

DRAFT¹

Balancing Competing Obligations: Sovereign Debt, the African Human Rights System, and the Pursuit of a Rights-Based Approach to African Debt²

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Abstract

Africa's sovereign debt crisis is exacerbating human rights vulnerabilities, yet the African human rights systems and institutions have remained largely absent from debt governance debates. While regional human rights systems do not explicitly address sovereign debt, the adverse human rights impact of unsustainable debt burdens demands their urgent attention. In this article, we examine how the African human rights system can more effectively respond to debt-related human rights issues. In this respect, we also discuss the potential of the Debt of Vulnerable Economies (DOVE) Principles to provide a conceptual framework for providing an operationally feasible link between debt and human rights. By situating sovereign debt within the African human rights framework, we advocate for a more integrated approach between economic governance and human rights. We also highlight the relevance of the African regional human rights systems and the role it should play in dealing with African sovereign debt restructurings.

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Table of Contents

1	Introduction	5
2	Understanding the Scale of Africa's Debt Burden	8
2.1	Some Data on African Debt	8
2.2	What Recent Debt Treatments Reveal: Insights from the African Experience	12
2.3	Recent Debt Governance Responses (G20, African Union and United Nations)	18
3	The Intersection of Debt and Human Rights	21
3.1	The Challenge of Establishing a Causal Link between Sovereign Debt and Human Rights Impacts	21
3.2	The Role of Private Creditors and Human Rights	22
4	An Overview of the Laws and Institutions in the African Human Rights System	24
5	A Human Rights-Based Approach to Debt Management and Restructuring?	28
5.1	Investigating the DOVE Principles' Potential to Strengthen a Human Rights-Based Approach to Debt Issues	28
6	Next Steps: Positioning The African Human Rights System to Tackle Debt Challenges	33
7	Conclusion	36

1 Introduction

Governments borrow from external sources for many reasons. They need resources beyond what they can raise domestically to build infrastructure, pay for imports, finance balance of payments deficits and, sub-optimally, meet their obligations to pay salaries and other operating expenses. All these purposes necessarily have social impacts. In the best cases, they lead to governments being able to offer their citizens more power, water and transport; better health and education services; and more opportunities for finding decent work. In the worst cases, they saddle their societies with larger debt obligations without any discernible improvement in their quality of life. In either case, the process of sovereign borrowing has profound implications for the human rights of their citizens. It can also directly affect the state of nature and the environment in the society which, in turn, can lead to second round human rights impacts.

This means that, when sovereigns experience debt crises, the problems that arise are more than merely financial and legal issues. There are also social, political, cultural, and environmental implications for the debtor country. The current debt governance framework fails to pay adequate attention to all these implications. It externalises their cost by prioritising the legal and financial aspects of the crisis and downplaying the parties' respective responsibilities regarding the way in which their social, environmental, and intergenerational consequences are distributed. This means that the current framework gives debt repayments and other obligations arising directly from the financial contracts precedence over the debtor's other legal commitments, such as respect for basic rights such as health, education, and a clean environment. The result is a regime that effectively treats debt as a private contractual matter, detached from the public interest in human rights and a healthy and clean environment and the state's obligations in this regard,

The human rights impact of sovereign debt is seen most clearly in cases of sovereign debt restructurings. The reason is that in these cases, both the sovereign debtor and its creditors are expected to make sacrifices in order to resolve the debt crisis. Inevitably, they will both negotiate to minimize the sacrifices that they have to make and to pass as much of the cost of the restructuring onto their counterparty. The resulting bargain will usually require the debtor to shift some of its resources from planned expenditures to paying their debts. This can mean

cuts in health, education and social welfare budgets or delayed expenditures on the infrastructure projects that their citizens need. It will also result in the creditor having to absorb some losses through reduced or delayed debt payments. This, in turn, can mean that its own investors, which may include pensioners and other individuals saving for their children's education or their own pensions, will receive lower returns on their investments than they anticipated.

In short, therefore, African sovereign debt restructurings are likely to have profound adverse human rights impacts on many of the stakeholders in these transactions. The scope and intensity of these impacts will depend on a range of factors, ranging from historical inequalities, opaque lending and borrowing practices, climate vulnerabilities, an unbalanced global financial architecture and debt restructuring mechanisms that favour foreign creditor interests. Despite the significant risk that unsustainable sovereign debt poses to the protection and promotion of the human rights of individuals and communities, the regional human rights discourse has paid limited attention to the potential contribution that the African human rights system can make to the sustainable resolution of Africa's debt crises. At first glance this is not surprising. The African human rights treaties do not explicitly address the topic of sovereign debt. In addition, there have not been any African human rights cases that explicitly deal with sovereign debt issues.

This article seeks to correct this deficiency. It explores the relationship between the African human and people's rights system (AfHPR) and sovereign debt and discusses how this system can contribute to formulating a more human rights-based approach to the debt-related challenges that so many African countries are facing. This paper proceeds from the position that sovereign debt is not only a financial or technical matter but also a profoundly political and human one. It has far-reaching implications for the realization of human rights across Africa. Its basic premise is that a sustainable approach to the financing of African development necessitates examining the human rights impacts of sovereign debt transactions, particularly debt restructurings, on all stakeholders in the transaction.

Under the AfHPR, states, in all their policies and actions have an obligation to protect, respect and promote the human rights of their subjects. At the same time, private creditors have a responsibility, pursuant to international norms and standards, to respect these human rights and to refrain from insisting on any terms and conditions in their sovereign debt

transactions that could undermine these rights or the ability of the borrower state to meet its human rights obligations.⁵ This dual responsibility framework raises the question of how the AfHPR can be used to promote debt restructurings that are more equitable, transparent and aligned with human rights.

It is important to note that, in principle a human-rights-based approach to debt should assess the human rights impacts on the stakeholders on both the debtor's side of the transaction and on the creditors' side. However, since the AfHPR is only applicable to the residents of African states, the following discussion only focuses on the responsibilities of sovereign debtors and foreign creditors to residents of the African countries where they invest. Thus, the article will focus on how the region's human rights system can navigate the challenges posed by unsustainable debt and ensure the preservation of human rights for all individuals on the continent.

The article will also discuss, the Debts of Vulnerable Economies (DOVE) Principles, which offer an operationalizable conceptual framework for a human rights-based approach to sovereign debt issues. A human-rights-based approach offers a principled means of redressing this structural asymmetry that prioritizes creditors' contractual claims over states' human-rights obligations. It also highlights that it is not only debtors who have human rights obligations. Their non-state creditors, have a responsibility to respect, fundamental human rights. The challenge, of course, is operationalising these human rights responsibilities and obligations within the context of debt arrangements. The DOVE Principles seeks to meet this challenge by translating human-rights and environmental considerations into actionable norms and principles, that can be embedded in transparent and effective debt restructuring processes.

The argument advanced in this article is therefore both normative and practical: African debt sustainability cannot be achieved unless it is re-conceptualized as a question of justice, that is the shared responsibility of all the stakeholders in the debt situation. In making these

⁵ See, for example UN Guiding Principles on Business and Human Rights (2011) Part 2 (Principles 11-24), https://www.ohchr.org/sites/default/files/documents/publications/guidingprinciplesbusinesshr_en.pdf discussing the responsibilities of business to respect human rights; and Principle 16 of the Guiding Principles on Human Rights Impact Assessments of Economic Reforms This principle sets out that "The State's donors and creditors, both official and private, should assess the human rights impacts of the terms and conditions of their proposed transactions with the reforming state and of any advice they may provide to the State." See United Nations Human Rights Special Procedures, Guiding Principles on Human Rights Impact Assessment of Economic Reforms, 8 https://www.ohchr.org/sites/default/files/GuidePrinciples_EN.pdf

arguments, the article is divided into four sections. The first section describes the scale of Africa's debt burden and how it has been managed. The second section focuses on the links between sovereign debt and human rights. This section includes a discussion of the AfHPR system. The third section concentrates on establishing a set of principles, the DOVE Principles⁶, that debtors and creditors can use to promote more responsible borrowing and lending practices. The final section is the conclusion. It offers some proposals on how the AfHPR system can be used to promote a more human rights-responsible approach to sovereign debt restructurings.

2 Understanding the Scale of Africa's Debt Burden

2.1 Some Data on African Debt

Africa is facing rising debt burdens and declining debt sustainability. The UNCTAD World of Debt Report, for instance, notes that the continent's median debt-to-GDP ratio rose from 33% in 2010 to 57.8 %t in 2024 and the external debt-to-GDP ratio rose from 19% in 2010 to 29% in 2022.⁷ Furthermore, 23 of the 55 countries in the region are either in or at a high risk of debt distress.⁸ The most recent World Bank debt statistics, as of the time of writing, show that Sub-Saharan Africa's total external debt had more than doubled from USD 341 billion in 2010 to USD 864 billion in 2023.⁹ Not only are external debt levels rising, so is the cost of servicing debt. Sub-Saharan Africa's interest payments tripled between 2013 and 2023.¹⁰

Africa's debt challenges have also been affected by the changing composition of its creditors. While multilateral and bilateral creditors hold significant portions of the continent's debt, there is a growing share of commercial and other private debt. For example, in 2023, private

⁶ The DOVE Principles are an updated version of the DOVE Fund Principles that Bradlow first proposed in the context of an approach to dealing with predatory creditor actions against debtors in distress. For a discussion of the DOVE Fund Principles see, Daniel D Bradlow, 'A New Conceptual Framework for African Sovereign Debt: Finding an Optimal Outcome that Addresses Five Challenges' (2024) *Journal of African Economies*, Volume 33, Issue Supplement_2, ii62–ii77, at ii74, <https://doi.org/10.1093/jae/ejae023>; Daniel Bradlow, 'A Proposal for a New Approach to Restructuring African Eurobonds: The DOVE Fund and Principles', (November 4, 2022) SouthViews No.242, https://www.southcentre.int/wp-content/uploads/2022/11/SV242_221104.pdf

⁷ UNCTAD, A world of Debt, (2025) 7 <https://unctad.org/publication/world-of-debt/dashboard>

⁸ Ibid, 8.

⁹ World Bank, *International Debt Report: Updated International Debt Statistics 2024* (2024) 79 <https://www.worldbank.org/en/programs/debt-statistics/idr/products>

¹⁰ Ibid, 25.

creditors comprised 42 percent of the external debt, while multilateral and bilateral official creditors accounted for 36 percent and 22 percent, respectively.¹¹

This changing creditor composition creates a number of challenges. First, borrowing through capital markets is more expensive than official debt. Africa also seems to be charged a premium over other countries. Between 2020 and 2025, African countries faced an average bond yield of 9.8 percent. This rate is higher than other developing regions (7.1 percent for Latin America and the Caribbean and 5.5 percent for Asia and Oceania) and significantly higher than those born by developed economies like the USA, which had an average yield of 2.3 percent.¹²

Second, the growing diversity of holders of African debt, complicates debt restructuring because it weakens the ability to coordinate among creditor groups and increases litigation risks.¹³ The holders now include insurance companies, pension funds, hedge funds, asset managers, investment companies, sovereign wealth funds, banks and individuals. Third, the fact that sovereign bonds are often governed by foreign law and foreign jurisdictions may limit the ability of African states to formulate and implement domestic solutions to their debt problems. It can also constrain their ability to use contractual defences, such as force majeure and necessity, to deal with their debt challenges. Fourth, there is no international mechanism or framework to compel private creditors to participate in equitable or environmentally responsible debt restructurings.

One of the most striking indicators of the continent's unsustainable debt trajectory is the scale of fiscal resources absorbed by debt servicing. In 2024, it was estimated that African countries collectively paid USD 89.4 billion in external debt repayments.¹⁴ In the same year, the interest payments of African governments consumed 10.1 percent of government revenues, with 27 countries exceeding this threshold.¹⁵ Some African countries spent more on

¹¹ UNCTAD, (note 3 above), 12.

¹² Ibid, 15.

¹³ See, for example, George Pavlidis 'Vulture litigation in the context of sovereign debt: global or local solutions?' (2018), Law and Financial Markets Review, Vol. 12, issue 2, 93-99 <https://ssrn.com/abstract=4595692> or <http://dx.doi.org/10.2139/ssrn.4595692>

¹⁴ United Nations office of the Special Advisor on Africa, Unpacking Africa's Debt: Towards a Lasting and Durable Solution, (2024) 41 https://www.un.org/osaa/sites/www.un.org.osaa/files/files/documents/2024/publications/2024-nepad-report_en.pdf

¹⁵ UNCTAD, (note 3 above) 18.

servicing foreign debt than on healthcare and education. On a per capita basis, African governments spent USD 70 per capita on interest payments between 2021 and 2023, compared to USD 63 on education and USD 44 on health per capita.¹⁶ UNCTAD provides country-level examples to demonstrate the consequences of this situation:¹⁷

- In Malawi, public debt interest payments reached 6.6 percent of the country's GDP, which was more than the spending on healthcare (1.1 percent) and education (3.4 percent) combined.
- Kenya spent 5.1 percent of its GDP on interest payments, versus 2.1 percent on health and 4.5 percent on education.
- Zambia spent 6.3 percent of its GDP on interest payments, which was more than the 2.7 percent spent on health and 3.3 percent on education combined.
- Nigeria spent 2.5 percent of its GDP on interest payments, versus 0.6 percent on health and 0.4 percent on education.
- Ghana spent 4.0 percent of its GDP on interest payments, versus 2.1 percent on health and 3.2 percent on education.
- In Egypt's case, debt service accounted for 8.8 percent of the GDP, dwarfing the health (1.8 percent) and education (3.6 percent) expenditures combined.

In addition to vulnerabilities arising from the rising debt burden, African countries are also having to confront the impacts of climate change. Not only does high debt servicing limit investment in adaptation, but climate shocks increase fiscal pressures and erode the fiscus, thus resulting in more borrowing. Some experts have argued that this means that many African countries are trapped in a vicious cycle in which the combined shocks of debt and climate are undermining their development prospects.¹⁸ This is raising concerns about the implications of climate change for the international legal and human rights responsibilities of African countries.¹⁹ In fact, a number of African countries—Kenya, Ghana, Madagascar, South Africa, Cameroon, Sierra Leone, Mauritius, Burkina Faso, and Egypt—made

¹⁶ Ibid, 20.

¹⁷ UNCTAD, Debt at a Glance, <https://unctad.org/publication/world-of-debt/dashboard>.

¹⁸ 'Healthy Debt on a Healthy Planet', Final Report of the Expert Panel on Debt, Nature and Climate, https://dl1eqfwiwfltz5.cloudfront.net/documents/Expert_final_review_Exec_sum_DIGITAL.pdf

¹⁹ The African Court of Human and Peoples' Rights (African Court) received a petition requesting an advisory opinion on the human rights obligations of African states in addressing the climate crisis. See 'In The Matter Of A Request By The Pan African Lawyers Union (Palu) For An Advisory Opinion On The Obligations Of States With Respect To The Climate Change Crisis' 7 – 27 https://climatecasechart.com/wp-content/uploads/non-us-case-documents/2025/20250502_99025_petition.pdf

submissions to the International Court of Justice in the public consultations that the court held in preparing its advisory opinion on Obligations of States in respect of Climate Change.²⁰

African countries' deteriorating debt situation also raises questions about their capacity to mobilize maximum available resources for economic, social, cultural and other rights under international instruments like the African Charter of Human and Peoples' Rights (African Charter). They demonstrate that the challenge of unsustainable debt is not just an economic issue about budgetary imbalances or a contractual matter about enforcing repayment obligations. It also raises human rights issues. These include the human rights obligations of the sovereign debtor when making the decision to borrow externally and the human rights responsibility of the creditors when providing such financing to a sovereign debtor. They also include the obligations of sovereign debtors in crisis to their populations as expressed in their country's constitution and the international treaties that they have signed and ratified and that the responsibilities of their creditors in responding to their debtors' difficult financial situations.

In this regard, it is important to recall that the main justifications for states borrowing from external sources is the need to supplement their domestic resources so that they can more expeditiously meet the infrastructure and development needs of their populations and can respond to unexpected external shocks. However, the current debt dynamics are eroding this rationale for borrowing internationally, at least from commercial sources. Instead of being a tool for development finance, debt in many African countries is becoming a mechanism for

²⁰ See ICJ, *Obligations Of States In Respect Of Climate Change*, (23 July 2025)

<https://icj-cij.org/sites/default/files/case-related/187/187-20250723-adv-01-00-en.pdf>. Also see, Zunaida Moosa Wadiwala 'Historic climate change ruling from the International Court of Justice: what it means for Africa', (30 June 2025)

https://theconversation.com/historic-climate-change-ruling-from-the-international-court-of-justice-what-it-means-for-africa-262047?utm_medium=email&utm_campaign=Latest%20from%20The%20Conversation%20for%20July%2029%202025%20-%203468635322&utm_content=Latest%20from%20The%20Conversation%20for%20July%2029%202025%20-%203468635322+CID_48fa42487f8d35f68939c78e4b11aac0&utm_source=campaign_monitor_africa&utm_term=Historic%20climate%20change%20ruling%20from%20the%20International%20Court%20of%20Justice%20what%20it%20means%20for%20Africa; and Daniel D. Bradlow 'African debt and climate change: how the ICJ's Vanuatu ruling could be used for broader justice' *The Conversation Africa* (27 August 2025)

https://theconversation.com/african-debt-and-climate-change-how-the-icjs-vanuatu-ruling-could-be-used-for-broader-justice-263859?utm_medium=email&utm_campaign=Latest%20from%20The%20Conversation%20for%20August%2027%202025%20-%203497935635&utm_content=Latest%20from%20The%20Conversation%20for%20August%2027%202025%20-%203497935635+CID_b9182270b841d1a9e7539307d702f96e&utm_source=campaign_monitor_africa&utm_term=African%20debt%20and%20climate%20change%20how%20the%20ICJs%20Vanuatu%20ruling%20could%20be%20used%20for%20broader%20justice

capital extraction and is contributing to deteriorating human rights situations in many countries.

2.2 What Recent Debt Treatments Reveal: Insights from the African Experience

The international community has made some effort to address the continent's escalating debt problems. However, recent experiences in Africa and beyond reveal that the path to debt sustainability is complicated. It depends on such factors as the composition of the country's debt, the mix of its creditors, its domestic environment, and the amount of debt relief required.

The G20, for instance, announced the Debt Service Suspension Initiative (DSSI) in May 2020 in response to the Covid-19 pandemic. This initiative allowed qualifying governments to temporarily suspend debt payments so they could devote resources to the pandemic response.²¹ Seventeen creditor countries participated in the DSSI. Despite the G20's call for private creditors to participate in the initiative on comparable terms, only one private creditor opted to do so.²² In the end, only 48 debtor nations, out of the 73 eligible countries, took advantage of the DSSI.²³ They received approximately US\$12.9 billion in debt-service relief before the DSSI expired in December 2021.²⁴

Countries were reluctant to participate in the DSSI for various reasons. One was that some states were concerned about the potential impact of the DSSI on their credit ratings and future access to financial markets.²⁵ Another was that some states preferred to engage with their creditors bilaterally.²⁶ Third, some states were worried that the initiative did not adequately

²¹ The countries that qualified for the DSSI and later, the Common Framework include, "IDA-countries, that are current on any debt service to the IMF and the World Bank" and "All least developed countries as defined by the United Nations, that are current on any debt service to the IMF and the World Bank." G20 Research Group *Virtual Meeting Of The G20 Finance Ministers And Central Bank Governors, Riyadh, Saudi Arabia*, (15 April 2020) <https://www.g20.utoronto.ca/2020/2020-g20-finance-0415.html#a2>

²² World Bank, *Debt Service Suspension Initiative*, (10 March 2022) <https://www.worldbank.org/en/topic/debt/brief/covid-19-debt-service-suspension-initiative>

²³ World Bank *Debt Service Suspension Initiative* (2022b). <https://www.worldbank.org/en/topic/debt/brief/covid-19-debt-service-suspension-initiative>

²⁴ Ibid.

²⁵ Danny Cassimon, Dennis Essers and Andrea F Presbitero 'Debtor (Non-) Participation in Sovereign Debt Relief: A Real Option Approach', IMF Working Paper No. 2023/187, (8 September 2023). <https://www.imf.org/en/Publications/WP/Issues/2023/09/08/Debtor-Non-Participation-in-Sovereign-Debt-Relief-A-Real-Option-Approach-535875>

²⁶ Ibid.

address their specific debt challenges.²⁷ For the countries that did participate, AFRODAD notes that the DSSI only provided limited and temporary relief to low-income countries during the Covid-19 pandemic, without significantly improving their long-term debt sustainability.²⁸ AFRODAD observes that the DSSI failed to address underlying debt vulnerabilities, although it did provide savings of US\$6 billion in 2022 and US\$7 billion in 2023. The IMF supplemented this by providing debt service suspensions of approximately US\$851 million for 29 countries.²⁹

The G20 also launched a second initiative to assist countries facing a debt solvency crisis in 2020. The Common Framework for Debt Treatments Beyond the DSSI (the Common Framework) was designed to facilitate comprehensive restructuring of all qualifying countries' official and commercial debt on comparable terms. The Common Framework has been used in the sovereign debt restructuring processes of Zambia, Ghana, Chad, and Ethiopia. In addition, Sri Lanka which was not eligible for Common Framework treatment because it is a middle-income country, also used a similar process to restructure its debt.³⁰

Each of these restructuring processes under the Common Framework faced challenges. However, together they demonstrated that creditor fragmentation, particularly the rise of private and non-Paris Club official lenders, has complicated restructuring timelines and made collective action challenging. Zambia's debt restructuring, which, sought to restructure approximately US\$13.4 billion of its external debt was the first major test case for the Common Framework. It exposed the program's structural shortcomings, especially with respect to the principle of comparability of treatment. Zambia ultimately reached a restructuring agreement in mid-2023. The agreement extended maturities and lowered

²⁷ Ibid.

²⁸ AFRODAD, 'Debt Restructuring Under The G20 Common Framework And Alternative Policy Solutions' 13, <https://afrodad.org/resources/publications/debt-restructuring-under-g20-common-framework-and-alternative-policy>

²⁹ Ibid.

³⁰ Sri Lanka conducted separate negotiations with official, Chinese, and bondholder groups. Sri Lanka's restructuring incorporated state-contingent debt instruments, meaning future repayments are linked to specific economic conditions. While it reached bilateral agreements with Chinese lenders relatively efficiently (negotiating bilateral deals with both China Eximbank and China Development Bank), its bondholder restructuring delivered much smaller haircuts (under 10%) than those granted to African debtors. Yunnan Chen and Tom Hart, 'Common Framework, Uncommon Challenges: Lessons from the Post-COVID Debt Restructuring Architecture' ODI (21 February 2025)

interest rates on both its official and commercial debts and provided for possible revisions (so-called “upside treatments”) if Zambia’s debt-carrying capacity improved.³¹

The Zambian process took about 4 years, largely due to tensions between private and official creditors. These tensions arose from disagreements about whether to treat some Chinese creditors as commercial or official creditors. Another source of tension was caused by the fact that the commercial creditors were willing to take bigger upfront losses in return for shorter repayment periods while the official creditors were willing to stretch out their debts over longer periods and at lower rates in return for no reduction in the principal of the loans. The two groups disagreed about whether or not their respective positions were offering Zambia comparable treatment.

A third source of tension arose because Chinese official creditors challenged the preferred creditor status of the multilateral financial institutions like the World Bank. They argued that these institutions were among Zambia’s largest creditors and that respecting their preferred creditor status resulted in other creditors having to make larger contributions than would be required if all creditors contributed comparably to the debt restructuring. The Chinese eventually withdrew their objection and accepted that these preferred creditors were contributing by making new funds available to the debtors. It is important to note that the issue of preferred creditor status has also become an issue in regard to African multilateral financial institutions like the African Export Import Bank (Afrexim Bank) and the Trade and Development Bank.³²

Ghana reached its restructuring agreement under the Common Framework in early 2024 and it included a comprehensive rescheduling of debt service during an IMF-supported program, coupled with extended maturities and reduced interest rates.³³ There were fewer disagreements among Ghana’s creditor groups so that its restructuring process was relatively

³¹ Paris Club *Common Framework: Lessons Learned and Ways Forward* (11 March 2025)

<https://clubdeparis.org/en/communications/page/common-framework-lessons-learned-and-ways-forward-11-03-2025>

³² see ODI article by Chris Humphrey, the special section in the Canadian J of International Law and the following oped by Bradlow and Sachs

<https://theconversation.com/africas-development-banks-are-being-undermined-the-continent-will-pay-the-price-259404>)

³³ Paris Club (note 26 above).

smoother than Zambia's. The differences in Zambia's and Ghana's experiences underscore how creditor composition can shape the pace and effectiveness of restructuring.

The other two countries that utilized the Common Framework had experiences that reflected their specific situations. Ethiopia's restructuring agreement was concluded in early 2025.³⁴ Its process was complicated by domestic instability and procedural bottlenecks, which led to delays in its negotiations with the IMF, which in turn caused delays in its creditor engagements.³⁵ While the Common Framework allowed Ethiopia to suspend debt service payments temporarily (2023–2024), a full restructuring agreement with official creditors was only reached in early 2025.³⁶ In contrast, Chad represents a unique adaptation of the Common Framework. It reached agreement with its creditors in 2022.³⁷ Rising oil prices unexpectedly eliminated the country's projected financing gap. This triggered a pause in implementing deeper debt relief, with creditors agreeing to revisit the situation should new fiscal pressures arise.³⁸

These Common Framework restructuring episodes highlight four lessons:

- i. *Creditor composition matters*: The complexity of the creditor composition will affect the speed of the process and it highlights the need for mechanisms to coordinate diverse creditor groups and enforce equitable burden-sharing. Zambia's Common Framework process demonstrates that creditor composition shapes the outcomes of debt workouts. The country's prolonged restructuring negotiations highlight how the presence of different groups of creditors can complicate the application of comparability of treatment. Official creditors and private creditors can disagree both amongst themselves and with each other about the kind of relief they are willing to provide and thus on what constitutes comparable treatment,
- ii. *Inter-creditor equity issues are a bottleneck that cause delays*: The Common Framework's principle of comparable burden-sharing across creditor groups has not been sufficiently well defined and, thus, cannot be effectively enforced. This matters

³⁴ Ibid.

³⁵ Ibid.

³⁶ Ibid.

³⁷ Ibid.

³⁸ Yunnan Chen and Tom Hart, 'Common Framework, Uncommon Challenges: Lessons From The Post-COVID Debt Restructuring Architecture' ODI (21 February 2025).

because the creditors differ in their willingness to accept reductions in interest rates, principal repayments, and changes in the time periods over which they are willing to stretch out debt payments. The result is that their understandings of what constitutes comparability of treatment differ. This complicates negotiations and, in the absence of an independent mechanism for resolving disputes, results in delays to the detriment of the debtor country.

- iii. *Timeliness is important:* Delayed restructurings cost countries both financially and socially. Prolonged negotiations exacerbate the debt crisis, and, by making it harder for countries to address their economic and social needs, increase the risks of the country receiving debt relief that is either too little or too late and of social unrest. They also mean that the government's ability to address the human rights concerns of their citizens is compromised.
- iv. *A more co-ordinated approach is still needed:* The evolving landscape of debt restructuring underscores the need for reforms that enhance predictability, timeliness, and equity in sovereign debt processes. These experiences suggest that while the Common Framework offers a starting point for coordinated relief, its current design may be insufficient to ensure equitable, timely, and human rights outcomes. The interplay between creditor dynamics, macroeconomic conditions, and institutional capacity remains central to restructuring success and to future discussions on reforming the global sovereign debt architecture.

In addition, it is noteworthy that, despite the growing international attention to promoting a more socially, environmentally, and human rights-based approach to development, the Common Framework does not offer the debtor countries any new approaches for dealing with their difficult social and environmental challenges or the profound and adverse human rights consequences associated with their unsustainable debt.³⁹ The result is that the African debtor

³⁹ Of note, the IMF for instance has, despite its evolving rhetoric emphasizing the importance of addressing developmental issues like inequality and climate change, continued to implement lending practices dominated by austerity-focused conditionalities. See for instance Oxfam, '*IMF Must Abandon Demands For Austerity As Cost-Of-Living Crisis Drives Up Hunger And Poverty Worldwide*' (19 April 2022), <https://westafrica.oxfam.org/en/latest/press-release/imf-must-abandon-demands-austerity-cost-living-crisis-drive-s-hunger-and-poverty?>; Oxfam, '*Adding Fuel to Fire: How IMF Demands For Austerity Will Drive Up Inequality Worldwide*' (11 August 2021) <https://oxfamlibrary.openrepository.com/bitstream/handle/10546/621210/bp-covid-loans-imf-austerity-110821-en.pdf;jsessionid=6356EAEF3CAEE0A8A5C691D9AEA9048?sequence=1>; and Alexandros Kentikelenis and

states, despite ostensibly receiving debt relief, continue to allocate significant portions of their limited fiscal budgets towards servicing their debt obligations, rather than for essential sectors such as healthcare, education, and other social services. This impedes the capacity of governments to effectively fulfil their human rights obligations towards their citizens.

Another complicating factor is that the siloed nature of sovereign debt restructuring processes means that negotiations are typically confined to the technical and contractual terms of the debt instruments, with little or no consideration for the state's other binding legal obligations, including those that arise from human rights treaties and national constitutions. This compartmentalized approach effectively prioritises creditors' financial claims over the social, developmental and rights-based commitments of the state. By contrast, corporate insolvency processes generally adopt a more holistic and court-supervised approach that balances the interests of the multiple stakeholders, such as the debtor, creditors, workers, and the broader community. If sovereign debt restructuring processes were designed in a similarly comprehensive manner, they could create space for human rights and developmental concerns to receive equal weight alongside creditor claims.

Adding to the imbalance, international financial institutions (IFIs), like the IMF and World Bank, play an important role in shaping the outcomes of debt restructurings through their policy-based lending and financial support packages during times of economic challenges. While IFIs' justify attaching policy conditions to their loans as a means of restoring economic stability and future debt sustainability, in practice these conditions frequently translate into austerity measures, primarily cuts in social spending.⁴⁰ While these austerity measures may be seen as necessary to restore investor confidence, they frequently disproportionately affect vulnerable communities and may deepen inequality and poverty.

2.3 Recent Debt Governance Responses (G20, African Union and United Nations)

Thomas Stubbs, 'IMF Social Spending Floors: A fig leaf for austerity?' (13 April 2023), Oxfam International, <https://policy-practice.oxfam.org/resources/imf-social-spending-floors-a-fig-leaf-for-austerity-621495/?>

⁴⁰ Oxfam International *World's Poorest Countries To Slash Public Spending By More Than US\$220 Billion In Face Of Crushing Debt* (9 October 2023) <https://www.oxfam.org/en/press-releases/worlds-poorest-countries-slash-public-spending-more-220-billion-face-crushing-debt> and Ortiz, I. & Cummings, M. (28 September 2022). *End Austerity: A Global Report on Budget Cuts and Harmful Social Reforms in 2022-25*, EURODAD https://www.eurodad.org/end_austerity_a_global_report

The debt restructuring experiences discussed above underscore a fundamental limitation of the prevailing global approach which frames debt crises primarily as financial problems of liquidity, solvency, or market access. This fails to adequately take into account that debt crises are also manifestations of deeper social, economic, political and cultural characteristics of the state and international order. The result is an undue focus on the quantitative aspects of the debt situation over its more qualitative but no less influential dimensions. This is evident, for example, in the methodologies used to assess debt sustainability which focus on debt ratios and public sector expenditures rather than on indicators of human-rights fulfilment, environmental integrity, and social resilience. This means that effectively the current debt arrangement treats the assessment and responsibility for the distribution of the real social and environmental costs of sovereign debt as being external to the debt restructuring negotiations. This, in turn, means that these costs become the sole responsibility of the borrower and its citizens even though the creditors actions have helped create the situation. It also reinforces the asymmetry between creditor power and debtor vulnerability.

Various international forums have attempted to respond to Africa's debt issues in different ways. Within the G20, Africa's debt challenges have become a prominent theme, during South Africa's presidency.⁴¹ South Africa has sought to give the continent's debt issues more visibility through the creation of an Africa Expert Panel, chaired by former Finance Minister Trevor Manuel, to "offer strategic advice by exploring and defining strategies that advance Africa's collective interests through increased voice, effective representation, and the achievement of a reformed and all-inclusive global economic policy through the G20".⁴² A recent G20 finance ministers and central governors communiqué highlights the G20's commitment to improving the G20 Common Framework, with an emphasis on making it more "predictable, timely, orderly, and coordinated", while also mobilising liquidity support through institutions like the World Bank and IMF.⁴³ G20 case studies covering Chad, Ghana and Zambia have been used to showcase progress and highlight persistent obstacles in the process.⁴⁴ The G20's International Financial Architecture Working Group has developed technical notes aimed at refining the Common Framework, including proposals to strengthen

⁴¹ G20 Presidency, <https://g20.org/g20-south-africa/g20-presidency/>

⁴² G20, *South Africa's G20 Presidency: New High Level Panel To Tackle Africa Debt Crisis* (13 March 2025), <https://g20.org/news/south-africas-g20-presidency-new-high-level-panel-to-tackle-africa-debt-crisis/>

⁴³ G20, Finance Track Communiqué 3rd Finance Ministers & Central Bank Governors Meeting, (18 July 2025) <https://g20.org/g20-media/3rd-finance-ministers-central-bank-governors-meeting/>

⁴⁴ G20, *Fact Sheets On G20 Common Framework Case Studies*, <https://g20.org/factsheets-of-g20-common-framework-for-debt-treatments-country-cases/>

debt data accuracy, streamline debt treatment steps, information sharing and reinforce the comparability of treatment principle to ensure equitable burden sharing among creditors.⁴⁵ Complementing these efforts, the Global Sovereign Debt Roundtable, co-chaired by the G20 presidency, has released a playbook that is intended to provide debtor states with a summary of the process established by the Common Framework.⁴⁶

The African Union Commission's permanent seat at the G20 has further raised expectations that the African perspective will be mainstreamed into global governance.⁴⁷ Outside of the G20, the African Union has sought to reclaim agency on debt issues by seeking to facilitate the formulation of an Africa-led strategy for dealing with the continent's debt issues. In May 2025 the African Union convened its inaugural African Union Debt Conference under the theme "African Public Debt Management Agenda: Restoring and Safeguarding Debt Sustainability".⁴⁸ This event included the participation of over 500 high-level delegates, including heads of state, finance ministers, central bankers and civil society.⁴⁹ This conference has helped strengthen the foundation for a collective African approach to debt issues. It resulted in the draft Lomé Declaration which urges the African Union Commission to leverage its newly acquired G20 membership to advocate for reforms to the Common Framework, including "by setting up a universally accepted methodology for comparability of treatment, enhancing transparency and inclusivity amongst stakeholders during restructuring, pursuing simultaneous and coordinated negotiations across creditor types, introducing a timebound aspect, suspending debt servicing for all borrower countries embarking on a debt restructuring, expediting the ongoing reforms to the Low Income

⁴⁵ See International Financial Architecture Working Group, <https://g20.org/track/international-financial-architecture/>; G20 Note following-up on the Lessons learned from the first cases of the Common Framework, <https://g20.org/wp-content/uploads/2025/06/G20-Note-following-up-on-the-lessons-learned-from-the-first-CF-cases.pdf>; and G20 Note: Steps of a debt restructuring under the Common Framework <https://g20.org/wp-content/uploads/2025/06/G20-Note-Steps-of-a-debt-restructuring-under-the-CF.pdf>

⁴⁶ World Bank Group, *Global Sovereign Debt Roundtable Sovereign Debt Restructuring: A Playbook for Country Authorities*, <http://documents.worldbank.org/curated/en/099618504232538404>

⁴⁷ Karoline Eickhoff, 'G20 Debt Negotiations: What Can the African Union Achieve?' Megatrends Africa Policy Brief 3 (7 April 2025) https://www.swp-berlin.org/assets/afrika/publications/policybrief/MTA-PB37_Eickhoff_G20_Debt_AU_25042025_v02.pdf?

⁴⁸ African Union, *Concept Note* https://au.int/sites/default/files/newsevents/conceptnotes/44531-CN-EN_Concept_Note-AU_Conference_on_Debt_FINAL.pdf

⁴⁹ UNECA, 'First African Union debt conference convenes in Lomé: ECA Executive Secretary outlines five imperatives for restoring Africa's fiscal sovereignty' (12 May 2025) <https://www.uneca.org/stories/first-african-union-debt-conference-convenes-in-lom%C3%A9-eca-executive-secretary-outlines-five?>

Country-Debt Sustainability Framework (“LIC-DSF”), accommodating debt swaps for climate and nature, expanding its eligibility criteria to include the middle-income countries, and establishing a supranational legal mechanism for enforcement purposes, among other proposed reforms”.⁵⁰ The declaration stresses the need for a unified African negotiation strategy to strengthen bargaining power and also calls for the reform of debt sustainability analysis methodologies, that, in effect penalise states for prioritising long-term sustainability and resilience. While, as of the time of writing (November 2025), an implementation strategy is yet to be published, the declaration signals a clear departure from the previous reactive, externally driven responses to the continent’s debt issues.

The Fourth UN International Conference on Financing for Development 2025 (FfD4) also reinforced debt as a global issue. The FfD4 Outcomes document includes language that shows an attempt to rebalance the global financial architecture in a manner that resonates with a human rights-based approach. It includes the affirmation that “the pursuit and enjoyment of human rights and fundamental freedoms for all, encompassing civil, political, economic, social and cultural rights, which includes the right to development, must be respected, protected and promoted, without distinction or discrimination of any kind.”⁵¹ When it comes to debt specifically, the outcomes document calls for a UN-led set of principles on responsible borrowing, stronger national debt management systems, a single global central debt data registry to improve debt transparency, concessional and local currency lending, innovative clauses including state-contingent clauses and the creation of a platform for borrower countries to amplify the voices of debtors.⁵² By referring to human rights from the onset, the outcomes document in effect reinforces that debt and other global financial governance matters cannot be separated from the environmental and human rights obligations of states.

⁵⁰ Draft Declaration of the African Union Conference on Debt 12th to 14th May 2025, https://au.int/sites/default/files/documents/44785-doc-EN_Draft_Zero_Declaration_AU_Conference_on_Debt_Final.pdf

⁵¹ *Outcome Document of the Fourth International Conference on Financing for Development*, 1 <https://financing.desa.un.org/sites/default/files/ffd4-documents/2025/Compromiso%20de%20Sevilla%20for%20action%2016%20June.pdf>

⁵² Outcome document of the Fourth International Conference on Financing for Development, 25 – 26.

3 The Intersection of Debt and Human Rights

3.1 The Challenge of Establishing a Causal Link between Sovereign Debt and Human Rights Impacts

While sovereigns have a contractual obligation to meet their debt commitments, they also have legally binding obligations to those who live in their countries under their constitutions and the human rights instruments that they have signed and ratified. It is unclear why, from a legal perspective, a sovereign debtor in distress should attach a higher priority to its creditors' contractual rights than to these domestic and international legal human rights obligations. As a practical matter, this can be explained in part by the siloed nature of the debt negotiations and partly by the imbalances in the relative power relations between the international financial system and international human rights systems. As the Secretary General of the United Nations notes;

“The global financial system is structurally unfair to developing countries in general and African countries in particular. Consequently, while the African human rights system recognises the need to safeguard human rights and the obligations of states, the reality is that millions still have limited access to essential social services. While debt servicing and the provision of social services has been a significant challenge for African countries, in part because of the high spending on debt service which leaves little room for financial resources dedicated to social services.”⁵³

It is important to note that sovereign debt burdens are not the only reason the continent faces human rights challenges. Many countries allocate budgets ineffectively; social budgets are used inefficiently and unfairly, and, in some cases, funds are lost due to corruption and other governance shortcomings. As a result, making the direct causal links between debt transactions and human rights impacts is a difficult task. The lines of causation run in both directions. An unsustainable sovereign debt burden can undermine the sovereign's efforts to realise economic and social rights and inefficient governance arrangements can make it harder to service the sovereign's debt and satisfy its human rights obligations. Disaggregating the causes of the human rights crisis is further complicated by the fact that there are often

⁵³ United Nations Meetings Coverage and Press Releases, SG/SM/21809 (24 May 2023) <https://press.un.org/en/2023/sgsm21809.doc.htm>

trade-offs between different human rights because the sovereign has finite resources and must make choices about how to allocate these resources among competing needs.

However, the complicated dynamic between debt and human rights does not relieve either the debtor or the creditors of the burden of understanding and managing the impact that debt has on the human rights of natural persons.⁵⁴ This is true for all creditors, including private creditors. Moreover, since the latter are not signatories of human rights treaties, it is particularly important to try and understand their human rights responsibilities in these situations.

3.2 The Role of Private Creditors and Human Rights

The primary focus of international human rights law is on the obligations of states, which are the only signatories to human rights treaties.⁵⁵ Private creditors, including commercial banks, investment funds, bondholders and other financial institutions, are non-state actors and are not signatories to any human rights treaties. Consequently, unless their home states impose them through domestic law, they do not have legally binding human rights obligations. However, private creditors have human rights responsibilities,⁵⁶ including the responsibility to respect the human rights of those individuals and communities who are affected by their investments.⁵⁷ In the sovereign debt context, the individuals who are affected by their investments include both the residents of the sovereign debtor state and those individuals who contribute their savings to the financial institutions that make the loans to and buy the bonds issued by the sovereign debtors.

⁵⁴ Magalie Masamba 'Sovereign Debt Restructuring and Human Rights: Overcoming A False Binary' in Bradlow, D. & Masamba, M. (Eds) *COVID-19 and Sovereign Debt: The case of SADC*, Pretoria University Law Press (2022) 176 - 203

https://www.pulp.up.ac.za/edocman/edited_collections/sadc_book/2021%20SADC%20Debt%20Chapter%208.pdf

⁵⁵ Olivier De Schutter 'International Human Rights Law' Cambridge University Press (2019).

⁵⁶ See The Corporate Responsibility to Respect Human Rights in the Guiding Principles on Business and Human Rights 13 – 16,

https://www.ohchr.org/sites/default/files/documents/publications/guidingprinciplesbusinesshr_en.pdf

⁵⁷ See Nicola Jägers, 'Sovereign Financing and the Human Rights Responsibilities of Private Creditors', in Bohoslavsky, J. P. & Černič, J. L. (eds) (2014). *Making Sovereign Financing and Human Rights Work* Hart Publishing, 179–198 and Motoko Aizawa; Daniel Bradlow, & Margaret Wachenfeld, 'International Financial Regulatory Standards and Human Rights: Connecting the Dots', *Manchester Journal of International Economic Law*, (May 2, 2018) Vol. 15, No. 1, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3171933

The challenge is identifying how these private creditors' human rights responsibilities can be operationalized. The first point to note in this regard is that these creditors are primarily driven by profit motives, rather than social or developmental objectives. This means that, unless constrained by the applicable law and regulations or their own tolerance for reputational risk, these creditors are relatively less concerned than official creditors or the sovereign debtor itself about the adverse impacts of their transactions on the environment, the communities in which the activities that their investments finance take place or on the human rights of the various stakeholders in their transactions. This is particularly the case when the investors are concerned that they could lose all or part of their investments, as is possible in sovereign debt restructurings.

The views of these private creditors, however, are slowly beginning to change. This is seen, for example, in the increased attention many of them are paying to such issues as climate change and biodiversity and the transparency of debt transactions.⁵⁸ In some cases, investors pay some regard to a broader range of environmental, social and governance issues. Many of them are beginning to formulate their own social responsibility policies, which often include human rights components.⁵⁹ These policies also often make reference to various voluntary international norms and standards. For example, the Equator Principles,⁶⁰ are voluntary standards that banks can adopt to assess and mitigate environmental and social risks in their project financing activities. Additionally, the United Nations Guiding Principles on Business and Human Rights provide a comprehensive framework for all businesses, including private creditors, to evaluate and address any potential human rights consequences in their

⁵⁸ An increasing number of private creditors are beginning to integrate environmental, social and governance (ESG) considerations into their investment frameworks and policies. For instance, BlackRock's support for climate related discourse under the and broader sustainability efforts. See BlackRock *BlackRock Supports Consistent Climate Related Disclosures; Urges Global Coordination* (2022) <https://www.blackrock.com/corporate/literature/whitepaper/spotlight-blk-supports-consistent-climate-related-disclosures-urges-global-coordination-june-2022.pdf>; BlackRock, *Environmental Sustainability*, (2023), <https://www.blackrock.com/corporate/responsibility/environmental-sustainability>. HSBC Asset Management has adopted detailed ESG integration and climate policies across its investment portfolios. See HSB Asset Management, *ESG Integration*, <https://www.assetmanagement.hsbc.com/about-us/responsible-investing/esg-integration> and *Our Climate Strategy: Our Approach To The Net Zero Transition*, <https://www.hsbc.com/who-we-are/our-climate-strategy>. However this trajectory has been uneven, with some evidence of backsliding in some jurisdictions. Recent political pushback in the United States has led to efforts to roll back ESG requirements, particularly during the Donald Trump administration, contributing to declining corporate momentum on green finance. See Reuters, *Sustainable Switch: Fight against US anti-ESG Policies* (22 August 2025) <https://www.reuters.com/sustainability/sustainable-switch-fight-against-us-anti-esg-policies-2025-08-22/>

⁵⁹ Daniel Bradlow, 'Can Parallel Lines Ever Meet? The Strange Case of the International Standards on Sovereign Debt and Business and Human Rights', *Yale Journal of International Law*, (1 July 2016). Vol. 41

⁶⁰ The Equator Principles (July 2020) https://equator-principles.com/app/uploads/The-Equator-Principles_EP4_July2020.pdf.

operations. These principles highlight the responsibility of businesses to avoid violating human rights, to assess and address any adverse human rights impacts their operations may have, and to respect the human rights of all those affected by their operations. While they are not legally enforceable, these principles embody an international consensus regarding the responsibilities of private corporations to uphold human rights. Other international standards that are widely acknowledged by corporations, including financial institutions, are the OECD Guidelines for Multinational Enterprises on Responsible Business Conduct⁶¹, and the six Principles for Responsible Investment,⁶² which provide guidance on how to incorporate environmental, social and governance issues into investment practice. While these norms and standards have, to a significant extent, been developed for corporations and financial institutions in creditor countries, they are applicable to all their operations, including those in Africa.⁶³

4 An Overview of the Laws and Institutions in the African Human Rights System

The African human rights system establishes a comprehensive framework of laws, institutional structures, operational procedures and mechanisms designed to advance and safeguard human rights, from an African perspective.⁶⁴ The primary legal instrument for the promotion and protection of human rights in Africa is the African Charter on Human and Peoples' Rights (the African Charter).⁶⁵ It is a comprehensive document that incorporates civil and political rights (articles 2 to 12) and economic, social, and cultural rights (articles 14 to 22). The individual rights enumerated in the African Charter include the right to a fair trial, the right to freedom of expression and access to information, freedom of association and

⁶¹ OECD *Guidelines for Multinational Enterprises on Responsible Business Conduct* https://www.oecd.org/en/publications/2023/06/oecd-guidelines-for-multinational-enterprises-on-responsible-business-conduct_a0b49990.html

⁶² UNPRI *Principles for Responsible Investment* <https://www.unpri.org/>

⁶³ Principle 11 of the Guiding Principles on Business and Human Rights (UNGPs) states that "Business enterprises should respect human rights. This means that they should avoid infringing on the human rights of others and should address adverse human rights impacts with which they are involved." The commentary to this further states that "The responsibility to respect human rights is a global standard of expected conduct for all business enterprises wherever they operate." See *Guiding Principles on Business and Human Rights* (2011) https://www.ohchr.org/sites/default/files/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf

⁶⁴ Christof Heyns, 'The African Regional Human Rights System: The African Charter', 108 DICK. L. REV., (2004) 679 - 702 <https://ideas.dickinsonlaw.psu.edu/dlra/vol108/iss3/2/>

⁶⁵ African Charter on Human and Peoples' Rights <https://au.int/en/treaties/african-charter-human-and-peoples-rights>

peaceful assembly, and such economic, social, and cultural rights, as the right to health, the right to participate freely in cultural life and the right to education. In addition to these individual rights, the African Charter includes collective rights in the form of “peoples’ rights” (articles 19 – 24). The most prominent collective right is the right to development (article 22). The African charter is the only international human rights instrument that includes the right to development.

A leading African human rights lawyer notes that the economic rights contained in the African Charter are different from those contained in the International Convention on Economic, Social and Cultural Rights. Chirwa notes that,

“..The advantage with the [African] Charter’s formulation is that it allows more room for the application of these rights to nonstate actors, who are increasingly regarded as having human rights obligations. Furthermore, the economic, social, and cultural rights provisions in the Charter are couched in such a way as to create immediate obligations. By contrast, the ICESCR qualifies these rights with such phrases as “progressive realization” and “to the maximum of available resources”.”⁶⁶

Other major human rights instruments in the African human rights system include the African Unity (OAU) Convention Governing the Specific Aspects of Refugee Problems in Africa,⁶⁷ the African Charter on the Rights and Welfare of the Child,⁶⁸ and the African Charter on Democracy, Elections and Governance.⁶⁹ The system also includes the special protocols or agreements developed under Article 66 of the African Charter, for example the Protocol on the Statute of the African Court of Justice and Human Rights,⁷⁰ and the Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Women in Africa.⁷¹ Finally, the African human rights system also provides for soft law or non-treaty instruments. Article 45(c) of the African Charter empowers the African Commission “...to formulate and lay

⁶⁶ Danwood Mzikenge Chirwa, ‘Toward Revitalizing Economic, Social, and Cultural Rights in Africa’, Human Rights Brief 10, no. 1 (2002) 15
<https://digitalcommons.wcl.american.edu/cgi/viewcontent.cgi?referer=&httpsredir=1&article=1392&context=hrbrief>

⁶⁷ OAU Convention Governing the Specific Aspects of Refugee Problems in Africa, (adopted on 10 September 1969) <https://au.int/en/treaties/oau-convention-governing-specific-aspects-refugee-problems-africa>

⁶⁸ African Charter on the Rights and Welfare of the Child, (adopted on 11 July 1990),
<https://au.int/en/treaties/african-charter-rights-and-welfare-child>

⁶⁹ African Charter on Democracy, Elections and Governance, (adopted on 30 January 2007)
<https://au.int/en/treaties/african-charter-democracy-elections-and-governance>

⁷⁰ Protocol on the Statute of the African Court of Justice and Human Rights, (adopted on 1 July 2008)
<https://au.int/en/treaties/protocol-statute-african-court-justice-and-human-rights>

⁷¹ Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, (adopted on 11 July 2003) <https://au.int/en/treaties/protocol-african-charter-human-and-peoples-rights-rights-women-africa>

down principles and rules aimed at solving legal problems relating to human and peoples' rights and fundamental freedoms upon which African governments may base their legislation". Notably, the Commission has developed soft-law instruments relating to extractive industries and environmental governance, such as the 'State Reporting Guidelines and Principles on Articles 21 and 24 of the African Charter relating to Extractive Industries, Human Rights and the Environment', which builds on the Charter's right to natural resources and satisfactory environment by guiding states' reporting and regulatory obligations.⁷²

The African human rights system's institutional framework consists of the African Commission on Human and Peoples' Rights (the African Commission) and the African Court on Human and Peoples' Rights (the African Court). The African Commission has the general mandate to promote human and peoples' rights in Africa (article 45 of the African Charter). It is empowered to: (i) interpret the provisions of the African Charter (article 45); (ii) provide states and organizations with advisory opinions and advice on human rights issues (article 45); (iii) receive and assess individual and NGO complaints of alleged human rights violations (article 46); (iv) conduct investigations and fact-finding missions (article 58); and (v) receive and assess periodic reports from member states on implementation of the African Charter and provide recommendations (article 62 to 64). Articles 26 to 34 of the African Charter outline the functions and powers of the African Court. These include the mandate to interpret the provisions of the African Charter and other human rights instruments; receive and hear human rights complaints on allegations of human rights violations from individuals, NGOs, and states and provide advisory opinions on the interpretation and application of the African Charter.

The African Commission operates as a quasi-judicial entity. It is the recipient of complaints from individuals and organisations. These complaints raise human rights issues and allege that the complainants have exhausted all available domestic remedies. The Commission can refer and make recommendations on these cases to the African Court. The Court serves as the ultimate adjudicator, presiding over cases referred by the Commission or those directly brought by states. Although both institutions have not addressed human rights in the context of sovereign debt, their mandates under Article 3(1) and Article 7 of the Protocol to the African Charter on the Establishment of the African Court, and Articles 30 and 45 of the

⁷² State Reporting Guidelines and Principles on Articles 21 and 24 of the African Charter relating to Extractive Industries, Human Rights and the Environment, <https://achpr.au.int/en/documents/2018-05-07/state-reporting-guidelines-and-principles-articles-21-and-24-africa> n/2

African Charter empower them to interpret and apply the Charter broadly, including on economic rights and economic policy-related issues. Their mandates are sufficiently broad to enable them to protect and promote human rights in African countries in debt distress. However, their jurisdiction would be limited to complaints from African residents about the way in which the relevant African state's debt management has resulted in human rights violations. Their rulings, by directly affecting the debt management practices of African states, can indirectly exert some influence over the external creditors.

While there are no cases in the African jurisprudence dealing with public debt issues directly, the African Commission's approach on economic, social and cultural (ESC) rights reinforces the argument for human-rights-based sovereign debt governance. The Commission and African Court have been consistent in recognizing that ESC rights are justiciable and have used both direct (minimum-core and reasonableness) and indirect (interdependence) models to evaluate the human rights performance of states.⁷³ A seminal case in this respect is *Social and Economic Rights Action Centre (SERAC) v Nigeria* (Communication No. 155/96).⁷⁴ In this case the African Commission found Nigeria accountable for environmental degradation and violations of the human rights to health, natural resources and a satisfactory environment (articles 16, 21 and 24 of the African Charter) of the Ogoni people. The Commission applied the standard that the state must "respect, protect, promote and fulfil" the human rights of its inhabitants and that this includes the obligation to mitigate the harm caused by economic programs or the actions of corporations that undermine socio-economic rights. While not dealing with debt issues, this case supports the proposition that sovereign debt frameworks, like those applicable to other economic sectors, should be consistent with the state's human rights obligations.

5 A Human Rights-Based Approach to Debt Management and Restructuring?

⁷³ Sisay Alemahu Yeshanew, 'Approaches to the justiciability of economic, social and cultural rights in the jurisprudence of the African Commission on Human and Peoples' Rights: Progress and perspectives' (2011) 11 *African Human Rights Law Journal*, 317 – 340, <https://scielo.org.za/pdf/ahrlj/v11n2/02.pdf?>

⁷⁴ African Commission on Human and Peoples' Rights, 'Social and Economic Rights Action Center (SERAC) v. Nigeria', (27 October 2001) <https://www.refworld.org/jurisprudence/caselaw/achpr/2001/en/149449?>

5.1 Investigating the DOVE Principles' Potential to Strengthen a Human Rights-Based Approach to Debt Issues

The African human rights system has the potential to contribute to shaping debt management practices in ways that are consistent with the state's human rights obligations and the private creditors' human rights responsibilities. The discussion above has highlighted that a conceptual framework, that is founded on the African Charter and the various regional protocols can provide an operationally feasible legal foundation for debt management strategies that prioritize the protection of socio-economic rights. In this context, we propose that states adopt the Debt Relief for Vulnerable Economies (DOVE) Principles, which can help them implement an operationally feasible conceptual framework that supports this human rights-based approach to debt. It is consistent with the human and people's rights perspectives of the African system because it is concerned with the impact of debt restructurings at the national, local, community, and individual levels. With this as its general orientation, the DOVE Principles (the Principles) provide guidance to the main parties involved in debt restructuring on how to align their decisions with human rights standards. They are designed to facilitate reaching an optimal outcome in any sovereign debt restructuring. This is defined as an outcome that, taking into account the circumstances in which the sovereign debtor and its creditors are negotiating and their respective rights, obligations and responsibilities, offers each of them the best possible mix of economic, financial, environmental, social, human rights and governance benefits.⁷⁵

The Principles also serve as an evaluative benchmark to assess whether a restructuring deal promotes equitable and sustainable outcomes. This should assist both borrowers and new investors in shaping future debt transactions.

The Principles are based on 20 international norms and standards. They can be grouped into three categories. The first category is those norms and standards that are intended to deal with technical aspects of international development finance and to strike a fair balance between the interests of debtors and creditors. The norms and standards in this category, listed in alphabetical order, are:

⁷⁵ Daniel Bradlow, 'A Proposal for a New Approach to Restructuring African Eurobonds: The DOVE Fund and Principles' (November 4, 2022) SouthViews No.242, https://www.southcentre.int/wp-content/uploads/2022/11/SV242_221104.pdf

- Climate Fund Management Responsible Investment Policy⁷⁶
- OECD Due Diligence for Responsible Business Practices⁷⁷
- PRI's ESG Engagements for Sovereign Debt Investors⁷⁸
- PRI's Why and How Investors Should Act on Human Rights⁷⁹
- UNCTAD's Principles on Responsible Sovereign Lending and Borrowing⁸⁰
- UNCTAD's Debt Workout: Going Forward Roadmap and Guide⁸¹
- World Bank's and other multilateral development banks' environmental and social frameworks⁸²
- World Bank's Debt Transparency in Developing Countries Report⁸³

The second category consists of those norms and standards that are developed by representatives of creditors and investors and so should be assumed to have a bias in favour of their interests. The norms and standards in this category, listed in alphabetical order, are:

- ICMA's Guiding Principles for Green Bonds⁸⁴
- ICMA's Guiding Principles for Social Bonds⁸⁵
- ICMA's Guiding Principles for Sustainability-Linked Bonds⁸⁶

⁷⁶ Climate Fund Management Responsible Investment Policy,
<https://climatefundmanagers.com/responsible-investing/#:~:text=As%20a%20responsible%20investor%2C%20CFM,its%20investment%20decision%20making%20process>

⁷⁷ OECD Due Diligence for Responsible Business Practices,
<https://www.oecd.org/investment/due-diligence-guidance-for-responsible-business-conduct.htm>

⁷⁸ PRI ESG Engagements for Sovereign Debt Investors
<https://www.unpri.org/download?ac=12018#:~:text=%E2%80%99C Sovereign%20engagement%20is%20a%20win,are%20doing%20to%20ameliorate%20those.%E2%80%9D>

⁷⁹ PRI ESG Engagements for Sovereign Debt Investors
<https://www.unpri.org/human-rights/why-and-how-investors-should-act-on-human-rights/6636.article>

⁸⁰ UNCTAD Principles on Responsible Sovereign Lending and Borrowing
<https://unctad.org/publication/principles-promoting-responsible-sovereign-lending-and-borrowing>

⁸¹ <https://unctad.org/publication/roadmap-and-guide-sovereign-debt-workouts>

⁸² See for example, World Bank Environmental and Social Framework,
<https://www.worldbank.org/en/projects-operations/environmental-and-social-framework>

⁸³ World Bank Debt Transparency in Developing Countries Report
<https://documents1.worldbank.org/curated/en/743881635526394087/pdf/Debt-Transparency-in-Developing-Economies.pdf>

⁸⁴ ICMA Guiding Principles for Green Bonds
[https://www.icmagroup.org/sustainable-finance/the-principles-guidelines-and-handbooks/green-bond-principles-gbp/#:~:text=The%20Green%20Bond%20Principles%20\(GBP,credentials%20alongside%20an%20investment%20opportunity.](https://www.icmagroup.org/sustainable-finance/the-principles-guidelines-and-handbooks/green-bond-principles-gbp/#:~:text=The%20Green%20Bond%20Principles%20(GBP,credentials%20alongside%20an%20investment%20opportunity.)

⁸⁵ ICMA Guiding Principles for Social Bonds
<https://www.icmagroup.org/sustainable-finance/the-principles-guidelines-and-handbooks/social-bond-principles-sbp/>

⁸⁶ ICMA Guiding Principles for Sustainability-Linked Bonds
<https://www.icmagroup.org/assets/documents/Sustainable-finance/2023-updates/Sustainability-Linked-Bond-Principles-June-2023-220623.pdf>

- IIF's Principles of Stable Capital Flows and Fair Debt Restructuring⁸⁷
- IIF's Voluntary Principles for Debt Transparency⁸⁸

The third category consists of those norms and standards that are developed by representatives of debtors or of civil society and so should be assumed to have a bias in favour of their interests. The norms and standards in this category, listed in alphabetical order, are:

- Afrodad's Fair and Orderly Framework for Sovereign Debt Restructuring⁸⁹
- Afrodad's Harare Principles⁹⁰
- Eurodad's 10 Civil Society Principles for Sovereign Debt Resolution⁹¹
- UNGA's Basic Principles on Sovereign Debt Restructuring Processes⁹²
- UN OHCHR's Guiding Principles on Foreign Debt and Human Rights⁹³
- UN OHCHR's Guiding Principles on Human Rights Impact Assessments and Economic Reforms⁹⁴

In addition, there are two international standards that are applicable to all transnational corporations, including financial institutions. A number of financial institutions have expressed support for one or both of these, and so they were used in developing the DOVE Principles. They are:

- OECD Guidelines on Multinational Enterprises⁹⁵

⁸⁷ IIF *Principles of Stable Capital Flows and Fair Debt Restructuring* <https://www.iif.com/Publications/ID/4887/The-Principles-for-Stable-Capital-Flows-and-Fair-Debt-Restructuring-April-2022-Update>

⁸⁸ IIF *Voluntary Principles for Debt Transparency* <https://www.iif.com/Publications/ID/3387/Voluntary-Principles-For-Debt-Transparency>

⁸⁹ AFRODAD *Fair and Orderly Framework for Sovereign Debt Restructuring* <https://afrodad.org/portfolio/towards-building-a-fair-and-orderly-international-framework-for-sovereign-debt-restructuring/>

⁹⁰ AFRODAD *Harare Principles* <https://afrodad.org/campaigns/the-harare-declaration-2021/>

⁹¹ EURODAD *10 Civil Society Principles for Sovereign Debt Resolution* https://assets.nationbuilder.com/eurodad/pages/523/attachments/original/1590689165/We_can_work_it_out.pdf?1590689165

⁹² UNGA *Basic Principles on Sovereign Debt Restructuring Processes* <https://digitallibrary.un.org/record/820120?ln=en>

⁹³ UN OHCHR *Guiding Principles on Foreign Debt and Human Rights* <https://www.ohchr.org/en/documents/reports/ahrc2023-guiding-principles-foreign-debt-and-human-rights>

⁹⁴ UN OHCHR *Guiding Principles on Human Rights Impact Assessments and Economic Reforms* <https://www.ohchr.org/en/calls-for-input/guiding-principles-human-rights-impact-assessments-economic-reform-policies>

⁹⁵ OECD *Guidelines on Multinational Enterprises* <https://mneguidelines.oecd.org/mneguidelines/>

- UN Guiding Principles on Business and Human Rights⁹⁶

The DOVE Principles are:

1. **Principle 1: Guiding Norms:**⁹⁷ Sovereign debt restructurings should be guided by the following 6 norms: Credibility, Responsibility, Good Faith, Optimality, Inclusiveness, and Effectiveness. *Credibility* requires confidence in the process; *responsibility* requires that all parties pay appropriate attention to their financial, social, environmental and human rights commitments and *good faith* underscores a sincere commitment to a fair and human rights focused resolution to the debt crisis. The principle of *optimality* emphasizes the goal of reaching an optimal outcome, defined as an outcome that, taking into account the circumstances in which the sovereign debtor and its creditors are negotiating and their respective rights, obligations and responsibilities, offers each of them the best possible mix of economic, financial, environmental, social, human rights and governance benefits.⁹⁸ Such an outcome balances all parties to the restructurings competing interests and obligations. *Inclusiveness* and *effectiveness* ensure that all creditors and affected populations have timely access to relevant information and that negotiations are concluded efficiently.
2. **Principle 2: Transparency:**⁹⁹ This principle underscores that both negotiating parties and the affected parties should have access to the information that they need to make informed decisions regarding the debt restructuring. It obliges the sovereign debtor to provide creditors and the public with sufficient, appropriately safeguarded information about the nature of the debt crisis, available solutions and their potential impacts, particularly on human rights and environmental matters. This duty is grounded in both the debtor's domestic and international legal obligation to its residents and treaty commitments. Further, creditors are expected to disclose relevant information regarding their own environmental, social and human rights

⁹⁶ UN UN Guiding Principles on Business and Human Rights

https://www.ohchr.org/sites/default/files/documents/publications/guidingprinciplesbusinesshr_en.pdf

⁹⁷ Daniel Bradlow 'A New Conceptual Framework for African Sovereign Debt: Finding an Optimal Outcome that Addresses Five Challenges' *Journal of African Economies*, Volume 33, Issue Supplement_2, December 2024, ii62–ii77, ii74, <https://doi.org/10.1093/jae/ejae023>

⁹⁸ Daniel Bradlow, 'A Proposal for a New Approach to Restructuring African Eurobonds: The DOVE Fund and Principles', (November 4, 2022) SouthViews No.242,

https://www.southcentre.int/wp-content/uploads/2022/11/SV242_221104.pdf

⁹⁹ Ibid ii75.

responsibilities, acknowledging that even non-binding standards carry an expectation of good faith compliance.

3. **Principle 3: Due Diligence:**¹⁰⁰ The sovereign debtor and its creditors should each undertake appropriate due diligence before concluding a sovereign debt restructuring process. This principle calls for the negotiating parties to rely on a mutually accepted debt sustainability analysis that enables them to assess and jointly agree on the extent of the debt challenges facing the parties.
4. **Principle 4: Optimal Outcome Assessment:**¹⁰¹ At the earliest feasible moment, the negotiating parties should publicly disclose why they expect their restructuring agreement to result in an optimal outcome. In order to reach an optimal outcome, the principle requires the negotiating parties to evaluate, as far as possible, the anticipated impacts of any proposed agreement on the sovereign borrower and affected parties across economic, social, environmental, governance and human rights dimensions.
5. **Principle 5: Monitoring:**¹⁰² The restructuring process should incorporate credible and transparent mechanisms for monitoring the implementation of the restructuring agreement. These mechanisms should audit the financial performance and broader impacts while ensuring that periodic, accessible reports are shared with the public, subject to confidentiality safeguards.

While the five DOVE Principles create a conceptual framework for a human rights-based approach to sovereign debt, the guiding norms enumerated in Principle 1 suggest that an effective sovereign debt restructuring should have the following three additional characteristics:

- all creditors should contribute comparably to achieving a sustainable debt restructuring

¹⁰⁰ Ibid.

¹⁰¹ Ibid.

¹⁰² Ibid.

- the distribution of the burdens and costs of the restructuring should be fairly allocated among all parties, taking into account their particular obligations, responsibilities and circumstances.
- the debt restructuring should be designed to help the debtor regain access to sustainable and affordable flows of development finance as quickly as is feasible under the circumstances.

6 Next Steps: Positioning The African Human Rights System to Tackle Debt Challenges

The Principles offer a strategic framework for effectively promoting the convergence of sovereign debt and human rights. They can play this connecting role because they highlight the significance to both human rights and sovereign debt restructurings of the obligations and responsibilities of all state and non-state actors who have the capacity to impact other individuals and communities. They can also ensure that their transactions are inclusive in the sense that they account for the concerns and interests of all stakeholders in the transaction. Moreover, they pay due regard to African states' legal obligations under their loan agreements, their international treaties, and domestic law. They do so in a way that takes into account the economic, financial, political, social and environmental complexities associated with sovereign debt restructurings.

This suggests that the institutions and actors in the African Human Rights System can use the Principles as the conceptual framework to support both advocacy for and actions that promote a human-rights-based approach to sovereign debt restructurings. The opportunities that the institutions and actors in the African Human Rights System can explore in this respect include:

Dialogue, Advocacy and Awareness-Raising on the Interconnectivity between Debt and Human Rights: They can advocate for the endorsement of the Principles by regional bodies, such as the African Commission. These bodies can then use the Principles to advocate for lending and debt restructuring practices that prioritise the incorporation of human rights considerations into policies and decisions related to debt management. They can also seek to

ensure that measures taken to manage debt do not disproportionately and adversely impact the populations in the debtor countries.

Monitoring and Reporting on Debt Issues: Principle 2 of the Principles emphasises transparency, while principle 5 of the Principles calls for monitoring throughout a restructuring transaction. This suggests that the African Commission and other regional human rights mechanisms can play a role in assessing the extent to which a state's debt burdens affect the realisation of economic, social, and cultural rights, such as the right to education, healthcare, and adequate housing.

The use of Human Rights Complaints Mechanisms to enhance Accountability and Redress of Debt-Related Human Rights Violations: Individuals, civil society organizations, and communities adversely affected by debt-related human rights violations can submit complaints to the African Commission and, if applicable, the African Court on Human and Peoples' Rights. These mechanisms provide avenues for seeking redress and accountability for violations resulting from unsustainable debt practices. They can investigate complaints, issue findings, and provide remedies to ensure that debt management practices align with human rights obligations. It is important to note that to date, no human rights complaints arising from debt management practices have been brought to the African Commission or African Court. However, there is at least one relevant precedent that relates to investors and the violation of economic, social and cultural rights and the environmental impacts of investments: Social and Economic Rights Action Centre (SERAC) & Another v Nigeria.

The Promotion and use of Human Rights Impact Assessments: Principle 3 of the Principles requires that effective due diligence be carried out in the restructuring process.¹⁰³ The institutions and actors in the African human rights system can help advocate for and promote the integration of human rights impact assessments into the debt management processes of African countries. The African human rights jurisprudence does not currently address this issue. The purpose of these human rights impact assessments would be to identify how borrowing and repayment obligations may impact vulnerable populations and help inform both debtors and creditors on what actions are needed to mitigate the challenges arising from unsustainable debt burdens. Ultimately these assessments can inform the design of debt

¹⁰³ For a discussion on human rights impact assessments see J P Bohoslavsky, F Cantamutto and L Castiglioni 2023, 213–236.

policies and agreements that minimize their negative impacts and maximize their positive impacts on human rights.

Collaboration between Human Rights Bodies and Regional Financial and Economic Institutions: By aligning economic policies with human rights principles, countries can ensure that their economic activities contribute to the realization of human rights and the well-being of all individuals and communities. In this respect, the African human rights system, in collaboration with economic institutions such as the African Union, the African Development Bank and other African multilateral financial institutions¹⁰⁴, and regional economic communities, should engage in dialogue, including, where appropriate, with African civil society organisations, and should cooperate to align economic policies, debt management strategies, and development objectives with human rights principles.

Capacity Building and Technical Assistance: The African human rights institutions, together with institutions like the African Development Bank, other African multilateral financial institutions and the African Legal Support Facility, have the potential to offer valuable capacity-building support and technical assistance to African countries grappling with debt distress and human rights issues. This assistance can prove instrumental in empowering governments to enhance their comprehension of human rights obligations as they pertain to sovereign debt and promote the integration of human rights principles in their debt management strategies. Capacity-building support can involve training programs, workshops, and seminars aimed at enhancing the knowledge and skills of government officials and policymakers in understanding the intersection between debt and human rights, conducting human rights impact assessments, and developing strategies to prioritize human rights in debt management policies, etc. They can incorporate the DOVE Principles into their capacity building and technical assistance programmes.

7 Conclusion

In this paper, we have discussed how the African human rights system can contribute to more inclusive and sustainable debt management and to mitigating the adverse human rights

¹⁰⁴ Afrexim Bank *Alliance of African Multilateral Financial Institutions*
<https://www.afreximbank.com/african-multilateral-financial-institutions-forge-historic-strategic-alliance-to-serve-as-catalyst-for-sustainable-economic-development-and-financial-self-reliance-in-africa/>

impacts of sovereign debt restructurings. We have also shown that addressing the human rights impacts of debt in Africa requires a comprehensive approach that can contribute to sustainable development and the realisation of the African Union's Agenda 2063 and the Sustainable Development Goals (SDGs).¹⁰⁵ Ultimately, we argue that debt justice must evolve from a moral aspiration into legal and institutional practice in the sovereign debt context. Embedding the DOVE Principles within African human-rights processes offers a feasible route to this objective.

African human rights institutions, with the help of other stakeholders such as civil society organizations and advocacy groups, can help amplify the voices of those adversely affected by debt distress. In our assessment we have found that the African human rights framework already has systems and institutional mechanisms that can be better leveraged. Notably, the African Commission and the African Court can provide a forum for these voices to be heard, to facilitate discussions, and to encourage governments to take action. It is, however, clear that the reform of the debt landscape cannot only rely on these forums. It will also require collaboration with international financial institutions and regional economic and financial bodies.

Finally, the Principles, which are designed to be applicable in the African context, have the potential to provide a comprehensive normative framework for addressing the challenges faced by vulnerable economies. The effective implementation of the Principles will require collaboration among various stakeholders, including debtor governments, international financial institutions, all types of creditors and civil society. Their collaborative efforts will help create a debt landscape in Africa that supports sustainable development, upholds human rights, and empowers vulnerable economies in the region to thrive.

While this paper has outlined a normative and conceptual framework for linking sovereign debt and human rights through the African human rights system and the DOVE Principles, several areas merit deeper inquiry. First, comparative research between the African, Inter-American and European systems could yield valuable lessons on how regional

¹⁰⁵ Daniel Bradlow and Magalie Masamba, 'Building Back Better Post-COVID 19: Lessons Learnt and The Future of Sovereign Debt Management and Restructuring In SADC', in Bradlow, D. & Masamba, M. (Eds) (2022). COVID-19 and Sovereign Debt: The case of SADC, Pretoria University Law Press, 352 – 364 https://www.pulp.up.ac.za/edocman/edited_collections/sadc_book/2021%20SADC%20Debt%20Chapter%2015.pdf

human-rights mechanisms address the human rights consequences of unsustainable debt and austerity. Further research is also needed to develop practical methodologies for conducting human-rights impact assessments in debt management and restructuring processes. Finally, additional research is required into how African human-rights bodies could operationalize and monitor compliance with the DOVE Principles.