Strengthening the African Financial Architecture: Why African Multilateral Financial Institutions Should have the same Preferred Creditor Status as MDBs

By:

Olabisi D. Akinkugbe

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Introduction

In July 2024 in Tunisia, the African Union’s Ministers of Finance and Central Bank Governors, at the African Union Specialized Technical Committee on Finance, Monetary Affairs, Economic Planning and Integration Meeting emphasized the critical role of African Multilateral Financial Institutions**[1]** (AMFIs) as pillars of the continental financial architecture, and affirmed that the rights conferred on the AMFIs by African governments under the treaties establishing them, including the preferred creditor status, are crucial to financing Africa’s development.

The Ministerial declaration affirmed the importance of the rights conferred on AMFIs by African Governments, including Preferred Creditor Status (PCS) as crucial for reducing borrowing costs and deepening capital markets.**[2]** The Ministers of Finance and Central Bank Governors therefore urged African Union (AU) Member States to uphold their commitments to AMFIs and respect their treaty obligations, and further recommended that the AU Assembly mandate the African Union Commission (AUC) to work with the Alliance of African Multilateral Financial Institutions in engaging key stakeholders, including the G20. Treating AMFIs as MDBs with PCS is germane to the capacity of these institutions to continue to fulfil their mandates.

More recently, the preferred creditor status (PCS) of African Multilateral Financial Institutions (AMFIs) has been questioned by Bretton Woods institutions. This query arose during restructuring process of some African states' loans. As a result of this query, AMFIs loans were described as private lenders. This has dire ramifications for AMFIs, African states relations with these institutions, and the objective of achieving a sustainable, effective, and efficient African Financial Architecture.

In this essay, I make four core arguments on why AMFIs**[3]** are multilateral development banks that must be treated as such on their own terms and with benefits – including PCS that allows the AMFIs to function optimally. Accordingly:

i) African Multilateral Financial Institutions should be treated as MDBs with PCS because it is inherent in their lending practice.

ii) African Multilateral Financial Institutions' rates reflect the costs and risks associated with their role in areas with critical financial gaps.

iii) The PCS of AMFIs is not up for determination merely by the "recognition by other creditors".

iv) The Reform of the Global Financial Architecture is incomplete without strong regional development banks such as the AMFIs that strengthen the African Financial Architecture.

Notably, the AMFIs collaborated and launched the Alliance of African Multilateral Financial Institutions (AAMFIs) in February 2024.

Preferred Creditor Status

A preferred creditor in the international financial system is a sovereign or organization that is exempt from participating or that has priority in being repaid in debt-restructuring arrangements if a debtor finds themselves in debt distress. PCS is one of the key drivers of multilateral lenders’ financial strength. For international financial institutions with PCS, their loans would not be subject to write-downs during debt restructurings. Accordingly, the loans offered by multilateral development banks (MDBs) would be exempt from restructuring arrangements.

Since its origins, the legal basis of PCS has been questioned. Importantly, there is no legal basis for PCS. Occasionally, the preferred treatment of international financial institutions has also been called into question.**[4]** PCS is a market practice that is not grounded in contractual undertakings nor in international law.**[5]** It is widely accepted that MDBs, amongst other IFIs, maintain PCS. The phenomenon of PCS is a market convention as opposed to an express assertion or presumptive recognition by an institution endowed with authority to confer such a status. Thus, the current imposition of international PCS is *de facto*, or a matter of fact, rather than *de jure*, a matter of law. For many MDBs, PCS is not expressly embedded in their articles of association or agreement. PCS can thus be a derivative of the practices of the relevant MDB and its borrowers as granted by member country shareholders or a consequence of the establishing treaties - even though it was not expressly indicated. PCS is one of the key drivers of multilateral lenders’ financial strength.

As children of necessity, AMFIs are pivotal to Africa’s socio-economic development agenda. Today, AMFIs play a critical role in supporting the pursuit of development aspirations that are aligned with the vision of the relevant African states.**[6]** They have become an indispensable aspect of Africa’s financial architecture. In turn, the African financial architecture is an integral part of Africa’s agenda of continental renaissance and long-standing vision of collective self-reliance.

African Multilateral Financial Institutions' Preferred Creditor Status Derive from their Establishing Treaties and not "recognition by Other Creditors"

There is a fundamental divergence of views between the perspectives of the AMFI and the IMF on the characterization of PCS. Whereas AMFIs conceptualize their PCS as a consequence that flows implicitly from their establishing treaties and practices, the IMF and other Bretton Woods institutions have a set of criteria that does not capture the essence of the AMFIs. On the one hand, AMFIs argue that they have PCS because of their practices and the treaties that establish them. On the other hand, the IMF argues that PCS is derived from the recognition of third parties, including the IMF and other creditors. AMFIs argue further that their PCS does not derive from third party recognition. The African Union has reinforced the position of the AMFIs that they have PCS.

AMFIs, such as AfreximBank, are a creation of treaties by African sovereign states and offer financing and ancillary services towards accelerating Africa's development and closing the deep financing gaps in trade and infrastructure. Embedded in the treaty establishing the AMFIs and to enable them to effectively fulfill their mandates, AMFIs were granted special rights, privileges and in most cases, diplomatic immunities to safeguard and protect their assets and operations, including PCS to protect the valuable capital that African countries invested in these institutions. Consequently, calls for "international community – led by the G20 – to clarify the status"**[7]** of multilateral financial institutions such as the AMFIs miss the mark.**[8]**

In context, the African financial architecture and AMFIs are Africa's response to the contemporary global financial architecture with privileged hierarchies that have historical roots in the post-colonial order of the post-Second World War era. Their emergence, and strengthening bodes well for Africa's international financial political economy. As such, an ahistorical approach to analyzing the origins, roles, status and treatment of AMFIs creates a presumed sense of superiority in comparison to other MDBs. Further, such an approach deepens the privilege and the structural and inequity issues in the current international financial architecture.**[9]**

AMFI PCS is therefore not derived merely from “recognition by other creditors”. For AMFIs, PCS questions strike at the heart of the existence and operations of the banks to meet their mandates. The establishment of these AMFIs and the granting of the institutions, rights and privileges, including juridical personality, was a sovereign exercise by the state parties to their establishment agreements collectively. In other words, a state party that fails to respect the privileges, immunities and rights conferred on these institutions by their treaties would be in clear breach of its treaty and domestic law obligations, especially when the treaties have been domesticated and incorporated into national law as part of the ratification process.

Flowing from the foregoing, African countries that are involved in debt restructuring should be wary of being encouraged to breach obligations in relation to their AMFI loans. For example, *Article IX (2)* of the Afreximbank Establishment Agreement (Treaty) provides that the Bank’s property, assets, operations and activities shall be free from restrictions, regulations, supervision or controls, moratoria and other legislative, executive, administrative, fiscal and monetary restrictions of any nature, in participating states. Similar provisions are found in other AMFI treaties. To this effect, participating states that have ratified such Agreements are legally constrained from including the AMFIs and their assets in restructuring arrangements, as such a restructuring would by its very nature, impair and restrict a key asset of the AMFI.

In addition, *Article XV* of the Afreximbank treaty guarantees that the Bank in its participating states, would enjoy treatment that is at least as favorable and shall enjoy all fiscal exemptions, financial facilities, privileges and concessions granted to international organizations, banking establishments and financial institutions by the Participating States. Consequently, countries that have signed and ratified such a treaty are legally obligated to provide the Bank, treatment that is no less favorable, than that which they provide to any financial institution or international organization, including the World Bank, IMF or any other MDB.

Hence, not according AMFIs equal treatment like other MDBs with PCS is not only dispiriting; it is dangerous, fundamentally anti-development, and risks entrenching African nations’ financial woes.

African Multilateral Financial Institutions' rates reflect the costs and risks associated with their role in areas with critical financial gaps

As multilateral lenders, AMFIs provide important alternative financing for African countries. The uniqueness of the AMFIs, the Alliance of African Multilateral Financial Institutions (AAMFIs) and their lending practices to African states lies in their core alignment with the economic realities and needs of African states. AMFIs understand the economic vulnerability that dominates the financial landscape of African countries and increasingly offer products that respond to the challenges that African states confront.

The AAMFI, or the Africa Club, was launched during the thirty-seventh African Union Assembly of the African Union Heads of State in Addis Ababa in February 2024. Members of the AAMFI include the African Export Import Bank, the Africa Finance Corporation, the Africa Reinsurance Corporation, the Trade and Development Bank, the Shelter Afrique Development Bank, the ZEP- RE (PTA Reinsurance Company), and the African Trade and Investment Development Insurance Agency. This category excludes the African Development Bank because its shareholding structure includes a significant portion held by non-Africa shareholders, mainly developed economies. AfreximBank is the interim Secretariat of the Alliance. In July 2024, the Governing Council of the AAMFI met on the margins of the African Union's sixth Mid-Year Co-ordination Meeting and welcomed two new members: the African Solidarity Fund and the East African Development Bank.

The AAMFI was established to promote collaboration, cooperation, and coordination among the multilateral financial institutions owned and managed by Africans and established by treaty to support Africa's economic development and integration objectives. The AAMFI will collaboratively develop tailored solutions and financing tools to meet Africa's unique developmental needs while amplifying the voices of member states and shareholders on the global stage. The AAMFI aspires to address the peculiar needs of African states and expedite their access to essential financing mechanisms in ways that do not require unfair and asymmetrical conditions. The AAMFI is a response to the inadequacies of the global financial architecture and seeks to promote African finance development needs and advocate for Africa at the international level. Seen in its proper context, the AAMFI is not only an alternative source of financing for African states, but it also paves the way for a new era of inclusive, self-reliant, and sustainable financial development.

The AAMFI is a catalyst to addressing the deficit of inequitable and unjust governance in the global financial architecture. Beyond the role of AAMFIs as bulwarks against imperialist international financial lending practices, the AAMFI offers an important springboard for African states to re-order their voice, representation, and participation in a global financial architecture that otherwise does not prioritize their socio-economic development interests. Further, the AAMFI shores up Africa's vulnerability in a fast-increasing unfavourable global economy. The success of the alliance portends the emergence of a potential regionally influential financial institution that does not entrench African states in a path dependency that is dominated by the IMF and the World Bank and entrapment in the cycles of indebtedness. The AAMFI offers an endogenous panacea to African-centred solutions for African challenges.**[10]**

Consequently, while AMFIs may sometimes charge competitive market rates, these rates reflect the cost of funds, and the risk premiums imposed on African countries—not an underlying commercial agenda. In fact, African nations, especially middle-income countries, often face similar or even higher interest rates from non-regional MDBs for less productive projects. Furthermore, these non-regional MDBs frequently impose policy conditions that can be costly and painful for citizens, whereas AMFIs do not impose such conditions, offering more tailored and flexible financing.

AMFIs financing packages**[11]** are a direct response to the flawed economic and financing models in Africa. AMFIs fill critical financing gaps that other institutions often neglect, and they are uniquely aligned with Africa's development aspirations, focusing on stimulating economic growth and driving structural transformation. This is a strength that must and should be accorded for the development cascading effect they have on the continent. While AMFI's continue to strengthen, they strive to offer lower interest rates than the market and reinvest their profits to support grants and concessional funding.

The Preferred Creditor Status (PCS) of AMFIs is inherent in their lending Practices and not up for determination simply by the

constitution of their Shareholding and Profitability

In comparison to Eurobond lenders, AMFIs were established specifically to address financing gaps in Africa, particularly where other financing options are unavailable or too expensive. In many cases, AMFI financing is the most affordable option available to financially/economically challenged African countries for specific projects. Indeed, in some situations, it is the only viable option because of the unfair risk premiums imposed on African borrowers by international markets.

Importantly, it should therefore go without saying that if the African Financial Architecture is to be deeply entrenched an strengthened beyond its ongoing important works, the operability and profitability of the institutions are essential to continuing to meet those objectives. Hence, while the IMF and others have opined that some AMFIs should not be granted PCS because they are profitable and pay dividends to shareholders including special categories of private sector shareholders, the value of such variation in the capital structure of the AMFIs must be analyzed in the context of Africa's long history of poor access to funds. The private sector shareholding of AMFIs offers an important avenue for the raising capital for MDBs that are set up by "poor countries" who would not otherwise have been able to build resilient financial institutions. As such, rather than seen as a factor that hurts their PCS, the special categories of private sector shareholders in AFMIs should be recognized for what it is: a core way that the goal of self reliant and meaningful alternative African Financial Architecture can be achieved.

Where cheaper alternatives are available, African borrowers will not willingly opt for more expensive African financing. Notably, AMFIs exist precisely because global financial systems often fail to offer affordable, sustainable financing to African nations. AMFIs have been instrumental in challenging these unfair risk premiums and working to create more equitable financial conditions for African countries. Furthermore, AMFIs are designed to operate on a financially sustainable model, with profits being reinvested to further capitalize and strengthen the institutions. This is a necessary approach, given the capital constraints faced by African states.

Punishing the AMFIs for operating profitably and sustainably undermines their ability to serve their intended purpose. Instead, maintaining their PCS is essential to their continued ability to provide affordable, development-focused financing and to reduce Africa's dependence on more expensive external lenders.

The Reform of the Global Financial Architecture is incomplete without strong regional development banks such as the AMFIs that strengthen the African Financial Architecture

The argument that AMFIs do not provide concessional loans and, therefore, should not have PCS overlooks the structural challenges they confront. Unlike institutions such as the IMF or World Bank, AMFIs are primarily funded by relatively poorer African member states, which limits their ability to raise consistent capital and provide concessional financing on a large scale. If AMFIs had access to the same resources and privileges as these larger institutions, they would be in a better position to offer concessional loans.

Given the barriers that African states confront in raising capital affordably, safeguarding the PCS of AMFIs should be everyone's priority. Recognizing and maintaining PCS for AMFIs strengthens their ability to attract more favorable financing, which, in turn, enhances their potential to offer concessional lending in the future. This support is crucial for filling development gaps across Africa and aligns with the vision for African financial independence laid out in Agenda 2063.

Despite these challenges, several AMFIs are already making efforts to establish concessional financing windows, even in the face of high financing costs. Continuing to support AMFIs through the recognition of PCS is not only fair but essential for their growth and evolution into the robust financial institutions Africa needs for sustainable development.

Conclusion

Strengthening the institutions of the African Financial Architecture is critical to the financial sovereignty of Africa and its states. The preservation and promotion of diversity in the global financial architecture is essential – safeguarding the full and effective functioning of AMFI's by not weakening them is critical to such futures.

Given the impact of PCS on the financial stability of financial institutions, characterizing AMFIs as institutions with no PCS portends dire consequences for the African financial architecture. Likewise, it would negatively affect the critical roles that the AMFIs play, especially when African states are confronted with emergencies. Accordingly, the AMFIs' financial strength may be undermined without PCS. The implications that arise from such classifications impact three core constituencies: Africa states; AMFIs; and continental development projects, especially as envisaged by the African Union Agenda 2063. To be clear, a potential unequal treatment of AMFIs would widen the gap and capacity of the financial institutions in Africa to offer a meaningful alternative to the Western-dominated international financial architecture.

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* A*ssociate Professor & Purdy Crawford Professor of Business Law, Schulich School of Law, Dalhousie University. Allan Rock Visiting Professor of Law, Faculty of Law – Common Law, University of Ottawa. Co-Founder and Editor, www.afronomicslaw.org. Co-Convenor: The African Sovereign Debt Justice Network. Email: Olabisi.akinkugbe@gmail.com*.

[1] They include: the African Export Import Bank; Trade and Development Bank; Africa Finance Corporation; African Reinsurance Corporation (Africa Re); and African Trade and Investment Development Insurance.

"AMFIs have broad ownership and participation by African states and have had a growing impact on financing and investment in the continent since their establishment. Collectively, AMFIs now hold assets more than US$53 billion, attracting equity investment of over US$8.6 billion, primarily from African countries, to support African growth and resilience. AMFIs are among the leading supporters of African integration through trade, investment, and infrastructure financing to help implement the AfCFTA and Agenda 2063."

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[2] Marc Jones, "Smaller African Development Banks Preferred Credit Status under threat, JPMorgan warns", *Reuters*, June 17, 2024. Online: https://www.reuters.com/world/africa/smaller-african-development-banks-preferred-credit-status-under-threat-jpmorgan-2024-06-17/; The Alliance of African Multilateral Financial Institutions welcomes African Union (AU) ministers' decisions on African Multilateral Financial Institutions' preferred creditor status. (2024, Aug 01). http://www.africa-newsroom.com/press/aamfi-welcomes-au-ministers-decisions-onafrican-multilateral-financial-institutions-preferred-creditor-status?lang=en. *See generally*, Tito Cordella and Andrew Powell, "Preferred and Non-Preferred Creditors", Journal of International Economics 132 (2021) 103491.

[3] This essay is part of my on-going project on the subject of African Multilateral Financial Institutions. *See generally*, Akinkugbe, Olabisi D., "African Financial Architecture: Voice, Representation, Preferred Creditor Status, and the Alliance of African Multilateral Financial Institutions" (December 02, 2024). Canadian Yearbook of International Law, Forthcoming, Available at SSRN: https://ssrn.com/abstract=5040741 or http://dx.doi.org/10.2139/ssrn.5040741 (Being the lead essay on the *Symposium on African Multilateral Financial Institutions*).

[4] *See generally*, Schadler, Susan. "The IMF's Preferred Creditor Status: Does It Still Make Sense after the Euro Crisis?" Centre for International Governance Innovation, 2014.

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[6] *See generally*, Adebayo Olukoshi, "In Quest of the Right to Development: Prospects for an African Financial Architecture", (2022) 63 Development, 153-

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[7] Humphrey, C. (2025) What makes an MDB an MDB? Southern-led multilateral banks and the sovereign debt crisis. Working Paper. London: ODI Global (www.odi.org/publications/what- makes-an-mdb-an-mdb-southern-led-multilateral-banks-and-the- sovereign-debt-crisis)

[8] Hannah Ryder, "Why are some creditors more preferred than others", African Business, 2 July 2024. Online: https://african.business/2024/07/finance-services/why-are-some-creditors-more-preferred-than-others

[9] *See generally*, Ndongo Samba Sylla, (Ed.) Imperialism and the Political Economy of Global South's Debt, (2023: Emerald Publishing Ltd.)

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