8 Sovereign debt restructuring and human rights: Overcoming a false binary

Magalie L Masamba

8.1 Introduction

The COVID-19 pandemic has had an unparalleled impact globally and has resulted in both a health crisis and economic crisis of epic proportions. Further, it has not only refocused the spotlight on sovereign debt related issues, but today it is probably changing the way in which we view debt-related issues that raise complex legal tensions. Sovereign debt restructuring (SoDR) in particular raises many legal questions because, despite decades of discussion, there still is no international mechanism to restructure sovereign debt, especially privately-held sovereign debt. The challenges of SoDR from a global perspective have been extensively discussed in the literature, and an African perspective on these challenges is slowly becoming part of the debate.[1]

The literature on the subject reveals that the governance gap created by an *ad hoc* approach to SoDR presently results in restructurings that are untimely, protracted, disorderly and inefficient. These challenges have arisen for various reasons, including the lack of effective coordination mechanisms, the multiplicity of institutional arrangements dealing with SoDR and the growing and ill-suited gap-filling role that national courts currently play.[2] However, the problems of present-day SoDR go beyond

* I would like to express my gratitude to Prof Daniel D Bradlow for his guidance and commentary on this chapter.

1 UNCTAD 'Sovereign debt workouts: Going forward – Roadmap and guide' (April 2015) 3, http://unctad.org/en/PublicationsLibrary/gdsddf2015misc1_en.pdf (accessed 10 June 2017). Also see ML Masamba 'An African perspective on reforming sovereign debt restructuring of privately held debt' LLD thesis, University of Pretoria, 2020. Also see ML Masamba 'Reflections on the current reality of Africa's debt landscape' AfronomicaLaw (26 January 2021), https://www.afronomicslaw.org/category/african-sovereign-debt-justice-network-afsdjn/reflections-current-reality-africas-debt (accessed 30 April 2021).

2 UNCTAD (n 1) 3.

the procedural issues.[3] The aspect that has been less discussed relates to fairness, or the lack thereof. An ideal approach to SoDR requires addressing the complex web of challenges – both substantive and procedural.[4] Both these dimensions have an impact on fairness, whether relating to fairness in the process or fairness of the outcome of a restructuring. The substantive issues, which are the focus of this chapter, can be grouped into two broad categories, namely, (i) the financial and economic problems required to restore a sovereign debtor to debt sustainability which are the subject of the negotiations between the sovereign debtor and its creditors; and (ii) the social and political concerns that also include human rights concerns, which have generally been seen to be the concern of the debtor.[5]

This chapter focuses on the second point, by addressing the link between sovereign debt and human rights. This chapter, therefore, will answer the question of whether there indeed is a failure of the present SoDR 'non-system' to deal adequately with human rights and

3 The term 'procedural', as Bradlow notes, comprises 'the arrangements for the negotiations between the debtor and creditors in an SODR' and includes, for instance, how to disseminate information to stakeholders in the restructuring process. DD Bradlow 'Can parallel lines ever meet? The strange case of the international standards on sovereign debt and business and human rights' (2016) 41 *Yale Journal of International Law* 201, 235.

4 Traditionally, the problems have mostly revolved around securing sufficient creditor coordination while dealing with numerous and diverse creditors and the high incentives for creditor holdouts. The question of binding minority creditors is among the key challenges in SoDR. This in turn has influenced the types of solutions that have been proposed to date, in particular the use of contractual innovations (CACs, aggregation provisions, etc). In fact, Sedlak has expressed the view that even where agreements are reached with all the major creditors, the question of how to compel minority creditors to accept the restructured deal may still pose a challenge. This challenge becomes ever more acute with restructuring over multiple bond series where there are no provisions for aggregation across multiple bond issues and raises concerns over inter-creditor equity. See J Sedlak 'Sovereign debt restructuring: Statutory reform or contractual solutions' (2004) 152 *Pennsylvania Law Review* 1483, 1493. Since this research in 2004, aggregated CACs have become a more common feature of sovereign bond issuances, including African sovereign bond issuances. However, despite the advancements, not all bonds issued by African countries include CACs and the potential of a collective action problem persists. Eg, in the SADC region, Zambia, the first African country to default during the COVID-19 pandemic, had issued Eurobonds that do not contain CACs, including the 2022 and 2024 bonds, thereby raising major concerns for a potential holdout by minority creditors in 2020. This is only one example of an African bond issuance that does not contain CACs. See Debtwire Republic of Zambia, Special Report (10 August 2020) 2, Governmenthttps://www.mergermarket.com/assets/Zambia%20Sovereign%20Report%20-%20FY19.pdf (accessed 10 April 2021). Further, today the collective action problem that may arise in the context of the current debate on restructuring is not so much that the creditor base is too dispersed, but rather how to get the private sector to agree on a restructuring for poorer and vulnerable countries.

5 Bradlow (n 3) 235.

developmental concerns. In so doing, I argue that not only does sovereign debt raise human rights concerns, but it can and should also be considered a human rights issue. In fact, to me, an analysis of SoDR without the consideration of human rights and developmental concerns would make such an analysis incomplete.

In making the above assessments, the chapter is divided into four parts. The first part briefly highlights the debt landscape in the Southern African Development Community (SADC) region, but does so in an abbreviated manner as other chapters in this book have conducted detailed assessments of the same.[6] The chapter then assesses the link between sovereign debt and human rights in the legal literature and identifies what is a glaring disconnect between these two fields. This leads to the following part, which explores whether there is a place for human rights in the sovereign debt discourse, in particular SoDR, which is one of the emerging issues that is still relatively overlooked. In so doing, this part considers the human rights impact on debtors and creditors and how the adoption of a human rights approach is viewed in present SoDR discourse.

8.2 Africa's sovereign debt landscape and debt restructuring

8.2.1 An overview of SADCs debt landscape

African sovereign debt levels are increasing and the nature of the debts are evolving as African countries turn to the capital markets to raise additional finance for development and to fill their budget deficits.[7] The 2021 statistics for the World Bank Group indicate that sub-Saharan Africa's overall external debt stock has considerably risen from approximately US $266

6 Among the chapters in this publication, see DD Bradlow & ML Masamba, ch 1 'Sovereign debt management and restructuring in SADC: Setting the scene and asking the right questions'; M Kessler, ch 3 'Deferring debt service in times of crisis: Did it matter and what can it lead to?; K Gallagher and Y Wang ch 5 'Sovereign debt via the lens of asset management: Implications for SADC countries'.

7 Among the justifications for the high demand for sovereign borrowing are the high developmental needs of the continent. In particular, the domestic resources of African countries are simply insufficient to meet its needs, including the need to fill the vast infrastructure deficit. At present the public infrastructure deficit is among the leading developmental challenges and is hindering the continent's integration with the global economy. Many countries are now finding their debt at the same levels as pre-HIPC. A case in point is Ghana, which went from being a HIPC success story to again requiring bailouts from the IMF. AfDB African Legal Support Facility 'Vulture funds in the sovereign debt context', http://www.afdb.org/en/topics-and-sectors/initiatives-partnerships/african-legal-support-facility/vulture-funds-in-the-sovereign-debt-context/ (accessed 30 January 2017).

billion in 2009 to approximately US $625 billion in 2019.[8] Furthermore, the external private sector long-term non-guaranteed debt rose from US $203 billion in 2008 to US $535 billion in 2019.[9] On these growing debt levels, the World Bank Group had already raised the concern in 2020 that the region's debt had increased faster than that of other regions with some sub-Saharan African countries more than doubling their debt stocks and with poorer countries that are legible for International Development Association assistance, accumulating an 89 per cent share of the region's then US $116 billion bond debt in 2018.[10] This figure in the most recent statistics is US $109 billion.

While sovereign debt is an important feature of the development process, the increased levels of new private debt bring with it the increased risk of distress or default. Several sub-Saharan African countries that issued Eurobonds in the last decade have at one time or another experienced difficulties with the repayment of their international bonds.[11] Among the experiences of SADC countries, the most recent is Zambia which in November 2020 defaulted on its US $42,5 million Eurobond payment. Previously, in January 2017 Mozambique missed a payment of US $60 million, and defaulted on the interest rate payment due for a US $772 million bond payment and a US $120 million payment due in March

8 World Bank Group 'International debt statistics' (2021), https://openknowledge.worldbank.org/bitstream/handle/10986/34588/9781464816109.pdf (accessed 30 April 2021).

9 World Bank Group (n 8) 31.

10 World Bank Group 'International debt statistics' (2020) vii, https://openknowledge.worldbank.org/bitstream/handle/10986/32382/9781464814617.pdf?sequence=7&isAllowed=y (accessed 1 July 2020).

11 Brooks et al point out that in 2005, most SSA countries had not issued any international bonds. Yet, by 2013 such bonds made up 21% of Zambia's, 27% of Rwanda's and 56% of Namibia's total sovereign debt. S Brooks, D Lombardi & E Suruma 'African perspective on sovereign debt restructuring' Centre for Governance Innovation Issues Paper 47 (September 2014) 6, https://www.cigionline.org/sites/default/files/no43_web.pdf (accessed 1 June 2017).

2017.[12] Additionally, Seychelles defaulted on a US $230 million Eurobond in 2011 following election disputes.[13]

In 2020 in the wake of the COVID-19 pandemic and the ensuing economic crisis, African countries are again in debt distress and payment moratoriums/standstills may be needed.[14] As a response to this need, the G20 has launched the COVID-19 Debt Service Suspension Initiative (DSSI) to temporarily suspend official bilateral debt payments.[15] In this respect, at the World Bank/IMF spring meeting in April 2020, the Development Committee proposed that moratoriums on privately-held sovereign debt apply with terms comparable with those imposed on bilateral debt.[16] The president of the World Bank, David Malpass, in response to this Development Committee proposal, acknowledged the important role that the treatment of privately-held sovereign debt also plays, and noted that '[t]he commercial creditors of governments need to support sovereign debt reduction efforts too – not free ride'. [17] In an effort to provide a more comprehensive option and to tackle the challenge of bringing the private creditors to the table the G20 agreed the Common Framework for Debt Treatments beyond the DSSI. It offers restructuring

12 The case of Mozambique is a very complex one. The bonds in question had been issued to raise finance for the repayment of syndicated loans that were obtained for the alleged purchase of tuna boats by state-owned companies, guaranteed by the government of Mozambique. The Constitutional Council has subsequently held that this government guarantee was provided illegally. See 'Mozambique defaults on repaying fishy debt' *Sunday Times* (29 January 2017), https://www.pressreader.com/south-africa/sunday-times/20170129/282471413582050 (accessed 30 August 2017). Also see 'Mozambique to default again on hidden debt payment due today' *Zitamar News* (21 March 2017), https://zitamar.com/mozambique-default-hidden-debt-payment-due-today/ (accessed 1 December 2017). In this publication, Koen has conducted a detailed case study of Mozambique's debt that has been tainted by corruption. See L Koen ch 10 'The renegotiation of sovereign debt tainted by corruption: Mozambique's "secret" debt in perspective'.

13 Brooks et al (n 11) 6, 7.

14 'Senior Africans propose "standstill" on Eurobond debt payments' *Financial Times* (7 April 2020), https://www.ft.com/content/89c6d60f-5fe9-4b72-b327-4a6eb267a9c9 (accessed 1 July 2020).

15 World Bank Group 'COVID 19: Debt Service Suspension Initiative' (19 February 2021), https://www.worldbank.org/en/topic/debt/brief/covid-19-debt-service-suspension-initiative (accessed 3 March 2021).

16 World Bank 'World Bank/IMF spring meetings 2020: Development committee Communiqué' (17 April 2020), https://www.worldbank.org/en/news/press-release/2020/04/17/world-bankimf-spring-meetings-2020-development-committee-communique (accessed 1 July 2020).

17 World Bank Group President 'World Bank Group President Malpass: Remarks to the Development Committee' (17 April 2020), https://www.worldbank.org/en/news/statement/2020/04/17/world-bank-group-president-malpass-remarks-to-the-development-committee (accessed 1 June 2020).

for low-income country debts from a broad array of creditors, including the private creditors.[18]

8.2.2 Why the focus on SADC's debt restructuring experience?

Previous multilateral initiatives on debt relief to African countries focused on official and bilateral debt (which in the past represented the more extensive stock of African debt). These initiatives include the Heavily-Indebted Poor Country programme (HIPC) and Multilateral Debt Relief Initiative (MDRI). Notwithstanding the debt burden reduction achieved, African countries remained vulnerable to predatory litigation by vulture funds that acquired debt that received treatment under the abovementioned debt relief initiatives.[19] These relief initiatives did not alter the legal terms of underlying debt contracts, as such, and, as a result, litigation has still occurred. SADC countries that have had cases brought against them or been threatened with litigation from commercial creditors and vulture funds include Angola, Democratic Republic of the Congo (DRC), Madagascar, Mozambique and Zambia.[20] The vulture fund claims represent a considerable portion of the gross domestic product (GDP) of these and other African debtor countries that have been targeted.[21] It is estimated that the number of sovereign debt claims filed against HIPCs

18 Paris Club 'Common framework for debt treatments beyond the DSSI', https://clubdeparis.org/sites/default/files/annex_common_framework_for_debt_treatments_beyond_the_dssi.pdf (accessed 15 June 2021).

19 According to the AfDB African Legal Support Facility, out of 25 judgments granted in favour of vulture funds (yielding approximately US $1 billion) the majority have been against countries that are regional members of the bank. AfDB African Legal Support Facility (n 7).

20 See AfDB (n 7). Some cases involving African debt pursued by vulture funds in national courts include *Camdex International Ltd v Bank of Zambia* 1996 (3) All ER 431 (CA); *Camdex International Ltd v Bank of Zambia* 1997 CLC 714 (CA); *Lordsvale Finance v Bank of Zambia* 1996 QB 752; and *Donegal International Ltd v Republic of Zambia* 2007 All ER (D) 184, all of which concerned Zambian distressed sovereign debt pursued by vulture funds in national courts of the United Kingdom; the unreported case of *Hamsah Investments Ltd & Another v The Republic of Liberia* Case 2008/587 (High Court of Justice, London), concerning litigation by vulture funds in the national courts of the United States and United Kingdom to recover distressed Liberian debt; and *FG Hemisphere Associates LLC v République du Congo* 455 F.3d 575 (5th Circ 2006); *Democratic Republic of the Congo v FG Hemisphere Associates LLC* [2011] 4 HKC 151, concerning litigation in the national courts of the United States and Hong Kong to recover DRC distressed debt. For a discussion of the case law emanating from the Congolese, Liberian and Zambian case studies, see 'Report of the Independent Expert on the effects of foreign debt and other related international financial obligations of states on the full enjoyment of all human rights, particularly economic, social and cultural rights, Cephas Lumina' Human Rights Council 14th session A/HRC/14/21 (29 April 2010) 7-10, https://www.refworld.org/pdfid/4c29a9f02.pdf (accessed 7 June 2017).

21 AfDB African Legal Support Facility (n 7).

alone has surpassed the volume of debt relief that was provided under this programme.[22] A case in point in the SADC region is the DRC that has debt claims brought against it in foreign courts amounting to approximately 15 per cent of the country's GDP.[23]

More broadly, the focus on the African continent is vital due to the continent's vulnerability. Even though debt crises have a very adverse impact on developed and developing countries alike, this impact is augmented in the case of developing countries and sub-Saharan African countries in particular, due to their vulnerability.[24] In this respect, African countries greatly suffer from the grave human rights and social implications of problematic SoDRs. Further, the SoDR process is less efficient and leads to more negative outcomes in this region, especially for low-income sub-Saharan African countries. On this point, Wright has assessed various outcomes in the SoDR process in the different regions, including the number of years of delay and level of creditor losses.[25] Wright points out that SoDR of privately-held debt 'is time-consuming, expensive, and largely ineffective at preserving the value of creditor claims or reducing the long-term indebtedness of the sovereign debtor', and finds that these outcomes are worse for sub-Saharan Africa.[26] Concerning delays, Wright's research reveals that it generally takes an average of approximately six years for a default to be resolved. More specifically by region, Europe

22 U Das, M Papaioannou & C Trebesch 'Sovereign debt restructurings 1950-2010: Concepts, literature survey and stylised facts' IMF Working Paper 12/203 (August 2012) 50, https://www.imf.org/en/Publications/WP/Issues/2016/12/31/Sovereign-Debt-Restructurings-1950-2010-Literature-Survey-Data-and-Stylized-Facts-26190 (accessed 1 April 2017).

23 As above.

24 Not only does Stichelmans assess the debt vulnerabilities and impact of debt crisis, but he also states that developed and developing countries are increasingly at the risk of debt crisis as debt levels (especially in developed countries) have reached a historical high. Further, these potential crises can undermine the implementation of the Sustainable Development Goals, especially in the case of acute debt crisis. See T Stichelmans 'Why a United Nations sovereign debt restructuring framework is key to implementing the post-2015 sustainable development agenda' European Network on Debt and Development Briefing (May 2015), http://www.eurodad.org/files/pdf/560542f0a6035.pdf (accessed 1 June 2017). Also see N Ellmers & D Hulova 'The new debt vulnerabilities: 10 reasons why the debt crisis is not over' European Network on Debt and Development (November 2013), https://eurodad.org/files/pdf/1546060-the-new-debt-vulnerabilities-10-reasons-why-the-debt-crisis-is-not-over.pdf (accessed 1 June 2017).

25 MLJ Wright 'Sovereign debt restructuring: Problems and prospects' (2012) 2 *Harvard Business Law Review* 153, 156.

26 Wright, however, expresses the view that despite the fact that SoDR leads to worse outcomes in SSA, this region is more reliant on official debt as opposed to private debt owed to commercial creditors. See Wright (n 25) 171.

and Central Asia take about four and a half years; Latin America and the Caribbean take approximately seven and a half years; while for sub-Saharan Africa, the average duration is much longer (approximately eight and a half years).[27]

Finally, commercial debt presents unique and complex problems during and after restructuring, even more so than concessional loan debt. For sub-Saharan African countries, these problems may have additional and even greater implications for a region that is already dealing with the heavy weight of extreme poverty levels and structural weaknesses in public institutional frameworks and good governance.[28] As such, the impact of a gap in the global governance of SoDR is mostly encountered by the citizens of a debtor that is forced to reallocate funds in the national budget that could have been utilised for education, health care and other social services to pay its debts, sometimes to a single creditor.[29] As such, in the absence of an international framework or policy coordination, the future restructurings of sovereign commercial debt owed to private creditors will result in escalated costs, including some unintended human rights, environmental and social costs that are caused by the problems of fragmentation, fairness and procrastination that plague the process. Low-income sub-Saharan African countries are among the most vulnerable to these additional costs which include not only the economic and political costs of SoDR, but also the social costs, including the human rights impact and the environmental costs. This justifies the need to explore the reform of the international sovereign debt landscape.

8.3 Is there a missing link between sovereign debt and human rights in the legal discourse?

The law on human rights and sovereign debt have historically been treated as two distinct fields. This is especially so for foreign sovereign debt. From a historical perspective, after World War II right up to the 1990s, human rights and sovereign debt were not only treated as two unrelated

27 Wright (n 25) 169-170.

28 I Husain & J Underwood 'The debt of sub-Saharan Africa: Problems and solutions' (9 July 1991), http://www.radioradicale.it/exagora/the-debt-of-sub-saharan-africa-problems-and-solutions (accessed 1 August 2017). According to the World Bank, although poverty on the continent has reduced in percentage (from 56% in 1990 to 43% in 2012) these statistics are somewhat misleading as there actually are more poor people today because of increased population growth. Further, out of the world's top 10 most unequal countries, seven are African countries. See World Bank 'While poverty in Africa has declined, number of poor has increased' (March 2016), http://www.worldbank.org/en/region/afr/publication/poverty-rising-africa-poverty-report (accessed 1 August 2017).

29 Bradlow (n 3) 202.

fields but, as Kampel observes, only limited and isolated efforts were made to link them.[30] Despite over-indebtedness in developing countries in the 1970s and 1980s, Kampel opines that the connection between over-indebtedness and human rights was generally overlooked.[31] Instead, the Bretton Woods institutions (the International Monetary Fund (IMF) and World Bank) responded to debt sustainability concerns by introducing structural adjustment programmes (SAPs), which were criticised as not being sufficiently considerate of human rights outcomes.[32] It was only in the mid-1990s that a more explicit link was made between the scale of developing country debt and the impact of debt repayment on human rights, resulting in debt relief programmes. It was then that more focus was given to the human rights impacts of the previous SAPs and conditionality of multilateral lenders such as the IMF. However, there now is a wealth of scholarly works on the human rights impact of SAPs and criticisms of Bretton Wood policies in general.[33] Various authors have likewise now noted the negative and positive human rights impacts and outcomes in different HIPC and MDRI countries.[34]

30 D Kampel & LatMa Research Team 'Sovereign debt restructuring and the right to development' Global Campus of Human Rights Research Programme (2014-2015) 1, https://gchumanrights.org/tl_files/EIUC%20MEDIA/Global%20Campus%20of%20Regional%20Masters/research/2014-15/3.pdf (accessed 1 June 2016).

31 As above. While there indeed is a noticeable gap in the literature on human rights and sovereign debt in the above-mentioned era, there are some important scholarly works that came out in this era that explored the impact of structural adjustment and social welfare. Of note, see GA Cornia, R Jolly & F Stewart (eds) *Adjustment with a human face: Country case studies* (1987).

32 Kampel (n 30) 1.

33 There is a link between the structural adjustment programmes and human rights impact. In some cases these programmes directly cause a negative impact as they aggravate a broad spectrum of rights including economic, social and cultural rights, civil and political rights, environmental rights and the right to self-determination. Negative human rights outcomes of IMF policies have been noted by other authors more recently, including Stubbs and Kentikelenis, who provide an outline of human rights implications of IFI lending conditionality and set out the direct and indirect impacts on the right to health, labour rights, civil and political rights; T Stubbs & A Kentikelenis 'Conditionality and sovereign debt' in I Bantekas & and C Lumina (eds) *Sovereign debt and human rights* (2018) 359-380. Also see AE Kentikelenis & L Seabrooke 'The policies of the world polity: Script-writing in international organisations' (2017) 82 *American Sociological Review*1065; DD Bradlow 'The World Bank, the IMF, and human rights' (1996) 6 *Transactional Law and Contemporary Problems* 47, 72-78; DD Bradlow 'Stuffing new wine into old bottles: The troubling case of the IMF' (2001) 3 *Journal of International Banking Regulation* 3-6; and DB Braaten 'Ambivalent engagement: Human rights and multilateral development banks' in S Park & JR Strand (eds) *Global economic governance and the development practices of the multilateral development banks* (2015) 99-118. Also see M Darrow *Between light and shadow: The World Bank, the International Monetary Fund and international human rights law (Studies in international law*) (2006).

34 Among the articles that discuss the success of the 'aid machinery' are MA Weiss 'The multilateral debt relief initiative' CRS Report for Congress (11 June 2012) 2, https://

The interconnections between the fields of sovereign debt and human rights have become of greater focus in the more recent years. This has, first, been reflected by the work of the UN Independent Expert on the Effects of Foreign Debt and other Related International Financial Obligations of States on the Full Enjoyment of all Human Rights, particularly Economic, Social and Cultural (UN Independent Expert).[35] In addition, scholarly works that explore the interconnection between these two fields have been written in recent years.[36] From the legal literature it is evident that the human rights approach to sovereign debt first requires defining the underlying link between sovereign finance and human rights and, second, it involves a determination of the legal implications flowing therein.[37] Bohoslavsky and □erni□ acknowledge that the legal theory that links sovereign finance and human rights is both underdeveloped and backward.[38] The authors note, among other observations, this gap exists because of (i) the difficulty in applying a multidisciplinary approach to two fields that have traditionally been treated as separate; (ii) the concern that factoring in human rights considerations when taking on loans will in effect 'politicise' what is viewed to be a purely technical financial issue; (iii) the challenge of tracing the use of borrowed funds and determining and quantifying the human rights obligations of states; and (iv) the fact that legal studies have only recently begun to link sovereign finance and human rights outcomes.[39]

I agree with the idea that there is a need for a stronger link between human rights and sovereign finance. Additionally, I find particular merit

fas.org/sgp/crs/row/RS22534.pdf (accessed 20 June 2016); S Isar 'Was the Highly Indebted Poor Country Initiative (HIPC) a success?' (2012) 9 *Journal of Sustainable Development* 107, 115; S Mustapha & A Prizzon 'Is debt sustainable in the post-HIPC era? A literature review' Overseas Development Institute (February 2014) 3, https://www.odi.org/sites/odi.org.uk/files/odi-assets/publications-opinion-files/9105.pdf (accessed 19 November 2017).

35 The mandate of the Independent Expert was officially set out by the Commission on Human Rights in Resolution 2000/82, and further extended by the Human Rights Council in Resolution 7/4 (2008), which not only renamed the independent expert but also set out key thematic areas of focus to include the impact of debt on human rights and the state's policy-making ability. In addition to the key thematic areas, it also requested the Independent Expert to consider the link between debt and other areas such as trade and HIV, etc. Resolution 16/14 (2001) and Resolution 25/16) which both extended the mandate of the Independent Expert for an additional three years.

36 See JP Bohoslavsky & JL Černič (eds) *Making sovereign debt and human rights and finance work* (2014); Bantekas & Lumina (n 33).

37 JP Bohoslavsky & JL Černič 'Placing human rights at the centre of sovereign financing' in Bohoslavsky & Černič (n 36) 3.

38 As above.

39 Bohoslavsky & Černič (n 37) 4.

in the first, third and fourth arguments by Bohoslavsky and □erni□ listed above. However, I believe that the second observation raises some additional perspectives that should be acknowledged. Of note is that while indeed it is true that the human rights approach has been unpopular with the financial sector, there are noticeable exceptions as some developments have occurred in this space, particularly the fact that several large banks have human rights policies/statements.[40]

In linking human rights and sovereign debt, Bantekas and Lumina not only observe the fragmentation between these disciplines but go as far as noting 'hostility between the "opposing" camps (ie human rights and commercial lawyers)'.[41] Among the reasons Bantekas and Lumina cite for the relatively-independent evolution of the two fields is what they describe, on the one hand, as the 'professionalisation and over-specialisation of human rights' which has culminated in a culture and drafting language that is little understood by those not immersed in human rights.[42] In this respect, they observe that this over-specialisation has resulted in 'a limited understanding of human suffering outside the specific context of existing human rights treaties'.[43] On the other hand, the discipline of human rights

40 As illustrations of the banks with human rights policies or statements, see Standard Bank Group 'Standard Bank Group statement on human rights', https://www.standardbank.com/static_file/StandardBankGroup/Who%20we%20are/Our%20values%20and%20code%20of%20ethics/PDFs/Human%20Rights%20Statement%20PDF.pdf (accessed 2 June 2020); 'Deutsche Bank statement on human rights', https://www.banktrack.org/download/deutsche_bank_human_rights_statement_1_pdf/deutschebankhumanrightsstatement.pdf (accessed 10 May 2020); 'Credit Suisse statement on human rights', https://www.banktrack.org/download/statement_on_human_rights_10/190305humanrightsstatementmarch2019.pdf (accessed 10 May 2020); Bank of America 'Bank of America human rights statement', https://about.bankofamerica.com/assets/pdf/human-rights-statement.pdf (accessed 10 May 2020); 'Citi statement on human rights' (November 2018), https://www.citigroup.com/citi/citizen/data/citi_statement_on_human_rights.pdf (accessed 10 May 2020); Deutsche Bank 'Human rights', https://www.db.com/newsroom/en/human-rights.htm; Lloyds Banking Group 'Human Rights Policy Statement', https://www.lloydsbankinggroup.com/globalassets/our-group/responsible-business/reporting-centre/humanrightspolicystatement-180222.pdf (accessed 2 June 2020). For further discussion on the human rights obligations on international financial institutions, see DD Bradlow 'A human rights-based approach to international financial regulatory standards' (2018) 171 *Articles in Law Reviews and Other Academic Journals* 940, https://digitalcommons.wcl.american.edu/cgi/viewcontent.cgi?article=1948&context=facsch_lawrev (accessed 10 May 2019); and M Aizawa, DD Bradlow & M Wachenfeld 'International financial regulatory standards and human rights: Connecting the dots' (2018) 15 *Manchester Journal of International Economic Law* 2.

41 I Bantekas & C Lumina 'Sovereign debt and human rights: An introduction' in Bantekas & Lumina (n 33) 1.

42 As above.

43 As above.

may be perceived as playing 'a fringed part in this process' by commercial lawyers, who treat sovereign debt as a purely commercial transaction.[44] As a result, commercial lawyers may see no reason to give human rights issues 'professional remit'.[45] Instead, they may find that human rights law opposes the interests of the commercial parties.[46] These factors are said to have limited the link between human rights law and other fields such as debt restructuring, despite what now seems to be a visible link.

In addition to different approaches between 'human rights lawyers' and 'commercial lawyers', there is also a noticeable difference in opinions between developed and developing countries on whether sovereign debt is a human rights issue. Lumina observes that this difference is apparent in the voting patterns of countries participating in the United Nations (UN) Human Rights Council in which two issues stand out, namely, (i) the idea that sovereign debt is not a human rights issue and resultantly is the notion that (ii) debt-related issues should not be discussed at the UN Human Rights Council.[47] For instance, in its vote on the resolution on the mandate on the UN Independent Expert, the US reiterated its concern that debt should not be treated as a human rights issue but rather concerned a commercial relationship between the debtor and creditor.[48] The US felt that the focus on the subject of sovereign debt by the Human Rights Council was not only misplaced, as other financial institutional setups are more suited to deal with sovereign debt.[49] However, the US also unduly side-tracked the Human Rights Council's attention and financial resources from what it described as 'serious human rights issues that more urgently require our attention'.[50] This, in effect, was confirmation of the rejection that sovereign debt is, and at the very least raises human rights implications. Likewise, the US again in 2017 reiterated its view that the Human Rights Council was dealing with subject matters that are both

44 As above.

45 As above.

46 As above.

47 C Lumina 'Sovereign debt and human rights: Making the connection' in Bantekas & Lumina (n 33) 173.

48 Human Rights Council 'US EOV on foreign debt as a human rights problem, explanation of vote of the United States of America, Mandate of the Independent Expert on the Effects of Foreign Debt and other Related International Financial Obligations of States on the Full Enjoyment of all Human Rights, particularly Economic, Social and Cultural' 16th session Human Rights Council (23 March 2011). Also see C Lumina 'Chapter 21: Sovereign debt and human rights' in UN Human Rights Office of High Commissioner *Realising the right to development: Essays in commemoration of 25 years of the United Nations Declaration on the Right to Development* (2013) 291.

49 As above.

50 Human Rights Council (n 48).

too technical and outside its scope, including sovereign debt.[51] The same view has also been expressed by the European Union (EU) member states, which opposed United Nations General Assembly (UNGA) Resolution on Draft Principles on Sovereign Debt Restructuring Process partly on the basis that the IMF was a more appropriate forum to deal with the complex issue of SoDR than the UN.[52] Again, this is confirmation of the rejection by developed countries of the classification of sovereign debt as a human rights issue which, if considered as such, would make it well within the mandate of UN organs. The question that may arise is the following: *If this viewpoint is correct, why have other historical efforts at sovereign workouts in what developed countries consider to be the suitable forums, not resulted in better outcomes, especially for citizens of debtor countries?*

Furthermore, not only has the inadequacy of past approaches been noted in this and other studies, but efforts to develop an SDRM at the IMF was opposed for reasons including the fear of a conflict of interest arising from the Fund's dual role as a lender of last resort and administrator of the SDRM. In exploring this, Lumina points out that despite the view by developed countries that different disciplines and institutional setups should tackle the issues of sovereign debt, from a historical perspective there has thus far been no evidence of better outcomes through any other system.[53] Moreover, the position of developed countries is somewhat alarming because, after the 2008 global financial crisis and even now during the COVID-19 pandemic, it became evident that the challenges of debt and human rights affect developed and developing countries alike. By way of illustration, adjustment programmes that formed part of the Greek

51 This was reiterated in the 34th session Human Rights Council 'Explanation of vote of the United States of America on the Rights Council (n 48).
This was reiterated in the 34th session Human Rights Council 'Explanation of vote of the United States of America on the negative impact of non-repatriation of illicit funds on foreign debt as a human rights problem' delivered by William T Mozdzierz (24 March 2017). See 'The United Nations Human Rights Council: Background and policy issues' Congressional Research Service (20 April 2020), https://fas.org/sgp/crs/row/RL33608.pdf (accessed 10 June 2020).

52 Council of European Union 'EU common position on the UN draft resolution on draft basic principles on sovereign debt restructuring process' A/69/L.84 (2 September 2015) 4, http://data.consilium.europa.eu/doc/document/ST-11705-2015-INIT/en/pdf (accessed 20 November 2016).

53 C Lumina 'Chapter 21: Sovereign debt and human rights' in UN Human Rights Office of High Commissioner (2013) (n 48) 291.

SoDR led to a reduction in social spending and, as a result, impacted the realisation of economic, social and cultural rights in Greece.[54]

Concerning the view of the Global South, both a statutory and human rights-centred approach to the governance of SoDR is a more attractive option, as countries in this region are most affected by vulture

54 According to the UN Independent Expert, these austerity measures after 2010 did little to restore debt sustainability, and instead unemployment levels remained at 25%, while poverty levels increased. While some national efforts were made to enhance social security, the UN Independent Expert called for a 'a more holistic approach' which required the allocation of the 'limited available resources to bolster the real economy and close holes in the social security net and in the system of public health care'. UN Human Rights Office of the High Commissioner 'Greek crisis: Human rights should not stop at doors of international institutions, says UN expert' (2 June 2015), https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=16032 (accessed 15 May 2016). Civil society organisations have also pointed out the human rights impact on the 2008 financial crisis on European countries. Amnesty International notes the high costs of debt service that Greece payed (up to 45% of the GDP) and its negative impact on its human rights obligations. Also see S Ambast & K Gogou 'Eurozone governments need to recognise that Greece's debt is a human rights issue' (27 June 2018) Amnesty International, https://www.amnesty.org/en/latest/news/2018/06/eurozone-governments-need-to-recognise-that-greeces-debt-is-a-human-rights-issue/ (accessed 19 July 2018). Also see Amnesty International 'Wrongful prescription: The impact of austerity measures on the right to health in Spain' (2018), https://www.amnesty.org/download/Documents/EUR4181362018ENGLISH.PDF (accessed 1 November 2019). Various cases have arisen flowing from the Greek debt crisis at different fora, including at the European Court of Human Rights on the human rights impact on creditors of Greece's SoDR. Of note in this respect is the case of *Mamatas & Others v Greece* which is important because it will instructive to 'similarly-situated Eurozone sovereign in the future'. The case relates to claims made by creditors on the basis of a violation of the right to property (art 1 of the First Added Protocol to the European Convention on Human Rights) and non-discrimination (art 14 of the European Charter of Human Rights). The case related to the haircut imposed on bonds under the Private Sector Involvement (PSI) Agreement amounting to 53,5% of the nominal value and approximately 75% in net present value. This restructuring was imposed through a voting mechanism by legislative amendments for Greek state bonds. Amongst the issues ruled by the Court in *Mamatas*, it acknowledged the restrictions on the right to property on the basis on 'public emergency threatening the life of the nation' as per art 15 of the European Convention on Human Rights. However, the Court did not carry an assessment on what magnitude of debt crisis constitutes a public emergency and the elements that should be considered. In the case of Greece, the restructuring was seen as unavoidable and considered a public emergency. Additionally, the Court found that investors did not have a legitimate expectation to be paid in full at maturity of the bonds as the possibility of restructuring was made known since 2010. *Mamatas & Others v Hellenic Republic,* Greece App 63066/14 64297/14 66106/14 (ECHR, 21 July 2016). Also see LC Buchheit & MG Gulati 'Sovereign debt restructuring in Europe' Global Policy Special Issue: Ten Years after the Global Financial Crisis: Lessons Learned, Opportunities Missed 9 Vol 1 (2018) 68, https://onlinelibrary.wiley.com/doi/epdf/10.1111/1758-5899.12531 (accessed 15 May 2019). Also see S Grund 'Restructuring government debt under local law: The Greek experience and implications for investor protection in Europe' (2017) 12 *Capital Markets Law Journal* 253.

fund litigation, particularly in Africa and Latin America.[55] One explanation for the preferred approach is that the Global South traditionally tends to mostly be debtor countries, and they feel the implications of sovereign debt in already impoverished communities. In addition, the eradication of poverty in African countries has been elusive in part due to the impact of over-indebtedness, and as such the issues of debt and human rights are not easily separated in the African context.

On the link between sovereign debt and human rights, Bohoslavsky and □erni□ note that while public debt can facilitate human capital development; infrastructure and social services, it can also enable significant human rights violations.[56] This connection between sovereign debt and human rights can be both direct and indirect. In the first instance of a direct connection, sovereign debt can be used to finance human rights violations such as 'funding death squads and death camps'.[57] In the instance that these violations take place where there is a change in government in the debtor country, this may theoretically make a good case for an odious debt argument to justify cancelling the debt.[58] However, even if this is the case, there may be a preference for arguments arising from the more developed sphere of human rights law, than the less developed odious debt jurisprudence. While the term has been used in various contexts, the main argument behind the legal doctrine of 'odious debt' is that 'sovereign debt incurred without the consent of the people and not benefiting the people is odious and should not be transferable to a successor government, especially if creditors are aware of these facts in advance'.[59]

55 The view of the Global South is evident in the statement made on behalf of the Group of 77 and China by JV Bainimaramam, who noted that with the failings of the contractual approach, as evident through vulture fund litigation, a human rights approach is preferred. He also reiterated the requirement of parties in a restructuring process to respect human rights obligations, as set out in the UN Guiding Principles on Foreign Debt and Human Rights. See 'Lessons learned from debt crisis and ongoing work on sovereign debt restructuring and debt resolution mechanism' Special High Level Meeting of ECOSOC, New York (April 2013), http://www.g77.org/statement/getstatement.php?id=130423 (accessed 15 May 2016).

56 Bohoslavsky & Černič (n 37) 1.

57 Bohoslavsky & Černič (n 37) 2.

58 For an overview of the doctrine of odious debt, see CG Paulus 'The concept of "odious debt": A historical survey' (2007) 179 *Duke Law School Legal Studies Paper*; T Wyler 'Wiping the slate: Maintaining capital markets while addressing the odious debt dilemma' (2008) 29 *University of Pennsylvania Journal of International Law* 947; S Ludington, M Gulati & A L. Brophy 'Applied legal history: Demystifying the doctrine of odious debts' (2010) 11 *Theoretical Inquiries in Law* 247; A Khalfan, J King & B Thomas 'Advancing the odious debt doctrine' Centre for International Sustainable Development Law (11 March 2003).

59 Two examples in the SADC region that may potentially be considered odious debt in the SADC region are (i) the debts accrued on behalf of the DRC by Mobutu

There also is an evident link between sovereign debt and the enjoyment of economic, social and cultural rights when the limited resources of the debtor country, which could have been directed to economic, social and cultural or civil and political rights spending, instead are diverted to debt servicing.[60] The indirect link between sovereign debt and human rights may arise where there is a restructuring that results in 'a factual loss of sovereignty over their [the sovereign debtor's] economic and social policies and in the imposition of policies with potentially negative consequences for the protection of social rights'.[61] In this respect, Bantekas and Lumina correctly note that where the interests of lenders influence debt management, a sovereign borrower will reconfigure its 'revenue-generation power ... in such a way to create annual surplus'.[62] This surplus may be generated in a manner that hampers the delivery of social services through, for instance, social spending cuts and the imposition of retrogressive taxes. The relationship between debt and the enjoyment of human rights is not always clear andless clear at times, is the relationship between SoDR and human rights. The following part attempts to connect the dots.

8.4 Connecting the dots: Assessing the interface between debt restructuring and human rights

8.4.1 The impact of sovereign debt restructuring on the enjoyment of human rights

The previous part of this chapter demonstrated the general missing link between human rights and debt in legal discourse. It also established the notion that sovereign debt indeed is a human rights issue. Flowing from that assessment, the task in this part is to focus on the link between human rights and SoDR of privately-held debt. The starting point of this assessment is the notion that the SoDR process broadly impacts the

Seseseko that was used to personally enrich himself; and (ii) the heavily-criticised debts acquired by the apartheid government of South Africa used to oppress the county's black population. However, the odious debt argument was not raised as a defence for non-repayment of debts in both instances, despite the potential of the argument. See M Kremer & S Jayachandran 'Odious debt' IMF Finance and Development Volume 39, Number 2 (June 2002), https://www.imf.org/external/pubs/ft/fandd/2002/06/kremer.htm (accessed 10 April 2021).

60 Lumina (n 48) 293.

61 S Michalowski 'Sovereign debt and social rights: Legal reflections on a difficult relationship' (2008) 8 *Human Rights Law Review* 35, 39. Also see Lumina (n 48) 293.

62 Bantekas & Lumina (n 41) 4.

different stakeholders (both the debtor and private creditors) in the process in different ways.[63]

The human rights impact within the debtor state

SoDR has an impact on the human rights of citizens of a debtor state because a debtor is in a more vulnerable economic position in a debt crisis. During this period, a debtor is made vulnerable by the contractual obligation to service the debt while it faces economic difficulties. Further vulnerability arises because a failure to meet contractual obligations may result in limitations in market access for additional financing, and even where new funding is possible, this may be at an excessively high cost.[64] During this vulnerable time, there is an inevitably high likelihood that human rights will be negatively impacted. This may manifest in two broad ways:

- First, SoDR may have a direct impact on economic, social and cultural rights in the debtor state. This is mainly through the divergence of resources away from economic, social and cultural spending, to debt service. However, during an economic crisis, I do acknowledge that it is possible that the reduced spending on economic, social and cultural is because of the difficult economic situation in the country and because of choices the government makes in response and not necessarily because of debt service directly. The impact may be felt more by vulnerable groups, such as women and children.[65] In this respect, the broad discussion on economic, social and cultural rights and sovereign debt above also finds relevance in the perspective of SoDR.
- Second, concerning multilateral and bilateral debt, in particular, SoDR may come with structural adjustment and austerity programmes that require policy adjustments. Human rights may be negatively impacted by the introduction of austerity or retrogressive measures, which may decrease or restrict access to essential services such as education, healthcare, judicial systems and employment.

The 'competing' rights of private creditors

The current tension in SoDR may be described as 'how to balance the interests of creditors and debtors in ways that ensure states can respect their

63 Bradlow acknowledges the high probability of a negative human rights impact on different actors in the SoDR process and in particular notes the limited focus on sovereign creditors. Bradlow (n 3) 202.

64 Bradlow (n 3) 202.

65 Lumina (n 48) 295.

obligations in the promotion and protection of rights'.[66] In this respect, the use of privately-held debt raises the need to consider the human rights obligations of creditors, as well as the rights that may be affected, which is an issue that is not generally raised as a concern in the context of debt from multilateral and bilateral lenders.[67] As such, a balanced approach requires consideration not only of the rights of the citizens of the debtor that have been impacted, but also a consideration of the human rights impact on private creditors (individual bondholders). Private creditors are mainly institutional and include insurance funds and pension funds. As such behind these institutions sometimes are the savings of individuals such as pensioners. By way of illustration, Argentina's 2001 default directly affected the rights to social security of hundreds of thousands of Argentinian and Italian retirees.

The complexity that arises, however, is that this enquiry requires answering the question of *how the competing human rights of the populations of the debtor and rights of creditors should be balanced.* This question has thus far not been seen as a critical issue during the acquisition of the debt, less so in the restructuring process.

In SoDR, creditors are adversely affected by the financial losses arising from haircuts to the principal or interest rate, as well as from rescheduling and the costs of delays. From the perspective of private creditors, SoDR may be considered as an attack on their property rights. In some cases, depending on the nature of the creditor, the right to social security may also be impacted.[68] Discussions on the impact of SoDR predominantly revolve around the effect on property rights. Although the right to property is contained in neither the International Covenant on Economic, Social and Cultural Rights (ICESCR) nor the International Covenant on Civil and Political Rights (ICCPR), it features in other international instruments.[69]

66 J Rossi 'Sovereign debt restructuring, national development and human rights' (2016) 13 *SUR International Journal on Human Rights* 185, 189.

67 Bradlow (n 3) 202. A major concern for some authors in the literature is what may be perceived as the limited consideration for creditor rights and SoDR. Porzecanski in particular believes that the limited consideration of property and creditor rights 'has led many contemporary human rights advocates down an infertile, if not inappropriate, intellectual and policy path'. See AC Porzecanski 'Human rights and sovereign debts in the context of property and creditor rights' in Bantekas & Lumina (n 33) 66.

68 Argentina's 2001 default by way of illustration directly affected the rights to social security of hundreds of thousands of Argentinian and Italian retirees. See Porzecanski (n 67) 65.

69 See ICESCR adopted by the UN General Assembly on 16 December 1966 by GA Resolution 2200A (XXI), https://treaties.un.org/doc/treaties/1976/01/19760103%2009-57%20pm/ch_iv_03.pdf (accessed 10 April 2021). See ICCPR adopted by UN

The Universal Declaration of Human Rights (Universal Declaration), for instance, sets out that '[e]veryone has the right to own property alone as well as in association with others' and 'no one shall be arbitrarily deprived of his property'.[70] The right to property is also contained in the African Charter on Human and Peoples' Rights (African Charter) which in article 14 sets out that 'the right to property shall be guaranteed. It may only be encroached upon in the interest of public need or in the general interest of the community and in accordance with the provisions of appropriate laws.[71]

From the wording of the provisions on the right to property above, it is evident that property rights are not absolute and, in some instances, competing public interests may justify interference with the right to property. The property provision in article 14 of the African Charter has been criticised for having the most far-reaching 'claw-back provisions' that gives the state much more leeway to infringe on property rights while leaving room for weaker safeguards.[72] However, Golay and Cismas note that this far-reaching claw-back provision in the African Charter emanates from the continent's colonial past.[73]

In answering the central question of whether the SoDR process violates the property rights of a creditor, Goldmann observes that where creditors have accepted a restructuring package, there is no violation of rights as this process is both consensual and voluntary.[74] The challenge exists when the creditors do not accept a restructuring or when SoDR is unilateral. In this respect, the case of a unilateral default or restructuring,

General Assembly Resolution 2200A (XXI) on 16 December 1966, https://treaties.un.org/doc/publication/unts/volume%20999/volume-999-i-14668-english.pdf (accessed 10 April 2021).

70 See art 17 of UDHR. Further, the International Convention on the Elimination of All Forms of Racial Discrimination (1965) provides for the right to property as it pertains to racial discrimination in art 5(v). Likewise, the Convention on the Rights of Persons with Disabilities A/RES/61/106 (CRPD, 2006) provides for the right to property in the context of disabled persons in both arts 5(3) and 30(3).

71 African Charter on Human and Peoples' Rights adopted by the Organisation of African Union on 27 June 1981, https://www.achpr.org/legalinstruments/detail?id=49 (accessed 10 April 2021).

72 C Golay & I Cismas 'Legal opinion: The right to property from a human rights' International Centre for Human Rights and Democratic Development & Geneva Academy of International Humanitarian Law and Human Rights (2010) 6, https://dspace.stir.ac.uk/bitstream/1893/21703/1/Golay%20and%20Cismas_Working%20Paper_2010.pdf (accessed 15 May 2016).

73 Golay & Cismas (n 72).

74 M Goldmann 'Human rights and sovereign debt workouts' in Bohoslavsky & Černič (n 33) 86.

in which the debtor in effect has repudiated its debt obligations, raises a different human rights concern. I share the view of Goldmann that a unilateral SoDR raises more of a procedural concern (the issue of due process) and not so much a substantive human rights issue –the violation of property rights.[75]

When it comes to private individuals as creditors, the difficulty is that it appears that there is a tug between the rights within the debtor state and those of creditors, which raises the question of who should assume the weight of over-indebtedness. On this tug, Porzecanski expresses his apprehension for what may be seen as a tendency to take the social and economic rights in the debtor more seriously than creditor rights.[76] Porzecanski harshly criticises the human rights approach that prioritises the human rights of the debtor population. In this respect, the main criticism has been on the position of the former UN Independent Expert, Lumina, who noted that '[i]t may be contended that states' responsibility to ensure the enjoyment of basic human rights may take priority over their debt-service obligations, particularly when such payments further limit the ability of states to fulfil their human rights obligations'.[77]

Moreover, Porzecanski finds fault with the view held by the former UN Independent Expert, Bohoslavsky, whose position is that two factors can limit the principle of the sanctity of contracts (*pacta sunt servanda*) – sovereignty and human rights.[78] In this regard, Bohoslavsky notes that 'under certain circumstances, particularly when economic, social and cultural rights [are] at risk, the operation of contract[s] may not be sufficiently compelling to ask the populations of sovereign states to fully repay their debts in a timely manner'.[79] In response to these views held by the former UN Independent Experts, as set out above, Porzecanski describes these as 'provocative opinions' as they 'lack legal justification', and also are 'counterproductive, especially given the increasingly heavier

75 As above.

76 Porzecanski feels that human rights laws are more honoured in the breach than in the observance in most parts of the world, principally because states accepted international standards governing the treatment of their own nationals in their own territory while reserving to themselves the sovereign right to enforce those rights as they saw fit. See Porzecanski (n 67) 66.

77 Lumina (n 77) 293.

78 UN 'Report of the Independent Expert on the Effects of Foreign Debt and other Related International Financial Obligations of States on the Full Enjoyment of all Human Rights, Particularly Economic, Social and Cultural Rights' (A/70/275 4 August 2015), as set out in Porzecanski (n 67) 63.

79 As above.

reliance, even by low-income countries, on funding from private rather than official (bilateral and multilateral) sources of debt finance'.[80]

Porzecanski opines that, in addition, there is a gap in the human rights literature which, despite being extensive even with economic rights, makes little mention of both creditor and property rights. According to Porzecanski this limited treatment stems from his view that human rights instruments from the past five decades have provided little focus on private property and other creditor rights.[81] He consequently highlights the importance of the enforcement of property and creditor rights for the fulfilment of other human rights, particularly economic rights.[82] Additionally, there is a direct link between broad property rights and various other human rights, and in fact these rights are inseparable. The main view here is what Porzecanski sees as the need, at the minimum, for the acknowledgment by human rights practitioners of the interconnectivity and complementarity between creditor rights and other human rights.[83] As such, for Porzecanski the idea of creditors bearing the burden of the SoDR in favour of welfare spending is 'sheer folly' because, according to him, there is not sufficient financial, economic and legal literature to demonstrate that property rights are a major precondition for a nation's evolution and success.[84] The 'folly', in the view of Porzecanski , arises from the fact that (i) some countries have mismanaged their resources after far-reaching debt relief; (ii) the default results in substantial reputational and economic harm; and (iii) the defaults further weaken already weak legal and regulatory institutions and systems to safeguard private investors.[85]

While to me, Porzecanski does raise concerns that are legitimate to an extent, my point of departure, however, is that they also seem to in effect relieve creditors of any responsibility for the crisis in a debtor. *This raises the complex and still unanswered question of accountability of all actors in the debt landscape and how to share this accountability and what it means in terms of a restructuring.*

80 As above.

81 Porzecanski (n 67) 44.

82 As above.

83 Porzecanski (n 67) 65.

84 Creditor protection emanates from both protections provided in statutes and the accompanying core feature of reliable regulatory and judicial systems to ensure good investor protection. Porzecanski (n 67) 63-64.

85 As above.

8.5 The role of human rights considerations in the sovereign debt restructuring discourse

8.5.1 What are the main considerations in the human rights and sovereign debt restructuring discourse?

Today it seems almost unfathomable why sovereign debt issues could be viewed outside of a human rights paradigm because of what appears to be the prominent human rights impact of a debt crisis. Yet, there seems to be an evident disconnect between the developments in the field of human rights and the field of sovereign debt. This is evidence that from the outset the complexity of SoDR arises from the present conceptualisation of the nature of privately-held sovereign debt. On this note, Goldmann opines that this conceptualisation of SoDR 'demonstrates how global governance blurs the distinction between the public and the private'.[86]

What complicates SoDR is that the distinction between public and private indeed is blurred. Goldmann further correctly notes that the blurring of the public/private divide in turn has had actual repercussions for the protection of human rights, as well as for democracy.[87] Concerning human rights in particular, both debt crises and, inevitably, SoDR tend to favour protecting incomes and profits of foreign creditors, over the human rights of debtor populations.[88] A consideration of the broader human rights impact brings into the spotlight the inadequacy of classifying the restructuring of sovereign bonds as a purely commercial activity. I align myself with the view that *(i) sovereign insolvency is among the risks of investment on the part of private creditors; (ii) the current SoDR regime is highly deficient in the protection of sovereign debtors; and (iii) human rights obligations of citizens of the debtor state should generally be a major consideration in restructuring, versus what may be seen as a very strict application of the sanctity of contracts.*

There is an evident link between human rights and SoDR. Nevertheless, not only is the 'human rights first' approach unpopular with adjudication bodies, but it has also been unpopular in some of the legal literature on the subject. In this regard, an argument that has been put forward in the context of bilateral debt is that if sovereign debtors use social spending as

86 M Goldmann 'Public and private authority in a global setting: The example of sovereign debt restructuring' (2018) 25 *Indiana Journal of Global Legal Studies* 331, 347.

87 Goldmann believes that this impact arises due to 'the insistence on the private law character of sovereign debt instruments serves as a tool for entrenching a neoliberal agenda and for discarding important public interests'. Goldmann (n 86) 347.

88 JP Bohoslavsky & K Raffer (eds) *Sovereign debt crisis: What have we learned*? (2017) 277.

a pretext to evade debt repayment, this will amount to a 'forced transfer of resources from the North to the South'.[89] The basis of this position is that creditors are effectively forced to assume the costs of the debtor's human rights obligations to its citizens and their resources are indirectly transferred when debt obligations are not met.[90] Michalowski, however, observes that the correct position whether or not the loan has enriched the debtor is that the divergence of resources to social spending is not a 'transfer' (even indirectly) of the cost of human rights obligations.[91] Instead, a creditor should accept that human rights obligations trump debt repayment due to the 'overriding importance of human rights'.[92]

8.5.2 What is the treatment of human rights in sovereign debt restructuring standards?

Various human rights soft law instruments have attempted to link human rights and sovereign debt. In 2012 the *United Nations Conference on Trade and Development* (UNCTAD) developed Principles on Promoting Responsible Sovereign Lending and Borrowing.[93] The Principles are relevant to SoDR as they provide that 'lenders should be willing to engage in good faith discussions with the debtor and other creditors' in response to distress.[94] In the event that a SoDR occurs, it should occur 'promptly, efficiently and fairly'.[95] While there is no reference to human rights obligations, it may questionably be inferred that a fair SoDR process is one that takes a balanced approach and not only takes into account human rights obligations but also makes use of shared responsibility. This, however, is not a view shared by all actors in the SoDR process.

Human rights obligations have not been reflected in standards developed by the Institute for International Finance (IIF), for instance. The IIF describes itself as a global association of the financial industry, and its membership includes approximately 450 financial institutions. Consequently, the IIF can be said to represent the views of private

89 Michalowski (n 61) 48.

90 As above.

91 As above.

92 As above.

93 UNCTAD 'Consolidated Principles on Promoting Responsible Sovereign Lending and Borrowing' (10 January 2012), https://unctad.org/en/PublicationsLibrary/gdsddf2012misc1_en.pdf (accessed 11 June 2017).

94 Principle 7 of the Principles on Promoting Responsible Sovereign Lending and Borrowing (n 93).

95 Principle 15 of the Principles on Promoting Responsible Sovereign Lending and Borrowing (n 93).

creditors. In October 2012 the IIF's Principles for Stable Capital Flows and Fair Debt Restructuring in Emerging Markets (Capital Flows Principles) were published.[96] The Capital Flows Principles generally provided for transparency during restructuring (disclosure practice), cooperation between debtors and creditors to avoid SoDR, good faith and fair treatment.[97] However, they made no mention of any human rights obligations in lending activities. In fact, Bradlow notes that instead they 'do not suggest that the creditors have any responsibility to take the likely impact of their actions on these citizens into account in their negotiating and decision-making process'.[98]

In 2012 the UN Independent Expert developed the UN Human Rights Council Guiding Principles on Sovereign Debt and Human Rights (UNHRC Guiding Principles).[99] This soft law instrument requires that lending and borrowing activities refrain from impacting sovereign human rights obligations (Principle 6), and that '[a]ny foreign debt strategy must be designed not to hamper the improvement of conditions guaranteeing the enjoyment of human rights and must be directed, inter alia, to ensuring that debtor states achieve an adequate level of growth to meet their social and economic needs and their development requirements, as well as fulfilment of their human rights obligations'.[100]

The HRC Guiding Principles, however, make no mention of other norms or standards that are relevant to the SoDR process, neither is there a cross-reference to ith the UN Guiding Principles on Business and Human Rights (UNGPs) which is among the leading instruments bridging human rights and business.[101]

96 IIF 'Principles for Stable Capital Flows and Fair Debt Restructuring in Emerging Market' (14 October 2012), https://www.iif.com/Portals/0/Files/content/Regulatory/The%20Principles%20and%20Addendum.pdf (accessed 10 May 2016).

97 Principles for Stable Capital Flows and Fair Debt Restructuring in Emerging Market (n 96).

98 Bradlow (n 3) 211. Similarly, the 2013 report on the Capital Flows Principles make no mention of human rights obligations. See IIF 'Principles for Stable Capital Flows and Fair Debt Restructuring: Report on Implementation by the Principles Consultative Group with Comprehensive Update on Investor Relations Programmes and Data Transparency' (October 2013), https://www.iif.com/portals/0/files/private/2013_IIF_PCG_Report_3.pdf (accessed 10 May 2016).

99 See Annex to the 'Guiding Principles on Foreign Debt and Human Rights' Report of the Independent Expert on the effects of foreign debt and other related international financial obligations of States on the full enjoyment of all human rights, particularly economic, social and cultural rights C Lumina A/HRC/20/23 (10 April 2011), https://undocs.org/en/A/HRC/20/23 (accessed 10 May 2016).

100 See 'Guiding Principles on Foreign Debt and Human Rights' (n 99) Principle 8.

101 Bradlow in his article 'Can parallel lines ever meet? The strange case of the

More recently the UNGA has acknowledged the need for clear principles on 'the management and resolution of financial crises that take into account the obligation of sovereign debtors and their creditors to act in good faith and with a cooperative spirit to reach a consensual rearrangement of the debt of sovereign states'.[102] To fill the normative gap, on 10 September 2015 the UNGA adopted UNGA Resolution 319/69 on Basic Principles on Sovereign Debt Restructuring Processes.[103] The nine basic principles – the right to restructure debt, good faith, transparency, impartiality, equitable treatment, sovereign immunity, legitimacy, sustainability, major restructuring – are intended to be the pillars upon which a multilateral framework is to be established as per UNGA Resolution 69/247.[104] UNGA Resolution 319/69 is a voluntary set of principles. However, some consider them as legally binding because they are seen as a representation of customary law and/or general principles of international law.[105] However, their human rights implications are yet to be determined as there seems to be a weak link expressed.[106]

There is an evident need to consider further developing the normative framework, and the nine basic principles on SoDR have enhanced the normative framework of SoDR, in addition to other voluntary principles and norms. The human rights dimension finds relevance when it comes to the principle of sustainability. The principle of sustainability has shifted the concept of successes in SoDR to go beyond a process which was conducted in a timely and efficient manner, and that stabilised debt levels. A successful SoDR is now also perceived to include a process that

international standards on sovereign debt and business and human rights' questions the developments of soft law principles in the field of human rights and business and explores whether the same can be of use on the subject of SoDR. In addition to the lack of express reference to the UNGPs, Bradlow further finds it peculiar that even the UNCTAD roadmap does not make reference to the UNGPs. Bradlow (n 3) 213-214.

102 UNGA Resolution 'Basic Principles on Sovereign Debt Restructuring Processes' UNGA Resolution A/69/L.84 (2015).

103 As above.

104 For an elaboration of the parameters of each principle, see 'South Africa: Draft Resolution Basic Principles on Sovereign Debt Restructuring Processes' 69 Session of UNGA Session A/69/L.84 (29 July 2015), https://unctad.org/meetings/en/SessionalDocuments/a69L84_en.pdf (accessed 14 May 2016). For a discussion of the principles, also see the discussion by SP Ng'ambi in ch 11 'Sovereign debt: A case study of Zambia'.

105 JP Bohoslavsky 'Why the Addis debt chapter falls short UN Research Institute for Social Development' (15 September 2015), http://www.unrisd.org/road-to-addis-bohoslavsky (accessed 16 May 2019). Also see art 38 of the Rules of the International Court of Justice (adopted on 14 April 1978 and entered into force on 1 July 1978), https://www.icj-cij.org/en/rules (accessed 15 May 2016).

106 Bohoslavsky (n 105).

preserves 'at the outset creditors' rights while promoting sustained and inclusive economic growth and sustainable development, minimising economic and social costs, warranting the stability of the international financial system and respecting human rights'.[107] As a result, the human rights implication of the principle of debt sustainability still is not clear. In fact, while this study sees the Basic Principles as a significant and positive development, human rights treatment still leaves questions.

8.6 Conclusion: SoDR reform requires a human rights-based approach

Flowing from the above-mentioned argument that there is a gap in the human rights treatment of SoDR, this chapter concludes that a significant component to a 'successful' SoDR is the process that preserves 'at the outset creditors' rights while promoting sustained and inclusive economic growth and sustainable development, minimising economic and social costs, warranting the stability of the international financial system and respecting human rights'.[108] As such, the question, therefore, is how to reform SoDR in a manner that both leads to efficiency gains and stabilised debt while also taking into account the human cost and development concerns. In this respect, transforming SoDR as we know it requires developing, among other things, a human rights-based approach (HRBA).

A human rights approach requires the consideration of human rights concerns from the outset. In this respect, a key feature could be the incorporation of human rights in the definition and shared understanding of 'debt sustainability'. Beyond this initial inclusion of human rights considerations, similar considerations should also be made in the SoDR process, including:

(1) Promoting the enjoyment of fundamental human rights by invoking existing human rights obligations in current human rights instruments and their enforcement in SoDR.

A rights-based approach to SoDR is one that will result in normatively basing SoDR on international human rights standards. In particular, the HRBA 'integrates the norms, standards and principles of the international human rights system into the plans, policies and processes of development.

107 Sedlak points out that 'any procedure that focuses on the conflict between the debtor and the creditor will marginalise the interests of the "community" and potentially exacerbate the very problems that caused the sovereign to default in the first place'. Sedlak (n 4) 1514. Also see UNGA Resolution 'Basic Principles on Sovereign Debt Restructuring Processes' (n 102).

108 As above.

The norms and standards are those contained in the wealth of international instruments.'[109]

(2) Developing human rights impact assessment tools and their incorporation in the SoDR process

There is a need for the consistent use of human rights impact assessment tools throughout the lending life cycle. In fact, in 2019 the UN Independent Expert developed the Guiding Principles on Human Rights Impact Assessments of Economic Reforms. Notably, among these, Principle 12 on 'Debt sustainability, debt relief and restructuring' sets out that '[i]ndependent debt sustainability analysis should incorporate human rights impact assessments. Findings of human rights impact assessments should be used to inform debt strategies, debt relief programmes and restructuring negotiations, potentially triggering the latter where actual or potential adverse impacts are identified. Debt audits can contribute valuable information in conducting such assessments.'[110]

(3) Stakeholder engagement and participation, including civil society participation in SoDR

The threats arising from default or even debt distress is even more evident in countries that lack checks and balances such as effective stakeholder engagement and participation, transparency in the law-making processes and institutional mechanisms that hold people accountable. Participation is an integral aspect of a human rights-based approach to SoDR. There is a need for proper engagement and participation in the restructuring debate and the restructuring and dispute resolution process. While the idea of participation in SoDR is not novel, it has fallen into the background. Nevertheless, a HRBA requires the participation of and engagement with citizens, civil society organisations and other stakeholders.

Lessons may be learnt from institutional structures of other organisations such as the International Labour Organisation (ILO) which has gone beyond collaborating with non-governmental organisations (NGOs) and other non-state actors to incorporating them in their institutional framework, by giving NGOs that meet a predetermined criterion a 'consultative status', and not only collaborating with international, regional, national and local NGOs but also integrating them into the structure of the ILO.[111] A similar

109 S Gruskin et al (eds) *Perspectives on health and human rights* (2005) 102.

110 'Guiding principles on human rights impact assessments of economic reforms' Report of the Independent Expert on the effects of foreign debt and other related international financial obligations of States on the full enjoyment of human rights, particularly economic, social and cultural rights, Human Rights Council Fortieth session (25 February-22 March 2019) 13, https://undocs.org/A/HRC/40/57 (accessed 10 April 2019).

111 International Labour Organisation 'Relations with NGOs', https://www.ilo.org/

approach may be incorporated into SoDR if a novel mechanism and a new institutional framework for SoDR are pursued. A new mechanism could go beyond the mere collaboration with NGOs and other non-state actors to actually integrating them in the ILO's institutional framework.

African countries ought to determine and contribute to the approaches that respond to debt-related issues and to design a future for the continent. In line with this view, the development of African regional solutions to SoDR is of value. In an effort to find institutional solutions, regional bodies such as the SADC may potentially be used to create venues and environments for proactive and early dialogue between different stakeholders as sovereign debt challenges arise within the SADC region. Early and ongoing dialogue will reduce the stigma associated with debt distress, which in turn will foster an environment with early and open engagement and a sense of ownership of a restructuring plan by both debtors and creditors. Regional bodies may potentially play a role in this. In conclusion, for African countries there is the need for a system that adequately reflects the developmental, human rights and environmental aspirations of the continent.

pardev/partnerships/civil-society/ngos/lang--en/index.htm (accessed 9 January 2020).

References

Aizawa, M, Bradlow, DD & Wachenfeld, M 'International financial regulatory standards and human rights: Connecting the dots' (2018) 15 *Manchester Journal of International Economic Law* 2

AfDB African Legal Support Facility 'Vulture funds in the sovereign debt context', http://www.afdb.org/en/topics-and-sectors/initiatives-partnerships/african-legal-support-facility/vulture-funds-in-the-sovereign-debt-context/ (accessed 30 January 2017)

Ambast, S & Gogou, K 'Eurozone governments need to recognise that Greece's debt is a human rights issue' (27 June 2018) Amnesty International, https://www.amnesty.org/en/latest/news/2018/06/eurozone-governments-need-to-recognise-that-greeces-debt-is-a-human-rights-issue/ (accessed 19 July 2018).

Amnesty International 'Wrongful prescription: The impact of austerity measures on the right to health in Spain' (2018), https://www.amnesty.org/download/Documents/EUR4181362018ENGLISH.PDF (accessed 1 November 2019)

Annex to the 'Guiding Principles on Foreign Debt and Human Rights' Report of the Independent Expert on the effects of foreign debt and other related international financial obligations of states on the full enjoyment of all human rights, particularly economic, social and cultural rights C Lumina A/HRC/20/23 (10 April 2011), https://undocs.org/en/A/HRC/20/23 (accessed 10 May 2016)

African Charter of Human and Peoples' Rights adopted by the Organisation of African Unity on 27 June 1981, https://www.achpr.org/legalinstruments/detail?id=49 (accessed 10 April 2021)

Bank of America 'Bank of America human rights statement', https://about.bankofamerica.com/assets/pdf/human-rights-statement.pdf (accessed 10 May 2020)

Bantekas, I & Lumina, C (eds) *Sovereign debt and human rights* (Oxford University Press 2018)

Bantekas, I & Lumina, C 'Sovereign debt and human rights: An introduction' in Bantekas, I & Lumina, C (eds) *Sovereign debt and human rights* (Oxford University Press 2018)

Basic Principles on Sovereign Debt Restructuring Processes (A/69/L.84), 69th session of the United Nations General Assembly, Draft Resolution by South Africa, 29 July 2015, http://unctad.org/meetings/en/SessionalDocuments/a69L84_en.pdf (accessed 10 May 2020)

Bohoslavsky, JP & Raffer, K (eds) *Sovereign debt crisis: What have we learned*? (Cambridge University Press 2017)

Bohoslavsky, JP & Černič, JL (eds) *Making sovereign debt and human rights and finance work* (Hart Publishing 2014)

Bohoslavsky JP & Černič , JL'Placing human rights at the centre of sovereign financing' in Bohoslavsky, JP & Černič, JL (eds) *Making sovereign debt and human rights and finance work* (Hart Publishing 2014)

Bohoslavsky, JP 'Why the Addis debt chapter falls short UN Research Institute for

Social Development' (15 September 2015), http://www.unrisd.org/road-to-addis-bohoslavsky (accessed on 16 May 2019)

Braaten, DB 'Ambivalent engagement: Human rights and multilateral development banks' in Park, S & Strand, JR (eds) *Global economic governance and the development practices of the multilateral development banks* (Routledge 2015) 99

Bradlow, DD & Masamba, ML Chapter 1 'Sovereign debt management and restructuring in SADC: Ssetting the scene and asking the right questions'

Bradlow, DD 'A human rights-based approach to international financial regulatory standards' (2018) 171 *Articles in Law Reviews and Other Academic Journals* 940, https://digitalcommons.wcl.american.edu/cgi/viewcontent.cgi?article=1948&context=facsch_lawrev (accessed 10 May 2019)

Bradlow, DD 'Can parallel lines ever meet? The strange case of the international standards on sovereign debt and business and human rights' (2016) 41 *Yale Journal of International Law* 201

Bradlow, DD 'Stuffing new wine into old bottles: The troubling case of the IMF' (2001) 3 *Journal of International Banking Regulation* 9

Bradlow, DD 'The World Bank, the IMF, and human rights' (1996) 6 *Transactional Law and Contemporary Problems* 47

Brooks, S, Lombardi, D & Suruma, E 'African perspective on sovereign debt restructuring' Centre for Governance Innovation Issues Paper 47 (September 2014), https://www.cigionline.org/sites/default/files/no43_web.pdf (accessed 1 June 2017)

Buchheit, LC & Gulati, MG 'Sovereign debt restructuring in Europe' Global Policy Special Issue: Ten Years after the Global Financial Crisis: Lessons Learned, Opportunities Missed 9 Vol 1 (2018) 68, https://onlinelibrary.wiley.com/doi/epdf/10.1111/1758-5899.12531 (accessed 15 May 2019)

Citi Statement on Human Rights (November 2018), https://www.citigroup.com/citi/citizen/data/citi_statement_on_human_rights.pdf (accessed 10 May 2020)

Convention on the Elimination of All Forms of Racial Discrimination (1965)

Convention on the Rights of Persons with Disabilities A/RES/61/106 (CRPD, 2006

Cornia, GA, Jolly, R & Stewart, F (eds) *Adjustment with a human face: Country case studies* (Oxford University Press 1987)

Council of European Union 'EU common position on the UN draft resolution on draft basic principles on sovereign debt restructuring process' A/69/L.84 (2 September 2015), http://data.consilium.europa.eu/doc/document/ST-11705-2015-INIT/en/pdf (accessed 20 November 2016)

Credit Suisse Statement on Human Rights, https://www.banktrack.org/download/statement_on_human_rights_10/190305humanrightsstatementmarch2019.pdf (accessed 10 May 2020)

Darrow, M *Between light and shadow: The World Bank, the International Monetary Fund and international human rights law (Studies in international law)* (Hart Publishing 2006)

Das, U, Papaioannou, M & Trebesch, C 'Sovereign debt restructurings 1950-2010: Concepts, literature survey and stylized facts' IMF Working Paper 12/203 (August 2012) 50, https://www.imf.org/en/Publications/WP/Issues/2016/12/31/Sovereign-Debt-Restructurings-1950-2010-Literature-Survey-Data-and-Stylized-Facts-26190 (accessed 1 April 2017)

Debtwire Republic of Zambia, Special Report (10 August 2020) 2, Government https://www.mergermarket.com/assets/Zambia%20Sovereign%20Report%20-%20FY19.pdf (accessed 10 April 2021)

Deutsche Bank Statement on Human Rights, https://www.banktrack.org/download/deutsche_bank_human_rights_statement_1_pdf/deutschebankhumanrightsstatement.pdf (accessed 10 May 2020)

Ellmers, N & Hulova, D 'The new debt vulnerabilities: 10 reasons why the debt crisis is not over' European Network on Debt and Development (November 2013), https://eurodad.org/files/pdf/1546060-the-new-debt-vulnerabilities-10-reasons-why-the-debt-crisis-is-not-over.pdf (accessed 1 June 2017)

Financial Times 'Senior Africans propose "standstill" on Eurobond debt payments' (7 April 2020), https://www.ft.com/content/89c6d60f-5fe9-4b72-b327-4a6eb267a9c9 (accessed 1 July 2020)

Gallagher, K & Wang, Y Chapter 5 'Sovereign debt via the lens of asset management: Implications for SADC countries'

Golay, C & Cismas, I 'Legal opinion: The right to property from a human rights' International Centre for Human Rights and Democratic Development and Geneva Academy of International Humanitarian Law and Human Rights (2010), https://dspace.stir.ac.uk/bitstream/1893/21703/1/Golay%20and%20Cismas_Working%20Paper_2010.pdf (accessed 15 May 2016)

Goldmann, M 'Public and private authority in a global setting: The example of sovereign debt restructuring' (2018) 25 *Indiana Journal of Global Legal Studies* 331

'Guiding principles on human rights impact assessments of economic reforms' Report of the Independent Expert on the effects of foreign debt and other related international financial obligations of states on the full enjoyment of human rights, particularly economic, social and cultural rights, Human Rights Council 40th session (25 February-22 March 2019) 13, https://undocs.org/A/HRC/40/57 (accessed 10 April 2019)

Grund, S 'Restructuring government debt under local law: The Greek experience and implications for investor protection in Europe' (2017) 12 *Capital Markets Law Journal* 253

Gruskin, S, Grodin, MA, Annas, CJ & Marks, SP (eds) *Perspectives on health and human rights* (Routledge 2005)

Husain, I & Underwood, J 'The debt of sub-Saharan Africa: Problems and solutions' (9 July 1991), http://www.radioradicale.it/exagora/the-debt-of-sub-saharan-africa-problems-and-solutions (accessed on 1 August 2017)

IIF 'Principles for Stable Capital Flows and Fair Debt Restructuring in Emerging Markets' (14 October 2012), https://www.iif.com/Portals/0/Files/content/Regulatory/The%20Principles%20and%20Addendum.pdf (accessed 10 May 2016)

IIF 'Principles for Stable Capital Flows and Fair Debt Restructuring: Report on

Implementation by the Principles Consultative Group with Comprehensive Update on Investor Relations Programmes and Data Transparency' (October 2013), https://www.iif.com/portals/0/files/private/2013_IIF_PCG_Report_3.pdf (accessed 10 May 2016)

International Covenant on Civil and Political Rights adopted by UN General Assembly Resolution 2200A (XXI) on 16 December 1966, https://treaties.un.org/doc/publication/unts/volume%20999/volume-999-i-14668-english.pdf (accessed 10 April 2021)

International Covenant on Economic, Social and Cultural Rights adopted by the UN General Assembly on 16 December 1966 by GA. Resolution 2200A (XXI) https://treaties.un.org/doc/treaties/1976/01/19760103%2009-57%20pm/ch_iv_03.pdf (accessed 10 April 2021)

International Labour Organisation 'Relations with NGOs', https://www.ilo.org/pardev/partnerships/civil-society/ngos/lang--en/index.htm (accessed 9 January 2020)

Isar, S 'Was the Highly Indebted Poor Country Initiative (HIPC) a success?' (2012) 9 *Journal of Sustainable Development* 107

Kampel, D & Lat.Ma Research Team 'Sovereign debt restructuring and the right to development' Global Campus of Human Rights Research Programme (2014-2015) 1, https://gchumanrights.org/tl_files/EIUC%20MEDIA/Global%20Campus%20of%20Regional%20Masters/research/2014-15/3.pdf (accessed 1 June 2016)

Kentikelenis, AE & Seabrooke, L 'The policies of the world polity: Script-writing in international organizations' (2017) 82 *American Sociological Review* 1065

Khalfan, A, King, J & Thomas, B 'Advancing the odious debt doctrine' Centre for International Sustainable Development Law (11 March 2003)

Koen, L Chapter 10 'The renegotiation of sovereign debt tainted by corruption: Mozambique's "secret" debt in perspective'

Kremer, M & Jayachandran, S *Odious debt* IMF Finance and Development Volume 39, Number 2 (June 2002), https://www.imf.org/external/pubs/ft/fandd/2002/06/kremer.htm (accessed 10 April 2021)

'Lessons learned from debt crisis and ongoing work on sovereign debt restructuring and debt resolution mechanism' Special High Level Meeting of ECOSOC, New York (April 2013), http://www.g77.org/statement/getstatement.php?id=130423 (accessed 15 May 2016)

Lloyds Banking Group 'Human Rights Policy Statement', https://www.lloydsbankinggroup.com/globalassets/our-group/responsible-business/reporting-centre/humanrightspolicystatement-180222.pdf (accessed 2 June 2020)

Ludington, S, Gulati, M & Brophy, AL 'Applied legal history: Demystifying the doctrine of odious debts' (2010) 11 *Theoretical Inquiries in Law* 247

Lumina, C 'Sovereign debt and human rights: Making the connection' in Bantekas, I & Lumina, C (eds) *Sovereign debt and human rights* (Oxford University Press 2018) 173

Lumina, C 'Chapter 21: Sovereign debt and human rights' in UN Human Rights Office of High Commissioner *Realizing the right to development: Essays in*

commemoration of 25 years of the United Nations Declaration on the Right to Development (OHCHR 2013) 291

Masamba, ML 'An African perspective on reforming sovereign debt restructuring of privately-held debt' LLD thesis, University of Pretoria, 2020

Masamba, ML 'Reflections on the current reality of Africa's debt landscape' AfronomicaLaw (26 January 2021), https://www.afronomicslaw.org/category/african-sovereign-debt-justice-network-afsdjn/reflections-current-reality-africas-debt (accessed 30 April 2021)

Michalowski, S 'Sovereign debt and social rights: Legal reflections on a difficult relationship' (2008) 8 *Human Rights Law Review* 35

Mustapha, S & Prizzon, A 'Is debt sustainable in the post-HIPC era? A literature review' Overseas Development Institute (February 2014) 3, https://www.odi.org/sites/odi.org.uk/files/odi-assets/publications-opinion-files/9105.pdf (accessed 19 November 2017)

Ng'ambi, SP Chapter 11 'Sovereign debt: A case study of Zambia'

Paris Club 'Common Framework for Debt Treatments beyond the DSSI', https://clubdeparis.org/sites/default/files/annex_common_framework_for_debt_treatments_beyond_the_dssi.pdf (accessed 15 June 2021)

Paulus, CG 'The concept of "odious debt": A historical survey' (2007) 179 *Duke Law School Legal Studies Paper*

Porzecanski, AC 'Human rights and sovereign debts in the context of property and creditor rights' in Bantekas, I & Lumina, C (eds) *Sovereign debt and human rights* (Oxford University Press 2018)

'Report of the Independent Expert on the effects of foreign debt and other related international financial obligations of states on the full enjoyment of all human rights, particularly economic, social and cultural rights, Cephas Lumina' Human Rights Council 14th session A/HRC/14/21 (29 April 2010) 7, https://www.refworld.org/pdfid/4c29a9f02.pdf (accessed 7 June 2017)

Rossi, J 'Sovereign debt restructuring, national development and human rights' (2016) 133 *SUR International Journal on Human Rights* 185

Rules of the International Court of Justice (adopted on 14 April 1978, entered into force on 1 July 1978), https://www.icj-cij.org/en/rules (accessed 15 May 2016)

Sedlak, J 'Sovereign debt restructuring: Statutory reform or contractual solutions' (2004) 152 *Pennsylvania Law Review* 1483

South Africa: Draft Resolution Basic Principles on Sovereign Debt Restructuring Processes, 69 session of UNGA Session A/69/L.84 (29 July 2015), https://unctad.org/meetings/en/SessionalDocuments/a69L84_en.pdf (accessed 14 May 2016)

Stichelmans, T 'Why a United Nations sovereign debt restructuring framework is key to implementing the post-2015 sustainable development agenda' European Network on Debt and Development Briefing (May 2015), http://www.eurodad.org/files/pdf/560542f0a6035.pdf (accessed 1 June 2017)

Stubbs, T & Kentikelenis, A 'Conditionality and sovereign debt' in Bantekas, I & Lumina, C (eds) *Sovereign debt and human rights* (Oxford University Press 2018) 359

Standard Bank Group 'Standard Bank Group statement on human rights', https://www.standardbank.com/static_file/StandardBankGroup/Who%20we%20are/Our%20values%20and%20code%20of%20ethics/PDFs/Human%20Rights%20Statement%20PDF.pdf (accessed 2 June 2020)

Sunday Times 'Mozambique defaults on repaying fishy debt' (29 January 2017), https://www.pressreader.com/south-africa/sunday-times/20170129/282471413582050 (accessed 30 August 2017)

'The United Nations Human Rights Council: Background and policy issues' Congressional Research Service (20 April 2020), https://fas.org/sgp/crs/row/RL33608.pdf (accessed 10 June 2020)

UN Human Rights Office of the High Commissioner 'Greek crisis: Human rights should not stop at doors of international institutions, says UN expert' (2 June 2015), https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=16032 (accessed 15 May 2016)

UNCTAD 'Sovereign debt workouts: Going forward – Roadmap and guide' (April 2015), http://unctad.org/en/PublicationsLibrary/gdsddf2015misc1_en.pdf (accessed 10 June 2017)

UNCTAD 'Consolidated Principles on Promoting Responsible Sovereign Lending and Borrowing' (10 January 2012), https://unctad.org/en/PublicationsLibrary/gdsddf2012misc1_en.pdf (accessed 11 June 2017)

Weiss, MA 'The multilateral debt relief initiative' CRS Report for Congress (11 June 2012) 2, https://fas.org/sgp/crs/row/RS22534.pdf (accessed 20 June 2016)

World Bank Group 'International debt statistics' (2021), https://openknowledge.worldbank.org/bitstream/handle/10986/34588/9781464816109.pdf (accessed 30 April 2021)

World Bank Group 'International debt statistics' (2020) vii, https://openknowledge.worldbank.org/bitstream/handle/10986/32382/9781464814617.pdf?sequence=7&isAllowed=y (accessed 1 July 2020)

World Bank Group 'COVID 19: Debt Service Suspension Initiative' (19 February 2021), https://www.worldbank.org/en/topic/debt/brief/covid-19-debt-service-suspension-initiative (accessed 3 March 2021)

World Bank 'World Bank/IMF spring meetings 2020: Development committee Communiqué' (17 April 2020), https://www.worldbank.org/en/news/press-release/2020/04/17/world-bankimf-spring-meetings-2020-development-committee-communique (accessed 1 July 2020)

World Bank Group President 'World Bank Group President Malpass: Remarks to the Development Committee' (17 April 2020), https://www.worldbank.org/en/news/statement/2020/04/17/world-bank-group-president-malpass-remarks-to-the-development-committee (accessed 1 June 2020)

World Bank 'While poverty in Africa has declined, number of poor has increased' (March 2016),

http://www.worldbank.org/en/region/afr/publication/poverty-rising-africa-poverty-report (accessed 1 August 2017)

Wright, MLJ 'Sovereign debt restructuring: Problems and prospects' (2012) 2 *Harvard Business Law Review* 153

Wyler, T 'Wiping the slate: Maintaining capital markets while addressing the odious debt dilemma' (2008) 29 *University of Pennsylvania Journal of International Law* 947

Zitamar News, 'Mozambique to default again on hidden debt payment due today' (21 March 2017), https://zitamar.com/mozambique-default-hidden-debt-payment-due-today/ (accessed 1 December 2017)

16th Session Human Rights Council 'US EOV on foreign debt as a human rights problem, explanation of vote of the United States of America, mandate of the Independent Expert on the Effects of Foreign Debt and other Related International Financial Obligations of States on the Full Enjoyment of all Human Rights, particularly Economic, Social and Cultural' 16th Session Human Rights Council (23 March 2011)