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Research Article

Recent Trends in Sovereign Debt Restructuring and the Global Economic Impact of Covid-19

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Abstract: Two things are at play: Sovereign debt and Sovereign Wealth Funds. On the one hand, states have been known to accumulate sovereign debt through bonds for priority development such as infrastructure. Whenever they default they resort to already predetermined debt restructuring mechanisms or negotiations of a certain nature with their creditors to either postpone the due date and or write-off the debt in entirety or partially. What if there are no predetermined measures? On the other hand, Sovereign Wealth Funds are meant to preserve wealth for future financial gaps and generations more so from the proceeds of natural resource exporting countries. They are now the new vehicle for wealth creation in African countries. Recent trends show that this investment vehicle has not been without its woes and fair share of challenges, in-state or beyond, with regard to management, accountability, transparency, financial crises, political instability and now the world health pandemic of Corona Virus 2019(COVID-19). It is expected that most nations would turn to their SWFs to arrest the post-COVID-19 economic crisis. What are these SWFs? How were they expected in the recent past and what restricting approaches were employed? How, if at all, has the pandemic affected SWFs? Is any of these viable in light of the current global pandemic?

Introduction

Creation of Sovereign Bonds owes its creation to the Brady Plan of 1989 which was geared towards salvaging the Least Developed Economies from the 1989 global financial crisis.[1] A Bond is a loan by one party (Bond holder) to another (the issuer) whereby the latter undertakes to repay the investor a fixed interest on the loan on a periodical basis.[2] The bonds operate in a manner like to local bank loans such that default to repay the loan within the specified period attracts penalties both legal and financial. The key difference is that the loans are issued to sovereign states and in the event of default; the defaulting issuer proposes a new repayment package so as to avoid an event of greater default.[3]

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[1] The Plan was hatched by the US. Secretary of State, Nicholas F. Brady by the lending of LDC sovereigns as a form of investment. Benefactors include Nigeria, Jordan, Mexico, Panama, Peru, Poland, Russia, Uruguay, Venezuela and Ivory Coast. See Lex Rieffel, Restructuring Sovereign Debt: The Case for Ad Hoc Machinery 170 (2003). See also Jose Jr. Garcia-Hamilton, Rodrigo Olivares-Caminal, and Octavio M. Zenarruza, *The Required Threshold to Restructure Sovereign Debt*, 27 Loy. L.A. Int'l & Comp. L. Rev. 249 (2005). Available at: http://digitalcommons.lmu.edu/ilr/vol27/iss2/3

[2] Patrick J. Brown, 'An Introduction to the Bond Markets', John Wiley & Sons, Ltd., England, 2006, (p.1)

[3] Praveen Varma, Richard Cantor, David Hamilton, David Levey, Sharon Ou, and Vincent Truglia, "Sovereign Bond Defaults, Rating Transitions, and Recoveries (1985-2002)," Moody's Investors Service (2003), (p. 4).

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States have from time to time amassed unsustainable debt, fueling the increasing need to restructure as in the case of Argentina and Greece among many other states.[4] Restructuring serves the vital function of enabling states resolve their financial and economic crises to relatively manageable/sustainable levels.[5] Repute plays an important motivational role for sovereigns to repay outstanding debts. So as to avoid negative publicity of 'bond issuers who never honor their debt obligations' states have to inevitably restructure.

Sovereigns restructure their debts through two levels: procedural and substantial. Procedural entails the means by which the restructuring shall be performed, for instance, its architecture, while the substantial aspect focuses on actual restructuring of debt. The latter level is characterized by write offs of principal debt and rescheduling amortization.[6] The restructured schedules represented a sovereign's exchange offer enforceable by sovereign's debtors once the creditors were in agreement. Restructuring included write-off of the debts which some "*hold-out*" creditors or "*rogue*" creditors would refuse to settle demanding instead for settlement of entire actual debt.[7]

Often, restructuring negotiations result in a split between the new bond holders and hold out creditors/litigating creditors. The court has to decide whether the sovereign debtor should pay hold out creditors on a *pari passu* or equal footing with the new bond holders.[8] In Argentina's Debt restructuring, American courts have issued injunctions against any further payments to the new bond holders without simultaneous settlement of the hold-out creditors.[9] The document shall consider two states as representative of the trends: Argentina and Greece. This paper shall discuss sovereign debt restructuring trends across the world in Part I. COVID-19 has tremendously affected the world financially and SWFs, if properly invested and recovered from formerly 'crushing' economies, may present a perfect escape route for most states after the pandemic passes. The viability of this shall be investigated under part II. This segment shall also make proposals as to where do we go from here?

Part I

Restructures up to the Argentine 'crush'

Due to disrepute and negative economic impact of debt adjustment, states used the following approaches to quell unrest:

a) Since the conception of the Brady Plan in 1989 states have reduced their debt-mostly in syndicated loans-by the issuance of Brady bonds. Most developing countries continued to issue bonds to fulfill further financing needs or simply to raise money from the capital markets. In many cases, countries amassed unsustainable debt burdens, fueling the increasing need to restructure sovereign debts, such as in Russia, Ukraine, Ecuador,

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[4] The two states shall present the constant referral texts for the purposes of indicating the changes or trends in sovereign debt restructuring before 1990s and after (presently).

[5]Caminal- Olivares R., *Understanding the Parri Passu Clause in Sovereign debt Instruments: A Complex Quest,* in The International Lawyer (Fall 2009) American Bar Association Vol. 43. No.3 page 1218. Available at <http://www.jstor.org/stable/40708204 >

[6] Ibid, n 5.

[7] Jill E., Fisch & Caroline M. Gentile, *Vultures or Vawguards?: The Role of Litigation in Sovereign debt Restructuring,*53 EMORY L.J.1043 (2004).

[8] Mark Weidemaier, Robert Scott, and Mitu Gulati, 'Origin Myths, Contracts, and the Hunt for *Pari Passu*', *Law and Social Inquiry* 38 (2013), *available at* http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1633439.

[9] For instance see NML Capital, Ltd. v. Republic of Argentina (S.D.N.Y. Dec. 7, 2011) (No. 1:08−cv−06978−TPG), ECF No. 353 [District Court Opinion of December 7] and *NML Capital Ltd. v. Republic of Argentina* (2d Cir. Oct. 26, 2012) (Nos. 12-105(L) etc.) [NML, Second Circuit Opinion].

Pakistan, Uruguay, and Argentina." These restructuring cases were achieved through a market-oriented approach based on corporate debt restructuring procedures, which involved a maturity extension with or without a default grace period and a haircut.

b) Ideally, voluntary negotiations would ensue with creditors to elect a restructure or maintain hold of their initial debts. Restructuring during such periods had the practice of maturity extension for the new form of the debt as re-negotiated. For instance, in *Pravin Banker Assocs. v. Banco Popular del Peru*[10] debt was extended for, first six months and later for two months after which the court held in favor of the creditor's wishes to hold out and be repaid the full amount.

c) In *Elliott Assocs. LLP v. Banco de la Nacion*,[11] Brady bonds were issued as the result of a sovereign debt restructuring resulting in litigious adamant hold-out creditors.[12] A court order was issued, by the Belgium Court of Appeal in Brussels, against the Respondent not to make any payments. Peru was facing default on the restructured bonds. Although Peru did not pay interest on the due date, it technically had a thirty-day period to fulfill the payment before the default was declared. In the circumstances, Peru was obligated to reach an agreement with Elliott Associates L.P. in order to avoid a new default on its restructured debt. Under this agreement, Elliott obtained a gain worth 400% of the purchase value of the defaulted bonds.

d) A record default was the 2002 Argentine debt of about USD 178.795 million with over 700,000 creditors each with differing interests.[13] Argentine had quite a challenge coordinating the various creditors. Argentina made a series of proposals between the year 2002 to 2005 and an acknowledgement of the accrued interest from date of date of default in 2002. Therefore, the amount of debt to be restructured is $99.4 billion, considering that a seventy-five percent write-off on principal is still applicable. Although the interests are acknowledged, they would be capitalized in the same time frame as the new bonds to be issued (between thirty and forty-two years), thereby resulting in a bigger share of par bonds and quasi par bonds.[14]

e) The *Par Bonds* will be subject to longer maturity periods with a lower interest rate than the bonds being swapped. *Quasi Par Bonds* will be subject to a percentage write-off on the nominal value of the bonds they replace. *Discount Bonds* also have a percentage write-off, higher than that of the quasi Par Bonds on the nominal value of the bonds they replace with a thirty-year maturity and twenty year grace period. Finally, there is a Value Recovery Right which will annually increase the payments resulting from the new bonds in the event that Argentina's GDP growth in a year exceeds the calculus done by the Argentine government.

f) In addition to the new structure, the bondholders were incentivized to accept the new bond as restructured with the promise of cash payments. However, in the long run, there are currently many claims pending before a number of courts (Italy, New York, Germany and other local claims). It is clear that due to the mess already caused, Argentina cannot

[10] *Pravin Banker Assocs.,* 109 F.3d at 855.

[11] *Elliott Assocs.,* 194 F.3d at 372

[12] John Nolan, *Special Policy Report 3: Emerging Market Debt & Vulture Hedge Funds: Free-Ridership, Legal & Market Remedies,* FINANCIAL POLICY FORUM, *at* http://www.financialpolicy.org/DSCNolan.htm (21 December, 2014).

[13] Statistics sourced from Hamilton G. J., Caminal O. R., & Octavio M. Zenarruza *TheRequireed Threshold to restructure Sovereign Debt,* (2005), Loyola of Los Angeles International Comparative Law Review, 255-265; see also Andrew Balls & Adam Thomson, *Argentina Defiant Towards Private Creditors,* FINANCIAL TIMES, Mar. 11, 2004, at 1, *available at* 2014 WL 72878019

[14] Ibid note 5, at 258, *See* Press Release, Comision de Economia, Once Puntos Basicos sobre la Reduccion de la Deuda Publica del Pais (June 1, 2004), *available at* http://www.cai.org.ar/economia/m-oncepuntos.html [hereinafter Comision de Economfa].

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resort to the 'exit consent' to tackle the hold out problem leaving it with only the opportunity to advance a cash payment offer to reduce number of hold-outs. Argentina also faces the threat of use of class action, initiated by one of the new bond holders acting as representative of the other contractual parties with the same terms as against it.

In the absence of standard legal regime applicable to sovereign debt restructuring, and usually there is more than one applicable legislation, the international financial community has tried to offset the holdout practice by means of:

i) Exit consent;
Developed in the sovereign debt restructure of Ecuador in 2000 whereby the holders of defaulted bonds accepted to swap their old bonds in an exchange offer grant their consent to amend certain terms of the old bonds. Such amendment would only take place once the required majority accepted the exchange offer. The amendment would make the old bonds less attractive, forcing more bondholders to potential holdout because the bonds would be stripped of its original guarantees.

ii) The International Monetary Fund's (IMF) proposal to establish a Sovereign Debt Restructuring Mechanism (SDRM); and
This is a two-tier system with two complementary approaches- contractual and statutory to create a more orderly and predictable restructuring scenario. Contractual might employ the use of CACs while the statutory has a legal framework for collective decisions of both debtors and a super-majority of its creditors. This method was adopted in 2002 when the IMF noted that many states delayed in restructuring in a bid to avoid the high costs of restructuring and the uncertainties. In the process interests of most investors were damaged.

IMF proposed guiding principles of the restructure such that it is: sustainable; catalystic of rapid restructure response; involving collective action; transparent; early creditor participation in the restructuring process; noninterference with debtor's sovereignty; incentivizes negotiation; simple and flexible procedure fill in gaps within the existing financial architecture but should not displace existing statutory frameworks; and the formal role of the Fund under the SDRM should not be limited.

iii) The acceptance of collective action clauses (CACs)
This entails the use of bond clauses that allow amendment of all the terms of the bonds by a pre-established holding majority. The usual majority ranges between 75%-85% of the creditors. The use of CACs makes the restructuring process more orderly without the need to resort to an exchange offer as Argentina had to. In the event of future debt restructuring, the hold-out problem would be overridden because the supermajority would bind the dissenting minority. [15] In the sovereign debt restructuring episodes, either in the case of syndicated loans or bonds, the market has been able to come up with a solution without the need of a statutory approach. There are two available techniques that have already been tested satisfactorily. Even though Argentina pushed the limits, an orderly sovereign debt restructuring can be achieved. The recent Argentina class actions illustrate an intermediate approach-between a formal statutory approach and a market driven approach-because to have court supervision, one of the parties must make the judicial request. Although it might be too early to make any

[15] However this approach has no guarantees of preventing actions for simultaneous payments of new bolder and rogue creditors. See Anna Gelpern, 'Sovereign Restructuring After NML v. Argentina: CACs Don't Make *Pari Passu* Go Away' (May 3, 2012), *available at* http://www.creditslips.org/creditslips/2012/05/sovereign-restructuringafter-nml-v-argentina-cacs-dont-make-pari-passu-go-away.html.

assumptions, we may be facing the development of another market-based technique to deal with holdout creditors. As for Argentina, the war still rages on!

Post Argentina to Greek Bonds and beyond

- ✓ In 2012, Greece carried out a very unique and exceptional debt restructure in these terms. Greece's total debt as of April 2010 was approximately €319 billion. Greek Bonds were mainly governed by Greek law with a very small portion under foreign (English) law. Bonds under foreign law contained CACs which has since 2004 been reviewed to reflect a supermajority of 75% who can consent to alteration of bond payment terms. There was no negative pledge.
- ✓ Events of default could be due to a general moratorium declared on external indebtedness, continued external indebtedness beyond the specified grace period, covenant defaults with a 30 days grace period after written notice to the issuer, failure to pay interest with a 30 days grace period or any general government decree that prevents Greece from performing its obligations under the bonds. Bond holders had the following remedies: acceleration of bonds on an individual basis prior to 2004. However, after 2004 at least 25% of the bond holders had to vote in favor of an acceleration.[16]
- ✓ The Greece debt restructuring process is similar to the Argentine one in that its debt is overwhelming but due to its less diverse creditor universe it is able to avoid intercreditor rivalries. The Greek debts are updated, they do not keep delaying with the hope of managing the default or expenses of an immediate restructure. It is also notable that Greece enjoys financial support from multilateral and bilateral sources thereby increasing credit worthiness of any of its new debt instruments issued as part of a debt restructuring. In addition, Greece's negative pledge clauses means that some form of collateralized Brady Bond approach might be legally feasible for Greece without having to obtain waivers of negative pledge restrictions in foreign law-governed instruments issued prior to 2004. Most of the Greek bonds are in non-institutional hands as this class of persons make restructuring an uphill task. The greatest advantage enjoyed by the Greek bonds is the fact that most (90%) of its debt is governed by its domestic law.
- ✓ The disadvantages facing the Greek bonds situation could lead to a complex restructure of its debts. More than 30% of its bonds is held by Greek institutional holders whose aggravation could massively negatively impact the financial economy. European banks being the largest holders of Greek bonds makes any kind of instability affect the bilateral and multilateral supporters of Greece should a restructure prove unavoidable. The 1980s global debt crisis was majorly due to international commercial banks. Moving forward from that crisis, official overseers of the restructuring process had to keep a watchful eye on the debtor's countries and the other eye on stability of the banking systems in the industrialized creditor states. This tension toned down once banks had built loan loss reserves.
- ✓ As remedial measures for restructuring, Greece 2010, had the following options: transaction structure change with new offers, eligible debtors only participation, new instruments terms with re-profiling, CACS, creditor consultations and credit enhancement.[17] Eurozone sovereigns were distressed when a *Deuville venture* allowing for "adequate private sector participation" failed.[18] To remedy the mess, EU announced

[16] Buchheit, Lee C. and Gulati, G. Mitu, How to Restructure Greek Debt (May 7, 2010) at p.7-11 Available at SSRN: <http://ssrn.com/abstract=1603304> or <http://dx.doi.org/10.2139/ssrn.1603304> at 24/12/2014

[17] See Press Release, ECB Announces Change in Eligibility of Debt Instruments Issued or Guaranteed by the Greek Government (May 3, 2010) available at http://www.ecb.int/press/pr/date/2010/html/pr100503.en.html).

[18] Peter Spiegel, *Anger at Germany Boils Over,* Financial Times, November 16, 2010; Simon Tilford, *Eurozone Politicians are Playing with Fire,* CER Insight, November 15, 2010.

that participation of any private sectors in Eurozone debt restructuring would only be effective after mid-2013. Unfortunately, this message was also misinterpreted by many as immunizing Eurozone sovereign debt instruments from debt restructuring. March, 2011 the Greek Finance minister announced that the Euro facility may not suffice to keep Greece afloat to 2013. Should they restructure the Eurozone sovereign debt?[19]

- ✓ In 2011, scholars projected that, in view of the foregoing, three scenarios are likely to unfold in 2013: (i) Greece goes the distance with the current IMF/EU program[20] and a debt restructuring is avoided altogether, (ii) a debt restructuring of some kind becomes unavoidable after June 2013 when the EU's "*read my lips -- no restructuring until 2013*" promise lapses by its terms, and (iii) a liability management transaction affecting some or all of the Greek debt stock is launched before 2013.[21]
- ✓ In 2014, what is the status of the Greek Debt? How are any of the projected end game scenarios playing out? In 2012, Greek bonds were restructured such that the Eurozone official sector allowed the use of taxpayer money to repay, in full and on time, all of the private sector creditors of the Eurozone countries receiving bailout.[22] This was pursuant to the Treaty Establishing the European Stability Mechanism (Eurozone's new bail-out facility). None of the projections sustained until 2013. Notice that the debt amassed was so great that it endangered the viability of the Eurozone necessitating the extension of a loan from the EU.[23] Unfortunately, as of January, 2019 after the end of the scheduled bailout program, Greece had only paid 41.6 billion euros of the total 320 billion euros loan extended. Moving forward and in the face of the unpaid bailout facility, Greece has scheduled repayments beyond 2060.

Protection of Eurozone sovereign assets against attachment by litigious hold-out creditors is the projection for future sovereign bond restructures. This would make it ever difficult to enforce hold-out demands. This proposal is against the backdrop that the legislatures or designers of every Eurozone sovereign bailout program must make a crucial threshold decision: what to do with the sovereign's debt maturing during the program period: pay it or restructure it? Justification for such an amendment to legislation include safeguards against harassment of the bailed out state by the hold out creditors; assist beneficiary in enforcing approved restructuring of its debt by deflating the expectations of prospective holdouts that they can obtain a preferential recovery through the pursuit of legal remedies after the restructuring closes; and ensure the financial support is not diverted to repayment of an existing debt obligation of debtor state that was eligible to participate in debt restructuring but failed to seize the opportunity.

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[19] *The Eurozone's ESM Permanent Bailout Fund*, Financial Mirror, March 23, 2011 (available at http://www.financialmirror.com/Columnist/Global_Markets/752).

[20] Ronald Janssen, *Greece and the IMF: Who Exactly is Being Saved?* CEPR Draft (July 2010) (available at http://www.cepr.net/documents/publications/greece-imf-2010-07.pdf).

[21] Buchheit, Lee C. and Gulati G. Mitu, Greek Debt- The Endgame Scenarios (2011) at 4-11 Available at SSRN: http://ssrn.com/abstract=1807011 or http://dx.doi.org/10.2139/ssrn.1807011 as at 24/12/2014

[22] Ansgar Belke, *Driven by the Markets? ECB Sovereign Bond Purchases and the Securities Market Program,* Directorate General for Internal Policies, Working Paper (June 2010) (available at http://www.europarl.europa.eu/document/activities/cont/201006/20100610ATT75796/20100610ATT75796 EN.pdf).

[23] Nektaria Stamouli "Many Greeks Struggle to Keep Their Heads Above Water as Bailout Ends," The Wall Street Journal, 20 Aug. 2018 available at https://www.wsj.com/articles/many-greeks-struggle-to-keep-their-heads-above-water-as-bailout-ends-1534757400?mod=djem10point Last accessed 09.04.2020. See also, Charles Forelle, Pat Minczeski and Elliot Bentley "Greece's Debt Due" The Wall Street Journal 19 Feb., 2015 available at http://graphics.wsj.com/greece-debt-timeline/

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This is the workable and justified norm for sovereign debt restructures, in Europe and backed by the IMF, at present.

Debt Restructuring in Africa

Nigeria, Libya and South Africa, have invested in SWFs[24] in developed economies.[25] However, the oil prices have dropped sharply in these states, and the USA, since late 2014. Consequently, GDP growth for sub-Saharan Africa has significantly dropped from 5.1 percent in 2014 to 1.4 percent in 2016. Crude oil prices also fell by 56 percent over seven months[26] and this year saw a 54 percent drop in the first three months in the face of COVID-19. This is a particularly low moment for three of the largest economies—Angola, Nigeria, and South Africa—which already had weak growth outlooks.[27] Africa has had about 317 sovereign debt restructurings yet none factored in continental perspectives.[28] With the introduction of Public Private Partnerships, PPPs, African states seeking to enhance infrastructural development, are now restructuring sovereign debt in light of the changing lender brackets.[29]

How does Africa restructure? Traditional creditors, such as the IMF and World Bank, issued concessional loans that also dictate the nature of restructuring in the event of default. There were three main avenues:

- ✓ The Paris Club was a venue for SSA states to restructure their debts through negotiations, reschedules and writeoffs. From its inception until 1988 the last two were most preferred alternatives. However, members resolved to downsize on amount of debt stock- debt reduction. [30] This is conditioned on a country's demonstration of its inability to settle debts, introduction of sound macroeconomic policy reforms.

[24] According to Hon. Mona Helen Quartey, Dep. Minister of Finace, Ghana, - Conference Summary, 2014. "SWFs are state-held investment funds that are financed by the proceeds of commodity exports, fiscal or trade surpluses and privatizations, with the main objective of investing in real or financial assets. SWFs must fulfil three key criteria to be characterized as such: they are owned by governments; investment strategies must include investments in foreign financial assets to the exclusion of funds invested exclusively in domestic, and they must be established by the government for macroeconomic purposes."- Africa's Sovereign Wealth Funds Demand, Development and Delivery Chatham House

[25] Most resource exporting nations invest up to 60 percent of their returns in state-owned investment enterprises or SWFs. Botswana, Libya, Algeria, Gabon, Equatorial Guinea and Mauritania created their own SWFs from oil and gas reserve exports. Since 2012, Angola, Nigeria, Senegal and Ghana established SWFs with initial seed capital of $5 billion, $1 billion, $1 billion and $100 million respectively. Mozambique and Tanzania are set to become large exporters of natural gas by 2020 and both are expected to set up SWFs, while Sierra Leone has suggested it could launch its own fund.

[26] Due to political instability, weak institutions and a lack of transparency and accountability can turn SWFs into nuclei of corruption and financial abuse.

[27] Kenya suffered about 86% work interference due to COVID-19 despite the massive debt amassed from China, IMF and other Paris Club members. South Africa has been hit by recession only two years since the last episode.

[28] Bategeka, L., L. Kiiza and E. Suruma. 2014. "African Perspectives on Sovereign Debt Restructuring: The Ugandan Experience." Paper commissioned for African Perspectives on Sovereign Debt Restructuring conference, Kampala, Uganda, August 7-8. Unpublished data. This was because their previous lenders were from multi-lateral lenders and high-income bilateral creditors in the Paris Club.

[29] This is due to the huge financial facilities extended by the China

[30] Supra note 27. Debt reduction rates increased from the Toronto Terms in 1988 to the London Terms in 1991 (50 percent reduction), Naples Terms in 1995 (50 to 67 percent reduction), Lyon Terms in 1996 (80 percent reduction) and Cologne Terms in 1999 (90 percent reduction) (Abrego and Ross 2001; Paris Club 2014).5 Between 1989 and 2006, the Paris Club met with Cameroon seven times and rescheduled or cancelled over $12 billion of its sovereign debt (Paris Club 2014; Thierry 2014). Several other African countries have benefitted from multiple trips to the Paris Club.

- ✓ Heavily Indebted Poor Countries (HIPC) Initiative which was launched in 1996 by World Bank and IMF upon realization that the sovereign det levels were still very high despite application of bilateral debt reliefs. Most nations stagnated economically and they were incapable of eradicating poverty.[31] HIPC mandated all debt relief applicants to prepare a poverty reduction strategy and ensure economic and structural reforms. The relief is given through two phases: 'decision point' with interim relief; and review to ensure that all conditions are on course before 'completion point' kicks in. Once satisfied the debt is cancelled in entirety.
- ✓ Multilateral Debt relief Initiative (MDRI) is a 2006 joint IMF and World Bank program that gave Sub-Saharan African countries elaborate debt relief to enhance their creditworthiness and sustainability of their debt positions.

However, there are no harmonized approaches from any of the above approaches or the emerging creditors to deal with likely future crises. The next section of this paper is trying to investigates the challenges facing SWFs and whether they would be a viable fall back in post-pandemic period in the absence of statutory debt restructures.

Sovereign Wealth Funds and Covid-19

In the year 2019, the world awakened to a respiratory virus, Covid-19,[32] that was spreading like bushfire in the province of Wuhan, China.[33] Currently, the entire world, is engulfed in a worldwide crisis with confirmed cases surpassing 1.8 million, reported deaths approaching 110,000[34]. USA just had the worst week ever with more than half a million confirmed cases and slightly more than 20,000, deaths.[35] Many governments have made tragic choices, such as imposing harsh containment and quarantine rules,[36] while others are allowing for development of "herd immunity" by letting the virus spread.[37] Investors and market operators across the world are preparing for the worst economic crisis ever.[38]

[31] Kiawu, Abubakar, Robert S. K. Doe, Anne Laski and Edward Corcoran. 2014. "Liberia's Experience of Debt Restructuring and Relief." Paper commissioned for African Perspectives on Sovereign Debt Restructuring conference, Kampala, Uganda, August 7-8. Unpublished data

[32] Renda, A., & Castro, R. (2020). Towards stronger EU governance of health threats after the COVID-19 pandemic. *European Journal of Risk Regulation,* 1-8. doi:10.1017/err.2020.34

[33] Report of the WHO-China Joint Mission on Coronavirus Disease 2019 (COVID-19) 16-24 February, 2020. Available at https://www.who.int/docs/default-source/coronaviruse/who-china-joint-mission-on-covid-19-final-report.pdf (12.03.2020)

[34] Figure based on the 11th April, 2020 situation report, which is published daily by the World Health Organization at: https://www.who.int/emergencies/diseases/novel-coronavirus-2019/situation-reports/ (12/04/2020).

[35] Shear M. D, Crowley M., and Glanz J., *Coronavirus May Kill 100,000 to 240,000 in U.S. Despite Actions, Officials Say,* 31 March 2020 available at https://www.nytimes.com/2020/03/31/us/politics/coronavirus-death-toll-united-states.html; See also the status of the UK: https://www.theguardian.com/world/2020/mar/16/new-data-new-policy-why-uks-coronavirusstrategy-has-changed?CMP=Share_iOSApp_Other

[36] https://www.africanews.com/2020/04/12/enforcement-of-coronavirus-lockdown-turns-violent-in-parts-of-africa/ South Africa and Uganda have an absolute lockdown while Kenya has a night curfew from 7pm to 5am and containment within three counties limiting movement into and out of Kenya. International flights are not operational in Kenya save for cargo carriers. On the other hand Germany still allows for international flights with a certain level of limitation.

[37] UK abandoned this method after its Prime Minister was taken ill and but Sweden and Netherlands have partly adopted it. See https://www.forbes.com/sites/joshuacohen/2020/03/27/caught-between-herd-immunity-and-national-lockdown-holland-hit-hard-bycovid-19/#673b738c3557 (10.04.2020). See also Pancevski Bojan *Inside Sweden's Radically Different Approach to the Coronavirus*, 30 March 2020, https://www.wsj.com/articles/inside-swedens-radically-different-approach-to-the-coronavirus-11585598175 (10.04.2020); and Jason Horowitz, *Italy's Health Care System Groans Under Coronavirus — a Warning to the World*, 12 March 2020, available at https://www.nytimes.com/2020/03/12/world/europe/12italy-coronavirus-health-care.html 7 See among others, Swiss, Academy of Medical Sciences. "COVID-19 pandemic: triage for

Economists have indicated that the best fall-back after the pandemic would be the SWFs. Why? Most natural resource exporting nations have learnt to save, no matter how little, for low export season or sudden price changes.[39] For instance, Zambia and Angola are some of the largest SWFs in the region and have enjoyed a surplus from extraction of oil and copper respectively. as of 2015 the two nations were facing budget deficits resulting in economic instability. Norway has the largest SWF overseeing about $ 945 billion funded by the nation's oil revenue.[40]

A well-structured SWF will present the best exit strategy by allocating funds to various rescue packages to keep companies afloat and preserve as many jobs as possible.[41] Depending on the state objectives and state allocation, key elements of an SWF include:

- ✓ Savings funds allocated with the objective of sharing wealth across generations through the transformation of non-renewable assets into diversified financial assets. Their mandate emphasizes on a high-risk return such as share equities.
- ✓ Development funds are created for priority socio-economic projects such as infrastructure and basic public amenities.
- ✓ Reserve investment corporations that are state owned for the purpose of reducing the negative carry costs of holding reserves or generate higher return on ample reserves and the assets in the invested funds are still clustered as reserves.
- ✓ Pension reserve funds identify future outflows in pension-related contingent liabilities on the government's balance sheet. Their purpose is to offset rising pension costs through a wide range of investments such as equity shares.
- ✓ Stabilization funds insulate the budget and economy from commodity price volatility and external shocks. Due to their role, they are structured closely to national central banks reserves with highly liquid portfolio of assets by allocating over 80% of their assets to fixed income securities while government securities consist about 70% of the total assets. Sometimes they also invest in instruments which are negatively correlated with the source of risk being addressed.

According to IMF, each fund requires a consideration of its risk tolerance, performance benchmarks, currency composition, assets composition, investment horizon and asset and liability management parameters. For the purposes of this paper, most non-African states with

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intensive-care treatment under resource scarcity." Swiss medical weekly 150 (2020): w20229 and Geert Meyfroidt et al., "Ethical principles concerning proportionality of critical care during the 2020 COVID-19 pandemic in Belgium: advice by the Belgian Society of Intensive care medicine" (2020), Update 26- 03-2020.

[38] Daud Khan and Leila Yasmine Khan *The Economic Impact of COVID-19 on Developing Countries* https://www.ipsnews.net/2020/04/the-economic-impact-of-covid-19-on-developing-countries/ "For countries with large numbers of overseas workers such as Philippines, India and Pakistan, or with large diasporas such as Somalia, remittances would slow down due to layoffs and delayed salary payments in Europe, the Middle-East and USA where most of these people live and work"

[39] Redvers L. (2015) *Sovereign Doubts: Sovereign wealth funds smell of success, but are they right for countries with high-spending demands*? http://gga.org/stories/editions/aif-31-public-finance/ sovereign-doubts. See also Sachs J. D., Warner A. M. (1995) 'Natural resource abundance and economic growth', Working Paper no. w5398. National Bureau of Economic Research.

[40] Abdullah Al-Hassan, Michael Papaioannou, Martin Skancke, and Cheng Chih Sung (2013) *Sovereign Wealth Funds: Aspects of Governance Structures and Investment Management,* IMF Working Paper WP/13/ 231 available at https://www.imf.org/external/pubs/ft/wp/2013/wp13231.pdf (10.04.2020) See also the voluntary Santiago Principles on Sovereign Wealth Funds on accepted principles and practices on SWF investment practices and objectives.

[41] Nicola and Carolynn Look, *Germany pays workers to stay home to avoid mass layoffs,* Bloomberg Business week 30th <arch, 2020 available at https://www.bloomberg.com/news/articles/2020-03-30/germany-pays-workers-to-stay-home-to-avoid-mass-layoffs?srnd=premium-europe (02.04.2020)

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SWFs are likely to survive the economic effects of covid-19 if the can be able create equity shares and issue funds to stabilize their economies. From the foregoing, however, SSA states have amassed sovereign debts but may not be able to repay them after the effect of the pandemic surges their economies. Two alternatives may be viable: enact legislation to enable the restructuring of sovereign debts; or borrow some of the Eurozone or American trends for debt restructuring. The former may be more popular because almost all SSA states have huge sovereign debts without any form of restructuring policies and highly uncertain risk allocation measures, if any. Inevitably, all economies will be negatively and extensively affected by the pandemic. Therefore, all SSAs with SWFs are encouraged to ensure that the stabilization and savings funds are properly structured.

Exit Strategies

In summary, there are several nations across the world that have invested abroad through sovereign wealth funds. Many more, if not all, States have accumulated sovereign debts and in Africa, governments are grappling between saving lives and settling creditors[42]. Whenever such states default, predetermined restructuring approaches are negotiated and set in motion.

Three recommendations emerge from the foregoing:

a) Savings and stabilization funds with high standards of management are necessary for all nations across the world because economic surges are sometimes inevitable and highly unpredicted.
b) The defaulting issuer is expected to make proposals on restructure for negotiation within the context of the treaty or contract resulting in the debt. Most developed and developing economies outside SSA have employed various debt restructuring and mechanisms. However, Africa's sovereign debt restructuring requires statutory enactment, in advance, from the 'defaulting issuer'. If these measures were in place, it may not have been necessary for the World Bank to intervene and stall all official bilateral debt service payments to as to redirect the funds towards healthcare, basic support to individuals rendered jobless and food.[43]
c) Nations that have successful SWFs can help augment the national needs by utilizing the resources invested abroad to assist its people and sustain the economy. Additionally, in view of the continued drop in oil and other natural resource prices, these nations may need to prepare a sustainable policy or strategy to stabilize its economy in the post-pandemic period.

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[42] The Economist, *Africa's Debt Crisis Hampers its Fight Against Covid-19*, 11th April, 2020. available at https://www.economist.com/middle-east-and-africa/2020/04/11/africas-debt-crisis-hampers-its-fight-against-covid-19 (10.04.2020)

[43] World Bank *COVID-19 (Coronavirus) Drives Sub-Saharan Africa Toward First Recession in 25 Years,* 9th April, 2020. Press Release No: 2020/099/AFR available at https://www.worldbank.org/en/news/press-release/2020/04/09/covid-19-coronavirus-drives-sub-saharan-africa-toward-first-recession-in-25-years (10.04.2020)