

POLICY BRIEF



Designing Human Rights-Aligned Reforms for Debt Restructurings

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Financing for Sustainable Development



Abstract

The current global debt crisis perpetuates inequalities and power imbalances between countries in the Global North and Global South. In this context, debt restructurings can play a central role in resolving the risks of debt distress for countries in the South. Yet restructurings have often failed to achieve equitable outcomes, perpetuating cycles of unsustainable debt. The absence of a coherent international legal framework further complicates these issues, leaving negotiations opaque. Structural reform to the international debt architecture is needed to break cycles of unsustainable debt that hinder development and basic rights' fulfilment. In this context, this brief will analyse how establishing an international legal statutory framework that embeds international human rights standards into debt restructurings can address these challenges. The brief will make concrete policy recommendations for the G20, specifically to its newly established Cost of Capital Commission. Recommendations include the need for the G20 to: a) recognise the inadequacy of current approaches to debt restructuring in addressing the current global debt crisis; b) recognise the potential of human rights principles to provide a basis for more just and equitable debt restructuring, and endorse the standards discussed in the brief; and c) commit to work towards a comprehensive, rights-based statutory mechanism for debt restructuring, hosted at the United Nations, to address current system deficits.

Keywords: Sovereign Debt, Human Rights, Debt Restructuring, Statutory Debt Framework, United Nations

Diagnosis

The world faces a structural debt crisis rooted in historical power imbalances tied to colonialism's cycle of dependency.¹ The current global financial architecture perpetuates this crisis by favouring creditors – whether multilateral, bilateral or private – over debtors, and leading countries – mostly from the Global South – to unsustainable cycles of borrowing.

A comprehensive structural approach is needed to address the flaws in the current (non)system and disrupt entrenched power dynamics, thereby promoting genuine sustainable development for all nations. In this context, debt restructurings play a central role in resolving the risks of debt distress. Yet, debt restructurings have often failed to achieve equitable outcomes, perpetuating cycles of unsustainable debt.²

The absence of a coherent international legal framework further complicates things, leaving negotiations inequitable and opaque.³ As human rights considerations are not systematically incorporated into debt sustainability assessments or restructuring processes, debt servicing often crowds out essential public spending, limiting fiscal capacity for areas like education, healthcare, climate action or social protection. Because of debt's impact on basic public services, the issue of debt restructuring clearly affects national and local realities,

¹ Eurodad et al. "Financing development? An assessment of domestic resource mobilization, illicit financial flows and debt management" (May 2024). Available online: https://www.eurodad.org/financing_development_an_assessment_of_domestic_resource_mobilisation_illicit_financial_flows_and_debt_management

² Idem.

³ See generally Guzman and Stiglitz refer to the current system as a "non-system". See Guzman and Stiglitz "A Soft Law Mechanism for Sovereign Debt Restructuring: based on the UN Principles" (October 2016). Available online: <https://library.fes.de/pdf-files/iez/12873.pdf>

even though it is often discussed internationally, or in jurisdictions alien to those of indebted countries.

Furthermore, there is an absence of a statutory debt restructuring mechanism. The G20's Common Framework has been a relevant, though insufficient effort in this line. The lack of a comprehensive framework leads to inconsistent, and often ineffective processes. Holdout creditors, for example, can obstruct restructuring efforts, prolonging economic crises and their associated human rights impacts. Additionally, debtor countries, especially those from the Global South, often lack the bargaining power to negotiate effectively with creditors, leading to unfavourable credit terms; differences in the costs of debt among countries which typically disfavours countries in the Global South⁴. To make matters worse, key institutions like the IMF face conflicts of interest as both creditors and advisers in restructuring processes.

Human rights principles can provide a powerful basis for more just and equitable restructurings. International human rights principles, while not a silver bullet, offer valuable guidance for designing a comprehensive reform of debt restructuring frameworks, acknowledging that multiple stakeholders' interests must be balanced. Human rights promote fairness in debt workarounds by providing a universal set of norms that demand countries meet the fundamental rights of all people, even during crises. This approach challenges the current status quo, where countries are often forced to spend more on debt repayments than social services. Human rights can also give debtor countries a basis to advocate for their peoples' interests during debt restructuring. While not completely binding on

⁴ See UN Report (2023). A world of debt - A growing burden to global prosperity. United Nations. Retrieved from https://unctad.org/system/files/official-document/osgmisc_2023d4_en.pdf

them, human rights principles can also extend to private creditors. This is critical given the scale of privately owned sovereign debt.

A statutory mechanism, hosted at the United Nations, can embed such human rights principles to address the deficits of current frameworks. A comprehensive mechanism has long been considered by different stakeholders the most effective and fair solution to addressing the inefficiency and effectiveness of the debt restructuring “non-system”, given its capacity for reducing fragmentation and creditor bias, eliminating collective action and holdout problems, addressing power asymmetries, and eliminating conflicts of interest by establishing an independent, multilateral. The ongoing process to negotiate a UN Convention on International Tax Cooperation process provides a model to advance in UN-hosted frameworks on issues related to the international financial architecture, showing the feasibility of these reforms.

The issue is of significant relevance to the G20. While a comprehensive statutory approach remains the ultimate goal, immediate opportunities could help to pave the way for broader debt restructuring reform. The G20 could build on its existing work, such as the Common Framework, by incorporating human rights principles into these mechanisms. The G20 could commission specialised UN entities, like UNCTAD or the Independent Expert on Foreign Debt & Human Rights, to produce reports on human-rights-based debt restructuring.

South Africa's G20 presidency has proposed establishing a Cost of Capital Commission to deliver a comprehensive expert review on issues impacting developing economies' cost of capital, an initiative that provides an opportunity to institutionalise human rights principles in addressing debt sustainability and fiscal space challenges. A rights-based framework can strengthen and guide the Commission's work. By embedding human rights principles in the Commission's

mandate and methodology, its recommendations could help transform how capital costs are assessed beyond purely financial metrics. This would support the Commission's goal of addressing future debt sustainability issues and related fiscal space challenges while ensuring these solutions align with states' human rights obligations.

Recommendations

We recommend the G20 to:

1. Recognise the inadequacy of current approaches to debt restructuring in addressing the current global debt crisis.
2. Recognise the potential of human rights principles to provide a basis for more just and equitable debt restructuring. Note that these principles align with previous efforts to promote more effective and equitable restructurings, such as UNTAD's Principles on promoting responsible sovereign lending and borrowing, or the UN General Assembly's Basic Principles on Sovereign Debt Restructuring Processes.
3. Commit to working towards a comprehensive, rights-based statutory approach and mechanism, hosted at the United Nations, to address current system deficits. The principles of state sovereignty, self-determination and transparency require an independent mediator in debt resolution mechanisms. The United Nations is the organisation that could currently host such a mechanism in the most rights-aligned way⁵. Its universal and equal-basis membership, its technical potential, its mandate to protect and promote human rights, and lack of financial interests make it an ideal candidate for this role.

⁵ See Eurodad, "UN framework convention on sovereign debt: Building a new debt architecture for economic justice", October 2024, available online: https://www.eurodad.org/un_framework_convention_on_sovereign_debt

4. Commit to applying human rights norms in debt restructurings, by:

- **Explicitly recognising the need to make debt restructuring compatible with human rights standards.** States have the obligations to respect, protect and fulfil human rights, and observe basic human rights standards such as those of transparency, or equality and non-discrimination. They must ensure that debt restructurings do not derogate from these obligations⁶. An explicit recognition of the applicability of human rights' norms to the restructuring process can help align debt restructuring with human rights.
- **Including human rights considerations in debt sustainability assessments.** States' core obligation to ensure minimum essential levels of economic and social rights compels them to maintain public spending on basic services even during debt crises. The right to development establishes that states must be able to both pursue and achieve their development goals in a way that ensures the full realisation of all human rights, requiring that debt does not impede poverty eradication or development processes⁷. Together, these obligations require expanding debt sustainability assessments conducted prior to debt restructuring beyond traditional economic metrics to evaluate impacts on poverty levels, and government capacity to fulfil rights. If a restructuring is conducted, Human Rights Impact Assessments of the outcomes of the restructuring process should also be made, in observance of the principle of accountability.

⁶ Independent Expert on the effects of foreign debt on the full enjoyment of all human rights, Guiding principles on foreign debt and human rights, A/HRC/20/23.

⁷ See generally Isabella D. Bunn, The Right to Development: Implications for International Economic Law, 15 AM. U. INT'L L. REV. 1425 (2000).

- **Protecting essential levels of economic and social rights in all circumstances and preventing retrogressive measures.** States are obliged to ensure essential levels of social, economic and cultural rights (such as access to food, primary healthcare, or basic education⁸), even in contexts of crises. Because debt restructurings often involve prioritising the interests of creditors in ways which minimise fiscal space to resource rights, it can be argued that where these negotiations require states to abrogate the minimum core obligations derogating their human rights duties. When faced with debt restructuring, a state must prioritise fulfilling these essential obligations over servicing debt. In light of the principles of equality and non-discrimination, widely recognised in international human rights law, debt restructurings must ensure that sufficient fiscal space is freed to avoid draconian austerity measures that disproportionately impact marginalised groups, and that the resources made available after the process are allocated, as matter of priority, to expenditures that can promote equality.
- **Observe the principle of good faith⁹.** This principle requires at least: a) that creditors and debtors have constructive engagement and participate actively in restructuring, cooperate towards a speedy and orderly resolution, and abstain from abusive behaviour, such as deliberately delaying a restructuring process; b) a duty to negotiate a debt arrangement once debt has become unsustainable; c) limiting the enforceability of claims by creditors who refuse to abide by this principle, such as those pursuing abusive litigation, particularly in connection to so-called “vulture” funds.

⁸ See generally, International Covenant on Economic, Social and Cultural Rights, art. 11

⁹ See generally UN General Assembly. (2015). Basic Principles on Sovereign Debt Restructuring Processes. A/RES/69/319.

- **Ensure participation of affected people and organisations.** Stakeholders, including affected communities and civil society organisations, should have a say in restructuring decisions to promote fairness and accountability.
- **Recognise the need for debt cancellation under certain circumstances.** The principle that unsustainable debt can fundamentally obstruct the right to development suggests the need for a spectrum of relief options, including, in certain circumstances, debt cancellation. Sovereignty and the right to self-determination also mean that a state could unilaterally refuse to pay odious, illegitimate debt (notwithstanding that such action could attract other legal, political or moral consequences).
- **Recognising human rights responsibilities of private actors.** Private financial investors, specifically corporations holding sovereign debt securities, are not exempt from observing human rights standards, such as those enumerated in the UN Guiding Principles on Business and Human Rights. Their responsibilities include due diligence, identifying potential human rights impacts, integrating human rights impact findings into their processes, and tracking these responses.

T20 South Africa Convenors



The Institute for Global Dialogue (IGD)



The South African Institute of International Affairs (SAIIA)



The Institute for Pan-African Thought and Conversation (IPATC)

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