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**The Declining Efficacy of Paris and London Clubs: Making the African Case for a Hybrid
Framework for Sovereign Debt Restructuring**

Doreen Belinda Aleri

Submitted in partial fulfillment of the requirements for the Degree of Master of Laws at
Strathmore University



Nairobi, Kenya

June 2019

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Doreen Belinda Areri

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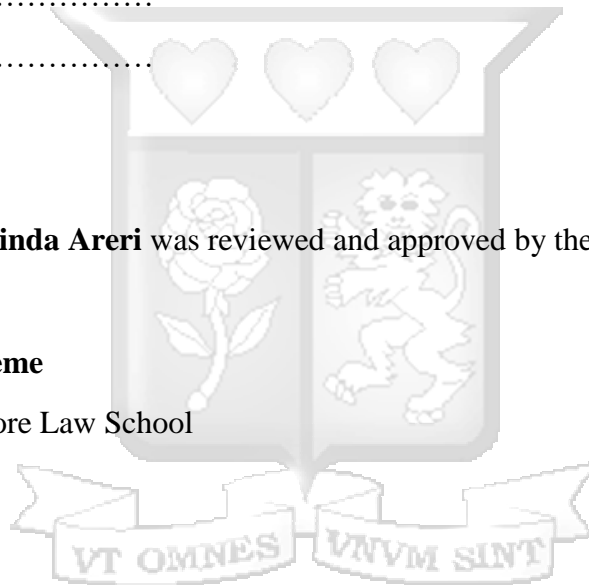
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ABSTRACT

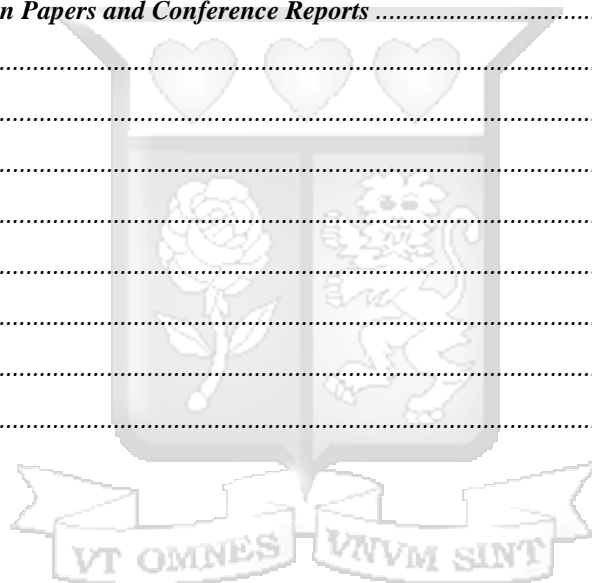
For a variety of reasons, such as enhancing economic growth, nations incur debts. For historical reasons, this is particularly true for African countries. Unfortunately, owing to a myriad of reasons like global financial crises, currency volatility and shortfall in revenue, at times these countries fall into difficulties in servicing their debts. During such times, the regime of insolvency provides a scenario where such debt may be rescheduled, or restructured, by altering the terms and periods of payment. Such debt restructuring mechanisms exist. The objective of the study was to investigate whether the existing mechanisms for sovereign debt restructuring are efficient. It also sought to evaluate whether debt held by African countries is distinguishable from that of other countries, and if so, whether the existing mechanisms for debt restructuring ought to take this into account when restructuring debt. The research was centered on desk research with sources of information including books, as well as journal articles, reports and working papers, documents issued by the government of African countries and international financial institutions such as the World Bank and the IMF. The study explored the questions raised through two conceptual frameworks: the creditor bargain theory, and the value based theory. It undertook an examination of the debt situation in Africa by examining the historical context within which African economies evolved, as well as current continent specific concerns, and found that indeed, the debt held by African countries, as well as the overall debt situation, is distinguishable from that of other regions. It also considered the current debt restructuring mechanisms and concluded that they are indeed inefficient for debt restructuring, and even more so, in restructuring debt held by African countries. While appreciating that there are reforms underway to correct the insufficiencies of the current mechanisms, the study concluded that these reforms were fundamentally inefficient for their purpose. It considered the creation of a framework that incorporates existing and proposed reforms, to come up with a system that is comprehensive for debt restructuring. It concluded that such a system was a suitable replacement for the existing mechanisms, especially for African countries. The study drew to a close by recommending that a multilateral effort be put into creating such a mechanism. It further recommended that debt sustainability measures be undertaken to curb incidences of debt distress in African countries.

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LIST OF ACRONYMS

AU	African Union
AfDB	African Development Bank
DRC	Democratic Republic of Congo
HIPC	Heavily Indebted Poor Countries
IFC	International Finance Corporation
IMF	International Monetary Fund
IFIs	International Financial Institutions
KNBS	Kenya National Bureau of Statistics
MDRI	Multilateral Debt Relief Initiative
MEFMI	Macroeconomic and Financial Management Institute of Eastern and Southern Africa
OECD	Organization for Economic Co-operation and Development
UN	United Nations
UNCTAD	United Nations Conference on Trade and Development
US	United States of America
UNGA	United Nations General Assembly
SDRM	Sovereign Debt Restructuring Mechanism
CPIA	Country Policy and Institutional Assessment



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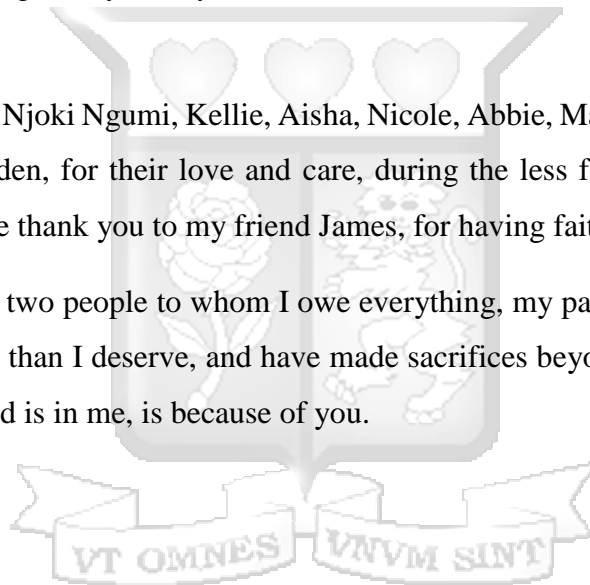
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Finally, thank you, to the two people to whom I owe everything, my parents, Kellan and George. You have given me more than I deserve, and have made sacrifices beyond comprehension. Mum and Dad, whatever is good is in me, is because of you.



DEDICATION

To my mother, the tenderest part of my heart; my forever home. This is for you and for me.



CHAPTER ONE: INTRODUCTION

1.1. Background

1.1.1. Why does Africa borrow¹?

Africa's debt uptake is informed by a variety of reasons. Chief among them, is to finance her countries' considerable developmental needs. There exists historical context to Sub-Saharan Africa²'s uptake of debt. To begin with, Sub-Saharan Africa's debt traces its roots to colonialism. It has indeed been argued that the foundations of Africa's debt crisis was set during the colonial period³.

A key pillar of colonialism was economic subjugation⁴, by requiring Africans to relinquish control of local economies. Robust and sustainable production methods, and strengthening the economy were sacrificed as a result of this, owing to the need by colonial powers to receive maximum economic benefit from the subject African nation at the least possible price⁵. Subsequent to the departure of colonial powers, this situation was not improved. One of the key legacies of colonialism was that colonial African economies, as a result of colonial overemphasis on single cash crop production, prioritized the production of few agricultural products for consumption in global markets⁶.

A further result of this distortion of African trading and production systems resulted in some defects, like over-reliance on imports, the high concentration on few commodities, increased instability of exports earning, as well as crises in making payments⁷. This necessitated borrowing to supplement domestic resources⁸. Another driver of Africa's borrowing has been presented as

¹ For ease of reference, 'Africa' herein will be used to refer to her countries.

² The investigation will be restricted to Anglophone countries owing to language limitations.

³ Omotola J, Sailu H, '*Foreign aid, debt relief and Africa's developments: Problems and prospects*' South African Journal of International Affairs (2009), 91

⁴ Settles JD, 'The impact of colonialism on African economic development', Published thesis, University of Tennessee, 1996, p.8

⁵ Settles JD, 'The impact of colonialism on African economic development', Published thesis, University of Tennessee, 1996, p.6

⁶ Settles JD, 'The impact of colonialism on African economic development', Published thesis, University of Tennessee, 1996, 11

⁷ Omotola J, Sailu H, '*Foreign aid, debt relief and Africa's developments: Problems and prospects*' South African Journal of International Affairs (2009), 91

⁸ Brooks S, Lombardi D, Suruma E, '*African perspectives on sovereign debt restructuring*', CIGI's Global Economy Program, Kampala, 7 August 2014. Available at CIGI, 2

the decline in commodity prices particularly in the 1970s and after the global financial crisis of 2008⁹.

When commodity prices declined sharply, there was a clear downturn in industrial countries and governments did not react promptly to salvage the situation and African economies were unable to adjust accordingly¹⁰. As proceeds from African exports decreased, her countries were impelled to borrow to plug budget deficits¹¹. From a supply perspective, several economic and geopolitical factors have increased the probability of lending to African countries¹², and this includes but not limited to the fast growth of African markets, and the possibility of higher returns owing to a rapidly growing population, increased spending power of the populace and highly priced credit¹³.

More recently, Sub-Saharan Africa has been faced with poor leadership, which invariably leads to poor economic management, illicit financial flows, wasteful expenditure, as well as the misappropriation of borrowed funds by a rogue political class¹⁴. Poor governance in Sub-Saharan countries has also contributed to the rise in indebtedness. A prominent example is Mozambique, currently in debt distress owing to hidden loans issued by public companies, but guaranteed by the government; this has contributed to the increase in debt.¹⁵

Additionally, the uptake of odious debt (which makes reference to sovereign debt that has been incurred without the consent of the people in whose name it is taken, and does not benefit the said

⁹ Brooks S, Lombardi D, Suruma E, *'African perspectives on sovereign debt restructuring'*, CIGI's Global Economy Program, Kampala, 7 August 2014. Available at CIGI, 2

¹⁰ Humphreys C, Underwood J, "The external debt difficulties of Low-Income Africa", *Dealing with the Debt Crisis*, Washington DC, August 1989 (available on file with the World Bank)

¹¹ Were A, *Debt trap? Chinese loans and Africa's development options*, South African Institute of International Affairs, Policy Insights 66, August 2018, at 3

¹² Brooks S, Lombardi D, Suruma E, *'African perspectives on sovereign debt restructuring'*, CIGI's Global Economy Program, Kampala, 7 August 2014. Available at CIGI, 6

¹³ Were A, *Debt trap? Chinese loans and Africa's development options*, South African Institute of International Affairs, Policy Insights 66, August 2018, at 3, at 3

¹⁴ Omotola J, Sailu H, *'Foreign aid, debt relief and Africa's developments: Problems and prospects'* South African Journal of International Affairs (2009), 91

¹⁵ Africa Growth Initiative at Brookings, *Is sub-Saharan Africa facing another systemic sovereign debt crisis?*, April 2019, 8

people)¹⁶ has increased Africa's debt burden¹⁷. Some creditors have been complicit in unduly increasing the debt in Sub-Saharan Africa. Some Western countries involved in the destabilization of African political and social environments, and thereafter installing leaders they considered to be supportive of their interests¹⁸, and thus nudging them to recklessly acquire burdensome debt into these economies.

A notorious example was the Democratic Republic of Congo (DRC), where the United States, through the Central Intelligence Agency (CIA) backed the ousting of the first popularly elected Prime Minister, Patrice Lumumba, and oversaw the installation of the dictator Mobutu Sese Seko as his replacement¹⁹. The USA, in order to keep Mobutu's loyalties, helped inject into the economy exceedingly huge amounts of money in debt²⁰, despite knowing that the money was being diverted away from development and used for personal interests²¹. By the time Mobutu was deposed in 1997, DRC had amassed external debt of USUS \$ 14 billion, while the majority of her populace lived in poverty²².

1.1.2. The evolving composition of African debt

African debt has morphed, considerably, from the 1980s, particularly with regard to the supply side. For a long time, Western countries such as the United States of America, France, Canada and the United Kingdom²³, were Africa's largest creditors²⁴. Now, the World Bank notes that low income countries have shifted towards riskier and more expensive sources of financing, such as

¹⁶ Jaoko IP, 'In defence of the formal recognition of the doctrine of odious debts: A study on African debts', Unpublished LL.B thesis, Strathmore University, January, 2017, vii

¹⁷ Jaoko IP, 'In defence of the formal recognition of the doctrine of odious debts: A study on African debts', Unpublished LL.B thesis, Strathmore University, January, 2017, 7

¹⁸ Jaoko IP, 'In defence of the formal recognition of the doctrine of odious debts: A study on African debts', Unpublished LL.B thesis, Strathmore University, January, 2017, 7

¹⁹ Weissman S, 'What Really Happened in Congo The CIA, the Murder of Lumumba, and the Rise of Mobutu' Foreign Affairs (July/August 2014), <https://www.foreignaffairs.com/articles/democratic-republic-congo/2014-06-16/what-really-happened-congo> on 23 April, 2019

²⁰ Robarge D, 'CIA's Covert operations in the Congo, 1960–1968: Insights from newly declassified documents' Studies in Intelligence Vol. 58, No. 3 September 2014, at 2 (available on file with the Central Intelligence Agency)

²¹ Collins CJL, 'Zaire/Democratic Republic of the Congo' *Foreign Policy in Focus*, 1 July 1997 <https://fpif.org/zairedemocratic-republic-of-the-congo/> on 23 April, 2019

²² Ndikumana L, Boyce JK, 'Congo's odious debt: External borrowing and capital flight in Zaire', Vol 29, *Development and Change Journal*, (1998) at 195

²³ <http://www.clubdeparis.org/en/communications/page/permanent-members> on 5 May, 2019

²⁴ Were A, 'Debt trap? Chinese loans and Africa's development options', *South African Institute of International Affairs, Policy Insights* 66, August 2018, at 3, at 3

bond issuances²⁵. It is noted that multilateral creditors and Paris-Club creditors have declined in importance as a source of financing²⁶. Indeed, external borrowing from private creditors has also grown significantly in recent years²⁷. Reportedly, countries that largely depend on commodities, including some Heavily Indebted Poor Countries (HIPCs) constitute the bulk of issuers.

To begin with, the share of multilateral and concessional debt from bilateral (owed from one government to another²⁸) and multilateral (debt that is owed to a consortium of creditors, like the World Bank²⁹) sources has declined considerably³⁰. Conversely, lending from non-Paris Club creditors has increased³¹. An obvious example is China, a non-Paris Club creditor. Currently, China alone owns what amounts to 14% of sub-Saharan Africa indebtedness. In Kenya, of her bilateral debt, China's constitutes about 66%³². Sino-African debt has largely been as a result of China's Belt Road Initiative (BRI), whose primary concern is infrastructure financing with a view to "connect Asian, European and African continents"³³.

Finally, African countries have increasingly flocked to international markets, issuing bonds, which have allowed countries to increase the volume of borrowing, over shorter periods and diversify their investor base³⁴. Since 2006, several African countries including Ghana, Gabon, Senegal, Nigeria and Kenya have issued Eurobonds on international markets³⁵. Access to financing from private markets by Sub-Saharan African countries has been lauded as important for economic development, even inevitable³⁶. This financing has been described as better than concessional debt

²⁵ International Development Association, *Debt vulnerabilities in IDA countries*, 4 October, 2018, at 3

²⁶ International Development Association, *Debt vulnerabilities in IDA countries*, 4 October, 2018, at 3

²⁷ International Development Association, *Debt vulnerabilities in IDA countries*, 4 October, 2018, at 3

²⁸ UNCTAD Report 2016, *Economic development in Africa: Debt dynamics and development finance in Africa*, 2016, 30

²⁹ Africa Growth Initiative at Brookings, *Is sub-Saharan Africa facing another systemic sovereign debt crisis?*, April 2019, 10

³⁰ Mustapha S, Prizzon A, *Africa's rising debt: How to avoid a new crisis*, October 2018, at 4

³¹ Mustapha S, Prizzon A, *Africa's rising debt: How to avoid a new crisis*, October 2018, at 4

³² Were A, *Debt trap? Chinese loans and Africa's development options*, South African Institute of International Affairs, Policy Insights 66, August 2018, at 3, at 4

³³ Were A, *Debt trap? Chinese loans and Africa's development options*, South African Institute of International Affairs, Policy Insights 66, August 2018, at 3, at 4

³⁴ Mustapha S, Prizzon A, *Africa's rising debt: How to avoid a new crisis*, October 2018, at 5

³⁵ Brooks S, Lombardi D, Suruma E, *'African perspectives on sovereign debt restructuring'*, CIGI's Global Economy Program, Kampala, 7 August 2014. Available at CIGI, 6

³⁶ Africa Growth Initiative at Brookings, *Is sub-Saharan Africa facing another systemic sovereign debt crisis?*, April 2019, 11

for African countries. For example, private loans are not made conditional on policy requirements made by entities like the IMF³⁷. Borrowing from private markets may also arguably enhance transparency where expenditure of these monies is concerned, owing to enhanced scrutiny by foreign investors³⁸. The borrowing countries are also ostensibly subjected to the discipline of the markets, with additional attention being paid to economic development and policies domestically³⁹.

Market financing, is not, however, a panacea to Sub-Saharan African debt. While diversification of debt portfolio is certainly advised, sovereign bonds come with great exposure to risk. There are exchange and interest rate risks, as well as far higher interest rate risks, as compared to multilateral and bilateral debts⁴⁰. Additionally, access to financial markets and the attendant benefits, does not address the concerns relating to weak debt management policies⁴¹, such as the wasteful consumption of borrowed monies and the disproportionate use of national resources and revenue to service debt⁴². For example, Kenya has issued three Eurobonds, as at 2019, despite experiencing difficulty in servicing the first two⁴³.

Reportedly, debt management for Sub-Saharan countries remains weak, with a deterioration in the indicators for good management between 2007 and 2017⁴⁴. The Debt Management Performance Assessment (DeMPA) developed by the World Bank indicated, in 2018, that out of 22 (twenty-two) African countries, only 50% have met minimum standards for international standards set for effective debt management⁴⁵. The African Development Bank (AfDB) has also expressed concerns about market financing. They note that infrastructure projects, which are largely why African

³⁷ Brooks S, Lombardi D, Suruma E, 'African perspectives on sovereign debt restructuring', CIGI's Global Economy Program, Kampala, 7 August 2014. Available at CIGI, 6

³⁸ Brooks S, Lombardi D, Suruma E, 'African perspectives on sovereign debt restructuring', CIGI's Global Economy Program, Kampala, 7 August 2014. Available at CIGI, 7

³⁹ Africa Growth Initiative at Brookings, *Is sub-Saharan Africa facing another systemic sovereign debt crisis?*, April 2019, 11

⁴⁰ Mustapha S, Prizzon A, Africa's rising debt: How to avoid a new crisis, October 2018, at 5

⁴¹ Mustapha S, Prizzon A, Africa's rising debt: How to avoid a new crisis, October 2018, at 5

⁴² 'Kisero J, Our debt management policy is flawed' *Business Daily*, 23 November, 2017, <https://www.businessdailyafrica.com/analysis/Our-debt-management-policy-is-flawed/539548-4200098-e6rk6n/index.html> on 5 May, 2019

⁴³ <https://www.ecofinagency.com/finance/2305-40089-kenya-s-third-eurobond-approved-for-listing-on-euronext-dublin> on 30 May, 2019

⁴⁴ Mustapha S, Prizzon A, Africa's rising debt: How to avoid a new crisis, October 2018, at 6

⁴⁵ Mustapha S, Prizzon A, Africa's rising debt: How to avoid a new crisis, October 2018, at 6

countries have been borrowing, lately, have long gestation periods, while the Eurobond maturities are far shorter. The rise of interest rates with every bond issuance increases macroeconomic vulnerability⁴⁶. Additionally, market finance is seldom accompanied by creditor initiated efforts to build sound fiscal policies and institutions.

1.1.3. Africa's recurrent debt burden

Historically, and currently, Africa's debt can hardly be considered sustainable. In fact, Africa's debt burden, has for decades become a recurring issue⁴⁷. After attaining independence, many African countries kicked off development programs in their respective countries, which required external funding⁴⁸. Low levels of private capital coming into the continent characterized the 1980s, however, and combined with inadequate domestic reserves, many African countries suffered domestic (financial) deficiencies⁴⁹. Eventually, many African governments were forced to rely on taxation of exports of commodities to raise revenue. Unfortunately, the fall of international primary commodity prices, slashed export earnings and governments' abilities to service their debt reduced considerably⁵⁰.

Africa has also faced governance challenges that have contributed to the debt burden. Corruption, in particular, is a cause for concern, in Sub-Saharan Africa. There is a strong argument to be made for the direct contribution of corruption to the increase of unnecessary public debt. Almost invariably, corruption serves to distort how public monies should be expended, and this results in inefficient allocation of government expenditure⁵¹. Unfortunately, there is a prominent example of such inefficient use of public funds in Kenya. The auditor general reported, for the year ending June 2014, that out of the revenue recorded during the financial year of 2013/2014, which amounted to over KShs. 960 billion, only KShs. 36 billion was properly accounted for.⁵² Cooray

⁴⁶ Mustapha S, Prizzon A, Africa's rising debt: How to avoid a new crisis, October 2018, at 6

⁴⁷ Omotola J, Sailu H, 'Foreign aid, debt relief and Africa's developments: Problems and prospects' South African Journal of International Affairs (2009), 87

⁴⁸ Omotola J, Sailu H, 'Foreign aid, debt relief and Africa's developments: Problems and prospects' South African Journal of International Affairs (2009), 91

⁴⁹ All Party Parliamentary Group on Overseas Development, *Africa's multilateral debt: A modest proposal*, 1994, at 19

⁵⁰ All Party Parliamentary Group on Overseas Development, *Africa's multilateral debt: A modest proposal*, 1994, at 19

⁵¹ Cooray, Arusha; Schneider, Friedrich, *How does corruption affect public debt? An empirical analysis*, Working Paper, No. 1322, 4

⁵² Office of the Auditor General Kenya, *Summary Of The Report Of The Auditor-General On The Financial Statements For Ministries Departments, Commissions, Funds And Other Accounts Of The National Government For The Year 2013/2014*, May 2015, 52

et al, argue that endemic corruption results into greater income inequality, reduced investment, distortion of budget allocations and lower GDP per capita. As a result, there is greater government spending, which then raises public debt⁵³.

After enjoying a period of arguably manageable debt⁵⁴, African debt is on the rise once more. According to the IMF, the external debt ratio for low-income countries should not rise above 40%⁵⁵. Currently, the debt-to-GDP ratio in Africa has risen to levels above 50%⁵⁶. This typically increases the likelihood of countries getting into debt distress⁵⁷ which the IMF⁵⁸ indicates occurs when a country struggles to repay its debt, characterized by arrears, or the likelihood of restructuring of the debt.

According to the World Bank⁵⁹, forty-nine percent of low income countries face the possibility of debt distress. Sub-Saharan Africa has experienced the largest increase in the median public debt-to-GDP ratio, and the World Bank notes that this is up 20 percentage points, from already high levels⁶⁰. Anzette Were⁶¹ reports that by 2017 some economies had amassed significant debt, with countries like Ethiopia, Kenya and Zambia being warned that they needed to tighten the reins on public spending. Reportedly, some countries like Gabon, Kenya, Angola Sudan and Mauritius have a collective GDP of more than US \$300 billion with debt-to-GDP ratios above 60%⁶², which according to the IMF recommended thresholds, is dangerous. Evidently, trouble looms and debt restructuring ought to be a consideration for a number of these countries. This then raises a

⁵³ Cooray, Arusha; Schneider, Friedrich, *How does corruption affect public debt? An empirical analysis*, Working Paper, No. 1322, 4

⁵⁴ Were A, Debt trap? Chinese loans and Africa's development options, South African Institute of International Affairs, Policy Insights 66, August 2018, at 3, at 3

⁵⁵ Were A, Debt trap? Chinese loans and Africa's development options, South African Institute of International Affairs, Policy Insights 66, August 2018, at 3, at 2

⁵⁶ Were A, Debt trap? Chinese loans and Africa's development options, South African Institute of International Affairs, Policy Insights 66, August 2018, at 3, at 2

⁵⁷ Were A, Debt trap? Chinese loans and Africa's development options, South African Institute of International Affairs, Policy Insights 66, August 2018, at 3, at 2

⁵⁸ 'IMF: Joint World Bank-IMF debt sustainability framework for low-income countries' IMF, 15 August 2018 <https://www.imf.org/en/About/Factsheets/Sheets/2016/08/01/16/39/Debt-Sustainability-Framework-for-Low-Income-Countries> on 29 January 2019

⁵⁹ International Development Association, *Debt vulnerabilities in IDA countries*, 4 October, 2018, 9

⁶⁰ International Development Association, *Debt vulnerabilities in IDA countries*, 4 October, 2018, 9

⁶¹ Were A, Debt trap? Chinese loans and Africa's development options, South African Institute of International Affairs, Policy Insights 66, August 2018, at 3, at 2

⁶² Were A, Debt trap? Chinese loans and Africa's development options, South African Institute of International Affairs, Policy Insights 66, August 2018, at 3, at 2

concern, as to why African countries face recurrent debt burdens, and difficulty in making repayments.

Sanford⁶³ postulates that the problem is not the debt, or even the size of the debt in itself. Indeed, he notes that other regions typically owe much more. The problem presented is that there is a huge debt size, relative to the size of Sub-Saharan African economies. The debt size is also disproportionate in size to these countries' export income. Africa's unique debt sustainability and repayment problem is further exacerbated by currency volatility. UNCTAD⁶⁴ notes that African countries hold debt in foreign currencies such as US Dollar and Euro, with some holding the debt in a variety of other currencies. Unfortunately, when an African country holds debt in a non-local currency, it is more exposed to shocks related to exchange rates, as well as macro-economic upheavals⁶⁵, which hamper their ability to repay the debt.⁶⁶ Africa's unique governance problems discussed before in this thesis, in the background to the problem, a great deal of them a result of colonialism, also hamper debt sustainability of debt and as a result, repayment of the same⁶⁷.

1.2. Literature Review

1.2.1. Debt restructuring mechanisms (Paris, London, HIPC, MDRI)

According to Elbadawi, Ndulu and Ndung'u⁶⁸, African countries incurred huge, unsustainable sovereign debt between the mid-1970s and late 1990s. Seeking debt relief through sovereign debt restructuring became inevitable⁶⁹. Africa owed a substantial amount of its debt to international financial institutions (IFIs), like the World Bank, the IMF and the AfDB, as well as bilateral

⁶³ Sanford JE, 'Africa's debt burden: Proposals for further forgiveness' 189 *Center for Strategic and International Studies* (1996), 1

⁶⁴ UNCTAD Report 2016, *Economic development in Africa: Debt dynamics and development finance in Africa*, 2016, 37

⁶⁵ Africa Growth Initiative at Brookings, *Is sub-Saharan Africa facing another systemic sovereign debt crisis?*, April 2019, 8

⁶⁶ UNCTAD Report 2016, *Economic development in Africa: Debt dynamics and development finance in Africa*, 2016, 37

⁶⁷ Africa Growth Initiative at Brookings, *Is sub-Saharan Africa facing another systemic sovereign debt crisis?*, April 2019, 8

⁶⁸ Elbadawi A, Ndulu J, Ndung'u N, 'Debt overhang and economic growth' in Iqbal Z, Kanbur R (eds), *External finance for low income countries*, IMF Institute, 1990, 51

⁶⁹ Brooks S, Lombardi D, Suruma E, *African perspectives on sovereign debt restructuring*, CIGI's Global Economy Program, Kampala, 7 August 2014. Available at CIGI, 2

creditors belonging to the Paris Club⁷⁰. The different modes of debt restructuring are discussed here.

In the period subsequent to the 2nd World War, there was the introduction of development aid targets⁷¹. These, coupled with competition with the Soviet Bloc resulted in western developed countries extending large amounts of debt to developing countries⁷². Some Latin-American countries started to be overleveraged by the mid-1950s⁷³. Argentina was one of the countries that needed to have its debt rescheduled, and as such in 1956, the first meeting in Paris was held among some European countries, under the ambit of the French Treasury. Thus the Paris Club was born (the nomenclature is informed by the venue of meeting.)⁷⁴

The Paris Club is described by Omotola and Sailu⁷⁵ as a group of creditor countries that have lent to developing nations. This club does not operate formally, and at the time, did not have permanent members. The Paris Club's secretariat is operated under the umbrella of the French Treasury, and works closely with the Bretton Woods Institutions (the World Bank and the IMF) as well as UNCTAD⁷⁶. Over the last few years of the twentieth century, the Club emerged as one of the foremost avenues for engagement in consultation over debt rescheduling agreements, with a view to deal with distress⁷⁷.

Brown and Bulman⁷⁸ explain the four principles taken into account when scheduling Paris Club debt. These are:

⁷⁰ Brooks S, Lombardi D, Suruma E, 'African perspectives on sovereign debt restructuring', CIGI's Global Economy Program, Kampala, 7 August 2014. Available at CIGI, 2

⁷¹ UNCTAD, 'The emerging of a multilateral forum for debt restructuring: The Paris Club' November 2008, at 64

⁷² Elbadawi A, Ndulu J, Ndung'u N, 'Debt overhang and economic growth' in Iqbal Z, Kanbur R (eds), 'External finance for low income countries', IMF Institute, 1990, 51

⁷³ UNCTAD, 'The emerging of a multilateral forum for debt restructuring: The Paris Club' November 2008, at 64

⁷⁴ UNCTAD, 'The emerging of a multilateral forum for debt restructuring: The Paris Club' November 2008, at 64

⁷⁵ Omotola J, Sailu H, 'Foreign aid, debt relief and Africa's developments: Problems and prospects' South African Journal of International Affairs (2009), 88

⁷⁶ Omotola J, Sailu H, 'Foreign aid, debt relief and Africa's developments: Problems and prospects' South African Journal of International Affairs (2009), 87

⁷⁷ Brown R, Bulman T, 'The evolving roles of the clubs in the management of international debt', 33 *International Journal of Social Economics*, 2006, 13

⁷⁸ Brown R, Bulman T, 'The evolving roles of the clubs in the management of international debt', 33 *International Journal of Social Economics*, 2006, 13

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- a. The possibility of default, which indicates that lending nations will not consider the debt eligible for rescheduling until the debtor has gotten into distress, or it is apparent that it is going to (initially, the Paris club provided relief to countries suffering temporary liquidity problems⁷⁹, but now only deals with countries that are in default or about to be in default. In view of this, the Paris Club does not particularly help with early prevention of distress⁸⁰.);
 - b. Conditionality, which makes a credit agreement with the IMF a condition precedent to rescheduling;
 - c. The creditors must provide aid, that is proportional with their exposure to the country in debt;
 - d. Unanimous approval of a rescheduling agreement by all Paris Club creditors. There are hardly creditor holdouts with Paris Club rescheduling processes owing to the fact that one of the principles upon which the club operates is unanimity⁸¹ and adoption of decisions by consensus, as opposed to the London Club that adopts decisions by unanimity⁸².

Loosely defined, the London Club is another ad hoc solution for rescheduling and restructuring debt, similar to the Paris Club, save that it comprises commercial creditors and deals with commercial debt. It was formed in the 1970s as a convenient mechanism for loan management but as McConnell⁸³ notes, was ‘solidified by a series of trials and crises in the 1980s’.

Notably, the London Club, constitutes lenders who lend commercial debt. They largely deal with Latin American and Asian borrowers, while the mainstay of the Paris Club has been lower income Sub Saharan countries⁸⁴. The inaugural meeting of London Club lenders was hosted in London in 1976, with the intent of rescheduling Zaire’s debts⁸⁵. The two clubs provided the most common

⁷⁹ Vilanova JC, Martin M, *The Paris Club, Debt Relief International Ltd, 2001*, Publication No. 3, 1

⁸⁰ Rieffel A, *Restructuring sovereign debt: The case for ad hoc machinery*, Brookings Institute Press, 2003, 71

⁸¹ Vilanova JC, Martin M, *The Paris Club, Debt Relief International Ltd, 2001*, Publication No. 3, 1

⁸² The Hague Centre for Studies and Research, *The role of the Paris and London Clubs: Is it under threat?*, 6 September, 2013, 35

⁸³ McConnell A, ‘A different kind of restructuring: Forty years of debate and the prospect of a formal international sovereign debt regime’ Published thesis, University of Pennsylvania, 2016, 6

⁸⁴ Brown R, Bulman T, ‘The evolving roles of the clubs in the management of international debt’, 33 *International Journal of Social Economics*, 2006, 13

⁸⁵ Brown R, Bulman T, ‘The evolving roles of the clubs in the management of international debt’, 33 *International Journal of Social Economics*, 2006, 13

form of debt relief for lower income African countries in the 1970s and 1980s. However, as Brooks, Lombardi and Suruma⁸⁶ write, they both failed to adequately address the underlying debt situation in many developing countries.

The World Bank and the IMF attempted to improve this by launching the HIPC initiative in 1996, bolstered by the MDRI in 2016⁸⁷. Both helped to marginally restore the sustainability of Sub Saharan countries' sovereign debt positions⁸⁸. The HIPC Initiative was launched so as to ensure that countries that are poor do not deal with debt burdens they cannot manage.⁸⁹ To qualify for debt relief, the debtor country was required to entrench in her economic plans poverty alleviation programs, which then allowed the IMF and World Bank to provide interim debt relief⁹⁰. Upon illustration of a track record of good performance on the poverty alleviation plans, the two institutions would then provide more substantial reliefs. However, by the mid-2000s, it was noted that low income countries needed a lot more debt relief⁹¹.

The MDRI, initiated by the IMF, the African Development Fund and the International Development Association), would result in the cancellation of 100% of debt owed to these institutions. This cancellation would benefit countries that successfully went through the full HIPC initiatives⁹². While noting that HIPC and MDRI have been very useful in providing debt reliefs, Brooks, Lombardi and Suruma⁹³ are concerned that these were only temporary, one off solutions.

⁸⁶ Brooks S, Lombardi D, Suruma E, *'African perspectives on sovereign debt restructuring'*, CIGI's Global Economy Program, Kampala, 7 August 2014. Available at CIGI, 3

⁸⁷ Brooks S, Lombardi D, Suruma E, *'African perspectives on sovereign debt restructuring'*, CIGI's Global Economy Program, Kampala, 7 August 2014. Available at CIGI, 3

⁸⁸ Brooks S, Lombardi D, Suruma E, *'African perspectives on sovereign debt restructuring'*, CIGI's Global Economy Program, Kampala, 7 August 2014. Available at CIGI, 3

⁸⁹ "Factsheet: Debt relief under the Heavily Indebted Poor Countries (HIPC) Initiative" *IMF*, March 2014, www.imf.org/external/np/exr/facts/hipc.ntm on 20 December, 2018

⁹⁰ Brooks S, Lombardi D, Suruma E, *'African perspectives on sovereign debt restructuring'*, CIGI's Global Economy Program, Kampala, 7 August 2014. Available at CIGI, 3

⁹¹ Brooks S, Lombardi D, Suruma E, *'African perspectives on sovereign debt restructuring'*, CIGI's Global Economy Program, Kampala, 7 August 2014. Available at CIGI, 3

⁹² Brooks S, Lombardi D, Suruma E, *'African perspectives on sovereign debt restructuring'*, CIGI's Global Economy Program, Kampala, 7 August 2014. Available at CIGI, 6

⁹³ Brooks S, Lombardi D, Suruma E, *'African perspectives on sovereign debt restructuring'*, CIGI's Global Economy Program, Kampala, 7 August 2014. Available at CIGI, 6

Indeed, more recently, Chad received debt relief under the HIPC 2015. Currently, just three HIPC countries remain: Somalia, Sudan and Eritrea, in spite of ballooning debt on the continent⁹⁴.

1.3. Statement of the Problem

As indicated earlier in the background to this study, Africa's debt profile has changed completely, in a variety of ways. External debt has risen, the proportion of commercial debt has risen, in comparison to debt granted on concessional terms, there is a greater variety where sources of credit are concerned, and there is greater uptake of Eurobonds⁹⁵. For reasons explored further in this thesis, and particularly in Chapter 3, this paper contends that the current debt restructuring mechanisms are no longer efficient. UNCTAD⁹⁶ acknowledges that currently, debt restructuring operations are multifaceted, expensive and ultimately time consuming, owing to the number of institutions and informal organizations a debtor country needs to approach to have the debt restructured. This speaks to the efficacy (in this case, the lack thereof) of the Paris and London clubs. There is need to rethink a better framework.

As the profile of African debt has changed to include a larger and more diffuse creditor base, as well as different sources of credit⁹⁷, the Paris Club has largely become inefficient for restructuring debt for African countries' sovereign debt⁹⁸. Additionally, there are hardly any well-defined procedures for negotiating the restructuring of sovereign bonds⁹⁹. The London Club does not fare any better. Reportedly, with regard to debt owed to private creditors, such as commercial banks and bondholders, take almost a decade to conclude. The result is that debtor countries end up more indebted, compared to when the debt treatment began¹⁰⁰. These delays are occasioned by a variety

⁹⁴ Were A, Debt trap? Chinese loans and Africa's development options, South African Institute of International Affairs, Policy Insights 66, August 2018, at 3, at 2

⁹⁵ Africa Growth Initiative at Brookings, *Is sub-Saharan Africa facing another systemic sovereign debt crisis?*, April 2019, 10

⁹⁶ Zivkovic D, Debt Renegotiation Framework, October 2005, at 2

⁹⁷ Africa Growth Initiative at Brookings, *Is sub-Saharan Africa facing another systemic sovereign debt crisis?*, April 2019, 10

⁹⁸ Brooks S, Lombardi D, Suruma E, '*African perspectives on sovereign debt restructuring*', CIGI's Global Economy Program, Kampala, 7 August 2014. Available at CIGI, 6

⁹⁹ Brooks S, Lombardi D, Suruma E, '*African perspectives on sovereign debt restructuring*', CIGI's Global Economy Program, Kampala, 7 August 2014. Available at CIGI, 6

¹⁰⁰ 'Wright M, Restructuring Sovereign Debts with Private Sector Creditors: Theory and Practice,' http://siteresources.worldbank.org/INTDEBTDEPT/Resources/468980-1238442914363/5969985-1295539401520/9780821384831_ch12.pdf on 1 February, 2019

of reasons, including the need to consolidate outstanding claims that are impinged by the default in question, lack of information symmetry between bargaining parties (the debtors and creditors), as well as limited enforceability of contracts between creditors and debtors¹⁰¹. Thus, one off initiatives such as the HIPC and MDRI are certainly not sustainable.

In light of the issues raised in this paper, to wit: the waning relevance of the present methods of sovereign debt restructuring (the Paris and London Clubs), and the seeming inadequacies of using the SDRM or CAC methods exclusively, this paper, in Chapter 2 and 4, will examine the case for establishment of a hybrid framework that will take into account Africa's realities and peculiarities, in as far as debt is concerned. Ostensibly, this hybrid system will combine salient elements of both contractual and statutory approaches¹⁰². A hybrid system that takes into account "objectivity, impartiality, inclusivity, comprehensiveness ad conclusiveness" has been proposed¹⁰³. This paper will attempt to examine the establishment, feasibility and possible effectiveness for such a framework for adequate treatment of African debt.

1.4. Research Hypothesis

This paper proceeds from the hypothesis that the current methods for sovereign debt restructuring, primarily the Paris and London Clubs, are not efficient for African countries, thus, informing the need to establish a hybrid system to rescheduling of debt.

1.5. Research Questions

This paper seeks to answer four principal questions.

- a. Is Africa's debt situation unique, necessitating special treatment when restructuring sovereign debt?
- b. Are the Paris and London clubs suitable for sovereign debt restructuring for African countries?

¹⁰¹ 'Wright M, Restructuring Sovereign Debts with Private Sector Creditors: Theory and Practice,' http://siteresources.worldbank.org/INTDEBTDEPT/Resources/468980-1238442914363/5969985-1295539401520/9780821384831_ch12.pdf on 24 April, 2019

¹⁰² Brooks S, Lombardi D, Suruma E, 'African perspectives on sovereign debt restructuring', CIGI's Global Economy Program, Kampala, 7 August 2014. Available at CIGI, 8

¹⁰³ Brooks S, Lombardi D, Suruma E, 'African perspectives on sovereign debt restructuring', CIGI's Global Economy Program, Kampala, 7 August 2014. Available at CIGI, 8

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- c. Is the establishment of a hybrid framework for sovereign debt restructuring, incorporating a statutory arrangement and a contractual approach, necessary?
 - d. What tailor-made recommendations are suitable for the management of sovereign borrowing in Africa?

1.6. Theoretical Framework

“When it becomes necessary for a state to declare itself bankrupt, in the same manner as when it becomes necessary for an individual to do so, a fair, open, and avowed bankruptcy is always the measure which is both least dishonourable to the debtor, and least hurtful to the creditor.”
*Adam Smith. (1723–1790). Wealth of Nations*¹⁰⁴.

It is important to have a debt restructuring mechanism that is both efficient, and one that does not occasion undue harm to the debtors. This study will evaluate sovereign debt restructuring through the lens of the Creditors Bargain Theory and the Value Based Theory.

1.6.1. Creditor Bargain Theory

This theory, as developed by Baird and Jackson¹⁰⁵, proceeds on the idea that there is a hypothetical bargain that creditors will ostensibly reach. One of the end goals of the said theory is to have maximization of the value of the debtor’s assets for the benefit of the creditors¹⁰⁶. This thesis will evaluate the treatment of debt relief through the lens of creditors who attempt to maximize the assets of the country in distress, so as to achieve a bargain that would have been availed of them, had the bargain been done ex-ante. In this way, an evaluation of the proposed hybrid system of debt restructuring will benefit from an analysis of whether the value of the debtor’s assets are maximized.

1.6.2. Value Based Theory

This theory of bankruptcy was proposed by Korobkin¹⁰⁷. It considers that the process of bankruptcy has to be undertaken with regard to social and political considerations as well as the

¹⁰⁴ (Cannan ed.), in 2 vols. [1776]

¹⁰⁵ <http://law2.wlu.edu/deptimages/Law%20Review/61-3Mooney.pdf> accessed on 1 February 2019

¹⁰⁶ Muriungi M, ‘Towards a legal framework on sovereign debt restructuring: A developing countries’ perspective’, Unpublished LLM Thesis, University of Nairobi, 14 November, 2016, at 5

¹⁰⁷ Korobkin DR, ‘Value and Rationality in Bankruptcy Decision-making’ 33, *William & Mary Law Review* (1992)

circumstances attendant to the situation¹⁰⁸. This theory illustrates that bankruptcy law attempts to resolve issues that emanate from financial distress, which encompass social, political and economic dimensions¹⁰⁹. This will be useful in analyzing the unique situation that Sub-Saharan African debtors find themselves in, during debt restructuring. The participants are able to give their contribution to the process with the benefit of the knowledge of historical contexts, as well as the dynamic nature of the issues in question¹¹⁰. This will assist in coming up with a method that addresses financial distress in a comprehensive manner¹¹¹.

1.7. Approach and Methodology

The research will be solely desk research. The information sources will include books, journal articles, policy briefs, reports, discussion and working papers, data and documentation issued by international monetary institutions like the International Monetary Fund and the World Bank, as well as other documents. The information will be analyzed with a view to evaluate the debt situation in Africa, and to come up with appropriate mechanisms to restructure sovereign debt.

1.8. Limitations

This study is limited by the nature of its design and methodology that does not include fieldwork. Further, this paper does not benefit from the research in Francophone and Lusophone African countries, owing to language limitations.

1.9. Chapter Breakdown

The thesis is divided into five chapters. This chapter is introductory. It sets out the background of the problem, the statement of the problem, the theoretical framework, the hypothesis, the research questions, the methodology and approach, and the chapter layout. The second chapter will address the evolving nature of African debt and determine whether her debt situation is unique. The third chapter will examine the efficacy of the Paris and London Clubs' methods of sovereign debt restructuring in the face of this. The fourth chapter will examine the hybrid framework for debt

¹⁰⁸ Onakoya, Olotu, 'Bankruptcy and insolvency: An exploration of relevant theories', *7 International Journal of Economics and Financial Issues* (2017) at 709

¹⁰⁹ Onakoya, Olotu, 'Bankruptcy and insolvency: An exploration of relevant theories', *7 International Journal of Economics and Financial Issues* (2017) at 710

¹¹⁰ Onakoya, Olotu, 'Bankruptcy and insolvency: An exploration of relevant theories', *7 International Journal of Economics and Financial Issues* (2017) at 710

¹¹¹ This will be discussed in Chapter 4 of this thesis.

restructuring incorporating the statutory and contractual approaches. Chapter five will make recommendations and conclusions.



CHAPTER TWO: AFRICA'S DEBT BURDEN

2.1. Introduction

When discussing debt, and in particular when it is taken up by African countries, there has been an inclination towards pathologization of the same¹¹². Mugasha¹¹³ notes that the idea of debt as a crisis in and of itself is mythical and argues that debt, in and of itself, is not necessarily bad. Additionally, the use of debt to bolster economic growth is not bad either. He notes that debt has certain advantages, such as its use in funding national projects where there is a constraint on revenue.

Africa, in particular, considering its vast developmental needs, requires all the financing it can get¹¹⁴. Africa has complex development challenges, owing to colonial legacies¹¹⁵, and has financing capacity constraints and as such has sought to leverage all possible sources of finance¹¹⁶. The United Nations Conference on Trade and Development (UNCTAD)¹¹⁷ estimates that to make it feasible for Africa to finance its Sustainable Development Goals, injection into the economy of between US \$600 million and US \$ 1.2 trillion per year, would be needed. Africa, however, can only manage to come up with half this amount. As such, both external and domestic debts have to be considered as one of the financing options¹¹⁸. However, debt sustainability is equally important, and Africa has faced quite a number of vulnerabilities in this regard, before¹¹⁹. In fact, it has been argued that Africa is currently facing the risk of a debt crisis¹²⁰.

This study's hypothesis is that a new debt rescheduling mechanism is necessary for sovereign debt held by African countries. What, if anything, about African debt, necessitates special treatment by insolvency regimes and frameworks? This chapter seeks to answer this question. It will evaluate

¹¹² Mugasha A, 'Solutions for developing-country external debt: Insolvency or forgiveness', 13 *Law and Business Review of the Americas Journal* (2007), 862

¹¹³ Mugasha A, 'Solutions for developing-country external debt: Insolvency or forgiveness', 13 *Law and Business Review of the Americas Journal* (2007), 860

¹¹⁴ UNCTAD *Economic development in Africa: Debt dynamics and development finance in Africa*, 8 August, 2016, TD/B/EX(63)/3

¹¹⁵ 'Olamosu B, Wynne A: Africa rising? The economic history of sub-Saharan Africa' *International Socialism*, A quarterly review of socialist theory, 12 April, 2015 <http://isj.org.uk/africa-rising/> on 25 April, 2019

¹¹⁶ UNCTAD *Economic development in Africa: Debt dynamics and development finance in Africa*, 5

¹¹⁷ UNCTAD *Economic development in Africa: Debt dynamics and development finance in Africa*, 5

¹¹⁸ UNCTAD *Economic development in Africa: Debt dynamics and development finance in Africa*, 5

¹¹⁹ UNCTAD, *Debt vulnerabilities in developing countries: A new debt trap?*, UNCTAD/GDS/MDP/2017/4 (Vol I), 2017, 8

¹²⁰ Africa Growth Initiative at Brookings, *Is sub-Saharan Africa facing another systemic sovereign debt crisis?*, April 2019, 1

the peculiarities (if any), of African debt, its fraught history, as well as the current debt situation. It will also interrogate that idea that there has been an evolution in Africa's debt profile to reflect diverse lending sources, new needs, as well as new challenges to debt sustainability.

2.2. Conceptualizing Africa's borrowing

2.2.1. Why does Africa need to borrow?

It is necessary, while seeking to understand Africa's debt appetite, to examine Africa's economic history. Over the years, African countries have been chided by Western leaders and institutions, over irresponsible economic policies that have left their countries in need of aid and loans from various institutions. A recent example that comes to mind is the former American President Barack Obama finger wagging at African countries, urging them to "stop making excuses" for their economic woes and onerous debt situations¹²¹.

While such criticisms of Africa's debt uptake are likely well meaning, albeit paternalistic, they hardly paint the entire picture with regard to why Africa has needed to borrow in the past, and indeed, currently. Reducing Africa's debt problems and financing needs to "corruption" and "governance" is not dishonest, but it does paint an incomplete scenario¹²². Tracing the roots of Africa's compromised economy would lead us as far back as the scramble and partition of Africa¹²³.

This thesis, for purposes of brevity, however, will only go back as far as post-independence Africa. Frantz Fanon, in the book "The Wretched of the Earth"¹²⁴ notes that colonialism left in its wake, economic dependence, writing that they traded "artillery shelling and scorched earth policy" in for this.

¹²¹ 'McGinnis A, Obama urges African nations not to make economic 'excuses' ' *Reuters* 29 July, 2014 <https://www.reuters.com/article/us-africa-obama-idUSKBN0FX1WW20140728> on 25 April, 2019

¹²² Mistry P, African Debt Revisited: Procrastination or Progress? Forum on Debt and Development (FONDAD), 1991, 8

¹²³ 'Wengraf L: Legacies of colonialism in Africa: Imperialism, dependence, and development' *International Socialist Review*, <https://isreview.org/issue/103/legacies-colonialism-africa> on 25 April, 2019

¹²⁴ Fanon, F, *The wretched of the earth*, Grove Press, New York, 1963

It has been argued that the economic ends of colonialism were envisioned to be the provision of as much economic value to the colonialist at the lowest possible price¹²⁵. African economies were brought under the control of Europe, with a view to oversee production from start to finish. Before colonialism, African economies exercised substantial control over their economic development. The goods they produced were used for both internal consumption, and for export in the event of surplus¹²⁶. This was changed by colonial powers requiring countries to produce almost exclusively for export, with a desire to ensure that prices for consumers back home, were kept as low as possible. In a perverse sense, Africa was completely integrated into the world economic system, but as unequal partners¹²⁷.

Settles¹²⁸ argues further that gains from agriculturally capable Africa were carted off by colonial governments, leaving Africa vulnerable to the shocks of the fluctuations of demand for the primary products she produced. Perhaps, however, the most substantial adverse effect of colonialism in Africa was the creation of a perverse specialization, with a singular focus on cash crop production¹²⁹.

A good number of colonial African economies were producing one or two cash crops, destined for European markets. This is in contrast to the pre-colonial period where there was diverse production of consumer goods¹³⁰. The result was the creation of over-reliance on European imports¹³¹. Frenkema, writing for the World Economic Forum, argues further that with the expansion of imports of European manufacturers, the diversification of African economies was stunted prematurely¹³². Notably, only white-dominated settler economies like South Africa and Zimbabwe

¹²⁵ Settles JD, 'The impact of colonialism on African economic development', Published thesis, University of Tennessee, 1996, 8

¹²⁶ Settles JD, 'The impact of colonialism on African economic development', Published thesis, University of Tennessee, 1996, 10

¹²⁷ Settles JD, 'The impact of colonialism on African economic development', Published thesis, University of Tennessee, 1996, 13

¹²⁸ Settles JD, 'The impact of colonialism on African economic development', Published thesis, University of Tennessee, 1996, 14

¹²⁹ Settles JD, 'The impact of colonialism on African economic development', Published thesis, University of Tennessee, 1996, 14

¹³⁰ Settles JD, 'The impact of colonialism on African economic development', Published thesis, University of Tennessee, 1996, 14

¹³¹ Settles JD, 'The impact of colonialism on African economic development', Published thesis, University of Tennessee, 1996, 14

¹³² 'Frenkema E: How Africa's colonial history affects its development' *World Economic Forum*, 15 July, 2015 <https://www.weforum.org/agenda/2015/07/how-africas-colonial-history-affects-its-development/> on 25 April, 2019

operated with independence, albeit with considerable reliance on coerced African labour¹³³. In addition to this, colonial powers sought to collect as much tax as possible from their colonial subjects, without spending nearly as much in the said countries. By way of example, in West African British colonies, there was the creation of new statutory export marketing boards, which collected huge surpluses by creating a considerable margin between the price paid to the producers of goods, and the price received by the boards for the said goods on the world market. The surpluses remained in London, with no repatriation to the colonial subjects¹³⁴.

Another legacy was the breakup of large colonies upon independence. Co-operation of African countries in relation to trade was brought to a halt, and all African trade was primarily focused on the international export market¹³⁵. Essentially, after the colonialists left the continent, Africa was left with distorted and fragile national economies, characterized by limited export bases, weak industrial sectors and economies that were largely oriented externally¹³⁶.

Onimode¹³⁷ has argued, in addition to this, that colonialism left Africa heavily dependent on exports, with a greater focus on few commodities, with insufficient terms of trade, as well as unstable earnings from exports. Many African economies would be unable to hold fast in the face of the impending post-colonial shocks, which will be discussed later in this chapter. Africa attained independence, against the backdrop of this weak economic situation.

It is against this background, that one can begin to understand Africa's history and impetus to borrow. Immediately after independence, the clamour to jump-start development programs began. Anti-colonial ideologies had promised previous colonial subjects improved living conditions¹³⁸. These development programs relied largely on external funding to be carried out. Additionally, to boost growth of African economies which had been severely compromised by colonialism, the quantity of investment in the economy needed to be heightened¹³⁹. There was unfortunately, no

¹³³ 'Frenkema E: How Africa's colonial history affects its development' *World Economic Forum*, 15 July, 2015 <https://www.weforum.org/agenda/2015/07/how-africas-colonial-history-affects-its-development/> on 25 April, 2019

¹³⁴ <https://journals.openedition.org/poldev/78?lang=es> on 30 May, 2019

¹³⁵ Settles JD, 'The impact of colonialism on African economic development', Published thesis, University of Tennessee, 1996, 14

¹³⁶ Cooper F, *Africa Since 1940*, Columbia University Press, New York, 2002, 16

¹³⁷ Onimode B, *Africa in the World of the 21st Century*, Ibadan University Press, 2000, 74

¹³⁸ Omotola J, Sailu H, 'Foreign aid, debt relief and Africa's developments: Problems and prospects' *South African Journal of International Affairs* (2009), 91

¹³⁹ Omotola J, Sailu H, 'Foreign aid, debt relief and Africa's developments: Problems and prospects' *South African Journal of International Affairs* (2009), 91

surplus to inject into the economy owing to the distorted factors of production that have been discussed, and in its absence, alternative funds had to be sought through incurring of debt. For these reasons, African countries started to seek external sources of money to supplement their savings and to fill in gaps in investments¹⁴⁰. This began Africa's dance with debt. It ought to be reiterated that borrowing is not, in itself, detrimental to an economy¹⁴¹. Quite the opposite, debt properly incurred, and used, is considered to be an excellent source of funding for an economy. There are, however, attendant risks related to the conditions attached to the issuing of debt as well as its management¹⁴².

Currently, Africa borrows for a variety of reasons. To begin with, there are huge financing gaps, especially as far as infrastructure is concerned¹⁴³. The African Development Bank (AfDB) reports that it estimates that the continent's infrastructure needs about US \$130 billion to US \$170 billion. The financing gaps are at US \$68 billion to US \$108 billion¹⁴⁴. Another reason that Africa has recently increased its borrowing, is the emergence of private markets as prominent lenders to African countries, owing to the low interest rates prevailing globally as a result of the 2008 financial crisis¹⁴⁵. Finally, the global financial crisis of 2008 resulted in an economic upheaval, with Africa taking a hard hit. The IMF reports that fiscal surpluses turned into deficits¹⁴⁶. This accelerated debt uptake¹⁴⁷.

2.3. The Evolution of Sovereign Debt in Africa

The profile of African debt has changed remarkably since the last debt crisis. The Brookings Institute's Africa Growth Initiative¹⁴⁸ notes that the design of the debt taken by Sub-Saharan

¹⁴⁰ Omotola J, Sailu H, 'Foreign aid, debt relief and Africa's developments: Problems and prospects' South African Journal of International Affairs (2009), 91

¹⁴¹ UNCTAD *Economic development in Africa: Debt dynamics and development finance in Africa*, 8 August, 2016, TD/B/EX(63)/3

¹⁴² Africa Growth Initiative at Brookings, *Is sub-Saharan Africa facing another systemic sovereign debt crisis?*, April 2019, 7

¹⁴³ Africa Growth Initiative at Brookings, *Is sub-Saharan Africa facing another systemic sovereign debt crisis?*, April 2019, 7

¹⁴⁴ https://www.afdb.org/fileadmin/uploads/afdb/Documents/Publications/2018AEO/African_Economic_Outlook_2018_-_EN_Chapter3.pdf on 25 April, 2019

¹⁴⁵ Africa Growth Initiative at Brookings, *Is sub-Saharan Africa facing another systemic sovereign debt crisis?*, April 2019, 8

¹⁴⁶ IMF, *World Economic Outlook Database*, October, 2018

¹⁴⁷ Africa Growth Initiative at Brookings, *Is sub-Saharan Africa facing another systemic sovereign debt crisis?*, April 2019, 5

¹⁴⁸ Africa Growth Initiative at Brookings, *Is sub-Saharan Africa facing another systemic sovereign debt crisis?*, April 2019, 10

African countries is changing in a number of ways. To begin with, external debt has increased considerably in recent years. The share of commercial debt relative to that of concessional debt has increased. There is also more diversity in the lender base, as well as an increase in the prevalence of bond issuance.

Traditionally, African countries borrowed from different categories, bilateral/official and multilateral agencies¹⁴⁹. Bilateral debt refers to debt owed by one government to another¹⁵⁰. Multilateral agencies such as the IMF also offered credit to countries¹⁵¹. Another source of sovereign debt has been private commercial lenders¹⁵². Now, African countries are moving towards market based debt¹⁵³. An example of this is the investment in bonds, such as the Eurobond¹⁵⁴. Reportedly, since 2006, a number of Sub-Saharan African countries such as Ghana, Gabon, Kenya, Nigeria, Rwanda and Zambia have issued Eurobonds on international markets¹⁵⁵. To contextualize the issue, the shift to market financing occurred very quickly. The Macroeconomic and Financial Management Institution of Eastern and Southern Africa (MEFMI) reports that in 2005 none of the countries mentioned above had participated in any international bond issue. By 2013, 21% of Zambia's debt constituted such bonds, as well as 27% of Rwanda's and 56% of Namibia's¹⁵⁶.

Proponents of this kind of lending argue that there are considerable number of benefits of borrowing from private markets. To begin with, unlike the IMF and the World Bank, these lenders do not impose policy adjustments on the borrowing countries¹⁵⁷. Additionally, borrowing from international markets may serve (in theory) to enhance government transparency owing to the

¹⁴⁹ <https://www.brookings.edu/blog/africa-in-focus/2018/04/26/figures-of-the-week-africas-changing-debt-structure/> on 26 April, 2019

¹⁵⁰ Mugasha A, 'Solutions for developing-country external debt: Insolvency or forgiveness', 13 *Law and Business Review of the Americas Journal* (2007), 860

¹⁵¹ Mugasha A, 'Solutions for developing-country external debt: Insolvency or forgiveness', 13 *Law and Business Review of the Americas Journal* (2007), 860

¹⁵² Mugasha A, 'Solutions for developing-country external debt: Insolvency or forgiveness', 13 *Law and Business Review of the Americas Journal* (2007), 860

¹⁵³ <https://www.brookings.edu/blog/africa-in-focus/2018/04/26/figures-of-the-week-africas-changing-debt-structure/> on 26 April, 2019

¹⁵⁴The nomenclature notwithstanding, these bonds have nothing to do with the Euro currency, but are bonds denominated in a particular currency and are issued simultaneously in the capital markets of several nations <https://web.stanford.edu/class/msande247s/2008/sixth%20week%20posting/ch10%20Solutions%20net%20homework%20aggigments.pdf> on 26 April, 2019

¹⁵⁵Brooks S, Lombardi D, Suruma E, 'African perspectives on sovereign debt restructuring', CIGI's Global Economy Program, Kampala, 7 August 2014. Available at CIGI, 6

¹⁵⁶ MEFMI, *Annual Report*, 2014, 8

¹⁵⁷ Brooks S, Lombardi D, Suruma E, 'African perspectives on sovereign debt restructuring', CIGI's Global Economy Program, Kampala, 7 August 2014. Available at CIGI, 6

enhanced scrutiny by lenders¹⁵⁸. Another benefit is the diversification of the debt portfolio¹⁵⁹. The High Level Panel on Transforming Trust in the AfDB Group into Influence¹⁶⁰ notes with concern that there are certain drawbacks to this kind of financing. First, Eurobonds have short maturities (7-12 years); considerably shorter than the period it takes for infrastructure projects to be completed. Further, interest rates for market bonds increase progressively with each issuance, which increases the risk of default for the borrowers. Finally, market finance seldom carries the conditions to build and maintain adequate fiscal and financial institutions which results in the absence of safeguards against default.

Another new phenomenon of sovereign debt in Sub-Saharan Africa is the emergence of new bilateral lenders. Of note is China, which is now the largest bilateral creditor of many countries and is touted as the single most important creditor country in Africa¹⁶¹. China's foray into Africa as a major lender is not by accident. Its new relationship with the continent is largely as a result of its ambitious infrastructure project, the Belt and Road Initiative which ostensibly seeks to "promote connectivity of Asian, European and African continents."

Between 2005 and 2013, China's portion of the total outstanding sovereign debt in Kenya went up from 1% to 8%¹⁶². In 2018, the Kenya National Bureau of Statistics reported that the debt from China constituted 12.1% of the total national government debt, and had grown by 52.8% from the previous year¹⁶³. Currently, the People's Republic of China accounts for over 68% of Kenya's total bilateral debt, making her the country's largest bilateral creditor¹⁶⁴.

While some questions raised by Western countries about the increased lending by China to Sub-Saharan Africa have been described as largely Sino-phobic¹⁶⁵, some valid concerns have been

¹⁵⁸ Brooks S, Lombardi D, Suruma E, 'African perspectives on sovereign debt restructuring', CIGI's Global Economy Program, Kampala, 7 August 2014. Available at CIGI, 7

¹⁵⁹ Brooks S, Lombardi D, Suruma E, 'African perspectives on sovereign debt restructuring', CIGI's Global Economy Program, Kampala, 7 August 2014. Available at CIGI, 7

¹⁶⁰ The High Level Panel on Transforming Trust in the AfDB Group into Influence, *Reinvigorating African Concessional Finance*, 2017, 10

¹⁶¹ Brooks S, Lombardi D, Suruma E, 'African perspectives on sovereign debt restructuring', CIGI's Global Economy Program, Kampala, 7 August 2014. Available at CIGI, 7

¹⁶² MEFMI, *Annual Report*, 2014, 10

¹⁶³ Kenya National Bureau of Statistics, *Economic Survey 2018*, 2018, 82

¹⁶⁴ <https://www.theestafrican.co.ke/business/Bleak-2019-for-taxpayers-as-Kenya-begins-repaying-loans/2560-4923632-bsy6lx/index.html> on 26 April, 2019

¹⁶⁵ Were A, Debt trap? Chinese loans and Africa's development options, South African Institute of International Affairs, Policy Insights 66, August 2018, at 3, at 8

brought to the fore. First is the risk of odious debt. In countries with high levels of corruption, it is disconcerting that some of the monies from these loans will be diverted to private interests and will not support the projects they are earmarked for¹⁶⁶. By way of example, in *World Free Duty Co. Ltd. v. Republic of Kenya*¹⁶⁷, the International Centre for Settlement of Investment Disputes (ICSID) decided that owing to bribery in the transaction, the contractual obligation incurred was void.

A recent example where this is a cause for alarm is Kenya, where the Director of Public Prosecutions is investigating the diversion of channeling of funds from credit granted for the building of the railway line linking Nairobi to the port in Mombasa, into private pockets¹⁶⁸. The opacity of Chinese debt provision is also a huge red flag as it is difficult to ascertain the effectiveness of the debt, and its affordability¹⁶⁹. Another concern as a result of this ambiguity is that the implications of default are unclear. Global credit ratings firm Moody's Investor Service reports that countries 'with strategically important infrastructure' like ports, such as Kenya, risk losing important assets in negotiations for credit with China¹⁷⁰. In countries like Kenya where public participation in fiscal decisions is a constitutional precept¹⁷¹ and forms part of the national values, such opacity undermines this.

From this discussion, it is clear that the evolving nature of African debt presents new benefits and more importantly, challenges. It is also evident that this needs to be taken into context when discussing its debt treatment in the event of a default. The implication of this shall be discussed further in chapter 3.

¹⁶⁶ Were A, Debt trap? Chinese loans and Africa's development options, South African Institute of International Affairs, Policy Insights 66, August 2018, at 3, at 8

¹⁶⁷ ICSID Case No. ARB/00/7 Award

¹⁶⁸ <https://af.reuters.com/article/topNews/idAFKBN1KY10J-OZATP> on 26 April, 2019

¹⁶⁹ Were A, Debt trap? Chinese loans and Africa's development options, South African Institute of International Affairs, Policy Insights 66, August 2018, at 3, at 9

¹⁷⁰ Moody's Investor Service, 14 November, 2018, https://www.moody.com/research/Moodys-Chinese-lending-to-Sub-Saharan-Africa-can-support-growth--PR_391736 on 26 April, 2019

¹⁷¹ Articles 1 (2) and 118 (1) (b), *Constitution of Kenya* (2010)

2.4. Africa's debt crises of the 1980s¹⁷²

Unfortunately, Africa is not new to debt crisis. The first debt crisis experienced by Africa was in the 1980s¹⁷³. Quite a number of reasons have been advanced to explain the occurrence of the crisis. To begin with, Cold War tensions precipitated a considerable amount of lending, to Western backed despots, with Western countries trying to court support for their ideologies in the region¹⁷⁴. This was done, despite these Western powers knowing that these dictators were channeling this debt for their own use¹⁷⁵. Thus, some African countries amassed debt as they accepted loans given in the 1970s, with the lenders paying no regard to the ability of these countries to repay. It has also been argued that some of these loans were given with a view to court the loyalty of corrupt regimes, with a great deal of these monies being funneled into the coffers of unrepresentative and repressive governments¹⁷⁶.

Mistry¹⁷⁷ gives other probable causes of the crisis, including irresponsible lending by creditors, both private and official¹⁷⁸; the oil shocks of 1973 and 1979, where Africa's oil exporters had their woes exacerbated by the fact that they had been far too easy targets for cheap credit; the global monetary shock which hit the world between 1979 and 1981 and induced recession that lasted considerably longer in African countries, and resulted in the implosion of commodity markets and crash of prices; as well as the attendant vagaries of a prolonged drought between 1981 and 1984, which had a disproportional effect on agriculture reliant, weak African economies. Certainly, the rampant corruption and political instability that was characteristic of many post-colonial states did

¹⁷² Other regions faced debt crises in the 1980s, such as Latin American and Asian countries. However, the scope of this paper is limited to the African experience of the debt crisis.

¹⁷³ Mistry P, *African Debt Revisited: Procrastination or Progress?* Forum on Debt and Development (FONDAD), 1991, 9.

¹⁷⁴ Robarge D, '*CIA's Covert operations in the Congo, 1960–1968: Insights from newly declassified documents*' *Studies in Intelligence* Vol. 58, No. 3 September 2014, at 2 (available on file with the Central Intelligence Agency)

¹⁷⁵ Robarge D, '*CIA's Covert operations in the Congo, 1960–1968: Insights from newly declassified documents*' *Studies in Intelligence* Vol. 58, No. 3 September 2014, at 2 (available on file with the Central Intelligence Agency)

¹⁷⁶ Akinboye SO, 'Africa's debt crisis: Perspectives on Nigeria's escape from external debt trap' 2 *Journal of Global Initiatives: Policy, Pedagogy, Perspective*, (2010), 82

¹⁷⁷ Mistry P, *African Debt Revisited: Procrastination or Progress?* Forum on Debt and Development (FONDAD), 1991, 10

¹⁷⁸ Mistry P, *African Debt Revisited: Procrastination or Progress?* Forum on Debt and Development (FONDAD), 1991, 10

not help matters and in fact contributed considerably to the crisis¹⁷⁹. The situation was grave. Between 1982 and 1990, the debt had ballooned from US \$140 billion, to over US \$270 billion¹⁸⁰.

There was also a marked increase in foreign borrowing in the period preceding the debt crisis. This was as a result of the oil price shocks of 1973 and 1979¹⁸¹ already mentioned. Non-oil producing countries on the continent had acute current account deficits and resorted to incremental debt. Simultaneously, international commercial banks had a lot of funds following the oil price hike of November, 1973, which they were anxious to recycle, and the cash-strapped African countries were an easy target for ill-thought lending¹⁸². After Mexico, in August 1982, announced that she was unable to service existing sovereign debt obligations, Argentina and Brazil followed suit. What followed was a debt crisis that hit the developing world, with Africa bearing the brunt of the aftermath¹⁸³.

A question arises, at this juncture. Is African debt distinguishable from other regions? After all, Latin American countries also suffered considerable debt burden in the 1980s¹⁸⁴. Mistry¹⁸⁵ appears to think so. He postulates that there was consensus, in the 1980s, that Africa's debt problem particularly that taken up by Sub-Saharan Africa, requires special attention and treatment. He goes on to note the sub-Saharan debt problem was markedly dissimilar to those in other developing countries in Latin America, at the time. In terms of size, the debt was indubitably smaller than that of all developing countries. However, relative to the economies of the indebted countries, the debt ran the risk of crippling these countries. The discussion above on the evolution of Africa's borrowing and resultant debt seems to confirm Mistry's postulations on the uniqueness of the African situation.

¹⁷⁹ Mistry P, African Debt Revisited: Procrastination or Progress? Forum on Debt and Development (FONDAD), 1991, 10

¹⁸⁰ Mistry P, African Debt Revisited: Procrastination or Progress? Forum on Debt and Development (FONDAD), 1991, 9

¹⁸¹ Mistry P, African Debt Revisited: Procrastination or Progress? Forum on Debt and Development (FONDAD), 1991, 9

¹⁸² Ogunnoiki A, 'The sovereign debt crisis in Africa and its impact on African states economic growth and development: A case study of Nigeria' *Ideal Journal of Art and Humanities* (2016), 107

¹⁸³ Ogunnoiki A, 'The sovereign debt crisis in Africa and its impact on African states economic growth and development: A case study of Nigeria' *Ideal Journal of Art and Humanities* (2016), 107

¹⁸⁴ Ogunnoiki A, 'The sovereign debt crisis in Africa and its impact on African states economic growth and development: A case study of Nigeria' *Ideal Journal of Art and Humanities* (2016), 107

¹⁸⁵ Mistry P, African Debt Revisited: Procrastination or Progress? Forum on Debt and Development (FONDAD), 1991, 9

Eventually, the debt crisis necessitated restructuring, which was done in subsequent years and which is discussed in Chapter 3 of this paper.

2.5. Africa's Looming Debt Crisis: False Alarm or Reality?

It is not in question that since the global financial crisis of 2008¹⁸⁶, African debt levels have been rising. While it is not all doom; Botswana, for example, has reported a decline in debt levels, recently¹⁸⁷, there is cause for concern elsewhere. The IMF¹⁸⁸ confirms that vulnerabilities are rising, and that 40% of low-income countries in the Sub-Saharan region are at risk of debt distress. Debt sustainability¹⁸⁹ levels are also worrying¹⁹⁰. Debt sustainability has deteriorated in a number of Sub-Saharan countries, and at the end of 2017, it was reported that some of these countries, Chad, Eritrea, Congo, Mozambique and South Sudan¹⁹¹ were assessed to be in debt distress¹⁹² with Zambia and Ethiopia, which had previously moderate ratings now changed to having a high risk of distress¹⁹³.

The International Financial Corporation¹⁹⁴ of the World Bank explains that there is poor revenue collection in many African countries, which may constrain their capacity to service debts, and is likely to pose significant debt sustainability concerns. Because of this, high debt levels pose a serious concern and are a considerable vulnerability for the economies in Sub-Saharan Africa.

Debt relief activist organization Jubilee Debt Campaign¹⁹⁵ (credited with helping to rally for debt forgiveness for highly indebted developing countries¹⁹⁶) notes that a considerable number of

¹⁸⁶ <https://jubileedebt.org.uk/blog/the-new-debt-crisis-in-southern-africa> on 26 April, 2019

¹⁸⁷ <https://countryeconomy.com/national-debt/botswana> on 30 May, 2019

¹⁸⁸ IMF, *Sub-Saharan Africa, domestic revenue mobilization and private investment*, April 2018, ix

¹⁸⁹ Debt sustainability is the ability of a country to service its external debt without sacrificing crucial domestic policies, or impose prolonged measures of austerity on its citizens or its creditors. Mugasha A, 'Solutions for developing-country external debt: Insolvency or forgiveness', 13 *Law and Business Review of the Americas Journal* (2007), 861

¹⁹⁰ IMF, *Sub-Saharan Africa, domestic revenue mobilization and private investment*, April 2018, ix

¹⁹¹ IMF, *Sub-Saharan Africa, domestic revenue mobilization and private investment*, April 2018, ix

¹⁹² The IMF defines this as the inability to service public debt which may result in the consequential disruption of economic activity and employment <https://blogs.imf.org/2019/01/18/three-steps-to-avert-a-debt-crisis/> on 26 April, 2019

¹⁹³ IMF, *Sub-Saharan Africa, domestic revenue mobilization and private investment*, April 2018, ix

¹⁹⁴ International Finance Corporation, *Shaping the future of Africa: Markets and opportunities for private investors*, March 2018, 11

¹⁹⁵ Jubilee Debt Campaign, *Africa's growing debt crisis: Who is the debt owed to?*, October, 2018, 13

¹⁹⁶ <https://www.fdiintelligence.com/News/IMF-spotlight-on-China-Africa-debt> 26 April, 2019

African countries like Zimbabwe, Ghana, Sudan, Zambia and quite sadly, Africa's youngest country, South Sudan, were at risk of debt distress.

According to the data collated by the AfDB, as from 2017, there is cause for concern. Below is an illustration of a group of countries in Sub-Saharan Africa, and the corresponding risk of debt distress¹⁹⁷:

<i>Low risk</i>	<i>Moderate risk</i>	<i>High risk</i>	<i>In debt distress</i>
Rwanda (2017)	Kenya (2018)	Burundi (2018)	Chad (2017)
Senegal (2018)	Benin (2019)	Cameroon (2017)	Mozambique (2018)
Tanzania (2018)	Burkina Faso (2018)	Cabo Verde (2017)	South Sudan (2017)
Uganda (2017)	Congo, DR (2018)	Central African Rep. (2017)	Sudan (2017)
Comoros (2019)	Congo, Rep (2018)	Djibouti (2017)	Zimbabwe (2017)
	Côte d'Ivoire (2018)	Ethiopia (2019)	Eritrea (2019)
	Guinea (2018)	Gambia (2017)	Gambia (2019)
	Guinea-Bissau (2017)	Mauritania (2017)	São Tomé & Príncipe (2018)
	Lesotho (2018)		Zambia (2017)
	Liberia (2018)		Somalia (2017)
	Madagascar (2019)		
	Malawi (2019)		
	Mali (2017)		
	Niger (2017)		
	Nigeria (2018)		
	Sierra Leone (2017)		
	Togo (2017)		

Note: Debt risk is assessed on the basis of average scores of Country Policy and Institution Assessment framework created by the World Bank, [which assessment uses four clusters as a basis, to wit: economic management, structural policies, policies for social inclusion and equity, and public sector management and institutions], as well as the size of debt and debt servicing as

¹⁹⁷ Cooperation with Africa, *Fiscal and debt sustainability in Africa*, 15 March, 2019, at 10

debt burden indicators. Low risk is descriptive of countries that have all the debt burden indicators below the thresholds, moderate risk, of countries that are below the thresholds, but said thresholds may be breached if there are sudden changes in macroeconomic policies, and external shocks, such as currency volatility, while high risk describes countries that show a prolonged breach of debt-service thresholds, but currently not struggling with repayments¹⁹⁸.

Another dimension to this debt is the China factor. As discussed in this chapter, China has extended considerably huge amounts of credit to Africa. Concerns have been raised about the impact of this seemingly bottomless lending on debt sustainability, seeing as over-borrowing helped to foment the debt crisis in the 1980s¹⁹⁹. The situation is further compounded by the rapacious corruption of certain regimes in Africa²⁰⁰. It is well documented that not all monies extended as loans by the Chinese government are being used for the intended purpose, which worsens debt sustainability. Indeed, even the Chinese government recognizes these issues as warranting action. Responding to concerns about debt distress risks, China has pledged to tackle sustainability issues tied to its lending. A statement from the Chinese embassy in Kenya given in 2017²⁰¹ states:

“China needs to keep an eye on certain African countries’ risks of external debt. Currently the sustainability of external debt is generally controllable, but we need to remain cautious about the possibility of a debt crisis in certain countries, such as Sudan, Zimbabwe, Ghana and Mozambique. Those countries’ development trends in external debt need timely analysis and evaluation, and precautions need to be taken when necessary. Regarding projects relating to Sino-African cooperation, China needs to pay special attention to projects that are guaranteed by the host countries and their governments’ solvency, and if necessary a mechanism of insurance needs to be introduced to avoid default on debt.”

It is yet to be seen, what measures the People’s Republic of China will undertake to promote debt sustainability. The Chinese government has gone so far as to forgive Sino-African debt that had

¹⁹⁸ Cooperation with Africa, *Fiscal and debt sustainability in Africa*, 15 March, 2019, at 10

¹⁹⁹ Brooks S, Lombardi D, Suruma E, ‘*African perspectives on sovereign debt restructuring*’, CIGI’s Global Economy Program, Kampala, 7 August 2014. Available at CIGI, 8

²⁰⁰ Were A, Debt trap? Chinese loans and Africa’s development options, South African Institute of International Affairs, Policy Insights 66, August 2018, at 3, at 4

²⁰¹ Embassy of the People’s Republic of China in the Republic of Kenya, ‘China can help Africa manage its debt risks’, 28 June 2017, <http://ke.china-embassy.org/eng/zfgx/>, accessed 26 April, 2019

posed challenges for repayment recently, in 2018²⁰². It is therefore not debatable that there are disconcerting levels of debt in Africa. Given the situation, and the fact that in the last debt crisis²⁰³, debt treatment was offered to Africa when a considerable amount of damage had been done, a framework for sovereign debt restructuring is not just desirable; it is imperative²⁰⁴.

2.6. Conclusion

This chapter has illustrated the African scenario with regard to debt, and has explained the nature of Africa's borrowing, in relation to its economic history, as well as the attendant peculiarities. In line with Korobkin's²⁰⁵ value based theory, this ought to inform any form of debt treatment that Sub-Saharan African countries may receive, paying due regard to the political, social and moral dimensions. Korobkin suggests that there exists a means of achieving Rawlsian rationality in bankruptcy (extrapolated here to include sovereign insolvency) decision making. He posits that the law of bankruptcy embodies "normative and deliberative constraints" that allow debt treatment to address issues arising among diverse values, contextually. In some situations, the debt treatment should reflect unchanging principles. In others, special consideration may be given to the particular characteristics of the case²⁰⁶.

This chapter has also examined the most significant debt crisis that Africa has had, in the 1980s, with a view to contextualize the precipitating factors. This chapter has also illustrated the concerns about Africa's current debt levels and debt sustainability. It acknowledges that debt treatment and relief for African countries is germane, given the current levels of debt exposures. All these factors, together, reveal a need to examine the current sovereign debt restructuring framework and examine its suitability or lack thereof, and if necessary propose a feasible, effective alternative. The next chapter will examine the frameworks currently available, and their suitability to the African situation.

²⁰² 'Olingo A: African countries seek relief from Chinese loans' *Daily Nation*, 17 September, 2018, <https://www.theeastafrican.co.ke/business/African-countries-seek-relief-from-Chinese-loans-/2560-4763776-6grapiz/index.html> on 26 April, 2019

²⁰³ Mistry P, African Debt Revisited: Procrastination or Progress? Forum on Debt and Development (FONDAD), 1991, 7

²⁰⁴ Brooks S, Lombardi D, Suruma E, 'African perspectives on sovereign debt restructuring', CIGI's Global Economy Program, Kampala, 7 August 2014. Available at CIGI, 8

²⁰⁵ Korobkin DR, 'Value and Rationality in Bankruptcy Decision-making' 33, *William & Mary Law Review* (1992)

²⁰⁶ Korobkin DR, 'Value and Rationality in Bankruptcy Decision-making' 33, *William & Mary Law Review* (1992), 365



CHAPTER THREE: THE DECLINING EFFICACY OF PARIS AND LONDON CLUBS' METHODS FOR RESTRUCTURING AFRICA'S DEBT

3.1. Introduction

The previous chapter examined the African debt situation. It considered the intricacies of lending for Sub-Saharan African countries, the debt crisis of the 1980s, as well as the rising levels of current debt, and the need to act pre-emptively to arrest any situation that may result in a systemic crisis. It is against that backdrop that this chapter will illustrate the various existing methods of sovereign debt restructuring, and whether they are suitable and efficient for the treatment of African debt. The research question this chapter will attempt to answer is whether the current methods for sovereign debt restructuring are sufficient. In doing so, it will examine the existing methods of debt restructuring, their process of treatment of debt, and its historical treatment of African debt. Against this, there will be an evaluation of current concerns regarding sovereign debt restructuring and debt relief for African countries.

3.2. A note on terminology

Before further inquiry, it is necessary to define certain economic terms that may be used in this chapter. 'External debt' refers to debt that is owed to creditors that are non-resident creditors and may be repaid in both foreign and domestic currency²⁰⁷. 'Official debt'²⁰⁸ is debt owed to a bilateral government agency or a multilateral development agency. 'Public debt'²⁰⁹ makes reference to the debt owed by the government or public sector agencies. 'Bilateral debt'²¹⁰ refers to debt owed by one government to another. 'Multilateral debt'²¹¹ refers to debt obligations to institutions such as the IMF and the World Bank. Finally, this chapter shall make reference to syndicated loans which describe loans that are given in concert, by several creditors²¹².

²⁰⁷ World Bank Group, *International Debt Statistics* 2016, 154

²⁰⁸ OECD, Glossary of Statistical Terms <https://stats.oecd.org/glossary/index.htm> on 27 April, 2019

²⁰⁹ OECD, Glossary of Statistical Terms <https://stats.oecd.org/glossary/index.htm> on 27 April, 2019

²¹⁰ OECD, Glossary of Statistical Terms <https://stats.oecd.org/glossary/index.htm> on 27 April, 2019

²¹¹ Brooks S, Lombardi D, Suruma E, 'African perspectives on sovereign debt restructuring', CIGI's Global Economy Program, Kampala, 7 August 2014. Available at CIGI, 2

²¹² <https://www.imf.org/external/pubs/ft/bop/2005/05-30.pdf> on 27 April, 2019

3.3. Sovereign Debt Restructuring: A Primer

When credit is extended, the resultant relationship is one of debtor-creditor²¹³. This relationship creates a set of rights and obligations, and the most fundamental of these is the obligation on the debtor to make repayment (as well as interest, which operates typically as remuneration for the lender) as well as the creditor's right to receive repayment²¹⁴. Under municipal law, when a debtor does not honour its obligations to pay, the lender is availed of alternative methods of debt collection, either through remedies provided contractually or by statutory operation. Another remedy available is a scenario where parties come to an agreement on a new contractual framework for repayment of the loan²¹⁵.

Insolvency (cash flow) happens when there is an inability by the debtor to make good on payment of their debt²¹⁶. The operation of insolvency law kicks in at this point. Here, it is important to illustrate what is considered to be a good bankruptcy/insolvency procedure. Finch²¹⁷ observes that the law of bankruptcy/insolvency operates with a view to acknowledge and protect the interests of the debtors and creditors, as well as those of the society affected by the insolvency. Mugasha²¹⁸ contends that insolvency law's success in dealing with debtor-creditor affairs is determined in evaluating its procedural efficiency, and by preventing exploitation of any parties involved. As discussed in Chapter 2, Korobkin's value based theory also considers bankruptcy law successful if it makes resolutions across diverse values and contexts, with a view to produce efficiency²¹⁹.

When a country becomes insolvent, such that it is unable to service its public debt, the country is said to be in debt distress²²⁰. Debt distress is heterogeneous in its effect. On debtor nations, in

²¹³ Mugasha A, 'Solutions for developing-country external debt: Insolvency or forgiveness', 13 *Law and Business Review of the Americas Journal* (2007), 859

²¹⁴ Mugasha A, 'Solutions for developing-country external debt: Insolvency or forgiveness', 13 *Law and Business Review of the Americas Journal* (2007), 859

²¹⁵ Mugasha A, 'Solutions for developing-country external debt: Insolvency or forgiveness', 13 *Law and Business Review of the Americas Journal* (2007), 859

²¹⁶ ²¹⁶ Mugasha A, 'Solutions for developing-country external debt: Insolvency or forgiveness', 13 *Law and Business Review of the Americas Journal* (2007), 859

²¹⁷ Finch V, *Corporate insolvency law, perspectives and principles*, Cambridge University Press, 2009, 29

²¹⁸ Mugasha A, 'Solutions for developing-country external debt: Insolvency or forgiveness', 13 *Law and Business Review of the Americas Journal* (2007), 865

²¹⁹ Korobkin DR, 'Value and Rationality in Bankruptcy Decision-making' 33, *William & Mary Law Review* (1992), 365

²²⁰ <https://blogs.imf.org/2019/01/18/three-steps-to-avert-a-debt-crisis/> on 26 April, 2019

particular, it affects social and economic programs with an adverse effect on the citizenry, and constrains meaningful participation in global trade²²¹. Municipally, when a company is in distress, and there exists a desire to rehabilitate and rescue the company, the regime of insolvency law will provide a variety of ways to do so. This may include, among others, debt restructuring. In Kenya, this is dealt with under the Insolvency Act, 2015²²². There is a comparable version, with sovereign debt. Sovereign debt restructuring involves the employment of measures to allow the debtor nation some respite²²³, with regard to repayment of the debt. It generally constitutes actions to renegotiate and modify the terms of credit, so as to improve the borrower's chances of eventually repaying the loan²²⁴. The debtor receives concessions, typically in the form of extensions of deadlines for payment or debt cancellation for part of the debt²²⁵. Usually, it is more beneficial to a greater number of parties, than the spiraling of the debtor nation into greater economic turmoil because of rigid terms of repayment²²⁶. With this context, the next part of this chapter will consider the available methods of debt restructuring.

3.4. The Paris Club

3.4.1. Origin and nature of the Paris Club

In the 1960s, following Argentina's debt default, the Paris Club emerged as a leading group of bilateral creditors, to reschedule sovereign debt.²²⁷ Their first ad hoc meeting was in Paris in 1956, where the countries gathered to deal with Argentina's debt default. Since 1979, the Club has had a permanent secretariat housed by the French Treasury. All the Club's meetings take place in Paris. As at 2014, the Club comprised permanent membership of twenty countries²²⁸. The initial idea behind what was intended to be a transient cooperation was to provide relief to debtor countries

²²¹ Mugasha A, 'Solutions for developing-country external debt: Insolvency or forgiveness', 13 *Law and Business Review of the Americas Journal* (2007), 859

²²² Part IX, *Insolvency Act* (2015)

²²³ Mugasha A, 'Solutions for developing-country external debt: Insolvency or forgiveness', 13 *Law and Business Review of the Americas Journal* (2007), 866

²²⁴ Mugasha A, 'Solutions for developing-country external debt: Insolvency or forgiveness', 13 *Law and Business Review of the Americas Journal* (2007), 866

²²⁵ Mugasha A, 'Solutions for developing-country external debt: Insolvency or forgiveness', 13 *Law and Business Review of the Americas Journal* (2007), 866

²²⁶ Mugasha A, 'Solutions for developing-country external debt: Insolvency or forgiveness', 13 *Law and Business Review of the Americas Journal* (2007), 866

²²⁷ The Hague Centre for Studies and Research, *The legal implications of global financial crises*, September 2014, 4

²²⁸ The Hague Centre for Studies and Research, *The legal implications of global financial crises*, September 2014, 4

facing temporary liquidity problems²²⁹. The unintended effect of this continued rescheduling was that the debt burden of these debtor countries worsened since rescheduled interest was being treated as new debt²³⁰. Following the debt crisis of 80s, the Paris Club elected to increase debt relief to countries with struggling economies. Unlike the inaugural meetings, where creditors merely considered debt relief as a means to forestall liquidity problems, they increased the remit of the Club to include assisting said countries to reduce the burden of debt on their economies²³¹. There are typically four types of parties that attend these meetings²³²:

- a. Delegates from the debtor country;
- b. Representatives of the creditors;
- c. The IMF, which plays an advisory role; and
- d. International organizations that are invited as observers and may include representatives from OECD, UNCTAD and AfDB.

Korff-Schmising²³³ explains that typically, debt treated by the Club arises from contracts executed by, or guaranteed by one of the creditor government. The purview is usually limited to debts that have a term of more than a year. The Paris Club has several principles for restructuring sovereign debt²³⁴. The basic principle is that the country must be facing imminent default on debt service. Another condition is the agreement between the debtor's government and the IMF that the country concerned will make use of the temporary relief to put into place necessary fiscal policy adjustment programs. The terms of the agreement for debt rescheduling are binding on all creditors, with no creditor receiving more favourable terms. Decisions are made by consensus, which radically reduces the risk of holdout creditors²³⁵ (lenders who are willing to break ranks with other creditors, typically in pursuit of better terms)²³⁶. The scope of the relief granted by the Club is typically wider

²²⁹ Vilanova JC, Martin M, *The Paris Club, Debt Relief International Ltd, 2001*, Publication No. 3, 1

²³⁰ Vilanova JC, Martin M, *The Paris Club, Debt Relief International Ltd, 2001*, Publication No. 3, 1

²³¹ Vilanova JC, Martin M, *The Paris Club, Debt Relief International Ltd, 2001*, Publication No. 3, 2

²³² Vilanova JC, Martin M, *The Paris Club, Debt Relief International Ltd, 2001*, Publication No. 3, 2

²³³ Korff-Schmising, "Rescheduling of the external debt: Paris Club" Debt restructuring, Dar es Salaam, 8 to 12 July 1991, available on <http://www.unitar.org/dfm>

²³⁴ Korff-Schmising, "Rescheduling of the external debt: Paris Club" Debt restructuring, Dar es Salaam, 8 to 12 July 1991, available on <http://www.unitar.org/dfm>

²³⁵ Buchheit L, Chabert G, DeLong C, Zettelmeyer J, *The sovereign debt restructuring process*, 4 September, 2018, 8

²³⁶ Buchheit L, Chabert G, DeLong C, Zettelmeyer J, *The sovereign debt restructuring process*, 4 September, 2018, 14

than that granted by commercial banks and in some incidences, may include rescheduling of both the principal and interest. The members are also required to treat each rescheduling according to the circumstances of the debtor, and to share information with each other.²³⁷ It is open to all creditor governments to whom the debtor country is indebted, provided that they are willing to adhere to all the Club's practices listed above.

3.4.2. The Restructuring Process

The process begins by submitting a formal request to the Secretariat of the Club by the debtor nation. Thereafter, a negotiation meeting is set, and begins with a session where the statement of request by the country in debt is presented²³⁸. The purpose of the statement is to illustrate the need for debt relief. It contains information of the situation with regard to balance of payment, data on debt sustainability and the economic performance predictions of the country. The IMF then provides an evaluation of the debtor country's economic situation²³⁹. It is worth noting that only requests supported by the IMF will be considered by the IMF. Deliberations continue thereafter, with only the creditor countries and the IMF present. Terms to be offered to the debtor are established, noting, as stated above that the proposal has to be agreed upon by consensus. Should the debtor suggest modifications, they are conveyed to the creditors by the Chair of the Club²⁴⁰. The end result of this process is a document referred to as "Agreed Minutes". This document, containing the terms of the rescheduling, is not legally binding. However, each government is expected to honour it in good faith²⁴¹.

3.5. Historical Treatment of African Debt

Following the 80s debt crisis, African nations required debt restructuring for their bilateral debt²⁴². Requests from African countries for debt restructuring from Paris Club creditors were considerable in amount by the end of the 1970s. The countries seeking relief included Sudan, Uganda and Sierra

²³⁷ Buchheit L, Chabert G, DeLong C, Zettelmeyer J, *The sovereign debt restructuring process*, 4 September, 2018, 8

²³⁸ The Hague Centre for Studies and Research, *The legal implications of global financial crises*, September 2014, 8

²³⁹ The Hague Centre for Studies and Research, *The legal implications of global financial crises*, September 2014, 8

²⁴⁰ The Hague Centre for Studies and Research, *The legal implications of global financial crises*, September 2014, 8

²⁴¹ The Hague Centre for Studies and Research, *The legal implications of global financial crises*, September 2014, 8

²⁴² Gamarra B, Pollock M, Domeland D, Braga C, Debt relief and sustainability, in OHCHR (ed), *Realizing the right to development: Essays in commemoration of 25 years of the United Nations Declaration on the Right to Development*, UN, 2013, 276

Leone. Reportedly, by the end of 1986, the debt of 22 Sub-Saharan African countries had been restructured²⁴³. Notably, the Club restructured previously rescheduled claims, in the period between 1973 and 1986. This was owing to an untenable principle at the time, that debts once rescheduled, would not be rescheduled again²⁴⁴.

As explained by Peter²⁴⁵, the Paris Club recognized that its terms were untenable and at a summit in Toronto in 1988, they proposed a reconsideration of terms. They agreed that African debtor countries would receive relief through three options (these were known as the Toronto terms). The writing off or forgiveness of debt comprising a third of what was owed, with the remainder being paid over a period of stipulated time, a rescheduling of all outstanding debt over a 14 year period of repayment, with a grace period of 8 years, and a reduced interest rate, and finally, rescheduling the debt over 25 years, after the granting of a 14 year grace period, with interest at market rates²⁴⁶. This was applied in negotiations with countries like Tanzania (2002)²⁴⁷ and Uganda (2000)²⁴⁸. Further engagement of Sub-Saharan Africa included the further application of lower interest rates on the existing debt, with longer repayment and grace periods. Somalia and Uganda benefited from this²⁴⁹.

An example of an unsavoury engagement between the Paris Club and a Sub-Saharan African country is its debt treatment of Nigeria²⁵⁰. Nigeria began experiencing debt servicing problems in 1985. By the time she had finished servicing the initial debt, its external debt had grown even greater²⁵¹. The reason for this, was that even when commercial creditors agreed to restructure her

²⁴³ Gamarra B, Pollock M, Domeland D, Braga C, Debt relief and sustainability, in OHCHR (ed), *Realizing the right to development: Essays in commemoration of 25 years of the United Nations Declaration on the Right to Development*, UN, 2013, 276

²⁴⁴ Gamarra B, Pollock M, Domeland D, Braga C, Debt relief and sustainability, in OHCHR (ed), *Realizing the right to development: Essays in commemoration of 25 years of the United Nations Declaration on the Right to Development*, UN, 2013, 276

²⁴⁵ Peter CM, "Rescheduling of sovereign debt: The experience of Tanzania at the Paris Club" Debt restructuring, Dar es Salaam, 8 to 12 July 1991, available on <http://www.unitar.org/dfm>

²⁴⁶ Peter CM, "Rescheduling of sovereign debt: The experience of Tanzania at the Paris Club" Debt restructuring, Dar es Salaam, 8 to 12 July 1991, available on <http://www.unitar.org/dfm>

²⁴⁷ <http://www.clubdeparis.org/en/sections/pays-debiteur/tanzania> on 5 May, 2019

²⁴⁸ <http://www.clubdeparis.org/en/sections/pays-debiteur/uganda> on 5 May, 2019

²⁴⁹ Peter CM, "Rescheduling of sovereign debt: The experience of Tanzania at the Paris Club" Debt restructuring, Dar es Salaam, 8 to 12 July 1991, available on <http://www.unitar.org/dfm>

²⁵⁰ The Brookings Institution, *Nigeria's Paris Club Debt Problem*, Policy Brief No. 44, 2

²⁵¹ The Brookings Institution, *Nigeria's Paris Club Debt Problem*, Policy Brief No. 44, 3

debt, the Paris Club refused to restructure the debts owed to them by Nigeria. The reason given was that Nigeria had run afoul of the policy requirements laid out by the IMF²⁵². In 2005, President Obasanjo and Finance Minister Ngozi Okonjo-Iweala announced that Nigeria had finally received debt relief, with the Paris Club implementing its first discounted buyback²⁵³. In this scenario, Nigeria paid off its entire bilateral debts at once, but at a steep discount²⁵⁴. By this time, however, Nigeria, was the continent's most indebted nation, holding US \$36 billion in external debt²⁵⁵.

The Paris Club clearly has a somewhat chequered history with African debtor nations. It has, in fact, been described as being ill suited to reschedule African debts. Mistry²⁵⁶ goes as far as to say that it was unable to deal with the debt relief needs of Sub-Saharan Africa. Some of the criticisms levelled against the Paris club include the imposition of unrealistic scheduling terms for Sub-Saharan countries, which led to build up of debt. It has also been accused of being inordinately slow to allow debt relief for Latin American and African countries during the 1980s debt crisis²⁵⁷.

3.6. The London Club

3.6.1. Origin and Nature of the London Club

Developing countries, in the 1970s, borrowed from commercial banks. This debt mostly took the form of syndicated loans²⁵⁸. When debt service by these governments became untenable, bank advisory committees (BACs) were formed to restructure the debt. The negotiations addressed debt owed by Zaire, Sudan, Poland, Turkey and Peru²⁵⁹. When this process was repeatedly applied in later defaults, it was (in a somewhat misleading manner as not all negotiations were conducted in London) labelled "the London Club"²⁶⁰. It has now come to be used to refer to negotiations held

²⁵² The Brookings Institution, *Nigeria's Paris Club Debt Problem*, Policy Brief No. 44, 3

²⁵³ The Brookings Institution, *Nigeria's Paris Club Debt Problem*, Policy Brief No. 44, 21

²⁵⁴ The Brookings Institution, *Nigeria's Paris Club Debt Problem*, Policy Brief No. 44, 2

²⁵⁵ <https://www.cgdev.org/topics/nigerian-debt-relief> on 26 April, 2019

²⁵⁶ Mistry P, *African Debt Revisited: Procrastination or Progress?* Forum on Debt and Development (FONDAD), 1991, 33

²⁵⁷ Mistry P, *African Debt Revisited: Procrastination or Progress?* Forum on Debt and Development (FONDAD), 1991, 13

²⁵⁸ Das U, Papaioannou M, Trebesch C, *Restructuring sovereign debt: Lessons from recent history*, August, 2012, 11

²⁵⁹ Das U, Papaioannou M, Trebesch C, *Restructuring sovereign debt: Lessons from recent history*, August, 2012, 11

²⁶⁰ The Hague Centre for Studies and Research, *The legal implications of global financial crises*, September 2014, 14

between commercial lenders and debtor nations. This is usually done by establishing as *ad hoc* bank advisory committee (described as a “communications link” between the debtor and the international banking community²⁶¹) or a creditor committee²⁶². The membership of the committee varied depending on the size of a bank’s debt exposure, and the need for representation. Usually, only the initial amounts lent were rescheduled, with the requirement that the arrears be paid at the time the agreement to restructure came into effect. Sometimes, the creditors extended fresh credit to the debtor nations²⁶³.

Reportedly, in the period between 1980 and 1988, US \$18.7 billion owed to commercial bank by low income countries was subjected to a debt restructuring mechanism, with countries like Côte d'Ivoire, Nicaragua, Sudan and Nigeria seeming to account for 85% of the entire amount²⁶⁴.

3.6.2. The Restructuring Process

The process of restructuring debt with the London Club begins with a debtor nation defaulting, and is subsequently unable to borrow on international markets²⁶⁵. The debtor country then reaches out to a one or two of its major bank lenders, and seeks to have them organize and chair a committee meeting. These committees do not operate under any set of rules of procedures, and their formation do not require statutory or contractual underpinnings²⁶⁶. The role of the BACs revolves around the establishment of procedures that would govern the negotiations, ascertaining the authenticity of data provided by the debtor to support the request for restructuring, assessing the debtor country’s fiscal reform efforts, negotiate the terms of the debt treatment, as well as

²⁶¹ The Hague Centre for Studies and Research, *The legal implications of global financial crises*, September 2014, 14

²⁶² Das U, Papaioannou M, Trebesch C, *Restructuring sovereign debt: Lessons from recent history*, August, 2012, 11

²⁶³ Gamarra B, Pollock M, Domeland D, Braga C, Debt relief and sustainability, in OHCHR (ed), *Realizing the right to development: Essays in commemoration of 25 years of the United Nations Declaration on the Right to Development*, UN, 2013, 282

²⁶⁴ Gamarra B, Pollock M, Domeland D, Braga C, Debt relief and sustainability, in OHCHR (ed), *Realizing the right to development: Essays in commemoration of 25 years of the United Nations Declaration on the Right to Development*, UN, 2013, 283

²⁶⁵ The Hague Centre for Studies and Research, *The legal implications of global financial crises*, September 2014, 15

²⁶⁶ The Hague Centre for Studies and Research, *The legal implications of global financial crises*, September 2014, 15

drafting the documentation, sells the terms of the restructuring to non-committee members²⁶⁷. The outcome of the process, there is an “agreement in principle”, which contains the terms agreed upon. The members of the BAC then need to approve the agreement²⁶⁸. Usually, unanimity is imperative, and in the alternative, approval by banks that are responsible for at least 95% of the debt. Contrary to the outcome of the Paris Club discussed in this chapter (agreed minutes), the agreement that is produced by this process, once formally ratified, is legally binding on all members²⁶⁹.

Notably, of the biggest drawbacks with the London Club process, is the presence of holdouts and disputes among creditors. In fact, it is reported that among the restructurings effected by the London Club, 30% dealt with inter-creditor wrangles that resulted in delays in implementing agreements²⁷⁰. Examples include dissension by Bankers Trust in Algeria’s restructuring in 1992, Lloyds bank resisting an agreement in Argentina in 1982, as well as Citibank in Chile in 1987²⁷¹.

3.7. Historical Treatment of African Debt

By the end of 1990, the total debt owed by African countries to London Club editors was estimated to be US \$23.4 billion, with Sub-Saharan Africa accounting for US \$15 billion of this. By this time, there was forty commercial debt rescheduling agreements on the continent²⁷². As indicated above, the London Club’s initial terms were that only the principal amounts were rescheduled, and the arrears paid off before the agreement was performed. However, it became apparent that the debt crisis in the 80s was systemic and debt owed to commercial creditors could not be dealt with by simply rescheduling principal payments. Additionally, concerted lending became difficult to

²⁶⁷ The Hague Centre for Studies and Research, *The legal implications of global financial crises*, September 2014, 15

²⁶⁸ The Hague Centre for Studies and Research, *The legal implications of global financial crises*, September 2014, 16

²⁶⁹ The Hague Centre for Studies and Research, *The legal implications of global financial crises*, September 2014, 16

²⁷⁰ Das U, Papaioannou M, Trebesch C, *Restructuring sovereign debt: Lessons from recent history*, August, 2012, 11

²⁷¹ Das U, Papaioannou M, Trebesch C, *Restructuring sovereign debt: Lessons from recent history*, August, 2012, 12

²⁷² Mistry P, *African Debt Revisited: Procrastination or Progress? Forum on Debt and Development (FONDAD)*, 1991, 56

arrange²⁷³. In fact, by the late 1980s, many developing countries had been in default for an entire decade²⁷⁴.

As a result of this, it became evident that debt reduction might be necessary. The Brady Plan was implemented. Named for the US Treasury Secretary who announced it in 1989, Nicholas Brady, it was spurred into fruition because there was concern about solvency of debtor countries, particularly those in developing regions. The Plan enjoyed support by the IMF and World Bank²⁷⁵. The crux of the Brady Plan appeared to be the parlaying of bank loans into new sovereign bonds, which enjoyed part securitization by US Treasury bonds, to offer creditors participating in restructurings an array of options, which would allow them to choose from different new debt instruments, and the writing off of interest owed to commercial banks²⁷⁶. The most notable African beneficiaries of the Brady Plan were Morocco, Nigeria and Côte d'Ivoire²⁷⁷.

3.8. Other Forms of Debt Relief

There were other forms of debt relief following the 80s debt crisis. This was necessitated by the fact that notwithstanding bilateral debt relief efforts, the debts of a considerable number of low-income countries were too high to service²⁷⁸. Because of this, the Bretton Woods institutions, the IMF and the World Bank, who were also major creditors of low-income countries came up with the HIPC (Heavily Indebted Poor Countries) Initiative, to deal with multilateral debt²⁷⁹. The key principles underpinning were that debt sustainability was to be assessed on a case-by-case basis, that debt relief would only be granted when the debtor indicated that the relief was to be put to good use, that the mechanisms to deal with debt sustainability should be developed, broad creditor

²⁷³ Gamarra B, Pollock M, Domeland D, Braga C, Debt relief and sustainability, in OHCHR (ed), *Realizing the right to development: Essays in commemoration of 25 years of the United Nations Declaration on the Right to Development*, UN, 2013, 283

²⁷⁴ Das U, Papaioannou M, Trebesch C, *Restructuring sovereign debt: Lessons from recent history*, August, 2012, 12

²⁷⁵ Das U, Papaioannou M, Trebesch C, *Restructuring sovereign debt: Lessons from recent history*, August, 2012, 12

²⁷⁶ Das U, Papaioannou M, Trebesch C, *Restructuring sovereign debt: Lessons from recent history*, August, 2012, 12

²⁷⁷ Mistry P, *African Debt Revisited: Procrastination or Progress?* Forum on Debt and Development (FONDAD), 1991, 56

²⁷⁸ Brooks S, Lombardi D, Suruma E, 'African perspectives on sovereign debt restructuring', CIGI's Global Economy Program, Kampala, 7 August 2014. Available at CIGI, 3

²⁷⁹ Brooks S, Lombardi D, Suruma E, 'African perspectives on sovereign debt restructuring', CIGI's Global Economy Program, Kampala, 7 August 2014. Available at CIGI, 3

participation, and that new financing to beneficiary countries would be provided on concessional terms²⁸⁰. Another debt relief initiative set up by multilateral agencies was the Multilateral Debt Relief Initiative (MDRI) was intended to supplement the HIPC. It seeks two major objectives, to wit, to increase debt relief to HIPC countries, to support their realization of Millennium Development Goals, while contemporaneously safeguarding the financial well-being of international financial institutions, as well as encouraging the allocative efficiency of donor resources by placing them in low income countries with demonstrable good policy performance²⁸¹. As at September, 2014, debt relief packages for 36 countries had been approved under the HIPC Initiative and MDRI, with 30 of these countries being in Africa²⁸². The benefits of these initiatives for African countries cannot be gainsaid. There was a remarkable decline in public debt held by Sub-Saharan African countries after the implementation of HIPC and MDRI²⁸³. Nonetheless, it is noted for the purposes of this paper that these initiatives do not carry a guarantee of replication²⁸⁴.

3.9. Concerns Presented

This chapter has discussed the existing methods of sovereign debt restructuring that have been used to grant relief to African countries. This chapter also seeks to ascertain whether these methods have any viability, at this point, given the peculiarities of African debt discussed in Chapter 2, as well as other concerns that will be addressed below.

3.9.1. Creditor lawsuits and vulture funds

With any debt restructuring mechanism, creditor holdouts present a huge concern²⁸⁵. They delay the process, worsening the indebtedness of the debtor. As discussed above, the London Club has been beguiled with a creditor holdout problem. Recent developments do not make things any

²⁸⁰ Gamarra B, Pollock M, Domeland D, Braga C, Debt relief and sustainability, in OHCHR (ed), *Realizing the right to development: Essays in commemoration of 25 years of the United Nations Declaration on the Right to Development*, UN, 2013, 284

²⁸¹ Gamarra B, Pollock M, Domeland D, Braga C, Debt relief and sustainability, in OHCHR (ed), *Realizing the right to development: Essays in commemoration of 25 years of the United Nations Declaration on the Right to Development*, UN, 2013, 284

²⁸² Brooks S, Lombardi D, Suruma E, 'African perspectives on sovereign debt restructuring', CIGI's Global Economy Program, Kampala, 7 August 2014. Available at CIGI, 3

²⁸³ Brooks S, Lombardi D, Suruma E, 'African perspectives on sovereign debt restructuring', CIGI's Global Economy Program, Kampala, 7 August 2014. Available at CIGI, 3

²⁸⁴ Brooks S, Lombardi D, Suruma E, 'African perspectives on sovereign debt restructuring', CIGI's Global Economy Program, Kampala, 7 August 2014. Available at CIGI, 4

²⁸⁵ Buchheit L, Chabert G, DeLong C, Zettelmeyer J, *The sovereign debt restructuring process*, 4 September, 2018, 15

better. The years subsequent to the 1980s debt crisis and the resultant debt restructuring, have witnessed an increase in creditor litigation²⁸⁶. Creditors have been breaking rank with other creditors and going to court to realize their debts. An example of this is the case between the DRC (then Zaire) and FG Hemisphere LLC²⁸⁷. The DRC had entered into a contract with a Yugoslav company to construct a hydro-electric facility in 1980 and 1986. Owing to the political upheavals faced by DRC during the period that Mobutu Sese Seko was at the helm of the country, the country was in massive debt distress and defaulted on its obligations²⁸⁸. In 2003, two arbitral institutions handed down awards against the DRC requiring her to pay the principal loans, as well as the interest accruing. Thereafter, investment fund known as FG Hemisphere LLC bought the debts from the Yugoslav company. In 2010, while DRC received massive debt relief through the HIPC Initiative discussed above, FG Hemisphere broke ranks with other creditors and sued DRC to recover what was owed to the Yugoslav company under the original loan contract²⁸⁹.

The emergence of vulture funds has further worsened things. The AfDB describes vulture funds as entities that seek to buy distressed debt, sell it at a value that is considerably lower than what it is worth, and then seek to realize the full amount, often times through litigation²⁹⁰. This was illustrated in the case of *Camdex International Ltd. v. Bank of Zambia*²⁹¹ where the vulture fund bought the sovereign debt, reduced it into a judgment debt, and then went ahead to freeze the debtor's assets, so as to enforce its claim, whilst a sovereign debt restructuring mechanism was ongoing. A more recent global development has further complicated sovereign debt restructuring with commercial lenders. The US Federal Courts in New York interpreted a *pari passu* clause (a principle in insolvency law denoting the designation of all unsecured creditors in an insolvency process as entitled to share equally in the available assets of the insolvent, in proportion to the

²⁸⁶ Das U, Papaioannou M, Trebesch C, *Restructuring sovereign debt: Lessons from recent history*, August, 2012, 21

²⁸⁷ Democratic Republic of the Congo & Others v FG Hemisphere Associates LLC. FACV No 5 of 2010 (8 June 2011)1 & (8 September 2011)

²⁸⁸ Holdout Creditor Litigation An assessment of legislative initiatives to counter aggressive sovereign debt creditor litigators, Unpublished LLM Thesis, University of Oslo, 1 June, 2015, 2

²⁸⁹ Holdout Creditor Litigation An assessment of legislative initiatives to counter aggressive sovereign debt creditor litigators, Unpublished LLM Thesis, University of Oslo, 1 June, 2015, 2

²⁹⁰ <https://www.afdb.org/en/topics-and-sectors/initiatives-partnerships/african-legal-support-facility/vulture-funds-in-the-sovereign-debt-context/> on 27 April, 2019

²⁹¹ *Camdex Int'l Ltd. v. Bank of Zambia*, [1997] C.L.C. 714 (Civ.).

claim of each lender²⁹²) in cross-border debt instrument to justify granting of an injunction that required Argentina to pay holdout creditors ratably with any payments that were made to countries that did indeed grant the sovereign borrower debt relief²⁹³. This decision has been seen to encourage holdout behaviour, during sovereign debt restructuring which is damaging to the debt restructuring framework, and the debtor nation²⁹⁴.

Such cases, have been considered to be an obstacle to sovereign debt restructurings and debt relief, particularly in low income countries²⁹⁵. Given the fragilities of African economies discussed in Chapter 3, it would not be an exaggeration to state that this would further exacerbate the debt distress in an African economy. The proliferation of holdout behaviour and litigation also diminishes the efficiency of the London Club method of restructuring.

3.9.2. Emergence of new bilateral lenders

As discussed in Chapter 2, there has been an emergence of new bilateral lenders. In Africa, chief among these is China. China is a non-Paris club country and as such has no obligation to participate in debt rescheduling exercises, or to observe its rules and practices²⁹⁶. While China has relaxed its erstwhile hostile stance against the Paris Club creditors²⁹⁷, there does not exist any indication that she will work with other bilateral lenders to restructure sovereign debt²⁹⁸. In the absence of a framework within which to deal with Sino-African debt, there is no way of knowing how each debt treatment will be treated, which portends trouble for African nations saddled with Chinese

²⁹² [https://uk.practicallaw.thomsonreuters.com/1-384-6152?transitionType=Default&contextData=\(sc.Default\)&firstPage=true&comp=pluk&bhcp=1](https://uk.practicallaw.thomsonreuters.com/1-384-6152?transitionType=Default&contextData=(sc.Default)&firstPage=true&comp=pluk&bhcp=1) on 27 April, 2019

²⁹³ *NML Capital, Ltd v Argentina*, No 08 Civ 6978 (TPG) (SDNY, 23 Feb 2012)

²⁹⁴ Buchheit L, Gulati G, 'Restructuring sovereign debt after *NML v Argentina*', 12 *Capital Markets Law Journal*, 2017, 2

²⁹⁵ Holdout Creditor Litigation An assessment of legislative initiatives to counter aggressive sovereign debt creditor litigators, Unpublished LLM Thesis, University of Oslo, 1 June, 2015, 2

²⁹⁶ Brooks S, Lombardi D, Suruma E, 'African perspectives on sovereign debt restructuring', CIGI's Global Economy Program, Kampala, 7 August 2014. Available at CIGI, 6

²⁹⁷ Brooks S, Lombardi D, Suruma E, 'African perspectives on sovereign debt restructuring', CIGI's Global Economy Program, Kampala, 7 August 2014. Available at CIGI, 6

²⁹⁸ Hurley J, Morris S, Portelance G, *Examining the Debt Implications of the Belt and Road Initiative from a Policy Perspective*, CGD Policy Paper 121, March, 2018, 19

debt²⁹⁹. This also served to render the Paris Club method of restructuring sovereign debt rather redundant in the face of these shifts in lender base³⁰⁰.

3.9.3. Sovereign bonds

As illustrated in chapter 2, African countries are increasingly turning to international capital markets to supplement their debt financing. Countries such as Kenya, Zambia, Ghana and Namibia have issued Eurobonds on the financial markets³⁰¹. The potential benefits of such financing have been already discussed. There are however mounting concerns about the risks of such financing, also discussed earlier. In relation to sovereign debt restructuring, the greater risk is that in the event of default, there is no clear way through which to restructure these private debts³⁰². A number of African countries have already showed signs of experiencing sovereign bond debt distress. Seychelles has already defaulted on a US \$230 million bond³⁰³. Kenya is also experiencing difficulties with repaying its first sovereign bond.³⁰⁴ The London Club is evidently insufficient to restructure sovereign bond debts, considering its existing creditor cooperation concerns³⁰⁵. As such, the need to restructure African debt held through bonds, will be faced with problems of coordination and expensive litigation, which would further worsen the state of a struggling economy.³⁰⁶ There is therefore need to establish a framework that will comprehensively treat debt held through sovereign bonds.

3.10. Conclusion

This chapter has evaluated the existing sovereign debt restructuring mechanisms and has examined their interaction with Africa debt, historically. The Paris Club and London Club have restructured

²⁹⁹ Hurley J, Morris S, Portelance G, *Examining the Debt Implications of the Belt and Road Initiative from a Policy Perspective*, CGD Policy Paper 121, March, 2018, 19

³⁰⁰ Brooks S, Lombardi D, Suruma E, 'African perspectives on sovereign debt restructuring', CIGI's Global Economy Program, Kampala, 7 August 2014. Available at CIGI, 6

³⁰¹ Brooks S, Lombardi D, Suruma E, 'African perspectives on sovereign debt restructuring', CIGI's Global Economy Program, Kampala, 7 August 2014. Available at CIGI, 6

³⁰² Brooks S, Lombardi D, Suruma E, 'African perspectives on sovereign debt restructuring', CIGI's Global Economy Program, Kampala, 7 August 2014. Available at CIGI, 6

³⁰³ 'Roy S, Turner M, Seychelles eyes market return' *Reuters*, 27 August, 2015

<https://www.reuters.com/article/seychelles-bonds/seychelles-eyes-market-return-sources-idUSL5N11233K20150827> on 5 May, 2019

³⁰⁴ <https://www.standardmedia.co.ke/article/2001308029/kenyans-to-feel-pinch-of-paying-first-eurobond-installment> on 27 April, 2019

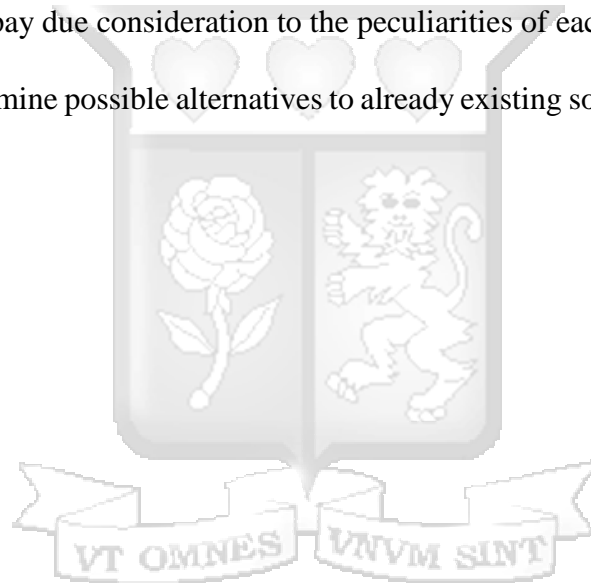
³⁰⁵ Brooks S, Lombardi D, Suruma E, 'African perspectives on sovereign debt restructuring', CIGI's Global Economy Program, Kampala, 7 August 2014. Available at CIGI, 6

³⁰⁶ Brooks S, Lombardi D, Suruma E, 'African perspectives on sovereign debt restructuring', CIGI's Global Economy Program, Kampala, 7 August 2014. Available at CIGI, 6

African debt previously. Multilateral agencies have also offered debt relief to African countries. However, given the changing landscape of sovereign debt to include more diverse lenders, and different debt instruments, it is clear that there is a dearth of sufficient debt restructuring mechanisms³⁰⁷.

The chief question this chapter undertook to answer, is whether these mechanisms are suitable and sufficient to address African debt, even with the developments that have been highlighted herein. From the evaluation done, they appear to come up short. Given that African countries may require sovereign debt restructuring in the not too distant future³⁰⁸, it is imperative that stakeholders, who include bilateral, multilateral and commercial lenders, as well as debtor nations, evaluate a suitable mechanism for restructuring their debts. It is imperative that these mechanisms to be considered, be efficient, timely, and pay due consideration to the peculiarities of each circumstance.

The next chapter will examine possible alternatives to already existing sovereign debt restructuring procedures.



³⁰⁷ Chapter 4 will attempt to discuss viable alternatives

³⁰⁸ Brooks S, Lombardi D, Suruma E, '*African perspectives on sovereign debt restructuring*', CIGI's Global Economy Program, Kampala, 7 August 2014. Available at CIGI, 7

CHAPTER FOUR: TOWARDS A HYBRID FRAMEWORK FOR DEBT RESTRUCTURING

4.1. Introduction

Chapter two of this thesis investigated the distinct nature of African borrowing, and as a result, her debt burden. The peculiarities of African debt, past and present, have been illustrated. It also examined the continent's rising debt levels, and the likelihood that some African countries will need avenues to restructure untenable debt, and soon. Flowing from this, Chapter 3 examined the existing methods of sovereign debt restructuring and their sufficiency to restructure debt held by countries in Africa. Owing to the said methods' inefficiencies, as well other emerging set of conditions that render these mechanisms even more inadequate to restructure African debt, it was demonstrated that they were not well suited to restructure African debt³⁰⁹.

Drawing from this, this chapter considers three pertinent questions: the structure of a hybrid framework for debt restructuring, whether such a framework is feasible, and finally, whether this framework will afford African countries, the relief they so seek. In doing so, this chapter attempts to answer the question that informs this thesis, "Is a hybrid framework for sovereign debt restructuring the answer to sovereign debt relief for African countries?" This chapter will interrogate the ability of such a framework to offer timely, efficient and less costly debt relief. It will begin by examining the objectives of a new framework for sovereign debt restructuring as envisioned by Korobkin³¹⁰, with a view to producing a timely and efficient system, that affords relief to debtors, value to creditors, and does so while taking into account the peculiarities of the circumstances that the debtor nation finds itself in. Thereafter, it will look at the proposed components of the framework separately, and illustrate the benefits thereof, to a regime of sovereign debt restructuring, as well as possible causes for concern. It will also evaluate the possible structure of such a system for debt restructuring. Finally, it will address the suitability of said framework for purposes of debt restructuring.

³⁰⁹ Brooks S, Lombardi D, Suruma E, '*African perspectives on sovereign debt restructuring*', CIGI's Global Economy Program, Kampala, 7 August 2014. Available at CIGI, 8

³¹⁰ Korobkin DR, 'Value and Rationality in Bankruptcy Decision-making' 33, *William & Mary Law Review* (1992), 365

4.2. Objectives of a New Framework for Sovereign Debt Restructuring

There is need for a new framework for sovereign debt restructuring. This study, has at length, attempted to illustrate that. But what would the objectives for such a framework be? To begin with, it would be necessary to examine the conceptual underpinnings for good system of debt restructuring. As stated, Korobkin³¹¹ argues that it is difficult to provide a single scaffolding on which the lot of an insolvent is resolved. Each incident of financial distress is unique in its context, and this ought to be taken into account when offering debt treatment. The handling of an incident of insolvency ought to have a comprehensive, multifaceted approach that optimizes value for all participants³¹².

Nudelsman³¹³ suggests that sovereign debt restructuring ought to have three invariable characteristics; efficiency, orderliness and predictability. She notes that to achieve this, coordination amongst creditors, as well as information sharing is imperative. Perhaps it is important to register that she urges that it ought to be at the centre of all considerations that a loss on the side of a debtor ought to be avoided, as the alternative results in destruction of value, from which none of the parties derive any resultant benefit, seeing as a debtor's loss produces no gain for the creditors. It is therefore pertinent to a sovereign debt restructuring system to preserve, in as far as is possible, the value of the debtor's resources, not just for the creditors, but the debtor itself.

4.3. Statutory Mechanism for Sovereign Debt Restructuring

One of the propositions for a system of sovereign debt restructuring has been the creation of a statutory mechanism of dealing with sovereign debt restructuring. This method was proposed by former IMF Chief Krueger³¹⁴, who advocated for the creation of a statutory based approach, which would create the SDRM, Sovereign Debt Restructuring Mechanism. In her estimation, the establishment of a universal treaty for obligations, would ensure uniformity of procedure, by giving the remit of standardizing interpretation to one institution, and would facilitate the creation of a sole international body with the power to deal with disputes and oversee voting among

³¹¹ Korobkin DR, 'Value and Rationality in Bankruptcy Decision-making' 33, *William & Mary Law Review* (1992), 365

³¹² Olotu E, Onakoya A, 'Bankruptcy and insolvency: An exploration of relevant theories' 7(3) *International Journal of Economics and Financial Issues*, 2017, 709

³¹³ Nudelsman S, 'Is it possible to improve sovereign debt restructuring?' 47 *Journal Revista Problemas del Desarrollo* (2016), 4

³¹⁴ Krueger A, *A new approach to sovereign debt restructuring*, International Monetary Fund, 2002

creditors. According to this proposal, the mechanism would allow for a moratorium in place once payments are suspended, create mechanisms to protect creditors' interests during the moratorium, and would allow for provision of new financing by private creditors during the proceedings, as well as a provision to have the creditors bound by an agreement that has been approved by a specified majority³¹⁵. Further, the claims to be restructured through the SDRM would be classified in the text of the treaty establishing the SDRM. As such, the classes created would be limited to those where it is possible to make general, ex ante decisions based on the seniority of claims (for example, unsecured or secured claims) as well as the interests of the types of creditors (for example, state versus private lenders)³¹⁶.

The IMF has postulated that objective of the SDRM would be to establish a framework that incentivizes the debtor nation and its creditors, to act collaboratively and promptly to arrive at an agreement on the restructuring of unsustainable debt³¹⁷. The envisaged goal would be the preservation of the economic value of the debtor nation's resources and a facilitation of the nation's status to viability, and as such, reduce the cost of the process³¹⁸. Further, creditor interests were seen to be balanced as per the proposal by IMF, the debtor nation would be disallowed from making any payment to non-priority creditors³¹⁹. Additionally, the IMF would exercise oversight over the debtor nation's ability to diminish her resources, which would result in the preservation of value for the creditors, policy wise³²⁰. Additionally, proponents of this mechanism have contended that it would strengthen creditor coordination, which would encourage debtor nations and their creditors to reschedule unsustainable debt, before default was the only option, and in doing so, promoting the idea of early prevention of distress³²¹. Another considerably attractive

³¹⁵ Krueger A, *A new approach to sovereign debt restructuring*, International Monetary Fund, 2002, 11

³¹⁶ International Monetary Fund, *Sovereign debt restructuring mechanism—further considerations*, 14 August, 2002, 10

³¹⁷ Sedlak J, 'Sovereign debt restructuring: Statutory reform or contractual solution?' 152 *University of Pennsylvania Law Review*, (2004) 1495

³¹⁸ Sedlak J, 'Sovereign debt restructuring: Statutory reform or contractual solution?' 152 *University of Pennsylvania Law Review*, (2004) 1495

³¹⁹ Sedlak J, 'Sovereign debt restructuring: Statutory reform or contractual solution?' 152 *University of Pennsylvania Law Review*, (2004) 1495

³²⁰ Sedlak J, 'Sovereign debt restructuring: Statutory reform or contractual solution?' 152 *University of Pennsylvania Law Review*, (2004) 1495

³²¹ Lastra RM, Bodellini M, 'Soft law and sovereign debt' Intergovernmental Group of Experts on Financing for Development, Geneva, 7-9 November, 2018, 13 available at

<https://unctad.org/meetings/en/Contribution/SOFT%20LAW%20AND%20SOVEREIGN%20DEBT.pdf>

feature of this method is that it would deal with any arising threat of litigation by dissenting creditors, as they would not have an alternative forum through which to litigate³²². The SDRM method got support from some quarters. Notable, was China, a key bilateral lender. Around September 2002 the governor of the Chinese central bank, Dai, submitted at before the IMF Committee, that an effective SDRM would help forestall and resolve debt crises³²³.

Some criticisms have been levelled against this proposed method. The biggest concern has been that of the creation of moral hazard³²⁴. It has been argued that if there is an orderly, predictable and rapid restructuring process, the result will be a reduction of the cost of default, which will provide a perverse incentive to debtor nations to borrow irresponsibly³²⁵. Another perceived drawback of the proposal was that there was no provision of either an automatic stay on litigation by disgruntled creditors, or an automatic moratorium on payments and that these options would only be available after voting by a majority of creditors³²⁶. Further, there remains fear of bad faith on the part of some powerful Western creditors who may enforce terms onerous to sovereign debtors, which may eventually become law³²⁷.

Finally, the US remained disconcerted by the notion that the SDRM would run afoul of the contractual claims of its investors, and further that the jurisdiction of its domestic courts would be curtailed by the dispute resolution body to be formed within the SDRM³²⁸. The IMF anticipated that given the attractive features of this model to both debtors and creditors, the proposal would

³²² Yu H "Official" bondholder: A new holdout creature in sovereign debt restructuring after vulture funds? 16 *Washington University Global Studies Law Review* (2017) 549

³²³ Wang H, 'China and Sovereign Debt Restructuring?', CIGI Papers 45, September 2014

³²⁴ The OECD defines moral hazard as the exhibition of behaviour where actors do not bear the entire costs of their actions, and as such are more predisposed to repeat said actions. OECD Glossary of Statistical Terms <https://stats.oecd.org/glossary/detail.asp?ID=1689> on 27 April, 2019

³²⁵ Sedlak J, 'Sovereign debt restructuring: Statutory reform or contractual solution?' 152 *University of Pennsylvania Law Review*, (2004) 1496

³²⁶ International Monetary Fund, *Proposed features of a sovereign debt restructuring mechanism*, 12 February, 2003, 8

³²⁷ Haley J, 'Sovereign debt restructuring: Good faith or self-interest?', CIGI Papers 150, November 2017

³²⁸ Hagan S, 'Designing a legal framework to restructure sovereign debt' 36 *Georgetown Journal of International Law*, (2005) 299

not be met with recalcitrance³²⁹. They were wrong. Owing to opposition by the US, the proposal was shelved³³⁰.

An alternative statutory approach has been proposed, with the enacting of complementary legislation nationally. This would involve the amendment of the articles creating the IMF, and the further establishment of new treaty obligations. As such, the member countries will require legislative amendments to their municipal frameworks, to give the amendment full force³³¹.

However, should there be some countries that refuse to adopt the necessary legislation, the key attractive features of this proposal which are uniformity and universality would be sacrificed³³². After the difficulties faced by Argentina while restructuring its debt, which were discussed in Chapter 3, calls for the SDRM approach have been renewed³³³.

4.4. Contractual Approach to Sovereign Debt Restructuring

This approach involves having negotiations between creditors and debtors, under the conditions that are provided in the debt contracts creating their relationship³³⁴. Eichengreen³³⁵ states, however, that these inter-creditor relations are governed by incomplete contracts, which have no provisions for communication centres for bondholders and creditors, no prohibition on disruptive litigation, and no allowance for a majority vote by creditors on changes in payment terms. He argues that it is for that reason that it is difficult to restructure sovereign debt under the existing institutional mechanisms. The absence of such contractual rules makes creditor coordination

³²⁹ Muriungi M, 'Towards a legal framework on sovereign debt restructuring: A developing countries' perspective' Unpublished LLM Thesis, University of Nairobi, 14 November, 2016

³³⁰ Eichengreen B, 'Restructuring sovereign debt' 17 *Journal of Economic Perspectives* (2003) 89

³³¹ International Monetary Fund, *The design of the sovereign debt restructuring mechanism—Further considerations*, 27 November, 2002, 13

³³² Eichengreen B, 'Restructuring sovereign debt' 17 *Journal of Economic Perspectives* (2003) 89

³³³ Lastra RM, Bodellini M, 'Soft law and sovereign debt' Intergovernmental Group of Experts on Financing for Development, Geneva, 7-9 November, 2018, 13 available at

<https://unctad.org/meetings/en/Contribution/SOFT%20LAW%20AND%20SOVEREIGN%20DEBT.pdf>

³³⁴ 'Multilateral debt restructuring mechanism' Ad hoc Committee on a multilateral legal framework for a sovereign debt restructuring, New York, 3 February, 2015 available at

https://unctad.org/meetings/en/Presentation/gds_sd_2015-02-03-05_Ocampo_en.pdf

³³⁵ Eichengreen B, 'Restructuring sovereign debt' 17 *Journal of Economic Perspectives* (2003) 83

extremely difficult, and as such, the restructuring of debt a painfully costly procedure that is also unpredictable³³⁶.

In 1996, a G10³³⁷ Working Group produced the Rey Report³³⁸, proposing, inter alia, the inclusion of Collective Action Clauses (CACs) in sovereign bonds. The term refers to provisions in bonds that allow the holders of a qualified majority (75%) to restructure the debt and amend terms of payment, and make them binding on the majority. In essence, they create an allowance for majority creditors to effect a “cram-down³³⁹” on dissenting creditors³⁴⁰. This method has been preferred in recent years, and particularly, in dealing with the holdout problem³⁴¹.

There are however a number of concerns with regard to the use of CACs. Their much touted effectiveness has been brought into question. It has been argued that to be truly effective as a debt restructuring mechanism, CACs would need to be included in each of a debtor nation’s bond issues, which could take years, yet maturity periods for the bonds being issued are quite short.³⁴² Another weakness of these clauses is that they are not applicable to the debtor nation’s other debt, such as bank loans, debts owed to creditors, and trade debt³⁴³. Another concern that has been raised is that the weakening of creditor rights might cause investors to reject contracts with CACs³⁴⁴.

³³⁶ Eichengreen B, ‘Restructuring sovereign debt’ 17 *Journal of Economic Perspectives* (2003) 83

³³⁷ The G10 (Group of Ten) is made up of eleven industrial countries (Belgium, Canada, France, Germany, Italy, Japan, the Netherlands, Sweden, Switzerland, the United Kingdom and the United States) which consult and co-operate on economic, monetary and financial matters. OECD Glossary of Statistical Terms <https://stats.oecd.org/glossary/search.asp> on 27 April, 2019

³³⁸ Lastra RM, Bodellini M, ‘Soft law and sovereign debt’ Intergovernmental Group of Experts on Financing for Development, Geneva, 7-9 November, 2018, 15 available at <https://unctad.org/meetings/en/Contribution/SOFT%20LAW%20AND%20SOVEREIGN%20DEBT.pdf>

³³⁹ A cram-down is a situation where majority creditors may make the restructuring plan binding on other creditors without their consent. <https://www.imf.org/external/pubs/ft/orderly/> on 27 April, 2019

³⁴⁰ Lastra RM, Bodellini M, ‘Soft law and sovereign debt’ Intergovernmental Group of Experts on Financing for Development, Geneva, 7-9 November, 2018, 15 available at <https://unctad.org/meetings/en/Contribution/SOFT%20LAW%20AND%20SOVEREIGN%20DEBT.pdf>

³⁴¹ Lastra RM, Bodellini M, ‘Soft law and sovereign debt’ Intergovernmental Group of Experts on Financing for Development, Geneva, 7-9 November, 2018, 15 available at <https://unctad.org/meetings/en/Contribution/SOFT%20LAW%20AND%20SOVEREIGN%20DEBT.pdf>

³⁴² Mooney C, ‘A framework for a formal sovereign debt restructuring mechanism: The kiss principle (keep it simple, stupid) and other guiding principles’ 37 *Michigan Journal of International Law* (2015), 71

³⁴³ Mooney C, ‘A framework for a formal sovereign debt restructuring mechanism: The kiss principle (keep it simple, stupid) and other guiding principles’ 37 *Michigan Journal of International Law* (2015), 71

³⁴⁴ Mooney C, ‘A framework for a formal sovereign debt restructuring mechanism: The kiss principle (keep it simple, stupid) and other guiding principles’ 37 *Michigan Journal of International Law* (2015), 71

Finally, a purely contractual approach may deal with creditor coordination problems and make the process cheaper and faster but does nothing in so far as dealing with externalities of each situation. While it is desirable to do so, it is not possible to foist wider public policy objectives such as issues of debt sustainability in individual contracts³⁴⁵. This is considered another limitation of a purely contractual approach, and is particularly pertinent while addressing treatment of African debt. As such, it has been argued that they should not be considered a sufficient alternative to a more comprehensive approach to debt restructuring³⁴⁶.

Another contractual device for sovereign debt restructuring is called the “exit consent clause” which allows a majority of bondholders participating in an exchange offer, to change important non-payment terms in the old bonds so as to reduce their value, as they exit which encourages participation in the exchange³⁴⁷. Finally, a contractual device for sovereign debt restructuring is the use of the *pari passu* clause. In sovereign debt restructuring, there are three types of *pari passu* clauses³⁴⁸. One that makes all bonds rank equally with all other unsecured sovereign debt, one that ranks all bonds equally in priority of payment, and one that ranks all bonds equally, and makes them payable on a pro rata basis³⁴⁹. The intended purpose of *pari passu* clauses in sovereign debt instruments was to discourage dissension and competition among creditors³⁵⁰. However, they seem to have become tools for vulture funds in holdout litigation, as was in the case of *NML v Argentina*³⁵¹.

4.5. Designing a Hybrid Framework for Sovereign Debt Restructuring

From the discussion in this chapter, it is apparent that both the contractual approach, and the proposed statutory method have attractive features to make sovereign debt restructuring efficient and timely. It is also clear, there are drawbacks to both methods. It is also evident that there is a

³⁴⁵ Haley J, ‘Sovereign debt restructuring old debates, new challenges’ 32 *CIGI Papers* (2014) 13

³⁴⁶ Brooks S, Lombardi D, Suruma E, ‘*African perspectives on sovereign debt restructuring*’, CIGI’s Global Economy Program, Kampala, 7 August 2014. Available at CIGI, 8

³⁴⁷ Yu H “Official” bondholder: A new holdout creature in sovereign debt restructuring after vulture funds?’ 16 *Washington University Global Studies Law Review* (2017) 548

³⁴⁸ Yu H “Official” bondholder: A new holdout creature in sovereign debt restructuring after vulture funds?’ 16 *Washington University Global Studies Law Review* (2017) 548

³⁴⁹ Yu H “Official” bondholder: A new holdout creature in sovereign debt restructuring after vulture funds?’ 16 *Washington University Global Studies Law Review* (2017) 548

³⁵⁰ Yu H “Official” bondholder: A new holdout creature in sovereign debt restructuring after vulture funds?’ 16 *Washington University Global Studies Law Review* (2017) 548

³⁵¹ *NML Capital, Ltd v Argentina*, No 08 Civ 6978 (TPG) (SDNY, 23 Feb 2012)

need to come up with a system for debt restructuring that is an adequate alternative to the existing ad hoc framework that is quite fragmented and inefficient³⁵².

There have been proposals advocating the creation of framework that combines key attractive elements of both the contractual and statutory approaches, in order to have a formal framework that hinges on the complementarities of both methods to restructure debt efficiently, taking into account inclusivity, comprehensiveness and conclusiveness³⁵³. Indeed, a number of countries agree that there should be a complementary, comprehensive framework to restructure sovereign debt. This is clear from the fact that the creation of a multinational legal framework was supported overwhelmingly as reflected in the passing of a UN resolution on the same, passed in September, 2014³⁵⁴. The framework should ideally put in place mechanisms that would solve disputes fairly, while complementing contractual approaches³⁵⁵.

There also exist several opinions on what such a framework would look like. Two proposals for the structure of such a framework, stand out, for the purposes of this study.

The first is championed by Guzman and Stiglitz³⁵⁶. They contend that given the inefficiencies of current mechanisms should impel the creation of a framework where the contractual approach is complemented by a multinational legal framework that carries out restructurings based on principles of “efficiency and equity”³⁵⁷. To deal with the inability of the earlier proposed SDRM to garner sufficient political support, it is proposed that a body, which will be tasked with the procedural framework, as well as dispute resolution be established under the auspices of the United

³⁵² Lastra RM, Bodellini M, ‘Soft law and sovereign debt’ Intergovernmental Group of Experts on Financing for Development, Geneva, 7-9 November, 2018, 12 available at <https://unctad.org/meetings/en/Contribution/SOFT%20LAW%20AND%20SOVEREIGN%20DEBT.pdf>

³⁵³ Brooks S, Lombardi D, Suruma E, ‘*African perspectives on sovereign debt restructuring*’, CIGI’s Global Economy Program, Kampala, 7 August 2014. Available at CIGI, 8

³⁵⁴ UNGA, *Towards the establishment of a multilateral legal framework for sovereign debt restructuring processes*, UN A/RES/68/304

³⁵⁵ Guzman M, Stiglitz J, Creating a framework for sovereign debt restructuring that works, Columbia University Working Paper, F34, G33, H63, K12, K33, 5

³⁵⁶ Guzman M, Stiglitz J, Creating a framework for sovereign debt restructuring that works, Columbia University Working Paper, F34, G33, H63, K12, K33, 5

³⁵⁷ Guzman M, Stiglitz J, Creating a framework for sovereign debt restructuring that works, Columbia University Working Paper, F34, G33, H63, K12, K33, 5

Nations³⁵⁸, although membership of parties be made voluntary³⁵⁹ but with the inculcation of contractual clauses in the debt contracts in order to ensure creditor coordination³⁶⁰.

Guzman and Stiglitz propose that such a framework should have these key features, to wit: it should acknowledge, recognize and seek to complement the constraints of the private contractual approach. The framework must recognize the limitations of the private contractual approach, while ensuring reasonably fair treatment to both the debtor and creditors. Quite importantly for African debtor nations, given the peculiarities discussed in chapter 2, they recommend that such a framework take into account the “primacy” of the functions of the debtor nation, and its obligations to the citizens³⁶¹. Additionally, such a framework should prioritize restructuring in timely way, by disincentivizing delays. To this end, there should be specific deadlines for the different stages of the process, to make the process more predictable³⁶². They further propose that this framework take into account the peculiarities of the debtor nation’s economic situation when dealing with debt crises solution, and should do so by promoting the reform of fiscal policies³⁶³. Finally, to deal with the issue of creditor litigation, they advise that the framework should promote the incorporation of contractual clauses of stays for litigation, prohibiting litigious creditors and vulture funds from derailing the debt restructuring process to the detriment of the debtors³⁶⁴. Overall, they consider a comprehensive debt restructuring system to be one that includes the implementation of a statutory approach at a multinational level. This approach will help to “complete” the contractual approach³⁶⁵.

³⁵⁸ It is important to note that the ability of the United Nations to oversee such dispute resolution, has been questioned, owing to the myriad of political problems that the United Nations faces. Notably, China, one of the emerging bilateral creditors, has proposed the UN as a key player, citing its legitimacy and mandate.

³⁵⁹ Conn R, ‘Perspectives on a sovereign debt restructuring framework’ in Guzman M, Ocampo J, Stiglitz J (eds) *Too little, too late: The quest to resolve sovereign debt restructuring*, Columbia University Press, 2016, 234

³⁶⁰ Guzman M, Stiglitz J, Creating a framework for sovereign debt restructuring that works, Columbia University Working Paper, F34, G33, H63, K12, K33, 21

³⁶¹ Guzman M, Stiglitz J, Creating a framework for sovereign debt restructuring that works, Columbia University Working Paper, F34, G33, H63, K12, K33, 22

³⁶² Guzman M, Stiglitz J, Creating a framework for sovereign debt restructuring that works, Columbia University Working Paper, F34, G33, H63, K12, K33, 22

³⁶³ Guzman M, Stiglitz J, Creating a framework for sovereign debt restructuring that works, Columbia University Working Paper, F34, G33, H63, K12, K33, 22

³⁶⁴ Guzman M, Stiglitz J, Creating a framework for sovereign debt restructuring that works, Columbia University Working Paper, F34, G33, H63, K12, K33, 23

³⁶⁵ Guzman M, Stiglitz J, Creating a framework for sovereign debt restructuring that works, Columbia University Working Paper, F34, G33, H63, K12, K33, 25

Another proposal is the creation of Sovereign Debt Tribunal. This method proposes to incorporate certain components of the SDRM, with contractual provisions. Essentially, it envisages that the creation of an arbitration panel that would deal with debt restructuring disputes, and the reference thereto would be based on a contractual agreement between the sovereign debtor and its creditors, and would be specified in the debt instrument at the time of agreement, well before the debtor nation experiences debt service difficulties³⁶⁶. The jurisdiction of this panel would be delineated by the operation of contractual clauses in the debt contracts, with such clauses containing the events that would trigger the said jurisdiction³⁶⁷. The SDT would have several advantages. There would be consensus based among stakeholders, and as such improve the perception of fairness and legitimacy³⁶⁸. Further, the arbitration panel would serve as a neutral forum to arbitrate any creditor-debtor and creditor-creditor disputes³⁶⁹. To promote such neutrality, this forum would be under the umbrella of a multilateral institution that is not a creditor itself. The United Nations was proposed as a probable candidate for this role³⁷⁰.

Additionally, the binding authority of such a panel would overcome the coordination problems faced by other sovereign debt restructuring mechanisms, as well as curb the proliferation of creditor litigation. Finally, the institution would create predictability of procedure, which as discussed, is an attractive feature of a sovereign debt restructuring mechanism.³⁷¹ For purposes of this discussion, this approach looks attractive for African economies, as it would save on costs incurred during protracted, unpredictable processes, which exacerbate situations of distress³⁷².

³⁶⁶ Paulus C, Kargman S, 'Reforming The Process of Sovereign Debt Restructuring: A Proposal for a Sovereign Debt Tribunal' United Nations Workshop on Debt, Finance and Emerging Issues in Financial Integration, New York, 8-9 April, 2008

³⁶⁷ Brooks S, Lombardi D, *Sovereign debt restructuring issues paper*, CIGI Papers, April 2015, 11, available on CIGI

³⁶⁸ Brooks S, Lombardi D, *Sovereign debt restructuring issues paper*, CIGI Papers, April 2015, 11, available on CIGI

³⁶⁹ A model such as ICSID would be desirable, where the Tribunal makes a decision with finality.

³⁷⁰ Brooks S, Lombardi D, *Sovereign debt restructuring issues paper*, CIGI Papers, April 2015, 11, available on CIGI

³⁷¹ Brooks S, Lombardi D, *Sovereign debt restructuring issues paper*, CIGI Papers, April 2015, 11, available on CIGI

³⁷² Brooks S, Lombardi D, Suruma E, 'African perspectives on sovereign debt restructuring', CIGI's Global Economy Program, Kampala, 7 August 2014. Available at CIGI, 8

It is easy to see why this would be attractive to African debtor nations. The predictability, as stated, would save time and costs. The limiting of litigation would forestall a situation such as the one faced by the DRC when seeking to reschedule and restructure its debt. At a time when African economies are dealing with the possibility of debt distress, these reforms would be welcome.

The chief concern when it comes to this proposal of a multifaceted system of sovereign debt restructuring is that there are concerns about political support of the same. However, this cannot mean that stakeholders abandon the quest for reforms. As it has been reiterated, the current mechanisms, and indeed, are not sufficient to deal with debt restructuring and it is imperative that reforms are initiated.

4.6. Conclusion

The statutory approach to resolving debt restructuring does not enjoy the political support it would need for its implementation³⁷³. And yet, the contractual approach does not suffice. In fact, even with improvements, the method would still fall short of a comprehensive, efficient debt restructuring mechanism³⁷⁴. Previous chapters have illustrated that reforms to the debt restructuring regime, or lack thereof, is of utmost importance. This chapter, drawing from the foregoing has demonstrated the insufficiencies of the alternatives proposed. It has considered the question of what reforms that provide solutions to this would be. In this respect, a conclusion has been made that a system that has a formal institution that deals with creation and standardization of procedures, as well as dispute resolution, is imperative. This system should be complemented by the use of contractual clauses to bind parties to the process, and to deal with the problem of creditor litigation, as well as make provisions for moratoria.

As far as the institution proposed to be tasked with the creation of such an entity, the United Nations appears to be a lead contender. Such a framework, one that is comprehensive, and predictable, will save on time, and costs, which would be beneficial to debtor nations, and particular African economies that seek to forestall any eventualities that would deepen their debt difficulties. In all, the chapter found that whatever form a hybrid, multilateral and multifaceted

³⁷³ Brooks S, Lombardi D, Suruma E, 'African perspectives on sovereign debt restructuring', CIGI's Global Economy Program, Kampala, 7 August 2014. Available at CIGI, 8

³⁷⁴ Guzman M, Stiglitz J, Creating a framework for sovereign debt restructuring that works, Columbia University Working Paper, F34, G33, H63, K12, K33, 21

framework for sovereign debt restructuring would take, it appears to be the best option for a sovereign debt restructuring mechanism. The next chapter concludes the study and makes recommendations.



CHAPTER 5: CONCLUSIONS AND RECOMMENDATIONS

5.1. Introduction

The substratum of this research is that there does not exist an adequate framework to restructure debt held by sovereigns. The existing mechanisms are inefficient in cost, and in time. They are not comprehensive and able to restructure sovereign debt effectively. Further, this is of particular concern to African countries holding sovereign debt. The reason for this distinction was evaluated, noting that African debtor nations require sovereign debt restructuring mechanisms that take into account the distinguishing characteristics of debt held by African countries, as well as her fraught economic history. For this reason, there is need of a formal, comprehensive, debt restructuring framework.

To arrive at a conclusion, the thesis made several inquiries such as: is debt held by African countries distinguishable from other sovereign debt? What are the existing mechanisms of sovereign debt restructuring? Are they effective? If not, what improvements can be made, to benefit debtor nations, and in particular, those on the continent?

This chapter concludes the thesis, presents the findings of this research and makes recommendations. It also highlights some areas of possible future study.

5.2. Findings

After considering the African debt situation, as well as the conceptual underpinnings for reformation to the current sovereign debt restructuring mechanisms, and having considered the structure of the proposed reforms, these findings have been made:

5.2.1. The debt situation faced and experienced by African nations, is distinguishable from debt held by other countries.

In Chapters one and two, the study revealed that indeed, African debt is distinguishable from debts held by other sovereigns. It attributed this to the legacy of colonialism, global financial periods of distress, such as the one in the 1980s, as well as current shifting global trends with regard to debt financing. The study found that owing to this, a case could be made for the establishment of a sovereign debt restructuring mechanism that is comprehensive and fair, so as to take into account

these factors. Additionally, it found that there is need to address Africa's debt sustainability so as to avoid distress.

5.2.2. The current debt restructuring mechanisms are insufficient

In chapter three, the current most notable frameworks for debt restructuring were evaluated. The Paris Club has been used to restructure sovereign debt, which is owed to bilateral creditors. Similarly, the London Club has been the forum, albeit an *ad hoc* one to restructure debt owed to commercial lenders. The two fora are inadequate to restructure sovereign debt. Additionally, with the emergence of new bilateral creditors, who are not its members, the Paris Club appears to be fading in relevance. In likewise fashion, the emergence of bondholders, and vulture funds, as well as creditor litigation, the London Club is facing a similar fate, with regard to relevance.

5.2.3. One proposed means for reform, the statutory approach, is not feasible.

The study, in chapter four, found that the statutory dispute resolution mechanism, does not enjoy enough political support to be implemented as a formal means of sovereign debt restructuring. By itself, it may also be insufficient to prevent holdout behaviour, a key concern when dealing with sovereign debt restructuring.

5.2.4. The suggested alternative to the statutory approach, the private contractual method is insufficient.

The thesis evaluated the use of contractual clauses, such as the Collective Action Clauses, for the facilitation of sovereign debt restructuring, and found that as a standalone mechanism, it is insufficient. Importantly, it does not deal with the bilateral creditors that a good number of nations, and in particular, African nations are indebted to. Indeed, even for debt restructuring for debt owed to bondholders, it does not suffice as a mechanism.

5.2.5. A multifaceted, hybrid approach is necessary to restructure sovereign debt.

In chapter four, the study found that owing to the inefficiencies of the current debt restructuring mechanisms, as well as the inadequacies of the proposed reforms to the sovereign debt restructuring regime, there is need for reform. An *ad hoc*, unpredictable, costly, and fragmented system of sovereign debt restructuring is detrimental to debtor countries. It is particularly harmful to debtor (African) countries that have fragile economies, owing to historical reasons.

Additionally, because of the sheer cost, a costly mechanism pushes countries further into debt distress. The proposed reform that the chapter found most comprehensive and suitable for the restructuring of African debt, is one that is statute based, and enjoys the complementarities of contractual clauses, to create a framework that is comprehensive, inclusive, efficient and predictable. The research also concluded that the United Nations would be best placed to create and operationalize such a framework, with the help of stakeholder nations.

5.3. Recommendations

Based on these findings, the study recommends the following:

5.3.1. Need for concerted efforts towards creating a multifaceted framework for sovereign debt restructuring spearheaded by the United Nations, the African Union, as well as International Financial Institutions

As it has been established, there is need for a multifaceted mechanism for sovereign debt restructuring. Therefore, there needs to be efforts towards setting up the same. There ought to be established, a statutory mechanism that uses the complementarities afforded by contractual clauses in debt instruments to bolster its effectiveness.

Notably, after the SDRM proposal was spurned by a number of countries, key stakeholders including international financial institutions and multilateral agencies shelved the proposal with a view to improve the use of the contractual approach. However, as it has been illustrated, this approach is not sufficient. The Clubs' methods, are not, either. Political opinions and positions on this cannot be considered immutable and as such, effort should be made towards establishing such a framework, and courting support for the same. This study also proposes the involvement of the African Union, noting the unique needs of its member countries.

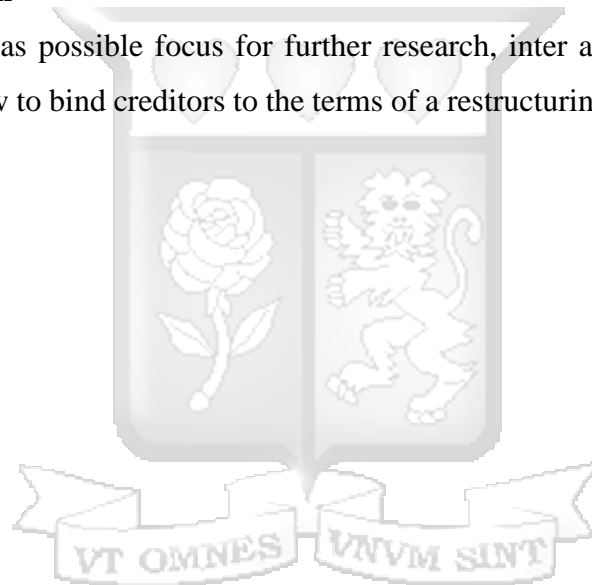
5.3.2. Promotion of debt sustainability in African countries, and among lenders

Whilst the creation of a proper debt restructuring mechanism is important, this study would be remiss if it did not mention that even more pertinent, is a coalesced effort towards increasing debt sustainability for African countries. Debt distress impacts the citizens of African nations. It distorts economic and social policies, to the detriment of these citizens. Further than that, unsustainable debt has grave implications on the global financial system. Additionally, when countries hold unsustainable debt, they are unable to withstand inevitable global economic shocks. This is even

more particular to African countries, owing to the vulnerability of their economies. The importance of establishing important debt sustainability mechanisms, and detecting and forestalling debt distress, cannot be overemphasized. The AfDB recommends a return to concessional finance, so as to reduce the cost of debt. This study, in taking cognizance of the fact that debt distress is not a single party problem, also recommends responsible lending and responsible borrowing. It goes further to recommend that the doctrine of odious debt be developed further, while taking into account the sovereignty of nations, so as to deter reckless lending and borrowing, and to ease the burden of servicing errant debt, that has been channeled to corrupt enterprise, on the citizenry of African nations.

5.4. Further Research

This study recommends as possible focus for further research, inter alia, the creation of a No-Tribunal SDRM, and how to bind creditors to the terms of a restructuring plan within the ambit of said tribunal.



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