



University of Essex

A Human Rights- Based Approach to Debt and Climate Justice

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2. Introduction

The global economy has been experiencing increasing rates of sovereign debt accumulation since the 19th century. Initially, colonising nations used sovereign debt as a tool to secure capital to support the building and maintenance of their colonial empires. These colonial powers exploited the land, resources and economies of countries under their rule in order to fuel Western industrialisation. Upon independence, previously colonised nations were left with little choice but to borrow from governments, banks and institutions in the Global North to finance development. This created a deeply unequal global economy in which Global North countries had control over shaping the international rules and standards around trade and finance. Thus, the asymmetrical power dynamics between colonial powers and those formerly colonised have been integrated into the sovereign debt model.

Over time, the sovereign debt model has developed into the multitrillion, multinational and multicurrency network of debt instruments that we see today. At the base of the current sovereign debt system is the influence of neoliberal economic policies, which prioritise private actors and profit over people and the planet. This system has been created by and for powerful governments, elite corporations, investment banks and wealthy individuals that have become increasingly involved in indebted states' economic, social and political policies. In some cases, the influence of private actors over public governance systems, law and policy has taken the form of corporate capture. Corporate capture, through its various manifestations, refers to democratic processes and public policymaking that are captured by the special interests of private businesses and corporate actors. These economic actors continue to exploit and benefit from the developmental needs of the Global South, while unsustainable debt burdens constrain borrowing governments' ability to fulfil their international human rights obligations.

The global inequality resulting from the neoliberal economic order has been exacerbated by the polycrisis¹ of our times. This refers to the simultaneous occurrence of several economic, social and political crises, such as the COVID-19 pandemic, climate change and ongoing armed conflicts. Particularly for low- and middle-income countries, the current financial, public health, and environmental crises constrain governments' ability to respond to the immediate and essential needs of their people. This phenomenon has heightened inequality, imperilled human rights and deepened impoverishment. It is therefore imperative to challenge the neoliberal sovereign debt model, increase corporate accountability and advocate for a debt and climate just global economy.

¹ Adam Tooze, 'Welcome to the World of the Polycrisis' (*Financial Times*, 28 October 2022) <<https://www.ft.com/content/498398e7-11b1-494b-9cd3-6d669dc3de33>> accessed 30 June 2023.

2.1 Overview of the Report

To begin, chapter three will outline the international human rights legal framework for economic, social and cultural rights. It will discuss states' obligation to utilise the maximum available resources for the progressive realisation of these rights as set out in the International Covenant on Economic, Social and Cultural Rights (ICESCR). This will include a discussion around the principles of international assistance and cooperation, minimum core obligations and non-retrogression. The chapter will conclude with a discussion on the impact of debt burdens on the ability of states to respect, protect and fulfil their human rights obligations.

Chapter four focuses on the key actors, structures and instruments that underpin the neoliberal sovereign debt model. It will explore how private actors such as credit rating agencies, bondholders and vulture funds profit from the sovereign debt of low- and middle-income countries. It will also look at the neoliberal policies and conditionalities that are imposed by public international financial institutions (IFIs) such as the International Monetary Fund (IMF) and the World Bank. It will be seen how both private and public economic actors influence the laws and policies around sovereign debt, yet, rarely face any accountability when debt burdens become unsustainable and result in retrogressive measures. For example, the case of Greece will illustrate how the IMF and the European Union (EU) prioritised the protection of private banks and business interests over Greece's human rights obligations. Further, many creditors require states to reduce public spending in order to prioritise debt repayment. The case of Chad will show how debt servicing obligations and austerity measures constrain governments' ability to fulfil economic, social and cultural rights such as education and healthcare.

Chapter five will address the relationship between debt and climate change by considering the colonial origins and legacies of these related crises. It will highlight the lasting and unjust consequences of colonial neoliberal extraction on the economies and environment of formerly colonised countries in the Global South, which suffer the impacts of climate change most severely. The case study of Zambia will demonstrate the impacts of high debt levels in climate vulnerable countries. Additionally, this chapter will advocate for the use of a transitional justice-based approach to address the root causes of high debt, the inequalities in the causation of global warming, and the link between sovereign debt and climate justice. This will involve an application of the pillars of truth, justice, reparations and guarantees of non-recurrence within the context of debt and climate.

Finally, chapters six and seven will conclude with key reflections of the research and provide recommendations on how to increase corporate accountability, protect economic, social and cultural rights, and work towards achieving debt justice and climate justice. These recommendations are aimed at private economic actors, IFIs and states.

2.2 Methodology

This report was produced by members of the University of Essex Human Rights Centre Clinic (HRCC) under the supervision of Dr Koldo Casla. The HRCC partnered with the International Network for Economic Social and Cultural Rights (ESCR-Net) to conduct research in support of its various advocacy and campaigning initiatives in relation to debt justice and human rights. ESCR-Net connects over 280 NGOs, social movements and advocates across more than 75 countries to build a global movement to make human rights and social justice a reality for all.

As part of this partnership, the HRCC conducted comprehensive desk research and held interviews with experts in the field of sovereign debt and human rights. The research took place between October 2022 and June 2023 and employed both doctrinal and socio-legal analyses. Key themes that are addressed in the report are the international human rights framework, the neoliberal sovereign debt model, corporate capture, conditionalities, colonial legacies of debt, climate, and transitional justice. To illustrate the global relevance, impact and key lessons from these topics, three countries were chosen as case studies: Chad, Greece and Zambia.

Prior to conducting the interviews, ethical approval was sought and approved by the Ethics Review and Management System (ERAMS) at the University of Essex. Interviewees consisted of scholars, researchers and activists with expertise in relation to the identified research topics and case studies. Some participants were identified through their organisations and partnership work with ESCR-Net, while others were invited independently based on their publications and contributions to the literature. Each interviewee was contacted via email with details of the research project, why they were invited to participate and what their participation would entail. Once the invitee agreed to participate, consent was obtained, and interviews were scheduled to take place via Zoom. Between March and May 2023, seven interviews were conducted. The interviews were semi-structured to allow for the opportunity to raise related issues and explore the topics in greater depth. This provided insight beyond desk research and enhanced the collection of qualitative data.

The conclusions and recommendations in this report were drawn primarily from qualitative data and secondary literature. While a combination of desk research and interviews was effective in collecting information, a challenge remains in the lack of transparency around negotiations and agreements between lenders and borrowers of sovereign debt. Due to this lack of transparency, it is difficult to draw clear connections between the influence of private economic actors and IFIs over the terms, conditions and social policies that arise from sovereign debt. This poses a major barrier to achieving debt justice, corporate accountability, and the enjoyment of economic, social and cultural rights.

3. International Human Rights Framework of Economic, Social and Cultural Rights

This chapter outlines the key international and regional human rights instruments and standards on economic, social and cultural rights (ESCR). It articulates the obligation to utilise the maximum available resources for the progressive realisation of these rights as set out in the International Covenant on Economic, Social and Cultural Rights (ICESCR). This includes a discussion of the principle of international assistance and cooperation within the context of foreign debt. Lastly, the chapter analyses the relationship between sovereign debt and human rights. It considers the impact of high debt burdens on the ability of states to respect, protect and fulfil ESCR.

3.1 Universal and Regional Treaty Mechanisms

The International Covenant on Economic, Social and Cultural Rights (ICESCR) is the leading international human rights treaty on economic, social and cultural rights (ESCR).² Currently, there are 117 state parties to the covenant. The covenant has provisions for various rights, including the rights to work, social security, health, education and cultural life.

Apart from ICESCR, there are UN group-specific treaties that articulate ESCR. This includes the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), which prohibits discrimination against women in the rights to education, employment, health and economic and social benefits.³ The Convention on the Rights of the Child (CRC) is another group-specific treaty that sets out ESC rights as they relate to children. These rights include but are not limited to the rights to survival and development, care, state assistance, social security and education.⁴ The Convention on the Elimination of All Forms of Racial and Ethnic Discrimination (CERD)⁵ and the Convention on the Rights of Persons with Disabilities (CRPD)⁶ also recognise ESCR.

² International Covenant on Economic, Social and Cultural Rights (adopted 16 December 1966, entered into force 3 January 1976) 993 UNTS 3 (ICESCR).

³ Convention on the Elimination of All Forms of Discrimination against Women (adopted 18 December 1979, entered into force 3 September 1981) 1249 UNTS 13 (CEDAW) arts 10-13.

⁴ Convention on the Rights of the Child (adopted 20 November 1989, entered into force 2 September 1990) 1577 UNTS 3 (CRC) arts 6, 7, 18, 26, 28.

⁵ Convention on the Elimination of All Forms of Racial and Ethnic Discrimination (adopted 21 December 1965, entered into force 4 January 1969) 660 UNTS 195 (CERD).

⁶ Convention on the Rights of Persons with Disabilities (adopted 13 December 2006, entered into force 3 May 2008) 2515 UNTS 3 (CRPD).

In addition to recognition in international conventions, ESCR are also protected at the regional level in the African, American and European systems. In the African system, the African Charter on Human and People's Rights provides for various economic, social and cultural rights, and it emphasises the interconnection and indivisibility of ESCR and civil and political rights (CPR).⁷ Furthermore, the Maputo Protocol on the Rights of Women in Africa provides for the direct protection of additional rights to food security and adequate housing.⁸

In the American context, the main conventions that set out ESCR are the American Declaration on the Rights and Duties of Man, which is applicable to all members of the Organization of America States, and the American Convention on Human Rights.⁹ Additionally, the San Salvador Protocol further reaffirms ESCR and elaborates on specific state obligations with regard to these rights.¹⁰

In the European context, the main human rights convention that protects ESCR is the European Social Charter (ESC), which provides for workers' rights, such as just conditions of work and safe and healthy working conditions, as well as other economic and social rights.¹¹ The European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) is another key treaty in the European system, although it offers limited protection for ESCR as its primary focus is CPR.¹²

3.2 ICESCR Framework

Art 2 (1) of the ICESCR sets out the core principles of economic, social and cultural rights. It states that:

Each State Party to the present Covenant undertakes to take steps, individually and through international assistance and co-operation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures.¹³

The Committee on Economic, Social and Cultural Rights (CESCR) noted in General Comment 3 that this article 'describes the nature of the general legal obligations undertaken by state parties to the

⁷ African Charter on Human and Peoples' Rights (adopted 27 June 1981, entered into force 21 October 1986) 1520 UNTS 217.

⁸ Protocol to the African Charter on the Rights of Women in Africa (adopted 11 July 2003, entered into force 25 November 2005) arts 15-16 (Maputo Protocol).

⁹ American Declaration of the Rights and Duties of Man (adopted 2 May 1948) OAS Res XXX; American Convention on Human Rights (adopted 22 November 1969, entered into force 18 July 1978) 1144 UNTS 123.

¹⁰ Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights (adopted 17 November 1988, entered into force 16 November 1999) OAS Treaty Series No 69 (Protocol of San Salvador).

¹¹ European Social Charter (adopted 18 October 1961, entered into force 26 February 1965) ETS No 035.

¹² European Convention for the Protection of Human Rights and Fundamental Freedoms (adopted 4 November 1950, entered into force 3 September 1953) 213 UNTS 221.

¹³ ICESCR (n 2) art 2 (1).

Covenant'.¹⁴ In this General Comment, CESCR acknowledged that the full realisation of ESCR will generally not be immediate due to limited resources available to states. Therefore, under ICESCR, states are obligated to progressively, rather than immediately, achieve the fulfilment of ESCR. Despite this, the CESCR emphasises that progressive realisation of rights must be understood in line with the overall objective of the Covenant, which is 'to establish clear obligations for state parties in respect of the full realisation of the rights in question'.¹⁵ Therefore, states must move 'as expeditiously and effectively as possible towards that goal'.¹⁶

The Committee also asserted that regardless of progressive realisation, each state party has 'a minimum core obligation to ensure the satisfaction of, at the very least, minimum essential levels of each of the rights'.¹⁷ In assessing whether a state has met its minimum core obligations, resource constraints must be taken into account. A state that fails to meet its minimum obligations must show that it has taken steps 'to the maximum of its available resources' to realise ESCR as set out in art 2 (1) ICESCR. Even where 'resources are demonstrably inadequate', the Committee notes that state parties still have an obligation to 'ensure the widest possible enjoyment' of ESCR 'under the prevailing circumstances'.¹⁸ They 'must protect the most disadvantaged and marginalised members or groups of society by adopting relatively low-cost programmes'.¹⁹ Additionally:

... for a state party to be able to attribute its failure to meet its core obligations to a lack of available resources, it must demonstrate that every effort has been made to use all resources at its disposal in an effort to satisfy, as a matter of priority, those core obligations.²⁰

General Comment 3 provides that any deliberately retrogressive measures 'require the most careful consideration'²¹ and must be justified. This means that measures that undermine the fulfilment of rights under ICESCR must be carefully scrutinised. The Committee has also outlined objective criteria to utilise when a state party uses 'resource constraints' to justify taking retrogressive measures.²² These include considering the country's level of development and current economic situation, how severe the

¹⁴ UN Committee on Economic, Social and Cultural Rights (CESCR), 'General Comment No 3: The nature of state parties' obligations (art 2 (1) of the Covenant)' (14 December 1990) E/1991/23 (CESCR General Comment No 3).

¹⁵ *ibid* [9].

¹⁶ *ibid*.

¹⁷ *ibid* [10].

¹⁸ UN Committee on Economic, Social and Cultural Rights (CESCR), 'An evaluation of the obligation to take steps to the 'maximum of available resources' under an optional protocol to the covenant' (10 May 2007) E/C 12/2007/1 (CESCR Statement on Maximum Available Resources) [4].

¹⁹ *ibid*.

²⁰ *ibid* [6].

²¹ CESCR General Comment No 3 (n 14) [9].

²² CESCR Statement on Maximum Available Resources (n 18) [10].

retrogressive measure was, and whether the country sought low-cost options as well as cooperation and assistance from the international community.²³

The principle of non-retrogression is further articulated in several soft law instruments, the most recent being the UN Guiding Principles on Human Rights Impact Assessment of Economic Reform from 2018. These principles were developed by the then Independent Expert on Foreign Debt and Economic Reforms, Juan Pablo Bohoslavsky, and set out the criteria for the permissibility of retrogressive measures as follows:

They must be temporary, legitimate in the sense that they are designed to contribute to the ultimate realization of human rights, reasonable, necessary, proportionate, non-discriminatory, protective of the minimum core content of economic, social and cultural rights, and designed and adopted consistent with the requirements of transparency, participation and accountability.²⁴

State parties to ICESCR should demonstrate that any retrogressive measure satisfies the above elements for it to be in accordance with international human rights law.

Regarding maximum available resources, the Committee emphasises the importance of transparent and participative decision-making at the national level during assessments on whether a state party has taken reasonable steps to the maximum of its available resources to progressively realise ESCR.²⁵ Maximum available resources include resources within a state as well as those available from the international community through international cooperation and assistance.²⁶ The Committee's position is that states that are in a position to assist others have an obligation to provide resources for national development and the fulfilment of ESCR.²⁷ It acknowledges that without 'an active programme of international assistance and cooperation', the realisation of ESCR will 'remain an unfulfilled aspiration in many countries'.²⁸ This position raises questions about the implications of such an obligation on state parties that can provide assistance on the one hand, and state parties that require assistance on the other hand.

²³ *ibid.*

²⁴ UN Independent Expert on Foreign Debt and Human Rights, 'Guiding Principles on Human Rights Impact Assessments of Economic Reforms' (19 December 2018) A/HRC/40/57 [10].

²⁵ CESCR Statement on Maximum Available Resources (n 18) [11].

²⁶ *ibid* [13].

²⁷ CESCR General Comment No 3 (n 14) [14].

²⁸ *ibid.*

3.3 Human Rights and Foreign Debt

Due to limited resources, many developing countries have to balance between debt repayment and the realisation of economic and social rights. This reality is acknowledged in the UN Guiding Principles on Foreign Debt and Human Rights of 2011.²⁹ The formulation of these principles began in 2004 when the Commission on Human Rights requested the then Independent Expert on the Effects of Foreign Debt to draft general guidelines for the various private and public actors that are involved in making decisions around debt repayment.³⁰ The Principles are significant because they were formulated based on the views, contributions and consultations of the various stakeholders involved in policymaking and legislation on foreign debt. Although they were adopted more than 10 years ago, the principles continue to be relevant as unsustainable foreign debt continues to be imposed in low-income and developing countries. This has serious consequences for various internationally protected human rights.

The Guiding Principles note that resource allocation for the full enjoyment of all human rights through the provision of public services such as education, health and housing is undermined by ‘the fulfilment of unduly burdensome external debt service obligations’.³¹ This means that where resources are limited, a state’s contractual obligations to debtors can conflict with its human rights obligations to respect, protect and fulfil ESCR. The Guiding Principles on Foreign Debt and Human Rights aim to balance these conflicting obligations. Although the principles are non-binding, they are applicable to debtor and creditor states, IFIs, private institutions and bondholders.

Some of the foundational principles on foreign debt are based on principles of ESCR, such as progressive realisation, minimum core obligations and non-retrogression.³² States should ensure that their obligations to repay external debt do not disregard these principles that promote the enjoyment and fulfilment of economic, social and cultural rights—even when available resources are limited. Additionally, IFIs and private corporations should respect international human rights, which ‘implies a duty to refrain from formulating, adopting, funding and implementing policies and programmes which directly or indirectly contravene the enjoyment of human rights’.³³

²⁹ UN Independent Expert on Foreign Debt and Human Rights, ‘Guiding Principles on Foreign Debt and Human Rights’ (10 April 2011) A/HRC/20/23.

³⁰ UN Commission on Human Rights, ‘Effects of structural adjustment policies and foreign debt on the full enjoyment of all human rights, particularly economic, social and cultural rights’ E/CN4/RES/2004/18 [18].

³¹ UN Independent Expert on Foreign Debt and Human Rights (n 29) 9.

³² *ibid* 13 [15]-[20].

³³ *ibid* 6 [9].

Despite this articulation in the Guiding Principles, private creditors are often not considered to be bound by international law. Thus, there are limited accompanying mechanisms to hold them accountable when their policies and programmes contravene the enjoyment of human rights. As a result, there have been increased calls for domestic legislation to mandate private actors to take part in (and share the burden of) debt relief schemes through the cancellation or suspension of debt owed by highly indebted countries. For example, the UK has been urged by the IMF, the World Bank, Debt Justice and its own International Development Select Committee to legislate on this matter.³⁴ This is because ‘90% of bond contracts of countries eligible for the G20’s debt relief scheme are governed by English law’.³⁵ Such legislation would therefore be critical for highly indebted countries such as Zambia and Sri Lanka, where private sector creditors have rejected debt relief in order to maximise their profits.³⁶ This position has made it difficult for such countries to ease their financial burdens, which could alleviate poverty.³⁷ This legislation would therefore benefit highly indebted countries because it expands the type and amount of debt eligible for suspension or cancellation.

The relationship between foreign debt and human rights makes it necessary to interrogate the influence of various actors on law and policy surrounding the current debt model. This involves looking at who or what influences the conditions for debt imposition, repayment, and restructuring and the effect of this influence on the human rights of people in highly indebted low-income countries. The next chapter will focus on the key actors, structures and instruments that form the neoliberal sovereign debt architecture.

³⁴ Larry Elliott, ‘Finance companies ‘may make \$30bn’ by delaying debt relief for five countries’ (*The Guardian*, 25 April 2023) <<https://www.theguardian.com/world/2023/apr/25/finance-companies-may-make-30bn-by-delaying-debt-relief-for-five-countries>> accessed 30 June 2023; Debt Justice, ‘UK MPs call for law to make private lenders deliver debt relief’ (10 March 2023) <<https://debtjustice.org.uk/press-release/uk-mps-call-for-law-to-make-private-lenders-deliver-debt-relief>> accessed 30 June 2023.

³⁵ Debt Justice (n 34).

³⁶ Elliott (n 34).

³⁷ *ibid.*

4. The Neoliberal Sovereign Debt Model and Human Rights

In the 1970s, there was a global shift towards neoliberalism as the dominant theory in political-economic thought and practice.³⁸ According to David Harvey, neoliberalism is a theory:

...that proposes that human well-being can best be advanced by liberating individual entrepreneurial freedoms and skills within an institutional framework characterized by strong private property rights, free markets and free trade.³⁹

Neoliberal institutional frameworks prioritise deregulation, privatisation and the withdrawal of the state from many areas of social provision.⁴⁰ The prominence of neoliberalism has become apparent by the extent to which its advocates occupy positions of considerable influence in education, media, financial institutions and key state institutions.⁴¹ Harvey argued in the early years of the 21st century that neoliberalism had become a hegemonic mode of discourse and had affected social ways of thought '...to the point where it has become incorporated into the common-sense way many of us interpret, line in, and understand the world'.⁴²

It is therefore unsurprising that sovereign debt is highly engrained in the neoliberal economic system. This neoliberal economic framework has been created by and for powerful governments, banks and institutions in the Global North to exert power and profit from the indebtedness of borrowing states.⁴³ With the onset of the debt crises in the developing world during the 1980s, the major Western powers, particularly the United States, established a set of policy recommendations on how to develop the Global South.⁴⁴ These economic policies, referred to as the Washington Consensus, are rooted in neoliberal ideologies and are mobilised through institutions such as the IMF and the World Bank.⁴⁵ The IMF and the World Bank have been, and continue to be, key in promoting the interests of Global North powers

³⁸ David Harvey, *A Brief History of Neoliberalism* (OUP 2005) 2.

³⁹ *ibid.*

⁴⁰ *ibid.* 3.

⁴¹ *ibid.*

⁴² *ibid.*

⁴³ Pierre Pénét and Juan Flores Zendejas, 'Rethinking Sovereign Debt from Colonial Empires to Hegemony', in Pierre Pénét and Juan Flores Zendejas (eds), *Sovereign Debt Diplomacies: Rethinking sovereign debt from colonial empires to hegemony* (OUP 2021) 15, 27.

⁴⁴ Stephen R Hurt, 'Washington Consensus' (*Encyclopaedia Britannica*, 27 May 2020) <<https://www.britannica.com/topic/Washington-consensus>> accessed 30 June 2023.

⁴⁵ *ibid.*

and imposing economic reforms in the Global South.⁴⁶ For example, lower- and middle-income countries comprise roughly 85% of the world's population, yet collectively make up less than 50% of the voting powers in both institutions.⁴⁷

Further, lending policies imposed by IFIs, such as structural adjustment programmes, privatisation and austerity measures have been likened to the Washington Consensus.⁴⁸ These conditionalities have become 'integral to the world consensus about how to manage fiscal policies from Africa to South America and East Asia.'⁴⁹ The neoliberal sovereign debt model has been critiqued for being a form of neo-colonialism 'where rich countries continue to dominate decision making spaces and plunder wealth from poorer countries in the Global South'.⁵⁰

Under the neoliberal debt model, many debt burdens have been accumulated irresponsibly, have become unsustainable, and have impacted the realisation of human rights.⁵¹ This is due to foreign debt being seen as a tool for lenders and creditors to profit from the accumulation of interest and servicing on sovereign loans.⁵² Thus, unsustainable debt burdens and the costs associated with their debt servicing:

can reduce the amount of resources available, especially to poorer countries, for the realisation of human rights, hinder the achievement of development goals, and pose a more general threat to economic, social and political stability and to democratic regimes.⁵³

To further explore the impact of sovereign debt on the realisation of human rights, this chapter focuses on the key actors, structures and instruments that underpin the neoliberal debt model. This includes an analysis of private actors and the how business interests can unduly influence laws and policies in relation to sovereign debt. The chapter also explores the role of IFIs in the unsustainable accumulation of sovereign debt, the imposition of terms and conditionalities, and subsequent repayment policies that undermine international human rights obligations.

⁴⁶ *ibid*; Debt Justice, 'Colonialism and Debt: How Debt is Used to Exploit and Control' (2022) <<https://debtjustice.org.uk/wp-content/uploads/2022/08/Colonialism-and-Debt-briefing.pdf>> accessed 30 June 2023.

⁴⁷ Jason Hickel, 'Apartheid in the World Bank and the IMF' (*Al Jazeera*, 26 November 2020) <<https://www.aljazeera.com/opinions/2020/11/26/it-is-time-to-decolonise-the-world-bank-and-the-imf>> accessed 30 June 2023.

⁴⁸ John Williamson, 'What Washington Means by Policy Reform' In John Williamson (ed), *Latin American Adjustment: How Much Has Happened?* (Peterson Institute for International Economics 1990).

⁴⁹ Pénet and Zendejas (n 43) 27.

⁵⁰ Debt Justice (n 46)

⁵¹ Emma Luce Scali, 'Economic and Social Rights and Neoliberalism' in Emma Luce Scali (ed) *Sovereign Debt and Socio-Economic Rights Beyond Crisis* (CUP 2022).

⁵² *ibid*.

⁵³ *ibid* 85.

4.1 Corporate Capture and Private Economic Actors

Elite corporations, investment banks and wealthy individuals have been claimed to ‘capture’ the democratic decision-making and public policies of borrowing states to prioritise the special interests of private businesses.⁵⁴ This phenomenon, referred to as corporate capture, occurs when private economic actors undermine human rights by exerting undue power and influence over governments, decision makers and public institutions’ policymaking.⁵⁵ For example, ‘companies may pressure legislatures and policy makers... to benefit business interests or remove/undermine relevant regulations that seek to protect human rights’.⁵⁶ These business interests are aimed at accumulating profit, and thus, sovereign debt has become a tool to serve narrow private interests rather than to promote economic, social and cultural rights.

However, a major barrier to being able to evidence corporate capture and increase accountability is the lack of information that is made publicly available around the negotiations, terms and conditions that are agreed upon between lenders and borrowing states. This makes it difficult to know whether loans and credits are being approved responsibly and sustainably. In cases where private actors exert undue influence over public bodies and policies, accountability can only be achieved with transparent and accurate information. This is crucial as decisions and policies made in relation to sovereign debt have an impact on citizens and their human rights. As one interviewee expressed:

Governments and experts feed into the idea that debt is a complex subject and something that people cannot understand. Efforts need to be made to increase citizen participation and inform people about the impacts of debt. To do this, conversations around debt need to be removed from corridors of power and discussed openly—everybody has a stake in debt-related decisions and should have access to information.⁵⁷

Therefore, while this report struggles to make direct claims to instances of corporate capture, this section explores how private economic actors such as credit rating agencies, bondholders and vulture funds contribute to and profit from the accumulation of sovereign debt. Each of these actors utilises their power and influence to shape the structures and policies in relation to debt, with limited obligations or

⁵⁴ Daniel Nyberg, ‘Corporations, Politics, and Democracy: Corporate Political Activities as Political Corruption’ (2021) 2 (1) Organization Theory 1 <<https://doi.org/10.1177/2631787720982618>> accessed 30 June 2023.

⁵⁵ *ibid*; ESCR-Net, ‘Corporate Capture Project’ <<https://www.escr-net.org/corporateaccountability/corporatecapture>> accessed 30 June 2023.

⁵⁶ Investor Alliance for Human Rights (IAHR), ‘Corporate Capture’ <<https://investorsforhumanrights.org/corporate-capture>> accessed 30 June 2023.

⁵⁷ Anonymous interviewee, Interview conducted on 10 March 2023 via Zoom.

accountability. This can be seen through the inherent power asymmetries, conflicts of interest, lack of issuer negotiation power and lack of regulatory frameworks.

Credit rating agencies have an enormous influence on market expectations and the lending decisions of both public and private investors.⁵⁸ They are meant to act as a bridge between lenders and borrowers by ‘reducing the information asymmetry’ and providing investors with objective, independent and expert information about whether bond and debt instrument issuers (i.e. borrowers) can meet their obligations.⁵⁹ Therefore, they play a crucial role in ensuring that a state’s accumulation of sovereign debt is responsible, sustainable and manageable. If states are evaluated incorrectly, they may overborrow, which could lead to inflation, heavy debt service burdens, and an unsustainable fiscal deficit.⁶⁰ Currently, three international credit rating agencies—Standard & Poor’s, Moody’s Investors Service, and Fitch Ratings—control over 92% of the global market and over 94% of outstanding credit ratings.⁶¹ According to Yuefen Li, the former Independent Expert on Foreign Debt and Human Rights, these credit rating agencies suffer from inherent structural defects, such as an oligarchy over ratings, conflicts of interest, ideological bias and a lack of transparency and accountability.⁶²

For example, assessments conducted by credit rating agencies privilege deregulation and ‘business friendly’ economic environments, regardless of the impact this might have on debt dynamics.⁶³ Agencies also use an ‘issuer pay’ model, where they provide rating judgments directly to the clients who pay them for their assessments.⁶⁴ Some credit rating agencies are also involved in designing and selling investment products and instruments, meaning that they profit from having lenders invest. Therefore, ‘credit rating agencies have, in many cases, been paid for positive ratings’.⁶⁵ This conflict of interest clouds the objectivity of the agencies and can result in inaccurate or misleading rating statements.⁶⁶ Thus, the priority of credit rating agencies to maximise investment and capital gains can compromise the economic development and sustainability of borrowing states. This creates an environment of ‘a self-fulfilling prophecy of debt crises,’ undermining the efforts of governments to utilise funding and affecting peoples’ livelihoods.⁶⁷ Additionally, if states default on their payments and have their credit ratings downgraded,

⁵⁸ Independent Expert on Foreign Debt and Human Rights, ‘Debt relief, debt crisis prevention and human rights: the role of credit rating agencies’ (17 February 2021) A/HRC/46/29, [1].

⁵⁹ *ibid* [20].

⁶⁰ *ibid* [22].

⁶¹ *ibid* [27].

⁶² *ibid* [26].

⁶³ United Nations Conference on Trade and Development, ‘Credit Rating Agencies: Just Status?’ (November 2015) Policy Brief no 39.

⁶⁴ Independent Expert on Foreign Debt and Human Rights (n 58) [30].

⁶⁵ *ibid*.

⁶⁶ *ibid*.

⁶⁷ *ibid* [40].

they risk losing the necessary financing for social protection, food, health, education, and measures to tackle poverty and inequalities.⁶⁸

Private lending from corporations, firms and wealthy individuals has always been a major source of sovereign financing. Since the 1980s, the prevalence has shifted to the use of bonds as financial instruments for issuing debt.⁶⁹ Borrowers issue bonds to raise money from private investors with the promise to pay a specified interest rate for a set period.⁷⁰ Therefore, a state's sovereign debt is treated like any other private investment geared towards maximising profit and returns. The investor receives interest payments throughout the life of the bonded loan and then retains the principal amount once the bond period ends.⁷¹ The use of bonded loans as debt instruments raises two key risks for the borrower. First, due to the ability to make quick negotiations and transactions on electronic platforms, bonds can be sold in massive amounts within just a few seconds.⁷² This poses a significant danger to the reputation and sustainability of the issuing state's debt accumulation.⁷³ Secondly, once a bond is issued, it becomes extremely difficult to restructure the terms of the loans, and the interest rates may be subject to international market values.⁷⁴ This can easily turn bonded loans that were issued responsibly into unsustainable debt burdens if there is an unpredictable change in global interest rates or a state's financial circumstances. Therefore, the ease with which private lenders can purchase and exchange sovereign debt as a commodity poses serious risks to the borrowing country.

The risks of this 'tradeable debt model' become clear when analysing vulture funds.⁷⁵ Vulture funds refer to private hedge funds that purchase distressed debt significantly below its face value, refuse to participate in debt restructuring, and seek to recover the full amount by suing the borrowing country.⁷⁶ When a country is at risk of defaulting, and it looks like it cannot repay its debt, investors sell their debt for 'pennies on the dollar'.⁷⁷ Vulture funds swoop in to purchase these debts at discounted rates and then use legal mechanisms to enforce their credit claims and sue debtor countries for a full recovery.⁷⁸ On

⁶⁸ *ibid* [10].

⁶⁹ Mauro Megliani, 'Private Loans to Sovereign Borrowers' in Ilias Bantekas and Cephas Lumina (eds), *Sovereign Debt and Human Rights* (OUP 2018) 83.

⁷⁰ *ibid* 74-76.

⁷¹ *ibid*.

⁷² *ibid* 83.

⁷³ *ibid*.

⁷⁴ *ibid*.

⁷⁵ African Development Bank Group, 'Vulture Funds in the Sovereign Debt Context' <<https://www.afdb.org/en/topics-and-sectors/initiatives-partnerships/african-legal-support-facility/vulture-funds-in-the-sovereign-debt-context>> accessed 30 June 2023.

⁷⁶ Human Rights Council, 'Draft Final Report of the Human Rights Council Advisory Committee on the Activities of Vulture Funds and the Impact on Human Rights' (8 February 2019) A/HRC/33/54 [8].

⁷⁷ Charles Ebikeme, 'Why a Court in New York is Deciding the Future of African Debt' (*The Continent*, 3 June 2023) <https://www.thecontinent.org/files/uqd/287178_ab0e62879ab54e8e818707869634631c.pdf> accessed 30 June 2023.

⁷⁸ *ibid*.

average, vulture funds recover three to twenty times their investment, claiming the full value of the debt, interest payments, legal fees and penalties for delayed payment where necessary.⁷⁹ The IMF estimates that in some cases, the claims by vulture funds can constitute 12-13% of a country's gross domestic product.⁸⁰ Further, the African Development Bank reported that judgments in favour of vulture funds have yielded nearly \$1 billion in payouts.⁸¹ States could have otherwise used these payments to help fund education, healthcare, adequate housing or essential services. Thus, by preying on highly indebted poor countries, vulture funds constrain social investment and hinder the fulfilment of human rights. There have been limited attempts to enact national laws that regulate and restrict vulture funds from taking advantage of domestic courts to sue debtors.⁸² This means that vulture funds can 'shop' for judicial systems that lack regulation and are more likely to result in favourable outcomes.⁸³

4.2 International Financial Institutions and Neoliberal Policies

IFIs such as the IMF, the World Bank and other regional development banks have been criticised for their neoliberal policies and lack of human rights considerations.⁸⁴ While these institutions are meant to support countries that require financial support, they often neglect their responsibility to ensure that their lending and programmes do not violate human rights. For example, the debt sustainability analyses from the IMF and the World Bank focus primarily on the borrowing state's ability to pay back its sovereign debt without resorting to exceptional financing.⁸⁵ According to the IMF and the World Bank, debt can be regarded as sustainable if the debt can be serviced and 'would not require a major future correction in the balance of income and expenditure'.⁸⁶ This framework completely neglects any consideration of a country's ability to maintain social spending and allocate financing and resources to the fulfil economic, social and cultural rights.

⁷⁹ African Development Bank Group (n 75); Human Rights Council (n 76) [8].

⁸⁰ Ibid.

⁸¹ African Development Bank Group (n 75).

⁸² Human Rights Council (n 76) [34]; Tim Jones, 'France Passes Law to Clip Vulture Funds' Wings' (*Debt Justice*, 21 March 2017) <<https://debtjustice.org.uk/blog/france-passes-law-clip-vulture-funds-wings#:~:text=Companies%20prevented%20from%20seeking%20large,a%20debt%20they%20bought%20cheaply>> accessed 30 June 2023; Lucas Wozny, 'National Anti-Vulture Funds Legislation: Belgium's Turn' (2017) 2 *Columbia Law Review* 697 <<https://doi.org/10.7916/cblr.v2017i2.1722>> accessed 30 June 2023.

⁸³ Human Rights Council (n 76) [8].

⁸⁴ Independent Expert on Foreign Debt and Human Rights, 'Integrating Human Rights into Debt Policies and Debt Sustainability Analyses to Counter New Debt Vulnerabilities: Report' (5 August 2016) A/71/305.

⁸⁵ Ibid [82].

⁸⁶ Ibid [82]; International Monetary Fund, 'Modernizing the Framework for Fiscal Policy and Public Debt Sustainability Analysis' (5 August 2011) 6 <<https://www.imf.org/external/np/pp/eng/2011/080511.pdf>> accessed 30 June 2023.

In addition to the lack of human rights assessments, IFIs often impose conditionalities on their loans that promote neoliberal practices and result in human rights violations.⁸⁷ According to Juan Pablo Bohoslavsky and Francisco Cantamutto:

The IMF, which considers itself above human rights, has been a central institutional vehicle in [increasing inequalities] through its credits and conditionalities that regularly translate into violations of the human rights of debtor states' populations.⁸⁸

In a 2019 report, the Independent Expert on the Effects of Foreign Debt noted that 'conditionalities are often imposed and are not necessarily negotiated with borrower states, not to mention their populations'.⁸⁹ IFIs widely promote conditionalities such as structural adjustment, privatisation and austerity measures despite 'the actual and potential consequences on a wide range of human rights'.⁹⁰ Regarding privatisation, the Independent Expert noted in his conclusions that it 'directly undermines the viability of the public sector and redirects government funds to subsidies and tax breaks for corporate actors'.⁹¹ Furthermore, privatisation prioritises 'profit seeking corporate actors' over human rights standards in providing public goods such as education, healthcare and essential services.⁹² Privatisation as a conditionality can therefore undermine a government's ability to use the maximum available resources for the fulfilment of economic, social and cultural rights.⁹³

Concerningly, the volume and scope of IMF conditionalities have been expanding over the years.⁹⁴ In the 2018 IMF Review of Programme Design and Conditionality, it was found that there was a marked increase in the number of structural conditions in programmes between 2011 and 2017.⁹⁵ Further, 23 out of 26 IMF loan programmes that were approved between 2016 to 2017 were conditional on fiscal

⁸⁷ Juan Pablo Bohoslavsky and Francisco Cantamutto, 'Not Even with a Pandemic: The IMF, Human Rights, and Rational Choices Under Power Relations' (2022) 44 Human Rights Quarterly 759 <<https://doi.org/10.1353/hrq.2022.0045>> accessed 30 June 2023.

⁸⁸ *ibid.*

⁸⁹ UN Independent Expert on Foreign Debt and Human Rights, 'Report on Responsibility for complicity of international financial institutions in human rights violations in the context of retrogressive economic reforms' (16 July 2019) A/74/178 [84].

⁹⁰ *ibid* [45].

⁹¹ *ibid* [82]

⁹² *ibid* [81]-[85].

⁹³ Aoife Nolan, 'Privatization and Economic and Social Rights' (2018) 40 Human Rights Quarterly 815 <<https://doi.org/10.1353/hrq.2018.0047>> accessed 30 June 2023; Special Rapporteur on Extreme Poverty and Human Rights, 'Extreme Poverty and Human Rights' (26 September 2018) A/73/396.

⁹⁴ Independent Expert on Foreign Debt and Human Rights (n 89) [84].

⁹⁵ *Ibid* [24]; International Monetary Fund, '2018 Review of Program Design and Conditionality' (20 May 2019) Policy Paper No 2019/012.

consolidation.⁹⁶ The impact of consolidation and austerity measures will be explored further in section 4.4.

In the absence of an alternative global mechanism to respond to debt crises, countries that require financial assistance have weak negotiation power in the terms and conditions of the loans they are receiving.⁹⁷ The IMF and the World Bank are effectively ‘lenders of last resort’, and thus have a large influence over borrowing states.⁹⁸ This asymmetrical power dynamic between IFIs and borrower states results in unilateral decision-making by the IFIs, thus, posing a major threat to the enjoyment of economic, social and cultural rights.⁹⁹

Therefore, there is a need to explore structural reforms and alternatives to the current neoliberal sovereign debt model. According to Julieta Rossi, discussions are already happening at the international level around the need to reform the debt architecture, the development model and neoliberalism.¹⁰⁰ Rossi sees this as a positive step but acknowledges that there is a difficult relationship between the political arena of the IMF and human rights organs.¹⁰¹ As noted by multiple interviewees, calls for structural reforms and alternatives require strong political will and collective action. According to Juan Pablo Bohoslavsky:

Politics and global factors change everything. There are many stakeholders and there is space to explore non-orthodox alternatives. If we believe that nothing can be changed, nothing will change.¹⁰²

Under the current sovereign debt model, human rights will continue to be put at risk. The international community, states and stakeholders urgently need to explore alternatives to the neoliberal sovereign debt model and take collective action against irresponsible lenders and actors that contribute to unsustainable debt burdens. The next section will provide a case study of the sovereign debt crisis in Greece and highlight how IFIs, such as the IMF and EU bodies, protect private economic actors and promote neoliberal policies at the expense of human rights.

⁹⁶ Gino Brunswijck, ‘Unhealthy Conditions: IMF Loan Conditionality and its Impact on Health Financing’ (*European Network on Debt and Development*, 20 November 2018) <<https://www.eurodad.org/unhealthy-conditions>> accessed 30 June 2023.

⁹⁷ Independent Expert on Foreign Debt and Human Rights (n 89) [16].

⁹⁸ *ibid.*

⁹⁹ *ibid.*

¹⁰⁰ Julieta Rossi, Professor at the University of Buenos Aires/Director and Professor and the Master Programme on Human Rights at the National University of Lanús (UNLa), Interview on 11 May 2023 via Zoom.

¹⁰¹ *ibid.*

¹⁰² Juan Pablo Bohoslavsky, Researcher at CONICET-UNRN (Argentina), Interview on 17 March via Zoom.

4.3 Greece: The IMF and EU Prioritising the Protection of Irresponsible Lending by Private Banks

Following Greece's adoption of the euro in 2001, European banks and foreign lenders—mainly German and French banks—began lending to the Greek government.¹⁰³ These private actors looked to take advantage of countries with weaker economies by lending significant amounts of money with the goal of boosting trade and increasing exports from the European core¹⁰⁴ to Greece.¹⁰⁵ In his 2016 book, Yanis Varoufakis described the suddenness and force with which European banks went on a 'lending spree' and could charge much higher interest rates in emerging economies such as Greece.¹⁰⁶ Thus, banks and financial institutions profited from Greece's debt servicing, while the economies and corporations from the European core made money from exporting goods and services.

The accumulation of private debt in Greece continued into the 2008 global financial crisis, as the Greek government had to continue borrowing to cope with a fall in revenues and a need for higher government spending.¹⁰⁷ By the end of 2009, Greece owed over €160 billion to foreign lenders.¹⁰⁸ Approximately half of this private debt was owed to creditors in just two countries—€50 billion to banks in France and €30 billion to banks in Germany.¹⁰⁹ Private lenders from the United States, the United Kingdom and the Netherlands were also significant creditors, collectively lending approximately €30 billion.¹¹⁰ According to the Truth Committee on the Greek Public Debt, 'the debt to private creditors should be considered illegal because private banks conducted themselves irresponsibly... major private creditors were aware that these debts were not incurred in the best interests of the population but rather for their own benefit'.¹¹¹

¹⁰³ Debt Justice, 'The Greek Debt Crisis: A Case of Banks Before People' <<https://debtjustice.org.uk/countries-in-crisis/greek-debt-crisis-case-banks-people>> accessed 30 June 2023.

¹⁰⁴ The European core refers to states that have stronger and more stable economies than states in the European 'periphery'. At the time of Greece's entry into the Eurozone, the European core consisted primarily of Germany, France, Austria and Belgium. Corrado Macchiarelli and Nauro Campos, 'A History of the European Core and its Periphery: How an Optimal Currency Area Forms' (*Centre for Economic Policy Research*, 12 March 2018) <<https://cepr.org/voxeu/columns/history-european-core-and-its-periphery-how-optimal-currency-area-forms>> accessed 30 June 2023.

¹⁰⁵ Eric Toussaint, 'Banks are Responsible for the Crisis in Greece: Debts Claimed from Greece are Odious' (*Committee for the Abolition of Illegitimate Debt*, 9 January 2017) <<http://www.cadtm.org/Banks-are-responsible-for-the>> accessed 30 June 2023.

¹⁰⁶ *ibid*; Yanis Varoufakis, *And the Weak Suffer What They Must? Europe's Crisis and America's Economic Future* (Nation Books 2016) 147-148.

¹⁰⁷ Debt Justice (n 103).

¹⁰⁸ Reuters, 'France, German Banks Lent Most to Greek Borrowers-BIS' (22 April 2010) <<https://www.reuters.com/article/banks-lending-greece-idUSLDE63L0ZA20100422>> accessed 30 June 2023.

¹⁰⁹ *ibid*.

¹¹⁰ *ibid*.

¹¹¹ Truth Committee on the Greek Public Debt, 'Executive Summary of the Report from the Debt Truth Committee' (17 June 2015) <<https://www.cadtm.org/Executive-Summary-of-the-report>> accessed 30 June 2023.

In 2010, Greece could not afford to service its debt and was at risk of defaulting—which would have caused serious problems for foreign lenders and creditors. Therefore, rather than having private banks and financial institutions suffer, the IMF, European Commission and European Central Bank joined together to bail out Greece. Throughout 2010-2015, the IMF and EU institutions rolled out two financial assistance programmes¹¹² and purchased some bonds on the private market, resulting in €252 billion being lent to the Greek government.¹¹³ According to research conducted by Debt Justice:

Of this [€252 billion], €34.5 billion of the bailout money was used to pay for various ‘sweeteners’ to get the private sector to accept the 2012 debt restructuring. €48.2 billion was used to bailout Greek banks following the restructuring, which did not discriminate between Greek and foreign private lenders. €149.2 billion has been spent on paying the original debts and interest from reckless lenders. This means less than 10% of the money has reached the people of Greece.¹¹⁴

The IMF–EU bailout—which effectively shifted private debt into public debt—prioritised protecting private foreign banks that lent irresponsibly over the well-being and human rights of the people of Greece.¹¹⁵ According to Ronald Janssen, the beneficiaries of the bailout were not the citizens of Greece, who will suffer from severe budget cuts and recession, but rather the banks, insurance companies and pension funds of the European core and abroad.¹¹⁶

The economic crisis and lack of available public expenditure increased poverty and inequality,¹¹⁷ unemployment,¹¹⁸ and homelessness.¹¹⁹ Moreover, these loans came with strict fiscal conditions. Measures ranged from laying off over 125,000 public servants,¹²⁰ wage and pension cuts,¹²¹ tax reforms, other public spending cuts, and privatising state services.¹²² The cycle of debt accumulation, fiscal

¹¹² The Greek Loan Facility (GLF) and IMF programme in 2010-2011 and the European Financial Stability Facility (EFSF) and IMF programme in 2012-2015. European Stability Mechanism, ‘Greece: Programme Timeline for Greece’ <<https://www.esm.europa.eu/assistance/greece>> accessed 30 June 2023.

¹¹³ Tim Jones, ‘Six Key Points About Greece’s Debt’ (*Debt Justice*, 26 January 2015) <https://debtjustice.org.uk/report/six-key-points-greek-debt-weeks-election#_edn2> accessed 30 June 2023.

¹¹⁴ *ibid.*

¹¹⁵ Ronald Janssen, ‘Greece and the IMF: Who Exactly is Being Saved?’ (*Centre for Economic and Policy Research*, July 2010) 6 <<https://cepr.net/documents/publications/greece-imf-2010-07.pdf>> accessed 30 June 2023; Eric Toussaint (n 105).

¹¹⁶ Ronald Janssen (n 115) 6.

¹¹⁷ Amnesty International, ‘Resuscitation Required: The Greek Health System After a Decade of Austerity’ (28 April 2020) 17-18 <<https://www.amnesty.org/en/documents/eur25/2176/2020/en/>> accessed 30 June 2023.

¹¹⁸ *ibid* 18-19.

¹¹⁹ *ibid* 20.

¹²⁰ Eurofound, ‘Greece: Reducing the Number of Public Servants – Latest Developments’ (23 June 2016) <<https://www.eurofound.europa.eu/publications/article/2016/greece-reducing-the-number-of-public-servants-latest-developments>> accessed 30 June 2023.

¹²¹ *ibid.*

¹²² European Commission, ‘The Economic Adjustment Programme for Greece Fourth Review – Spring 2011’ (July 2011) Occasional Papers 82, 31; European Commission, ‘The Second Economic Adjustment Programme for Greece Fourth Review – April 2014’ (April 2014) Occasional Papers 192, 26.

consolidation, and neoliberal policies such as privatisation has continued in Greece ever since. For example, a third loan assistance programme, the 2015-2018 European Stability Mechanism (ESM), disbursed a further €61.9 billion and required economic adjustment reforms that specifically advocated for further privatisation of public services such as healthcare.¹²³

The health sector has been significantly impacted by fiscal reforms and increasing privatisation since 2009. In 2017, Greece spent €1,650 per capita on health care, over one-third less than the EU average.¹²⁴ Further, 59% of health spending was publicly funded, while out-of-pocket spending (35%) was more than double the EU average.¹²⁵ These expenditure cuts have resulted in a system that has been labelled a 'humanitarian emergency' by local doctors,¹²⁶ suffering from understaffing, long wait periods, shortages in basic supplies and medicine, and greater barriers to accessing free healthcare.¹²⁷ These conditions were exacerbated by COVID-19, which put significant stress on the system.¹²⁸

Despite these consequences, further privatisation continues. In December 2022, the Greek Parliament passed a law calling for even more privately paid doctors and surgeons to work as temporary staff with fewer employment rights than permanent staff.¹²⁹ Some politicians opposed this law because it 'totally dismantles the National Health System', which has already been weakened by the country's economic crisis and the pandemic.¹³⁰ The law has also been criticised for effectively increasing patients' barriers to accessing free health care and serving the profitability of large business groups.¹³¹

The situation in Greece illustrates the role of private lenders and IFIs in the accumulation of sovereign debt. It serves as an example of private banks and creditors lending irresponsibly and contributing to unsustainable debt burdens and economic crises. Further, the IMF and EU institutions have prioritised the protection of private actors and the promotion of neoliberal policies over states' human rights

¹²³ European Stability Mechanism, 'Post-Programme Surveillance Report on Greece, Autumn 2022' (22 November 2022) <<https://www.esm.europa.eu/news/post-programme-surveillance-report-greece-autumn-2022>> accessed 30 June 2023.

¹²⁴ Organisation for Economic Co-operation and Development (OECD) and European Observatory on Health Systems and Policies, 'State of Health in the EU: Greece Country Profile 2017' (*OECD Publishing*, 2017) 1 <<http://dx.doi.org/10.1787/9789264283404-en>> accessed 30 June 2023.

¹²⁵ *ibid.*

¹²⁶ William Kremer and Zeinab Badawi, 'Greece's Life-Saving Austerity Medics' (*BBC News*, 10 July 2013) <<https://www.bbc.co.uk/news/magazine-23247914>> accessed 30 June 2023.

¹²⁷ Amnesty International (n 117) 34.

¹²⁸ *ibid.* 30.

¹²⁹ Eurotopics, 'Greece: Controversial Healthcare Reforms' (6 December 2022) <<https://www.eurotopics.net/en/292941/greece-controversial-healthcare-reforms#>> accessed 30 June 2023; Keep Talking Greece, 'Privatization of Greece's Public Hospitals: Gov't Under Fire In- and Outside Parliament' (1 December 2022) <<https://www.keeptalkinggreece.com/2022/12/01/privatization-of-greeces-public-hospitals-govt-under-fire-in-and-outside-the-parliament/>> accessed 30 June 2023.

¹³⁰ *ibid.*

¹³¹ *ibid.*

obligations. This highlights the significant consequences for borrowing states that are provided with loans or credits that are not adequately assessed for human rights impacts before, during or after financial assistance.

4.4 Austerity Measures and the Fulfilment of Economic, Social and Cultural Rights

As discussed in section 4.2, IFIs often impose conditionalities on how borrowers structure the use of their debt financing. In fact, ‘fiscal consolidation is often among the conditions attached to loans, and it has been widely advised, promoted and even pushed by IFIs over the years’.¹³² According to Wolfgang Streeck, a consolidation state is:

...one that has managed to institutionalise a political commitment and build a political capacity never to default on its debt, projecting an uncompromising determination to place its obligations to its creditors above all other obligations.¹³³

This is achieved by cutting social spending to ‘balance budgets’.¹³⁴ This results in less resources being available to fulfil economic, social and cultural human rights.

Juan Pablo Bohoslavsky, the former Independent Expert on Foreign Debt and Human Rights, concluded in his report from 2019 that austerity measures do not contribute to economic recovery but instead have ‘negative consequences in terms of economic growth, debt ratios and equality, and routinely result in a series of negative human rights impacts’.¹³⁵ The adoption and scope of austerity measures have been increasing despite the lack of consultations and negotiations with borrowing states and affected communities.¹³⁶ In fact, by the end of 2021, austerity measures had become the ‘new normal’ and were measured to affect 5.6 billion people worldwide—or, in other terms, 75% of the world’s population.¹³⁷ This impact is projected to increase from 2022 and into 2023 with as many as 6.6 billion people estimated to be impacted.¹³⁸ These measures, which benefit the lenders and creditors, result in policy reforms such

¹³² Independent Expert on Foreign Debt and Human Rights (n 89) [45].

¹³³ Wolfgang Streeck, ‘The Rise of the European Consolidation State’ (*Max Planck Institute for the Study of Societies*, 2015) MPIfG Discussion Paper 15/1, 11.

¹³⁴ *ibid* 11-12.

¹³⁵ Independent Expert on Foreign Debt and Human Rights (n 89) 2.

¹³⁶ *ibid*.

¹³⁷ Bohoslavsky and Cantamutto (n 87) 760; Isabel Ortiz and Matthew Cummings, ‘Global Austerity Alert: Looming Budget Cuts in 2021-25 and Alternative Pathways’ (29 April 2021) 7 <<https://dx.doi.org/10.2139/ssrn.3856299>> accessed 30 June 2023.

¹³⁸ *ibid*.

as wage cuts, employment limits, privatisation of public services, and decreased funding for education and support services.¹³⁹ These spending cuts reduce people's access to human rights and disproportionately impact disadvantaged and marginalised groups that are particularly reliant on social support.¹⁴⁰ Furthermore:

Although austerity measures are thought to be temporary, their effects last far beyond the period of their effective implementation. Lessons learned from previous experiences, such as the imposition of structural adjustment programmes in various regions, including in South-East Asia, Latin America and sub-Saharan Africa a few decades ago, indicated that it could take up to 20 years to recover from the human rights impacts of austerity measures, resulting in an increase in inequalities and poverty.¹⁴¹

Overall, there have been many cases where austerity has resulted in retrogressive measures to economic, social and cultural rights. This can lead to higher unemployment, lower wages, and reduced access to education and healthcare. Therefore, the imposition on borrowing states to consolidate contradicts the economic development that sovereign debt is meant to finance. The next section will provide a case study on the impact of strict austerity measures in Chad and demonstrate how the prioritisation of debt repayment is highly consequential to the progressive realisation of human rights.

4.5 Chad: Austerity Measures, Retrogression, and the Violation of Human Rights

Chad has been facing an economic crisis and increasing debt burdens since 2015. The crisis was triggered by various factors, including a major drop in the global price of oil (a significant source of Chad's GDP),¹⁴² a lack of economic diversification,¹⁴³ issues of tax evasion and corruption,¹⁴³ and an oil-backed loan of over \$1 billion from a syndicate led by an Anglo-Swiss commodities trading company, Glencore.¹⁴⁴

¹³⁹ Independent Expert on Foreign Debt and Human Rights (n 89).

¹⁴⁰ *ibid* [51].

¹⁴¹ *ibid* [55]; Oxfam, 'A Cautionary Tale: The True Cost of Austerity and Inequality in Europe' (12 September 2013)

<https://www-cdn.oxfam.org/s3fs-public/file_attachments/bp174-cautionary-tale-austerity-inequality-europe-120913-en_1_1.pdf> accessed 30 June 2023.

¹⁴² International Monetary Fund, 'Chad: Third and Fourth Reviews Under the Extended Credit Facility Arrangement' (November 2016) IMF Country Report no 16/364, 4.

¹⁴³ Transparency International, 'Corruption perceptions Index 2022' (2022) 3

<https://images.transparencycdn.org/images/Report_CPI2022_English.pdf> accessed 30 June 2023 (Chad ranked 167 out of 180 countries for perceived levels of public sector corruption); World Economic Forum, 'The Africa Competitiveness Report 2017' (2017) 100 <https://www3.weforum.org/docs/WEF_ACR_2017.pdf> accessed 30 June 2023 (Corruption is second on Chad's 'most problematic factors for doing business').

¹⁴⁴ International Monetary Fund, 'Chad: Request for a Three-year Arrangement Under the Extended Credit Facility and Cancellation of the Current Arrangement—Debt Sustainability Analysis' (19 June 2017) IMF Country Report No 17/246, 2.

Glencore owns approximately one-third of Chad's \$3 billion external debt in the form of two oil-backed loans from 2013 and 2014.¹⁴⁵ In general, resource-backed loans have been criticised for their opaque terms and lack of transparency.¹⁴⁶

Furthermore, they are expensive and 'come with strings attached'.¹⁴⁷ For example, in 2016, 85% of Chad's oil proceeds were directed towards paying Glencore back¹⁴⁸ and by 2017, Chad's loan payments to Glencore had almost doubled due to fees and interest.¹⁴⁹ The agreement allows Glencore to sell Chad's national oil company's oil while being exempt from corporate income tax.¹⁵⁰ From the profits, operating expenses and debt servicing costs are deducted and whatever is leftover is then transferred to the Chadian government.¹⁵¹ This makes it likely that a significant portion of the oil and profits are routed outside of Chad, posing a threat to the sovereignty of resources and public assets.¹⁵² Further, Glencore has been involved in allegations of bribery and market abuse. In 2022, Glencore paid \$1 billion in settlements in the United States¹⁵³ and £280 million in the United Kingdom after pleading guilty to seven counts of bribery.¹⁵⁴ In total, it was found that Glencore paid \$29 million in bribes to gain preferential access to oil in 5 African countries.¹⁵⁵ It is important to note that these investigations did not include Chad. However, according to Global Witness, the role of commodity traders in sovereign debt makes the lending landscape more complex and oil-backed loans pose concerns about transparency, sovereignty and corruption.¹⁵⁶

¹⁴⁵ Mahamat Ramadane, 'Chad Agrees Debt Plan with Creditors, Including Glencore' (*Reuters*, 11 November 2022) <<https://www.reuters.com/world/africa/chad-agrees-debt-plan-with-creditors-including-glencore-says-minister-2022-11-11/>> accessed 30 June 2023.

¹⁴⁶ Scott Carpenter, 'Opaque Oil-Backed Loans Could Fuel Next African Debt Crisis' (*Forbes*, 29 February 2020) <<https://www.forbes.com/sites/scottcarpenter/2020/02/29/opaque-oil-backed-loans-could-fuel-next-african-debt-crisis/?sh=545cf4666b1e>> accessed 30 June 2023.

¹⁴⁷ Global Witness, 'Commodity Traders: Lenders of Last Resort for Africa's Oil-Producers' (3 July 2019) <<https://www.globalwitness.org/en/blog/commodity-traders-lenders-of-last-resort/>> accessed 30 June 2023.

¹⁴⁸ Global Witness, 'Hey, Big Lenders' (30 November 2018) <<https://www.globalwitness.org/en/blog/hey-big-lenders/>> accessed 30 June 2023.

¹⁴⁹ Global Witness (n 147).

¹⁵⁰ International Monetary Fund, 'Chad: Selected Issues' (August 2016) IMF Country Report No 16/275 [43].

¹⁵¹ Global Witness (n 147).

¹⁵² *ibid.*

¹⁵³ Jasper Jolly, 'Glencore to Pay \$1Bn Settlement Amid US Bribery and Markey Abuse Allegations' (24 May 2022) <<https://www.theguardian.com/business/2022/may/24/glencore-to-pay-1bn-settlement-amid-us-bribery-and-market-abuse-allegations>> accessed June 2023.

¹⁵⁴ Serious Fraud Office, 'Glencore to pay £280 million for "highly corrosive" and "endemic" corruption' (3 November 2022) <<https://www.sfo.gov.uk/2022/11/03/glencore-energy-uk-ltd-will-pay-280965092-95-million-over-400-million-usd-after-an-sfo-investigation-revealed-it-paid-us-29-million-in-bribes-to-gain-preferential-access-to-oil-in-africa/>> accessed 30 June 2023.

¹⁵⁵ *ibid.*

¹⁵⁶ Global Witness (n 147).

In addition to Chad's private debt with Glencore, country creditors and IFIs such as the IMF have also provided loans.¹⁵⁷ Though these economic actors were not directly involved in the design and implementation of austerity measures in Chad, their loans were often conditional on social spending cuts.¹⁵⁸ Between 2013-2017, Chad began implementing harsh austerity measures such as a 50% cut to the public healthcare budget,¹⁵⁹ a 22% reduction to primary and secondary education spending, and a 70% cut to the higher education budget.¹⁶⁰ These spending cuts exacerbated the existing issues in the public health and education sectors that emanate from years of under-investment.¹⁶¹ According to Amnesty International, neither the IMF nor Chadian authorities evaluated the human rights impacts of the austerity measures, which had retrogressive effects and did not comply with human rights obligations.¹⁶²

In the public health sector, reductions to the budget resulted in reduced access to emergency healthcare,¹⁶³ reduced availability of essential drugs and medical products,¹⁶⁴ and increased financial burdens for those who need to access healthcare.¹⁶⁵ For example, the budget for the emergency healthcare programme was reduced by 70% between 2013-2017, and the categories of emergencies covered by the programme were decreased from 45 to 5.¹⁶⁶ Furthermore, the Chadian health sector continuously faces shortages of essential medicines and products, including items from the World Health Organisation's Model List of Essential Medicines that are the minimum standard for a basic healthcare system.¹⁶⁷ Due to the spending cuts to emergency services and regular drug shortages, the out-of-pocket expenditure for Chadian citizens has increased since 2015.¹⁶⁸ This has a major impact on the safety and wellbeing of the public and has significant consequences for the most economically vulnerable. In interviews held by Amnesty International, doctors stated that the economic crisis and austerity measures have created an environment where patients are waiting until their health situations are becoming emergent before seeking care due to their inability to afford non-emergent services.¹⁶⁹ This demonstrates

¹⁵⁷ Mahamat Ramadane (n 145) China, France, India and Saudi Arabia are significant bilateral creditors; International Monetary Fund, 'Chad: First and Second Reviews Under the Extended Credit Facility Arrangement' (January 2023) IMF Country Report No 23/7.

¹⁵⁸ Amnesty International, 'Strangled Budgets, Silenced Dissent: The Human Cost of Austerity Measures in Chad (2018) 27 <<https://www.amnesty.org/en/documents/afr20/8203/2018/en/>> accessed 30 June 2023.

¹⁵⁹ *ibid* 33.

¹⁶⁰ *ibid* 43.

¹⁶¹ *ibid* 31; 42.

¹⁶² *ibid* 7.

¹⁶³ *ibid* 34-37.

¹⁶⁴ *ibid* 38-39.

¹⁶⁵ *ibid* 39-41.

¹⁶⁶ *ibid* 35.

¹⁶⁷ *ibid* 38; World Health Organisation, 'WHO Model List of Essential Medicines, 19th List' (April 2015).

¹⁶⁸ Amnesty International (n 158) 39.

¹⁶⁹ *ibid*.

that the spending cuts to public healthcare in Chad have resulted in retrogressive effects in relation to the right to health.

In the public education sector, austerity measures have reduced the funding, accessibility, and resourcing of primary and secondary education. According to the World Bank, Chad's public education system faces an 'uneven and suboptimal allocation of human and material resources'.¹⁷⁰ This is evidenced through the low levels of classroom materials, insufficient textbooks, and lack of teacher recruitment.¹⁷¹ Furthermore, parental financial contributions have significantly increased since the financial crisis compensate for the decreased social spending.¹⁷² Overall, the lack of resourcing and increased costs for parents has led to a system with low enrolment, low attendance, and high drop-out rates¹⁷³—especially for girls who face gender-specific barriers to education.¹⁷⁴ Beyond the primary and secondary education systems, university students have also had an increased financial burden. Chadian authorities have doubled the fee in public universities, introduced new registration fees, and cancelled a significant number of scholarships.¹⁷⁵ For many students, this makes the prospect of university education completely inaccessible. Retrogressive measures in the areas of primary, secondary, and higher education all violate the right to education, which can hinder the fulfilment of other human rights such as the right to self-determination, the right to work, and the right to an adequate standard of living.

In November 2022, Chad was the first country to reach an agreement under the Common Framework—a mechanism created by the G20 to help poor countries following the COVID-19 pandemic.¹⁷⁶ The agreement allows for the restructuring of Chad's external sovereign debt from all bilateral state lenders (China, France, India and Saudi Arabia) as well as Glencore.¹⁷⁷ However, this agreement does not reduce any of Chad's current debt. President of the World Bank, David Malpass, stated that he is 'deeply concerned' about the sustainability of Chad's debt due to the volatility of oil prices and the failure of creditors to make any debt cuts.¹⁷⁸ While the restructuring will help Chad from defaulting, this is not a long-term solution to Chad's ability to pay off its debts.

¹⁷⁰ The World Bank, 'International Development Association Project Paper on a Proposed Additional Grant and Restructuring' (2 June 2016) Report No PAD2408 [10].

¹⁷¹ *ibid*; Amnesty International (n 158) 43-44.

¹⁷² *ibid*.

¹⁷³ *ibid* 42.

¹⁷⁴ *ibid*.

¹⁷⁵ *ibid* 45-48.

¹⁷⁶ Mahamat Ramadane (n 157).

¹⁷⁷ *ibid*.

¹⁷⁸ *ibid*.

The situation in Chad illustrates the negative impact of high sovereign debt burdens and austerity measures on protecting and fulfilling human rights. Chad's sovereign debt, both private and public, was taken on without adequate human rights impact assessments. Therefore, to service debt and avoid defaulting, Chad has had to adopt very strict austerity measures. These measures have had retrogressive effects on economic, social and cultural rights, especially in relation to public health and education. The consequences of sovereign debt and austerity measures in Chad continue to impact citizens and violate human rights obligations.

5. Sovereign Debt and Climate Change

This chapter addresses the link between debt and climate change as manifestations of colonial neoliberal extraction of countries in the Global South by countries in the Global North. It then advocates for the use of transitional justice pillars of truth, justice, reparations and guarantees of non-recurrence to efforts aimed at achieving debt and climate justice.

5.1 Colonialism, Debt and Climate

The relationship between the debt and climate crises can be addressed by considering their common colonial origins. The period of European colonialism (15th-20th century) was characterised by domination, oppression, violence and resource extraction by European countries such as Britain and France.¹⁷⁹ Colonising countries were able to industrialise and develop rapidly by exploiting the wealth, labour and resources of colonised countries.¹⁸⁰ The prolonged, widespread and unsustainable scale of resource extraction and environmental degradation during this period made it extremely difficult for formerly colonised countries to develop, even after gaining independence. Furthermore, the economies of former colonies were modelled around exporting primary commodities 'in order to feed the industrial growth taking place in Europe'.¹⁸¹ As noted by Millet and Toussaint:

...during the 1950s and 1960s..., Third World subordination was mainly due to standard colonial practices which had not yet been abolished, or to a lack of control over the exploitation and pricing of the raw materials and agricultural products whose production and export they specialized in.¹⁸²

Newly independent Global South countries were also joining 'a deeply unequal global economy' designed to serve the interests of Global North countries.¹⁸³ These factors made it almost impossible for formerly colonised countries to develop without incurring debt from governments, banks and institutions in the Global North.¹⁸⁴

Furthermore, in some instances, newly independent countries were forced to resort to debt in order to compensate colonial rulers for loss of income. This was the case in Haiti, where France imposed a 150

¹⁷⁹ Colonialism and Debt (n 46) 3.

¹⁸⁰ *ibid.*

¹⁸¹ *ibid.* 5.

¹⁸² Damien Millet and Eric Toussaint, *Who Owes Who? 50 Questions About World Debt* (Zed Books Ltd 2004) 27.

¹⁸³ Colonialism and Debt (n 46) 5.

¹⁸⁴ *ibid.*

million francs indemnity as a precondition for recognising Haitian independence in 1825.¹⁸⁵ France justified this 'independence debt' as compensation for 'lost revenue from slavery'.¹⁸⁶ Under the threat of recolonisation, Haiti was forced to agree to the terms. Over the next century, Haiti had to take on multiple loans from French and other European banks to pay off its independence debt. The country's accumulation of subsequent debt over the years can therefore be traced back to France's indemnity, which set up the first free black republic for more than 100 years of resource depletion, underdevelopment, and impoverishment.

Although the period of European colonialism formally ended, debt has become an increasingly powerful tool of economic imperialism. As noted by Chimni:

Colonialism was followed by neocolonialism and is today succeeded by global imperialism. To put it differently, the need for capital to expand to non-capitalist spaces remains a reality in the twenty-first century... the economic sovereignty of Third World states is being relocated through international laws in international institutions that arguably constitute an emerging global state backed by the armed might of the advanced capitalist states, in particular the unrivalled military power of the United States'.¹⁸⁷

The legacies of the colonial origins of debt are sustained by the policies and practices of institutions such as the IMF, the World Bank and private banks within a global imperial order. For example, harsh loan conditionalities and prioritisation of debt repayments over resource allocation for ESCR may be viewed as relocating the economic sovereignty of Third World states to international institutions. Through these institutions, debt continues to be a manifestation of colonial neoliberal extraction.

With regard to climate change, the impacts of global warming have also been linked to the exploitation and depletion of resources during the colonial period. As noted by Bhambra and Newell:

Climate change has been brought about through the colonial processes implicated in the production and reproduction of those very inequalities: the colonial and racialised dispossessions that severed peoples' access to land and resources to sustain their livelihoods and set them to

¹⁸⁵ Council of Hemispheric Affairs, 'Justice for Haiti: Beyond Aid and Debt Forgiveness' (14 April 2010) <<https://coha.org/justice-for-haiti-beyond-aid-and-debt-forgiveness/>> accessed 30 June 2023.

¹⁸⁶ Mandy Boltax, Thomas Boulger and Tyler Miller, 'The Haitian Independence Debt: A Case for Restitution' (5 March 2021) Social Science Research Network <<https://dx.doi.org/10.2139/ssrn.3798802>> accessed 30 June 2023.

¹⁸⁷ B S Chimni, 'Capitalism, Imperialism, and International Law in the Twenty-First Century' (2012) 14 (1) Oregon Review of International Law 17, 20,24 <<https://core.ac.uk/download/pdf/36687201.pdf>> accessed 30 June 2023.

work in the plantations and factories that went on to drive extraction through industrial development.¹⁸⁸

European expansion during the colonial period was characterised by the extraction of the natural resources of their colonial empires, which was achieved by widescale deforestation and coal burning.¹⁸⁹ Western countries developed and generated their wealth from ‘a century of emissions and environmental degradation’ in formerly colonised countries, whose people continue to suffer the compounding injustices of the colonial era.¹⁹⁰ Climate justice movements have been pushing for world leaders to acknowledge the central role of colonialism in the disproportionate consequences of the current climate crisis.¹⁹¹ In 2022, scientists and officials from 195 governments officially recognised ‘colonialism not only as a driver of the climate crisis but also as an ongoing issue that is exacerbating communities’ vulnerability to it’.¹⁹² This acknowledgement was published in a report by the Intergovernmental Panel on Climate Change—the UN body that assesses the science related to climate change.¹⁹³

Although climate change is a global issue with global consequences, developing countries in the Global South suffer the most severe impacts despite having the least carbon emissions.¹⁹⁴ For example, although Africa is responsible for less than 4% of global greenhouse gas emissions, almost 60 million people suffer acute food insecurity due to severe drought in arid areas such as Ethiopia and Somalia.¹⁹⁵ Small Island Developing States are responsible for only 0.2% of global carbon dioxide emissions, yet more than 90% of the most damaging climate disasters since 2000 have been in these states.¹⁹⁶ These examples illustrate the disproportionate consequences of climate change for developing countries that are the least responsible for the climate crisis. As a result, proponents for climate justice demand that the

¹⁸⁸ Gurminder K Bhambra and Peter Newell, ‘More than a metaphor: ‘Climate Colonialism’ in Perspective’ (2022) 20 *Global Social Challenges Journal* 1, 4 <<https://doi.org/10.1332/EIEM6688>> accessed 30 June 2023.

¹⁸⁹ Mohamed Adow, ‘The Climate Debt: What the West Owes the Rest’ (2020) 99 (3) *Foreign Affairs* 60, 63 <<https://heinonline.org/HOL/P?h=hein.journals/fora99&i=466>> accessed 30 June 2023.

¹⁹⁰ *ibid* 60-63.

¹⁹¹ Yessenia Funes, ‘Yes, Colonialism Caused Climate Change, IPCC Reports’ (*The Frontline*, 4 April 2022) <<https://atmos.earth/ipcc-report-colonialism-climate-change/>> accessed 30 June 2023.

¹⁹² *ibid*.

¹⁹³ Intergovernmental Panel on Climate Change (IPCC), ‘Climate Change 2022: Impacts, Adaptation and Vulnerability’ (27 February 2022) <<https://www.ipcc.ch/report/sixth-assessment-report-working-group-ii/>> accessed 30 June 2023.

¹⁹⁴ Tess Woolfenden and Jerome Phelps, ‘Climate Justice Means Debt Justice’ (*Progressive International*, 8 October 2021) <<https://progressive.international/blueprint/eb2ebe24-1040-4226-9265-5eecd247c1ce-climate-justice-means-debt-justice/en>> accessed 30 June 2023.

¹⁹⁵ Nona Tamale and Adebayo Majekolagbe, ‘Debt, Climate Finance and Vulnerability: A Brief on Debt and Climate Vulnerable Countries in Africa’ (*African Sovereign Debt Justice Network*, 8 November 2022) <<https://www.afronomiclaw.org/sites/default/files/pdf/A%20Brief%20on%20Debt%20and%20Climate%20Vulnerable%20Countries%20in%20Africa.pdf>> accessed 30 June 2023.

¹⁹⁶ Jubilee Debt Campaign, ‘Climate Change, Debt & Disasters’ (2018) 4 <<https://jubileedebt.org.uk/wp/wp-content/uploads/2018/12/Drop-it-16-winter-2018-WEB.pdf>> accessed 30 June 2023.

corporations and governments of rich Global North countries pay the climate debt that is owed to the people of Global South countries.¹⁹⁷

Empirical evidence shows that 'countries with higher exposure to climate vulnerability incur a risk premium on their sovereign debt'.¹⁹⁸ A 2018 study on countries that are members of the Climate Vulnerable Forum (CVF) showed that borrowing by such countries cost more than \$62 billion in higher external interest payments over a ten-year period (2007-2016).¹⁹⁹ Furthermore, the study projected that additional interest payments due to climate vulnerability will increase to \$146-168 billion between 2019-2028.²⁰⁰ This means that developing countries that are more prone to experiencing the impacts of climate change, while having less capacity to tackle and adapt to these changes, pay additional interest on their sovereign debt. Therefore, debt and climate vulnerable (DCV) countries are subjected to higher interest rates that further increase their debt burdens.

DCV countries also have to spend more on fulfilling their debt repayment obligations rather than investing in climate mitigation and adaptation measures.²⁰¹ This was the case in Zambia, which is discussed in the following section. Additionally, to adequately deal with the impacts of climate disasters on economic, social and environmental rights, DCV countries rely on climate financing, a large proportion of which is in the form of loans.²⁰² As a result, climate financing significantly contributes to the debt burdens of such countries.

Furthermore, some highly indebted countries are attempting to diversify their economies through projects and activities that may increase carbon emissions and contribute to adverse climate change consequences. While permanent solutions to debt crises require systemic and holistic reform of the entire international debt architecture, these countries are attempting to partially alleviate their financial burdens and generate revenue for debt servicing. In doing so, it is important to consider the human rights and environmental impacts of planned economic activities and projects. For example, various research participants mentioned plans to diversify and boost Argentina's economy through oil, gas, and lithium

¹⁹⁷ Geoff Evans, 'A rising tide: Linking local and global climate justice' (2010) 66 *Journal of Australian Political Economy* 199, 202 <https://www.researchgate.net/publication/267864004_A_rising_tide_Linking_local_and_global_climate_justice> accessed 30 June 2023.

¹⁹⁸ Matthew Agarwala and others, 'Climate Change and Fiscal Sustainability: Risks and Opportunities' (2021) 258 *National Institute Economic Review* 28, 35-36 <<https://doi.org/10.1017/nie.2021.37>> accessed 30 June 2023.

¹⁹⁹ Bob Buhr and others, 'Climate Change and the Cost of Capital in Developing Countries: Assessing the Impact of Climate Risks on Sovereign Borrowing Costs' (UNEP, 2018) 11 <<https://wedocs.unep.org/20.500.11822/26007>> accessed 30 June 2023.

²⁰⁰ *ibid* 12.

²⁰¹ Tamale and Majekolagbe (n 195) 13.

²⁰² Woolfenden and Phelps (n 194).

exports through the Vaca Muerta Project.²⁰³ Two interviewees commented on the potential human rights and environmental impacts, noting that:

Environmental and social concerns in the oil, gas and lithium industries are severe and neo-colonialist methods of development. There are concerns over water scarcity, the land rights of indigenous communities, as well as how much money from these industries remains in the country.²⁰⁴

At the same time, international law affords states the right to exploit their own natural resources for development. As noted by Julieta Rossi (University of Buenos Aires & University of Lanús):

With inequalities continuing to increase, human rights movements should also focus on the economy. The Vaca Muerta project in Argentina could generate internal energy, and there is also the possibility of exporting the gas. The government and the people think it could improve the debt situation in the country. Despite climate concerns, it seems that it is not the position of the government to withdraw from the project because that is all they have. Developed countries are also not doing what they need to do to reduce emissions. The demand on developing countries is tricky when developed countries are not doing what they are supposed to do.²⁰⁵

As highly indebted states explore possible solutions to debt crises, it is therefore important that they reconcile or balance resource exploitation activities with their human rights and environmental protection obligations under international law.

5.2 Zambia: The Impact of Debt Burdens on Climate Change Adaptation and Mitigation

In September 2020, Zambia requested a six-month interest payments standstill on its Eurobonds, which have a combined value of \$3 billion.²⁰⁶ The Zambia External Bondholders Committee rejected this request, resulting in the government defaulting on its debt. The committee members— including

²⁰³ Michael Scott and Lucinda Elliott, 'Gas and mining boom to transform Argentina's economy, minister says' (*Financial Times*, 24 January 2023) <<https://www.ft.com/content/390c3f2e-9625-4fd4-95c7-526d4ab58a21>> accessed 30 June 2023.

²⁰⁴ Anonymous Interviewees, Interview conducted on 17 March 2023 via Zoom.

²⁰⁵ Julieta Rossi, Professor at the University of Buenos Aires/Director and Professor and the Master Programme on Human Rights at the National University of Lanús (UNLa), Interview on 11 May 2023 via Zoom.

²⁰⁶ Zambia Institute for Policy Analysis and Research, 'The Road to Zambia's 2020 Sovereign Default' (*Finance for Development Lab*, March 2023) 3-4

<https://findevlab.org/wpcontent/uploads/2023/03/Summary_Zambia_Debt_ZIPAR_17_03-1.pdf> accessed 30 June 2023.

corporations such as BlackRock and Ashmore Group—hold about 40% of outstanding Eurobonds.²⁰⁷ Additionally, while most of Zambia’s private lenders rejected the request, government lenders such as China suspended debt payments in 2020 and 2021.²⁰⁸

In 2021 Zambia applied for debt restructuring under the G20 Common Framework for Debt Treatment beyond the Debt Service Suspension Initiative (DSSI). The Common Framework sets out to ‘facilitate timely and orderly treatment for DSSI-eligible countries with broad creditors’ participation’.²⁰⁹ Since restructuring is limited to public debt owed to participating creditors under the framework, the private sector debt that triggered Zambia’s default is not part of the restructuring. After two years of slow negotiations, the debt restructuring process was concluded in June 2023 at the Global Finance and Climate Summit in Paris, France.²¹⁰ As part of the deal, some of Zambia’s creditors, led by China, agreed to restructure \$6.3 billion in loans. Additionally, the country’s debt ‘will be rescheduled over more than 20 years with a three-year grace period during which only payments on interest are due’.²¹¹ While private creditors are not obligated to partake in the restructuring of debt under the Common Framework, it is expected that Zambia’s private creditors will follow suit and reschedule the additional \$6.8 billion of debt owed to them.²¹²

With regard to climate change considerations during the debt restructuring process, in January 2023, the Zambia Ministry of Finance and Planning revealed that it received a debt-for-nature swap proposal by the World Wide Fund for Nature (WWF), which would ‘replace expensive loans with cheaper financing in order to avail money for the protection of fragile ecosystems’.²¹³ If adopted, such a proposal could have

²⁰⁷ Debtwire, ‘Republic of Zambia Government Special Report’ (*Merger Market*, 10 August 2020) 2 <<https://www.mergermarket.com/assets/Zambia%20Sovereign%20Report%20-%20FY19.pdf>> accessed 30 June 2023.

²⁰⁸ Debt Justice, ‘BlackRock could make 110% profit out of Zambia’s debt crisis’ (12 April 2022) <<https://debtjustice.org.uk/press-release/blackrock-could-make-110-profit-out-of-zambias-debt-crisis>> accessed 30 June 2023.

²⁰⁹ G20 and Paris Club, ‘Common Framework for Debt Treatments beyond the DSSI’ (2020) <https://clubdeparis.org/sites/default/files/annex_common_framework_for_debt_treatments_beyond_the_dssi.pdf> accessed 30 June 2023.

²¹⁰ Joseph Cotterill and others, ‘Zambia agrees ‘milestone’ debt relief plan with China and other creditors’ (*Financial Times*, 23 June 2023) <https://www.ft.com/content/e3b66798-1c5c-4c0c-8339-83a76e1e2c34?accessToken=zwaF_we_CfD4kdPitmeYHFxMDNODOYOnbh4sNA.MEYCIQDg6GkwbPA3Xsoa_LiZTf11E4izgQ1SOrLOY5KQO1WUwlhAKiilDcJKDes0ESU5bTIBMxiJxcnFFiCqCzzwSBOqXBL&sharetype=qift&token=75ce2f9b-9443-4bb4-9f6f-857ef1a3572e> accessed 30 June 2023.

²¹¹ Leigh Thomas, Jorgelina Do Rosario and Chris Mfula, ‘Zambia seals \$6.3 billion restructuring in breakthrough for indebted nations’ (*Reuters*, 23 June 2023) <<https://www.reuters.com/world/africa/zambia-seals-63-billion-debt-restructuring-deal-2023-06-22/>> accessed 30 June 2023.

²¹² Dingindaba Jonah Buyoya, ‘Zambian President Hichilema’s \$6bn debt deal hailed as ‘historic’ (BBC, 24 June 2023) <<https://www.bbc.co.uk/news/world-africa-65997830>> accessed 30 June 2023. *Reuters* (n 211).

²¹³ Marc Jones and Rachel Savage, ‘Zambia received ‘debt-for-nature’ proposal from WWF for restructuring’ (*Reuters*, 19 January 2023) <<https://www.reuters.com/world/africa/zambia-received-debt-for-nature-proposal-wwf-13-bln-restructuring-2023-01-18/#:~:text=Zambia%20received%20a%20%22debt%2Dfor,debt%20crises%20if%20eventually%20included>>> accessed 30 June 2023.

the double effect of alleviating part of the country's debt burden as well as providing some finances for climate change adaptation in Zambia. In the debt crisis of the early 1980s, debt-for-nature swaps were regarded as a method of promoting environmental protection in developing countries. However, in countries such as Bolivia and Costa Rica, the swaps alienated indigenous groups from their lands and displaced farmers.²¹⁴ Therefore, should a debt-for-nature swap project be implemented in Zambia, terms and exact measures would need to be carefully evaluated for human rights impacts and avoidance of fortress conservation models and land grabs that harm the rights of local communities in the country.

The prolonged debt restructuring process in Zambia meant that even after defaulting, the country still had to allocate significant portions of its budget to debt repayments. This has reduced the financing available to fund other sectors, including climate change adaptation and mitigation. The country's projected budget for debt servicing in both 2021 (\$1.55 billion) and 2022 (\$2.27 billion) exceeded the \$1.45 billion allocated for climate adaptation.²¹⁵ In 2021, the country topped a list of the world's most underreported crises due to acute food insecurity fuelled by the climate crisis.²¹⁶ In the same year, 60% of the population lived below the international poverty line (\$1.90 a day), and around 1.18 million people suffered acute food insecurity arising from climate events such as prolonged droughts, floods, and locust swarms.²¹⁷ Rather than allocating sufficient mitigation and adaptation finance to deal with these impacts of climate change, the Zambian government had to continue budgeting for its outstanding debt obligations as the debt restructuring negotiations had not yet been concluded at the time. As noted by Ceasar Katebe:

Debt repayment is impacting people and their livelihoods because the loans are not going towards fighting climate change or supporting vulnerable people. Restructuring debt needs to be done in such a way that countries like Zambia can be intentional about addressing their climate vulnerability. The government needs to make sure that there is more allocation of funds for the environment and climate for local communities to rely on and leverage on to address their needs. The climate has changed a lot, and people are not able to quickly adapt.²¹⁸

Even as Zambia is in the process of lowering its debt levels, the government has committed to mobilising resources for climate change mitigation and adaptation through 'green bonds and other innovative

²¹⁴ Maano Ramutsindela, 'National Parks and (Neo)Colonialisms' in Katharine Legun and others (eds), *The Cambridge Handbook of Environmental Sociology* (CUP 2020) 216; Nicole Hassoun, 'The Problem of Debt-for-Nature Swaps from a Human Rights Perspective' (2012) 29 (4) *Journal of Applied Philosophy* 359, 367 <<http://www.jstor.org/stable/24356189>> accessed 30 June 2023.

²¹⁵ Tamale & Majekolagbe (n 195) 13.

²¹⁶ CARE, 'The Most Under-Reported Humanitarian Crises of 2021' (13 January 2022) <<https://www.care-international.org/sites/default/files/files/MostUnderReportedHumanitarianCrisesof2021.pdf>> accessed 30 June 2023.

²¹⁷ *ibid* 6.

²¹⁸ Ceasar Katebe, Programmes Manager at Zambia Alliance of Women, Interview conducted on 6 April 2023 via Zoom.

climate finance sources'.²¹⁹ Between 2015 and 2022, 55% of the country's climate change adaptation funding was in the form of loans rather than grants.²²⁰ This suggests that for Zambia to meet its climate change adaptation goals between 2022-2026, it may have to incur more debt, increasing its debt burdens. It is, therefore, important that climate financing does not further increase the debt burdens of DCV countries.

The situation in Zambia indicates the need for countries' climate adaptation and mitigation needs to be factored into debt restructuring negotiations. Climate change-related events and disasters have the most severe impact on the lives and livelihoods of those living in poverty in DCV countries. Ceasar Katebe commented:

The type of conversation around debt restructuring needs to account for countries that are most impacted by climate change. Debt has a big role to play in the effects of climate change. Governments need to look at the availability of resources and need to reconsider renegotiating terms and repayment of loans. There is a need to facilitate negotiations and advocate for the rights of all people, especially women and children, who are most impacted by the effects of climate change, such as flash floods.²²¹

It is therefore important for Zambia and other DCV countries to be able to prioritise financing climate change adaptation and mitigation measures over debt repayments to public and private creditors. Furthermore, climate financing in DCV countries should be predominantly grants-based to enable the government to allocate sufficient resources to tackle the disproportionate and unequal consequences of climate change.

5.3 Applying Transitional Justice to Debt and Climate

The relationship between climate change and debt means that for DCV countries, any efforts geared towards debt justice must also include a climate justice dimension. An application of the transitional justice pillars of truth, justice, reparations, and guarantees of non-recurrence may be useful in exploring what kind of climate justice-inclusive reform is needed in the international debt architecture system for the achievement of debt justice.

²¹⁹ Zambia Ministry of Finance and National Planning, 'Eighth National Development Plan 2022-2026' (*Republic of Zambia: State House*, August 2022) 62 <<https://www.sh.gov.zm/wp-content/uploads/2022/09/EIGHTH-NATIONAL-DEVELOPMENT-PLAN-2022-2026-05-07-2022.pdf>> accessed 30 June 2023.

²²⁰ Tamale & Majekolagbe (n 195) 8.

²²¹ Ceasar Katebe, Programmes Manager at Zambia Alliance of Women, Interview conducted on 6 April 2023 via Zoom.

The scholarship and practice of transitional justice looks at ‘how societies “transitioning” from repressive rule or armed conflict deal with past atrocities... and how they create just systems so as to prevent future human rights atrocities’.²²² Although various factors have contributed to the debt and climate crises in formerly colonised countries, the extraction, exploitation, and depletion of resources during the colonial era is at the root of today’s debt and climate injustices. Thus, the pillars of transitional justice can be applied within the context of previously colonised nations that are both debt and climate vulnerable.

The first pillar of transitional justice is truth-seeking, which is geared towards investigating and collecting information about past human rights violations through non-judicial mechanisms such as truth commissions.²²³ In the context of climate and debt justice, truth seeking processes may help increase transparency regarding corporate influence in the prioritisation of debt repayment in DCV countries. Additionally, revealing and acknowledging the truth about the scale and extent of resource extraction and exploitation during the colonial period may be a form of accountability by Western countries.

The second pillar, justice, involves judicial mechanisms such as prosecution. There are limitations in seeking accountability through prosecution for both climate and debt injustices. Given that they are systemic injustices that have historical colonial roots but continue to occur under the current global economic system, legal punishment is unlikely to put an end to current and future debt and climate injustices. Some regard litigation and prosecution in the context of transitional justice and climate to be pushing ‘the limits of domestic and international law’ because of the ‘complex nature of indirect or systemic injustices and harms, such as socioeconomic rights abuses’.²²⁴ However, creative legislation on human rights-responsive judicial mechanisms can contribute to adequately redressing longstanding and emerging systemic debt and climate injustices. Additionally, such mechanisms would need to be complemented with other transitional justice mechanisms such as truth commissions and reparations.

Reparations in transitional justice refer to ‘measures to redress violations of human rights by providing a range of material and symbolic benefits to victims’.²²⁵ With regard to reparations for human rights violations committed in colonial contexts, Special Rapporteur Fabián Salvioli noted that:

²²² Charles T Call, ‘Is Transitional Justice Really Just?’ (2004) 11 (1) *Brown Journal of World Affairs* 101, 101 <<https://heinonline.org/HOL/P?h=hein.journals/brownjwa11&i=101>> accessed 30 June 2023.

²²³ Special Rapporteur on the Promotion of Truth, Justice, Reparation and Guarantees of Non-recurrence, ‘Transitional justice measures and addressing the legacy of gross violations of human rights and international humanitarian law committed in colonial contexts’ (19 July 2021) A/76/180 [33].

²²⁴ Sonja Klinsky, ‘Why Explore ‘Transitional Justice’ in the Climate Context?’ (*Climate Strategies*, November 2016) 3 <<https://climatestrategies.org/wp-content/uploads/2016/10/Why-Explore-Transitional-Justice-in-the-Climate-Context.pdf>> accessed 30 June 2023.

²²⁵ UN Office of the High Commissioner for Human Rights, ‘Reparations: OHCHR and Transitional Justice’ <<https://www.ohchr.org/en/transitional-justice/reparations>> accessed 30 June 2023.

Development aid is not genuine reparation, however, because it perpetuates and reinforces an economic and political system that is based on colonial hierarchies of submission. Reparations, by contrast, imply that the former colonizing power has a debt to the former colony.²²⁶

Therefore, in the context of climate-inclusive debt justice, genuine reparation should involve material and symbolic benefits that do not reinforce colonial legacies. For example, the climate debt owed by Global North countries to the people in the Global South can be redressed through climate finance in the form of grants. Currently, two-thirds of climate finance is in the form of loans with high interest rates.²²⁷ These cannot be considered genuine reparations because they increase the debt burdens of DCV countries rather than repair the harm caused. Furthermore, reparations for debt justice may include cancelling illegitimate debt incurred during repressive regimes, including the colonial period. Even in instances where debt was incurred after independence, there have still been demands for reparations for colonialism in the form of cancellation of debt owed by former colonies like Jamaica to its former colonial power, Britain.²²⁸

Finally, guarantees of non-recurrence in transitional justice mechanisms are aimed at institutional reforms to prevent future human rights violations. These reforms 'must attempt to change something fundamental in the structural, forward-oriented relationships between those who have traditionally benefitted from the existing patterns, and those who stand to lose'.²²⁹ For example, while redirecting debt payments towards climate financing may be beneficial, debt and climate justice can only be achieved if the non-recurrence of unsustainable debt cycles is guaranteed.²³⁰ This would require widescale reform of the current international debt architecture with the aim to prioritise people and the planet over profit. In conclusion, transition:

potentially opens the possibility for recognizing past economic injustice, confronting the role of multinational corporations or resource inequality in conflict and altering present or future inequality through redistribution.²³¹

²²⁶ Special Rapporteur on the Promotion of Truth, Justice, Reparation and Guarantees of Non-recurrence (n 223) [60].

²²⁷ Woolfenden and Phelps (n 194).

²²⁸ Barbara Blake-Hannah, 'King Charles needn't sell off the crown jewels in atonement for slavery- but Britain must waive Jamaica's debt' (*The Guardian*, 31 March 2023) <https://www.theguardian.com/news/commentisfree/2023/mar/31/king-charles-crown-jewels-slavery-jamaica-debt?CMP=Share_iOSApp_Other> accessed 30 June 2023.

²²⁹ Sonja Klinsky, 'An initial scoping of transitional justice for global climate governance' (2018) 18 (6) *Climate Policy* 752, 761 <<https://doi.org/10.1080/14693062.2017.1377594>> accessed 30 June 2023.

²³⁰ *ibid*; Adrian Fenton and others 'Debt relief and financing climate change action' (2014) 4 *Nature Climate Change* 650, 652 <<https://doi.org/10.1038/nclimate2303>> accessed 30 June 2023.

²³¹ Zinaida Miller, 'Effects of Invisibility: In Search of the 'Economic' in Transitional Justice' (2008) 2 (3) *The International Journal of Transitional Justice* 266, 272 <<https://doi.org/10.1093/ijtj/ijn022>> accessed 30 June 2023.

This quote illustrates the contribution that transitional justice can make in dealing with economic injustices. For DCV countries, transitional justice pillars and mechanisms can address human rights violations that arise from debt and climate injustices rooted in colonial legacies, as well as the influence of multinational corporations. If utilised, these mechanisms can offer various opportunities and avenues for seeking redress. Furthermore, transitional justice pillars have the potential of promoting transparency and accountability regarding the influence of Global North countries and their multinational corporations on debt policies in Global South countries. It is necessary for debt justice initiatives to be inclusive of climate justice. The common colonial origins and legacies of these injustices make it possible for a transitional justice paradigm to address human rights violations through a combined framework of truth, justice, reparations and guarantees of non-recurrence.

6. Conclusions

The current structure and operation of the neoliberal sovereign debt model continues to prioritise debt repayment to creditors at the expense of the human rights and environmental consequences for people living in low- and middle-income countries. Lack of transparency among private actors, IFIs and lending governments makes it difficult to evidence undue corporate influence on legislation and policies on debt, therefore limiting corporate responsibility and accountability. There is a need for key economic actors to publicise negotiations and policy decisions on debt imposition, assessment, terms, restructuring and other related processes.

Further, there is a significant gap in the current international, regional and domestic legal frameworks in which private economic actors are afforded rights and claims to recovering their loans, without being bound by human rights obligations. By escaping legal responsibility, private actors continue to contribute to human rights violations such as impermissible retrogressive effects to economic, social and cultural rights.

Recommendations and reforms to the current system attempt to balance power asymmetries between wealthy Global North countries and highly indebted Global South countries. However, these attempts are made and implemented within a historically unjust and oppressive system that prioritises corporate elites who reap the benefits of developmental needs in the Global South. The current global economic system does not sufficiently prioritise and protect the economic, social, cultural and environmental rights of people living in highly indebted and climate vulnerable countries. In making the recommendations and calls to action below, this report acknowledges the pressing need for complete, comprehensive, holistic and human rights-centred reform to the neoliberal sovereign debt model.

7. Recommendations

- 1) International, regional and national regulatory frameworks should be reformed to strengthen the obligations, responsibilities, and accountability of private actors such as multinational corporations, credit rating agencies, and vulture funds. This may consist of international and regional treaties that place human rights obligations on private actors, national laws that mandate institutions such as credit rating agencies to disclose their credit assessments, or national laws that restrict vulture funds from utilising domestic courts to sue indebted countries. These laws would need to be developed carefully and employ oversight and enforceability mechanisms at all levels.
- 2) Lenders and creditors should incorporate human rights obligations into debt sustainability analyses to ensure that debt servicing does not amount to impermissible retrogression in terms of the realisation of economic, social and cultural rights.
- 3) IFIs and regional development banks should ensure that human rights impact assessments are conducted before, during and after the implementation of financial assistance programmes.
- 4) Human rights impact assessments and sustainability analyses, as well as lender negotiations, terms, and conditionalities, should be made public to enhance disclosure and transparency.
- 5) Global North states should pay the climate debt owed to climate vulnerable Global South states through grant-based climate financing rather than loans, which contribute to high debt burdens.
- 6) Debt restructuring mechanisms, such as the Common Framework, should be reformed to mandate the participation of private sector creditors.
- 7) Debt and climate vulnerable countries should prioritise allocating resources towards tackling the adverse effects of climate events over debt servicing which fulfils the economic interests of creditors.
- 8) In cases where debt servicing results in impermissible retrogressive effects to economic, social and cultural rights, lenders and creditors should urgently renegotiate the terms and structure of the debt. This may include pausing debt payments, changing interest rates, or reducing/cancelling the sovereign debt to prioritise states' human rights obligations.

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