International Lawyers Project

Debt Relief in the Global South: an Overview of the Political Economy of Debt Relief by the UK, the US, France and Germany

By Mary Ongore[1]

Executive Summary

Most states have debt. However, when they are no longer able to service debt obligations as they fall due, this poses significant challenges. It may result in the downgrading of credit ratings for debtor countries, which in turn increases the cost of borrowing for those countries and limits access to capital markets. States may then turn to debt restructurings - often the last resort of countries with unsustainable debt. These take various forms ranging from moratoria on debt repayment to full debt cancellation. Debt restructuring can have significant positive implications for low and lower-middle-income countries. Without some form of debt restructuring, countries struggling to meet their debt servicing obligations will most likely prioritise meeting those obligations instead of paying for the provision of public services, the provision of social services, and investment in development infrastructure. This can have dire, long-lasting consequences on these countries and sentence them to a cycle of debt where they are constantly forced to incur new debt to settle debt obligations falling due.

An international sovereign debt bankruptcy regime would allow for the outright cancellation of debt in developing countries. This would significantly benefit heavily indebted countries by allowing their debt to be written off and would give them a fresh start. While this would be the fairest outcome for those countries, such a regime does not yet exist. This paper explores the origins of debt crises, the responses to those crises and the case for debt cancellation.

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1. Introduction

Sovereign nations find themselves in a debt crisis when they are no longer able to meet their current and future debt payment obligations without either significant external financial assistance or going into default. When default occurs, there are lasting implications for these states, including the lack of access to credit markets, a lack of trade finance, financial sector instability, and high borrowing costs. This generally harms growth and investment and often diverts spending away from the provision of public services, with direct impact on citizens. Although disruptions to capital market access can be temporary in some cases, this is not always the case.

Bankruptcy regimes allow legal persons, including corporations and natural persons, to liquidate assets, divide proceeds and apportion them between creditors. Ultimately, the debt that is in excess of the debtor's existing assets is forgiven or cancelled, and the debtor is allowed to make a fresh start.[2] In this way, debtors are able to make their way back to profitable trading, with creditors being given the maximum possible return given the circumstances. In addition, those culpable for mismanagement of the company are identified and sanctioned.[3]

There is, however, no corresponding bankruptcy regime for insolvent sovereigns. Such a regime would allow for a moratorium period during which borrowers would not be obliged to make payments. Some form of debt relief would then follow which could include debt cancellation and the remaining debt being rescheduled. This would allow the sovereign to continue servicing its debts while allowing it to continue to provide essential social services which are particularly relied on by the poorest in society. [4]

Despite the fact that the need for such a regime was conceptualised by Adam Smith, the father of economics, as early as 1776, this has not materialised. According to Smith, a sovereign bankruptcy regime would be least dishonourable to the debtor and least hurtful to the creditor.[5]

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[2] This is how the purposes of bankruptcy law are expressed in the leading Australian text, Lewis Australian Bankruptcy Law, (Dennis Rose QC (ed.), Sydney: The Law Book Company Limited, 1994) at 1. Oddly enough, the purposes of insolvency laws often receive scant attention in the literature. The classic Australian text on liquidation, McPherson, The Law of Company Liquidation (J O'Donovan, Sydney: The Law Book Company Limited) is utterly silent as to the purposes of liquidation as is the classic English text, The Law of Insolvency, op cit n 8.

[3] Roy Goode, Principles of Corporate Insolvency Law, 3rd ed. (London: Sweet & Maxwell, 2005), 25–28.

[4] Ross P. Buckley, "The Bankruptcy of Nations: Let the Law Reflect Reality," *University of New South Wales Faculty of Law Research Series,* 2009, Paper 20, accessed January 7, 2025, <https://law.bepress.com/cgi/viewcontent.cgi?referer=&httpsredir=1&article=1162&context=unswwps-flrps09>.

[5] Adam Smith, *An Inquiry into the Nature and Causes of the Wealth of Nations*, ed. Edwin Cannan (London: Methuen & Co., 1904), Book V, Chapter III, 468.

The argument against such a regime is that debtor countries will always have assets such as natural resources and human capital that they could use to service their debt obligations. Therefore, the conclusion is that countries cannot go bankrupt; they can only go broke. [6]

This theory, however, does not hold. This is because a sovereign's infrastructure is not necessarily saleable with proceeds being used to pay off debt.[7] There are often also legal restrictions, whether treaty-based, constitutional or statutory, as well cultural restrictions that prevent the sale of certain national assets. Moreover, if the test of bankruptcy and insolvency as applied to legal and natural persons - the inability to service debts as they fall due - is applied to sovereign nations, then sovereign nations can be deemed insolvent/bankrupt.

At present, debts owed by countries in debt distress must be paid, failure of which will result in default, which is highly destabilising and will likely leave such states with restricted access to commercial capital for years. Faced with the risk of default, debtor countries often service debt by raising taxes and by adopting austerity measures that lower social services in their countries. This can lead to malnutrition, unsafe water, and lack of housing - among other issues - and therefore the repayment of these debts can take place at the expense of meeting human rights obligations. In addition, where money is borrowed to pay off existing debt, this results in what has been termed a "lifetime sentence for poor countries." Indebted countries will forever be stuck in a cycle of indebtedness where they will be stuck repaying debt at the expense of providing for human rights.[8] This is evident from the flurry of loans that countries in Latin America and sub-Saharan Africa received in the 1980s. When faced with default, debtors borrowed even more money to settle short term liabilities. Debts that were incurred in the early 1970s were restructured with long terms that effectively tied foreign exchange gained through exports for as much as 45 years.[9]

Borrowing to finance budget deficits can have a negative impact because the funds borrowed will not generate foreign exchange to service or repay debts. That notwithstanding, the cost of borrowing in foreign currency can be lower than borrowing in domestic currency in some instances. Countries can also employ swaps to protect against the foreign exchange downside.

Borrowing long term debt to pay off short term debt also has significant implications for debtor countries, who are then plunged into years of debt. Although there have been options for debtor countries such as debt write-offs under the Heavily Indebted Poor Countries (HIPC) initiative implemented in 1996 and the Multilateral Debt Relief Initiative (MDR) in 2005, these initiatives only dealt with traditional creditors. Given that the current debt architecture has changed, with private creditors such as bondholders and new official creditors such as China,

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[6] Walter B. Wriston, "Was I exacting? Sure. Was I occasionally sarcastic? Of course," *Institutional Investor* 21(6) (June 1987): 16(5), accessed January 7, 2025, < https://dl.tufts.edu/concern/teis/mg74qx68q >.
[7] Buckley.
[8] Ibid.
[9] Ibid.

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there is need for the adoption of a new approach. Other options do exist in the form of the receipt of concessional loans from international bodies such as multilateral institutions ("MFIs"). However, this does not address the fact that the majority of debt is now held by private creditors.

An international bankruptcy regime would restrain poor lending habits as lenders would be aware that sovereign bankruptcy would result in losses on their part. While this would reduce capital flows to the Global South, it would encourage flows that are more appropriately targeted to the needs of developing countries and would consider their ability to pay. Such a regime would however need to be structured in a manner that ensures that the bankruptcy regime would not be abused through irresponsible borrowing.

Ross P. Buckley, an Australian academic who currently sits on the Payments System Board of the Reserve Bank of Australia, has suggested five principal reasons for the lack of an international bankruptcy regime:

1. "The lack ... of an overarching need for a sovereign bankruptcy regime;
2. The profound difficulties of creating international institutions and gaining widespread implementation of treaties;
3. The inability to compel participation in such a regime;
4. The perceived interests of the creditors;
5. The short-term interests of debtors."

His arguments are as follows:

1. **The lack, before the 1980s, of an overarching need for a sovereign bankruptcy regime**. Before the 1980s, there was no need for an international bankruptcy regime, because debt crises were few and far between. In addition, due to a lack of interconnectedness of markets, the effects of any crises tended to be limited in scope and geographic reach. Globalisation has, however, resulted in the internationalisation of finance with increased capital flows between countries. This sees huge capital inflows to developing countries when there is a surplus of liquidity, and equivalent capital outflows when prospects in developing countries weaken.[10]

2. **The profound difficulties of creating international institutions and gaining widespread implementation of treaties**. Although there have been calls for the

[10] Buckley.

development of an international sovereign bankruptcy regime, there have been challenges faced in establishing such a regime and, more often than not, it is difficult to get the political will of countries to come together to develop such a regime.[11]

3. **The inability to compel participation in such a regime**. Even if political will did exist, it is hard for different groups of countries to reach common agreement and/or a middle ground. Some countries will have to make concessions and agree to be disadvantaged, and are unlikely to adopt such an approach. If a sovereign bankruptcy regime were established, it would likely have to be perceived as neutral in order to gain acceptance.

4. **The perceived interests of the creditors**. Creditors are usually opposed to such a regime because debt arrangements benefit them - and they are likely to continue to be ardent opposers to such a regime, despite the fact that bankruptcy exists at the domestic level. They argue that an international bankruptcy regime will discourage investors and drive-up borrowing costs.[12] This, however, is not the case domestically as bankruptcy regimes create certainty. In the absence of a bankruptcy regime, investors in sovereign debt such as international banks, insurance companies, and pension funds, among others, are forced to lend even more to ensure that debtors are able to continue paying interest. Reference should be made to the effectiveness of restructurings that allow for some aspect of debt forgiveness or cancellation as was the case during the Brady Plan discussed further in section 2 below.[13]

5. **The short-term interests of debtors**. Debtor countries fear an international bankruptcy regime will create increased borrowing costs. This is because creditors, aware of the possibility of debt cancellation or a haircut (a reduction of the principal amount of debt), would factor this in when calculating interest rates. As such, the cost of borrowing from international markets would increase.

In addition to Buckley's proposals, shortsightedness of politicians from debtor countries is also a factor. Implementing practices that pay off in six to ten years' time often fall at the bottom of the political agenda: politicians tend to be focused on short-term gains. Nevertheless, procedures for sovereign debt restructurings do exist. These have developed over the last 40 years without any particular institutional framework and will be discussed in section 5 below.

Sovereign debt restructurings can be tailored to achieve various outcomes:

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[11] Ibid.
[12] William Rhodes, "The Drawbacks of an Orderly Rescue," *Financial Times*, March 21, 2002.
[13] Neil Shenai and Marijn A. Bolhuis, "How the Brady Plan Delivered on Debt Relief: Lessons and Implications," *IMF Working Papers*, December 15, 2023, accessed January 7, 2025, <https://www.imf.org/en/Publications/WP/Issues/2023/12/14/How-the-Brady-Plan-Delivered-on-Debt-Relief-Lessons-and-Implications-542389>.

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1. To change the maturity dates for amounts of principal or interest falling due under the affected debts and introduce grace periods (a "maturity extension");
2. To reduce the principal amount of the debt (in the jargon, a principal "haircut"); and
3. To reduce the interest rate on the debt (in the case of bond indebtedness, a "coupon adjustment").

It is possible, of course, to mix and match these techniques (for example, a maturity extension with a coupon adjustment) and this is indeed the norm in most sovereign debt restructuring packages.[14]

At the international level, the Eurozone developed a system to respond to the financial crisis that began in 2009. This involved the provision of rescue loans by the "Troika" which comprised of the International Monetary Fund (IMF), the European Commission and the European Central Bank. Austerity measures were also mandated during this period. In Greece, for instance, an EU- IMF bailout loan of EUR130 billion was provided and a 53.5% debt write down for private Greek bondholders known as the Private Sector Involvement (PSI) was conducted in 2012. The austerity measures adopted had significant negative implications for Greek citizens, but Greece has since managed to recover from the decade-long recession and has finally returned to investment grade credit rating in 2023,[15] and is now one of the fastest growing economies in Europe. Inequality and unemployment continue to affect citizens, yet the unemployment rate is the lowest in the last ten years.[16]The Greece experience shows that debt forgiveness can give a country the fiscal space necessary to complete structural reform and recover from a debt crisis. Although this applied to the Eurozone countries particularly, and was largely taken on to prevent contagion, it illustrates how a coordinated response to financial crises can benefit both debtor and creditor countries.

In 2002, the IMF proposed the adoption of a Sovereign Debt Restructuring Mechanism (SDRM), which aimed at the orderly restructuring of sovereign debt. Key among its features was the initiation of the restructuring process by indebted countries rather than by creditor countries. Subsequent to the initiation of the mechanism, the debtor country would need to highlight their level of indebtedness for verification. A creditors' committee would then be developed to bring all creditors to the negotiating table. The debtors' proposals on restructuring would then be adopted by at least 75% of the creditors. Debtor countries would be mandated to propose how they intended to service debt obligations that fell outside the SDRM.[15] The use of the mechanism was envisaged to only be a measure of last resort. Although the regime was

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[14] Lee Buchheit, Guillaume Chabert, Chanda DeLong, and Jeromin Zettelmeyer, "The Restructuring Process," in ed. S. Ali Abbas et al., *Sovereign Debt: A Guide for Economists and Practitioners* (Oxford: Oxford University Press, 2019), accessed January 7, 2025, <https://academic.oup.com/book/35147/chapter-abstract/299352184?redirectedFrom=fulltext>, 14.

[15] International Monetary Fund, *The Design of the Sovereign Debt Restructuring Mechanism—Further Considerations* (Washing, DC: IMF), November 27, 2002, accessed January 7, 2025, <https://www.imf.org/external/np/pdr/sdrm/2002/112702.pdf>.

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intensely debated, it was ultimately rejected by the IMF shareholders in 2003.[16] Thus, the status quo remains and there is no sovereign debt bankruptcy regime.

2. Historical Context

This section will address the historical origins of the first systemic debt crisis which began during the second half of 1982 and will give a brief overview of how it was responded to.

A myriad of external shocks catalysed the debt crisis of the 1980s. Foremost, the Arab oil embargo in 1973 resulted in a huge increase of world energy prices and doubled the cost of oil-importing in developing countries. These countries took on more debt to cover this increased cost and the "Petro-dollars" that oil-exporting countries received were used to finance budget deficits in oil-importing countries.[17] Secondly, the increase in interest rates in the US between 1979 and 1981 to reverse inflationary pressures increased the cost of servicing debt for developing countries as a large portion of external debt was dollar denominated.[18] Thirdly, the global recession that occurred between 1980-1982 resulted in a reduced demand for commodities exported by developing countries. This hampered the ability of these countries to raise foreign exchange necessary for the servicing of their debt obligations. Fourthly, inadequate exchange rate policies in debtor countries, which saw the overvaluation of exchange rates, caused an increase in price of exports and further contributed to a reduced the demand for them. Fifthly, the adoption of expansionary fiscal policies in developing countries which resulted in increased public spending that was financed by increased borrowing also contributed to the crisis. Sixth, the appreciation of the US dollar increased the cost of servicing developing countries' debt as most debt was dollar denominated.[19] Finally, unrestrained lending to developing countries spurred by liberalisation of international finance through the removal of excessive controls and reduced regulation of financial institutions resulted in a sevenfold increase in external debt in those countries during the 1970s.[20]

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[16] Anna Gelpern, "The IMF Revisits Sovereign Debt Restructuring, Not the SDRM," *Peterson Institute for International Economics*, accessed January 7, 2025, <https://www.piie.com/blogs/realtime-economic-issues-watch/imf-revisits-sovereign-debt-restructuring-not-sdrm>.

[17] Julianne Ams, Tamon Asonuma, Wolfgang Bergthaler, Chanda M. DeLong, Nouria El Mehdi, Mark J. Flanagan, Sean Hagan, Yan Liu, Charlotte J. Lundgren, Martin Mühleisen, Alex Pienkowski, Gustavo Pinto, and Eric Robert, "Chapter 1: The 1980s Debt Crisis," *Sovereign Debt: A Guide for Economists and Practitioners* (Washington, DC: IMF, 2018), accessed January 7, 2025, <https://www.elibrary.imf.org/display/book/9781484371329/ch001.xml>.

[18] James M. Boughton, "The Crisis Erupts," *The IMF and the World Bank: A Review of the Institutional Framework for Debt Relief* (Washington, DC: IMF, 2001), accessed January 7, 2025, <https://www.elibrary.imf.org/display/book/9781557759719/ch008.xml>

[19] Ibid.

[20] Maxwell Watson and Klaus Regling, "Chapter 4: History of the Debt Crisis," *Current Legal Issues Affecting Central Banks*, Volume I (Washington, DC: IMF, 1992), accessed January 7, 2025, <https://www.elibrary.imf.org/display/book/9781557751423/ch04.xml>.

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The crisis began in Eastern Europe, with Poland, Romania, Hungary and Yugoslavia requesting IMF-supported programmes, and came to a head in 1982, when Mexico suspended payments to its creditors. Several countries subsequently defaulted on their debt repayments This led to an abrupt end to lending of money to Latin America, Africa, Asia and Eastern Europe, plunging those regions into crisis.[21] Bank exposures of US and Japanese banks were so high that sovereign default by debtor countries would have systemic implications. [22]

Initially, the crisis was deemed to be a liquidity issue and the IMF provided short-term balance-of-payments assistance.[23] This was simply a stopgap measure that failed to resolve the problem.[24]

Between 1983 and 1984, the IMF resorted to "concerted lending" which involved the provision of "new money" in order to allow debtor countries to meet their debt obligations. Financing packages were given on a case-by-case basis and involved Fund-supported economic structural adjustment programmes. [25] IMF resources would only be disbursed when a "critical mass" of banks had agreed to provide "new money". Thus, debt burdens continued to increase given that these maturity extensions and new debt was provided on market terms. [26] Through concerted lending, the IMF brought together private sector and official creditors to the table and would only lend "new money" where a good number of private sector banks had committed to lend.[27] These short- and mid-term facilities unfortunately resulted in further indebtedness of debtor countries. In addition, the structural adjustment programmes that aimed to see the reform of public budgets, the reform on domestic trade in order to increase exports, the reform of prices of commodities, and the slimming of the public sector while privatising state owned enterprises had huge consequences for debtor countries.[28] These programmes resulted in declines in real income and high levels of unemployment.[29] UNICEF estimates that this resulted in the death of 500,000 children under the age of five.[30]

By mid-1984, it became apparent that a more long-term approach to resolving the debt crisis was needed. As a result, longer-term arrangements were made with the negotiation of multi-

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[21] Sebastian Edwards, "Structural Adjustment Policies in Highly Indebted Countries," in ed. Jeffrey D. Sachs, *Developing Country Debt and Economic Performance*, vol. 1 (Chicago: University of Chicago Press, 1989), accessed January 7, 2025, <http://www.nber.org/chapters/c8990>.
[22] Ams et al.
[23] Boughton.
[24] Horst Tomann, "The Debt Crisis and Structural Adjustment in Developing Countries," *Intereconomics* 23, no. 5 (1988): 203–207, <https://doi.org/10.1007/BF02925113>.
[25] Watson & Regling.
[26] Ams et al. https://www.elibrary.imf.org/display/book/9781484371329/ch001.xml
[27] Ibid.
[28] Tomann.
[29] Edwards.
[30] UNICEF, "The State of the World's Children," reproduced in part in the statement of Dr. Richard Jolly, Deputy Executive Director for Programmes, United Nations Children's Fund, before the House Committee on Banking, Finance and Urban Affairs, hearings on "International Economic Issues and Their Impact on the U.S. Financial System," January 4, 1989, 101st Congress, First Session U.S. Financial System", Jan 4, 1989, 101st Congress First Session.

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year (debt) restructuring agreements (MYRAs) with commercial banks. These were generally entered into where debtor countries had made progress in adjusting their economies. To increase commercial bank creditors willingness to participate, "enhanced surveillance" procedures were developed in 1985. Under this new arrangement, MYRA's were only to be entered into when a quantitative financial program setting out macroeconomic targets and policies objectives had been prepared. These were subject to more frequent assessment (half-yearly) of policies and economic conditions of debtor countries. The MYRAs had mixed success.

In 1985, James Baker, the then US Secretary of the Treasury, announced a programme for sustained growth, now known as the "Baker Plan." This was because debtor counties continued to be vulnerable to external shocks and growth in those countries had continued to stall. In addition, there was a decline in lending by financial institutions. The Baker Plan called for a case-by-case approach and highlighted the important role that industrial countries played in expanding the world economy. Baker's focus was on long term macroeconomic stabilisation rather than on short term sustained creditworthiness. It also advocated for an expanded role of the World Bank through longer-term lending in order to address structural problems. Finally, it encouraged commercial banks to continue lending to debtor countries to provide "new money". The Baker Plan was largely unsuccessful as the increased lending that had been hoped for did not materialise and the plan came to an end in 1988.[31]

By 1987, the IMF had begun to resort less and less to concerted lending and more to a "menu of options" response. These menus endorsed the use of other financial instruments such as debt buy-backs, debt-for-equity swaps among others.[32] It was only in 1988 that the IMF officially called for debt relief and the Brady Plan was subsequently launched in 1989 to help distressed sovereigns. This plan called for the US and multilateral financial institutions, such as the IMF and the World Bank, to restructure and reduce the debt of those developing countries that were pursuing structural adjustments and economic programmes supported by these agencies. Debt restructuring took place by giving creditors the option to exchange bonds for one of several options:

1. **Par bonds**: bonds at par value compared to existing bonds with a 30-year maturity at a below-market annual interest rate of 6.25%;

2. **Discount bonds**: bonds resulting in a haircut of 35% compared to existing bonds in exchange for an annual interest rate of LIBOR+13-16%;

[31] Edwin M. Truman, "Chapter 8: The Debt Crisis and Its Resolution," *The IMF and the World Bank: A Review of the Institutional Framework for Debt Relief* (Washington, DC: IMF, 1995), accessed January 7, 2025, <https://www.elibrary.imf.org/display/book/9781557754981/ch020.xml>.
[32] Ams et al.

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3. **Front-loaded interest-reduction bonds**: bonds with no haircut and an initial annual interest rate of 3-4% for a 5-7 year period, followed by an increase to an annual interest rate of LIBOR+13/16%. These bonds were generally collateralised with US government securities, with funds made available by the IMF and the World Bank. The limit on these loans was 15% of the creditor's holdings of bonds;

4. **Debt conversion bonds (DCBs) and new money bonds**: bonds with no haircut and an annual interest rate of LIBOR+7-8%, with amortisation over 10-15 years and not collateralised with US government securities.[33]

US banks exchanged 58% of their outstanding debt for par bonds and 24 % of their debt with discount bonds. The remainder of the outstanding debt constituted the base for the new money contributions.[34]

However, this did not address the problem for developing countries, as these actions were in effect bailouts to creditors rather than to developing countries. This is because international banks required both debt owed to private sector lenders and bilateral creditors to be brought under sovereign guarantee as a prerequisite for rescheduling. In essence, this action by the large commercial banks, in collaboration with the IMF (who facilitated and directed the process), led to what has been dubbed "the socialisation of irrecoverable debt". This was effectively the bailout of these commercial banks which insured them against risky lending practices.[35]

Since then, there have been several debt crises in the developing world, including the East Asian economic crisis in the 1990s, the Argentinian crisis of the late 1990s, and the global financial crisis in 2007–2008. However, none of these crises have led to a globally coordinated response to sovereign insolvency.

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[33]Federal Reserve Board, Brady Bonds and Other Emerging-Markets Bonds, *Trading and Capital-Markets Activities Manual*, February 1998, accessed January 7, 2025, <https://www.federalreserve.gov/boarddocs/supmanual/trading/4000p2.pdf>.

[34] Haluk Unal, Asih Demirgüç-Kunt, and Kwok-Wai Leung, "The Brady Plan, the 1989 Mexican Debt Reduction Agreement, and Bank Stock Returns in the United States and Japan", *Debt and International Finance Policy Research*, November 1992, accessed January 7, 2025, <https://documents.worldbank.org/en/publication/documents-reports/documentdetail/261821468752349081/the-brady-plan-the-1989-mexican-debt-reduction-agreement-and-bank-stock-returns-in-the-united-states-and-japan>.

[35]Buckley.

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3. Types of sovereign debt

There are three broad categories of sovereign debt: multilateral debt, bilateral debt and private debt.

Multilateral debt is debt granted by international financial institutions, such as the World Bank and the IMF.

Bilateral debt is debt granted by official bilateral creditors, which include governments or their institutions (such as export credit agencies). These loans are often given to finance exports from the creditor country or as part of the provision of development assistance. Bilateral lenders deem their loans as being superior to commercial lenders because those loans are made for public policy reasons, such as aiding development. Commercial creditors, however, contest this position on the basis that these bilateral credits simply further the geopolitical objectives of lending countries and enhance their exports.[36]

The "Paris Club" brings together many of the official bilateral creditors. Although not all bilateral creditors are members, collectively the Paris Club members hold large amounts of bilateral debt and, together with China, hold almost all official bilateral claims worldwide. Additionally, China and other official bilateral creditors do sometimes participate in the Paris Club sessions on an ad hoc basis.[37] The Paris Club is not a formal legal entity but rather is an informally organised group of official creditors that is under the chairmanship of a member of the France Finance Ministry. It first met in 1956 to deal with Argentina's difficulties in servicing its debt to several European creditors. It has continued since that time as a forum for handling the restructuring of official bilateral credits and guarantees extended by OECD countries.

Private debt is debt that is not held by states, MFIs or state-linked bodies: this includes loans issued to commercial banks, insurance companies and investment banks, as well as government bonds and similar securities that are, or could be, publicly-listed by government borrowers in the capital markets.[38] Holders of sovereign bonds include banks, investment funds, insurance companies, retirement funds and, in the case of domestic bonds, even members of the public who buy these bonds on the primary market and hold them to maturity. Public markets for government bonds result in a wide variety of bondholders, including funds that specialise in distressed investments, who buy defaulted or nearly defaulted debt on the secondary market at

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[36] Buchheit et al.

[37] Paris Club, "Who Are We? - Ad Hoc Participants," *Paris Club News*, accessed January 7, 2025, <https://clubdeparis.org/en/communications/page/who-are-we>.

[38] Herbert V. Morais, "Chapter 13: Legal Framework for Dealing with Sovereign Debt Defaults," in *Legal Framework for Dealing with Sovereign Debt Defaults* (Washington, DC: International Monetary Fund, May 20, 1998), accessed January 7, 2025, <https://www.elibrary.imf.org/display/book/9781557756954/ch031.xml>.

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large discounts and may have the aim of taking a firm stance in negotiated settlements from the outset and potentially pursuing full recovery through litigation.

Of external debt payments by low- and lower middle-income countries between 2022 and 2028, 42% are to private lenders, 33% to multilateral institutions and 25% to bilateral lenders (11% China, 8% G7 governments, 6% others).[39]

China became the world's largest official creditor in 2017, surpassing the claims of the World Bank, IMF, and all Western Paris Club governments combined. However, it tends to take a different approach to providing debt relief, preferring to give countries longer to pay rather than what is often the IMF's recommended option of writing off money completely.

Of the private debt payments, 76% are bonds and 24% other forms of loans.[40] The share of loans to African nations held by private creditors has doubled from 17% in 2000 to 39% in 2019.[41] Multilateral debt has been relatively stable at 32.5% over the last 20 years, but bilateral debt has halved to 27% today (of which 48.5% for China, 15% for the US and 11% for France).

4. Justification for debt cancellation

Unlike corporate and individual debtors, states cannot legally discharge their debts in bankruptcy under the supervision of a court due to the absence of an international bankruptcy regime for sovereigns. Debt relief can only be obtained with the consent of creditors. However, there is a strong case for the cancellation of debt, as will be set out in this section.

Reparations

Many argue that debt cancellation should be granted on the basis that colonialist Global North countries exploited the resources of their colonies and benefited significantly from the wealth, labour and resources that they exploited. Moreover, when these nations gained independence, these countries were obliged to compensate their former colonisers for the loss of income. In addition, they inherited the debt their former colonial powers had accumulated. Therefore, these economies were already in debt on independence. This in turn ensured that European domination continued and hampered these former colonies' ability to invest in development.

[39] UK Parliament Committees, "Debt Levels," 2023, *UK Parliament Committee Written Evidence*, accessed January 7, 2025, <https://committees.parliament.uk/writtenevidence/108922/default/>.
[40] UK Parliament.
[41] French Platform on Debt and Development, *A New International Debt Sustainability Crisis: Context, Perspectives and Recommendations*, December 2022, accessed January 7, 2025, <https://dette-developpement.org/IMG/pdf/pfdd_policy_paper_dec22.pdf>.

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That notwithstanding, the role of colonialism in plundering Global South countries into indebtedness is often overlooked.[42]

A reparations approach would right the wrongs from historical injustice by acknowledging and compensating Global South countries for the debt owed by Global North countries. It could also end the injustice from continued exploitation of Global South countries.[43]

Human rights obligations

Heavy debt burdens limit the realisation of human rights and hamper indebted countries' ability to realise their human rights obligations, particularly relating to economic, social and cultural rights. This was acknowledged some time ago by the UN Commission on Human Rights and subsequently by the UN Human Rights Council.[44]

Several international instruments provide the basis for assistance and cooperation in addressing these heavy debt burdens. The Charter of the United Nations sets out the purpose of international and social cooperation. Article 1(3) mandates "international cooperation in solving international problems of an economic, social, cultural or humanitarian character, and in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion." In Article 56, Member States also agree to "take joint and separate action in cooperation with the Organization."

Article 28 of the Universal Declaration of Human Rights also provides that "[e]veryone is entitled to a social and international order in which the rights and freedoms set forth in this Declaration can be fully realized." Unsustainable debt burdens limit the ability of citizens of heavily indebted countries to enjoy their human rights.

The International Covenant on Economic, Social and Cultural Rights also requires state parties to "undertake[s] to take steps, individually and through international assistance and cooperation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures."[45]

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[42] Debt Justice, *Colonialism and Debt: How Debt Is Used to Exploit and Control*, August 2022, accessed January 7, 2025, <https://debtjustice.org.uk/wp-content/uploads/2022/08/Colonialism-and-Debt-briefing.pdf>.

[43] Tess Woolfenden, "The Global Debt Crisis and the Need for Reparations," *Debt Justice*, June 21, 2023, accessed January 7, 2025, <https://debtjustice.org.uk/blog/the-global-debt-crisis-and-the-need-for-reparations>.

[44] Office of the High Commissioner for Human Rights (OHCHR), "About Human Rights and Foreign Debt," *United Nations Human Rights*, accessed January 7, 2025, <https://www.ohchr.org/en/special-procedures/ie-foreign-debt/about-human-rights-and-foreign-debt#:~:text=States%20are%20obliged%20to%20manage,economic%2C%20social%20and%20cultural%20rights >.

[45] United Nations, *International Covenant on Economic, Social and Cultural Rights* (ICESCR), Article 2(1), adopted December 16, 1966, entered into force January 3, 1976, <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-economic-social-and-cultural-rights>.

The right of states to write down debts

The European Convention on Human Rights (ECHR) provides protection to creditors holding sovereign debt governed by domestic law. Article 1 of Protocol No. 1 provides that "Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law. The preceding provisions shall not, however, in any way impair the right of a state to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties." Although this provision protects the rights of creditors to property it is not absolute and there are instances where sovereign states can write down their debts without breaching the rights of creditors. A number of judgments by the European Court of Human Rights (ECtHR) have been made to that effect.

In *Lithgow et al. v. UK*,[46] the ECtHR considered the right to compensation of seven creditor applicants following the nationalisation of the shipping industry in 1977. Although they received payment following expropriation, they urged that the terms of compensation of the Aircraft and Shipbuilding Industries Act 1977 were grossly unfair, and that the compensation received was grossly inadequate. As such they claimed that this was a violation of Article 1 of Protocol No. 1 ECHR. The ECtHR found that the taking of property in the public interest without payment of compensation is treated as justifiable only in exceptional circumstances and that a "fair balance" must be struck between the demands of the general interest of the community and the requirements of the protection of the individual's fundamental rights. That notwithstanding, this did not guarantee the right to full compensation in all circumstances as the objectives of "public" interest may call for reimbursement that is less than the full market value. In addition, the ECtHR found that states had a wide margin of appreciation in determining what compensation was appropriate given that they have direct knowledge of the society and were in a better position to make that determination.

In *De Dreux-Breze v. France*[47], the rights of creditors were also considered following a debt restructuring between France and Russia for debt incurred by the USSR. Similar to the finding in the *Lithgow* case, the ECtHR found that Article 1 of Protocol 1 ECHR did not give a right to full repayment. Moreover, going further than the *Lithgow* judgment, the ECtHR held that when considering the public interest, a state could reduce or even completely suspend repayments given that it had an obligation to fulfil its citizens' economic and social rights. While ordinary sovereign bonds can be deemed to be possessions within the meaning of the ECHR, there is a lack of clarity on whether sovereign restructurings amount to "expropriation"

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[46] *Lithgow and Others v. United Kingdom,* European Court of Human Rights, Judgment of July 8, 1986, Series A, No. 102.

[47] *De Dreux-Breze v. France* (decision), No. 57969/00, European Court of Human Rights, 2000.

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within the terms of Article 1 of Protocol 1. The *De Dreux* case concerned bonds still being held by the applicants.

These judgments support the ability of states to write off debt in the public interest.

Development

Unsustainable debt burdens have a negative impact on development. They limit a state's ability to fight poverty, inequality and climate change. The Sustainable Development Goals (SDGs), which frame the agenda on development, recognise this fact. SDG Target 17.4 notes the importance of assisting developing countries to attain long-term debt sustainability and reduce the risk of debt distress.

Where a country is heavily indebted, its ability to provide basic social services is constrained. Some studies have shown that in Africa alone, many countries spend more on debt repayment than on healthcare. [48]

Countries which are more indebted therefore tend to spend more of their revenue on servicing debt payments and often resort to reducing public spending.[49] The trend in low- and middle-income countries shows that external debt payments increased by 120% between 2010 and 2021.[50] In the case of the Sahel, a geographical priority of French diplomacy, the figures are equally striking. For the six French-speaking Sahelian countries (Burkina Faso, Mali, Mauritania, Niger, Senegal and Chad), the annual repayment of their debts is equivalent to 140% of the amounts allocated to their health budgets.[51]

Given that many countries are still recovering from the effects of the Covid-19 pandemic, the sustainable development funding gap will only continue to widen. Debt forgiveness is therefore necessary to ensure the aim of ending global poverty, ensuring all people enjoy prosperity.

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[48] French Platform on Debt and Development, *A New International Debt Sustainability Crisis: Context, Perspectives and Recommendations*, December 2022, accessed January 7, 2025, <https://dette-developpement.org/A-new-international-debt-sustainability-crisis-context-perspectives-and>; United Nations, "Africa Spends More on Debt Servicing than Health Care, Secretary-General Tells High-Level Policy Dialogue, Urging Financing, Investment in Continent," *UN Press - Meetings Coverage and Press Releases*, 24 May 2023, accessed January 7, 2025, <https://press.un.org/en/2023/sgsm21809.doc.htm#:~:text=One%20example%3A%20Africa%20currently%20spends,billion%20%E2%80%94%20barely%205%20per%20cent.>; "African Debt," *ONE Data & Analysis*, accessed January 7, 2025, <https://data.one.org/topics/african-debt/>.

[49] UK Parliament.

[50] Ibid.

[51] French Platform on Debt and Development.

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Private debtors
Debt forgiveness is also important to reign in unscrupulous lending by private debtors. Private debtors pump money into developing countries knowing that they will consistently be bailed out when debt levels become unsustainable and restructurings are mandated.

An international bankruptcy regime would restrain such poor lending habits as lenders would be aware that sovereign bankruptcy would result in losses on their part. While this would reduce capital flows to the Global South, it would encourage flows that are more appropriately targeted to the needs of developing countries and would consider their ability to pay.

Debt forgiveness is effective
It has previously been shown that debt forgiveness works. In 1953, the US, the UK, France, Sri Lanka, Pakistan and other private creditors cancelled 50% of debt owed by West Germany. Subsequently, other countries signed up to cancel West German debt, including several developing countries, among them being Egypt, Argentina, Cambodia and Cameroon.[52] This debt had been accrued in the 1920s and 30s to meet payments agreed to at the Treaty of Versailles, as well as loans taken to reconstruct Germany following the Second World War.

Following the debt cancellation, West Germany enjoyed a period of strong and sustained economic growth. The inclusion of private creditors in these restructurings significantly contributed to their success of the debt cancellation. In addition, following the cancellation, West Germany was only required to make debt repayments from income coming out of trade surpluses. This removed the need to continue borrowing in order to settle debt.[53] Given that some of the countries that cancelled West Germany's debt are now in debt distress, a strong case can be made for requiring it to partake in debt cancellation.

There is therefore arguably a need for a globally concerted effort to realise debt forgiveness so that citizens of all states can enjoy their human rights.

5. Principles Governing Debt Forgiveness Internationally

As indicated in section 1, there is no single international framework for debt relief in general and debt forgiveness in particular. The principles under which debt forgiveness takes place are generally set by several different institutions, depending on the type of creditor involved.

[52] Tim Jones, "Germany's Debt Cancellation: The London Debt Accords," *Debt Justice*, February 27, 2023, accessed January 7, 2025, <https://debtjustice.org.uk/blog/germanys-debt-cancellation-the-london-debt-accords>.
[53] Jones.

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Different frameworks govern debt relief depending on the type of debt. This next section will briefly explore the best practices that have evolved when dealing with different types of creditors before conducting a deep dive into the practices of the case study countries which are the UK, the US, France and Germany.

Creditor countries participate in multilateral institutions such as the Paris Club, the G20, the IMF and World Bank. These institutions provide frameworks through which creditor countries may participate in sovereign debt restructuring. These frameworks set important norms in sovereign debt restructurings.

Paris Club - Bilateral Lenders

The principal international forum for restructuring official bilateral claims is the Paris Club, which is a group of 22 creditors that does not operate as a single entity but rather acts to coordinate actions between the member governments. The four case study countries listed above are all Paris Club members. While significant amounts of debt are owed to Paris Club members, over the last couple of decades, there has been increased lending from non-Paris Club economies such as China and India. China for instance became the world's largest official creditor in 2017, surpassing the claims of the World Bank, IMF and all Western Paris Club governments combined.[54]

Paris Club has six main principles that guide its work:

1. pursuant to the solidarity principle, members are required to act as a group;
2. decisions must be made via consensus of the Paris Club members;
3. all members must share information with each other;
4. debtors must have an IMF-supported programme;
5. there must be comparable treatment between Paris club members and private and non-Paris club creditors; and
6. decisions must be made on a case-by-case basis.[55]

Insisting on the comparability of treatment is meant to ensure that taxpayers' claims from Paris Club countries are not subordinated to those of other creditors and that their financial interests are preserved.[56] It should be noted that a significant portion of new official bilateral lending is increasingly coming from non-Paris Club countries such as China and India. Where the non-

[54] Sebastian Horn, Carmen M. Reinhart, and Christoph Trebesch, "China's Overseas Lending," *Journal of International Economics* 133 (2021): 103539, accessed January 7, 2025, <https://fsi9-prod.s3.us-west-1.amazonaws.com/s3fs-public/2024-09/overseas_lending_11.15.23_0.pdf>.

[55] Paris Club, "What Are the Main Principles Underlying Paris Club Work?" *Paris Club News*, accessed January 7, 2025, <https://clubdeparis.org/en/communications/page/what-are-the-main-principles-underlying-paris-club-work>.

[56] Paris Club, "How Do We Work?", *Paris Club News*, accessed January 7, 2025, <https://clubdeparis.org/en/communications/page/how-do-we-work>.

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Paris Club members refuse to negotiate within the terms of the Paris Club, a sovereign borrower will need to negotiate bilaterally with each lending country which can be an expensive and painful process.[57]

Paris Club negotiations usually conclude with an 'Agreed Minute', which provides a broad legal framework for principles to be followed when negotiating subsequent bilateral restructuring agreements.[58] However, since the Paris Club is an informal institution, the outcome of a Paris Club meeting is not a legal agreement between the debtor and the individual creditor countries. Creditor countries that participate in the negotiation sign the 'Agreed Minute.' This recommends that creditor nations collectively sign bilateral agreements with the debtor nation, giving effect to the multilateral Paris Club agreement.[59] This often requires national legislative approval e.g. in the US, congressional involvement is necessary to implement any Paris Club agreement.

The terms of Paris Club reschedulings have varied from time to time. They have ranged from postponement of maturities to interest rate reductions and to providing debt forgiveness or cancellation.

Between its inception in 1956 and 1987, Paris Club restructured debt on classic terms; this mainly involved rescheduling debt on non-concessional terms with little or no debt relief. Following the debt crisis of the 1980s, the Club provided more accommodating terms (known as the Venice terms) in 1987, according to which repayment terms were lengthened and grace periods were provided. One year later, in 1988, Toronto terms were created according to which the most heavily indebted and poorest countries would be eligible for a 33% cancellation of non-Official Development Assistance (ODA) debt with the very concessional rescheduling of ODA claims. In 1990, the Houston terms were created. These targeted lower-middle-income countries and allowed for longer repayment periods on both non-ODA debt and ODA debt. They also allowed for rescheduling at concessional rates and allowed for debt swaps on a bilateral and voluntary basis for ODA claims.

In 1991, the Toronto terms were replaced with the London terms. This allowed for debt cancellation from the rate of 33% to 50%. 23 countries benefited from London terms between 1991 and 1994, before these terms were replaced by Naples terms. Subsequently, in 1994, the Naples terms were created according to which the poorest and most indebted countries could be between 50% and not more than 67% of eligible ODA debt. In addition, the rescheduling of ODA claims was lengthened to 40 years. In 1996, the Lyon terms further increased the level of cancellation to up to 80% for non-ODA claims.

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[57] Buchheit et al.
[58] Morais.
[59] Martin A. Weiss, "The Paris Club and International Debt Relief, Analyst in International Trade and Finance", *Congressional Research Service*, 11 December 2013, accessed 7 January 2025, <https://sgp.fas.org/crs/misc/RS21482.pdf>.

In 1996, the international financial community realised that the external debt of mostly African low-income countries had become unsustainable. As a result, the World Bank and IMF launched the Initiative for Heavily Indebted Poor Countries (HIPC). This aimed to relieve the debt of the poorest and most indebted countries. This will be discussed in the next section.

In 1999, the Paris Club creditors replaced its Lyon terms with Cologne terms. These aimed to make the HIPC initiative faster and broader and raised the rate of cancellation on non-ODA claims for countries declared eligible to the enhanced HIPC initiative, from 80 to up to 90% or more on a case-by-case basis. On top of that, all Paris Club creditors agreed to provide additional efforts to the HIPC Initiative assistance, on a bilateral basis.

In 2003, the Paris Club agreed yet another approach known as the Evian Approach. This specifically dealt with non-HIPC countries by providing more tailor-made and concessional treatments. Under this approach, a debt treatment may take various forms depending on the results of the IMF's debt sustainability analysis: flow treatment, stock reprofiling, and stock reduction (in exceptional cases). Treatments would be phased to ensure that countries would only fully benefit from concessional treatment if they maintained a sound track record on its IMF supported programmes over time.[60]

The Paris Club has concluded 433 successful negotiations with 90 countries over the last sixty years.[61] On the whole, Paris Club reschedulings have provided significant debt relief to many countries, particularly those less-creditworthy countries in Africa that rely more heavily on official sources of credit.

Heavily Indebted Poor Countries Initiative (HIPC)

As explained above, in 1996, the international community realised that the traditional debt relief mechanisms - which included rescheduling and debt reduction coupled with concessional lending - were not enough to alleviate the debt crisis in low-income countries. They therefore developed the HIPC.

The HIPC was an initiative that, unlike previous debt relief programmes, aimed to obtain total debt write-offs for eligible rather than provide temporary debt relief.

Under HIPC there is a two-step eligibility process. First, to get interim relief, the country in question must meet the criteria for World Bank International Development Agency (IDA) funding,[62] face an unsustainable debt burden, have a good track record of reform and have a

[60] Buchheit et al.
[61] Ibid.
[62] International Development Association. "Assisting Low-Income Countries with Grants and Low-Interest Loans," *About the IMF*, accessed January 7, 2025,

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Poverty Reduction Strategy Paper.[63] The Executive Boards of the IMF and World Bank formally decide on a country's eligibility for debt relief at this point. This first stage is known as the 'Decision Point' and must be reached prior to getting any interim relief. The second stage is known as the 'Completion Point'. It requires a further track record of good cooperation with the IMF and World Bank, the implementation of key reforms in accordance with recommendations at the decision point, and implementation of its Poverty Reduction Strategy Paper for at least one year. If this is obtained, then the debt can voluntarily be written off.

Under the HIPC, countries could obtain 100% debt reduction on their debts incurred prior to their HIPC Decision Point. Reaching this point had strict eligibility requirements, with 42 mostly Sub-Saharan African countries qualifying under the two-step eligibility process.[64]

In 2005, the HIPC initiative was supplemented by the Multilateral Debt Relief Initiative (MDRI), which facilitates 100% debt relief from the IMF, the IDA and the African Development Fund for countries completing the HIPC process. The IMF agreed that all member countries (including non-HIPCs) at or below the per capita income threshold of US$380 a year, should also be eligible.[65]

As of January 2023, 36 countries had obtained full relief under HIPC and were post completion point, with around US $130 billion of debt cancelled. Two countries were in the interim stage and one country still at the Pre-Decision Point.[66] The impact of this debt cancellation resulted in an increase in spending on social services in relevant countries, with poverty reducing.[67]

However, one criticism of those schemes is that the gains were short-lived and that they were unable to restrain future irresponsible borrowing and lending practices. Furthermore, these schemes were restricted to bilateral and multilateral debt, and no mechanism existed to compel private creditors to participate in the cancellation. The impact of this weakness was that vulture funds were still able to sue Zambia and Liberia for full repayment of their debt in the 2000s.[68]

<https://ida.worldbank.org/en/about#:~:text=Established%20in%201960%2C%20IDA%20complements,prosperous%20communities%20around%20the%20world>.

[63] International Monetary Fund, "Poverty Reduction Strategy Papers (PRSP)," *About the IMF*, December 28, 2016, accessed January 7, 2025, <https://www.imf.org/external/np/prsp/prsp.aspx>.

[64] International Monetary Fund, "Debt Relief Under the Heavily Indebted Poor Countries (HIPC) Initiative," accessed January 7, 2025, <https://www.imf.org/en/About/Factsheets/Sheets/2023/Debt-relief-under-the-heavily-indebted-poor-countries-initiative-HIPC>.

[65] International Monetary Fund, "Multilateral Debt Relief Initiative — Questions and Answers," *About the IMF*, July 28, 2017, accessed January 7, 2025, <https://www.imf.org/external/np/exr/mdri/eng/index.htm#:~:text=Thus%2C%20it%20was%20agreed%20that,relief%20from%20the%20IMF%E2%80%99s%20resources>.

[66] International Monetary Fund, "Debt Relief Under the Heavily Indebted Poor Countries (HIPC) Initiative," *IMF Factsheets*, accessed January 7, 2025, <https://www.imf.org/en/About/Factsheets/Sheets/2023/Debt-relief-under-the-heavily-indebted-poor-countries-initiative-HIPC>.

[67] UK Parliament.

[68] Ibid.

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Catastrophe Containment and Relief Trust (CCRT)

The CCRT was established in 2015 by the IMF in response to the Ebola outbreak. It provided relief to eligible countries in the form of either grants for a period of up to two years from the date of the disaster, or 100% cancellation of the entire debt stock. Cancellation was however only possible in extreme cases where the natural disaster had caused substantial and long-lasting balance of payment needs.

To be eligible, the following conditions needed to have been met:

1. Already receiving support from the IMF's Poverty Reduction and Growth Trust;
2. Experiencing a natural disaster affecting over a third of their population or had destroyed over a quarter of their productive capacity or had caused damage of over 100% of their GDP.
3. Per capita income of less than US$1,255.

By 2015, Guinea, Liberia and Sierra Leone had received US$100million from the CCRT.

At the beginning of the pandemic, the IMF funded the CCRT by launching an urgent fundraising effort. It was initially funded with the balance of the earlier Post-Catastrophe Debt Relief Trust and accounts left over from the financing of the Multilateral Debt Relief Initiative and managed to raise US$0.8 billion and provided debt relief to 31 countries worth US$927 million.[69]

G20 Common Framework

The G20 Common Framework is a new sovereign debt restructuring framework. It was established after the expiration of the Debt Service Suspension Initiative (the DSSI), a temporary debt relief measure which was developed by the G20 and Paris Club members in response to the COVID-19 pandemic, that paused debt-service payments owed by 73 countries that were either categorised as least developed countries by the UN or were eligible for support from the IDA. Creditors suspended US$12.9 billion in debt-service payments under the DSSI.[70] Countries eligible under the DSSI are eligible for participation in the Common Framework at their request.

The G20 Common Framework was agreed by members of the G20 and the Paris Club to co-ordinate their approach to sovereign debt relief. It sets out that participating sovereign creditors will jointly co-ordinate their debt relief and base their analysis of the need for debt restructuring on IMF-World Bank analysis. Participating sovereign creditors negotiate a memorandum of

[69] International Monetary Fund, "Catastrophe Containment and Relief Trust," *IMF Factsheets*, accessed January 7, 2025, <https://www.imf.org/en/About/Factsheets/Sheets/2023/Catastrophe-containment-relief-trust-CCRT>.

[70] World Bank Group, "Debt Service Suspension Initiative," *World Bank Group Brief*, March 10, 2022, accessed January 7, 2025, <https://www.worldbank.org/en/topic/debt/brief/covid-19-debt-service-suspension-initiative>.

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understanding with the debtor country and then each implement a bilateral agreement with the debtor country implementing their part of the memorandum.[71]

Only four countries had requested debt relief under the G20 Framework as of January 2025: Chad, Ethiopia, Zambia and Ghana. Of these, only Chad and Zambia have successfully completed a restructuring under this framework.

A notable feature of this framework is its requirement for comparability of treatment between creditors participating in the Common Framework and private creditors or official creditors not participating in the Framework. While intended to benefit official creditors by ensuring they receive treatment at least as favourable as that of private creditors, it has been noted by bodies such as the British Parliament's International Development Committee that the creditor countries' 'ability to write off debt unilaterally is limited' as a result.[72]

Comparability of treatment has further resulted in difficulties in the G20 Framework restructuring of Zambian debt.[73] A key issue here was the inability of the Official Creditor's Committee to define what they would consider comparable treatment. Negotiations between Zambia and its private creditors stalled as they were obliged to negotiate a deal that secured comparability of treatment with official creditors, despite the official creditors themselves not being in agreement as to what terms they would consider comparable.[74] As a result, there have been wide-ranging calls for reform of the G20 Framework to make it easier for comparability of treatment to be established.

Another criticism of the framework is that it does not mandate private creditors to cancel debt.[75] Given that private lenders account for almost half of external debt payments by low and lower-middle income countries, this framework's effectiveness is severely limited. [76]

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[71] Paris Club and G20 Saudi Arabia, *Annex: Common Framework for Debt Treatments Beyond the DSSI*, 2020, accessed January 7, 2025, <https://clubdeparis.org/sites/default/files/annex_common_framework_for_debt_treatments_beyond_the_dssi.pdf>.

[72] International Development Committee, *Debt Relief in Low-Income Countries: Seventh Report of Session 2022–23* (London: House of Commons, 2023), accessed January 7, 2025, <https://publications.parliament.uk/pa/cm5803/cmselect/cmintdev/146/report.html#heading-4> .

[73] Peter Fabricius, "Pilot Zambian Debt Relief Collapses," *Institute for Security Studies*, December 1, 2023, accessed January 7, 2025, <https://issafrica.org/iss-today/pilot-zambian-debt-relief-collapses >.

[74] Zambia External Bondholder Steering Committee, "Statement Regarding OCC Stance on Comparability of Treatment," *PR Newswire*, November 20, 2023, accessed January 7, 2025, <https://www.prnewswire.com/apac/news-releases/zambia-external-bondholder-steering-committee-statement-regarding-occ-stance-on-comparability-of-treatment-301993514.html>.

[75] UK Parliament.

[76] Rt Hon Liam Byrne MP and Gustavo Rivera, "Opinion: UK and New York Laws Have to Be Part of Global Debt Crisis Fix," *Devex,* May 9, 2024, accessed January 7, 2025, <https://www.devex.com/news/opinion-uk-and-new-york-laws-have-to-be-part-of-global-debt-crisis-fix-107599>.

In addition, the process is protracted. After applying in February 2021, Zambia only reached completion in June 2024. This process took three years, during which Zambia's currency lost a third of its value.

6. State practices on debt forgiveness: France, UK, Germany and US

Having set out the general international framework for debt forgiveness, this section will consider the conditions under which France, the UK, the US and Germany forgive debt.

All four countries are members of the Paris Club, the G20, the IMF and the World Bank. As a result, the determination of debt forgiveness is governed by the multilateral agreements and international frameworks discussed above. The G20 Common Framework requires that all official bilateral lenders participate in joint negotiation to determine debt treatment and that comparability of treatment is obtained between creditor classes. Once multilateral agreement is obtained, each creditor country is obliged to implement the terms bilaterally with the debtor country. At the official creditor committee, each country is represented by its government. In situations where Paris Club governments are represented in addition to non-member governments, the Paris Club may meet separately to establish its position in advance.[77] Even where negotiations take place on Paris Club terms, bilateral negotiations which require national governments' participation will be required. The requirements for the comparability of treatment between creditors participating in the G20 Common Framework therefore restricts these countries' ability to offer unilateral debt forgiveness.

France

Generally, France maintains a high level of strategic interest in Africa, particularly in several of its former colonies in West Africa. This historical relationship and France's traditional membership in several institutions, including the Paris Club, give it significant importance in the renegotiation of these countries' debts. Its political influence is even broader, as demonstrated by its intervention on behalf of Zambia in debt restructuring talks.[78] However, France has recently expressed its intention to redefine its relationship with these African countries, a shift that began during Nicolas Sarkozy's presidency.[79]

This change in political stance is exemplified by the abandonment of the former common currency of this geographical area, the CFA franc. The end of the CFA franc and its transition

[77] Rachel Savage, Maxwell Akalaare Adombila, and Jorgelina Do Rosario, "Exclusive: Ghana Official Creditors to Meet Monday to Discuss Debt Restructuring Terms," *Reuters*, January 5, 2024, accessed January 7, 2025, <https://www.reuters.com/world/africa/ghana-official-creditors-meet-monday-discuss-debt-restructuring-terms-sources-2024-01-04/>.

[78] "Zambia Asks France to Help Speed Up Debt Restructuring Talks," *Reuters*, May 10, 2023, accessed January 7, 2025, <https://www.reuters.com/world/africa/zambia-asks-france-help-speed-up-debt-restructuring-talks-2023-05-10/>.

[79] Cristina Barrios, "France in Africa: from paternalism to pragmatism," *FRIDE Policy Brief*, November 2010, accessed February 4, 2025, <https://www.files.ethz.ch/isn/130902/PB_58_Eng_France_in_Africa.pdf>.

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to the Eco, the new common currency of the Economic Community of West African States (ECOWAS), could potentially impact economic relations between France and the African countries involved, including debt relief policies. This could provide these countries with more flexibility to manage their debt, but it could also expose them to new financial risks. If the end of the CFA franc leads to significant changes in the economies of the African countries concerned, this could affect their ability to repay their debt and therefore potentially influence debt relief negotiations. It will be interesting to observe whether this change will impact debt relief policies in the coming years.

Germany

Official bilateral debt held by the German government is generally debt resulting from bilateral financial cooperation granted by the KfW Development Bank as part of development cooperation and government-guaranteed trade receivables and loans that have become non-performing and have been compensated by Germany. Trade receivables are debt owed by the public sector of a debtor country incurred during the purchase of German exports which Germany has compensated via Euler Hermes (a credit insurance company).

Germany has cancelled debts of about €6 billion under the HIPC since 1999.[80] While there were 14 restructurings under the Evian Approach, 99% of the debt relief by value went to Iraq, Nigeria and Myanmar. The scale of Germany's participation in these restructurings is however unclear.[81] Under the DSSI, Germany deferred receivables (interest payments and principal payments totalling approximately €301 million) that fell due during the DSSI period, which ran from May 2020 to December 2021.[82] However, the G20 Common Framework memorandum of understanding agreed between the official creditors and the debtor country is not a public document. German finance ministry publications do not state how much debt has been cancelled under any bilateral treaties with countries participating in the Common Framework.[83]

UK

In the UK, foreign debt forgiveness is determined by the Foreign, Commonwealth and Development Office (FCDO). The FCDO is the result of the merger of the Foreign and Commonwealth Office with the Department for International Development, which was

[80] Federal Ministry of Finance, "International Strategy to Provide Relief to Heavily Indebted Countries," *Financial Market Issues*, October 12, 2022, accessed January 7, 2025, <https://www.bundesfinanzministerium.de/Content/EN/Standardartikel/Topics/Financial_markets/Articles/international-debt-strategy.html>.

[81] Paris Club, "Evian Approach," *Paris Club News*, accessed January 7, 2025, <https://clubdeparis.org/en/communications/page/evian-approach>.

[82] Federal Ministry of Finance, "Overview of German Debt Claims and Debt Cancellations," *Financial Market Issues*, January 3, 2022, accessed January 7, 2025, <https://www.bundesfinanzministerium.de/Content/EN/Standardartikel/Topics/Financial_markets/Articles/international-debt-strategy.html>.

[83] Federal Ministry of Finance, "International Strategy to Provide Relief to Heavily Indebted Countries."

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intended to help British aid spending deliver foreign policy goals.[84] As a result, debt forgiveness decisions are driven by a combination of developmental and foreign policy goals. For example, the UK participated in a joint debt service suspension with Ukrainian creditors to suspend its debt service following the Russian invasion of Ukraine, which the creditors made clear was linked to 'their unwavering support for Ukraine as it defends itself against Russia's war of aggression.'[85]

More broadly, UK debt forgiveness is subject to general policy decisions. Debt forgiveness is a component part of the overall UK international development strategy, which is in turn part of general UK foreign policy as set out in the 2023 Integrated Review.[86] The goals of the UK international development strategy are to end extreme poverty and tackle climate change and biodiversity loss.[87] Hence the UK focuses its debt forgiveness on poor countries and has promoted the use of climate resilient debt clauses that pause repayments when climate shocks occur.[88]

The UK has provided debt relief worth £650 million through the HIPC and £1.4 billion through the MDRI between the start of these initiatives and June 2022.[89] The UK also contributed to the World Bank's Sustainable Development Finance Policy for the International Development Association in 2020, which links concessional financing to domestic debt policy actions.[90] Under this programme, which replaces the Non-Concessional Borrowing Policy, coverage is extended to include all IDA-eligible countries and takes into account domestic borrowing as well as international borrowing.

[84] Prime Minister's Office, "Prime Minister Announces Merger of Department for International Development and Foreign Office," *GOV.UK*, published June 16, 2020, last updated June 17, 2020, accessed January 7, 2025, <https://www.gov.uk/government/news/prime-minister-announces-merger-of-department-for-international-development-and-foreign-office#:~:text=Prime%20Minister%20Boris%20Johnson%20announces,International%20Development%20and%20Foreign%20Office.&text=The%20Prime%20Minister%20has%20announced,brings%20together%20Britain%E2%80%99s%20international%20effort>.
[85] HM Treasury, "Group of Creditors of Ukraine: Statement," *Policy Paper*, January 9, 2024, accessed January 7, 2025, <https://www.gov.uk/government/publications/group-of-creditors-to-ukraine-statement-on-extending-the-debt-deferral-for-ukraine/group-of-creditors-of-ukraine-statement>.
[86] HM Government, *Integrated Review Refresh 2023: Responding to a More Contested and Volatile World*, presented to Parliament by the Prime Minister by Command of His Majesty, March 2023, accessed January 7, 2025, <https://assets.publishing.service.gov.uk/media/641d72f45155a2000c6ad5d5/11857435_NS_IR_Refresh_2023_Supply_AllPages_Revision_7_WEB_PDF.pdf>.
[87] UK International Development, "International Development in a Contested World: Ending Extreme Poverty and Tackling Climate Change," November 2023, accessed January 7, 2025, <https://assets.publishing.service.gov.uk/media/6576f37e48d7b7001357ca5b/international-development-in-a-contested-world-ending-extreme-poverty-and-tackling-climate-change.pdf>.
[88] Ibid.
[89] International Development Committee, *Debt Relief in Low-Income Countries*.
[90] Ibid.

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7. Legal and Regulatory Framework for Debt Forgiveness at the Domestic Level: France, UK, Germany and US

This section discusses who decides whether debt relief is granted, who needs to approve the decision, the measures governments can take under existing law with respect to sovereign debt relief, the extent to which the executive branch of government acting alone decides to forgive debt, the relevant budgetary consequences, and how debt relief needs to be reflected in budgets approved by Parliament in the four focus countries.

France

Who decides whether debt relief is granted, and who needs to approve the decision? In situations involving a bilateral agreement, France is relatively free to grant debt relief in the framework of its finance act, subject to respecting the provisions of the relevant convention. To do so, the French Government submits the following year's draft budget to Parliament each year. The budget takes the form of a single document covering all government expenditures and revenue forecasts. Sovereign debt relief expenditure is included within this budget, which must be approved by the French Parliament.

In situations involving multilateral agreements, any global solution would need to be adopted by the relevant members in accordance with the relevant group's decisions rules. In this situation, France may have proportionally more weight in restructuring decisions and enjoys certain privileges if it is a major bilateral lender for countries undergoing the debt restructuring. For example, in the case of the ongoing Sri-Lankan restructurings,[91] France acts as the co-chair of the official creditors' committees.

What measures can the government take under existing law with respect to sovereign debt relief?

As discussed below, due to the French executive's broad control over the budget process, it has a great deal of control over financial spending. However, ongoing French political disputes over budget deficits have led to the Government introducing plans to lock in deficit and debt reduction measures until 2027, which may restrict budget flexibility for considering sovereign debt relief.[92]

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[91] Uditha Jayasinghe,"Sri Lanka Reaches Debt Restructuring Deal with Creditor Nations," *Reuters*, 29 November 2023, accessed January 7, 2025, <https://www.reuters.com/world/asia-pacific/sri-lanka-reaches-debt-restructuring-deal-with-creditor-nations-government-2023-11-29/#:~:text=COLOMBO%2C%20Nov%2029%20(Reuters),source%20told%20Reuters%20on%20Wednesday>

[92] "French Government Rams Long-Term Budget Bill Through Parliament," *Reuters*, September 28, 2023, accessed January 7, 2025, <https://www.reuters.com/markets/europe/french-government-rams-long-term-budget-bill-through-parliament-2023-09-28/>.

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To what extent can the executive branch of government acting alone decide to forgive debt?
The executive branch composed of the President of the Republic and the Government is very powerful within the French constitutional framework.

As discussed below, the French budget proposed by the Government within the framework of the finance bill is subject to approval by Parliament, which is composed of the National Assembly and the Senate.[93] However, it remains challenging for Parliament to make substantive amendments to the finance bill, as it holds less power than the Government in the law adoption process, as demonstrated in the following examples.

Under the French Constitution, legislation that seeks to authorise expenditure or impose taxation must originate from the Government. Parliamentarians are also prohibited from creating new “missions” or programmes. However, the French Parliament has full freedom to amend proposed expenditure within these restrictions by shifting the amounts allocated among programmes within the same “mission”.[94] In practice, total amendments tend to be very small; in 2013 they were less than 0.1 per cent of the total budget.

Furthermore, the Prime Minister may, after deliberation by the Council of Ministers, take steps to pass a finance bill without approval from the National Assembly. This is done by submitting a draft finance bill, which shall be deemed to have been adopted unless a motion of no-confidence in the Government, tabled within twenty-four hours, is passed.[95] It is rare for the National Assembly to pass such a motion. In this case, the Government is overthrown, and the bill is rejected. This power is provided for by Article 49 of the French Constitution and was used for the 2023 Finance Bill.[96]

Thus, the French Government never acts entirely alone as the adoption of the finance bill is done with the Parliament, but it nevertheless has a preponderant power over the latter and can even force the adoption of a finance bill via Article 49.3 of the Constitution.

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[93] France, *Constitution of 4 October 1958*, Article 39, accessed January 7, 2025, <https://www.conseil-constitutionnel.fr/en/constitution-of-4-october-1958#:~:text=by%20statute%20law.-,Article%2039,other%20of%20the%20two%20Houses>.
[94] Ministry of Economy, "Le Projet de Loi de Finances (PLF), Comment Ça Marche?" September 26, 2024, accessed January 7, 2025, <https://www.economie.gouv.fr/actualites/le-projet-de-loi-de-finances-comment-ca-marche>.
[95] France, *Constitution of 4 October 1958*, Article 49, accessed January 7, 2025, <https://www.conseil-constitutionnel.fr/en/constitution-of-4-october-1958#:~:text=by%20statute%20law.-,Article%2039,other%20of%20the%20two%20Houses>.
[96] Elsa Conesa, "The Amendments the French Government Kept in Its Budget Bill Before Forcing It Through," *Le Monde*, October 20, 2022, accessed January 7, 2025, <https://www.lemonde.fr/en/politics/article/2022/10/20/what-is-inside-france-s-2023-budget-that-passed-without-a-vote_6001047_5.html>.

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What are the relevant budgetary consequences, and how does debt relief need to be reflected in budgets approved by Parliament?

The limited amount of debt owed to the French Government makes its effect on the national budget small.

US

Who decides whether debt relief is granted, and who needs to approve the decision?

An Act of Congress, which has been passed by both houses of the Congress and signed into law by the President, is necessary for the US to participate in multilateral debt relief efforts. Under authority first granted by Congress in 1993 (P.L. 103-87), an appropriation by Congress of the estimated amount of debt relief is required in advance. This request is included in the budget and justified by statements from the US Treasury.

What measures can the government take under existing law with respect to sovereign debt relief?

Congressional authorisation is necessary for the US to participate in multilateral debt relief efforts. This is provided both through specific authorisations for bilateral debt relief and longer-term funding for US participation in multilateral institutions such as the IMF and World Bank.

The 1998 Tropical Forest and Coral Reef Conservation Act provides the legal basis for US participation in debt-for-nature swaps such as in Peru.[97] It was reauthorised in 2019 with bipartisan support under the Tropical Forest Conservation Act (TFCA) after its expiration in 2014.[98] By 2014, approximately US$233.4 million in congressionally-appropriated funds had been used to conclude 20 TFCA debt-for-nature agreements with 14 countries.[99]

To what extent can the executive branch of government acting alone decide to forgive debt?

The executive branch is constrained from acting unilaterally with regards to official bilateral debt due to the need to obtain appropriations from Congress. It has more freedom when it comes to negotiations through multilateral lenders where specific appropriations are not required.

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[97] Mary Kate McCoy, "U.S., Peru Trade Debt for Nature," *Conservation International*, September 7, 2023, accessed January 7, 2025, <https://www.conservation.org/blog/us-peru-trade-debt-for-nature#:~:text=Debt%2Dfor%2Dnature%20swaps%20aim,the%20Latin%20American%20debt%20crisis>.

[98] Olivia DeSmit, "The Most Important Conservation Law You've Never Heard Of," *Conservation International*, April 29, 2019, accessed January 7, 2025, <https://www.conservation.org/blog/the-most-important-conservation-law-youve-never-heard-of>.

[99] U.S. Agency for International Development, "Financing Forest Conservation: An Overview of the Tropical Forest and Coral Reef Conservation Act," *USAID*, accessed January 7, 2025, <https://www.usaid.gov/tropical-forest-conservation-act>.

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The Biden Administration requested US$52 million in FY2022 funds from Congress to support debt forgiveness efforts. These funds were appropriated in P.L. 117-328, Consolidated Appropriations Act, 2023.[100]

Under the Federal Credit Reform Act of 1990, an appropriation by Congress of the estimated cost of debt relief - on a net present value basis - is required for debt reduction. This calculation produces a value for all debt owed to the United States, even if it hasn't been serviced in decades (which is the case for several countries that currently owe money to the United States).[101]

What are the relevant budgetary consequences, and how does debt relief need to be reflected in budgets approved by parliament?

The limited amount of debt owed to the US government makes its effect on the national budget small.

The Federal Credit Reform Act of 1990 (FCRA) allows special budgetary treatment for federal loans made to non-federal borrowers. Specifically, the subsidy cost of the loan, which represents the estimated long-term cost to the government (including defaults, interest subsidies, and other expenses), is reflected in the budget in the year the loan is made. Prior to FCRA, the total amount of a direct loan was recorded as a cost in the year it was made. Repayments were not recorded until the years they were received. Under the special budgetary treatment FCRA affords, federal agencies can issue an amount of loans that is larger than the related appropriations they receive. For example, in fiscal year 2021, US$7 billion in appropriations for subsidy costs supported roughly US$236 billion in direct loans.[102]

Germany

Who decides whether debt relief is granted, and who needs to approve the decision?

Generally, the legal authorisations for bilateral debt restructuring agreements can be found in the annual budget acts (as discussed below) which are drafted by the German Ministry of Finance.[103] The annual budget acts are approved by the German Federal Parliament (*Bundestag*).

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[100] Congressional Research Service, "Sovereign Debt Concerns in Developing Countries," CRS *In Focus*, February 21, 2023, accessed January 7, 2025, <https://crsreports.congress.gov/product/pdf/IF/IF11880/3>.

[101] John Hurley, "The Paris Club: Will the United States Be Asked to Leave?" *Center for Global Development*, April 3, 2018, accessed January 7, 2025, <https://www.cgdev.org/blog/paris-club-will-united-states-be-asked-leave>.

[102] U.S. Government Accountability Office, *Credit Reform: Transparency Needed for Evaluation of Potential Federal Involvement in Projects Seeking Loans*, GAO-22-105280, July 28, 2022, accessed January 7, 2025, <https://www.gao.gov/products/gao-22-105280#:~:text=The%20Federal%20Credit%20Reform%20Act,year%20the%20loan%20is%20made>.

[103] Federal Ministry of Finance, "Overview of German Debt Claims and Debt Cancellations."

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Once a restructuring has been agreed in principle under a multilateral framework, such as the G20 Common Framework, and been included in the annual budget acts, bilateral restructuring agreements are concluded to make those negotiated agreements legally binding. In Germany, the Finance Ministry has lead responsibility for concluding these bilateral agreements.[104]

What measures can the governments take under existing law with respect to sovereign debt relief?

The German government has broad authority to participate in sovereign debt relief. No examples were found of the government being willing to offer more significant debt relief but being unable to for domestic legal reasons. The key limiting factor on government efforts is the requirement for all expenditure to be approved in a budget passed by the Bundestag.

German international aid and development spending is a federal expense, and so is approved in the federal budget.[105]

To what extent can the executive branch of government acting alone decide to forgive debt?

The executive branch of the German government cannot unilaterally approve debt forgiveness; debt forgiveness must be approved through the German budget process in which the Bundestag approves the federal budget.

The executive branch proposes the draft of the annual budget plan and therefore, influences the decision to relieve debt. In more detail, the German Ministry of Finance prepares the draft budget as it is submitted to the German Parliament for approval. In doing so, the Ministry of Finance reviews and consolidates the various proposals of the individual budget departments of the federal authorities and ministries (including any proposals for debt relief).

Bilateral restructuring agreements are concluded to make multilaterally negotiated agreements legally binding. In Germany, the Finance Ministry has lead responsibility for concluding these bilateral agreements. The legal authorisations for bilateral debt restructuring agreements can be found in the annual budget acts, specifically in departmental budget 23 (Federal Ministry for Economic Cooperation and Development).

What are the relevant budgetary consequences, and how does debt relief need to be reflected in budgets approved by parliament?

As federal expenditure debt relief must, in accordance with the constitution, be reflected in the budget to be adopted by the *Bundestag*.

[104] Ibid.

[105] Federal Ministry of Economic Cooperation and Development, "Facts and Figures of German Development Cooperation," *BMZ*, April 12, 2024, accessed January 7, 2025, <https://www.bmz.de/en/ministry/facts-figures#:~:text=The%20budget%20of%20the%20Federal,order%20of%2011.22%20billion%20euros>.

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The draft budget and draft Budget Act are drawn up by the Federal Ministry of Finance, then deliberated on and adopted by the Federal Government. After this, they must be passed by the Bundestag and the Bundesrat before they can enter into force. The rapporteurs on the Bundestag Budget Committee examine all individual items of expenditure, including foreign aid and debt relief spending, before delivering their recommendations to the Budget Committee which in turn scrutinises these line-by-line recommendations.[106]

The limited amount of debt owed to the German government makes its fiscal effect on the national budget small.

UK

Who decides whether debt relief is granted, and who needs to approve the decision?

UK debt relief is part of the Official Development Assistance budget and controlled by the FCDO. Official Development Assistance allocations by the FCDO are set out in a written statement by the Minister for Development.[107]

In cases where sovereign debt requires restructuring, the UK is represented both by its government directly and also indirectly through the multilateral lenders. Within the government, the FCDO is responsible for representing the UK and is immediately responsible for debt forgiveness decisions. These decisions are, however, subject to control both by the Treasury and by Parliament.

What measures can the government take under existing law with respect to sovereign debt relief?

The UK government has broad authority to participate in sovereign debt relief. No examples were found of the government being willing to offer more significant debt relief but being unable to for domestic legal reasons. There is no general legal authority for the British executive to participate in debt relief; rather specific expenditures are approved by parliament as part of the budget, as discussed below. The negotiation of treaties with sovereign debtors is a component of the royal prerogative power exercised by the government to make and ratify treaties with foreign countries.[108] Prerogative powers officially belong to the King but are delegated to the executive to exercise them on his behalf.

[106] German Bundestag, "Adoption of the Federal Budget: Government Programme in Figures," *Bundestag*, accessed January 7, 2025, <https://www.bundestag.de/en/parliament/adoption-245712#:~:text=The%20draft%20budget%20and%20draft,usually%20revised%20in%20the%20Bundestag>.

[107] Andrew Mitchell, "FCDO Programme Allocations - Statement UIN HCWS705, Minister of State (Development and Africa)," *UK Parliament Written Questions, Answers and Statements*, March 30, 2023, accessed January 7, 2025, <https://questions-statements.parliament.uk/written-statements/detail/2023-03-30/HCWS705>.

[108] Ministry of Justice, *Review of the Executive Royal Prerogative Powers: Final Report* (London: UK Parliament, 2010), accessed January 7, 2025, <https://data.parliament.uk/DepositedPapers/Files/DEP2009-2493/DEP2009-2493.pdf>.

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In the UK, the House of Commons has the sole right to initiate and amend bills whose main purpose is to levy taxes or authorise expenditure.[109] Therefore, 'while ministers have in principle an unfettered power to make treaties which do not change domestic law',[110] any treaty committing the UK to granting sovereign debt relief is effectively subject to approval by Parliament when it approves the Budget.

To what extent can the executive branch of government acting alone decide to forgive debt?

The UK government has considerable latitude when determining whether to forgive debt. In the UK, the party with control over the legislative branch is almost always the party that controls the executive branch, due to executive power being granted to a party or coalition of parties that the legislature supports. Furthermore, the ministers in the executive branch itself usually are members of the legislative branch belonging to the party with legislative control. Therefore, it is uncommon for disputes between executive and legislative branches of government to impact government function in ways comparable to countries such as the United States, where legislative and executive branches can be controlled by different political parties at the same time.

What are the relevant budgetary consequences, and how does debt relief need to be reflected in budgets approved by parliament?

In the UK, debt relief appears in the ODA budget.[111] This is a component part of the Budget passed by Parliament. Debt forgiveness has not featured in UK aid statistics since 2009, and relief of multilateral debt (grants to cover debts owed to multilateral institutions, such as the World Bank) fell to zero by 2013. From 2009 to 2021, £576 million in aid was related to debt or relief of multilateral debt.[112] The limited amount of debt owed to the UK government makes its effect on the national budget small.

[109] UK Parliament, "The Budget and Parliament," *UK Parliament*, accessed January 7, 2025, <https://www.parliament.uk/about/how/role/check-and-approve-government-spending-and-taxation/the-budget-and-parliament/>.
[110] *R (on the application of Miller) v Secretary of State for Exiting the European Union* [2017] UKSC 5, Supreme Court, <https://www.supremecourt.uk/cases/docs/uksc-2016-0196-judgment.pdf>.
[111] Foreign, Commonwealth & Development Office, *Statistics on International Development: Provisional UK Aid Spend 2022* (London: FCDO, 2023), accessed January 7, 2025, <https://assets.publishing.service.gov.uk/media/64355a2b877741001368d7cf/Statistics-on-International-Development-Provisional-UK-Aid-Spend-2022.pdf>.
[112] Philip Loft and Philip Brien, "Debt Relief for Low-Income Countries," *House of Commons Library - Research Briefing*, January 10, 2024, accessed January 7, 2025, <https://researchbriefings.files.parliament.uk/documents/CBP-9830/CBP-9830.pdf>.

8. Private Debt - Collective Action Clauses

This section considers debt forgiveness by private lenders and considers the impact that domestic legislation can have on their participation in the provision of debt relief. From the outset, it should be noted that private creditors have been called upon to participate in debt relief initiatives such as the DSSI and the G20 Common Framework. This has not amounted to any tangible involvement as no private creditors participated in the DSSI and only one participated in the Common Framework. These private lenders have therefore benefited the most from debt relief initiatives as governments have suspended or cancelled debt, but these private lenders have continued to be paid.

The London Club of private creditors is an informal group of private lenders, primarily commercial banks, which coordinate the restructuring of government debt owed to them. Unlike the Paris Club, which deals with official bilateral debt, the London Club focuses on private sector debt. It operates without a permanent secretariat or formal membership, forming ad hoc committees for each debtor government, typically led by a major creditor bank. The Institute of International Finance (IIF) is a private organisation whose members include a wide range of sovereign debt investors. The IIF put out a statement in response to the DSSI expressing in-principle support for its goal but expressing reluctance of private creditors to commit to debt cancellation initiatives.

According to Debt Justice, a campaigning organisation that aims to end unjust debt, debt payments for developing countries increased by 120% between 2010 and 2021 and are higher than at any time since 2001.[113] Given that almost 60% of public debt in the Global South is held by private creditors, the failure to subject debt held by them to debt relief procedures would result in only marginal benefits for debtor countries in distress in the sense that they would still have to meet debt obligations to private creditors.

This was evident during the Covid-19 pandemic. The lack of participation of private debtors in the DSSI meant that less than a quarter of external debt payments were suspended. Similarly, under the G20 Common Framework created in 2020, private lenders refused to take part in debt cancellations and in fact stalled negotiations. In Chad, the private company Glencore delayed negotiations to ensure it was still paid in full. In Zambia, private lenders such as BlackRock have refused to agree to the scale of debt cancellation needed.

One of the challenges that debtors face when trying to restructure private debt is the requirement for unanimous consent of lenders when making any amendments that seek to reduce the principal of, or the interest on, the debt borrowed. This requirement of unanimity

[113] French Platform on Debt and Development.

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has delayed the conclusion of several rescheduling negotiations with sovereign debtors and is particularly problematic where the debt is held by several bondholders.[114]

However, Collective Action Clauses (CACs) can be used to manage this problem. CACs are clauses inserted into bond documents that seek to facilitate restructurings of sovereign debt by limiting the ability of small groups of holdout investors to block such restructuring by providing for majority voting among bondholders on matters such as default, acceleration, waivers and amendments.

As a result of broad efforts to encourage their use, the IMF now estimates that 95% of international sovereign bonds now include some form of CAC.[115] Furthermore, the IMF has noted that CACs have contributed recently to sovereign debt restructurings being smoother, faster, and with greater creditor participation, stating this is 'mainly due to the use of collective action clauses.'[116]

CACs are normally adopted on the terms set forward by the International Capital Markets Association (ICMA). There are some exceptions, such as in the case of Eurozone bonds, but CACs in bonds issued by low-income countries overwhelmingly follow ICMA terms. ICMA CACs provide three options for modifying the payment and other key terms of sovereign bonds: (1) a single-series option, which requires a 75 percent supermajority of holders of a specific bond; (2) a "two-limb" option, which requires a 66 2/3 percent supermajority across all bondholders voting in a designated pool, and a 50 percent majority of all bondholders within the pool; and (3) a "single-limb" option, which requires a 75 percent supermajority across all bondholders voting in a designated pool as long as all holders are offered the same instrument or a choice from the same menu of instruments.[117]

The single limb option is the most favourable for debtors as it enables the broadest restructuring on a single vote. In some cases, such as in recent Ecuadorian and Argentinian restructurings, sovereigns have considered consolidating votes between series in a way that allows them to build majorities from a low base of supporting bond holders, this is referred to as a of 'Pac-

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[114] Morais.
[115] Loft & Brien.
[116] International Monetary Fund, "The International Architecture for Resolving Sovereign Debt Involving Private-Sector Creditors—Recent Developments, Challenges, and Reform Options", *IMF Policy Paper*, October 1, 2020, accessed January 7, 2025, <https://www.imf.org/en/Publications/Policy-Papers/Issues/2020/09/30/The-International-Architecture-for-Resolving-Sovereign-Debt-Involving-Private-Sector-49796>.
[117] International Capital Market Association, *Standard Aggregated Collective Action Clauses ("CACs") for the Terms and Conditions of Sovereign Notes Governed by English Law*, May 2015, accessed January 7, 2025, <https://www.icmagroup.org/assets/documents/Resources/ICMA-Standard-CACs-Pari-Passu-and-Creditor-Engagement-Provisions---May-2015.pdf>.

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man' strategy. This specific activity has now been prevented by updates to the ICMA standard clauses due to protests from creditors.[118]

When CACs were first discussed there were calls to compel private creditors to take part in debt relief by mandating the use of CACs in New York law or English law, given that almost all bonds issued are governed by either of these laws.[119] CACs are, however, often seen as an alternative to legislative attempts to compel private creditors to participate in debt restructurings. For example, the UK government has responded in the Eighth Special Report of Session 2022-23 to a recommendation by the International Development Committee that it introduce legislation compelling private creditor participation in sovereign debt restructurings by saying that it prefers non-legislative solutions such as encouraging CACs.[120] Nevertheless, at present, CACs are a standard feature in bonds issued under both New York and English law.

It should however be noted that CACs, though useful, do not remove the need for an international sovereign debt regime. Firstly, CACs do not offer debt relief or cancellation, which would be necessary to reduce a debtor's debt to sustainable levels. Secondly, collective action problems are only a small part of the puzzle.[121] Thirdly, while CACs are now widespread among government bonds, they do not apply retroactively to bonds issued without such clauses, leaving open the possibility of creditor holdouts for holders of some older vintages of bonds. Further, such CACs apply only to bonds, not to loans by MFIs or official bilateral loans.

9. Private Creditor Holdouts - A Domestic Law Response: France, UK, Germany and US

The failure to make private lenders take part in debt relief is a major barrier to getting debt cancellation for countries in crisis. At the start of the Covid-19 pandemic, the G20 agreed a scheme to suspend debt payments for up to 73 countries under the DSSI. However, private lenders were not made to take part; as a result, countries which applied to the scheme had less than a quarter of their external debt payments suspended.

The G20 then created a debt relief scheme, which has so far cancelled no debt. One of the reasons is, again, because private lenders have not been made to take part in debt relief. In Chad, the private company Glencore delayed negotiations to ensure it still got paid in full. In

[118] Gustavo Medeiros and Jan Dehn, "Insights from Recent EM Sovereign Debt Restructurings," *Ashmore Market Commentary*, August 11, 2020, accessed January 7, 2025, <https://www.ashmoregroup.com/document/marketcommentary-11aug20>.
[119] Kenneth Kletzer, "Sovereign Bond Restructuring: Collective Action Clauses and Official Crisis Intervention," *IMF Working Paper*, June 1, 2003, accessed January 7, 2025, <https://www.imf.org/en/Publications/WP/Issues/2016/12/30/Sovereign-Bond-Restructuring-Collective-Action-Clauses-and-official-Crisis-Intervention-16571>.
[120] International Development Committee.
[121] Buckley.

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Zambia, private lenders such as BlackRock have refused to agree to the scale of debt cancellation needed.

The UK and New York, as two of the world's biggest financial markets, have a unique opportunity to act to facilitate fast and fair debt restructurings and protect taxpayers' money from being used to bail out reckless private lenders.[122]

The vast majority of debt contracts of private debt owed by low- and middle-income countries are governed by English or New York law, so legislation could be enacted in the UK and New York to provide a legal perimeter, much like bankruptcy, to protect countries from opportunistic holdout creditors.

Domestic law can be used to either compel debt restructurings or debt forgiveness for debt owed to private creditors to some extent. This has been attempted in France, the UK and is being considered in the US. The section below provides an overview of existing laws that deal with debt relief and interrogates how those laws can be modified to support debt relief efforts of governments.

French Domestic Law

How can existing laws be modified to support debt relief efforts by private creditors?

Almost all private sovereign debt is governed by either English or New York law, hence there is limited scope for French legislative efforts to impact sovereign debt practices. The World Bank recommended that states legislatures make four changes to domestic law imposing new rules for sovereign debt issuances governed by domestic law to facilitate debt relief efforts:[123]

1. Ensure that bond contracts should stipulate that all creditors have a legal duty to cooperate "in good faith" in sovereign-debt restructurings;
2. Limit creditor recovery in future restructurings lawsuits to that which would have been recoverable had the creditor participated in debt restructuring negotiations;
3. Make it more difficult for creditors to seize the assets of a debt-distressed government if that government has acted in good faith;
4. Either retrofit in or require that all new domestic law governed bonds include CACs which allow for all bonds in a class to be restructured as long as a clear majority of bondholders have agreed.

[122] Rt Hon Liam Byrne MP and Gustavo Rivera.

[123] Blanca Ximena Talero, "Potential Statutory Options to Encourage Private Sector Creditor Participation in the Common Framework," *World Bank Group - Equitable Growth, Finance & Institutions Notes*, 2022, accessed January 7, 2025, <https://documents1.worldbank.org/curated/en/099802006132239956/pdf/IDU0766c0f2d0f5d0040fe09c9a0bf7fb0e2d858.pdf>.

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These recommendations apply for the remaining case study countries.

As discussed below, France has partially implemented laws that mirror some of these aims.

What are the existing provisions under French law that deal with debt relief by private creditors?

France passed a law restricting private creditor claims against sovereign debtors in 2016, known as "Sapin 2". It has the full title: "LAW no. 2016-1691 of 9 December 2016 relating to transparency, the fight against corruption and the modernization of economic life".

The French law's innovations include establishing a four-year time frame over which negotiations should happen before a creditor can attempt to seize assets, and providing for a debt restructuring accepted by a super-majority of creditors in a sovereign debt restructuring for an eligible country to be imposed on any holdouts.

In detail, the law forbids a creditor from seizing assets held by a debtor state if three conditions are met:

1. The debtor state was listed as a recipient of ODA when the loan was given (currently 156 countries and territories);
2. The debtor state was in default or nearly defaulting when the debt was bought by the creditor;
3. The default occurred less than four years ago, or a restructuring of the debt has been accepted by at least 66% of holders of that type of debt.[124]

What proposals have been made to modify the laws dealing with private creditors for the benefit of developing countries? Which seem likely to be implemented?

No evidence was found of proposals under serious consideration in France for further reforms to private creditor rules regarding developing country sovereign debt.

New York State Law

How can existing laws be modified to support debt relief efforts by private creditors?

Almost all international sovereign debt is governed by either English or New York law. Therefore, despite the U.S. overall being a minor bilateral lender there is great scope for New York state legislation to impact sovereign debt practices globally. The World Bank recommendations for state-level legal changes apply principally to New York, as other states are not significant venues for government debt contracts. It should be noted that debt markets are fluid, with English law gaining prominence as the more favoured governing law internationally for government debt.

[124] France, "LOI n° 2016-1691 du 9 décembre 2016 relative à la transparence, à la lutte contre la corruption et à la modernisation de la vie économique (1)," *Journal officiel de la République française* n°0287, December 10, 2016, accessed January 7, 2025, <https://www.legifrance.gouv.fr/loda/article_lc/LEGIARTI000033561959>.

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The New York legislature is considering the implementation of comparable legislation, as discussed below. Such legislation would be in keeping with global trends towards the proliferation of CACs with the IMF estimating that 95% of international sovereign bonds now include some form of CAC[125] and all euro area bonds with maturity above one year now being required to include an updated "double-limb" CAC.[126] A double-limb CAC essentially requires a positive vote at the level of individual classes of bondholders and an aggregated positive vote in general.

What are the existing provisions under Federal/New York law that deal with debt relief by private creditors?

New York commercial law provides that: "Every contract or duty within this Act imposes an obligation of good faith in its performance or enforcement." (NY UCC§1-203). While this has not historically prevented private creditors from enforcing claims on debtor countries in New York courts, it has been suggested that this obligation could form the basis of new rules preventing such actions.[127] In a recent New York ruling in *Hamilton Reserve Bank v Sri Lanka*, the judge made clear that the ruling "should not be construed either as an endorsement of litigation filed by beneficial holders of sovereign debt while the IMF addresses a grave crisis over that debt or an indication that such plaintiffs should be given priority in recovery during any debt restructuring negotiations that occur."[128] This was seen by observers such as Daniel Reichert-Facilides, an international insolvency expert, as a hint that New York judges were 'losing patience' with debt enforcement claims by private creditors against debt-distressed sovereigns.[129] More broadly there are no New York laws that apply specifically to debt relief by private creditors.

What proposals have been made to modify the laws dealing with private creditors for the benefit of developing countries? Which seem likely to be implemented?

Due to New York's prominence as a governing law venue for sovereign debt contracts, it has been the focus of numerous proposals to alter New York state law for the benefit of developing

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[125] Loft & Brien.

[126] EFC Sub-Committee on EU Sovereign Debt Markets, *2022 Collective Action Clause Explanatory Note* (2022), accessed January 7, 2025, <https://economic-financial-committee.europa.eu/system/files/2021-04/EA%20Model%20CAC%20-%20Draft%20Explanatory%20Note.pdf>.

[127] Mitu Gulati and Lee Buchheit, "The Duty of Creditors to Cooperate in Sovereign Debt Workouts," *University of Oxford Faculty of Law Blogs*, January 20, 2022, accessed January 7, 2025, <https://blogs.law.ox.ac.uk/business-law-blog/blog/2022/01/duty-creditors-cooperate-sovereign-debt-workouts>.

[128] "Opinion: Hamilton Reserve Bank Ltd. v. The Democratic Socialist Republic of Sri Lanka," *Casetext,* November 1, 2023, accessed January 7, 2025, <https://casetext.com/case/hamilton-reserve-bank-ltd-v-the-democratic-socialist-republic-of-sri-lanka-8>.

[129] "New York Rewrites the Rules on Sovereign Debt Restructurings," *Financial Times*, accessed January 7, 2025, <https://www.ft.com/content/213aa90a-3eba-4451-a509-b9d17e1d56c8>.

countries.[130] There are three notable recent active bills introduced to the New York State Assembly in 2023 that seek to benefit developing countries:

1. NY A5290 is considered the broadest reaching bill and would have two main effects:.
    a. The bill would alter state limits on the acquisition of debt for the purposes of litigating to achieve repayment of that debt by removing the current US$500,000 ceiling that essentially prevents this principle from applying to sovereign debt. Additionally, the bill seeks to rework the law that has held since the 1999 Second Circuit case of *Elliot Associates, LP v Banco dela Nación*[131]. In this case, the court held that there was a distinction between acquisition of debt for the primary purpose of litigation and acquisition of debt where the intent to litigate is incidental and contingent;
    b. The bill would also create a duty for holders of New York law sovereign debt to participate in "qualified restructurings" of sovereign debt. Qualified restructurings are those that involve "modification of the terms of some or all of the unsecured debt instruments issued by a foreign state whose debt has been assessed as unsustainable by the IMF within the prior twelve months provided that the modification is accepted by the holders of not less than two-thirds in amount and more than one-half in number of the debt instruments affected by the modification (excluding, for purposes of voting, any instruments that are owned or controlled, directly or indirectly, by the foreign state or any of its agencies or instrumentalities)."[132]
2. NY A2102A would impose a sovereign debt restructuring mechanism by amending the existing New York Banking Law through a new Article 7. This would be similar to a CAC voting scheme which enables a majority or supermajority of bondholders to impose a collective agreement with the debtor government on non-consenting bondholders.[133]
3. NY A2970 (and an identical State Senate Bill S4747) would limit recovery on claims against sovereigns participating in certain international initiatives aimed at providing debt relief by limiting claims to essentially what would be recoverable if those debts were held by the US Federal Government.[134] The initiatives covered by the draft bill are very broad, extending to "any mechanism, framework or initiative in which the US Government and other sovereign states" are participating, applying to eligible developing countries.

[130] Rodrigo Campos and Jorgelina Do Rosario, "Explainer: Can a New York State Law Solve or Trigger an Emerging Markets Debt Crisis?" *Reuters*, June 1, 2023, accessed January 7, 2025, <https://www.reuters.com/world/us/can-new-york-state-law-solve-an-emerging-markets-debt-crisis-2023-06-01/>.
[131] *Elliott Associates, L.P. v. Banco de la Nacion*, 194 F.3d 363 (2d Cir. 1999)
[132] New York State Senate, *Assembly Bill A5290A*, 2023-2024 Legislative Session, accessed January 7, 2025, <https://www.nysenate.gov/legislation/bills/2023/A5290/amendment/A>.
[133] Ibid.
[134] New York State Senate.

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It is currently unclear if any of these bills will pass into law. The 2023 New York legislative session ended without plenary action of any of the bills. The bills were reintroduced, without the champerty changes, in the 2024 legislative session,[135] and work from think tanks such as the Columbia Institute for Global Politics on making recommendations for the bills continues.[136]

The bills face opposition from financial groups such as the American Council of Life Insurers (ACLI), The Credit Roundtable, the Investment Company Institute (ICI), the International Capital Market Association (ICMA), the Institute of International Finance (IIF) and the Life Insurance Council of New York (LICONY). The groups issued a press statement objecting to the retroactive scope of the proposals and 'dangers these bills pose to the very governments the bills seek to help.' In particular, the opponents claimed the bills would degrade access by developing countries to finance, and that the implementation of CACs already ensured the success of voluntary sovereign restructurings such as in the case of Argentina and Ecuador.[137]

German Domestic Law

How can existing laws be modified to support debt relief efforts of private creditors?

There is limited scope for German legislative efforts to impact sovereign debt practices as not much sovereign debt is issued in Germany. The World Bank recommendations discussed earlier apply to German Domestic Law. NGOs such as German Jubilee Network have echoed these recommendations and called for both similar domestic laws and for Germany to use its influence in international affairs to take steps such as remove the requirement for IMF debt sustainability analysis for sovereign debt restructurings and to set up independent arbitration panels between sovereign debtors and their creditors. German Jubilee Network in particular has called for establishing a sovereign insolvency process to allow for greater reduction of total debt stock for debtor countries.

Germany has been a consistent opponent of proposals from China to require multilateral lenders to take haircuts on their loans as part of sovereign debt restructurings, suggesting that it is unlikely that the German government would support efforts to establish a formal insolvency process where developing countries would be able to reduce their multilateral debt.

What are the existing provisions under German law that deal with debt relief by private creditors?

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[135] "New York Moves to Rewrite Law on Sovereign Debt Default Recovery," *Financial Times*, accessed January 7, 2025, <https://www.ft.com/content/3c4f3323-d9bb-4399-94fb-0bd4abd67b2a>.

[136] Columbia University Institute of Global Politics, "Sovereign Debt - NY Legislation," *SIPA Event Highlight*, accessed January 7, 2025, <https://igp.sipa.columbia.edu/news/sovereign-debt-ny-legislation>.

[137] Investment Company Institute, "ACLI, The Credit Roundtable, ICI, IIF, and LICONY Oppose New York Legislature Bills on Sovereign Debt," *News Release*, May 22, 2023, accessed January 7, 2025, <https://www.ici.org/news-release/23-news-ny-leg-bills>.

No evidence was found of existing laws in Germany specifically related to private creditor enforcement against sovereign debtors.

Whilst laws proposing to limit the abilities of private creditors to obtain favourable treatment of their debt claims against sovereign debtors have been proposed by advocacy groups, there are currently no initiatives by the government or parliament to resolve any such acts.

Advocacy for German laws in the model of the UK Debt Relief Act or to grant immunity from seizure to assets of debtor states reached a peak during the German presidency of the G7 in 2022, when groups such as Erlassjahr and the Friedrich Ebert Foundation campaigned for such proposals.[138]

What proposals have been made to modify the laws dealing with private creditors for the benefit of developing countries? Which seem likely to be implemented?

While the low proportion of international sovereign debt with German law as its governing law reduces the scope for German legislation to impact world debt markets, it has been suggested by NGOs such as the German Jubilee Network that Germany pass a number of laws to benefit developing countries dealing with private creditors. These laws include:

1. Preventing German courts from implementing judgements of foreign courts in Germany if those judgements enable private creditors to recover greater amounts from sovereign debtors than the claimants could have recovered through participating in formal restructuring processes;[139]
2. Passing anti-holdout legislation that does affect German law governed sovereign bonds, with the intent to provide a reference point for the German government to use while advocating the adoption of comparable provisions by other jurisdictions;[140]
3. Taking the international initiative by passing a law defining what constitutes fair restructuring negotiations and expressly linking this definition to concepts of fairness and transparency.[141]

While the current German governing coalition has included a new international debt management consensus as one of its goals in its coalition agreement, there is no indication that any such measures are currently under serious consideration.

[138] Friedrich-Ebert-Stiftung, "Die globale Schuldenkrise lösen, private Gläubiger beteiligen – die Rolle nationaler Gesetzgebungen in G7-Ländern," *FES News*, June 27, 2022, accessed January 7, 2025, <https://www.fes.de/digitales-lernen/artikelseite-videos/die-globale-schuldenkrise-loesen-private-glaeubiger-beteiligen-die-rolle-nationaler-gesetzgebungen-in-g7-laendern>.
[139] MISEREOR, *Global Sovereign Debt Monitor 2023*, April 2023, accessed January 7, 2025, <https://erlassjahr.de/wordpress/wp-content/uploads/2023/04/GSDM23-online.pdf>.
[140] Ibid, 45.
[141] Ibid.

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UK Domestic Law

How can existing laws be modified to support debt relief efforts by private creditors?

Despite being a minor bilateral lender there is great scope for UK legislation to impact sovereign debt practices globally given that most private sovereign debt is governed by UK law. The World Bank recommendations on changes to domestic law apply to the UK. While the World Bank suggestions are not at present likely to be adopted by the UK in full, the UK has taken steps that partially implement the World Bank recommendation to limit creditor recovery to that obtainable through participation in restructurings through the Debt Relief (Developing Countries) Act (as discussed below). It has also directly [142] and through multilateral organisations such as the G20[143] encouraged the adoption of CACs in English law bonds on a voluntary basis rather than through legislation, with the IMF estimating that 95% of international sovereign bonds now include some form of CAC.[144] This has been part of a broader global trend towards the introduction of CACs in sovereign debt, with all euro area bonds with maturity above one year now being required to include an updated "double-limb" CAC.[145]

What are the existing laws under English law that deal with debt relief by private creditors?

The principal law in the UK impacting private creditor debt claims against sovereign countries is the Debt Relief (Developing Countries) Act 2010 ("HIPC Act"). The HIPC Act applies to debt eligible for relief under the HIPC and limits the amount recoverable through private court actions to the level that the creditor would have received had they participated in the official HIPC restructuring.

The HIPC Act was passed in an effort to reduce the impact of private creditor holdouts in sovereign debt restructurings for low-income countries, as private creditors were able to make higher recoveries from debtor countries through enforcement of English law governed bonds in the English courts than they would have received had they participated in international restructuring efforts. Prominent examples of such enforcement actions are *Donegal v Zambia*[146] and *Hamsah Investments v Liberia*[147], where debt claims acquired at large discounts were successfully pursued through UK courts critics for large returns.

The HIPC Act was originally only implemented for one year but was made permanent by the Debt Relief (Developing Countries) Act 2010 (Permanent Effect) Order 2011 after what was judged to be the success of its first year. The Act was judged to have saved HIPC countries up

[142] International Development Committee.

[143] International Monetary Fund, *Progress Report on Inclusion of Enhanced Contractual Provisions in International Sovereign Bond Contracts* (Washington, DC: IMF), September 18, 2015, accessed January 7, 2025, <https://www.imf.org/en/Publications/Policy-Papers/Issues/2016/12/31/Progress-Report-on-Inclusion-of-Enhanced-Contractual-Provisions-in-International-Sovereign-PP4983>.

[144] Loft & Brien.

[145] EFC Sub-Committee on EU Sovereign Debt Markets.

[146] *Donegal International Ltd v Republic of Zambia* [2007] EWHC 197 (Comm).

[147] *Hamsah Investments Ltd v Republic of Liberia* [2009] 11 WLUK 644.

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to £26 million per year and the IMF noted that after the introduction of this legislation in Parliament litigation against eligible countries decreased.[148]

A notable limitation of the HIPC Act is that it applies only to historic Pre-Decision Point HIPC debt and not to the overall debt stock of debtor countries.

What proposals have been made to modify the laws dealing with private creditors for the benefit of developing countries? Which seem likely to be implemented?

The HIPC Act does not cover countries participating in the G20 Common Framework. It has been suggested that the UK Government could introduce equivalent legislation, updated to include Common Framework countries. In addition to proposals by debt relief NGOs such as Debt Justice,[149] this expansion of the scope of the HIPC Act was a particular focus of Parliament's International Development Committee, which published its Seventh Report of Session 2022–23, recommending the government take several measures relating to sovereign debt relief. Most notable was recommendation five relating to private creditors:

"UK Government should consult on the introduction of legislation to compel or incentivise participation of private creditors in the Common Framework, such as those proposed by the World Bank. This should include proposals either:

a) to prevent low-income countries facing debt distress from being sued by private creditors for a sum greater than that those creditors would have received had they participated in the Common Framework; or

b) to make debt restructuring agreements binding for all private creditors if the agreement is supported by at least two-thirds of private creditors."[150]

This recommendation was rejected by the UK government on the grounds that doing so could have the effect of impeding access to finance by developing countries and because the government prefers non-legislative solutions. Similarly, the UK government has not indicated interest in accepting the World Bank legislative proposals as it instead prefers to focus on non-legislative areas for reform of private sector lending including:

1. Government meetings with private sector stakeholders, including through the Institute of International Finance, International Capital Markets Association, and

[148] International Monetary Fund, *Heavily Indebted Poor Countries (HIPC) Initiative and Multilateral Debt Relief Initiative (MDRI)—Status of Implementation*, prepared by the staffs of IDA and the IMF, approved by Otaviano Canuto and Reza Moghadam, September 14, 2010, accessed January 7, 2025, <https://www.imf.org/external/np/pp/eng/2010/091410.pdf>.

[149] Catholic Agency for Overseas Development (CAFOD) and Debt Justice, *Parliamentary Briefing: Legislative Reform to Ease Debt Restructuring for Lower-Income Countries*, April 2023, accessed January 7, 2025, <https://debtjustice.org.uk/wp-content/uploads/2023/05/DJ-CAFOD-Parliamentary-Briefing-Legislative-Reform-May-23.pdf>.

[150] International Development Committee.

Global Sovereign Debt Roundtable, to discuss issues including comparability of treatment in debt restructurings;[151]

2. Emphasising through the G20, Paris Club, IMF, and Paris Club Secretariat that private creditors are expected to participate in restructurings on at least as favourable terms as bilateral creditors;[152]
3. Enhancing market-based (also known as contractual) solutions to private sector participation in debt restructurings, in particular through the adoption of CACs;[153]
4. Encouraging the use of Majority Voting Provisions in syndicated lending contracts, through which the UK government claims credit for inclusion of specimen clauses by industry bodies and loan market associations.[154]

The committee also recommended formal cooperation with the New York legislature to develop a co-operative legislative approach. This was also rejected on the grounds that the government had rejected a legislative approach to sovereign debt relief.[155]

10. Debt-for-Nature Swaps

Debt-for-nature swaps, also known as debt-for-environment swaps, are a form of debt restructuring whereby creditors grant concessions to sovereign debtors in exchange for those debtors agreeing to take certain steps to preserve their environments. They are intended to redirect resources of debtor nations from servicing debt for other goals, particularly climate-conscious ones.[156]

Debt-for-nature swaps are a relatively old concept. The first such swap occurred in 1987 between an NGO and the Government of Bolivia. Debt-for-nature swaps are often financed by charities due to their inherently concessionary nature and their environmentally conscious credentials.[157]

Debt-for-nature swaps have historically been small in size and have not made a significant impact on the debt stocks of debtor nations. To 2022, only eight such swaps have been over $100m in size.[158]

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[151] International Development Committee.
[152] Ibid.
[153] Ibid.
[154] Ibid.
[155] Ibid.
[156] Loft & Brien.
[157] Ibid.
[158] African Development Bank Group, *Debt-for-Nature Swaps: Feasibility and Policy Significance in Africa's Natural Resources Sector* (Côte d'Ivoire, 2022), accessed January 7, 2025, <https://www.greenpolicyplatform.org/sites/default/files/downloads/resource/debt-for-nature-swaps.pdf >.

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There is, however, growing interest in debt-for-nature swaps due to increasing concern over the impact of climate change and the recognition that many of the most debt-distressed countries are also particularly vulnerable to climate change impacts.[159] This has been reflected in the increase in size of debt-for-nature swaps in recent years. In August 2023, Gabon secured a US$500 million debt-for-nature swap;[160] whilst in May 2023, Ecuador secured a US$450 million debt-for-nature swap.[161]

Despite this trend, legislators and industry practitioners have expressed scepticism over debt-for-nature swaps. This is because they potentially divert attention away from adopting measures that address unsustainable and unequitable management of natural resources. In addition, given the secretive nature of these agreements, citizens' consent is often not given. This often results in the adoption of measures that do not consider the culture and livelihoods of indigenous communities. Furthermore, whilst these instruments relieve countries with high levels of debt from onerous debt servicing obligations, they tie up funds that could have been used for urgent national development plans in other sectors such as health and education.[162]

For example, the UK International Development Committee expressed concern that the focus on preserving natural environments 'can also disempower and harm communities, because they may entail top-down conditions that impact indigenous and ethnic minorities.'[163] The government concurred, further expressing concern that 'the value-for-money and effectiveness of these interventions is unclear' as they defocus securing debt sustainability for debtor nations in favour of environmental goals.

France has not historically participated in debt for nature swaps. On this specific point, a Banque de France report from 2023 suggested that while they had potential benefits, their implementation "poses many technical, financial and governance related challenges" and so could "be accompanied by adverse effects that need to be analysed in detail."[164]

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[159] Kristalina Georgieva, Marcos Chamon, and Vimal Thakoor, "Swapping Debt for Climate or Nature Pledges Can Help Fund Resilience," *IMF Blog*, December 14, 2022, accessed January 7, 2025, <https://www.imf.org/en/Blogs/Articles/2022/12/14/swapping-debt-for-climate-or-nature-pledges-can-help-fund-resilience>.

[160] Zane Irwin, "A $500 Million Deal to Restore Gabon's Coast Reignites Climate Finance Debate," *AP World News*, August 15, 2023, accessed January 7, 2025, <https://apnews.com/article/gabon-debt-conservation-environment-ocean-blue-bonds-940b9e3ea3a3e2b03cec41e55e9e8f2c?utm_source=dailybrief&utm_medium=email&utm_campaign=DailyBrief2023Aug15&utm_term=DailyNewsBrief>.

[161] Marc Jones and Rodrigo Campos, "Ecuador Seals Record Debt-for-Nature Swap with Galapagos Bond," *Reuters*, May 9, 2023, accessed January 7, 2025, <https://www.reuters.com/world/americas/ecuador-seals-record-debt-for-nature-swap-with-galapagos-bond-2023-05-09/>.

[162] CADTM, "Financing the 30x30 Agenda for the Oceans: Debt for Nature Swaps Should Be Rejected," *CADTM News*, December 16, 2022, accessed January 7, 2025, <https://www.cadtm.org/Financing-the-30x-30-agenda-for-the-Oceans-Debt-for-Nature-swaps-should-be>.

[163] International Development Committee.

[164] Quentin Paul, Pierre-François Weber and Romain Svartzman, "Debt-for-Nature Swaps: A Two-Fold Solution for Environmental and Debt Sustainability in Developing Countries?" *Banque de France - Bulletin*, accessed

The US has a history of participation in debt-for-nature swaps. In November 2023, the US International Development Finance Corporation joined other Multilateral Development Banks and Development Finance Institutions to launch a debt-for-nature swap task force.[165] Related developments include the participation by the US International Development Finance Corporation in a loan to Barbados with ecological protection linked credit guarantees and a US$450 million debt-for-nature swap with Gabon.[166] The US has also participated in a US$20 million swap to protect the Peruvian Amazon.[167]

Germany participates in debt-for-nature swaps. In 2023, Germany agreed with Egypt a debt swap deal worth €54m to promote green energy transition. This was part of a German COP 27 pledge worth more than €250m that included debt forgiveness, grants, and low interest-rate loans to Egypt.[168] Germany has separately committed €450m in climate finance pledges to African nations, including a €60m debt cancellation for Kenya as part of a financing package for green hydrogen facilities.[169]

11. Is there a way a global debt relief initiative could be adapted to cater for the legal conditions of debt relief in the major creditor countries?

France

From a bilateral point of view, the total amount of debt owed to France directly is small in the scheme of overall developing country indebtedness. The overwhelming majority of developing country external debt is now in the hands of non-bilateral creditors with the World Bank estimating that only around 5% of low- and middle-income country debt is in the hands of bilateral creditors.[170]

January 7, 2025, <https://publications.banque-france.fr/sites/default/files/medias/documents/823003_bdf244_2-en_version_finale.pdf>.

[165] Marc Jones, "Exclusive: Top Development Banks to Launch Debt-for-Nature Swap 'Task Force,'" *Reuters*, November 30, 2023, accessed January 7, 2025, <https://www.reuters.com/sustainability/sustainable-finance-reporting/worlds-top-mdbs-forge-debt-for-nature-swap-task-force-sources-2023-11-30/>.

[166] Ibid.

[167] McCoy.

[168] Shaimaa Al-Aees, "Egypt, Germany Sign Debt Swap Deal Worth €54M to Promote Green Energy Transition," *Egypt Daily News*, June 25, 2023, accessed January 7, 2025, <https://www.dailynewsegypt.com/2023/06/25/egypt-germany-sign-debt-swap-deal-worth-e54m-to-promote-green-energy-transition/>.

[169] Antony Sguazzin, "Germany Backs Kenya Hydrogen Among Africa Climate Pledges," *Bloomberg*, September 5, 2023, accessed January 7, 2025, <https://www.bloomberg.com/news/articles/2023-09-04/germany-backs-kenya-hydrogen-in-raft-of-african-climate-pledges?leadSource=uverify%20wall>.

[170] World Bank, *International Debt Report 2023* (Washington, DC: IMF, 2023), accessed January 7, 2025, <https://openknowledge.worldbank.org/entities/publication/02225002-395f-464a-8e13-2acfca05e8f0>.

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Furthermore, France is not a significant venue for governing law for sovereign debt, so any changes to domestic laws along the lines suggested by campaigners in the US and UK are unlikely to have a material impact on global sovereign debt practices.

One potential way of increasing the impact of any future French legislation is through a co-ordinated effort with those countries to introduce such laws and prevent private creditors from demanding that bonds be governed elsewhere, mirroring proposals by UK legislators for co-operation with New York legislators to avoid jurisdiction shopping by private creditors.

US

The total amount of debt owed to the US directly is small in the scheme of overall developing country indebtedness. The US is only around the 11th largest official creditor and developing country debt is now held overwhelmingly by multilateral and private creditors.[171] US credit exposure to sovereign governments has fallen dramatically - from over US$90 billion in 1999 to roughly US$35 billion today - and much of what remains is in the form of guarantees. The number of countries that owe the United States money or have a guarantee has dropped from 135 to 85 over the same period.[172]

The key legal condition in New York is that its trusted courts and legal system make it a popular venue for contracts of all types, including sovereign debt. Any global debt relief initiative may therefore seek to focus on altering how New York law governed bonds are treated, such as by requiring CACs or multilateral restructuring provisions in New York law-governed sovereign debt.

Any such efforts would need to be carefully considered. Private creditors invest in New York law governed bonds partly because there is a track record of courts upholding claims against sovereigns, including in *EM Ltd. V. Republic of Argentina*,[173]. A move to make all New York law debt subject to restructuring terms negotiated by official creditors would fundamentally alter the rights of private sector creditors and degrade their negotiating power in a sovereign restructuring. These creditors are not bound to purchase New York law governed debt. They would be free to demand English law, or another law be used as the governing law for debt instruments going forward. At present, there is a trend for sovereigns to issue under English rather than New York law due to higher costs of litigation in New York and higher US standards for securities and disclosure-based liability.

Germany

The total amount of debt owed to Germany directly is small in the scheme of overall developing country indebtedness. While Germany is a relatively large bilateral creditor, the overwhelming

[171] Congressional Research Service.
[172] Hurley.
[173] *EM Ltd. v. Republic of Argentina, 695 F.3d 201, 203 n.1 (2d Cir. 2012).*

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majority of developing country external debt is now in the hands of non-bilateral creditors with the World Bank estimating that only around 5% of low- and middle-income country debt is in the hands of bilateral creditors.[174]

Germany is not a significant venue for governing law for sovereign debt, so any changes to laws along the lines suggested by campaigners in the US and UK are unlikely to have a material impact on global sovereign debt practices. One potential way of increasing the impact of any future German legislation is through a co-ordinated effort with those countries to introduce such laws and prevent private creditors from demanding that bonds be governed elsewhere, mirroring proposals by UK legislators for co-operation with New York legislators to avoid jurisdiction shopping by private creditors.

UK

The total amount of debt owed to the UK directly is small in the scheme of overall developing country indebtedness. The total amount of debt owed to the UK is now US$1.8 billion as compared to US$70 billion owed to the 22 members of the Paris Club.[175] Debt owed by debt-distressed countries is now largely in the hands of private creditors, multilateral institutions, or non-UK sovereign creditors, limiting the importance of legal limits on the British Government and Paris Club members generally, who, as of 2021, held only 11% of the external debt of low-income countries.[176]

The key legal condition in the UK is that its trusted courts and legal system make it a popular venue for contracts of all types, including sovereign debt. Any global debt relief initiative may seek to focus on altering English law for debts not owed to the British Government but still governed by English law, such as by further expanding the successful efforts to encourage the use of CACs in English law-governed sovereign debt.

Any such expansion would need to be carefully considered. Private creditors invest in English law governed bonds partly because there is a track record of courts upholding claims against sovereigns. A move to make all English law debt subject to restructuring terms negotiated by official creditors would fundamentally alter the rights of private sector creditors and degrade their negotiating power in a sovereign restructuring. These creditors are not bound to purchase English law governed debt. They would be free to demand New York law or another law be used as the governing law for debt instruments going forward.

[174] World Bank, *International Debt Report 2023*.
[175] Loft & Brien.
[176] Chuku Chuku, Prateek Samal, Joyce Saito, Dalia S. Hakura, Marcos D. Chamon, Martin D. Cerisola, Guillaume Chabert, and Jeromin Zettelmeyer, "Are We Heading for Another Debt Crisis in Low-Income Countries? Debt Vulnerabilities: Today vs the Pre-HIPC Era," *IMF eLibrary*, April 4, 2023, accessed January 7, 2025, <https://www.elibrary.imf.org/view/journals/001/2023/079/article-A001-en.xml#A001fig11>.

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12. Conclusion

Based on the above findings, there is a need for an international sovereign bankruptcy regime upon which debt cancellation could be based. This is because there currently is no coordinated and universally applicable regime. This could be accompanied by the creation of a sovereign bankruptcy court with agreed terms of reference, rules and procedures. A treaty ratified between nations could be developed with representatives from the various creditor groups such as commercial banks and nations being included. A sovereign bankruptcy regime could, for instance, be based on Chapter 9 "Adjustment of Debts of a Municipality of the US Bankruptcy Code" which provides for re-organisation of municipalities, which includes cities and towns, as well as villages, counties, taxing districts, municipal utilities, and school districts. In the alternative, a bankruptcy regime could be developed under the auspices of the United Nations to ensure a fair, comprehensive and transparent multilateral space for the resolution of debt crises.

Domestic legislation governing sovereign bonds should also be enacted to ensure participation by private creditors in sovereign debt restructurings. A coordinated approach should be taken by jurisdictions whose laws are often used as the governing law of these bonds including the UK and the US. These laws should be developed based on past experience such as the UK's Debt Relief (Developing Countries) Act 2010. In addition, domestic legislation should mandate the use of CACs. Such provisions would encourage responsible borrowing practices.

Other measures to compel private creditors to participate in debt restructurings include the provision of public support by the Paris Club members, G20 countries and the IMF to debtors to default on creditors who refuse to do so. This could be coupled with adoption of UK and New York legislation preventing lenders from suing any country taking part in a G20 scheme. Another option could be to use Article VIII Section 2(b) at the IMF which allows the IMF to impose a debt standstill through the temporary suspension of enforceability of debt contracts in domestic courts of more than 189 IMF member countries. In the alternative, a UN Security Council resolution to order a suspension of private creditor litigation with regards to certain countries' sovereign debt: an action that was used in relation to Iraq's debt with United Nations Security Council Resolution 1483.

Debt cancellation by the IMF, the World Bank and other multilateral institutions should also be encouraged. This is because their debt represents a significant amount of external debt for developing countries.[177] This multilateral debt cancellation could also be offered as part of a scheme that requires private lenders to also write down debt payments, and which turns the

[177] Debt Justice, "How the IMF Can Unlock Multilateral Debt Cancellation", *Debt Justice Briefing*, October 2020, accessed January 7, 2025, <https://debtjustice.org.uk/wp-content/uploads/2020/10/IMF-and-World-Bank-debt-cancellation_10.20.pdf>.

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current suspension of payments to bilateral lenders into debt cancellation. This could be done for a fixed period of time.

Finally, conditionalities requiring the implementation of austerity policies should be eliminated to ensure sufficient public spending for the realisation of development goals and economic and social rights.

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