HUMAN RIGHTS LAW:
HOW HAS IT BEEN RELEVANT TO AUSTERITY AND DEBT CRises?

By Aldo Caliari

According to a study released last year, more than eighty countries were planning to introduce austerity measures—that is, some type of public expense cuts—this year.1 Importantly, not all those countries were facing or likely to face a financial crisis, but would be doing so out of choice. Human rights and the introduction of austerity measures have been the subject of several pronouncements by human rights bodies, such as the Office of the High Commissioner for Human Rights and the Committee on Economic, Social and Cultural Rights. The latter, in a letter to states parties to the International Covenant on Economic, Social and Cultural Rights in 2012, clarified the implications of the treaty for the introduction of austerity measures.2

While the pronouncements were in reference to the link between human rights and the austerity measures potentially being imposed in the wake of, or to forestall, a debt crisis, it is also important to realize that this represents a partial approach to the question. This is not to deny the importance of guidance to allocate adjustment burdens in a fair way during a crisis and to protect minimum essential levels in the enjoyment of rights, as well as to avoid or mitigate impacts on marginalized and vulnerable groups, which is crucial. Human rights law obligations should be part and parcel of that process.

But a wider lens, one that considers human rights law germane to the building blocks of the financial, fiscal, and monetary systems, including the complete process of sovereign indebtedness, is necessary. Only in this case will we be able to address the human rights responsibility for failing proactively to take measures to limit the severity of crises, and ensure more equitable distribution of its consequences.

Human rights obligations become relevant, from this perspective, long before a crisis takes place. They should be built into debt contracts. This is not just a requirement for debtors, but also for creditors. The due diligence processes of private creditors are not exempt from this requirement. They should translate into rights to transparency, participation, and effective remedies for affected citizens. With so many debt crises triggered by bailouts of the financial sector, it is time to establish the connection between properly functioning bank resolution and recovery legislation that avoids a single private bank crisis from becoming the system-wide catastrophic event that can force a publicly-funded bailout.

Having said all that, a reality of finances is that sovereign debt crises have always existed and will continue to exist, and human rights law obligations also have a role to play in addressing existing debt obligations that cannot be honored and, perhaps, even stating when such obligations should not be honored.

That is how human rights, perhaps not through their legal force, but through their moral statement, one that mobilized politics and consciences, were very much behind the movement that eventually led to the debt relief initiatives of the late 1990s: the Heavily Indebted Poor Countries Initiatives (I and II), culminating with the Multilateral Debt Relief Initiative in

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The notion was that indebted countries should prioritize using their income to satisfy their human rights obligations and only have to service debt with the remainder. This connection became more visible when, in between the debt relief initiatives, world leaders approved the Millennium Development Goals, which could be said to crystalize some human rights aspirations. Part of the inspiration from them translated into a clause in the Monterrey Consensus on Financing for Development in 2002 that linked debt sustainability reviews to the financing needs of developing countries.

But it is true that debt relief initiatives covered a relatively small portion of the universe of outstanding sovereign debt. For the vast majority of sovereign debt, restructurings and their outcomes would be subject to the vagaries of a regime that can be characterized as ad hoc—consisting of a fragmented patchwork of ad hoc arrangements. It is not a surprise that human rights were not a strong normative consideration in processes whose outcomes were essentially left to the relative strength of the sovereign debtor in question in each case and its creditors (with, in some cases, the backing of states invested in such outcomes for geopolitical or other reasons). Looking at this desolate picture, it is hard to think that human rights law has taken us far in the quest toward achieving fairer processes for the contraction of debt and the resolution of sovereign debt crises.

But this would be losing sight of the magnitude of change in consciousness required to make human rights relevant to an area so intrinsically dominated by economic and financial thinking. In fact, although one could argue that human rights were relevant to sovereign debt since their very inception, it was not until recently that a growing consciousness of the connection began to emerge. In fact, the normative standard-setting developments that attest to such emerging consciousness is a phenomenon that goes back to a period covering no more than four years. These include:

- The Guiding Principles on Business and Human Rights, passed by the Human Rights Council in 2011;
- Guiding Principles on Foreign Debt and Human Rights, passed by the Human Rights Council in 2012;
- The UN Conference on Trade and Development Principles on Responsible Sovereign Lending and Borrowing, finalized in 2012; and
- The Basic Principles on Sovereign Debt Restructuring, approved by the United Nations General Assembly in 2015.

In fact, having the latter, a universally-adopted set of principles on sovereign debt restructuring, is arguably the best we have ever been in this area. Their explicit reference to human rights provides a strong foothold to make the connection going forward.

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4 World Bank Operations Evaluation Dep’t, Debt Relief for the Poorest: An Evaluation of the HIPC Initiative 5 (2003) (the external debt of the countries covered by the HIPC Initiative represented at the time approximately 8 percent of the total external debt of all developing countries).


6 See G.A. Res. 69/319 (Sept. 29, 2015) (declaring that “sovereign debt restructuring processes should be guided by the following Basic Principles . . . 8. Sustainability implies that sovereign debt restructuring workouts are completed in a timely and efficient manner and lead to a stable debt situation in the debtor State, preserving at the outset creditors’ rights while promoting sustained and inclusive economic growth and sustainable development, minimizing economic and social costs, warranting the stability of the international financial system and respecting human rights.”).