AFRICAN FORUM AND NETWORK
ON DEBT AND DEVELOPMENT

AN AFRICAN PERSPECTIVE ON THE ESTABLISHMENT OF A FAIR AND TRANSPARENT INTERNATIONAL SOVEREIGN DEBT RESTRUCTURING MECHANISM (SDRM) VARIOUS OPTIONS FOR AFRICAN COUNTRIES

DECEMBER 2020

INTRODUCTION

Prior to 1996, much of Africa's outstanding debt was owed to multi-lateral Institutions, (namely the IBRD/IDA, the IMF and AfDB) and bi-lateral lenders of the Paris Club. As such, debt restructuring took place predominately through these multilateral and bilateral channels. Debt owed to private foreign creditors were restructured through debt swaps and buy-backs from the London Club (an informal group of commercial banks). In 1996, the largest creditors of the majority of SSA countries, the IMF and the World Bank, launched the HIPC initiative, ostensibly to ensure that no poor country was overburdened with debt. African Sovereign Debt Restructuring processes almost exclusively (with the exception of a few countries) followed the HIPC/MDRI processes of the IBRD/IDA and the IMF. What are the lessons learned from the HIPC process and how could they be brought to have a bearing on needed reforms to the SDR process?

The HIPC initiative introduced a system designed for countries that clearly couldn't sustainably continue to service their debts; it provided an arrangement of regular debt rescheduling and reductions for such countries to keep afloat instead of crashing out of the market. In a two stage process, countries would have to qualify for debt relief (Stage 1) before acceding to "completion point" at which stage they could benefit from full assistance (Stage 2).

In the words of the BWIs, "prior actions" meant that a country must:

- normalize their relations with multilateral banks and reach an agreement on possible arrears;
- adopt adjustment and reform programs supported by the IMF and the World Bank and establish a proven track record in implementing them; and
- adopt a poverty reduction strategy – national poverty reduction strategy papers (PRSPs) date from this period of the sovereign debt restructuring process.

Having achieved these prior actions, a country undergoes a Debt Sustainability Analysis (DSA) to determine whether the country's external commitments are sustainable and that the country was eligible to assistance under the HIPC initiative (the Decision Point). During this time, the country continues to benefit from traditional debt relief by bi-lateral creditors of the Paris Club. In order to reach the "completion point" (Stage 2), the country continues to improve performance (mainly fiscal and poverty reduction funding performance), implement key (IMF-backed) Poverty Reduction and Growth structural policy reforms, maintain financial stability and show significant progress in reaching its poverty reduction goals. In 2005, the HIPC initiative was supplemented by the MDRI which provides for full relief on eligible debts owed to the IMF, the IBRD/IDA and the African Development Fund. By late 2016, debt reduction packages under the HIPC initiative had been approved for 36 countries, 30 of them in Africa, with USD 76 billion in debt relief being allocated.

Assessing the outcome of the debt relief initiatives (the HIPC debt relief and the follow-up MDRI), it is widely accepted that significant debt reduction was achieved for the beneficiary countries, fiscal space for poverty reduction expenditures was created and general macro-economic conditions for economic growth and expansion of exports were laid. DSA reports of the IMF and IDA indicated low to moderate levels of debt distress and that overall the twin initiatives had achieved their objectives, namely:

(i) To lower debt stock and thus debt service, thus removing debt overhang and opening new access to international capital markets; and
(ii) To free up resources for financing of poverty reduction public expenditures (IDA and IMF, 2012; JDC, 2012).

Across Africa, countries differed in their debt situations on reaching completion point[1]:

- Ivory Coast, in West Africa, fluctuated from being in debt distress to being in high risk between 2007 and 2011. Its situation improved to a moderate level of risk on reaching completion point in 2012
- The Central African Republic (CAR) evolved from high risk to moderate risk on reaching completion point in 2009.
- The Democratic Republic of Congo went from being in debt distress in 2007 to high risk on reaching completion point.

Although a lot has been written on the political economy of the HIPC/MDRI debt relief processes, there has been little said on the long term economic growth consequences of the debt restructuring processes. Arguably, the return to sustainable debt levels is applauded in the literature, but the financial crisis that followed made swift rift of any long term growth and poverty reduction expectations. The advent of Covid-19 in late 2019 has become a defining moment in the debt situation of SSA countries, ushering in a period of ballooned demand for public investments to contain the pandemic and at the same time maintain domestic demand at levels compatible with growth aspirations.

This paper seeks to contribute to the on-going debate on sovereign debt restructuring, bringing in an African perspective and making recommendations for continued Civil Society advocacy for an international sovereign debt restructuring mechanism. It is a follow-up "confirmatory" study on AFRODAD's 2017 issues paper[2], and takes a dive into the key conclusions from that paper. The next section of the paper looks at the current environment and level of indebtedness of select countries in West and Central Africa, making a case for a restructuring of the debt of these countries in view of the challenges of post-Covid recovery. Section III explores the competing theories on SDR reforms, from the perspectives of both creditors and debtor nations and discusses the merits of market-based approaches versus the much contested Fund-led structural reforms approach. In Section IV we discuss the position of tenants of an International Sovereign Debt Restructuring Mechanism, its merits and demerits and how it could better serve global mobilization to reduce inequalities and recover from the Covid-19 debt spiraling. We conclude on key areas of focus for Civil Society Organizations in their advocacy for equity and effectiveness in resolving debt crises.

THE CURRENT SOVEREIGN DEBT RESTRUCTURING ENVIRONMENT

Sovereign Debt Restructuring (SDR) is a process used to alter the key terms of sovereign debt contracts through negotiations between debtors and creditors. In effect, this process may either alter the maturity of the servicing of debt (debt rescheduling) or the nominal value of the debt and/or interest rate (debt reduction).
At present, unlike corporate restructuring, SDR is not guided by any statutory framework. Instead, the restructuring process is conducted through a market based/contractual approach which comprises negotiations that are initiated by sovereign debtors. The duty of creditors to participate in such negotiations is however voluntary. In practice, these negotiations are complex and may sometimes be protracted depending on the number of creditors in the restructuring, on the complexities of each case and the presence or absence of a predetermined super majority threshold of creditors (collective action clause) for voting on the restructuring package.

Where the negotiations result in no agreement on the restructuring package or even prior to the conclusion of the restructuring process, disgruntled creditors may unilaterally institute legal proceedings at national courts or international arbitration bodies.

[1] Debt Sustainability in HIPCs in a new age of choice", ODI Working Paper 397, 2014
[2] Towards building a fair and orderly international framework for sovereign debt restructuring – AFRODAD 2017

Dispute resolution, especially during the restructuring process, is proving problematic as sovereign debtors become at the mercy of judges at foreign national courts and this process may have a disruptive effect on the entire restructuring and the debtor's ability to return to financial health.

Several African countries are engaging creditors on debt restructuring or rescheduling operations, such as Chad, Republic of Congo, Gambia, Ghana and Mozambique. There is no multilateral framework for sovereign debt restructurings. For over a decade, global civil society have been advocating for rules-based approach to sovereign debt workouts to increase the predictability and timely restructuring of debt when required, with fair burden sharing. A sovereign debt workout mechanism that protects the interests of all countries and all creditors and debtors and does so at the multilateral level.

To date, at the global level, global debt networks have achieved a big milestone in having the UN General Assembly set out nine Basic Principles for Debt Restructuring Processes, which were adopted in September 2015. The resolution meant that the UN General Assembly has declared that sovereign debt restructuring processes should be guided by principles of. i) sovereignty, ii) good faith, iii) transparency, iv) impartiality, v) equitable treatment, vi) sovereign immunity, vii) legitimacy, viii) sustainability, and ix) majority restructuring. While the resolution does not reflect the original subject of establishing a multilateral legal mechanism for sovereign debt restructuring, the nine core principles that have been adopted are historical breakthrough at the UN. The majority of debtor nations in the world spoke out for a change to the current creditor-led debt system that has repeatedly failed numerous countries.

Sovereign Debt Restructurings are expected to become more frequent because the debt indicators for the Sub-Saharan Africa (SSA) region have deteriorated quickly. Number of low income countries in debt distress has been rising. An increasing number of SSA countries are (temporarily) kept solvent through IMF programs. Rising bond yields indicate rising default risks. Rising debt-to-revenue ratios indicate that debt service crowds out investment and social spending, unless the debt stock is restructured.

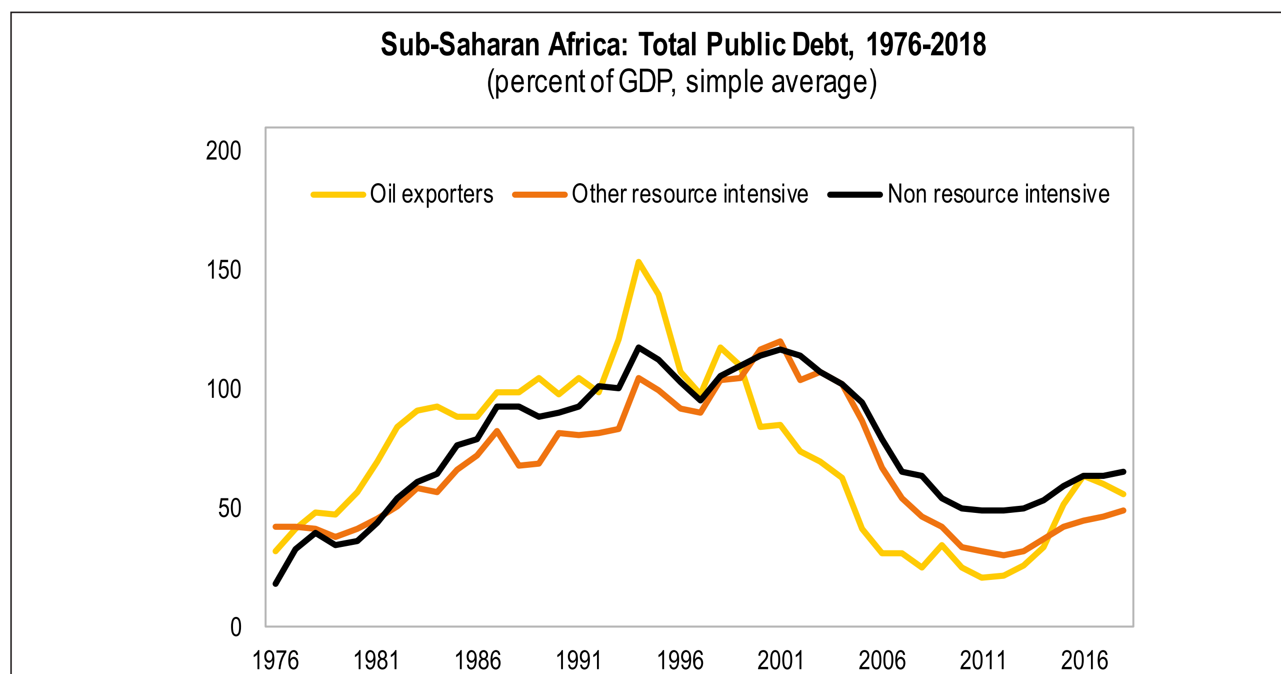
Sovereign Debt restructurings are expected to become more difficult because the creditor landscape became more complex and dispersed (mix of bilateral loans / multilateral loans / bonds / private loans, both domestic and external, aggressive litigation by vulture funds, expiry of comprehensive debt relief initiatives (HIPC/MDRI) and the absence of any multilateral debt restructuring framework

Debt restructuring is complex based on debt portfolio. IMF loans cannot be restructured because the institution has a preferred creditor status. Official multilateral loans will not be restructured because MDRI expired. Bilateral loans - Paris Club creditors, can be restructured through renegotiation in one process with the creditor cartel Paris Club. While bilateral loans from non-Paris Club can be restructured through negotiations with each individual creditor e.g. China. Private creditors (Bonds) can be restructured through renegotiation with bondholder committee, although holdouts and litigation by vultures are possible. Private creditors (Banks) can be restructured through renegotiation bank-by-bank or London Club treatment.

Current levels of indebtedness in select West and Central African Countries: the emerging Covid-19 Conundrum. In many ways, the year 2019 is a watershed in the drive to reign in unsustainable debt levels and reduce poverty globally. The global economy grew by a sluggish 2.4%[3], the lowest expansion since 2008.Aggregate financial inflows to low and middle income countries fell by 14%, while total external debt stocks surpassed $8 Trillion.

[3] World Bank International Debt Statistics, 2021.

Notable among developments in the debt situation is the rapid rise in long term external debt, which is reported to have grown by 7%, to reach $6 Trillion or 73% of the total debt stock. Bond holders account for the largest share of growth in these long term debt inflows to low and middle income countries, although this rapid rise has not significantly altered the structural allocation of debt between creditors. Inflows from official creditors, the main component of long term debt, (IBRD/IDA) also rose by 31% and the share of bi-lateral creditors by 50% to $9 Billion.



Source: Patrick Imam, IMF October 2019

The Covid-19 financing risk is perceptible in rising debt among countries eligible for the DSSI. Total external debt stocks of these countries rose by 9% in 2019 to $744 billion, "equivalent on average to one-third of their combined gross national income"[4]. Private creditor lending was the fastest-growing component of the external debt of DSSI-eligible borrowers, with a cumulative growth of 500% since 2010; total debt owed to private creditors totaled $102 billion at the end of 2019. Debt owed to bi-lateral creditors (27% of total debt stock of DSSIs), reached $178 Billion in end 2019. Of total debt owed to bi-laterals, China's share rose from 45% in 2013 to 63% at end-2019. If, for most IDA countries, private lending does not represent a significant share in their total debt stock, for some SSA countries this is not the case: private lending accounts for 60% of Ivory Coast's total debt stock, 58% of Ghana's total debt stock and 50% of the same for Chad and Zambia.

Table 1: Summary External debt Stock by Creditor Type: All Low and Middle-Income Countries (In Billions of Dollars)

Public Debt owed to	2009	2015	2016	2017	2018	2019
➢ Official Creditors	762	909	967	1052	1089	1130
➢ Private Creditors	703	1396	1481	1709	1814	1870

Source: World Bank Debt Statistics, 2021

[1] World Bank International Debt Statistics, 2021

The rising role of private creditors is perceptibly a source of worry for future sovereign debt restructurings. However, it is also notable that non-government entities are largely involved in the bond market. According to the WB 2021 Report cited:

"New bond issuance by the 120 low- and middle income countries reporting to the Debtor Reporting System (DRS) totaled $376 billion in 2019, 16 percent higher than in 2018. Issuance in 2019 was characterized by a surge in bond issues by private sector entities, which rose 37 percent to $129 billion"

Determinants of lending in West and Central Africa

The debt portfolio structure for SSA does not significantly vary from table 1, confirming a global trend of "privatization" of debt since 2015.

Table 2: Summary External Debt Stock by Creditor Type, SSA. (In Billions of Dollars.)

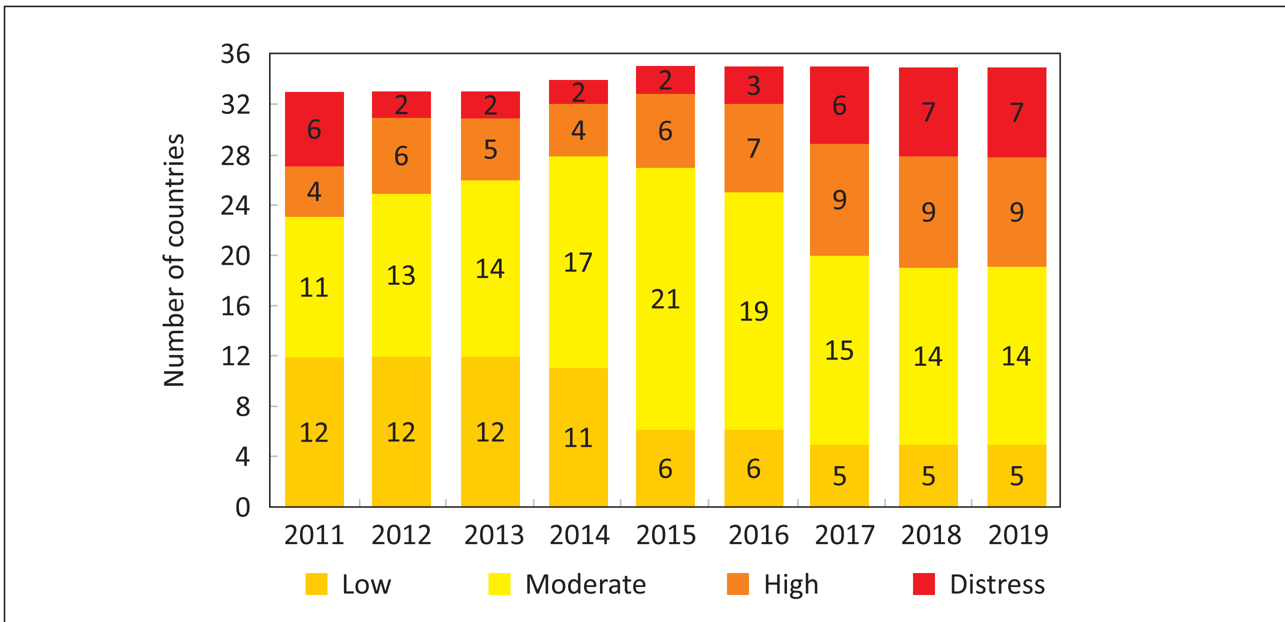
	2009	2015	2016	2017	2018	2019
Long Term External debt	203	359	399	458	484	535
O/W Multilaterals	55	81	87	104	110	124
Private Creditors	43	99	111	136	145	168

Country political stability is a determining factor for financial inflows to the countries we selected in our list: Ghana, Nigeria, Sierra Leone (from West Africa) and Gabon, on the one hand and Central African Republic and the Democratic Republic of Congo on the other, present stark contrasts in terms of private inflows to finance development. In the non-crisis countries of West Africa and Gabon, all three components of creditors (Multi-laterals, Bi-laterals and Private Lenders) are actively involved in lending and this at significant levels. Private creditors and bi-laterals have, in some years, shied away from conflict-affected countries, to the extent that these countries have an almost exclusive multi-lateral lending program. (See: (http://datatopics.worldbank.org/debt/ids) for debt tables of countries).

From a macro-economic perspective, large primary deficits are the main drivers of debt; these deficits have become the instrument of predilection for financing of Covid-19 response related investments for one out of every three countries across the continent. Primary deficits as the main driver of debt has now surpassed exchange rate depreciation and increased interest payments, according to the IMF. Domestic sources of finance have little to offer to ward off or contain the spread of the pandemic, as hitherto fore "credible macro-economic frameworks" have given way to crisis management.

With rising total public debt since 2016, more countries have become vulnerable to risk of default, with close to seven countries in debt distress since 2018[5] .

[5] See "Zambia's looming debt crisis – is China to blame?" Arve Ofstad, Elling Yjonneland (2019) in CMI Insight, 2019



To wit the publication "Drop Debt, Save Lives: Global South Debt and Covid-19", July 2020

"Ghana was in deep debt distress even before Covid-19 hit and is due to spend $3.8bn on external debt payments in 2020. It is currently spending almost four times more on servicing its external debt than it is on public healthcare for its people: 39.1% of its government revenue is spent on debt servicing, 10.8% is spent on healthcare.

Central African Republic has 3 ventilators in a country of almost 5 million people. It is due to spend $25 million on external debt payments in 2020 (10% of government revenue). Instead, these resources could be invested in increasing access to clean water and promoting social protection to those jobless due to the lockdown and the economic crisis".

APPROACHES TO MANAGING SOVEREIGN DEBT RESCHEDULING: COMPETING PARADIGMS

Under current non-arrangements, a notable absence of an insolvency law (national and international) and an orderly insolvency procedure makes it difficult for efficient and equitable sovereign debt restructurings to be concluded.

Notably, differing interests across actors in the restructuring process has led to a fragmentation of negotiations processes, and an increasing resistance of private lenders and new entrants (non-traditional lenders) adverse to the official IMF-led processes. The opacity of loan agreements (particularly where Chinese loans are highly involved) makes it difficult for the official process to access reliable information for a comprehensive assessment of debt sustainability, much less doing so on time[6]. In the absence of a recognised independent decision-making authority, creditor hold-out becomes the norm whenever the restructuring process is perceived to be unfair to private lenders.

Various African countries have been targeted by vulture funds. The African Development Bank Legal Support Facility notes that out of 25 judgements granted in favor of vulture funds (yielding approximately 1 billion United States Dollars), a majority are against countries that are regional members of the bank.

[6] Some of the difficulties encountered, particularly in the on-going Zambian stand-off with bond-holders, can be alleviated through compliance with the "African Borrowing Charter" – AFRODAD.

In 2011 Seychelles defaulted on a $230 million Eurobond following election disputes, Côte d'Ivoire missed a $29 million interest payment on a 2010 bond issue, Ghana, Zambia has been facing debt difficulties, and have gone back to the IMF for help.

Among the cases against African countries include cases in national courts of the United Kingdom concerning the pursuit of Zambian distressed debt, litigations in the national courts of the United States and United Kingdom to recover distressed Liberian debt, litigations in the national courts of the United States and Hong Kong to recover DRC distressed debt. Other countries that have been targeted by vulture funds include, Angola, Burkina Faso, Cameroon, the Republic of Congo, Ethiopia, Ivory Coast, Madagascar, Mozambique, Niger, Sierra Leone, Tanzania, and Uganda.

Some countries have already defaulted. A striking example for irresponsible lending is Mozambique, where loans by European banks Credit Suisse and VTB have funded military equipment, patrol speedboats for the navy. This just the tip of the illegitimate debt iceberg. Since commodity prices continue to be low and interest rates are expected to rise, the South is on the brink of a new debt crises. Ghana and Zambia already look shaky and face IMF conditions to cut public spending.

As the old debt relief initiatives expired and new debt workout mechanisms remain absent, developing countries struggle to find a way out.

The debt and development literature is rife with competing paradigms on what constitutes a "satisficing" sovereign debt restructuring outcome. Because states have responsibilities to their citizens, it is inconceivable that the rights of citizens to adequate health services, clean drinkable water, education, housing and other amenities can be compromised in a debt rescheduling exercise. Civil Society organizations have been vocal and vigilant to the outcomes of debt work-outs and the resulting welfare benefits that may be compromised in the process. On the other hand, debt work-outs are becoming increasingly more complex due to the changing composition of creditors involved in the processes (particularly private creditors) and the changing landscape of traditional external creditors.

Increasingly, a larger share of debt is held by private banks and bond holders (15% in 2016), whose interests might be compromised by an IMF/WB led debt restructuring. Discussing the challenges of the restructuring processes, Lee Buchheit, Guillaume Chabert, Chanda DeLong and Jeromin Zettelmeye (2018) state:

"A sovereign debt restructuring can fail in several ways. It can take too long to execute; it may not provide sufficient debt relief; it may extract debt relief that most creditors see as excessive and confiscatory; or the creditors may view the operation as unnecessarily coercive and hold a grudge that can affect future market access for the sovereign".

The debt renegotiation platform of the HIPC/MDRI has significantly changed, as non-traditional lenders have also moved into the Paris Club space. Countries such as China, India, Middle Eastern and other BRICS members have been very active in the lending market; it is not foreseeable that massive debt relied/cancellation programs can happen in future without these actors playing a significant role in negotiations.

Finally, the central player in any debt restructuring program is the IMF.

The Role of the IMF in Sovereign Debt Restructuring

Because of its oversight and financing roles enshrined in its Articles of Agreement, the IMF is often central to the debt restructuring process, as described below:

Financing: The IMF provides balance of payments financing "under adequate safeguards" (e.g., conditionality) to a member country implementing an economic adjustment program. The success of that program is meant to assist the member in overcoming its balance of payments problem, enable it to repay the IMF, and foster stability more generally, including by preventing or mitigating spillovers to other countries.

The "Trigger": Whether a country requires a debt restructuring will depend on a debt sustainability analysis (DSA), the feasibility of policy adjustment and the availability of financing from all available sources (including the IMF and other creditors). The IMF's DSA hence plays a role in the decision whether a debt restructuring will take place (whether in the context of an IMF-supported adjustment program or outside).

The Financing Envelope: The IMF's DSA also effectively identifies the envelope of resources available for debt service payments to official and private creditors, which is crucial to anchor deliberations between the debtor and its creditors.

Process: In general, the IMF encourages its members to engage in a collaborative process with their creditors when seeking a restructuring. Beyond that, the IMF leaves the specific details of the debt restructuring strategy to the debtor and its legal and financial advisors. In pre-default cases, the IMF does not insist on any particular form of dialogue between the debtor and its creditors. In post-default cases, the IMF is guided by its "Lending into Arrears" policy, which sets more specific standards for dialogue between creditors and debtors, including assessing whether the member is making a good faith effort to reach a collaborative agreement with its creditors.

Inter-Creditor Equity: The IMF does not intervene on issues of inter-creditor equity. Its "Lending into Arrears" Policy, however, makes a distinction between official and private claims. In some cases, creditors are likely to accept some differentiation in the treatment of their claims, as this would help limit the extent of economic dislocation, maintain market access, and preserve financial stability.

The financing role of the IMF in the restructuring process is often obfuscated as CSOs see in the accompanying adjustment program an unjust and unwarranted interference in the defaulting country's economic management. The Fund though, enjoys preferred creditor status, meaning its own claims on the sovereign are left out of the restructuring process.

The Process of Negotiation

As we've seen with the HIPC process[7], once the debtor country agrees that a restructuring is inevitable (mostly based on an IMF-led DSA), the main challenge becomes dealing with the creditors. The process is a simple one if the country creditor profile is simple and its creditors homogenous. Recent trends in SSA are not going in this direction, as the diversity of creditors is noted – banks, bond-holders, suppliers, contractors etc.-making future negotiations likely to be long, arduous and "unsatisficing" to all parties involved in the process. Even within the circle of official creditors, (the traditional departure point of such negotiations), it might prove problematic to predict the behavior of countries such as China has shown in the granting of Covid relief to low income countries recently.

[7] See Appendix to this document.

Besides the official creditors, another important party is the creditor committee – these have re-emerged recently in negotiations with Greece and Ukraine – which serves to structure the negotiating terms of diverse creditors represented by this committee. Because of the "growing privatization" of public debt in SSA, it is to be envisaged that choosing to negotiate with a specific creditor committee would have to be a guided engagement for most debtor countries, especially in the age of "restrictive sovereign immunity[8]". In this context, countries will inexorably be obliged to resort to the IMF for support through the "Lending into Arrears Policy[9]", making them vulnerable to conditionalities and prior actions that go counter to social and development spending. In a word, current developments could lead to situations that compromise efficient and equitable outcomes of debt restructuring.

COMPETING APPROACHES TO SOVEREIGN DEBT RESTRUCTURING

Borrowing from (external) creditors has become an important instrument of governments' growth and development policies; debt is, in and of itself, an instrument for achieving long term expansionary and economic recovery goals of the modern state. As argued by Stiglitz[10]" it is not high debt per se that is bad for economic growth or full employment (….).Indeed, standard general equilibrium theory argues that there is full employment equilibrium regardless of level of debt. Instead, it is the difficulty of running expansionary policies when primary surpluses are allocated to debt payments in times of recession (…) that makes debt a constraint on economic recovery".

However, a changing international financial architecture has renewed interest in the search for a sovereign debt restructuring mechanism.

The current debate on SDR seems to indicate the absence of three components without which parties to an SDR process cannot come to an economically "satisficing" conclusion, (Anne Krueger, First MD IMF).

1 A set of incentives to help countries with unsustainable debts to resolve them promptly and in an orderly way. At present the only available mechanism requires the international community to bail out the private creditors. This absence of incentives for an early disclosure of debt servicing difficulties and full-cooperation of private lenders when a crisis situation arises, is the major gap in the international legal and financial architecture for an efficient and equitable SDR process. It is noted that historically, since bonds replaced traditional loans, 40% of restructurings end in default or another restructuring within five years[11].

2 Absence of a catalyst that will encourage debtors and creditors to come together to restructure unsustainable debts in a timely and efficient manner. Whereas in the context of multi-lateral and Paris Club restructurings, the generalization of DSAs have been helpful in early detections of default risks, the current state of the international legal and financial architecture presents no other catalyst to enhance a timely and efficient restructuring. Both the IMF and ICMA recognize this gap and have proposed the use of collective action clauses (CACs)[12] and clarification of pari-passu as improvements over old terms. The current fragmentation of the lending market and the advent of non-traditional lenders makes the financial architecture more complex and unlikely to create consensus of what incentives would be acceptable to both lenders and borrowers.

[10] Guzman and Stiglitz, "Creating a Framework for a Sovereign Debt Restructuring that works""

[11] Gelpern 2015.

[12] CACs are clauses in debt contracts that set out the predetermined super majority of creditors for accepting the amendment of key terms in debt contracts. More advanced versions of these clauses may provide for aggregation of votes across various bond issues. The strategic inclusion of contractual provisions, such as CACs, does not fully resolve the abovementioned challenges, although they provide some level of relief for future restructurings. Despite this very welcome innovation various challenges still remain. Although CACs are being increasingly included in new debt instruments, there are still a substantial number of debt instruments that do not contain CACs. Furthermore, where the CACs are included in some debt instruments, do not always provide for aggregation across different issues of bonds.

3 A framework offering a debtor country legal protection from creditors that stand in the way of a necessary restructuring, in exchange for an obligation for the debtor to negotiate with its creditors in good faith and to put in place policies that would prevent a similar problem from arising in the future – in other words an "international workout mechanism". As argued, such a mechanism should complement contracts and put forward framework for resolving disputes equitably. Resolution 69/304 of the UNGA (September 2014) was overwhelmingly passed as a framework to complement contracts and resolve disputes. However, presenting a set of principles accepted by all parties has proved problematic ever since.

Notably, of the countries that had the opportunity to vote for the resolution, 124 countries voted in favor (mostly developing countries), 11 voted against the resolution and 41 abstained from voting. 31 The debate between countries on this resolution revealed a rift between the developing and developing countries. Amongst the points of departure between developed and developing countries was whether the UNGA is in fact the relevant and qualified authority to determine matters of contemporary SDR.

The establishment of an international framework for SDR occurred on 10 September 2015 when the UNGA passed resolution on "Basic Principles on Sovereign Debt Restructuring Processes". This resolution requires that the following nine basic principles guide a SDR process:

- Sovereignty,
- Good faith,
- Transparency,
- Impartiality,
- Equitable treatment,
- Sovereign immunity,
- Legitimacy,
- Sustainability, and
- Majority restructuring.

Similarly to the UNGA resolution on a multilateral legal framework mentioned above, the political debate on the adoption of the nine basic principles also demonstrates that the divide between developing and developed countries is still a matter of fact. Notably, 136 states voted in favor of the adoption of the nine basic principles, while 6 voted against and 41 abstained from voting.

Of the countries that voted in favour, most were from Africa, Latin America, Asia and the Caribbean, while the countries that voted against include Canada, Germany, Israel, Japan, the United Kingdom and the United States. Again, countries such as the United States, pointed out that the UN is not the correct forum for SDR and that, rather, the debate should be directed to the IMF, G20 or the Paris Club. Moreover, fears that these principles would undermine the principle of the sanctity of contracts and the enforcement of contracts resulted in votes against the resolution.

What perspective for Southern Civil Society Organizations?

CSOs should identify a tenable entry point to the current "standoff" on an international workout mechanism. This entry point should reconcile the divide whilst advocating for responsible borrowing from governments. In the words of UNCTAD:

"In principle, debt resolution mechanisms should help prevent impending financial or debt crises when countries face difficulties in meeting their external obligations. They should pre-empt any sudden collapse of market confidence that has potentially catastrophic long term consequences for the debtor economy. At the same time, such mechanisms should aim at a fair distribution of the burden of debt restructuring between debtors and creditors. Finally, they should respect national sovereignty and preserve domestic policy space in order to allow a debtor economy to grow, achieve improved debt sustainability and design and implement its own development strategies"

There is need to make sovereign debt workout mechanism understandable, useful, desirable, and a priority. The continent's officials, parliamentarians, government officials, civil society have not sufficiently featuring in the international debate on SDR because the continents traditional source of finance has been official, multilateral and bilateral debts. Notably this is slowly changing to private debt. African perspective on SDR, express the view that despite the large number of debt restructuring on the continent, the African perspective have not featured prominently to the international debate.

Parliaments when approving loans must scrutinize terms and conditions. A public debt contract is a binding obligation and should be honored. Exceptional cases nonetheless can arise which could invalidate the debt (including making it odious) or a state of economic necessity which could prevent full and/or timely repayment. In that regard, the government has an obligation to seek competent judicial authority to rule that circumstances giving rise to legal defense will have occurred. In order to maintain international market credibility and stability, debt restructuring should be an option of last resorts. However, if a restructuring of public debt obligations becomes unavoidable, it should be undertaken efficiently, effectively and equitably.

Reforms, what reforms are needed?

There are many proposals on the table on the subject of reforms of SDR such as:

- Independent institution for decision-making
- Comprehensive treatment of all sovereign debts in one single process
- Independent assessment of debt sustainability ...
- ... under consideration of developmental and human rights criteria
- Assessment of debt stock under responsible finance criteria, cancellation of debt found to be illegitimate
- Transparent and inclusive process, giving citizens a right to be heard.

A number of initiatives have also been taken at the level of the United Nations:

- UNCTAD Principles on Promoting Responsible Sovereign Lending and Borrowing (to operationalize the co-responsibility of creditors and debtors)
- UNHRC Guiding Principles on Debt and Human Rights (to integrate the primacy of human rights over debt service
- UNCTAD Roadmap and Guide for Sovereign Debt Workouts (outline a fair debt workout process)
- UN Basic Principles on Sovereign Debt Restructuring (with the aim to prevent vulture funds litigation)
- UN Sustainable Development Goal 17 (defines debt sustainability and restructuring as means of implementation, operationalized in the Addis Ababa Action Agenda).

Besides the United Nations, other actors have also been active in putting forward proposals:

The International Monetary Fund:

- Promotion of collective action clauses
- Promotion of state-contingent debt instruments ("automatic debt relief" as their payment terms change when the debtor is hit by a shock, e.g. commodity price drop
- Plans to improve transparency (G20 agreement that all official creditors to report all loans to the IMF)

Paris Club:

- Expansion of membership (Brazil and South Korea joined)

The politics, and the way forward

Creating better international institutions for prevention and resolution of debt crises:

- UN has mandate for future reforms from the Addis Ababa Action Agenda and General Assembly Resolution 69/319);
- IMF staff and management have a strong desire to create stronger frameworks African governments should take a more pro-active role to drive those reforms

Making the best out of the status quo:

- Pioneering innovative sovereign debt restructurings: (e.g. apply UNCTAD Roadmap approach in Mozambique)
- Implementation of the UNCTAD Responsible Lending and Borrowing Principles in Mozambique (incl monitoring and accountability)
- Future issuance of state-contingent debt instruments

CONCLUSIONS

How relevant is the United Nations General Assembly in Sovereign Debt Restructuring if countries whose laws govern debt contracts do not sign or ratify resolutions ? Is there sufficient treatment of human rights, environmental rights and social concerns in Principles? How will the principles be applied in a uniform manner and how will their impact be determined?

What are the greatest obstacles to a multilateral statute? Political will, opposition from private creditors; opposition from multilateral and bilateral creditors; opposition from debtor countries.

There is still a lot of work to be done at the national, regional and international levels to push for the establishment of the mechanism on debt. Developing countries, especially in Africa, financing their development with debt need to push for such a mechanism under the United Nations. Despite them being weak at the international level, civil society needs to speak on their behalf.

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