AfSDJN

SOVEREIGN DEBT AND HUMAN RIGHTS: A FOCUS ON SUB-SAHARAN AFRICA

PAPER I OF THE AFRICAN SOVEREIGN DEBT JUSTICE PAPER SERIES

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FOREWORD

Welcome to the second paper in the African Sovereign Debt Justice Network Paper Series. The African Sovereign Debt Justice is a coalition of citizens, scholars, civil society actors and church groups committed to exposing the adverse impact of unsustainable levels of African sovereign debt on the lives of ordinary citizens.

The African Sovereign Debt Justice Paper Series has four primary goals:

I. To provide insightful and highly accessible analysis of key sovereign debt issues;
II. To create awareness about and elevate public attention to the sovereign debt crisis;
III. To contribute significantly to the menu of reform options for the sovereign debt crisis;
IV. To promote and build capacity among African academics on sovereign debt issues.

The African Sovereign Debt Justice Network is delighted to have been able to work with the experts to produce this paper series. This paper series, written against the background of the ongoing sovereign debt crisis, has been exacerbated by the COVID19 pandemic. AfSDJN believes there continues to be pathways towards reforming many aspects of the global financial architecture and we hope that this series will speak authoritatively to the types of challenges involved in definitively addressing the sovereign debt crisis.

Introduction

It has been argued that public debt can foster economic growth and this, in turn, can help countries achieve their development goals and contribute to the realization of human rights.[1] Nevertheless, unsustainable public debt burdens often have a negative impact on the realization of human rights. In many countries, public debt payments outweigh government spending on critical social services that support the realization of human rights. In 2019, 25 countries – of which 16 are African[2] - spent more on debt repayment than on education, health and social protection combined.[3]

Furthermore, policy conditionalities typically linked to loans and debt relief by the international financial institutions undermine the realization of human rights by, among other things, compelling reductions in public spending on basic social services.

While public debt levels in many Sub-Saharan African countries have been increasing over the last decade, the COVID-19 pandemic has exacerbated the region's debt crisis, raising renewed concerns about the ability of countries in the region to adequately spend on basic social services, such as health and education. According to UNICEF, in the context of a contracting global economy and fall in government revenues, 'the growing burden of debt interest threatens to crowd out social spending further.'[4]

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[1] See, e.g., Wade M Cole, 'Too much of a good thing? Economic growth and human rights, 1960-2010,' (2017) 67 Social Science Research 72-90; Serges Alain Djoyou Kamga and Siyambonga Heleba, 'Can Economic Growth Translate into Access to Rights: Challenges Facing Institutions in South Africa in Ensuring that Growth Leads to Better Living Conditions,' (2012) 9(17) Sur – International Journal on Human Rights 83. See also Sam Kris Hilton, 'Public debt and economic growth: contemporary evidence from a developing economy,' (2021) 5(2) Asian Journal of Economics & Banking 173 <www.emerald.com/insight/2615-9821.htm> accessed 13 September 2021.

[2] Angola, Benin, Chad, Congo (Republic of), Ethiopia, The Gambia, Ghana, Kenya, Madagascar, Mauritania, Niger, South Sudan, Uganda, Zambia and Zimbabwe.

[3] For example, South Sudan spent over 11 times more on debt service than on education, health and social protection combined; The Gambia and Chad spent over three times more. See UNICEF Office of Research – Innocenti, *COVID-19 and the Looming Debt Crisis*, Innocenti Policy Brief Series, Brief 2021-01, Protecting and Transforming Social Spending for Inclusive Recoveries, Florence, Italy, 15-1. See also Jubilee Debt Campaign, 'Comparing debt payments with health spending,' April 2020 <https://jubileedebt.org.uk/wp-content/uploads/2020/04/Debt-payments-and-health-spending_13.04.20.pdf> accessed 20 September 2021.

[4] ibid.

This paper discusses the impact of sovereign debt and related policy conditionalities on the realization of human rights, with a focus on Sub-Saharan Africa. The paper is structured as follows. Following this introduction, section 2 provides a brief overview of Sub-Saharan Africa's debt crisis, highlighting the threat of vulture fund litigation and the implications of opaque Chinese lending. Section 3 briefly discusses the impact of debt servicing on the realization of human rights, particularly economic, social, and cultural rights, and how conditions linked to loans and debt relief undermine human rights as well as country ownership of national development strategies. Section 5 concludes.

I. Sub-Saharan Africa's Debt Crisis: A Brief Overview

Sub-Saharan Africa's debt has been on an upward trajectory in the last decade while government revenues have decreased. The public external debt stock rose almost threefold from $149 billion in 2009 to $392 billion in 2019, while the proportion of the continent's exports to debt service doubled from 5 to 12 percent between 2009 and 2012.[5] According to Eurodad, the overall proportion of government revenue spent on external debt payments more than doubled between 2010-2018 to 10.8 percent. The African Development Bank projects that the average debt to gross domestic product (GDP) ratio will increase by 10-15 percentage points in 2021 from 60 percent in 2019.

While 31 Sub-Saharan African countries have received debt relief under the Heavily Indebted Poor Countries (HIPC) Initiative and Multilateral Debt Relief Initiative (MDRI), several remain heavily burdened with debt, raising questions about whether these debt relief mechanisms have achieved their stated central goal of ensuring long-term debt sustainability.[6]

[5]World Bank, *International Debt Statistics 2021* (World Bank 2021) 3 <https://openknowledge.worldbank.org/bitstream/handle/10986/34588/9781464816109.pdf> accessed 20 September 2021.

[6] In 2004, the United Nations Conference on Trade and Development (UNCTAD) expressed doubt over HIPCs achieving long term debt sustainability. One specific criticism that rings true to date is the 'over-optimistic assumptions of economic and export growth' and reliance on proceeds from commodities to determine sustainability under the IMF and World Bank Debt Sustainability Framework, yet African economies are vulnerable to shocks due to volatility of commodity prices. See UNCTAD, *Economic Development in Africa: Debt Sustainability: Oasis or Mirage?* (United Nations 2004) <https://unctad.org/system/files/official-document/gdsafrica20041_en.pdf> accessed 19 July 2021. See also United Nations, *Report of the Independent Expert on 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,* A/HRC/23/37 (11 June 2013), which highlights several shortcomings of these international debt relief efforts, including creditor dominance, a

As of December 2020, six African countries (Mozambique, Republic of Congo, Sao Tome and Principe, Somalia, Sudan and Zimbabwe) were in debt distress and 14 others were at high risk of debt distress.[7] Sixteen countries had a moderate risk of debt distress, while two were considered at low risk.[8] The increase in the number of countries at risk for moderate or high debt distress is attributable to increased public spending necessary for addressing the health implications and the drop in economic activity amid the COVID-19 pandemic.

The exclusion, from the HIPC Initiative, of some countries that did not meet the eligibility criteria but were nonetheless in desperate need of debt relief has also played a role in precipitating the current debt crisis. Non-HIPCs - such as Zimbabwe, Cabo Verde and Nigeria - are currently struggling with unsustainable debt burdens.[9]

Several factors have contributed to Sub-Saharan Africa's mounting debt levels. These include increasing exchange rate depreciation, fluctuating commodity prices, high interest expenses and increasing domestic debt.[10] There has also been an increasing shift to non-concessional borrowing to finance large capital investments. Between 2000 and 2020, 21 African countries issued Eurobond instruments valued at more than $155 billion.[11] An estimated $117 billion of this debt is in the form of tradable bonds.[12] However, recent evidence indicates that the markets are not confident that these countries will be able to meet their debt obligations during the COVID-19 pandemic. For example, in 2020, Angolan and Zambian sovereign bonds were

rigid definition of debt sustainability. Harmful conditionalities, lack of additionality and the risk of vulture fund litigation.

7 African Development Bank, *African Economic Outlook 2021. From Debt Resolution to Growth: The Road Ahead for Africa* (African Development Bank 2021), 58.

8 ibid.

9 For example, during the first quarter of 2021, Nigeria spent a whopping 99 per cent of its revenues on debt repayments. See Oladeinde Olawoyin, 'Nigeria Spent 97% of Revenue on Debt Servicing in 2020 – Report,' *Premium Times* (Abuja, 11 July 2021) <www.premiumtimesng.com/news/top-news/472929-nigeria-spent-97-of-revenue-on-debt-servicing-in-2020-report.html> accessed 18 July 2021.

10 African Development Bank (n 7) 49.

11 ibid.

12 Daniel D Bradlow, 'Deterring the Debt Vultures in Africa,' May 2020 <https://theconversation.com/vultures-doves-and-african-debt-heres-a-way-out-137643> accessed 13 September 2021.

trading at roughly 35-38 cents on the dollar.[13] This situation further exposes African countries to the risk of vulture funds – speculators (typically equity or hedge funds), who purchase distressed sovereign debt at steep discounts, hold out for other creditors to cancel their debts and then aggressively pursue repayment at amounts vastly in excess of what they paid for the debt.[14] At least 13 African countries have been subject to vulture fund litigation – at significant financial and social cost – since the late 1990s.[15] It should be noted that though most bond contracts contain collective action clauses that entail imposing a restructuring on all bondholders if a sufficient majority agree, some speculators may still be able to purchase enough bonds to block a restructuring.

China's Opaque Lending

Over the past two decades, there has been a spike in Chinese bilateral lending to finance large-scale infrastructure in countries around the world, including those in Sub-Saharan Africa.[16] At present, China is the largest bilateral lender to African countries. Between 2000 and 2019, Chinese lenders signed 1,141 loan commitments with African governments and state-owned enterprises, amounting to $153 billion.[17] Nevertheless, there are several concerns regarding

[13] Tommy Stubbington and Laurence Fletcher, 'Zambia's bonds drop on expected restructuring,' *Financial Times* (London, 1 April 2020) <www.ft.com/content/a3755cf3-34a9-4992-a54b-686a6b5380b2> accessed 13 September 2021; Bradlow (n 12).

[14] For a discussion of vulture funds and sovereign debt, see Cephas Lumina, 'Curbing "Vulture Fund" Litigation,' in Ilias Bantekas and Cephas Lumina (eds), *Sovereign Debt and Human Rights* (Oxford University Press 2018) 498-513; United Nations, *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,* A/HRC/14/21 (29 April 2010). See also African Development Bank, 'Vulture Funds in the Sovereign Debt Context' <www.afdb.org/en/topics-and-sectors/initiatives-partnerships/african-legal-support-facility/vulture-funds-in-the-sovereign-debt-context> accessed 13 September 2021; Olufunmilayo B Arewa, 'Vultures, Hyenas, and African Debt: Private Equity and Zambia' (2009) 29(3) Northwestern Journal of International Law & Business 643.

[15] These include Angola, Burkina Faso, Cameroon, Republic of Congo, Ethiopia, Cote d'Ivoire, Madagascar, Mozambique, Niger, Sierra Leone, Tanzania, Uganda and Zambia. See African Development Bank (n 10).

[16] Juan Pablo Bohoslavsky, 'A Human Rights Focus to Upgrade China's International Lending' (2019) 5 Chinese Journal of Global Governance 69

<https://brill.com/view/journals/cjgg/5/1/article-p69_3.xml?language=en> accessed 20 September 2021. This lending is largely channelled through the state-owned China Development Bank (which, despite its name, provides non-concessional loans) and Export-Import Bank of China (which offers government-subsidized concessional loans).

[17] Zainab Usman, 'What Do We Know About Chinese Lending in Africa?' 2 June 2021 <https://carnegieendowment.org/2021/06/02/what-do-we-know-about-chinese-lending-in-africa-pub-84648>. See also David Landry and Gailyn Portelance, 'More Problems More Money? Does China Lend More to African Countries with Higher Credit Risk Levels?' Center for global Development Working Paper 568, March

Chinese lending to Africa. First, the opacity of the terms and conditions of Chinese loans renders it difficult to ascertain the true extent of African countries' debt to China.[18] A recent study reviewing a sample of China's loan contracts found that post-2014 contracts with China's state-owned enterprises imposed confidentiality obligations barring debtors from disclosing the terms of the contracts except where it is a requirement of law.[19] These confidentiality clauses prevent the public in both China and borrowing countries from accessing information about the loans and holding their governments accountable as envisaged in the United Nations Guiding Principles on foreign debt and human rights.[20]

Second, the lack of transparency around Chinese lending has serious implications for debt restructuring. This is evident in the case of Zambia, whose bondholders are reluctant to offer debt relief due to the uncertainty around the treatment of China's debt compared to other creditors.[21] While China committed under the G-20 Common Framework for Debt Treatments

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2021 <www.cgdev.org/sites/default/files/more-problems-more-money-does-china-lend-more-african-countries-higher-credit-risk.pdf> accessed 13 September 2021.

[18] Anna Gelpern et al, 'How China Lends: A Rare Look Into 100 Debt Contracts with Foreign Governments,' March 2021

<https://docs.aiddata.org/ad4/pdfs/How_China_Lends__A_Rare_Look_into_100_Debt_Contracts_with_Foreign_Governments.pdf> accessed 13 September 2021. See also Sebastian Horn et al, 'China's Overseas Lending,' National Bureau of Economic Research Working Paper Series, Working Paper 26050, July 2019

<www.nber.org/system/files/working_papers/w26050/w26050.pdf> accessed 13 September 2021; Scott Morris, 'A Reckoning for China's Opaque Overseas Lending,' Center for Global Development, 7 April 2020 <www.cgdev.org/blog/reckoning-chinas-opaque-overseas-lending> accessed 13 September 2021. While it is estimated that, as of 2018, China held over 20 percent of Africa's external debt, the exact figure remains unknown. For instance, the World Bank and IMF estimate that China's undisclosed loans to Zambia for infrastructure spending amount to approximately $10 billion. See Jubilee Debt Campaign, 'Africa's Growing Debt Crisis: Who is the Debt Owed to?' October 2018 <https://jubileedebt.org.uk/wp/wp-content/uploads/2018/10/Who-is-Africa-debt-owed-to_10.18.pdf> accessed 13 September 2021; Shoshana Kedem, 'IMF seeks China Loan Transparency in Zambia Talks,' *African Business* (12 February 2021) <https://african.business/2021/02/economy/imf-seeks-china-loan-transparency-in-zambia-talks/> accessed 13 September 2021.

[19] Gelpern et al (n 18).

[20] United Nations, *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,* A/HRC/20/23, 10 April 2011, Annex: Guiding principles on foreign debt and human rights, and A/HRC/20/23/Corr.1, 11 June 2012, principles 28, 29 and 43. The Guiding Principles were endorsed by the Human Rights Council by its resolution 20/10.

[21] Gelpern et al (n 18). See also Joe Bavier and Karin Strohecker, 'An Election, a Mine Deal and China Loom Over Zambia's IMF Talks,' 11 February 2021

<www.reuters.com/article/us-zambia-debt-imf-idUSKBN2AB0E3> accessed 20 September 2021.

beyond the Debt Service Suspension Initiative (DSSI) (hereinafter "Common Framework"), to cooperate with other bilateral creditors in offering debt relief, research indicates that in some contracts with sovereign debtors, it excludes debt 'from restructuring in the Paris Club of official bilateral creditors, and from any comparable debt treatment.'[22] It is noteworthy that, over the last decade, China has offered substantial debt relief to African countries, especially on its zero interest loans.[23]

Third, Chinese lending to Sub-Saharan Africa is 'increasingly seen as a threat to debt sustainability.'[24] This concern stems from the large scale of the projects being financed and the lack of transparency referred to above. Repayment of loans for these projects could prove challenging in circumstances where the projects fail to generate sufficient returns, particularly in foreign exchange.[25] This is the subject of one of the other papers in this series by Olabisi Akinkugbe and Sanni Oluwaseyi.

Fourth, there is controversy regarding the Chinese resource-backed lending model for financing infrastructure projects in which the borrowing countries commit future revenues from their natural resources exports to paying loans secured from Chinese lenders.[26]

Finally, there are concerns about the cost of Chinese loans. From 2000 to 2014, African countries borrowed over $86 billion from China on commercial terms for infrastructure spending.[27] Such borrowing is typically at market rates, with short grace periods and maturities.[28]

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[22] Gelpern (n 18).

[23] Landry and Portelance, (n 17) 9.

[24] See, e.g., John Hurley, Scott Morris and Gailyn Portelance, 'Examining the Debt Implications of the Belt and Road Initiative from a Policy Perspective,' CGD Policy Paper 121, Center for Global Development, March 2018 <www.cgdev.org/sites/default/files/examining-debt-implications-belt-and-road-initiative-policy-perspective.pdf> accessed 13 September 2021.

[25] Shakira Mustapha and Annalisa Prizzon, 'Africa's rising debt: How to avoid a new debt crisis,' ODI Briefing Note, October 2018.

[26] Usman (n 17).

[27] Anzetse Were, 'Debt Trap? Chinese Loans and Africa's Development Options,' South African Institute of International Affairs, Policy Insights 66, August 2018

<https://media.africaportal.org/documents/sai_spi_66_were_20190910.pdf > accessed 20 September 2021.

[28] Horn et al (n 18); Deborah Brautigam, Yufan Huang and Kevin Acker, 'Risky Business: New Data on Chinese Loans and Africa's Debt Problem,' Briefing Paper No. 3, China Africa Research Initiative

II. The COVID-19 Pandemic and Sub-Saharan Africa’s Debt

As noted above, public debt in Sub-Saharan African countries was already on the rise prior to the COVID-19 pandemic. The pandemic has further worsened the region’s debt situation with a notable increase in the number of countries at moderate or high risk of debt distress.[29] Most governments in the region are running wide fiscal deficits that are translating into more debt and debt distress.[30]

To enable struggling low-income countries (including several Sub-Saharan African countries) to respond adequately to the pandemic, the G-20 and the IMF have provided some debt relief through the DSSI and the Catastrophe Containment Relief Trust respectively. These measures allow all International Development Association and all-UN defined least developed countries (including many African countries) to temporarily suspend their debt repayments to bilateral creditors for a defined period.[31] However, critics have described these measures are insufficient, noting that the only sustainable solution is debt cancellation. For example, in 2020, 43 eligible countries benefitted from $5.7 billion debt service suspension - much needed relief albeit a miniscule sum compared to the debt servicing burden of developing countries estimated at $356 billion and $329 billion in 2021 and 2022, respectively.[32]

<https://static1.squarespace.com/static/5652847de4b033f56d2bdc29/t/6033fadb7ba591794b0a9dff/1614019291794/BP+3+-+Brautigam%2C+Huang%2C+Acker+-+Chinese+Loans+African+Debt.pdf> accessed 20 September 2021. The authors note that terms and interest rates of Chinese loans vary depending on the lender and project type. The Chinese Government offers concessional loans while its commercial institutions lend at market rates.

[29] IMF, *Regional Economic Outlook. Sub-Saharan Africa: navigating a long pandemic* (IMF 2021).

[30] COMESA, ‘Implications of Covid-19 Pandemic on Debt for Sub-Saharan Africa,’ Special Report, 2 December 2020 <www.comesa.int/wp-content/uploads/2020/12/Implication-of-COVID-19-Pandemic-on-Debt-for-Sub-Saharan-African-Countries-USE.pdf> accessed 13 September 2021. See also African Development Bank (n 7) 46. The Bank expects most African countries to experience a significant upsurge in their debt-to-GDP ratios for 2020 and 2021, particularly resource-intensive economies.

[31] See IMF, ‘Catastrophe Containment and Relief Trust – Third Tranche of Debt Service Relief in the Context of the COVID-19 Pandemic’ <www.imf.org/en/Publications/Policy-Papers/Issues/2021/04/05/Catastrophe-Containment-and-Relief-Trust-Third-Tranche-Of-Debt-Service-Relief-In-The-Context-50336> accessed 13 September 2021; World Bank, ‘COVID-19: Debt Service Suspension Initiative,’ 17 September 2021 <www.worldbank.org/en/topic/debt/brief/covid-19-debt-service-suspension-initiative> accessed 20 September 2021.

[32] Homi Kharas and Meagan Dooley, ‘COVID-19’s Legacy of Debt and Debt Service in Developing Countries,’ Global Woking Paper No. 148, Center for Sustainable Development at Brookings Institution, December 2020

Moreover, in circumstances where commercial debt comprises 40 percent of Africa's debt stock, the non-participation of private creditors in the G-20's DSSI has seriously crippled its potential to deliver substantial debt relief.[33] Regrettably, the initiative repeats the HIPC Initiative mistake of excluding countries in need of relief, such as Sudan and Zimbabwe, which are both presently in debt distress but are ineligible because of their arrear's status.[34]

In November 2020, the G-20 established the Common Framework. Designed to address the inadequacies of the DSSI by providing a platform for debt restructuring on a case-by-case basis, the Common Framework requires countries to seek comparable treatment from all creditors, including private creditors.[35]

Nevertheless, concerns have been raised about the Framework, including the lack of transparency and its reinforcement of power imbalances between private actors and countries by failing to mandate participation of the former.[36] This was evident in the case of Zambia, whose efforts to secure debt relief from its private creditors failed, resulting in a default on its Eurobond payments in 2020.[37] The threat of downgrades by credit rating agencies for opting to participate in the Common Framework is a deterrent for countries that want to retain access to international markets.[38] Another notable concern is the requirement that participating

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<www.brookings.edu/wp-content/uploads/2020/12/COVID-19-legacy-of-debt_final.pdf>accessed 20 September 2021.

33 African Development Bank (n 7).

34 UNICEF (n 3).

35 The comparability of treatment requirement is meant to encourage participation of private sector creditors. See <www.g20.org/g20-common-framework-for-debt-burden-relief-dialogues-for-low-income-countries.html> accessed 20 September 2021.

36 See, e.g., Daniel Munevar, 'The G20 "Common Framework for Debt Treatments beyond the DSSI": Is it bound to fail?', Briefing, European Network on Debt and Development, October 2020 <www.eurodad.org/the_g20_common_framework_for_debt_treatments_beyond_the_dssi_is_it_bound_to_fail_2> accessed 20 September 2021.

37 Ollie Williams, 'Zambia's Default Fuels Fears of African 'Debt Tsunami' as COVID Impact Bites,' *The Guardian* (25 November 2020) <www.theguardian.com/global-development/2020/nov/25/zambias-default-fuels-fears-of-african-debt-tsunami-as-covid-impact-bites> accessed 21 September 2021.

38 For example, when Ethiopia announced its intention to access the initiative, its credit rating was downgraded. Other countries, including Benin, Ghana and Nigeria, were dissuaded from participating in the DSSI. See Peter Fabricius, 'The G20's COVID-19 debt relief plan needs to go further: Should more creditors consider suspending debt servicing, and for longer?' ISS Today, 10 July 2020 <https://issafrica.org/iss-today/the-g20s-covid-19-debt-relief-plan-needs-to-go-further> accessed 20 September 2021. See also Jan Friederich et al, 'G20 Common Framework and Private-Sector Debt Restructuring" Special Report, Fitch Ratings, 16 February 2021

countries undertake economic reforms under an IMF programme. This could repeat the challenges of previous efforts that linked debt relief to often harmful conditionalities.[39]

III. The Debt Burden and its Impact on Human Rights[40]

Under international law, States have the primary responsibility for establishing and sustaining the conditions in which all persons living under their jurisdiction can enjoy the full range of human rights. Nevertheless, States' ability to fulfil their international human rights obligations is, to a large extent, subject to the availability and allocation of sufficient resources for essential investments in human, social, and physical infrastructure that provide the foundation for sustainable and equitable development, as well as the realization of all human rights.[41]

In relation to economic, social, and cultural rights, states must use their 'maximum available resources' to progressively ensure the full realization of these rights.[42] In many cases, however, public debt servicing often reduces the amount of revenues available to governments for social spending and the realization of human rights.[43] Indeed, when a disproportionate amount of scarce national financial resources are allocated to debt servicing, there is little left over to provide essential public services - such as education, healthcare, water and sanitation – and

<https://cdn.roxhillmedia.com/production/email/attachment/850001_860000/5b20c66f88ef9c6db1e0ef85ef107c855f7399ff.pdf > accessed 18 July 2021.

[39] Munevar (n 36).

[40] For a discussion of the impact of sovereign debt on human rights, see Cephas Lumina, 'Sovereign Debt and Human Rights: Making the Connection,' in Bantekas and Lumina (n 14) 169-185.

[41] Office of the High Commissioner for Human Rights (OHCHR), *Realizing Human Rights through Government Budgets* (United Nations 2017) 18.

[42] This obligation means that a state must do its utmost to mobilize resources within the country, with budget being a significant element in these national resources. In addition, the state must do all it can to secure international assistance (including official development assistance) in circumstances where national resources are insufficient to realize economic, social, and cultural rights.

[43] United Nations, 'Consolidation of Findings of the High-Level Task Force on the Implementation of the Right to Development', UN Doc A/HRC/15/WG.2/TF/2/Add.1 (25 March 2010) paras 53-4. Other studies have confirmed the high level of spending on debt servicing relative to expenditure on basic social services such as education and healthcare. See, e.g., Sadia Shabbir, Hafiz M Yasin, 'Implications of Public External Debt for Social Spending: A Case of Selected Asian Developing Countries' (2015) 20(1) The Lahore Journal of Economics 71; Augustin Kwasi Fosu, 'The External Debt Servicing Constraint and Public Expenditure Composition in Sub-Saharan Africa' (2010) 22(3) African Development Review 378; Jubilee Debt Campaign, 'Debt and Public Services,' Briefing (2007).

infrastructure that underpin the realization of human rights.[44] There is extensive evidence that this diversion of limited resources reduces many poor developing countries' capacities to establish the conditions for the realization of human rights, particularly economic, social, and cultural rights, with millions left facing more impoverished living conditions.[45]

In addition, the policy conditions linked to the provision of new loans and debt relief by the international financial institutions often have a negative impact on the realization of many human rights by compelling reductions in government spending or limiting investment in social services such as education and health. These conditions typically include *austerity measures* such as reduction of government spending for public services, public sector wage freezes or ceilings, public sector job cuts and introduction of user fees for basic social services; *privatization* of State-owned enterprises such as electricity and water utilities; *liberalization* including the elimination of barriers to imports, the removal of subsidies, and the scaling up of exports; and *structural reforms* such as the introduction of value-added tax and other regressive taxes, tax holidays for foreign corporations and labour market reforms.

Austerity policies tend to undermine the enjoyment of economic and social rights, with a particularly devastating impact on vulnerable groups, including poor people, persons with disabilities, women,[46] and children.[47] This is because such measures are often applied to public social services and programmes and are therefore likely to affect those already dependent on social welfare or lacking access to social services.[48]

Privatization often results in price increases which limit poor people's access to basic services which, in many countries, have traditionally been provided by governments free of charge or at low cost, as well as a decrease in tax revenues arising from the general impoverishment of

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[44] Lumina (n 40).

[45]ibid.

[46] Since women rely more than men on public services and welfare assistance, they are disproportionately affected by spending cuts imposed in the context of austerity measures. See United Nations, *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/67/304 (13 August 2012). See also Gender Action, *Gender Toolkit for International Finance Watchers*, February 2011.

[47] See, e.g., Daisy Sands, 'The Impact of Austerity on Women,' Fawcett Society Policy Briefing, March 2012 <www.fawcettsociety.org.uk/Handlers/Download.ashx?IDMF=f61c3b7e-b0d9-4968-baf6-e3fa0ef7d17f> accessed 20 September 2021.

[48] United Nations (n 47) para 36.

the population and from tax incentives offered to transnational corporations that usually buy up state-owned enterprises in the context of privatization.[49] In Tanzania, the privatization of water supplies in Dar es Salaam as a condition for multilateral debt relief resulted in severely reduced access to water for the poorest, both through cuts in services and increased user fees.[50]

Trade liberalization often has adverse economic and social consequences in the countries concerned. In Malawi, for example, the liberalization of the agricultural sector through the reduction of subsidies for small-scale farmers, the removal of price controls, and the restructuring/privatization of the national agricultural marketing agency as a condition for debt relief, coupled with drought and floods, resulted in price increases, increased hoarding of grain, and a lack of affordable food for the poor, thereby undermining food security for the majority of the population.[51] It has been reported that the ensuing food crisis also forced many desperate rural women and girls into early marriage and, in some cases, into sex work, increasing their exposure to HIV/AIDS.[52]

Moreover, the influx of imported goods made possible by liberalization and the reduction of subsidies make it impossible for local industries and farmers to be competitive. These factors have a negative impact on employment and food security and increase overall poverty levels. In addition, developing countries' increased dependence on food imports in the context of liberalization has exposed these countries to fluctuations in global food prices as the flood of cheap food imports destroys local markets, long-term productive capacity, and the livelihoods of poor farmers.

While these policy conditionalities supposedly seek to promote economic growth and prosperity, as well as to restore the debt repayment capacity of debtor countries,[53] the available

[49]The reduction in revenue often leaves governments with little income for social investment, with particularly devastating and long-term impacts on the enjoyment of human rights.

[50] See Romilly Greenhill and Irene Wekiya, 'Turning Off the Taps: Donor Conditionality and Water Privatization in Dar es Salaam, United Republic of Tanzania' (ActionAid International 2004).

[51] Kwesi Owusu, Francis Ng'ambi, 'Structural Damage: The Causes and Consequences of Malawi's Food Crisis' (World Development Movement 2002).

[52]Lumina (n 40).

[53]See IMF, 'Factsheet: IMF Conditionality,' 22 February 2021 <www.imf.org/en/About/Factsheets/Sheets/2016/08/02/21/28/IMF-Conditionality> accessed 20 September 2021. See also Independent Evaluation Office of the IMF, *Structural Conditionality in IMF-Supported Programs*: *Evaluation Update 2018* (IMF 2018) <https://ieo.imf.org/en/our-

evidence shows that the measures, in fact, have an adverse impact on the realization of human rights in the longer term and they have contributed to increasing poverty in many countries.[54]

Among the harmful impacts are increased unemployment, destruction of social safety nets, rising food prices, falling real incomes in poor households, increasing poverty levels, and marginalization of the poor.[55]

IV. Conclusion

Over the past decade, there has been an upsurge in the public debt of Sub-Saharan African countries, largely because of increased non-concessional borrowing and a decrease in government revenues. The high proportion of government revenue absorbed by debt service has meant that, for many countries, there is little revenue left over for critical areas, including social spending needs, with adverse implications for the realization of human rights.

The COVID-19 has worsened the debt vulnerabilities of several African countries. The IMF estimates that Africa will need $285 million to respond to the pandemic between 2021-2025.[56] This underscores the need for robust measures, including debt cancellation, to deal with the region's debt crisis in a sustainable manner. The 1953 London Agreement on German External Debts, in terms of which nearly half of the Federal Republic of Germany's total pre-and post-

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work/Evaluations/Updates/Structural-Conditionality-in-IMF-Supported-Programs-Eval> accessed 20 September 2021.

[54] Jeffrey D. Sachs, *The End of Poverty: Economic Possibilities for Our Time* (2005) 81-8, 280-281, 342; Martin Dent and Bill Peters, *The Crisis of Poverty and Debt in the Third World* (1999) 73-79. For concerns expressed by the UN human rights mechanisms on the adverse impacts of conditionalities, see, e.g., the following concluding observations, Committee on Economic, Social and Cultural Rights: E/C.12/1/Add.106 (Zambia); E/C.12/1/Add.78 (Benin); E/C.12/1/Add.62 (Senegal); and E/C.12/1/Add.48 (Sudan); Committee on the Rights of the Child: CRC/C/15/Add.218 (Madagascar); CRC/C/15/Add.204 (Eritrea); CRC/C/15/Add.193 (Burkina Faso); CRC/C/15/Add.190 (Sudan); CRC/C/15/Add.179 (Niger); CRC/C/15/Add.174 (Malawi); CRC/C/15/Add.172 (Mozambique); CRC/C/15/Add.160 (Kenya); and CRC/C/15/Add.138 (Central African Republic); Committee on the Elimination of Discrimination against Women, *Official Records of the General Assembly, Fifty-seventh Session, Supplement No. 38*, A/57/38, para 149 (Uganda); and *Fifty-fifth Session, Supplement No. 38,* A/55/38, para 44 (Cameroon). See also United Nations, *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, Addendum: Mission to Greece (22-27 April 2013), A/HRC/25/50/Add.1 (27 March 2014).

[55] ibid.

[56] IMF, 'Background Note for International Financing Summit for Africa High-Level Event,' 12May 2021 < www.imf.org/-/media/Files/News/Speech/2021/africa-summit-background-note-may-13-2021.ashx> accessed 20 September 2021.

Second World War external debt of 30 billion Deutsche Marks was cancelled, provides an important historical precedent in this regard.[57] Cancellation of that debt contributed significantly to Germany's economic growth by creating fiscal space for public investment and social spending, as well as lowering the costs of borrowing and stabilizing inflation.[58] It also helped Germany re-integrate into the global economy.

It is important to note, however, that the effectiveness of any such measures will depend on, among other things, Sub-Saharan African countries undertaking reforms to eliminate leakages of public resources, enhancing domestic resource mobilization and improving transparency in debt contraction.

[57] Agreement on German External Debts (London, 27 February 1953). The Agreement contained generous debt relief terms, such as linking repayment of the remainder of the debt to Germany's economic growth and exports, so that the debt service/export ratio could not exceed 3 percent and renegotiation of the repayment terms if circumstances rendered debt service more burdensome than originally anticipated.

[58] See Gregori Galofre-Vila et al, 'The economic consequences of the 1953 London Debt Agreement,' (2019) 23(1) European Review of Economic History 1, 23; Jurgen Kaiser, *One Made it Out of the Debt Trap: Lessons from the London Debt Agreement of 1953 for Current Debt Crises,* Friedrich-Ebert-Stiftung, Dialogue on Globalization, June 2013 <https://library.fes.de/pdf-files/iez/10137.pdf> accessed 26 September 2021.

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