

UNIVERSITY OF RWANDA
COLLEGE OF ARTS AND SOCIAL SCIENCES
SCHOOL OF LAW
LLM BUSINESS LAW

**CRITICAL ANALYSIS OF INTERNATIONAL FINANCIAL
INSTITUTIONS' CONDITIONALITY VIS-A-VIS THE
SOVEREIGNTY OF BORROWING COUNTRIES**

By Joselyne INGABIRE

This Thesis is presented as part of the fulfillment of requirement for the award of a Masters Degree in Business Law (LLM Business Law) of the University of Rwanda

SUPERVISOR: Dr. Faustin NTEZILYAYO

January, 2016

THESIS CERTIFICATION

I, Joselyne INGABIRE, declare that this thesis is my own work, unless referenced otherwise, and has been submitted for the award of A Masters' Degree in Business Law (LLM Business law) from the College of Arts and Social Sciences, School of Law of the University of Rwanda.

Joselyne INGABIRE

Signature.....

Date: 28/01/2016

DEDICATION

To the memory of my late father,

To my dearest mother,

To my brothers and sisters,

To all my friends and relatives.

ACKNOWLEDGMENTS

Writing this thesis has been fascinating and extremely rewarding from its beginning as a vague idea to explore the conditionality of International Financial Institutions in regard to the sovereignty of borrowing countries. I would like to thank a number of people who have contributed to the final result in many different ways.

I would like to thank first my supervisor Dr Faustin NTEZILYAYO for accepting to guide me. Really, a thesis takes shape after a tiresome work that involves a lot of research and researcher's ideas. I am much indebted to you for the supervision of this work; your detailed comments and edits helped me to shape my ideas and realize my aim. I owe you a debt of gratitude. I also extend my gratitude to all teachers who participated in my education from my childhood up to now.

I would like also to express my sincere gratitude to my Law Firm Partners and Associates at **FOUNTAIN ADVOCATES** for the enormous support.

Much appreciation and gratitude to my beloved mother for the constant reminders on the importance of concluding this work.

May the Almighty God bless all of you abundantly!!

Joselyne INGABIRE

LIST OF ABBREVIATIONS AND ACRONYMS

CCL:	Contingent Credit Line
COMESA:	Common Market for Eastern and Southern Africa
CPIA:	Country Policy and Institutional Assessments
EAC:	East African Community
Ed.:	Edition
EDPRS:	Economic Development and Poverty Reduction Strategy
EURODAD:	European Network on Debt and Development
GATT:	General Agreement on Tariffs and Trade
IBRD:	International Bank for Reconstruction and Development
IDA:	International Development Association
IFI:	International Financial Institutions
IMF:	International Monetary Fund
LDC:	Less developed countries
MDB:	Multilateral Development Banks
OD:	Operational Directive
OP:	Operational Policy
Op. cit.:	Opere Citato (already quoted)
PBAS:	Performance Based Allocation System

PRGF: Poverty Reduction and Growth Facility

PRSP: Poverty Reduction Strategy Paper

Vol: Volume

UN: United Nations

U.S.: United States

USA: United States of America

CONTENTS

THESIS CERTIFICATION.....	i
DEDICATION	ii
ACKNOWLEDGMENTS	iii
LIST OF ABBREVIATIONS AND ACRONYMS	iv
CONTENTS.....	vi
I. INTRODUCTION.....	1
II. BACKGROUND.....	3
III. PROBLEM STATEMENT	4
IV. RESEARCH QUESTIONS.....	5
V. HYPOTHESES	5
VI. PURPOSE.....	5
VII. SIGNIFICANCE.....	6
VIII. METHODOLOGY	6
IX. SCOPE.....	7
X. OUTLINE	7
CHAPTER I: OVERVIEW ON CONCEPTS OF CONDITIONALITY AND SOVEREIGNTY IN PUBLIC INTERNATIONAL BORROWING.....	8
1.1. CONCEPT OF CONDITIONALITY	8
1.1.1. The evolution of conditionality	8
1.1.2. Forms of Conditionality.....	12
1.2. CONCEPT OF SOVEREIGNTY	16
1.2.1. Historical Roots of Sovereignty	17
1.2.2. Trends to restrain sovereignty.....	20

CHAPTER II: THE RATIONALE FOR INTERNATIONAL FINANCIAL INSTITUTIONS’ CONDITIONALITY	23
2.1. CONDITIONALITY AS COMMITMENT MODELS.....	23
2.2. CONDITIONALITY AS INDUCEMENT.....	26
2.3. CONDITIONALITY AS SIGNAL OF THE BORROWING COUNTRY’S GOVERNMENT TYPE.....	28
2.4. CONDITIONALITY AS MORAL HAZARD	30
2.5. CONDITIONALITY AS TIED TRANSFERS.....	32
CHAPTER III: IMPACT OF CONDITIONALITY ON BORROWING COUNTRY’S SOVEREIGNTY	35
3.1. IMPACT OF CONDITIONALITY ON BORROWING COUNTRY’S ECONOMY	35
3.2. IMPACT OF CONDITIONALITY ON LAWS OF BORROWING COUNTRY	41
3.2.1. Conditions affecting constitutional provisions.....	41
3.2.2. Conditions requiring to enact Laws and Regulations	44
3.3. IMPACT OF CONDITIONALITY ON BORROWING COUNTRY OWNERSHIP.....	48
GENERAL CONCLUSION	51
BIBLIOGRAPHY	53

I. INTRODUCTION

International Financial Institutions (IFIs) are mainly divided into two groups. On one hand, there is the International Monetary Fund (IMF) which was formed at the Bretton Woods Conference way back in 1944 as the international supervisor of a system of fixed currency exchange rates, a system whose overall aim was to facilitate increase of international trade by resisting competitive currency devaluations among countries.¹ That fixed currency rate system then broke down in the 1970s, and since that time the IMF has been most evident as a financing institution for countries facing heavy external debts and facing financial or/and economic crises.²

On the other hand, IFI refer to Multilateral Development Banks (MDBs), of which the World Bank (WB) is the most prominent. The World Bank technically consists of two legally distinct entities: the International Bank for Reconstruction and Development (IBRD) and the International Development Association (IDA).³

The IBRD was formed alongside the IMF at the Bretton Woods in 1944 mainly to finance post-war reconstruction in Europe. The IDA was established to provide lower-cost financing to economically less developed countries (LDCs), which rocketed to prominence with the demise of colonial holdings by European powers. For most practical purposes, the IBRD and the IDA operate as one institution, and they do undertake to focus on mainly public-sector project lending, that is lending national governments or government agencies.⁴

¹International Monetary Fund, Cooperation and reconstruction (1944–71) available on <http://www.imf.org/external/about/histcoop.htm>, accessed on 28/02/2015.

²D. ÜNLÜ, “Is Conditionality for Loans from International Financial Institutions a Legitimate Way to Influence National Policies?”, in *Ankara Bar Review*, 2013/2, p190.

³ J.W. Head, *Law and policy in international financial Institutions: the changing role of law in the IMF and the Multilateral Development Banks* available on <https://kuscholarworks.ku.edu/bitstream/handle/1808/6695/Head%2017KanJLPubPol194.pdf?sequence=1>, accessed on 28/02/2015.

⁴ Ibid.

Though the IFI plays an indispensable role in the globalized financial order, its growing influence along those lines is increasing on the number of disputes every day revolving around some issues. Among the controversial issues is the conditionality policy that is imposed by IFI, as well as its effects on the sovereignty of the borrowing country.⁵

Conditionality is defined as 'an exchange of policy changes for external financing'.⁶ As per IFI view, conditionality means 'an instrument of mutual accountability.'⁷ Basing on those two definitions we can define conditionality as an exercise of financial leverage, requiring governments to do things they wouldn't otherwise do, or to do things more quickly than they would choose to do. Nonetheless, conditionality provides protection to the IFI that the credit is being utilized for the agreed intention and the debtor will be able to acquit its debt.

The Articles of Agreement of IBRD (Bank) provide under Article III Section 4 the conditions on which the Bank may guarantee or make loans. It states that “*Loans made or guaranteed by the Bank shall, except in special circumstances, be for the purpose of specific projects of reconstruction or development.*”⁸ This provision relating to the conditions of financing is also provided for under Article V Section 1 (b) of IDA’s Articles of Agreement.⁹

The Articles of Agreement of IMF (Fund) provide under Article V Section 3 (b) that the IMF shall adopt policies on the use of its general resources, including policies on stand-by or similar arrangements, and may adopt special policies for special balance of payments problems, that will assist members to solve their balance of payments problems in a manner consistent with the

⁵ D. ÜNLÜ, *op. Cit.*, p.189.

⁶ D. Zormelo, *Is Aid Conditionality Consistent With National Sovereignty?*, Overseas Development Institute, 17/021997, available on <http://www.odi.org/sites/odi.org.uk/files/odi-assets/publications-opinion-files/7018.pdf>, accessed on 02/05/2015.

⁷ T. Killick, *Did Conditionality Streamlining Succeed?*, available on <http://siteresources.worldbank.org/PROJECTS/Resources/Session1gDidConditionalityStreamliningSucceedTony.pdf>, accessed on 18/04/2015.

⁸ IBRD Articles of Agreement of 1944 as amended effective February 16, 1989, Article III Section 4 (vii).

⁹ IDA Articles of Agreement of September 24, 1960, Article V Section 1 (b).

provisions of the Articles of Agreement and that will establish adequate safeguards for the temporary use of the general resources of the Fund.¹⁰

Those stated articles refer to conditions on which IBRD, IDA and IMF or simply IFI guarantees or makes loans to the borrowers in circumstances referred to as special; those conditions are reflected in loan agreements under provisions generally known as “Conditionality.”

Though it is argued that conditionality is beneficial for the improvement of democracy of the borrowing country,¹¹ it does also in one way or another encroach on its sovereignty.

II. BACKGROUND

As J. Polak points out, conditionality was introduced by structural adjustment loans in 1980.¹² Until that time, the World Bank operations generally involved lending for projects, although the Bank also made certain loans that were not for specific projects. Project lending did not generally include any macroeconomic or policy-based conditions. These policy reforms and actions were, however, a common feature in the IMF’s balance-of-payments support operations.¹³

According to what is stated above, it is understood that policy-based conditions or conditionality in general started with a reform of 1980 for the World Bank while it was commonly used in the IMF.

Structural adjustment loans formally introduced the concept of “conditionality” in the World Bank operations. The World Bank’s policy guidance on adjustment lending was codified in

¹⁰ Articles of Agreement of the International Monetary Fund of December 27, 1945 as amended up to date, Article V Section 3 (b).

¹¹ See supra note 5.

¹² J. Polak, “The World Bank and the IMF: A Changing Relationship” in, *The World Bank: Its First Half Century* vol. 2, 473-523, 486.

¹³ Legal Vice Presidency World Bank, *Review of World Bank Conditionality: Legal Aspects of Conditionality in Policy-Based Lending*, June 29, 2005, available on <http://siteresources.worldbank.org/PROJECTS/Resources/40940-1114615847489/LegalAspectsofConditionality.pdf>, accessed on 18/04/2015

December 1992 through the adoption of Operational Directive (OD) 8.60. This directive identified certain preconditions for adjustment lending and contained various prescriptions regarding conditionality.¹⁴

In August 2004, a new framework for policy-based lending was introduced through Operational Policy (OP) 8.60. Among other things, the new policy replaced the existing types of adjustment loans with a single instrument commonly referred to as a development policy loan.¹⁵

III. PROBLEM STATEMENT

Conditionality mainly focuses on maintenance of an adequate macroeconomic policy framework, on implementation of an overall program in a manner satisfactory to the IFI as well as on compliance with critical policy and institutional actions; however, criticism remains high and doubts persist about the real extent of the project ownership and participation by borrowing countries.

If IFI conditions are supposed to be aligned to national projects, loans have been usually granted under stringent conditionality, pursuing objectives not always shared by borrowing countries' governments. Policy and political system stipulations attached to loans and grants by IFI have been contentious in international financial transfers between countries. Reasons for the contentiousness of such conditionality range from its contested efficacy to its social and political impact.¹⁶

Some also view conditionality as an interference of IFI in the sovereign prerogatives of borrowing governments;¹⁷ the problem will be to know the impact conditionality can have on the

¹⁴World Bank, Archived: Operational Manual, available on <http://web.worldbank.org/WBSITE/EXTERNAL/PROJECTS/EXTPOLICIES/EXTOPMANUAL/0,,contentMDK:23386490~menuPK:51508119~pagePK:64141683~piPK:4688102~theSitePK:502184,00.html>, accessed on 30/10/2013.

¹⁵ Ibid.

¹⁶ D. Zormelo, *op.cit.*, p.7.

¹⁷ Ibid.

borrowing country's sovereignty or more specifically to what extent IFI conditionality affects borrowing country's sovereignty.

IV. RESEARCH QUESTIONS

As per the problem statement above, this work will try to answer the following research questions:

- **Why are standards or conditionality set that countries must meet in order to receive adjustment loans from IFIs, mainly the World Bank and the International Monetary Fund?**
- **To what extent conditionality affects the countries' sovereignty?**

V. HYPOTHESES

Based on the above stated research questions, the following hypotheses were generated:

- By compelling debtor countries to meet certain provisions and criteria in order to access loans, conditionality is an essential tool to protect the IFI by ensuring that the credit is being utilized for the agreed intention and the debtor will be able to acquit its debt.
- The International Financing Institutions' conditionality affects mostly the sovereignty of developing countries rather than being a most convenient method for strengthening their democracy.

VI. PURPOSE

The major International Financing Institutions' (i.e. the World Bank and the IMF) main objective is lending to sovereign countries. This Dissertation attempts to critically analyze the International Financial Institutions' conditionality vis - à - vis the sovereignty of borrowing countries.

VII. SIGNIFICANCE

International Financing Institutions are almost affecting the investment policies of the developing countries, and conditionality regimes make this feasible. Hence, IFI conditionality affects sovereignty of developing countries mostly rather than strengthening their democracy.

This work will make away the concerned persons that conditionality, at its best, is a form of paternalism, by which a country is guided towards its own good rather like a parent or a teacher guide a child, in its own best interests. This may appear to be the case more often in programs where certain states lack the technical knowledge and/or the financial resources to pursue good policies and that the IFIs have both the expertise and resources to assist the country.

This work will also elucidate that conditionality, at its worst, implies the imposition on a country of an alien policy agenda that might contain elements that are not necessary to overcome the payments crisis and sometimes suggested by a third party, but which may not be in the country's best interest.

VIII. METHODOLOGY

In order to effectively carry out this research and basing on the research question, a qualitative methodology, which is a method which strength ability to provide how a given research issue is experienced in order to identify intangible factors as well as deferent opinion of various authors, was used to critically analysis the conditionality of International Financial Institutions vis-à-vis the sovereignty of borrowing country using mainly doctrinal and non-doctrinal sources and descriptive. The source of data includes secondary sources like Articles, books and Journals were also used.

IX. SCOPE

As said above, conditionality is provided in World Bank policy-based lending and in Articles of Agreement of IMF. Those instruments are not more specific and seem to be very wider.

This work will focus on conditionality in World Bank policy-based lending operations authorized under the “special circumstances” provisions in IBRD and IDA’s Articles of Agreement processed under Operational Policy as well as the conditionality under Articles of Agreement of International Monetary Fund and their impact on borrowing country sovereignty.

X. OUTLINE

This work is divided into three chapters; the first is an overview on concepts of conditionality and sovereignty in public international borrowing, the second explains the rationale of IFI’s conditionality, and the last chapter analyzes the impact of conditionality on borrowing country’s sovereignty and then a conclusion and recommendations close the work.

CHAPTER I: OVERVIEW ON CONCEPTS OF CONDITIONALITY AND SOVEREIGNTY IN PUBLIC INTERNATIONAL BORROWING

Public international borrowing consists of practice of financial assistance contingent on the implementation of specific conditions. When a country borrows from an IFI, its government, despite its sovereignty, agrees to adjust its economic policies to overcome the problems that led it to seek financial aid from the international community.¹⁸ This Chapter will focus on explaining concept of conditionality and concept of sovereignty in public international borrowing.

1.1. CONCEPT OF CONDITIONALITY

Conditionality in its broad sense covers both supported programs which are the macroeconomic and structural policies and the specific tools used to monitor progress toward the goals outlined by the country in cooperation with the IFI. According to the IMF, conditionality under supported program must be “macro-critical” that is, either critical to the achievement of macroeconomic program goals or necessary for the implementation of specific provisions under Articles of Agreement.¹⁹

1.1.1. The evolution of conditionality

According to D. Zormelo, after the Second World War, the United States of America argued strongly in favour of the IMF having wide discretion and policing powers to influence and control over central banks of the member countries, that the central banks exercise over other banks in their own countries in order to scrutinise economic policies. However, other countries such as the United Kingdom were not in favour of that idea of a new organisation with such powers.²⁰

¹⁸ A. Dreher, *IMF conditionality: theory and evidence*, Public Choice, 2009, 141:233–267, available on <http://www.rrojasdatabank.info/dreher2006.pdf>, accessed on 20/05/2015.

¹⁹ IMF, *IMF Conditionality*, Factsheet, April 2015, available on <https://www.imf.org/external/np/exr/facts/conditio.htm>, accessed on 2/05/2015.

²⁰ D. Zormelo, *Op. Cit.*, pp.8-9.

The type of conditionality, which would have been implied by the American position on the issue of the powers of the new organisation was therefore not stated explicitly in the original Articles of Association of the IMF.²¹

Conditionality was given explicit legal status in 1969 in the first amendment to the IMF Article of Agreement²² which includes Article V Section 3 (a) which states that “*The Fund shall adopt policies on the use of its general resources, including policies on stand-by or similar arrangements, and may adopt special policies for special balance of payments problems, that will assist members to solve their balance of payments problems in a manner consistent with the provisions of this Agreement and that will establish adequate safeguards for the temporary use of the general resources.*”

Thereafter, on 2nd March 1979, the IMF’s Executive Board made a decision entitled “Use of Fund's General Resources and Stand-By Arrangements” which dealt with conditionality and other financial activities of the Fund.²³ These Guidelines permit the setting of preconditions in which a borrowing country may be expected to adopt and carry out a program consistent with the IMF's provisions and policies.

On the side of the World Bank, the IBRD was formed alongside the IMF at Bretton Woods in 1944 to finance post-war reconstruction. A decade and a half later, the IDA was established to provide lower-cost financing to economically less developed countries (LDCs). For most practical purposes, the IBRD and the IDA operate as one institution by undertaking mainly public-sector project lending.²⁴

²¹ Idem, p.9.

²² Idem, p.11.

²³ Guidelines on Conditionality, [Decision No. 6056-\(79/38\), March 2, 1979; SDS, part 2, p.39](http://www.imf.org/external/np/pdr/cond/2001/eng/guide/) available on <http://www.imf.org/external/np/pdr/cond/2001/eng/guide/>, accessed on 22/05/2015.

²⁴ J.W. Head, *Law and Policy in International Financial Institutions: The Changing Role of Law in the IMF and the Multilateral Development Banks*, 4/21/2008, available on <https://kuscholarworks.ku.edu/bitstream/handle/1808/6695/Head%2017KanJLPubPol194.pdf?sequence=1>, accessed on 26/06/2015.

The Articles of Agreement of IBRD (Bank) provide for conditionality under Article III Section 4. It states that loans made or guaranteed by the Bank shall, except in special circumstances, be for the purpose of specific projects of reconstruction or development. This provision relating to the conditions of financing is also provided for under Article V Section 1 (b) of IDA's Articles of Agreement.

Conditionality started to be applied by the World Bank in 1980 with introduction of structural adjustment loans. The conditionality in the World Bank was defined by Operational Policy (OP) 8.60, *Development Policy Lending* which provides that “(...) *the Bank makes its resources available if the borrower (a) maintains an adequate macroeconomic framework, (b) implements its overall program in a manner satisfactory to the Bank, and (c) complies with the policy and institutional actions that are deemed critical for the implementation and expected results of the supported program,*”²⁵

The IFI conditionality, as the abovementioned provisions of the World Bank and IMF instruments state, was economic and project based conditionality with the main aim to maintain the IFI's objectives.

After the collapse of the Soviet Union, IFI conditionality has become more political than the economic and project-based conditionality. As D. Zormelo sums it up, the collapse of the Soviet Union reduced the strategic considerations in the disbursement of aid for the Great Powers. Aid that helped to maintain spheres of influence during the Cold War and after were no longer quite as relevant. The major significance of the demise of the Soviet Union and the Communist countries of Eastern Europe gave the western countries the basis to claim interdependence of market-oriented economies and pluralism that were necessary for the viability of economies of states.²⁶

²⁵ E. McLean and Chr. Schneider, *Limits of Informal Governance? The Scope of Conditionality in the World Bank*, Princeton University, 2014, available on http://wp.peio.me/wp-content/uploads/2014/04/Conf7_McLean-Schneider-30.08.2013.pdf, accessed on 26/06/2015.

²⁶ D. Zormelo, *op.cit.*, p. 9.

The World Bank and the IMF endorsed the joint document named “*Strengthening IMF-World Bank Collaboration on Country Programs and Conditionality*” in August 2001; this document was aimed at applying the strengthened collaboration framework to the borrowing country. This document was helped on appreciation of the different structures and processes of the IFI and how best they can be aligned in the support of countries.²⁷

It is reported that one year later, in 2002, the Bank and the Fund endorsed on a guidance note named “*Operationalising Bank-Fund Collaboration in Country Programs and Conditionality*” to operationalise the approach of the strengthened the IFI collaboration framework. This guidance strengthened IMF-World Bank Collaboration on Country Programs and Conditionality and reaffirmed the need to provide coherent support to countries.²⁸ This collaboration approach ensures clarity, improve accountability, and increase transparency in the Bank and Fund respective roles of each institution in support of country programs.

It should be pointed out however that the collaboration emphasizes that each institution retains ultimate responsibility for its own lending decisions. Conditions for the success of an institution’s program continue to be specified in that institution’s own arrangements. According to the collaboration, conditionality is duplicated only when a policy measure is considered critical for the success of the programs supported by both institutions. In such cases, conditionality is harmonized, using the possible identical dates and benchmarks.²⁹

To sum up, the conditionality used today is different from the conditionality used in World Bank’s policy based structural adjustment lending and IMF’s broadening of conditionality from the 1980s. IMF’s conditionality was originally related to project lending and they were meant to ensure that the Funds were used as intended; nowadays the purpose of conditionality was

²⁷ INTERNATIONAL MONETARY FUND and WORLD BANK, *Strengthening IMF-World Bank Collaboration on Country Programs and Conditionality*, Progress Report, August 19, 2002.

²⁸ Ibid.

²⁹ INTERNATIONAL MONETARY FUND and WORLD BANK, *Strengthening IMF-World Bank Collaboration on Country Programs and Conditionality*, Progress Report, February 24, 2004

changed to enable the borrower to remove what IMF regarded as fundamental policy-induced obstacles to economic growth and development such as privatisation and liberalisation.

This shift from project-related conditions to policy-related conditions made us identify forms of conditionality used by IFI in the following sub-section.

1.1.2. Forms of Conditionality

Authors differentiate various forms of conditionality, such as fiduciary conditionality, policy conditionality, process conditionality, outcome conditionality, tranche release, program reviews, trigger actions, performance criteria, prior actions, as well as benchmarks. We cannot exhaust all those forms in this sub-section that is why we are going to focus on the most used ones. .

(i) Performance Criteria

Performance criteria is the most common form of conditionality which consists of quantitative performance criteria related to quantitative targets respecting key macroeconomic variables that are expected to be reached by the borrowing country's program. Performance criteria also consists of structural performance criteria which is structural measures whose implementation is regarded as crucial to the success of the program of borrowing country. These conditions often involve legislative reforms such as the enactment of a new banking or bankruptcy law.³⁰ According to these criteria, the borrowing country must demonstrate that the relevant performance criteria have been met and that the program is on track.

In case the IMF finds that performance criterion is not met and that disbursements will be interrupted, the Executive Board may decide to grant a waiver for the nonobservance of the condition and permit the disbursement to be made. The Board will only do so if it is satisfied that, notwithstanding the nonobservance, the program can still be successfully implemented. Thus, the waiver will normally be granted only if (i) the nonobservance is minor and essentially

³⁰ R. Leckow, Conditionality in the International Monetary Fund, May 7, 2002, available on <https://www.imf.org/external/np/leg/sem/2002/cdmfl/eng/leckow.pdf>, accessed on 30/05/2015.

self-correcting, or (ii) in cases where the nonobservance is more serious, the member is prepared to take additional corrective measures to bring the program back on track.³¹

According to the World Bank, performance is indicated by the benchmarks which are used for the general evaluation of a country's performance, on the basis of which loans are disbursed. That implies that benchmarks in effect can act as conditions.³²

Performance criteria include Country Policy and Institutional Assessments (CPIAs) as part of the Bank Performance Based Allocation System (PBAS) which, if there fulfilled according to IDA, a country receives four times more resources from IDA than the lowest performance quantile country. In terms of the Country Performance loan allocation criteria, Performance Ratings are obtained through the Performance Based Allocation System (PBAS) which includes CPIA, Portfolio Performance Ratings and Governance Factor.³³

We understand that this criterion is highly considered by the World Bank than IMF; we shared the view with IMF because the non performance may result from the *force majeure* or from event which is not in borrowing county's control. We believe that other criteria than performance should be considered while granting or disbursing t the loan.

(ii) Prior Actions

For B. Bull et al., prior Actions are referred to policy actions that a borrowing country agrees to take before the World Bank's Executive Board or IMF's Executive Board approve a loan. Prior actions are used as measures that a country is expected to adopt before the approval of an arrangement or completion of a review. They are particularly appropriate when upfront

³¹ Ibid.

³² Action for Solidarity Environment Equality and Diversity, *World Bank Conditionalities. Poor Deal for Poor Countries*, Amsterdam 2008, p 10, available on http://www.aseed.net/pdfs/ASEED_Report_on_Worldbank_Conditionalities.pdf, accessed on 01/06/2015.

³³ Ibid.

implementation is deemed as critical for the success of the program. Single-tranche operations, whether self-standing or as part of a programmatic series, disburse on the basis of prior actions.³⁴

The same authors further state that prior actions show a certain discrepancy between the World Bank and the IMF in their use of the term conditionality, whereby the World Bank uses them as legally binding conditions as conditionality. Unlike the World Bank, the IMF generally uses prior actions as not legally binding in the term conditionality.³⁵

According to the World Bank, prior actions also called critical conditions are policy and institutional actions in a single-tranche operation which are usually met before the operation is presented to the Board for approval. These conditions are listed in a schedule to the legal agreement between the World Bank and the borrowing country for the operation. It is possible that in some single-tranche operations certain conditions can only be met after Board approval. In such cases, the conditions must be satisfied before the loan is declared effective, and they are formulated as special conditions of effectiveness, which are indicated in the legal agreement.³⁶

R. Leckow noted that prior actions have recently become part of conditionality of the IMF. Thus, the Fund often called upon members to take certain measures as prior condition to the release of Fund financial assistance but the Fund did not expressly incorporate these measures into the loan agreement. Rather, the Fund simply sought to verify that the measures were taken before adopting its decision. This approach was been subject to criticism whereby the information provided to the Fund were false and misreported by the side of borrowing country.³⁷

The author further reports that in order to ensure that the reporting of information respecting the implementation of prior actions is subjected to this misreporting framework, the Fund has, since

³⁴ B. Bull et al., *The World Bank's and the IMF's use of Conditionality to Encourage Privatization and Liberalization: Current Issues and Practices*, Oslo Conditionality Conference, November 2006, p.4, available on https://www.regjeringen.no/globalassets/upload/kilde/ud/rap/2006/0164/ddd/pdfv/300495-7final_conditionality_report.pdf, accessed on 10/06/2015.

³⁵ Ibid.

³⁶ World Bank, *Review of World Bank Conditionality: Legal Aspects of Conditionality in Policy-Based Lending*, September 2005, p. 4.

³⁷ R.Leckow, *op.cit.*, p.4.

July, 2000, followed a policy of expressly incorporating prior actions as part of the conditionality of the arrangement and Executive Board decisions approving arrangements, completing reviews, or granting waivers for nonobservance are now adopted on the basis of an express condition that the information provided by the member on the implementation of specified prior actions is accurate.³⁸

We find that to incorporate prior actions conditions into arrangement or loan agreement as the World Bank does, is more transparent and easier to negotiate and implement., however there are not more flexible taking into account the other factors which may occur while implementing them.

(iii) Benchmarks

Benchmarks are monitoring mechanisms which are applied to measures that may not be objectively monitored or where non-implementation would not, by itself, save as a base of an interruption of IFI loan. Benchmarks describe the contents and results of the government's program financed by the IFI.³⁹

Benchmarks conditions are not reflected in a lending operation's legal agreements as conditions. They only represent an indicative understanding of measures under the overall policy program that a country intends to implement, and are used as a reference framework and management tool. Although benchmarks meant to be only indicators of the direction of performance, they may however be used for the general evaluation of a country's performance, on the basis of which loans are disbursed.⁴⁰

As benchmarks are reform measures that are critical to achieve program goals and are intended as markers to assess program implementation during a review, they vary across programs; they

³⁸ Ibid.

³⁹ R. Lamdany and J. Hamann, *Structural Conditionality in IMF-supported Programs*, Oslo, January 2008, available on <https://www.regjeringen.no/globalassets/upload/fin/vedlegg/imf/lamdany.pdf>, accessed on 31/06/2015.

⁴⁰ B. Bull and others, *op.cit.*, p.5.

may be used as measures to improve financial sector operations, to build up social safety nets, or to strengthen public financial management. Benchmarks do not require waivers if they are not met but are assessed in the context of overall program performance.⁴¹

Structural reforms, such as privatization, deregulation, and tax reform, which are used to determine a country's compliance with a program, are assessed through benchmarks but do not automatically call for suspending loan in the event of non fulfillment as stated above. This measure of conditionality excludes prior actions explained under point (ii) above as conditions that must be met before the Executive Board approves a program. Excluding prior actions means that they focus on the elements of conditionality that a country promises to implement in the future when it contracts with the IFI, rather than on policy concessions that have been implemented to obtain a program.⁴²

Although benchmarks are not binding to the borrowing country, they should not be ignored because they serve as a base of evaluation of its performance and we believe that they may impact the future lending. This seems like the country regardless of its sovereignty, is always controlled by IFIs, which made us want to analyse the concept of sovereignty.

1.2. CONCEPT OF SOVEREIGNTY

Sovereignty is one of the regulating principles that more or less guides the behaviour of states⁴³ in international society. It is generally understood to signify the constitutional independence of other states.⁴⁴ The United Nations Charter of Economic Rights and Duties of States provides under Article 1 of Chapter II that *“Every State has the sovereign and inalienable right to choose its economic system as well as its political, social and cultural systems in accordance with the will of its people, without outside interference, coercion or threat in any form whatsoever.”*⁴⁵

⁴¹ INTERNATIONAL MONETARY FUND FACTSHIT, *IMF conditionality*, April 2015.

⁴²R. W. Stone, *The Scope of IMF Conditionality*, IO Foundation, 2008, available on http://ducis.jhfc.duke.edu/wp-content/uploads/2008/09/stone-02_20081002.pdf, accessed on 30/06/2015.

⁴³ 'States' here refers to those entities that have been defined by Article 1 of the 1933 Montevideo Convention on the Right and Duties of States.

⁴⁴ D. Zormelo, *op.cit.*, p. 18.

⁴⁵ Charter of Economic Rights and Duties of States, GA Res. 3281(xxix), UN GAOR, 29th Sess., Supp. No. 31

This provision recognizes the independence of every state in determining its economic and political orientation without any interference from another country or a given organisation or institution. After summarily showing the historical roots of the notion of sovereignty, this section will analyse some trends to restrain sovereignty of states under international borrowing system.

1.2.1. Historical Roots of Sovereignty

No one can analyse the historical roots of notion of sovereignty without talking about international law, because their history is almost similar. The notions of sovereignty and international law started by the end of Thirty Years' war in 1648 with the Peace Treaty between the Holy Roman Emperor and the King of France and their respective allies known as the Treaty of Westphalia signed on October 24, 1648.⁴⁶

Before the Thirty Years' War, the European world of Christendom was largely a diarchic one of Pope and Emperor. But as a result of its defeat, the Holy Roman Empire was dissolved into hundreds of relatively independent authorities with sovereignty over their populations and territories.⁴⁷

For B. Straumann, the sovereignty and international law are two concepts which are independent from each other. Sovereigns in the international law sense can voluntarily compromise features of domestic sovereignty, and sovereigns in the so called Westphalian sense need not necessarily to have international legal personality. However, many scholars on the history of international

(1974) 50, available on

http://www.aaas.org/sites/default/files/SRHRL/PDF/IHRDArticle15/Charter_of_Economic_Rights_and_Duties_of_States_Eng.pdf, accessed on 26/06/2015.

⁴⁶ Treaty of Westphalia, October 24, 1648, available on http://www.google.rw/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&ved=0CB0QFjAA&url=http%3A%2F%2Fmercury.ethz.ch%2Fserviceengine%2FFiles%2FISN%2F125308%2Fpublicationdocument_singledocument%2F4f69a17-f61f-4ac1-85cd-ccdc206b87f4%2Fen%2F057.pdf&ei=bOiPVdOnCqyP7Ab1pqyYAg&usg=AFQjCNGOOTL0pO_xYhklfK3nCey3K8s-rg&sig2=NQJiIDqZIV0-dpw72q6hfQ, accessed on 27/06/2015.

⁴⁷ Mihushi Masahiro, Sovereignty and International Law, p. 2,

https://www.dur.ac.uk/resources/ibru/conferences/sos/masahiro_miyoshi_paper.pdf, accessed on 01/06/2015

law and international relations claim that both the international law and sovereignty notion have their origin in the Peace of Westphalia.⁴⁸

As S. Krasner quoted by B. Straumann pointed out, international legal sovereignty is concerned with establishing the status of a political entity in the international system, this means that a state is regarded as sovereign when it possesses international legal personality and is a subject of international law, a necessary condition for entering into treaty agreements with other states and or entities. This notion of sovereignty is based on an analogy between states and individuals, deriving its force from the application of liberal political theory to the international realm.⁴⁹

Thus, state sovereignty meant a state's independence and legal impermeability in relation to foreign powers on the one hand and the State's exclusive jurisdiction and supremacy over its territory and inhabitants and be sovereign internally and internationally.⁵⁰

D. Hassan indicated that under feudalism, there was a hierarchical system of power and authority instead of territorial sovereignty and sovereign equality in medieval Europe; sovereigns were divided into following categories: (i) Sovereignty universally recognized as independent, both de-facto and de-jure; (ii) Sovereignty independent in practice but not in juridical theory and (iii) Some states were separately constituted with their own laws and institutions but dependent.⁵¹

The Montevideo Convention on Rights and Duties of States of 1933, Article 1 provides that *"The State as a person of international law should possess the following qualifications: (a) a permanent population; (b) a defined territory; (c) government; and (d) capacity to enter into*

⁴⁸B. Straumann, *The Peace of Westphalia as a Secular Constitution*, Constellations Volume 15, No 2, Blackwell Publishing Ltd., Garsington Road, Oxford, 2008, p.1, available on <http://www.iilj.org/aboutus/documents/straumann.westphalia.pdf> accessed on 26/06/2015.

⁴⁹ Ibid.

⁵⁰ Mihushi Masahiro, *op. cit.*, p. 3.

⁵¹ D. Hassan, *The Rise of the Territorial State and The Treaty Of Westphalia*, 2006, p.4, available on <https://opus.lib.uts.edu.au/research/bitstream/handle/10453/3289/2006006060.pdf?sequenc>, accessed on 26/06/2015.

relations with other States”.⁵² This provision reflects general acceptance of sovereignty by States under international law.

Although, as stated above, it was assumed in history that sovereignty implied the capacity of a given state to be independent and supreme, decolonisation of Africa, Asia, Latin America and the Pacific states has created a new meaning of sovereignty; the new states lacked the wherewithal to exercise sovereignty in a substantive sense, they rather existed as sovereign States through international recognition than as *de facto* sovereign States.⁵³

The low capacity of these decolonised States, especially African States, has caused some to distinguish negative and positive sovereignty from external and internal sovereignty as a way of assessing the reality of independence and jurisdictional supremacy of the states or governments which represent them. In this regard, D. Zormelo considers that a positively sovereign government means a state which enjoys rights of non-intervention and other international immunities and possesses the wherewithal to provide political goods for its citizens. It is also a government that can collaborate with other governments in defense alliances and similar international arrangements and reciprocate in international commerce and finance.⁵⁴

It is the author’s further argument that whilst developing countries insist on their sovereign rights as equal partners in international interactions, they have demanded preferential treatment because of their level of development and hence their lack of the wherewithal to reciprocate in international relations. Their arguments were recognized in some forums like in GATT agreements on trade preferences and other preferences granted by developed countries, as well as the preferential treatment given by the European Union to the African, Caribbean and Pacific States under the Lomé Convention.⁵⁵

⁵² (1934) 165 *League of Nations Treaty Series*, at 19.

⁵³ D. Zormelo, *op.cit.*, p. 11.

⁵⁴ *Ibid.*

⁵⁵ D. Zormelo, *op.cit.*, p. 13.

He also revealed that another argument used by developing countries is that since many of the rules guiding international interaction were formulated before they became independent their interests were not and could not have been taken into account. There are therefore many instances in which their sovereignties are infringed. An example of such infringement is claimed to be the linking of conditionality to financial aid by the developed countries and IFIs.⁵⁶

1.2.2. Trends to restrain sovereignty

As M. Masahiro⁵⁷ points out, international law has developed through increased co-operation among sovereign States in recent years as, for example, in the European Union. International organisation is simply impossible without co-operation among States. International co-operation does indeed depend on a degree of mutual concession among the members of an international organisation, be it the United Nations Organisation, the European Union, the Organisation of American States, the African Union, or whatever.

The author also notes that there have been occasional claims for a fade-out of the Westphalian concept of State sovereignty, but the international community seems to continue to depend on it. The Marxist doctrine once predicted the fate of the concept of sovereign State, but those communist or socialist countries which adopted Marxist teachings and contemporary developing countries, while adopting Marxist teachings in their criticism of the traditional international legal institutions, have tended to reinforce their sense of sovereignty in their dealings with the established international order.⁵⁸

The author further found out that in the world of today, it is noticeable that Russia, in its post-Soviet era and especially under the current leadership, and China under its current leader are trending to be increasingly authoritarian in their oil/gas-motivated or military-geopolitical

⁵⁶ Idem.

⁵⁷ M. Masahiro, *Sovereignty and International Law*, Aichi University, Japan, available on https://www.dur.ac.uk/resources/ibru/conferences/sos/masahiro_miyoshi_paper.pdf, accessed on 30/05/2015.

⁵⁸ Ibid

expansionist diplomatic offensives against their trading or neighbouring countries. Such authoritarian behaviour seems to be backed by a strong sense of sovereignty.

Similarly, we can take, for example, the case of an economically weak developing country. What such a country tries to do is to put up and keep its head above the strong economic waves of the world. In doing so, it is obliged to rely on their sovereignty, a sense of pride as a nation or something considered as equal to that of even the most powerful country. On this, we concur with M. Masahiro that the idea of democracy is prevalent in the world of today, and a small or weak country is theoretically no less equal to the biggest or most powerful country. The theoretical basis for such an idea of democracy is the notion of sovereignty of the State in a world of juxtaposed large and small States.⁵⁹

It is also Masahiro's view that to rely on sovereignty as a fundamental attribute of the State does not necessarily entail exemption from international law either in the form of general international law or treaty obligations. Manifold legal obligations of States co-operating within a network of international instruments may restrain their freedom of action and consequently their exercise of sovereignty, but are in fact a form of exercising their sovereignty and may rather enhance the preservation of their legal status of sovereignty politically and economically. Such obligations neither deprive States of their sovereign status nor diminish it.⁶⁰

Thus, it is generally recognized that from an economic perspective, sovereignty is not absolute. In the classical sense as D. Zormelo points out, sovereignty implies that a ruler or government is master in its own state, and therefore should not be subject to rules made and enforced by others.⁶¹ However, because states interact, certain rules and regulations need to be observed to maintain peace and order in their relations with each other. Besides, such rules cannot be the rules made by any individual state. By necessity such rules must be made by all states participating in the relations they are supposed to govern.

⁵⁹Ibid.

⁶⁰ Ibid.

⁶¹ D. Zormelo, *op.cit*, p. 17.

The author also expressed the view that the fact of interdependence therefore has resulted in a discarding of sovereignty in the classical sense and has been replaced by the concept of relative sovereignty. From the perspective of increased interdependence, therefore, a state is regarded as sovereign if its acts are not subject to any other rules than those of international law. Sovereignty, and the rules and norms that guide it, is an institution which underpins the existence of international society. Changes in its interpretation therefore imply a fundamental change in the structure of international relations.⁶²

It is in this context that IFI comes in with its conditions in order to be sure that the loan granted is been using for the intended objective and that the borrowing country shall be able to pay it back as it is going to be discussed in the following chapter relation to rational of IFI's conditionality.

By conclusion on overview on concepts of conditionality and sovereignty in public international borrowing, we can say that the conditionality has been evolved from the 1980s and has thereafter been incorporated in Articles of Agreement of the World Bank and the IMF and become binding to the borrowing country notwithstanding its sovereignty. Moreover, it is noteworthy that sovereignty started with international law by the Treaty of Westphalian, and has e evolved as States became independent. However, due to the international interdependence and financial needs, it is more relative than absolute.

⁶² Ibid

CHAPTER II: THE RATIONALE FOR INTERNATIONAL FINANCIAL INSTITUTIONS' CONDITIONALITY

When a country borrows from an IFI, its government agrees to adjust its economic policies in accordance with IFI's conditions to overcome the problems that led it to seek financial aid. These loan conditions also serve to ensure that the country will be able to repay the loan so that the resources can be made available to other members in need.⁶³

According to the IMF Articles of Agreement, for example, conditionality plays two roles; one is to providing assurances to members that the committed resources would be available to them upon compliance with agreed policies; the other role is to give the IMF assurance that the borrower will be able to repay the loan granted.⁶⁴

Conditionality in international borrowing has different rationale among others, the commitment models, inducement, a signal of the borrowing country's government type, moral hazard and tied transfers. This Chapter is going to analyse those deferent reasons of IFI conditionality.

2.1. CONDITIONALITY AS COMMITMENT MODELS

As an IMF factsheet paper indicated, conditionality might serve as a commitment device to address time inconsistency problems. The objective of conditionality is to provide credibility. Commitment models treats governments of borrowing countries as unified actors, and their preferred policies might be similar to those preferred by the IMF.⁶⁵

As markets cannot be taken for granted, governments have to pursue appropriate policies while getting loan; governments have incentives to bind themselves in order to minimize risk. According to A. Dreher, this idea has been emerged in the beginning of the 1980 debt-crisis and is based on the observation that high levels of government debt are usually associated with

⁶³IMF, *IMF Conditionality*, Factsheet, April 2015, available on <https://www.imf.org/external/np/exr/facts/conditio.htm>, accessed on 2/05/2015.

⁶⁴ Evaluation of Structural Conditionality in IMF-Supported Programmes, 2005, p. 4, <http://www.ieo-imf.org/ieo/files/issuespapers/051805.pdf>., accessed on 20/06/2015

⁶⁵ Idem.

inefficient policy outcomes; therefore governments face incentives to reduce their reform efforts as a large fraction of the gains from reform would have to be transferred to creditors.⁶⁶ To an IFI, this commitment can lead to increase debt repayments.

The author further argues that a government with debt overhang has to decide whether or not to undertake reforms in order to reduce this overhang. In the absence of external financing, the cost of reform would exceed benefits for the government. If external financing is provided by commercial creditors, governments' promises to reform would not be credible as those promises could not be enforced. Therefore a loan shall only be granted when there is a certainty that the money will change governments' incentives to adjust.⁶⁷ It is understood that this requires that loans granted is higher to cover those adjustment expenses.

It is also his view that the basic idea of this commitment model is that the conditionality provides a partial solution to commitment problem of sovereign borrowing which is characterized by a failure to commit to repayment of debt. This model improves trade policies and the penalties creditors can impose on debtors are modeled to depend on the level of the commitment and implementation of conditions.⁶⁸

In addition, he considers that conditionality as commitment models provides high insights in the incentives of borrowing countries. These insights might have some implications for the design of programs and facilities and the commitment model gives the difference between conditional money and conditionality per se. He argues that if commitment would be the main rationale for conditionality, loan facilities that do not provide access to financial assistance should be strengthened.⁶⁹

As for W.Branson and N.Hanna, they argue that the commitment of the IFI and the borrowing country to support a mutually agreed reform process, is indicated by the level of implementation

⁶⁶A. Dreher, *Op. Cit.*, p.5.

⁶⁷ Ibid.

⁶⁸ Ibid.

⁶⁹ Ibid.

of conditionality rather than an attempt to force externally designed policy changes on unwilling governments. Thus conditionality is reshaped as an instrument of mutual commitment among partners; therefore would be adapted to the different stages of a long-term reform process. Conditionality as a sign of commitment of external support would add to the credibility of domestic reform programs, particularly for the private sector. Thus conditionality as commitment would be part of a virtuous circle in which IFI involvement would contribute to the success and credibility of sustained growth.⁷⁰

In this regard, it is I. Husain and I. Diwan's argument that the commitment model should be viewed to cover investment decisions, consumption decisions in public sector, policy and institutional reforms in order to increase the efficiency of resource use and to increase domestic saving and hence the resources available to finance investment and growth.⁷¹

The authors also are of the view that an IFI is able to provide an effective commitment mechanism using conditional loans because of its capacities in economic analysis, its long-term relationships with borrowing countries and its status as international organisations. The commitment mechanism is made operational by conditioning the IFI's own disbursements on the specific policy actions, linking other lenders' financing and disbursement to the IFI's own actions and through the long-term relationship with the country.⁷² Therefore commitment model is a reasonable success in implementing IFI conditionality.

Conditionality being a sign of commitment of a borrowing country, it induces the borrowing country to make important policies which would not be taken if conditionality was not imposed. This inducing rationale of conditionality is going to be covered by the following section.

⁷⁰ W.Branson and N.Hanna, Ownership and Conditionality, OED Working Paper Series No. 8, Washington, D.C., Summer 2000, available on www.worldbank.org/html/oed accessed on 27/06/2015.

⁷¹ I. Husain and I. Diwan, Dealing with the Debt Crisis, a World Bank Symposium, 1995, available on https://books.google.rw/books?id=UxdnmDBj7EEC&pg=PA221&lpg=PA221&dq=IFI+Conditionality+as+commitment+model&source=bl&ots=echfgBgC6c&sig=n6pUjJhuBly8YAdlmGVz2c5CnXo&hl=fr&sa=X&ei=q3aRVe_eNsbQ7AaLoqKgAQ&ved=0CCgQ6AEwAjgU#v=onepage&q=IFI%20Conditionality%20as%20commitment%20model&f=false accessed on 27/06/2015.

⁷² Ibid.

2.2. CONDITIONALITY AS INDUCEMENT

Another rationale of IFI conditionality is inducement which consists of encouraging borrowing country to do things differently than they otherwise would have, or implement policies which it was supposed to implement.

As A. Dreher points out, “conditional lending is employed to induce governments to pursue policies they would not have chosen without the offer of aid (*bribery*).” Bribing or inducing borrowing country is probably more important in Poverty Reduction and Growth Facility (PRGF) programs, where governments of the poorest countries often pursued policies very different from those preferred by the IFI.⁷³

The author argues that incenting borrowing country by IFI is justified by the need to protect the interests of other borrowers from attempts to improve their welfare at the expense of others; this is referred as beggar-thy-neighbor which means that to some extent, conditionality might have public good characteristics.⁷⁴

As another reason for inducement, the IFI is ought to have superior knowledge and experience to generate better designed policies for the borrowing country; in all those cases, IFI conditionality is employed to induce policies governments would not otherwise want to pursue.

The underlying rationale of conditionality is that the donor provides incentives to the borrowing country for the implementation of policies that would improve the welfare of its citizens. At first it may seem paradoxical that the government needs externally provided incentives to carry out such policies.⁷⁵ Therefore conditionality is used as an inducement where the IFI offers aid as an incentive to change or adopt policies deemed best for the borrowing country.

⁷³A. Dreher, *Op. Cit.*, p.7.

⁷⁴ Ibid.

⁷⁵ International Bank for Reconstruction and Development, Review of World Bank Conditionality: A Literature review, p.3, available on <http://siteresources.worldbank.org/PROJECTS/Resources/40940-1114615847489/webConditionalitysept05.pdf>, accessed on 24/06/2015.

Inducement as the offer of financial support in exchange for the country authorities introducing a certain set of policies as above stated, it is the dominant use of conditionality. Collier et al., as quoted by Omotunde E.G. Johnson, argued that the IFI is buying the policies and hence owns them, not the aid-recipient country.⁷⁶

The most common argument in IFI using conditionality is that conditional money is used to buy reform to induce borrowing country to adopt policies. According to this argument, IFI provides resources to induce country authorities to implement policy changes that they would not otherwise make as above stated.⁷⁷

R. Kanbur, however, argues that it is extremely difficult for IFI as an institution which is acting from outside of the borrowing country, to induce policy reform in a country from the outside, for the outside tail to wag the internal political economy. Therefore this was been the problem with IFI thinking it could do that.⁷⁸

We assume that it is better for IFI to follow the sorts of domestic changes rather than attempt to lead them because only conditionality is not sufficient to induce policy change of a sovereign borrowing country. However, commitment to fulfill the IFI conditionality will identify the type of government of the borrowing country as it is going to be discussed in the next section.

⁷⁶ O.E.G. Johnson, Country Ownership of Reform Programmes and the Implications for Conditionality, No. 35, January 2005, available on http://unctad.org/en/Docs/gdsmdpbg2420052_en.pdf, accessed on 30/06/2015.

⁷⁷ The Independent Evaluation Office, Understanding the Design and Impact of Conditionality: A Brief Look at the Literature, available on http://www.ieso-imf.org/ieso/files/completedevaluations/01032008SC_background1.pdf, accessed on 01/07/2015.

⁷⁸ R. Kanbur, Aid, Conditionality, and Debt in Africa, October 1998, available on http://iad.einaudi.cornell.edu/system/files/Aid_Conditionality_and_Debt_in_Africa.pdf, accessed on 29/06/2015.

2.3. CONDITIONALITY AS SIGNAL OF THE BORROWING COUNTRY'S GOVERNMENT TYPE

Conditions of IFI in international borrowing may signal the type of the borrowing country's government. Arguably, the IFI prefers lending to countries with competent governments and good policies as this might be more productive. Conditions may serve to solve the IFI's selection problem in environments of asymmetrically imperfect information; they help in alleviating adverse selection.⁷⁹ In that sense, conditionality could signal the type of the government to the IFI.

If this would be the rationale of IFI conditionality, IFI arrangements that do not provide money should be strengthened. There would be a role for conditionality but not necessarily for conditional money. By separating conditions from money, the conflict of interest between disbursing the funds promised and monitoring implementation would be eliminated.⁸⁰ In that case, we assume that the signal could become more valuable.

It has also been argued that IFI conditionality might provide a seal of approval to private and official creditors finding it preferable to free-ride on the decisions of the IFI.⁸¹ For example, under IMF, the seal of approval is needed while providing information to private and bilateral lenders. Therefore IFI could signal the governments' type to other potential lenders.

By agreeing to comply with conditionality and implement policies, the borrowing country sends a message to potential private investors on its commitment to implement the required policies and maintain a sound economic environment. This means that endorsing conditionality makes

⁷⁹ A. Dreher and R. Vaubel, *The Causes and Consequences of IMF Conditionality*, p.18, available on http://papers.ssrn.com/sol3/papers.cfm?abstract_id=449180, accessed on 08/06/2015.

⁸⁰ Ibid.

⁸¹ G. Bird, *The international monetary system and the less developed countries*. London: Macmillan, 1978, available on <http://www.palgrave.com/page/detail/the-international-monetary-system-and-the-less-developed-countries-graham-bird/?K=9780333330029>, accessed on 07/06/2015.

the borrowing country establish the credibility and predictability of the policy environment. It also allows the government to distinguish itself from defaulters.⁸²

We find that there are two types of countries, according to what discussed above, one with a high return to investment, and one with a low return. In the presence of a debt-overhang countries might chose a level of investment that is too low, as part of the returns accrues to their creditors. Creditors might then want to offer debt reductions but face the problem of being unable to discriminate among high and low productivity types. If the country is credit-constrained and cannot signal its productivity by buying back part of its debt in order to gain debt relief, IFI conditionality can offer an alternative screening device.⁸³

The signal provided by the IFI's conditionality might also be valuable for official creditors. However, when it comes to official creditors, the story is different. Official lenders tend to lend not only when an IFI program is in place, but also when the IFI provides them with an Assessment Letter. As in all cases the IFI is not involved, there is no real seal of approval by the institution. Instead of profiting from a signal of the type of borrowing country's government, official creditors might be interested in some form of delegated monitoring.⁸⁴

Therefore, we concur with A. Dreher⁸⁵ that the impact of IFI conditionality on official creditors' lending might be different from those on private creditors, this means that the type of borrowing country's government can be interpreted differently due to the interests of lenders, however in all cases the IFI's conditionality gives an insurance that the borrowing country will take precautions in order to pay back; this is referred to as moral hazard which is going to be discussed in the following section.

⁸² International Bank for Reconstruction and Development, Review of World Bank Conditionality: A Literature review, p.3, available on <http://siteresources.worldbank.org/PROJECTS/Resources/40940-1114615847489/webConditionalitysept05.pdf>, accessed on 24/06/2015.

⁸³ S. Marchesi and J. P. Thomas, IMF conditionality as a screening device, February 1997, p.2, available on http://dems.unimib.it/corsi/644/altro/marchesi_thomas_gei_99.pdf, accessed on 01/08/2015.

⁸⁴ Bordo, M. D., Mody, A., & Oomes, N., Keeping capital flowing: the role of the IMF. *International Finance*, 7(3), 2004, available on <https://www.imf.org/external/pubs/ft/wp/2004/wp04197.pdf>, accessed on 07/06/2015.

⁸⁵ A. Dreher, *Op. Cit.*, p.9.

2.4. CONDITIONALITY AS MORAL HAZARD

The other reason of conditionality is to address the problem of moral hazard. In principle, moral hazard arises when the provision of insurance leads the insurant to take actions that increase the probability of bad outcomes. Conditionality may be interpreted as subsidized income insurance against adverse shocks.⁸⁶

It is admitted that the insurance cover induces the potential recipients to take fewer precautions against such damages or even to intentionally generate a crisis. This form of moral hazard may be called direct moral hazard because it looks at the behavior of the direct recipients of insurance payments in this case the governments of the borrowing states.⁸⁷ It ought to be distinguished from indirect moral hazard effects on the lending behavior of creditors.

In the same vein, it is argued that in the relationship between the donor and the recipient, borrower countries chose a certain set of reforms in the first period, interacting with exogenous shocks to an uncertain outcome in the second. Loans are then disbursed in the second period. Reform effort is higher compared to a situation without aid if the donor can credibly commit to a disbursement rule in other words, when donors make credible that funds are released only when conditions have been implemented.⁸⁸ Without a credible commitment to insist on those conditions, however, incentives to reform are reduced, implying a worse outcome for all parties involved.

According to M. Feldstein, the role of moral hazard in the international financial crises of the 1990s has been the subject of much debate following the Asian crisis. Reckless investment behavior in the boom phase was attributed, after the fact, to cronyism, financial opaqueness, deficient supervision, and the moral hazard resulting from government bailout guarantees. In the bust phase, the international rescue packages arranged under the auspices of the IMF were used,

⁸⁶ R. Vaubel, The moral hazard of IMF lending. In A. H. Meltzer (Ed.), *International lending and the International Monetary Fund: a conference in memory of Wilson E. Schmidt*, Washington: Heritage Foundation, 1983,

⁸⁷A. Dreher, & R. Vaubel, *Op. Cit.*, p.18.

⁸⁸ Ibid.

among other things, to help governments implement these bailout guarantees.⁸⁹ Consequently, the presence of international official lending may be a contributing cause of financial crises.

Proposals to address this problem have included abolishing the IFI's conditions, breaking it up, making it more independent, lending only to countries that pre-qualify according to certain conditions, requiring collateral, limiting the size of official bail-outs and/or requiring private sector .bail-ins., and raising interest rates charged.⁹⁰

For T. Lane and S. Phillips, "... *In order to make the case for abolishing or drastically overhauling the IMF, one must show ... that the moral hazard generated by the availability of IMF financing overshadows any potentially beneficial effects in mitigating crises ... Despite many assertions in policy discussions that moral hazard is a major cause of financial crises, there has been astonishingly little effort to provide empirical support for this belief.*"⁹¹

Thus moral hazard is taken to encompass anti-cyclical measures such as interest rates cuts especially in period when the inflation is deemed to be high.

A. Dreher, on his part, has affirmed that "*Net flows (of World Bank lending) are higher prior to elections ... It is shown that a country's rate of monetary expansion and its government budget deficit are higher the more loans it receives ... Moreover, the budget deficit is shown to be larger the higher the interest rate subsidy offered by the (World) Bank.*"⁹²

S. Vaknim pointed out that the antidote to moral hazard is not beast in the capitalistic menagerie or in market discipline. Nor is it regulation. In this regard the author has quoted N. Prize and al that "*.....using capital requirements in an economy with freely determined deposit rates yields ... inefficient outcomes. With deposit insurance, freely determined deposit rates undermine prudent*

⁸⁹ Feldstein, M., Refocusing the IMF. *Foreign Affairs*, March/April, 1998, available on <https://www.foreignaffairs.com/articles/asia/1998-03-01/refocusing-imf>, accessed on 07/06/2015.

⁹⁰Ibid.

⁹¹ T. Lane and S. Phillips, *IMF Financing and Moral Hazard*, June 2001, available on <http://www.imf.org/external/pubs/ft/fandd/2001/06/lane.htm>, accessed on 02/06/2015.

⁹² A. Dreher, *Does the World Bank Cause Moral Hazard and Political Business Cycles?*, Mannheim University, May 2001, available on <http://citeseerx.ist.psu.edu/viewdoc/download?doi=10.1.1.202.5284&rep=rep1&type=pdf>, accessed on 07/06/2015.

*bank behavior. To induce a bank to choose to make prudent investments, the bank must have sufficient franchise value at risk ... Capital requirements also have a perverse effect of increasing the bank's cost structure, harming the franchise value of the bank ... Even in an economy where the government can credibly commit not to offer deposit insurance, the moral hazard problem still may not disappear."*⁹³

We concur with S. Vaknin that moral hazard must be balanced and that in some cases moral hazard is inevitable, especially when the alternative is another great depression. Governments take moral hazard as an insurance premium that is why they prefer to incur its cost. The concrete example is how depositors like to know that their deposits are safe or reimbursable; how investors like to mitigate some of the risk by shifting it to the state; how unemployed persons like to get their benefits regularly; how bankers like to lend more daringly or how governments like to maintain the stability of their financial systems.⁹⁴

Although moral hazard, as above described, is taken as mechanism that used in order to push on change of economic player's behaviour as a result of the alleviation of real or perceived potential costs, governments are willing to act imprudently, safe in the knowledge that the IFI is a lender of last resort, which is often steered by geopolitical considerations, rather than merely economic ones. That is why IFI uses conditionality as tied transfers as it is going to be discussed here bellow.

2.5. CONDITIONALITY AS TIED TRANSFERS

Conditionality of IFI is analogous to the long-standing debate about tied transfers in public economics. For A. Dreher and R. Vaubel, the issue is: should transfers to the poor be subject to restrictions on their use? In the case of the Fund, the transfer or aid is the subsidy implied by the

⁹³ S. Vaknin, Moral Hazard and the Survival Value of Risk, United Press International (UPI), June 2005, available on <http://samvak.tripod.com/pp150.html>, accessed on 02/07/2015.

⁹⁴ Ibid.

difference between the IMF rate of charge and the interest rate which the borrowing government would have to pay on the capital market.⁹⁵

The term tied transfer has been used to indicate that the borrowing country is restricted in the allocation of the resources received. These restrictions may be linked to a project, to commodity or service, or to any other form determined by the IFI but mostly to investments in public infrastructure projects like telecommunications, energy, transport and water services, in all cases tied transfer aims at limiting the borrowing country's policy options, dictated mainly by the growing infrastructure requirements of developing countries.⁹⁶

It was argued that investment in public infrastructure raises the productivity and efficiency of the private sector and, as a consequence, provides a crucial channel for economic growth, development, and higher living standards. In contrary financing the required investment in infrastructure has been proven to be a challenging task for developing countries which have significantly restricted public sector borrowing while their infrastructure requirements have increased steadily and they have end up turning to external financing, in the form of tied transfers, as a significant source of financing public investment.⁹⁷

Tied transfers have been criticized by most economists as they prevent the recipient countries from maximizing their utility and made them uncertain on framework of redistribution by causing large administrative cost. However, tied transfers have also been defended on the grounds of utility maximization must also allow for the donors' preferences. On this point we concur with A. Dreher and R. Vaubel that the restrictions used under tied transfer prevents the recipient country from abusing the money so as to remain dependent on further transfers.⁹⁸

⁹⁵ A. Dreher and R. Vaubel, *op.cit.*, p.17.

⁹⁶ C. Brakman and C. V. Marrewijk, *The Economics of International Transfers*, Cambridge University, UK., December 1998, p133. Available on www.cambridge.org/9780521572149 accessed on 21/07/2015.

⁹⁷ S. Chatterjee and S. J. Turnovsky, *Tied Versus Untied Foreign Aid: Consequences for a Growing Economy* November 2003, available on <http://repec.org/res2004/ChatterjeeTurnovsky.pdf>, accessed on 21/07/2015.

⁹⁸ A. Dreher and R. Vaubel, *op. Cit.*, p.18.

On the other hand, the tied transfer help recipient country to not be treated simply as poor rather than a responsible country which can repay its commitments on international level by transfers justified by some higher purpose. A. Dreher and R. Vaubel have compared this as household by pointing out that *“if the transfers are paid to households, notably families with children, the donors ought to make sure that the father or the parents do not abuse the money. There may be principal-agent problems within the family.”* In this case the borrowing county will apply for a loan only by the truly needy.⁹⁹

To know whether the borrowing country is benefiting from tied transfer we concur with S. Chatterjee and S. J. Turnovsky that the fact that the acceptance of a tied transfer by the borrowing country inevitably obligates it to undertake some internal structural adjustments, and the flexibility it has to do this will determine the capability to pay back the granted loan.¹⁰⁰

To sum up, conditionality, if it works, might prevent the recipient from abusing the money so as to remain dependent on further transfers. Arguably, the effectiveness of conditionality depends both on the recipient governments’ willingness to implement the conditions and its ability to do so. Finally, even if conditionality is implemented as agreed, desired outcomes will be achieved only if the appropriate conditions have been chosen and no exogenous shocks have undermined their impact. On the other hand, however, it is important to analyse the possible impact conditionality, on its turn may have on the sovereignty of the borrowing country, as it is going to be discussed in the next chapter of this work.

⁹⁹ Ibid.

¹⁰⁰ S. Chatterjee and S. J. Turnovsky, *op.cit.*, p.3.

CHAPTER III: IMPACT OF CONDITIONALITY ON BORROWING COUNTRY'S SOVEREIGNTY

Although conditionality is determined to maintain macroeconomic stability and development, it has been alleged to restrict borrower country's sovereignty.¹⁰¹ Thereby, conditional lending has composed a domination of the IFI in national policies.¹⁰²

Having analysed the concept of conditionality and what sovereignty means as well as how it has evolved in modern times in relation to international law and increasing interdependence, this chapter is going to analyse the possible ways that IFI conditionality may affect borrowing country's sovereignty.

3.1. IMPACT OF CONDITIONALITY ON BORROWING COUNTRY'S ECONOMY

Article 1 of the Charter of Economic Rights and Duties of States provides that *“Every State has the sovereign and inalienable right to choose its economic system as well as its political, social and cultural systems in accordance with the will of its people, without outside interference, coercion or threat in any form whatsoever.”*¹⁰³ According to this article, the economic system of a given country shall be determined by the will of its citizens without any external interference. As economy of a given country is very wide, this section is going to analyse the interference of IFI via conditions of privatisation and trade liberalisation.

Privatisation means partial or total transfer of property from the public sector to the private sector by the government.

¹⁰¹ T. Friedman, *The Lexus and the Olive Tree: Understanding Globalization*, New York, Random House, 2000.

¹⁰² E. Denters, New Challenges To IMF Jurisdiction, *Netherlands Yearbook of International Law*, 1998, available on <http://journals.cambridge.org/action/displayAbstract?fromPage=online&aid=5083436>, accessed on 10/ 2015.

¹⁰³ Charter of Economic Rights and Duties of States, GA Res. 3281(xxix), UN GAOR, 29th Sess., Supp. No. 31 (1974) 50, available on http://www.aaas.org/sites/default/files/SRHRL/PDF/IHRDArticle15/Charter_of_Economic_Rights_and_Duties_of_States_Eng.pdf, accessed on 06/07/2015.

According to B. Bull et al., privatisation means any shift of activities or functions from the state to the private sector; and, more specifically, any shift of the production of goods and services from public to private. The author stated that privatisation includes all reductions in the regulatory and spending activity of the state by excluding deregulation and spending cuts except when they result in a shift from public to private in the production of goods and services. He emphasizes that privatisation may not result in less government spending and regulation but on unexpectedly increase them.¹⁰⁴

There are many different forms of privatisation. EURODAD reported that privatisation may be all conditions which stipulate the liquidation, divest, concession, lease, point of sale and voucher of state owned companies. It also reported that privatisation includes immediate prior actions to privatisation such as conditions which call for borrowing country to issue a bid for privatisation of company; to hire staff to oversee bid and draft document for privatisation.¹⁰⁵ Eurodad divided privatisation up into five categories which are water privatisation, energy privatisation, banking privatisation, agriculture privatisation and other privatisation.¹⁰⁶

Legally speaking, privatisation is understood as a transfer of public assets to private ownership, through sale or lease of any public assets like land, infrastructure, and enterprises.

Contrary to some authors, B. Bull et al. insist that privatisation does not aim to improve the business climate or to encourage private sector development, unless privatisation includes the transfer of property or responsibility from the public to the private sector. The authors include the formation of public-private partnerships to the extent that these involve such transfer of property or responsibility. They said that introduction of user fees may be considered a transfer

¹⁰⁴ B. Bull and al., *op. cit.*, p.10.

¹⁰⁵ Eurodad, *World Bank and IMF conditionality: a development injustice*, June 2006.

¹⁰⁶ *Ibid.*

of responsibility for financing public services from the public sector to private persons or entities.¹⁰⁷

Regarding liberalisation, it means any relaxation of previous government restrictions, in areas of social or economic policy or political organisation.¹⁰⁸

According to Eurodad, liberalisation refers to lowering or rationalising tariff systems, removing quantitative restrictions, dismantling controls on goods and services as well as simplification of tariff structures.¹⁰⁹

Liberalisation as a concept of economic policy may include trade liberalisation which means lifting of tariff and non-tariff barriers against foreign trade. It also includes price liberalisation which means the reduction or removal of regulations on prices and reduction or removal of subsidies, Liberalisation again includes the lifting of monopolies and opening for private sector participation in production of goods and services.¹¹⁰

The above said economic policies, privatisation and liberalisation, are exercised by a country with full of sovereignty and will of its people as provided by Article 21 of the Charter of Economic Rights and Duties of States which states that “*Every State has and shall freely exercise full permanent sovereignty, including possession, use and disposal, over all its wealth, natural resources and economic activities.*”¹¹¹

Among conditions imposed by IFI conditionality in international borrowing there those related to trade and financial, mainly liberalisation and privatisation of state owned companies. Recipient governments are forced and pressed to reduce public spending on health, education, and food in order to repay debt, to privatise state owned enterprises, devalue their currencies in order to

¹⁰⁷ B. Bull and al., *op. cit.*, p.11.

¹⁰⁸ T. Mutazu, *World Bank and IMF use of privatisation and liberalisation policy conditionality and its effects on selected recipient countries*, Norwegian Church Aid, April 2007

¹⁰⁹ Eurodad, *op. cit.*, p.29.

¹¹⁰ B. Bull and al., *op. cit.*, p.10.

¹¹¹ See supra note 103, article 21.

cheapen their exports, remove subsidies on agriculture inputs and promote export crops for international market negating their domestic agricultural needs and food security.¹¹² Economic policy conditionality of IFI touches on structural and sensitive issues that are said to be beyond the mandate of the IFI and often not needed to manage crisis in recipient countries.

T. Mutazu points out that “*policy conditionality such as privatisations and liberalizations are not generating sustainable growth, and are often insensitive to social impacts resulting in the burden falling heavily on the poor.*” He added that the effects of those policy conditions have been noticed, dramatically and traumatically, in many developing countries to the extent that IMF/World Bank itself be forced to take note of the disastrous impacts of its policies but instead it has only made few changes like language and words used to the substance of its conditionality.¹¹³

As evidenced above, it is clear that privatisation and liberalisation have never been removed from IMF/World Bank conditionality; they might have been reduced but they are still in loan agreements and even have some priority as there is no any alternative policy to them.

The condition of privatisation is recently appearing in the Greece case, especially in the Greece bailout agreement where the most contentious aspects of the bailout agreement was that Greece will have to put €50bn worth of state assets including utility companies under the control of a special arms-length privatisation fund.¹¹⁴

The bailout deal for Greece states as follow:

On top of that, the Greek authorities shall take the following actions:

- *To develop a significant scaled up privatisation program with improved governance; valuable Greek assets will be transferred to an independent fund that will monetize the*

¹¹² T. Mutazu, *op. cit.*, p.5.

¹¹³ *Idem*, p.5

¹¹⁴ The independent, available on <http://www.independent.co.uk/news/business/news/greece-debt-crisis-live-the-three-most-important-paragraphs-of-the-greece-deal--and-what-they-mean-for-ordinary-greeks-10385830.html>, accessed on 01/08/2015.

*assets through privatizations and other means. The monetization of the assets will be one source to make the scheduled repayment of the new loan of ESM and generate over the life of the new loan a targeted total of EUR 50bn of which EUR 25 bn will be used for the repayment of recapitalization of banks and other assets and 50% of every remaining euro (i.e. 50% of EUR 25bn) will be used for decreasing the debt to GDP ratio and the remaining 50% will be used for investments.*¹¹⁵

The said privatisation fund which is the backbone of the bailout deal would contain €50 billion earned from the privatisation and sale of public assets, the equivalent of a third of Greece's income. The half of money generated by the fund would be used to recapitalise the banks, and the other half will be split between debt repayments and investment. Yet the €50bn valuation is outlandishly high. The IMF estimated that in the past months Greece's saleable state assets were worth around half €50bn per month and that the proceeds from future privatisations are only likely to be €500m a year.¹¹⁶

Privatisation is a standard ingredient in any 'economic reform programme' prescription of the IMF and the World Bank as it is always found in Poverty Reduction Strategy Papers (PRSPs) which are conditions from the World Bank and the Fund and are littered with commitments to privatise.¹¹⁷

Under the Rwandan EDPRS, the privatisation Secretariat established in 2005 identified more than 100 companies for privatisation. As of the end of 2006, 70 enterprises had been privatised and fourteen were in the process of privatisation.¹¹⁸

The World Bank has reported that in Rwanda, a flexible exchange rate was introduced, tariff rates were reduced from and the number of bands was reduced. Liberalisation of the monetary and financial sectors led to the adoption of new currency exchange regulations, the creation of

¹¹⁵ Ibid.

¹¹⁶ Ibid.

¹¹⁷ Ibid.

¹¹⁸ Ministry of Finance and Economic Planning, *the Economic Development and Poverty Reduction Strategy (EDPRS) 2008 to 2012*, September 2007.

private commercial banks, and the privatisation of state-owned banks. The imports, exports and other services were liberalized, and certain restrictions on capital flows were eliminated. In addition, Rwanda has joined the East African Customs Union (COMESA) and the East African Community (EAC).¹¹⁹

The report shows that The Rwandan Government has reduced its role in the market by privatizing numerous state-owned enterprises, including two commercial banks (Banque Commerciale du Rwanda and BACAR), Rwandex (the largest coffee exporter), three tea factories, and Rwandatel (the telecommunication company). However, the privatisation of tea factories has progressed more slowly than planned; and less progress has been made in transforming agriculture and improving economic infrastructure in rural areas.¹²⁰

Although this report was showing the achievements of Rwanda in liberalisation and privatisation; we know that after privatisation of Rwandex and Rwandatel, they became insolvent and were liquidated.¹²¹

This harmful impact has been recognised by the British government and Norwegian government, both of which have formally rejected tying their development aid to privatisation and trade liberalisation conditions. The G8 leaders highlighted the importance of national governments' sovereign right to determine their own national economic policies, revealing the inappropriateness of tying development finance to these types of reforms.¹²²

In sum, as B. Bull et al. point out, conditions of privatisation and liberalisation were generally declined, although they still play a part in some programs as above stated. Whereas the IFI argues that the main focus of conditionality is currently on governance and economic

¹¹⁹ International Bank for Reconstruction and Development, *Rwanda Toward Sustained Growth and Competitiveness*, Volume I: Synthesis and Priority Measures, Report No. 37860-RW, June 1, 2007.

¹²⁰ Ibid.

¹²¹ Judgment No Rcom 0175/011/TC/ Nyge of 18/07/2011 Registrar General vs RWANDATEL LTD; RWANDEX case No RCOM 0896/06/TC/Nyge of 28/08/2006.

¹²² Eurodad report, *op.cit.* p. 3.

management, its orientation has not changed; therefore privatisation and liberalisation are still priorities as IFI conditionality.¹²³

IFIs while granting loans not only impose conditions of privatisation of public institutions and trade liberalisation, they also go further requiring enactment and or amendment of borrowing country's laws to the extent that IFIs require borrowing countries to sometimes act against their own constitution as it is going to be discussed in the next section.

3.2. IMPACT OF CONDITIONALITY ON LAWS OF BORROWING COUNTRY

Although IFI conditionality has different supporting reasons as discussed under chapter two of this work above, it restricts the borrowing country sovereignty as it intended not only to fix balance of payment problems, but also to adjust social welfare of the borrowing country. It is argued that this is inherently dangerous for democracy of the borrowing country because IFI conditionality composed a domination of the IFI in national policies.¹²⁴

The sovereignty of a country is identified by laws which it adopted to govern it, especially the constitution which is a supreme and fundamental law of country. In order to analyse whether conditionality imposed by IFI affects the sovereignty of borrowing country, it is worth analysing to what extend conditionality affects constitution and any requirement to enact new laws and regulations which would not otherwise have been enacted.

3.2.1. Conditions affecting constitutional provisions

Constitution is defined as the fundamental law of a nation or state which is establishing the character and conception of its government, laying the basic principles to which its internal life is

¹²³ B. Bull et al., *op.cit.* p. 17.

¹²⁴ D. ÜNLÜ, *Op. Cit.*, p.9.

to be conformed, organising the government, and regulating, distributing, and limiting the powers of its different organs, and prescribing the extent and manner of the exercise of sovereign powers.¹²⁵ Basing on this definition, the constitution is the highest and fundamental legal instrument of a sovereign state.

IFI is alleged to affect constitutional provisions of borrowing country by including in loan contracts conditions that are contrary to the provisions of the borrower's constitution which is at the core of a state's sovereignty and nationhood.¹²⁶ Therefore, when undertaking IFI policies, the borrowing country has no other choice but to act contrary to its constitution.

A clear example is when the constitution of a given country forbids the privatisation of certain public enterprises and the conditions given by IFI includes privatisation, yet it is provided that a state may not defend its actions or any course of conduct that are inconsistent with IFI agreements by relying on its domestic law or legal system. This statement is found for example in the World Bank's loan agreements with its borrowers which is provided in the General Conditions that the rights and obligations of both parties (the Bank and the borrower) are valid and enforceable "notwithstanding" any contrary law of a state or political subdivision.¹²⁷

In this regard, D. ÜNLÜ states that, although the IFI insists that the conditionality policy has never been compelled on any country, a borrowing country has no bargaining chance because it needs the credit. He also argues that the negotiations are not transparent but are done behind closed doors which he found to not be compatible with the term of "the right to know of the citizens" of a borrowing state. Indeed, although citizens of the member countries repay the debts, they have never have right to ratiocinate and decide the alternatives.¹²⁸

¹²⁵ H.C. BLACK, *black's law dictionary*, 4th ed., St. Paul, Minn. West Publishing Co., 1968, p. 384.

¹²⁶ International Bank for the Reconstruction and Development, *Review of World Bank Conditionality*, September 2005, available on <http://siteresources.worldbank.org/PROJECTS/Resources/40940-1114615847489/webConditionalitysept05.pdf>, accessed on 10/05/2015.

¹²⁷ International Bank for Reconstruction and Development, *IBRD General Conditions*, Section 8.01 and *IDA General Conditions*, Section 7.01.

¹²⁸ D. ÜNLÜ, *op.cit.*, p.10.

In this regard we concur with D. ÜNLÜ that the conditionality does not strengthen democracy which is the base of legitimacy of government because elected legislation members are not a part of deciding IFI's programs; in democratic systems, parliaments should be involved in the negotiating as well as any other process of the concerned loan.¹²⁹

In democratic systems as D. Unlu found out, citizens should be able to observe and know what decisions are taken and how and why they are fixed. Especially, in the negotiations with indebted developing countries, the reforms debated only with their financial ministers. Then, commonly financial ministers sacrifice their economic independence. Generally, developing countries' parliaments and citizens are excluded from the process. Correspondingly, the budgets of such countries are prepared by IFI officers, who are not elected by citizens or not liable to them. Consequently, contrary to the constitution, the IFI designates their future, but the citizens are not aware of it.¹³⁰

Government as a representative of the state derives its power, legitimacy and authority from the citizens. In this regard, Article 21, paragraph 1 of the Universal Declaration of Human Rights states that everyone has the right to take part in the government of his country directly or through chosen representatives . . . It also states in paragraph 2 that the will of the people shall be the basis of the authority of governments; this will shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures.¹³¹

To sum up, although many countries' constitution, including Rwandan constitution, provide that the national development projects have to be ratified by legislation, the parliaments as citizens' elected representatives are not involved in negotiations. Parliaments are critical links between

¹²⁹ Idem, p.10

¹³⁰ Idem, p.11

¹³¹ The Universal Declaration of Human Rights, available on <http://www.un.org/en/documents/udhr/>, accessed on 01/08/2015.

citizens and governments.¹³² If the IFI ignores the involvement of parliaments, the citizens' political rights will also be ignored; therefore the sovereignty as expressed in constitution is affected.

3.2.2. Conditions requiring to enact Laws and Regulations

As stated above, IFIs often ignore the involvement of parliament of borrowing country; parliament can only be involved when conditions imposed by IFIs require enacting of new laws or amending the existing ones.

Conditionality sometimes requires the enactment of a law and/or a regulation as part of the agreed reform program. The World Bank has argued that it is preferable to avoid including a condition in a loan requiring a borrower to enact a law or amend the existing ones. Instead, the condition should require the borrowing country to ensure that draft legislations are submitted to its parliament for approval.¹³³ However, requiring the passage of a law could cause problems between the executive and legislative organs of a borrowing country, because this condition assumes that the legislature will inevitably approve the envisaged legislation and, therefore, undermines the independence of the legislative organ and the principle of separation of power.

It was further argued that there are often situations in conditionality where legislative action is absolutely essential to the viability of a program. In these cases, the IFI may consider asking for this action to be taken as a prior action or as a tranche-release condition. It may be preferable if conditions and tranche-release conditions avoid setting any specific dates for legislative action for such stipulations obviously interfere in sovereign legislative prerogatives.¹³⁴

Generally, laws and regulations to be enacted as per IFI conditionality are relating to Anti-corruption and or accountability laws and regulations. It is believed that the conditions relating to

¹³² P. Norris, *The Growth of Critical Citizens?*, Harvard University, 1999, available on http://www.hks.harvard.edu/fs/pnorris/Acrobat/Critical_ch1.pdf, accessed on 11/06/2015.

¹³³ International Bank for the Reconstruction and Development, *Review of World Bank Conditionality: Legal Aspects of Conditionality in Policy-Based Lending*, September 2005, p. 102.

¹³⁴ *Idem*, p.103.

enactment of accountability and related laws enable citizens to better hold their governments to account, like parliamentary disclosure of budgets for example and conditions which call for external audits of accounts. These conditions include those relate to the way public finance needs to be spent and facilitate greater efficiency in the management of public resources. There is clearly some overlap with public finance management here. However, conditions requiring enactment of anti-corruption laws are conditions that put in place regulatory and institutional mechanisms to fight corruption.¹³⁵

Furthermore, IFI conditionality may require civil service reform by imposing the borrowing country conditions which call for interventions that affect the organisation, employment conditions and/or performance of employees supported by the government budget. Normally civil service status is a sole discretion of a sovereignty country; to impose a government a reform designated by the IFI is a flagrant violation of sovereignty of a borrowing country.¹³⁶

It is also worth mentioning that decentralisation conditions are imposed by IFI by requiring transferring authority and responsibility for public functions from the central government to local governments, quasi-independent government organisations, or the profit or non-profit private sector. Again a government is sovereign to decide the way it will govern its country any external interference shall be interference on country sovereignty.¹³⁷

Consolidating democracy and sustaining economic reform beyond structural adjustment both require strengthening the institutions of governance, enhancing the rule of law and enhancing accountability and transparency. The macro-economic conditionality is not enough, it is gradually reforming institutions and in some instances political systems. It was reported that since 1990, the World Bank has supported legal and judicial reform and decentralisation around

¹³⁵ Eurodad report, *op. cit.*, p.30.

¹³⁶ *Idem*, p.28.

¹³⁷ *Idem*, p.31

the developing world and strengthening other accountability institutions such as ombudspersons and parliamentary oversight bodies.¹³⁸

The IFI tended to avoid the state, circumventing it by strengthening non-state actors and promoting decentralisation and local governance. For good governance to be enhanced, the state must be strengthened. While the state is expected to withdraw from policy interventions and become leaner, the transition usually requires both nimble and robust political institutions that can implement and enforce policy reform and a responsive bureaucracy.¹³⁹

Moreover, the current efforts at reforming and modernising the state focus on the devolution of power to lower levels of government. Decentralisation, which carried the promise of local self-government, has become a major component of IFI conditionality like in the Bank's reform strategies of 1999.¹⁴⁰ According those reform strategies, the modernisation of the state, the fight against corruption, the reform of judiciary, the strengthening of legislatures and the decentralisation of government are now integral parts of the Bank's conditions.

The condition requiring enactment of law is recently found in Greece under Greece bailout agreement which states as follow:

In agreement with Institutions and building on best international practices, a legislative framework should be adopted to ensure transparent procedures and adequate asset sale pricing, according to CECD principles and standards on the management of State Owned Enterprises (SOEs)

With the exception of the humanitarian crisis bill, the Greek government will reexamine with a view to amending legislations that were introduced counter to the February 20

¹³⁸ C. Santiso, Good Governance and Aid Effectiveness: The World Bank and Conditionality, The Georgetown Public Policy Review, Volume 7, Number 1, Fall 2001, p.15, available on http://www.sti.ch/fileadmin/user_upload/Pdfs/swap/swap108.pdf, accessed on 06/07/2015.

¹³⁹ Ibid.

¹⁴⁰ Ibid.

*agreement by backtracking on previous programme commitments or identify clear compensatory equivalents for the vested rights that were subsequently created.*¹⁴¹

Greece has been told that it must pass a series of laws, such as raising VAT rates and cutting pensions. These are known as “prior actions” because European politicians will not restart negotiations without them.¹⁴²

As Greek Finance Minister Euclid Tsakalotos told to MPs, Greece had no choice. He added that "We never said this was a good agreement."¹⁴³

Huffington post reported that the IMF cannot participate in another Greek bailout until Greece and its creditors make difficult decisions on economic reforms and debt relief. Extending loan terms or reducing the debt outright that will allow Greece to pay its bills over time. Huffington post reported that it is always been clear that the IMF will only come in once these conditions are in place.¹⁴⁴

The IMF also wants Athens to enact laws that would overhaul its economy. According to Reuters, the IMF sees debt relief concessions made by the Europeans and economic reforms enacted in Greece as necessary for ensuring Greece can pay back its debts over the long run.¹⁴⁵

To sum up, basing on the conditions imposed by the IFI in international borrowing, the issue of ownership of the financed projects may be raised; the next section will discuss the impact of those conditions on borrowing country ownership.

¹⁴¹ The independent, available on <http://www.independent.co.uk/news/business/news/greece-debt-crisis-live-the-three-most-important-paragraphs-of-the-greece-deal--and-what-they-mean-for-ordinary-greeks-10385830.html>, accessed on 01/08/2015.

¹⁴² Ibid.

¹⁴³ BBC, available on <http://www.bbc.com/news/world-europe-33535205>, accessed on 01/08/2015.

¹⁴⁴ Huffington post, available on http://www.huffingtonpost.ca/2015/07/30/imf-greece-bailout_n_7905500.html, accessed on 01/08/2015.

¹⁴⁵ Reuters, available on <http://www.reuters.com/article/2015/07/30/us-eurozone-greece-imf-idUSKCN0Q421920150730>, accessed on 01/08/2015.

3.3. IMPACT OF CONDITIONALITY ON BORROWING COUNTRY OWNERSHIP

The ‘ownership’ concept, according to D. ÜNLÜ, is identified as “*a commitment to a program of policies, by country official who have the responsibility to formulate and carry out those policies, based on their understanding that the program is achievable and is in the country’s best interest.*”¹⁴⁶ This means that a country does not only own program but also policies accompanying the loan.

The IMF has defined ownership as a willing assumption of responsibility for an agreed program of policies, by officials in a borrowing country who have the responsibility to formulate and carry out those policies, based on an understanding that the program is achievable and is in the country’s own interest.¹⁴⁷

According to the above definition, ownership refers to the implementation, intention and designing of a policy, by the borrowing country regardless of the intervention of the IFI. Among those imposed policies through conditionality include economic policy conditionality which are related to agriculture, rural development, water supply, sanitation, education, health and related domain.

However, as A. Dreher points out, the use of economic policy conditionality seriously infringes upon government sovereignty as well as country ownership; as argued by African Commission in 2005 that development cannot and does not work if policies are shaped by outsiders and forced upon countries, a system which is both ineffective and infringes on national sovereignty and ownership.¹⁴⁸

¹⁴⁶ D. ÜNLÜ, *op.cit.*, p.10.

¹⁴⁷ A. Dreher, *op.cit.* pp.3-4.

¹⁴⁸ Ibid.

The author further notes that the World Bank claims that the system of Poverty Reduction Strategy Papers (PRSPs) has enhanced country ownership, as they are supposedly written and owned by developing-country governments. In contrary, the PRSPs are still subject to IFI approval, and have to incorporate the range of policies, deemed important by the IFI without consider the view of borrowing country as we highlighted in previous sections such as deregulation and liberalisation.¹⁴⁹

It has been alleged that politically weak countries have to accept stronger conditionality than more influential ones. Therefore conditionality is not considering the specific political situation in the borrowing country into account. If conditionality works, it undermines democracy in the recipient countries; that conditions are not enforceable if country authorities do not want to implement them.¹⁵⁰

Mainly, the economic policy conditionality from the IFI as stated in previous section was alleged to undermine democracy and policy ownership. By imposing particular policy choices onto the recipient countries, IFI weakens government's sovereignty and accountability to their own people, and instead make them answerable to unaccountable external institutions for their choice of economic policies, their level of spending on public services and political decisions.¹⁵¹

The IFI would like recipient countries to own the policy conditionality but genuine ownership can only be derived if the countries themselves participate in the making of policies, this is the generally not the case as policies are usually imposed, often against the wishes of the governments and people. The IFI do not present different policy alternatives and their consequences despite the acknowledgement that these are critical factors for establishing ownership.¹⁵²

¹⁴⁹ Ibid.

¹⁵⁰ Ibid.

¹⁵¹ T. Mutazu, *op. cit.*

¹⁵² Ibid.

Eurodad report has found that IFI conditionality is fundamentally flawed. It stated that IFI is not only imposing far too many conditions on poor countries, but also many of the conditions are at best wholly inappropriate, and at worst, harmful to the poor people and undermine national ownership. Even more worryingly, the picture appears to be getting worse not better with the burden of conditionality rising not falling for poor countries.¹⁵³

Basing on the discussion on borrowing country ownership, we find that as time passes, IFI is taking into consideration the criticism raised and it has tried to allow the borrowing country to own the financed project even if it is not such sufficient because still the IFI is imposing conditions which seems to encroach on that ownership.

¹⁵³ Eurodad Report, *op.cit.*

GENERAL CONCLUSION

IFI conditionality in international borrowing is used mainly to ensure that the loan granted shall be repaid. By imposing conditions, also in this work referred to as conditionality, the IFI deems to help the borrowing country in establishing the policies which it would not otherwise adopted. In doing so, the IFI helps the borrowing country in improving its internal governance.. Conditionality is normally provided in the IFI's Articles of Agreement.

On the other hand, the concept of sovereignty in international borrowing is rather relative than being absolute as it was initially deemed to be. This is the result of international conventions and agreements including articles of agreement establishing IFIs, in this work, the IMF and the World Bank. In this case, the international moral principle "*pacta sunt servanda*" applies since States are bound to obey conventions and agreements signed by them.

By signing the loan agreement with the IFI, the borrowing country should know that the loan agreement is in line with the IMF's or World Bank's Articles of Agreement that contain provisions on conditionality.

Conditionality in international borrowing is a negotiated contractual arrangement. However, it is naïve to assume that conflicts of interest and divergent opinions will not exist. Criticisms are as discussed in this work mainly on ownership of the project and on full responsibility for effective use of the loan, among others.

Borrowing countries, especially developing countries including Rwanda, as well as countries which are in deep financial crisis like currently Greece, have no other alternative to get such loan and have no other choice but to accept those conditions that are sometimes very draconian and controversial.

Basing on lack of bargaining power of those poor countries, the IFI does not impose the same conditionality to developed countries as to developing countries and often goes further by imposing conditions of taking some actions which the developing borrowing country's

constitution or governing laws reserve to the power of a specific national organ. In democratic systems, parliaments should be involved in the negotiating process; and any economic policy decisions like whether to privatise public institutions or liberalise trade within the borrowing country, should be made by national governments or citizens representatives.

Therefore, IFI's conditionality in international borrowing may encroach on the borrowing country's sovereignty, more so for developing countries than developed countries.

RECOMMENDATIONS

Basing on the deep analyses of the Conditionality of the International Financial Institutions vis-à-vis the sovereignty of Borrowing Countries which led us to the above conclusion, we recommend that IFIs reduce number of binding and non-binding conditions attached to loan agreements signed especially with developing countries;

IFIs should reduce and, if possible, stop imposing controversial condition policies and allow governmental institutions to exercise stronger ownership via implication of the parliament or any other body composed by members elected by citizens of the borrowing country as conditionality is not a convenient method for strengthening democracy.

IFIs should also treat States equally without distinction as was recently reported on refusal of granting loan to Zimbabwe,¹⁵⁴ because all States are equal on eyes of international law; therefore IFIs should be more flexible in enforcement of conditionality.

¹⁵⁴ Public finance international, available on <http://www.publicfinanceinternational.org/news/2014/09/imf-rules-out-further-loans-zimbabwe>, accessed on 01/08/2015.

BIBLIOGRAPHY

INTERNATIONAL AGREEMENTS

1. International Bank for Reconstruction and Development Articles of Agreement of 1944 as amended.
2. International Development Association Articles of Agreement of September 24, 1960.
3. Articles of Agreement of the International Monetary Fund of December 27, 1945 as amended up to date.
4. Charter of Economic Rights and Duties of States, GA Res. 3281(xxix), UN GAOR, 29th Sess., Supp. No. 31 (1974) 50, available on [http://www.aas.org/sites/default/files/SRHRL/PDF/IHRDArticle15/Charter_of Economic Rights and Duties of States Eng.pdf](http://www.aas.org/sites/default/files/SRHRL/PDF/IHRDArticle15/Charter_of_Economic_Rights_and_Duties_of_States_Eng.pdf), accessed on 26/06/2015.
5. Treaty of Westphalia, October 24, 1648, available on http://www.google.rw/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&ved=0CBoQFjAA&url=http%3A%2F%2Fmercury.ethz.ch%2Fserviceengine%2Ffiles%2FISN%2F125308%2Fpublicationdocument_singledocument%2Ff4f69a17-f61f-4ac1-85cd-ccdc206b87f4%2Fen%2F057.pdf&ei=bOiPVdOnCqyP7Ab1pqyYAg&usq=AFQjCNGO OTL0pO_xYhklfK3nCey3K8s-rg&sig2=NQJiDqZIV0-dpw72q6hfQ, accessed on 27/06/2015.

BOOKS AND ARTICLES

1. Barro R. J. & Jong-Wha Lee, *IMF Programs: Who Is Chosen and What Are the Effects?*, April 2003.
2. B. Bull et al., *The World Bank's and the IMF's use of Conditionality to Encourage Privatization and Liberalization: Current Issues and Practices*, Oslo Conditionality Conference, November 2006, available on https://www.regjeringen.no/globalassets/upload/kilde/ud/rap/2006/0164/ddd/pdfv/300495-7final_conditionality_report.pdf, accessed on 10/06/2015.

3. Bird G., *The international monetary system and the less developed countries*. London: Macmillan, 1978, available on <http://www.palgrave.com/page/detail/the-international-monetary-system-and-the-less-developed-countries-graham-bird/?K=9780333330029>, accessed on 07/06/2015.
4. Black H.C., *Black's Law Dictionary*, 4th ed., St. Paul, Minn. West Publishing Co., 1968.
5. Bordo M. D., Mody, A., & Oomes, N., Keeping capital flowing: the role of the IMF. *International Finance*, 7(3), 2004, available on <https://www.imf.org/external/pubs/ft/wp/2004/wp04197.pdf>, accessed on 07/06/2015.
6. Branson W. and Hanna, N., Ownership and Conditionality, OED Working Paper Series No. 8, Washington, D.C., Summer 2000, available on www.worldbank.org/html/oed accessed on 27/06/2015.
7. Denters E., New Challenges To IMF Jurisdiction, *Netherlands Yearbook of International Law*, 1998, available on <http://journals.cambridge.org/action/displayAbstract?fromPage=online&aid=5083436>, accessed on 10/ 2015.
8. Dreher A., *IMF and Economic Growth: The Effects of Programs, Loans, and Compliance with Conditionality*, November 2004.
9. Dreher A., *IMF conditionality: theory and evidence*, *Public Choice*, 2009, 141:233–267, available on <http://www.rrojasatabank.info/dreher2006.pdf>, accessed on 20/05/2015.
10. Dreher A., *Does the World Bank Cause Moral Hazard and Political Business Cycles?*, Mannheim University, May 2001, available on <http://citeseerx.ist.psu.edu/viewdoc/download?doi=10.1.1.202.5284&rep=rep1&type=pdf>, accessed on 07/06/2015.
11. Dreher A., & Vaubel, R., The Causes and consequences of IMF conditionality. *Emerging Markets Finance and Trade*, 40(3), 2004. http://papers.ssrn.com/sol3/papers.cfm?abstract_id=449180, accessed on 26/06/2015.
12. Easterly W., *IMF and World Bank Structural Adjustment Programs and Poverty*, University of Chicago Press, January 2003, available on <http://www.nber.org/chapters/c9656>.

13. Feldstein M., Refocusing the IMF. *Foreign Affairs*, March/April, 1998, available on <https://www.foreignaffairs.com/articles/asia/1998-03-01/refocusing-imf>, accessed on 07/06/2015.
14. Friedman T., *The Lexus and the Olive Tree: Understanding Globalization*, New York, Random House, 2000.
15. Hassan D., *The Rise of the Territorial State and The Treaty Of Westphalia*, 2006, available on <https://opus.lib.uts.edu.au/research/bitstream/handle/10453/3289/2006006060.pdf?sequence>, accessed on 26/06/2015.
16. Head J. W., *law and policy in international financial Institutions: the changing role of law in the IMF and the Multilateral Development Banks* available on <https://kuscholarworks.ku.edu/bitstream/handle/1808/6695/Head%2017KanJLPubPol194.pdf?sequence=1>, accessed on 28/02/2015.
17. Husain I. and Diwan, I., *Dealing with the Debt Crisis*, a World Bank Symposium, 1995, available on https://books.google.rw/books?id=UxdnmDBj7EEC&pg=PA221&lpg=PA221&dq=IFI+Conditionality+as+commitment+model&source=bl&ots=echfgBgC6c&sig=n6pUjJhuBly8YAdlmGVz2c5CnXo&hl=fr&sa=X&ei=q3aRVe_eNsbQ7AaLoqKgAQ&ved=0CCgQ6AEwAjgU#v=onepage&q=IFI%20Conditionality%20as%20commitment%20model&f=false accessed on 27/06/2015.
18. IMF, Strategy, Policy, and Review Department, *2011 Review of Conditionality Background Paper 1: Content and Application of Conditionality*, June 18, 2012.
19. International Bank for Reconstruction and Development, Archived: Operational Manual, available on <http://web.worldbank.org/WBSITE/EXTERNAL/PROJECTS/EXTPOLICIES/EXTOPMANUAL/0,,contentMDK:23386490~menuPK:51508119~pagePK:64141683~piPK:4688102~theSitePK:502184,00.html>, accessed on 30/10/2013.
20. International Bank for Reconstruction and Development, The World Bank Operations Policy and Country Services, *Conditionality in Development Policy Lending*, November 15, 2007. International Bank for Reconstruction and Development, *Review of World Bank*

- Conditionality: Legal Aspects of Conditionality in Policy-Based Lending*, September 2005.
21. Kanbur R., *Aid, Conditionality, and Debt in Africa*, October 1998, available on http://iad.einaudi.cornell.edu/system/files/Aid_Conditionality_and_Debt_in_Africa.pdf, accessed on 29/06/2015.
 22. Killick T., *Did Conditionality Streamlining Succeed?*, available on <http://siteresources.worldbank.org/PROJECTS/Resources/Session1gDidConditionalityStreamliningSucceedTony.pdf>, accessed on 18/04/2015.
 23. Lamdany R. and J Hamann, J., *Structural Conditionality in IMF-supported Programs*, Oslo, January 2008.
 24. Lane T. and Steven Phillips, S., *IMF Financing and Moral Hazard*, June 2001, available on <http://www.imf.org/external/pubs/ft/fandd/2001/06/lane.htm>, accessed on 02/06/2015.
 25. Leckow R., Assistant General Counsel International Monetary Fund, *Conditionality in the International Monetary Fund*, May 7, 2002.
 26. Legal Vice Presidency World Bank, *Review of World Bank Conditionality: Legal Aspects of Conditionality in Policy-Based Lending*, June 29, 2005.
 27. Masahiro M., *Sovereignty and International Law*, Aichi University, Japan, available on https://www.dur.ac.uk/resources/ibru/conferences/sos/masahiro_miyoshi_paper.pdf, accessed on 30/05/2015.
 28. McLean E. and Schneider, Chr., *limits of Informal Governance? The Scope of Conditionality in the World Bank*, Princeton University, 2014, available on http://wp.peio.me/wp-content/uploads/2014/04/Conf7_McLean-Schneider-30.08.2013.pdf, accessed on 26/06/2015.
 29. Mutazu T., *World Bank and IMF use of privatisation and liberalisation policy conditionality and its effects on selected recipient countries*, Norwegian Church Aid, April 2007.
 30. Norris P., *The Growth of Critical Citizens?*, Harvard University, 1999, available on http://www.hks.harvard.edu/fs/pnorris/Acrobat/Critical_ch1.pdf, accessed on 11/06/2015.
 31. Omotunde E.G. Johnson, *Country Ownership of Reform Programmes and the*

- Implications for Conditionality, No. 35, January 2005, available on http://unctad.org/en/Docs/gdsmdpbg2420052_en.pdf, accessed on 30/06/2015.
32. Polak J., "The World Bank and the IMF: A Changing Relationship" in, *the World Bank: Its First Half Century* vol. 2, 473-523, 486.
 33. Santiso C., Good Governance and Aid Effectiveness: The World Bank and Conditionality, *The Georgetown Public Policy Review*, Volume 7, Number 1, Fall 2001, available on http://www.sti.ch/fileadmin/user_upload/Pdfs/swap/swap108.pdf, accessed on 06/07/2015.
 34. Stone R.W., *the Scope of IMF Conditionality*, IO Foundation, 2008.
 35. Straumann B., *The Peace of Westphalia as a Secular Constitution*, Constellations Volume 15, No 2, Blackwell Publishing Ltd., Garsington Road, Oxford, 2008, available on <http://www.iilj.org/aboutus/documents/straumann.westphalia.pdf> accessed on 26/06/2015.
 36. ÜNLÜ D., "Is Conditionality for Loans From International Financial Institutions a Legitimate Way to Influence National Policies?", in *Ankara Bar Review*, 2013/2.
 37. Vaknin S., Moral Hazard and the Survival Value of Risk, United Press International (UPI), June 2005, available on <http://samvak.tripod.com/pp150.html>, accessed on 02/07/2015.
 38. Vaubel R., The moral hazard of IMF lending. In A. H. Meltzer (Ed.), *International lending and the International Monetary Fund: a conference in memory of Wilson E. Schmidt*, Washington: Heritage Foundation, 1983.
 39. Zormelo D., *Is Aid Conditionality Consistent With National Sovereignty?*, Overseas Development Institute, 17/021997, available on <http://www.odi.org/sites/odi.org.uk/files/odi-assets/publications-opinion-files/7018.pdf>, accessed on 02/05/2015.

REPORTS

1. Action for Solidarity Environment Equality and Diversity, *World Bank Conditionalities. Poor Deal for Poor Countries*, Amsterdam 2008, p 10, available on

http://www.aseed.net/pdfs/ASEED_Report_on_Worldbank_Conditionalities.pdf,
accessed on 01/06/2015.

2. Eurodad, *World Bank and IMF conditionality: a development injustice*, June 2006.
3. International Monetary Fund, *IMF Conditionality*, Factsheet, April 2015, available on <https://www.imf.org/external/np/exr/facts/conditio.htm>, accessed on 2/05/2015.
4. International Monetary Fund, *IMF Conditionality*, Factsheet, October 1, 2013, available on <http://www.imf.org/external/np/exr/facts/pdf/conditio.pdf>, accessed on 30/10/2013.
5. International Monetary Fund *The IMF's Contingent Credit Lines (CCL)*, Factsheet, March 2004, available on <http://www.imf.org/external/np/exr/facts/ccl.htm>, accessed on 09/06/2015.
6. International Monetary Fund, Guidelines on Conditionality, [Decision No. 6056-\(79/38\), March 2, 1979; SDSD, part 2, p.39](#) available on <http://www.imf.org/external/np/pdr/cond/2001/eng/guide/>, accessed on 22/05/2015.
7. International Monetary Fund and International Bank for Reconstruction and Development, *Strengthening IMF-World Bank Collaboration on Country Programs and Conditionality*, Progress Report, August 19, 2002.
8. International Monetary Fund and International Bank for Reconstruction and Development, *Strengthening IMF-World Bank Collaboration on Country Programs and Conditionality*, Progress Report, February 24. 2004.
9. International Monetary Fund, *IMF conditionality*, Factsheet, April 2015.
10. International Bank for the Reconstruction and Development, *Rwanda Toward Sustained Growth and Competitiveness*, Volume I: Synthesis and Priority Measures, Report No. 37860-RW, June 1, 2007.
11. Ministry of Finance and Economic Planning, *The Economic Development and Poverty Reduction Strategy (EDPRS) 2008 to 2012*, September 2007.
12. Ministry of Finance and Economic Planning, *The Economic Development and Poverty Reduction Strategy (EDPRS) II 2013 to 2018*, May 2013.

DECIDED CASES

1. Registrar General v. RWANDATEL LTD Judgment No RCOM 0175/011/TC/ Nyge of 18/07/2011, unpublished.
2. RWANDEX case No RCOM 0896/06/TC/Nyge of 28/08/2006, unpublished.