Towards Primacy of Human Rights in the Global Architecture:

Reflections on the Relationship between Foreign Debt and Human Rights

Prof. Cephas Lumina

Research Professor, Nelson R Mandela School of Law, University of Fort Hare

Former United Nations Independent Expert on foreign debt and human rights

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Outline

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- Ensuring the primacy of human rights
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- Conclusion

1 The context

- External financing (including loans) can contribute to development as well as the establishment of conditions for the realisation of human rights, particularly economic, social & cultural rights

- **Caveat:** This depends on a variety of factors, including the loan conditions & prudent use of the funds by the borrower State

The context (cont'd)

- Excessive debt burdens have the potential to & often undermine the capacity of debtor countries to create favourable conditions for the realisation of economic, social & cultural human rights two main interrelated ways:
  - **Debt servicing** often entails the redirection of scarce national financial resources from essential investments in social services & physical infrastructure (e.g, schools, hospitals, etc)
  - **Retrogressive policy conditionalities (austerity measures, privatization & structural reforms)** linked to loans or debt relief compel reductions in government expenditure or limit investments in social services & ultimately undermine the enjoyment of human rights as well as national ownership of development agendas

The context (cont'd)

Percentage of national budget devoted to basic social services & debt service payments of some HIPCs (1992-1997)

Country	Social Services	Debt Service
Cameroon	4	36
Cote d'Ivoire	11.4	35
Tanzania	15	46
Zambia	6.7	40

The context (cont'd)

- In Greece, about 92% of bailout loans have been used to service foreign debts or on bank recapitalisation, leaving approximately 8% for social investment

- In the country's third bailout programme agreed in June 2015, Greece was to receive €86 billion in loans. To this would be added €6 billion from privatisation [2015-2016] & €2 billion from the government, making a total of 94 billion:

  – € 54 billion on debt repayments
  – € 15 billion for payment of defaulted payments
  – € 25 billion on bank recapitalisation

The context (cont'd)

- Economic adjustment programmes ostensibly aim to stimulate economic growth & restore debt repayment capacity of implementing countries but often result in economic stagnation (e.g. Greece) & have a negative impact on the realization of many basic human rights:
  - Tanzania – debt relief was conditional on the privatization of water supplies in Dar es Salaam, resulting in severely reduced access to water for the poorest, both through cuts in services & through increased user fees

The context (cont'd)

- Malawi – the reduction of subsidies for small-scale farmers, removal of price controls & the restructuring/privatization of the national agricultural marketing agency as a condition for debt relief resulted in price increases, increased hoarding of grain & lack of affordable food for the poor

- See also A/HRC/25/50/Add. 1 (Greece mission report 2013)

2 Ensuring the primacy of human rights

- Art 28 of the UDHR proclaims:

  “Everyone is entitled to a social & international order in which the rights & freedoms set forth in this Declaration can be fully realised”

- The present global financial architecture falls short of the requirements of this provision & needs to be revisited if this aspiration is to be fufilled

- This requires, at least, ensuring the primacy of human rights

The primacy of human rights (cont'd)

Why human rights are important:

- Provide an elaborate, fair & universally agreed framework
- Invoke specific legal obligations that have been accepted by States through ratification of various treaties
- Ensure normative certainty & coherence
- Importantly, "the language of rights recognizes the dignity and agency of all individuals", is "intentionally empowering" & ensures accountability for violations (see A/70/274, para. 65)

The primacy of human rights (cont'd)

- UN Guiding Principles on Foreign Debt & Human Rights (A/HRC/17/31, annex) endorsed by the Human Rights Council in 2012 underscore the primacy of human rights in the context of debt obligations (paras 6 & 9)

The primacy of human rights (cont'd)

- The Principles contain various measures to ensure that foreign debt obligations do not undermine human rights:
  - Holding of periodic transparent debt audits
  - Moratoriums on debt repayments
  - Human rights impact assessments (HRIAs)

The primacy of human rights (cont'd)

- HRIAs may help identify potential risks ensuing from structural adjustment programmes (e.g., high unemployment, poverty, cuts in public services, discriminatory effects, etc)

- Should therefore be included as a routine procedure in:

  – sovereign debt restructuring negotiations &

  – the preparation/implementation of adjustment programmes

3 The challenges

- Key players such as the international financial institutions & developed countries either claim that human rights are outside their mandate or oppose consideration of foreign debt as a human rights issue:
  - "[W]e continue to believe that it is incorrect to treat the issue of foreign debt as a human rights problem to be addressed by this Council. Rules other than human rights law are most relevant to the contractual arrangements between States and lenders. There are other international for a which are much better equipped to deal with the question of foreign debt and debt forgiveness, which are principally economic and technical in nature. Unfortunately, continuing the mandate of the independent expert does not simply further the inappropriate treatment of this important issue as a human rights problem. It also diverts the focus and finances of this Council away from serious human rights issues that more urgently require our attention. We must therefore vote against this resolution" (US delegation, Human Rights Council, March 2011)

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The challenges (cont'd)

- Similarly, in March 2013, Ireland speaking on behalf of the European Union on a draft resolution of the Human Rights Council on illicit financial flows (A/HRC/22/L.24) claimed that the resolution covered issues that exceeded the mandate & expertise of the Council

- See also votes on the Guiding Principles on Foreign Debt & Human Rights and the EU Common Position on a Sovereign Debt Restructuring Mechanism

- These contentions reflect a misunderstanding of international human rights law & are untenable for a number of reasons

The challenges (cont'd)

- **Note:** States must adhere to their international law obligations when they act through international organisations:
  - Guiding Principles on Foreign Debt & Human Rights, para. 6
  - *Waite & Kennedy v Germany*, Application No. 26083/94. ECtHR, Grand Chamber Judgment, 18/02/99, para. 67
  - Maastricht Guidelines on Violations of ESCR, para. 19

The challenges (cont'd)

- IFIs have an obligation to respect human rights:
  - Guiding Principles on Foreign Debt & Human Rights, para. 9
  - Legal Opinion of World Bank General Counsel, Roberto Danino (2006)
  - Art IV(3)(b) of IMF Articles of Agreement enjoins the Fund to respect "domestic social & political principles" of its member states (this includes member states' human rights obligations)

4 Conclusion

- The global economy needs to function within an ethical framework
- Human rights & its key notion of respect for the dignity of human beings are e a core part of that ethical framework