30th September 2014

Input from SLUG – Debt Justice Network Norway

Thank you for the opportunity to provide input on the draft consultation paper “Sovereign Debt Restructuring: A Backgrounder.” The paper gives a good overview of current debates on both contractual and statutory approaches to debt restructuring, and a very useful outline of the wide array of proposals currently on the table.

We would like to concentrate our inputs on the section 4.3 A Sovereign Debt Tribunal and Arbitration Process. While this section outlines the principle of using arbitration for restructuring debt, and the key notion of ensuring the independence and neutrality of the arbitration panel, very central features of the proposal as set out by civil society organizations have been left out:

1. **Arbitration**
   An arbitration process can in principle be initiated as long as the creditors agree. Including an arbitration clause in sovereign bond contracts would clearly make this much easier, but that does not mean that it is a necessary condition for an arbitration to take place. Further, once an arbitration process has been carried out, arbitration awards are legally binding through the New York Arbitration Convention of 1958 that has 150 states as parties to the convention.

2. **Human rights based approach**
   The proposal by civil society organizations includes a human rights based approach to determining the level of necessary debt cancellation or reduction. An evaluation must be carried out to evaluate how much resources the country in debt crisis needs to fulfill its basic human rights obligations. This has been reiterated by the previous UN Expert of Debt and Human Rights, Cephas Lumina, and the UN Guiding Principles on Foreign Debt and Human Rights state that “Debtor States which experience difficulty in repaying their external debts should renegotiate these with their creditors with the aim of reaching a restructuring agreement that enables the debtor State to service its external debts without compromising its capacity to fulfil its international human rights obligations as mentioned in section II or implement its development goals.” (UN Guiding Principles on Foreign Debt and Human Rights, section 53.)

3. **The legitimacy of debts**
   Another key element is that responsible and irresponsible creditors must be treated differently. Illegitimate debt, such as odious debt, must be cancelled. Differentiating between responsible and irresponsible creditors also introduces an important risk element and creates incentives for more responsible lending in the future.

4. **The right to be heard for affected parties**
   As part of the arbitration, affected parties must have a right to be heard. That
includes individuals and organizations that represent citizens in the debtor countries affected by decisions taken by the arbitration panel.

It would also be useful to update the paper to include the recent UNGA resolution A/68/L.57/Rev.1 “Towards the establishment of a multilateral legal framework for sovereign debt restructuring,” that points towards the UN taking a greater lead in the work for a new debt workout mechanism.

We hope you will find our comments useful, and look forward to participating in the debates ahead on a new debt workout mechanism.

Best wishes,

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