International Law and Sustainable Development: Grounds for Cancellation of Africa Debts

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Abstract: As of April 2020, the IMF categorised seven African countries as being in debt distress, whilst identifying twelve more that were at high risk of becoming distress. It is no longer a secret that considered immutable and eternally binding, debt by the global south (i.e., poor developing African countries) has become a tool for imperial powers in the post-colonial world to enforce and perpetuate their dominance over the global south. This is despite serious global crises that emerge from, and/or were caused by the rich countries of the global north; specifically, the negative effects of the global financial crisis of 2008, devastating impact of Covid-19 pandemic, and impact of Russia–Ukraine war on the African economies and contribution to these debt vulnerabilities. Yet, the rich countries of the global north have insisted on these poor countries to continue financing their debts. The paper considers how African countries could legally cancel the repayment of the debts by relying on the principles of international law (such as pacta sunt servanda, limit to legal obligation to pay, force majeure, State of Necessity or rebus sic stantibus) and States' declarations to commitment to sustainable development agenda (such as the European Union's response to the adoption of the 2030 Agenda featured in its Commission's 2016 Communication) could be used as justifying grounds for cancellation of Africa debts. The paper draws on international law and development in the light of dependency and postcolonial theories and employs the human rights-based approach, interdisciplinary and critical-analytical perspective and using qualitative empirical evidence from rich countries and institutions of the global north and poor developing countries of the global south for analysis.

Keywords: Africa debt crisis; human rights-based approach; international development law; post-colonial and dependency theories; principles of public international law

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1 Introduction

The old argument for debt cancellation in Africa no longer applies – two decades ago, the world was in grip of a great debate over debt and debt cancellation in Africa. Total public debt stock had climbed to nearly $300bn by 2002 from $40bn in two decades prior. Jubilee Debt Campaigners insisted on immediate cancellation. The pope concurred. Today, Africa's external debt alone exceeds $700bn – campaigners are back asking for cancellation, but their campaign and argument are not going through or being accepted by the creditors.[1] This paper proposes an idea based on international law and interdisciplinary legal argument for the cancellation of Africa's debt.

As of April 2020, the IMF categorised seven African countries as being in debt distress, whilst identifying 12 more that were at high risk of becoming distressed. Chad, the Republic of Congo, Mozambique, Sao Tome and Principe, Somalia, Sudan and Zimbabwe were already in debt distress.[2] The composition of African debt has changed significantly. Previously, most of the African debt was owed to official creditors – the high-income countries and multilateral lenders like the World Bank and IMF.[3] In the 1970s and 80s for instance, developing countries borrowed heavily to pay increasingly costly oil imports and to finance ambitious investment projects, many of which turned out to be white elephants.[4] By early 1980s, global recession, collapsing commodity prices, and rising interest rates meant many of these countries had difficulty servicing their loans with commercial lenders and multilateral development banks, including the IMF.[5] These developing countries borrowed more loans hoping that this will help improve the situation, but the conditions tied to these loans by the multilateral lenders always spell trouble and doom for these less developed countries.[6] The application of this condition for example, in Zambia 1985, Ghana, and Nigeria in 1986, suggests that these economies are far from improving, rather it has worsened them.[7]

1 See Financial Times, 19 February 2023.

2 Paul Madhumita, *Almost 60 % of Africa's Low-income Countries in Debt Distress,* UNCTAD (2022), available at: <https://www.downtoearth.org.in/news/africa/almost-60-of-africa-s-low-income-countries-in-debt-distress-unctad-85374>, accessed March 24, 2023.

3 David Mihalyi and Christoph Trebesh, *Who Lends to Africa and How? Introducing the Africa Debt Database*, IFW KIEL Institute for the World Economy, KIEL Working Paper (2022).

4 Atish Ghosh and Ann A. Postelnyak, *Growing Together the IMF and African Low-Income Countries* (2021), available at: <https://www.imf.org/en/Publications/fandd/issues/2021/12/Africa-Low-Income-Countries>, accessed March 29, 2023.

5 *Ibid.*

6 Bode Onimode eds, *The IMF, the World Bank and the African Debt, The Economic Impact* (London: Zed Books Publication Ltd,1991).

7 Brian B. Ikejiaku, *Africa Debt Crisis and the IMF with a Case of Nigeria: towards Theoretical Explanations*, 1 Journal of Politics and Law, no. 44 (2008).

Presently, China and private creditors make up a large proportion of debt stocks, meaning more debt is non-concessional.[8] Statistics suggest that Africa's debt as a percentage of GDP has been rising quickly since 2014 and is 24.1 % of African countries' GDP as of the year 2022. Yet, many individual countries have rates far higher.[9] Chinese debt varies widely across the continent. Chinese loans are critical in only a subset of Africa 54 countries. Angola and Ethiopia are the two leading recipients of Chinese loans. China loans on the continent have driven infrastructure and development projects.[10] However, at the end of 2021, Angola, Djibouti, Mozambique, Rwanda, Sudan, Tunisia and Zambia, Cabo Verde, Mauritius and Seychelles had external debt levels more than 75 % of GDP. The higher the debt-to-GDP ratio, the less likely the country will pay back its debt and the higher its risk of default, which could cause a financial panic in the domestic and international markets. The increased lending to the continent has drawn significant attention and criticism and, accusation of debt trapping just like that made against the multilateral lenders, has been a critical feature of the Sino–African relationship.[11]

The paper postulates that it is no longer a secret that considered immutable and eternally binding, debt by the global south (i.e., poor developing African countries)[12] has become a tool for imperial powers in the post-colonial world to enforce and perpetuate their dominance over the global south. This is despite serious global crises that emerge from, and/or were caused primarily by the rich countries of the global north – specifically, 'the negative effects of the global financial crisis of 2008, the devastating impact of Covid-19 pandemic, and the negative effects of Russo–Ukraine war' on the African economies and their contribution to these debt vulnerabilities. Yet, the rich countries of the global north have insisted on these poor countries to continue financing their debts. The paper considers how African countries could legally cancel the repayment of the debts by relying on the principles of international law (such as pacta sunt servanda, limit to legal obligation to pay, force majeure, State of Necessity or rebus sic stantibus) as well as States' declarations

8 Sarah Harcourt and Fiona Robertson, *African Debt,* available at: <https://data.one.org/topics/african-debt/>, accessed March 22, 2023. Debt is an important source of financing for development, but it needs to be sustainable. Africa debt has been growing significantly over the past decade.

9 Other statistics show that 21 countries in Africa are in, or at risk of, debt distress (58 % of assessed countries); African countries owe US$644.9 billion to external creditors as of 2021; African countries will pay US$68.9 billion in debt service in 2013; and Debt owed by African countries is equivalent to 24.1 % of their combined GDP in 2021, *Ibid.*

10 Fikayo Akeredolu, *China's Role in Restructuring Debt in Africa*, University of Oxford, The Oxford University Politics BLOG, OXPOL, DIPR (2023).

11 *Ibid.*

12 The paper focuses on the global south/developing countries/less developed countries (in this paper means 'poor developing African countries').

to commitment to sustainable development agenda (such as the European Union's response to the adoption of the 2030 Agenda featured in its Commission's 2016 Communication) could be justifying grounds for cancellation of Africa debts. Thus, resolving Africa's debt sustainability will not only require, but calls for the cooperation of multilateral lenders, including World Bank and IMF, as well as China, African nations, Paris Club members, and other key stakeholders.

In terms of theory and method, the paper draws on international law and development in the light of dependency and postcolonial theories and employs the human rights-based approach, interdisciplinary and critical-analytical perspective and uses qualitative empirical evidence from rich countries and institutions of the global north and poor developing countries of the global south, especially Africa for analysis. While the post-colonial theory, dependency theory and human rights-based approach are used to analyse the issues of global crises, Africa debts and human rights implications on Africa, from the perspective of the need and justification for cancellation of Africa debts; the interdisciplinary and critical-analytical perspective involves employing literature in the legal, politics/IR, economics, and international development. This will be critically analysed within the framework of international law and development. The qualitative empirical evidence is employed by gathering relevant material from developing countries and developed countries for an in-depth analysis.

The paper is structured into five sections – Section 1 introduces the paper and presents the methodology. Section 2 sets out the theoretical and legal frameworks by looking at the post-colonial theory, dependency theory and human rights-based approach, which the paper employs for the analysis. Section 3 considers global crises and implications on Africa's debt burden. Section 4 examines and analyses the role of international law and place of sustainable development, as justification for cancellation of Africa's debts. Section 5 summarises and concludes the paper.

2 Theoretical and Legal Frameworks

The narrative of debt crisis in African countries is not a new one, as the protracted debt crisis in these countries has stimulated research projects that endeavour to unravel the causes and explain the complexities surrounding the debt crisis.[13] Therefore, an accurate account and proper analysis of the debt crisis in developing countries of Africa cannot be possible without the examination of some theories

13 Richard Baldwin, and Simon Evenett (ed.), *The Collapse of Global Trade Murky Protectionism, and the Crises: Recommendation for the G20*, Centre for Economic Policy Research 'CEPR' (2009); Ikejiaku, *supra* note 7.

underpinning the critical issue – this paper considers the Dependency Theory and Post-Colonial Theory[14] explanation of Africa debt crisis.

2.1 Post-Colonial Theory Explanation of Africa's Debt

Considered immutable and eternally binding, the post-colonial theorists subscribe that debt has become a tool for imperial powers in the post-colonial world to enforce and perpetuate their dominance over the global south.[15] The post-colonial theory was based on some of the experiences of formerly colonised countries after independence to demonstrate how debt is a tool used by rich countries and corporations owned by the West to maintain their power in our global system.[16] While many countries gained independence after decades of struggle and uprising against colonial rule, colonialism is not seen as a thing of the past.[17] Post-colonial theory subscribes that undertaking in Africa is still organised along colonial lines, where rich countries continue to dominate decision making spaces, exploit and plunder wealth

14 The background to post-colonial theory is fundamental – European colonialism refers to the period between the fifteenth and twentieth century when European countries such as Britain, Portugal, Spain, and France imposed their rule across the Americans, Africa, and Asia. During this period, colonial powers scrambled these areas, devastated indigenous communities, cultures, lands and resources through exploitation, extraction of natural resources, violence, and slavery. They unhesitantly justified their actions with the unguided racist-like view that they were more civilised than the Black, indigenous and people of colour they harmed – a white-supremacist logic which still influences our political and economic institutions, systems, and structures today – See Kehinde Andrews, *The New Age of Empire: How Racism & Colonialism Still Rule the World* (UK: Penguin Random House, 2021); Alex Muyebe, *Colonialism and Debt, How Debts used to Exploit and Control: Debt Justice*, avaliable at: <https://debtjustice.org.uk/wp-content/uploads/2022/08/Colonialism-and-Debt-briefing.pdf>, accessed March 30, 2023. Postcolonial theory is a body of thought primarily concerned with accounting for the political, aesthetic, economic, historical, and social impact of European colonial rule around the world in the eighteenth through the twentieth century. Postcolonial theory takes many different shapes and interventions, but all share a fundamental claim: that the world we inhabit is impossible to understand except in relationship to the history of imperialism and colonial rule – See Daniel Elam, *Postcolonial Theory,* available at: <https://www.oxfordbibliographies.com/ViewContributor/document/obo-9780190221911/obo-9780190221911-0069.xml?id=con9129>, accessed March 31, 2023.

15 Luis Eslava & Sundhya Pahuja, *Beyond the (Post) Colonial: TWAIL and the Everyday Life of International Law*, 45 Law and Politics in Africa, Asia and Latin America, no. 2 (2012), 195–221.

16 S. Nair, *Introducing Postcolonialism in International Relations Theory*, in Stephen Mcglinchey, Rosie Walters, and Christian C. Scheinpflug (eds.), *International Relations Theory* (E-International Relations Publishing, 2022).

17 In 'How Europe Under-Developed Africa', Walter Rodney argued that development in the global north can be directly linked to the wealth and resources colonising countries extracted during the period of colonisation.

from poor African countries.[18] Debt is just one of the many post-colonial tools employed by the global north/rich Western countries to maintain these structures[19] – Lending to countries in the global south, especially by Western banks, became robust and aggressively boomed from the 1970s onwards, with loans to Latin America and African governments increase tremendously between the period 1973–79.[20]

However, in the 1980s, the price of goods plummeted, and an increase in interest rates in the United States suggested that many governments in the global south, particularly Africa could no longer repay their loans. Some had no choice but to default.[21] Western powers and multilaterals lent to countries such as Sudan, Liberia, DRC, Nigeria, Ghana and others, even though these countries were under oppressive dictatorships at the time, and with full knowledge that they were lending to corrupt autocrats and regimes who would use the money for their own personal interests.[22] More so, the poor countries' defaults posed a threat to the profits of global north lenders – primarily the US and the UK banks. The World Bank and IMF stepped into salvage and bailout these banks by providing loans, so to avoid default by poor countries, and to ensure banks would keep getting paid, effectively rescue those banks notwithstanding their reckless lending causing the debt crisis in the first place.[23]

There is argument that IMF set-out preconditions, which have their theoretical roots underpinning in monetarist doctrines, and show no sensitivity or consideration to the peculiar underdeveloped nature of the economies of the poor developing countries, and as a result, the prescriptions have had the effect of threatening their very survival.[24] In fact, one such conditional ties have been the insistence that the currencies of these countries be devalued. The application of this condition for

18 Brian Ikejiaku, *International Law is Western Made Global Law: The Perception of Third World Category*, 6 African Journal of Legal Studies, no. 3 (2014), 337–356.

19 Gregoire Mallard, *We Owe You Nothing: Decolonisation and Sovereign Debt Obligations an International Public Law*, In Pierre Penet and Juan Zendejas (eds.), *Sovereign Debt Diplomacies: Rethinking Sovereign Debt from Colonial Empires to Hegemony*, Oxford Academic (2021), 189–212.

20 Lea Schneider, *The International Court (ICC) – a Postcolonial Tool for Western States to Control Africa?* (2020) 1 Journal of International Criminal Law, no. 1 (2020), 90–109; William Jr. Eskridge, *Les Jeux Sont Faits: Structural Origins of the International Debt Problem*, 25 Virginia Journal of International Law, no. 2 (1985), 282–399.

21 Sujata Rao, and Karin Strohecker, *A Decade after Debt Forgiveness, Africa still Hooked on Dollars*, Reuters, available at: <https://www.reuters.com/article/us-africa-bonds-local-analysis-idUKKCN18F0I9>, April 3,2023.

22 Amanda Hammar, *Displacement Economics in Africa Paradoxes of Crisis, and Creativity* (New York: Zed Books Ltd, 2014).

23 IMF & World Bank, *100 Percent Debt Cancellation? A Response from the IMF and the World Bank*, International Monetary Fund, available at: https://www.imf.org/external/np/exr/ib/2001/071001.htm, April 3, 2023.

24 Onimode Bade (eds.), *The IMF, the World Bank and the African Debt, The Economic Impact* (London: Zed Books Publication Ltd, 1981).

example in Zambia 1985, Ghana, and Nigeria in 1986, suggests that these economies are far from improving, rather it has worsened them, and thereby raises fundamental questions to their long-term usefulness.[25] Besides, there is a large element of uncertainty in the minds of the donor bodies regarding the ability and stamina of the State in Africa, to stem the tide of opposition to overall adjustment policies, and thus meeting the expectations of loan repayments – the Zambian and Nigerian experience are cases in point.[26] And by implication how long the programmes can be continued considering the serious hardship imposed on the people. Therefore, the lending organisations advance a lacklustre approach to African countries. Above all, there is further submission that these financial institutions created an easy or sophisticated means through which corrupt leaders in developing countries can use to stash their nations' wealth into tax havens; therefore, worsening the debt crisis, and deepening the level of absolute poverty.[27] The developed world contributes to Africa's capital flight, 'The poor countries are constantly de-capitalised, and their economies remain largely upon decision made in New York, London, Paris, and other metropolitan centres'.[28] These were part of the factors that rendered the African economy weak, and therefore necessitated or led to their financial plight, post-colonial unequal relation and subsequent interests, and demand for foreign loans.[29]

Yet, the manipulations by the financial institutions and other lending agents, which were made feasible through the post-colonial tools, helped in impacting negatively to the purse of African states, thus aggravated the debt crisis in the continent. For example, the structural adjustment programme (SAP) initiated by the IMF failed most African countries, in Nigeria it brought mass unemployment.[30] Kenya also continues to express its displeasure at the IMF and the World Bank for forcing these policy changes on it.[31] In the early 1980s, Uganda was rocked by weeks of demonstrations, as industrial workers and students took to the streets to denounce President Milton Obote's IMF-imposed economic recovery programme and in 1990, Matthew Kerokou of the Benin Republic in West Africa was pushed out of power due to a wave of anti-SAP riots.[32] It is therefore not surprising and understandable while

25 *Ibid.*

26 Ikejiaku, *supra* note 7.

27 *Ibid.*

28 Kalevi Holsti, *International Politics: A Framework for Analysis* (New Jersey: Princeton International Inc, 1995).

29 African Forum and Network on Debt and Development, *Nigeria: Foreign Debts Stolen Wealth, IFIs and The West, A Case Study* (AFRODAD: 2007).

30 *Ibid.*

31 Peter Wanyande, *State Driven Conflict in the Greater Horn of Africa* (USAID: 1997).

32 Sunday Dare, "A Continent in Crisis, Africa and Globalization," Dollars, and Sense Magazine, July/August, 2001.

notable scholars, such as Sachs criticises the IMF and World Bank for imposing draconian budgets to support SAP, which had: 'little scientific merit'.[33]

2.2 Dependency Theory Explanation of Africa's Debt

Similarly, proponents of the dependency theory[34] contend that the debt crisis in Africa can be perceived from the extreme dependence of Africa's economies on international competitive economic conditions over which they had (and still have) little or no control.[35] The major contention here is that the economic development of the developing countries (of the Global South) was rendered impossible by the domination of the global economy by the already industrialized capitalist powers (of 'the Global North').[36] The implication is that poverty, including indebtedness of the countries is the result of the lopsided manner of their integration of the world economic system.[37] The historical incorporation of dependent territories into global division of labour entailed a tendency toward economic stagnation in the colonies and neo colonies.[38] Therefore, scholars for example, agree that American based multinationals own overseas investments too large to have been generated by the capital transferred by these companies out of U.S. – It is evidential from the viewpoints of these scholars and dependency theorists that their net returns of foreign exchange to the U.S. are also reported to be very high and growing.

The net effect is that holes are continuously knocked into the pockets of these poor developing countries and the degree of their impoverishment is growing more and more until they acquire the false impression that the only way, they can support investment is through foreign loans – loans which once acquired are erased by worsening balance of trade.[39] These developing countries go for more loans hoping

33 Joseph Sachs, *The End of Poverty: How we can make it happen in our life* (Penguin: 2005).

34 Dependency theory is predicated on the notion that there is a 'centre' of wealthy states and a 'periphery' of poor, underdeveloped states. Resources are extracted from the periphery (developing nations) and flow towards the states at the centre (developed nations) to sustain their economic growth and wealth.

35 Benno Ndulu and Stephen O'Connel, *Africa's Development Debts*, 30 Journal of African Economies, no.1 (2021), 133–173; L. Martell, *The Sociology of Globalisation* (2nd ed., Cambridge Publishing, 2017), 148.

36 Daniel Offiong, *Imperialism and Dependency, Obstacles to African Development* (Enugu, Nigeria: Fourth Dimension Pub, 1989).

37 Collins Okafor, *Neo-Democracy and Poverty Management in Africa* (Awka, Nigeria: Mercury Bright Press, 2004).

38 Richard Sandbrook, *The Politics of Basic Needs* (London: Heinemann, 1982).

39 See for example, Paul Baran, *The Political Economy of Growth* (New York: Monthly Review Press, 1957); Gunder Frank, *Crisis in The Third World* (London: Heinemann, 1971); and W. Rodney, *How Europe Underdeveloped Africa* (London: Bogle L'Ouverture pub, 1972).

that this will help improve the situation, but the stringent conditions tied to these loans are very difficult to implement and always spell trouble and doom for these poor countries – This is in line with the words of George Washington, the former president of U.S. 'it is madness for one nation to expect disinterested help from another – the U.S. does not have friends, but interest'.[40] Thus, dependency tightens its grip as the poor developing countries go for borrowing more loans from the financial institutions and donor countries. This is the phenomenon which was called 'debt trap' by Cheryl.[41] At this point, dependency becomes inescapable. As argued these developing countries borrowed more loans hoping that this will help improve the situation, but the conditions tied to these loans by the multilateral lenders complicate the debt burden for these developing countries.[42] This is evidenced in the application of this condition – the cases of Zambia 1985, Ghana and Nigeria 1986, Uganda 1980s, Kenya 1980s, and Benin Republic 1990 suggest that these economies are far from improving, rather it has worsened them.[43]

2.3 Human Rights-Based Approach

The paper also employs human rights-based approach (HRBA) in the analysis section to demonstrate that debt burden in African countries has human rights implications, as debt burdens rise, governments of developing countries end up in a vicious circle, unable to be committed and invest in achieving the sustainable development goals (SDGs) and grow their economies, making it even more onerous to pay their debts[44] and thereby worsening the level of poverty.[45] The unfair and onerous debts historically imposed on African countries, entrenched in colonial legacies of oppression and ongoing imperialism. There is constant imposition of neoliberal policy reforms by international financial institutions like the IMF and other private creditors amid debt crises that have ridiculed human rights, including exacerbated global inequalities, impoverishment and introduced structural changes that have weakened labour rights, undermined food sovereignty, promoted regressive taxation and

40 Ikejiaku *supra* note 7.

41 Payer Cheryl, *The Debt Trap: The IMF and Third World* (Middlesex: Penguin Books Ltd, 1974).

42 Bade, *supra* note 24.

43 African Forum and Network on Debt and Development, *supra* note 29; Wanyande, *supra* note 31; and Dare, *supra* note 32.

44 Elliot Harris and Chris Lane, *Debt as an Obstacle to the Sustainable Development Goals*, available at: <https://www.un.org/pt/desa/debt-obstacle-sustainable-development-goals>, accessed April 4, 2023.

45 In redefining development as freedom, Sen takes a holistic view of poverty and characterises it as impending people's capacity to lead the lives they want. – Amartya Sen, *Development as Freedom* (Oxford: Oxford University Press, 1999).

imposed austerity on the majority, including cuts in public expenditures while promoting the privatisation and commercialisation of public services.[46] Under this atmosphere in Africa, how are people expected to be capable, to be empowered and/or to have opportunities and freedom they value.[47]

The equal and inalienable rights of all human beings provide the foundation for freedom, justice and peace in the world, according to the Universal Declaration of Human Rights, adopted by the UN General Assembly in 1948.[48] From an interdisciplinary law perspective; human rights are probably dominant normative conception in the contemporary globalising world.[49] It is common for struggles for national self-determination, the recognition of alternative identities, class-based and labour empowerment, gender equality, democratic inclusion, property rights protections, rectification of State violence, and consumer goods to use rights discourse – in spite of varying political orientations and alliances among the actors involved.[50] Similarly, development has become relevant to human rights. Whereas it was understood primarily in the terms of economic output from about 1950 to 1970, and concerned with poverty from around 1970 to 1990, development has in the past two decades increasingly been framed in the language of human rights and related concepts, such as fundamental human capabilities and multi-dimensional poverty.[51] Thus, development

46 ESRC, *Human Rights Organisations in Africa Deppen Calls for Debt Cancellation and Restructuring*, available at: <https://www.escr-net.org/news/2022/human-rights-organizations-africa-deepen-calls-debt-cancellation-and-restructuring>, accessed April 10, 2023.

47 Sen, *supra* note 45.

48 Universal Declaration of Human Rights, United Nations, available at: <https://www.un.org/en/universal-declaration-human-rights/>.

49 Globalisation is the integration of poor countries into a world economy of open competition Martell; Martell, *supra* note 35. While, anti-globalists see globalisation as producer of inequality, others view it as equalising, democratising and expanding the horizon of the poor; in effect, claim that the world is globalised; P. Bardhan, *Does Globalisation Help or Hurt the World's Poor?: Overview/Globalisation and Poverty*, Scientific American, available at: <https://www.scientificamerican.com/article/does-globalisation-help-o-2006-04/>, accessed April 9, 2023. However, the reality is that trends of events within the international system suggest that *'the world is still globalising and not yet globalised'* – if China is taking out from the space/picture or equation, the global economic situation has worsened in other parts of the developing world. For example, the poverty in Sub-Saharan Africa has risen from 290 million to 415 million and "at the end of the nineteenth century, the ratio of average income in the richest countries to income in the poorest was 9 to 1." Martell, *supra* note 35. Similarly, the middle-income family in the United States is 60 times richer than the average family in Ethiopia or Bangladesh; N. Birdsall, *Asymmetric Globalisation: Global Markets Require Good Global Politics*: (Brookings, 2012); Brian Ikejiaku, *Migration, Poverty, the Role of State (International) Law and Development in the Industrialised Countries of Europe*, 14 Law & Development Review, no. 2 (2021), 465–501.

50 Varun Gauri and Siri Gloppen, *Human Rights Based Approaches to Development Concepts, Evidence, and Policy*, The World Bank Development Research Group, Research Working Paper (2012).

51 *Ibid.*

has come to be seen as part of human rights framework. There is relationship between human rights and development; from a legal point of view, human rights are the subject of binding international legal obligations and their relevance to development can be understood in the light of this.[52] The debt crisis in Africa cannot allow the region to achieve any meaningful growth, freedom, and SDGs.

The human rights-based approach focuses on those who are most marginalised, excluded or discriminated against like African countries in the global economy. This requires an understanding of power imbalances among other things, to ensure that interventions reach the most marginalised segments of the population.[53] There are three major elements that necessitate good practices under a human rights-based approach and enhance important roles in its implementation: (i) participation and inclusion – people are recognised as key actors in their own development, rather than passive recipients of commodities and service and the participation is both a means and a goal and strategies are empowering, not disempowering; (ii) non-discrimination and equality – programmes focus on marginalised excluded groups and aim to reduce disparities and empower those left behind; and (iii) accountability – human rights standards guide the formulation of measurable goals, targets and indicators in programming and accountability systems need to be strengthened with a view to ensure independent review of government performance and access to remedies for aggrieved individuals.[54] In terms of implementation, the approach is related to the process of empowerment; forms of advocacy, and the use of legal instruments in defence or protection of groups of people who are poor, discriminated against or marginalised.[55] It is important to argue that the nature of debt crisis in Africa and the response of the 'powers that be' within the global system, does not support the precepts or principles of human rights.[56]

3 Global Crises and Implication to Africa's Debt Burden

This considers various serious global crises that emerge from, and/or were caused by the rich countries of the global north; specifically, the negative effects of the global financial

52 Siobhan Mclnerney-Lankford, *Human Rights and Development: A Comment on Challenges and Opportunities from a Legal Perspective*, 1 Journal of Human Rights Practice, no. 1 (2009), 51–82.

53 *The Human Rights-Based Approach,* UNFPA, available at: <https://www.unfpa.org/human-rights-based-approach>, October 18, 2020.

54 *Ibid.*; Morten Broberg and Hans-Otto Soto, *Strengths and Weaknesses in a Human Rights-based Approach to International Development: an analysis of a rights-based approach to development assistance based on practical experiences*, 2 The International Journal of Human Rights, no. 5 (2018).

55 Broberg and Soto, *supra* note 54.

56 Human rights are based on important principles like 'dignity, fairness, respect and equality'.

crisis of 2008, devastating impact of Covid-19 pandemic, and impact of Russia–Ukraine war on the African economies and contribution to these debt vulnerabilities.

3.1 Covid-19 and Africa Debt Crisis

The economic impact of the Covid-19 pandemic is devastating for the global south, particularly African countries with enormous financial gap in funding[57] staggering record of debt crisis.[58] There is skyrocketing and unsustainable public debts facing countries in the region amid a devastating pandemic and distressed economies.[59] A situation that has aggravated social, political, economic, and environmental crises in almost every context, increasing inequality, facilitating continued inaction on climate change, and imperilling human rights in the region.[60] Available statistics suggest that Africa will be most negatively impacted by the effect of Covid-19 pandemic. For instance, Oxfam predicts that shutting down economies to prevent the virus from spreading could destroy vital industries and set back the fight against poverty in sub-Saharan Africa by up to 30 years.[61] The African Union Commission estimated that Africa's gross domestic product (GDP) could shrink by up to 4.51 percent, resulting in the loss of 20 million jobs.[62]

The looming debt crisis further complicates the pandemic-induced economic shock, severely limiting governments' ability to repay their foreign loans and address the current crisis. From 2010 to 2018, the average public debt in sub-Saharan Africa increased by 40 %–59 % of GDP, making it the continent with the fastest-growing debt accumulation toward sovereign, private and multilateral lenders.[63] The current sovereign debt architecture is failing African states in multiple ways. Among these, it fails

57 Maria Carrai, *African Sovereign Debt at a time of Pandemic; Legal Justification for Suspension or Cancellation*, Afronomics Law, available at: <https://www.afronomicslaw.org/2020/05/20/african-sovereign-debt-at-a-time-of-pandemic-legal-justifications-for-suspension-or-cancellation>, accessed April 12, 2023.

58 James Crotty, *Structural Causes of the Global Financial Crisis: a Critical Assessment of the 'new Financial Architecture'*, 33 Cambridge Journal of Economics, no. 4 (2009), 563–580.

59 Carrai, *supra* note 57.

60 *Ibid.*

61 Oxfam, *Half a Billion People could be Pushed into Poverty by Covid-19*, available at: https://www.oxfamamerica.org/press/half-billion-people-could-be-pushed-poverty-covid-19/, accessed April 12, 2023.

62 AU, *Impact of the Coronavirus (Covid-19) on the African Economy*, available at: https://au.int/sites/default/files/documents/38326-doc-covid-19_impact_on_african_economy.pdf, accessed April 12, 2023.

63 Francisco Carneiro and Wilfried Kouame, *How Much Should Sub-Saharan African Countries Adjust to Curb the Increase in Public Debt*, World Bank Blogs, available at: https://blogs.worldbank.org/africacan/how-much-should-sub-saharan-african-countries-adjust-curb-increase-public-debt, accessed April 8, 2023.

to incentivize private creditors to be sufficiently flexible in dealing with sovereign debtors in difficulty, thereby narrowing fiscal space and jeopardising macroeconomic stability and is resulting in terrible human suffering and economic damage.[64] Although, the evolution of debt dynamics has increased Africa's vulnerabilities, exposing the region to significant risks in the wake of Covid-19.[65]

The economic impact of Covid-19 will be felt for a long time to come in many parts of the world, particularly in poor developing countries of Africa and there is suggestion that these challenges may compel borrower creditors to engage in substantial reforms in their financial dealings and relationship throughout the continent, providing African governments with the much needed opportunity to reassess their sustainable and balanced growth approaches and strategies.[66] With the current pandemic, the cost of sovereign borrowing has increased drastically, and African countries are getting less money for export commodities and less access to foreign exchange, on which their economies depend.[67] Export earning for some nations will decrease by up to 20% of GDP.[68] The severe lack of liquidity and cushion for fiscal relief and monetary stimulus in times of the crisis render African governments inadequate to tackle heath crisis, provide financial relief and reduce the economic sting to their populations.[69]

The restructuring of the African sovereign debt,[70] including its cancellation,[71] is not something new, but the pandemic has transformed and placed it on top-priority list. The G20, the International Monetary Fund (IMF), the World Bank, and other multilateral development institutions shows a growing acknowledgement that wealthier countries must act to lessen the debt burden of the global south.[72] On one hand, the United Nations Economic Commission for Africa promote an economic

64 Daniel Bradlow, *Sovereign Debt Architecture, A Proposal for a New Approach to African Debt*, Spring 2022, available at: <https://justmoney.org/daniel-bradlow-a-proposal-for-a-new-approach-toafrican-debt/>.

65 UNDP, *Covid-19 and External Debt in Africa*, available at: <https://www.undp.org/africa/publications/covid-19-and-external-debt-africa>, accessed April 8, 2023.

66 UNDP, *supra* note 65.

67 Carrai, *supra* note 57.

68 Sherillyn Raga, *Economic Vulnerabilities to the Coronavirus: Top Countries at Risk,* available at: <https://odi.org/en/insights/economic-vulnerabilities-to-the-coronavirus-top-countries-at-risk/#:~:text=A%20new%20ODI%20paper%20examines,Viet%20Nam%2C%20and%20the%20Philippines>, accessed April 10, 2023.

69 Carrai, *supra* note 57.

70 David Grigorian, *Restructuring Domestic Sovereign Debt: An Analytic Illustration*, IMF Working Paper (International Monetary Funds: 2023).

71 Marin Ferry, *The Carrot and Stick Approach to debt Relief: Over Coming Moral Hazards,* 28 Journal of African Economies, no. 3 (2019), 252–276.

72 Group of Twenty, *Coordination between the International Monetary Fund and Multilateral Development Banks on Policy-Based Lending: Update on the Implementation of the G20 Principles,* available at: <https://www.imf.org/external/np/g20/pdf/2018/082918.pdf>, accessed April 11, 2023.

stimulus of $100 billion reached in part through a waiver of all interest payment (a total of $44 billion for 2020).[73] The IMF, the World Bank, and members of the G20 were to suspend the payment of the debt interests of emerging countries so they can release funds to address the pandemic.[74] On the other hand, are those that advocate for debt forgiveness, generally opposed by major creditors, the Economic and Monetary Community of Central Africa (CEMAC) suggested that member countries should bargain collectively for the cancellation of their external debts, handle the pandemic and revitalise their economies.[75] The UK-based Jubilee Debt Campaign calls for the immediate cancellation of debt payments for the poorest countries.[76] They argue that the limited resources of the global south should be devoted to fighting the pandemic rather than reimbursing international creditors.[77]

3.2 The Global Financial Crisis of 2008 and Africa Debt Crisis

Within a few weeks in September 2008, Lehman Brothers, one of the World's biggest financial institutions, went bankrupt; £90 billion was wiped off the value of Britain's biggest companies in a single day.[78] Financial stress peaked following the failure of the US financial firm Lehman Brothers in Sept 2008. Together with the failure or near failure of a range of other financial firms around that time, this triggered a panic in financial markets globally.[79] It began with the housing market bubble, created by an overwhelming load of mortgage-backed securities that bundled high-risk loans. Reckless lending led to unprecedented numbers of loans in default; bundled together, the losses led many financial institutions to fail.[80]

73 United Nations, *United Nations Economic Commission for Africa Macroeconomic policies to promote economic recovery in Africa* (2020) Addis Ababa.

74 Jeremy Bulow, Carmen Reinhart, Kenneth Rogoff, and Christop Trebesch, *The Debt Pandemic,* International Monetary Fund (IMF), available at: <https://www.imf.org/en/Publications/fandd/issues/2020/09/debt-pandemic-reinhart-rogoff-bulow-trebesch>, accessed April 12, 2023.

75 Yaounde, *CEMAC: Ministry of Finance and Economy Suggest Cancellation of External Debts to 'Deal with Covid-19' and 'Relaunch' Post Pandemic Economies*, available at: <https://www.businessincameroon.com/economy/3003-10143-cemac-ministries-of-finance-and-economy-suggest-cancellation-of-external-debts-to-deal-with-covid-19-and-relaunch-post-pandemic-economies>, accessed April 11, 2023.

76 Debt Justice, *Coronavirus: Cancel the Debts of Countries in the Global South*, available at: <https://debtjustice.org.uk/actions/stop-coronavirus-debt-disaster>, accessed April 11, 2023.

77 *Ibid.*

78 Martin Daunton, Scott Newton, & Linda Yueh, "The 2008 Financial Crisis Explained," History Extra: 2021, available at: <https://www.historyextra.com/period/modern/financial-crisis-crash-explained-facts-causes/>.

79 Norman Moran, *The Federal Reserve and the Decision to let Lehman Brothers Fail,* 4 Berkeley Undergraduate Journal, no. 1 (2008), 1–27.

80 Crotty, *supra* note 58.

Public debt levels in sub-Saharan Africa rose sharply in the wake of the global financial crisis, and a number of countries were classified by the World Bank and International Monetary Fund as at high risk of debt distress. By contrast with the debt crisis of the 1980s and 1990s, however, concerns were not region wide as recently as early 2020, and the policy environment for growth remains robust for the majority of countries in the region.[81] Due to the global financial downturn, food and fuel price spikes through mid-2008 put food-importing and oil-importing sub-Saharan African fragile countries under severe stress, pushing down their foreign exchange reserves and making it difficult for them to pay for imports and to sustain growth.[82] The IMF emphasised that most sub-Saharan African countries have almost consecutively suffered fuel, food and financial (3F) shocks. The average rate of growth was low in the 1980s and 1990s, the so-called "lost decades", but increased since 2000, inducing an improvement in millennium development goals (MDGs) even in some fragile countries. Most recent estimates put real sub-Saharan Africa GDP growth for 2009 at around 2.5 %, down from an estimated 5.5 % in October 2008.[83]

The capitalist economic and financial activities at the metropolitan centres[84] reached the summit, overheated the world economy, and exploded in 2007 in the form of economic meltdown. This unfortunate event had severe economic consequences on the world economy which, initially, African economies, being misconstrued as slightly exposed to global financial system, were thought to be the exceptions to the economic distress. The unfolding event, however, refuted this assumption owing to the interconnectedness of global economies. The coercive integration of African economies into the international capitalist economic system has meant that they are vulnerable to and more often buffeted by economic developments in the capitalist centres. In South Africa for example, the global financial crisis has had a severe impact – the economy went into recession in 2008/09 for the first time in 19 years. Nearly a million jobs were lost in 2009 alone and the unemployment rate continued to remain high with 25 %. Economic growth has resumed a

81 Benno Ndulu and Stephen O'Connell, *Africa's Development Debts*, 30 Journal of African Economies, no. 1 (2021).

82 Franklin Allen and Giorgia Giovannetti, *The Effects of the Financial Crisis on Sub-Saharan Africa*, 1 Review of Development Finance, no. 1 (2011), 1–27.

83 IMF, *Regional Economic Outlook – Sub-Saharan Africa* (Washington: 2009).

84 The concept can be understood within the context of – The centre-periphery (or core-periphery) model is a spatial metaphor which describes and attempts to explain the structural relationship between the advanced or 'metropolitan centre' and a less developed 'periphery', either with a particular country, or (more commonly) as applied to the relationship between capitalist and developing societies; Wilson Simon, *Centre-Periphery Relationship in the Understanding of Development of Internal Colonies*, 2 International Journal of Economic Development Research & Investment, no. 1 (2011), 147–155.

bit in the recent past, but the recovery shows fragility, and another recession may be possible. Rising unemployment and poverty have placed greater burden and high demands on State resources even as revenues contracted, and there is mounting political pressure on government to review its economic policy.[85]

Consequent to the 2008 global financial crisis that led to the aftermath of significant debt cancellation provided to 30 sub-Saharan African (SSA) countries in the context of the HIPCs and the multilateral debt relief initiative (MDRI) in the early-to mid-2000s, the median public debt-to-GDP ratio fell from 85.3 % in 2001 to 34.3 % in 2011.[86] These initiatives, together with resilient growth and improved solvency, provided an additional space for new borrowing. Despite these developments, recent trends show that countries have taken up more debt, driving the median public debt-to-GDP ratio to about 58 % by 2019.[87]

3.3 Russia–Ukraine War and Africa Debt Crisis

The most visible impact of the Russia–Ukraine war initiated on 24 February 2022 on Africa is the rising fuel and food prices, inflation, and financial instability. The poorest are hardest hit as a large proportion of their consumption expenditure is on food and transport. Besides, the war in Ukraine is derailing Africa's slow recovery from Covid-19,[88] as shown by a recent study by the UNDP on the impact of the war on sustainable development in Africa is that the effect of the crisis on Africa's economies is complicated and diverse.[89] Africa risks sliding into stagflation, a prolonged period of slow economic growth accompanied by high inflation and debt distress, as price pressures and supply-chain disruption emanating from Russia's as such indebtedness remains a threat to the continent's economic recovery, despite recent international debt-relief initiatives. The prolonged effect of economic disruptions, stemming from the Russia–Ukraine war pushed an additional 1.8 million Africans into extreme poverty in 2022 and another 2.1 million is forecasted in 2023.[90]

85 Rena Ravinder and Malinda Msoni, *Global Financial Crises and its Impact on the South African Economy: A Further Update*, 5 Journal of Economies, no. 1 (2014).

86 Njuguna Ndung'u, Abebe Shimeles, and Damiano Manda, *Growing with Debt in African Economies through Improved Governance: Options, Challenges and Pitfalls*, 30 Journal of African Economies, no. 1 (2021), i3-i13.

87 *Ibid.*

88 Angela Lusigi, "Africa and the Russia-Ukraine Conflict: Seizing the Opportunity in the Crisis," Africa Renewal Magazine, June 30, 2022.

89 UNDP, *The Impact of the War in Ukraine on Sustainable Development in Africa*, available at: <htttps://www.undp.org/Africa/publications/impact-war-ukraine-sustainable-development-africa>.

90 Moses Dzawu, *War in Ukraine Puts Africa at Risk of Stagflation, Debt Distress*, Bloomberg, available at: <www.bloomberg.com>.

Russia's invasion of Ukraine is among the most – if not the most – significant shocks to the global order since World War II. Its impact is of course most directly felt by Ukrainians, who have suffered enormous devastation and are still, as of this writing, fighting for their national independence. However, the stakes of Russia's invasion extend well beyond the horror that has unfolded in Ukraine. They go to the very heart of contemporary international law and to the world order that it has helped to create.[91] It is important to highlight that Russia and Ukraine, both usually referred to as the 'world's breadbasket', are major players in the export of wheat and sunflower to Africa. North African countries (Algeria, Egypt, Libya, Morocco and Tunisia), Nigeria in West Africa, Ethiopia and Sudan in East Africa, and South Africa account for 80 percent of wheat imports. Wheat consumption in Africa is projected to reach 76.5 million tonnes by 2025, of which 48.3 million tonnes or 63.4 percent is estimated to be imported outside of the Continent, thereby deteriorating the debt burden of poor African countries.[92] The sanctions imposed on Russia by Western countries will further exacerbate commercial flows between Russia and Africa due to the closure of vital port operations in the Black Sea – all these will put a strain on the economies of most African countries.[93]

The debt crisis in Africa works against the achievement of SDGs, using the first two SDGs (end of poverty and zero hunger) as an example, with the disruption of the global supply chain by the Russia–Ukrain war and the international sanctions imposed on Russia, Africa now experiences food commodity and energy shortages, soaring inflation and commodity price hikes which now threatens to worsen poverty and hunger.[94] There is recommendation that Africa should give structural change and regional cooperation top priority, reconsidering the global financial system and the way that development finance is structured as well as maintaining a steady commitment to building resilience, as a strategy for long-term debt financing.[95] However, this paper argues that African countries with worsening poverty and hunger can hardly service their debts or maintain long-term debt financing. And the paper considers how African countries could legally cancel the repayment of the debts by relying on the principles of international law.

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91 Ingrid Brunk and Monica Hakimi, *Russia Ukraine, and the Future World Order*, 116 American Journal of International Law, no. 4 (2022), 687–697.

92 Josefa Sacko and Ibrahim Mayaki, *How the Russia-Ukraine Conflict Impacts Africa Renewal.*

93 *Ibid.*

94 David Mhianga and Emmanuel Ndhiovu, *The Implications of the Russia-Ukraine war on Sustainable Development Goals in Africa,* SSRN Electronic Journal (2022).

95 *Ibid.*

4 International Law and Sustainable Development: Quest for Cancellation of Africa Debts

As argued in the preceding section, the negative effects of the global financial crisis of 2008, devastating impact of Covid-19 pandemic, and impact of Russia–Ukraine war on the African economies and contribution to the debt vulnerabilities. This notwithstanding, most of the rich countries of the global north and multilateral organisations have insisted on these poor countries to continue financing their debts. It is necessary to point out that the law governing the loan is generally, but not exclusively, governed by principles of public international law such as the law of treaties and State responsibility. By analogy, aspects of the law of treaty govern loan agreements concluded between States and private commercial banks. In respect of official debts, a unilateral repudiation or cancellation of a debt by a State will directly engage that State in international responsibility on the ground of breach of the infringement of treaty provisions, arbitrariness and discrimination will not engage the State in international responsibility. In practice with respect to both official and private loans, unilateral repudiation of a debt by an African State is most likely to attach both trade and financial retaliation from the creditors.[96] There is also an evolving trend to place a call on creditors to cancel debts on a legal basis derived from the UN resolutions dealing with the New International Economic Order (NIEO) and the Declaration on the Right to Development (DRD).[97]

The paper considers how African countries can legally cancel the repayment of the debts by relying on the principles of international law (such as pacta sunt servanda, limit to legal obligation to pay, force majeure, State of Necessity or rebus sic stantibus) – these comprise part of the international common law contained in the 1969 Vienna Convention on the Law of Treaties and various national legislations. Regardless of the consent of the parties, or the legality or illegality of the debt, they can be applied to debtors and creditors, as well as relying on States' declarations to commitment to sustainable development agenda (such as the European Union's response to the adoption of the 2030 Agenda featured in its Commission's 2016 Communication) could be used as justifying grounds for cancellation of Africa debts.

96 Louis Baloro, *African Responses to the Debt Crisis: the Relevance of Public International Law*, 23 The Comparative and International Law Journal of Southern Africa, no. 2 (1990), 131–161.
97 *Ibid.*; Brian Ikejiaku, *Liberal Economic Internationalism and Developing Countries of the Global South: Critique from International Law & International Relations Contexts*, 4 Asian-African Journal of International Law no. 1 (2015), 108–125; Ikejiaku, *supra* note 7.

Firstly, relying on the law of contract and international law principle of *pacta sunt servanda*,[98] for a State to be bound by a loan contract, it must give its free consent, from which it derives the legal obligation to repay the debt contracted.[99] In certain domestic economies, where exceptional measure or lenient approach were adopted to handle the pandemic, such as the European Union suspension of the rule of budgetary discipline (the annual deficit should not exceed 3 % of GDP); since the principle of *pacta sunt servanda* is not absolute, the same suspension consideration would have been accorded to African loans to enable African government brace the challenges of its population.[100] Relying on the prescriptions of the post-colonial theory and dependency theory, the global south and particularly developing countries of Africa are not giving the same opportunity.

Secondly, African countries that are indebted can find legal justification for their claims to possible cancellation for the repayment of the debt, by relying on the principle of *force majeure.* The notion of *force majeure*[101] acquired popularity during the period of Covid 19, as debtors have appealed to this principle to limit the enforcement of contracts. International jurisprudence explicitly recognises this principle and legitimises cancellation or a suspension of debt repayment to both private and public creditors depending on timeline. The claim of force majeure operates as long as force majeure itself exists – 'if force majeure vanishes, the obligor is mandated to fulfil the obligation; contrarily, they will incur responsibility for non-performance'.[102] The principle of force majeure is temporary, but if the situations that led to applying force majeure are long-lasting and the country/State determinatively cannot meet its financial obligation, the suspension could result in the cancellation of debt. In the case of Covid-19, or the long-lasting and combining effects of Russia–Ukraine war, Covid-19, and global financial crisis of 2008, debtor countries could make recourse to *force majeure*, as developing countries of Africa did not contribute to these. Also, the human rights-based approach focuses on those who are most marginalised, excluded or discriminated against like African countries in the global economy. This requires an understanding of power imbalances

98 This is a well-known Latin formula, meaning 'agreements must be kept' and arguable one of the, if not the oldest principle of international law. Without such a rule, no international agreement would be binding or enforceable.

99 Kwan Lau, *Novation and Advance Consent*, 81 The Cambridge Law Journal, no. 3 (2022), 581–609.

100 Robert Howse, *The Concept of Odious Debt in Public International Law*, United Nations Conference in Trade and Development, no. 185 (2007).

101 The United Nations International Law Commission defines force majeure as an unforeseen or foreseen but inevitable or irresistible event external to the obligor, which makes it impossible for him to perform the obligation concerned.

102 Carrai, *supra* note 57.

among other things, to ensure that interventions reach the most marginalised segments of the population.[103]

Thirdly, another legal principle that African countries can rely on is the *'necessity principle'* – the legal principle of necessity can be employed as a justification for rapid suspension or cancellation of State's ability to repay or service her debt and refusal to meet stringent conditions attached to it, the condition it finds itself continues to jeopardise fundamental existence of the State in whatever manner that endangers the citizens. The UN Commission for International Law argue that the legal principle can be utilised when the cancellation or suspension of debt is the only way to save the State from grave and imminent danger.[104] The underlying justification lies in the notion that there exist limits to what can be reasonably expected of a State regarding debt repayment and contracts. The state of necessity offers sufficient grounds for suspension or cancellation of foreign debts, should the state of necessity endure that threatens the very existence of the State.[105] Thus, the defence of necessity could be pleaded because of the Covid-19 pandemic or the combining effects of Russia–Ukraine war, Covid-19, and global financial crisis. The application of this principle to cancel or suspend Africa loan by the Western countries and multilateral organisations may be far-fetched because the post-colonial theorists subscribe that debt has become a tool for imperial powers in the post-colonial world to enforce and perpetuate their dominance over the global south[106] As argued, the human rights-based approach, prescribes that debt crisis in Africa cannot allow the region to achieve any meaningful growth, freedom, and SDGs.

Fourthly, African countries can rely on the legal doctrine of *clausula rebus sic stantibus* – this doctrine renders a debt contract moot or inapplicable because of a fundamental change of circumstances. In public international law, the doctrine fundamentally serves an 'escape clause' to the general rule of *pacta sunt servanda* due to a fundamental change in circumstances beyond the debtor's control. This change must be significant and impact circumstances that were 'an essential basis of the consent of the parties to be bound by the treaty'.[107] In respect to debt, this *rebus sic stantibus* provision permits a State to unilaterally suspend or cancel payments. In the case of debt repayment by African countries confronting the pandemic, or the combining effects of the global financial crisis, pandemic and Russia–Ukraine war, it could be argued that circumstances have fundamentally transformed.

103 *The Human Rights-Based Approach*, *supra* note 53.

104 ILC, *'force majeur' and 'fortuitous event' as Circumstances Precluding Wrongfulness: Survey of State Practice International Judicial Decision and Doctrine – State Responsibility*, II Yearbook of the International Law Commission, no. 1 (1978); Carrai, *supra* note 57.

105 Carrai, *supra* note 57.

106 Eslava and Pahuja, *supra* note 15.

107 Poonia Mahmood, *Termination of Treaties Owing to Fundamental Change of Circumstances*, Clausula Rebus Sic Stantibus (Prague: Charles University, 1982).

The fifth and final ground which Africa could use to cancel or suspend her debts is the States' declarations to commitment to sustainable development agenda. While both the EU Commission's 2016 Communication[108] and the 2017 New European Consensus on Development,[109] show her commitment to the 2030 UN Agenda for Sustainable Development Goals (SDGs)[110] – all goals have linkage to human rights. However, the EU and the U.S approach to global debts, especially debt crisis in Africa is against the law and development prescriptions – despite the global agenda and EU's ambition to stress the interlinkage between the rule of law and economic development, it remains questionable whether this has been translated into action in relation to debt crisis in developing countries of Africa. Both the Agenda and the EU's implementing documents underline the role of the rule of law and of 'effective, accountable, and inclusive institutions' in achieving sustainable development.[111] The HRBA subscribes for human rights standards that guide the formulation of measurable goals, targets and indicators in programming and accountability systems. However, both the post-colonial theory and dependency theory provides that, the implication is that poverty, including indebtedness of the countries is the result of the lopsided manner of their integration of the world economic system and the maintenance of the structure,[112] that will not allow for practical accountability and measurable goals in Africa.

It is helpful to consider other supporting views and case(s) in relation to national debt cancellation: As argued, scholars like Baloro[113] and Carrai[114] support the position of this paper that whilst the law governing the loan is generally, but not exclusively, governed by principles of public international law such as the law of treaties and State responsibility. Yet, public international law theories or principles as analysed in this paper can be legitimately used to cancel and forgive national debts. Good case(s) in which national debts were legitimately cancelled and/or

108 European Commission, *Next Steps for a Sustainable Future: European Action for Sustainability*, COM (2016), 739.

109 Joint Statement by the Council and the Representatives of the Governments of the Member States Meeting within the Council, the European Parliament and the European Commission, The New European Consensus on Development – *'Our World, Our Dignity, Our Future'*, available at: <https://op.europa.eu/en/publication-detail/-/publication/ca80bb57-6778-11e7-b2f2-01aa75ed71a1/language-en/format-PDF>, accessed October 11, 2020.

110 This was adopted by the UN General Assembly (UNGA) on 25 September 2015, represents a comprehensive 'plan of action for people, planet and prosperity' – See UNGA, *Transforming Our World: The 2030 Agenda for Sustainable Development* (2015) A/RES/70/1. P.3.

111 *Ibid.*

112 Okafor, *supra* note 37.

113 Baloro, *supra* note 96.

114 Carrai, *supra* note 57.

forgiven based on the theories as argued in this paper, includes the Euro-zone crisis[115] which was one of the effects of the aftermath of *global financial crisis of 2008*, was particularly evoked by the huge indebted members of the Euro-zone, mainly Italy with a debt of about €1.8 trillion and to a lesser degree, Greece's €329 billion.[116] For example, Italy's balance sheet under its embattled and former leader Berlusconi was over stretched due to conflicting business interests such as corruption trials and charges of fraud, and over spending that led to a battered economy. During Berlusconi's later years in office, there were serious issues, such as corruption trials, sex charges, and fraudulent misrepresentations in his media business involvement. This caused investors to avoid investing their resources in Italy, which has been one of the biggest economies in Europe.[117] The leaders of Italy and Greece were compelled to resign to pave way for a new government in these countries. Also, economic reform measures and spending cuts were recommended by the leaders of the Euro-zone for these highly indebted countries within the Euro-zone to improve their depressed economy.[118]

Therefore, while this paper calls for Africa debt cancellation or forgiveness, through the application of the international law theories. However, in the broader development context and for long-term development goals of African countries, as well as to avoid further or continued indebtedness, other measures are necessary. The leaders of most African countries that have poor economic and leadership record should be compelled to resign to pave way for a new government in these countries. Also, unbiased economic reform measures and spending cuts should be

115 Particularly, the principles of force majeure and necessity. The European sovereign debt crisis (commonly known as the Euro-zone crisis) is an ongoing financial crisis that has made it difficult, if not impossible for some countries in the euro area to repay or re-finance their government debt with seeking assistance of third parties.

116 J. Haidar, *Sovereign Credit Risk in the Euro-zone*, 13 World Economics, no. 1 (2012), 123–136.

117 Graeme Wearden *'EU debt crisis: Italy hit with rating downgrade'*, The Guardian UK 2011, September 20. Berlusconi was convicted of fraud and has been sentenced to four years in prison by Italian court for tax evasion. However, his sentence was immediately reduced to one year under a 2006 amnesty plan to ease overcrowding in Italian jails. The prosecution says that Berlusconi and his partner Fedele Confalonieri falsely declared payments to their Mediaset TV Company to avoid paying taxes. They were also 'accused' of artificially inflating prices for the TV rights of some 3,000 firms which were re-licensed on Berlusconi's network, earning 250 million euro in illegal profits. In sum his allegation at the Milan's court in the Mediatrade case was over fiscal fraud and breach of trust in his business interests; *Former Italian PM Berlusconi gets 1-year reduced sentence for fraud*; available at: <http://rt.com/news/italy-berlusconi-jail-sentence-322/>, accessed January 13, 2013.

118 The Euro-zone crisis did not only introduce adverse economic effects for the worst affected countries, but also had a major political impact on the incumbents or ruling governments in eight (8) out of seventeen (17) Euro-zone member countries – this led to power shifts in countries like Greece, Ireland, Italy, Portugal, Spain, Slovenia, and the Netherlands; J. Nicolas, *'Greece and the Roots, the EU Debt Crisis'*, The Vienna Review (March 2010).

recommended by the creditor agencies and countries for these highly indebted countries within Africa to improve their ailing economy, as condition to the cancellation or forgiveness of their debts.

5 Summary and Conclusion

The paper remarked that whilst recently the IMF categorised some African countries as being in debt distress, others may be at high risk of becoming distress; debt by the poor developing African countries has become a tool for imperial powers in the post-colonial world to enforce and perpetuate hegemony or supremacy over the global south. This is notwithstanding the series of global crises – specifically, the negative effects of the global financial crisis of 2008, devastating impact of Covid-19 pandemic, and bad impact of Russia–Ukraine war on the African economies and contribution to these debt susceptibilities. Despite the general acknowledgement that these global crises emerged from, and/or were caused by the rich countries of the global north.

The paper considers how African countries could legally cancel the repayment of the debts by relying on principles of international law – pacta sunt servanda, limit to legal obligation to pay, force majeure, State of Necessity or rebus sic stantibus, as well as States' declarations to commitment to sustainable development agenda, such as the European Union's response to the adoption of the 2030 Agenda featured in its Commission's 2016 Communication. It draws on international law and development in the light of dependency and postcolonial theories, as well as the human rights-based approach for analysis.

Whereas, the paper finds that Africa could rely on the principles of international law – pacta sunt servanda, limit to legal obligation to pay, force majeure, State of Necessity or rebus sic stantibus, as well as States' declarations to commitment to sustainable development agenda, such as the European Union's response to the adoption of the 2030 Agenda – as legitimate and justifiable defences to legally cancel or suspend the repayment of the debts because of the Covid-19 pandemic or the combining effects of Russia–Ukraine war, Covid-19, and global financial crisis. And that the human rights-based approach prescribes that debt crisis in Africa cannot allow the region to achieve any meaningful growth, freedom, and SDGs. However, the application of this principle to cancel or suspend Africa debt by the Western countries and multilateral organisations may be improbable because the post-colonial theorists subscribe that debt has become a tool for imperial powers in the post-colonial world and, the dependency proponents proffer that debt are used to enforce and perpetuate their dominance over the global south. Though, the paper provided cases (e.g., Italy and Greece) where debt was cancelled because of the effects of the global financial crisis.

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