Preferred in Principle, Penalised in Practice: Afreximbank and the Politics of Preferred Creditor Status*

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Abstract

This paper examines the contested claim that the African Export-Import Bank (Afreximbank) enjoys Preferred Creditor Status (PCS), particularly in the context of its recent downgrade by Fitch to BBB-. While Afreximbank cites provisions in its founding treaty as evidence of such status, the realities of sovereign debt restructuring suggest that PCS is not a legally enforceable right, but a practice shaped by consistent behaviour and market consensus. The analysis argues that, despite normative justifications advanced by African multilateral development banks and sympathetic scholars, the inconsistent treatment of Afreximbank's claims by African sovereigns has weakened its path toward recognition. Drawing on recent debt workouts in Ghana and Zambia, the paper *highlights how systemic pressures and the absence of a global debt resolution framework have compelled member states to treat Afreximbank as an ordinary creditor. It concludes that recognition of PCS for regional development banks cannot be achieved solely through legal assertion or treaty clauses. Instead, it must be earned through consistent practice, reinforced by institutional behaviour, and ultimately sponsored by a reformed global financial architecture. In the interim, the creation of a differentiated PCS tier for regional development banks could serve as a pragmatic step toward balancing developmental imperatives with restructuring realities.*

Introduction

Fitch's recent downgrade of African Export-Import Bank (Afreximbank or the Bank) from BBB to BBB-[1] has drawn significant commentary. Much of the conversation focuses on the Bank's risk exposure and the financial signals this downgrade sends to the markets. While the economic implications of that downgrade are being parsed by analysts, one legal-financial argument lingers due to its complexity: the claim that Afreximbank enjoys *Preferred Creditor Status* (PCS) by virtue of Article IX of its 1993 Establishment Agreement. This provision, titled "*Freedom of Property, Assets and Operations from Restriction*," is part of a treaty signed by 53 African states, and the logic runs that by virtue of this treaty, these states have committed to honour Afreximbank's financial claims, insulating the Bank's loans from non-performance or restructuring.

The reasoning follows a familiar path: if states have contractually agreed via treaty not to hinder Afreximbank's operations or jeopardise its assets, they cannot in good faith restructure or default on loans owed to the Bank. By this view, classifying Afreximbank's loans as non-performing or forcing them into a haircut would violate the state's own treaty obligations, rendering such actions legally unfounded. It is an argument that is technically attractive and grounded in the Bank's founding documents. Yet, when tested against the real dynamics of sovereign debt, this claim rests on shifting sands. To understand why, we must examine the nature of PCS in international finance; what it is (and is not), how it is earned, and how it fits into the current global debt architecture.

PCS: A Customary Courtesy, not a Legal Right

First, it is crucial to recognize that Preferred Creditor Status is not a legally enforceable right or doctrine under international law, at least not in an *erga omnes* sense. There is no international treaty or court ruling that universally grants certain lenders sacrosanctity of repayment or an inviolable priority over others. Instead, PCS is best understood as a voluntary, coordinated practice sustained by political will and decades of custom.[2] In other words, it exists de facto rather than de jure. Historically, major multilateral institutions like the International Monetary Fund (IMF), African Development Bank (AfDB)[3] , and World Bank have enjoyed de facto PCS not because a law was written to that effect, but because the international community has acted as if they should be preferred. This practice has solidified over time into a norm: sovereigns generally avoid restructuring debts owed to these institutions, and other creditors tacitly consent to this exclusion in debt workouts. As a recent analysis observes, PCS “is a market practice that is not grounded in contractual undertakings nor in international law”[4] ; it is a convention sustained by mutual understanding rather than formal legal obligation. It does not typically appear in loan contracts or statutes, and its force comes from widespread acceptance and the fear of losing access to the preferred lenders’ support in the future. In short, PCS can be viewed as having the character of customary law: a norm born of consistent state practice coupled with the belief (or *opinio juris*) that such practice is obligatory in the sovereign debt context.

Crucially, however, not every multilateral lender automatically benefits from this courtesy. The IMF, World Bank, AfDB, and a few peers have long been treated as preferred creditors because the international creditor community collectively chose to grant them that status, and because these institutions reciprocally fulfil certain expectations (for example, providing low-cost or emergency funding and refraining from seeking high profits). Their PCS was earned by meeting thresholds of global acceptance: decades of consistent treatment as senior creditors, and an understanding among states that these institutions serve a unique systemic role. Preferred status, therefore, is less a matter of law than of trust and consensus. As the IMF itself has noted, whether an institution is treated as preferred “*is ultimately determined by the willingness of the international creditor community not to seek comparable treatment in a restructuring case*”[5]. In essence, creditors large and small must voluntarily abstain from demanding that a preferred institution share the pain in a debt crisis. PCS lives in that collective forbearance. Without it, under the current architecture, any claim to priority is only as good as the next creditor's consent.

Treaty Promises vs. Third-Party Realities

Second, even if Afreximbank's founding treaty articulates PCS-like provisions (such as immunity from restrictions or moratoria on its assets), those promises apply **only between the Bank and its member states**, not to other parties. This is a fundamental principle of international law codified in the Vienna Convention on the Law of Treaties: "*A treaty does not create either obligations or rights for a third state without its consent.*"[6]

In practical terms, while Ghana, Zambia, or any other member state that ratified Afreximbank's Establishment Agreement is bound vis-à-vis Afreximbank to respect the Bank's assets and refrain from impeding its operations (which arguably includes not defaulting on its loans), that obligation has no legal hold on commercial or bilateral creditors who never signed up. Citibank, or bondholder groups, or even non-member sovereign lenders like, say, Brazil or India, owe Afreximbank no special duty under that treaty. Thus, any PCS granted by a founding treaty is inter partes: it can be enforced (at least in theory) between the contracting states and the institution; but it is not erga omnes. It confers no automatic seniority in the eyes of outside creditors.

This distinction is not merely academic. Sovereign debt workouts today are typically multilateral negotiations involving the debtor and all its diverse creditors. When a country seeks to restructure, each creditor class (multilateral, bilateral, bondholders, banks, etc.) watches carefully to ensure it is not asked to sacrifice disproportionately. No single creditor can unilaterally enforce its exclusion from these talks absent the others' agreement. For newer or regionally-focused institutions like Afreximbank, a treaty clause proclaiming immunity from "restrictions… controls, moratoria" might give it a legal argument against its borrowing member states restructuring its loans. However, it does not bind the broader creditor community to give Afreximbank a free pass. Other lenders are under no legal compulsion to accept losses while an African multilateral goes untouched, unless they agree to that arrangement. In the delicate web of sovereign debt negotiations, a self-declared preference clause can become a paper tiger when faced with the coordinated insistence of other creditors that all must contribute their fair share. Of course, this dynamic may well be questioned and may, in time, be renegotiated, but this paper speaks specifically to the global financial architecture as *presently constituted.*

A Global Perspective: Are African Multilateral Financial Institutions Unique?

The question then arises: why should African multilateral financial institutions like Afreximbank (or its peers such as the Trade and Development Bank) receive special preferred status when other regional lenders elsewhere do not? Indeed, many “southern-led” or regional development banks around the world operate under similar fundamentals but have not been accorded PCS by the international community. The Caribbean Development Bank, for example, boasts several non-borrower shareholders, a strong credit rating, and lending terms comparable to legacy multilateral development banks (MDBs), yet it has not historically been exempted from restructuring in the way the World Bank, AFDB or IMF have.[7] The same could be said for institutions like the Latin American *Corporación Andina de Fomento* (Development Bank of Latin America) or the BRICS-founded New Development Bank. These banks are crucial regional financiers, much like Afreximbank.

Proponents of Afreximbank and other African international financial institutions argue, with understandable force, that denying them PCS perpetuates inequity and ignores their importance to the development ambitions of their member states. They point out that these banks were born as “*children of necessity*”, formed out of African nations’ desire to establish self-reliant financial mechanisms when global lenders failed to meet their needs.[8] Indeed, the African Union’s finance ministers, in a 2024 communiqué, underscored that the privileges granted to African multilateral financial institutions by treaty, including PCS, are vital to reducing borrowing costs and building the continent’s financial autonomy.[9] In their view, African MDBs’ development should be treated “*on their own terms*”, as legitimate MDBs, not penalised for charging slightly higher rates that reflect the constraints of their operating environment.[10] There is undeniable merit in the claim that robust regional development banks are essential to a more balanced global financial architecture.

Yet to argue that African multilateral financial institutions should receive PCS solely on the grounds of the unique needs of their environment and regional importance is to invite similar claims from institutions in other parts of the world that share comparable mandates and constraints. A preference carved out for Africa could open the floodgates of activism for PCS to a broader universe of development banks. Whether PCS, in such an expanded and decentralised form, would still serve the purpose for which it was originally conceived remains an open question. Unfortunately, the pool of exempted creditors has often correlated less with moral claims than with the hard limits of what is needed to restore debt sustainability. If the category of PCS-eligible entities is broadened without coordination, the path to restructuring itself risks being undermined.

More so, recognising their claims to PCS requires a more grounded understanding of how they compare to legacy institutions like the World Bank, IMF, AfDB or other peer institutions. These institutions are established under formal treaty frameworks, boast near-universal membership, and have benefited from decades of consistent practice and political consensus affirming their preferential treatment. Afreximbank and its peers, by contrast, are regional in composition, operate under hybrid legal mandates[11], and often blend sovereign and commercial financing models. Their lending terms, though development-oriented, are priced closer to market rates, and their claims to PCS, while normatively compelling, lack the benefit of settled global consensus in the prevailing financial architecture.

This calls for more than isolated advocacy. While a full restructuring of the global financial architecture remains the long-term imperative, an interim solution could lie in the creation of a distinct class of preferential treatment for regional development banks such as Afreximbank. These institutions would be eligible for limited forms of debt relief, such as time-bound moratoria or payment deferrals, without being subjected to the full restructuring terms applied to commercial creditors. This would provide breathing room to both debtor governments and regional lenders, while preserving the integrity of broader debt workouts. Crucially, any such accommodation would need to be systematised, coordinated, and transparently applied, to avoid replacing one form of inconsistency with another.

The larger point is this: PCS cannot evolve sustainably through scattered exemptions or ad hoc defences. Its legitimacy rests on shared rules and mutual expectations. Without a clear and inclusive framework, PCS risks becoming less a marker of collective discipline and more a mosaic of fragmented claims, pursued in parallel, eroding the very coherence upon which sustainable restructuring depends.

Building a Customary Status: Practice and Opinio Juris

How, then, can African multilateral financial institutions move from aspiration to acceptance in terms of PCS? The answer lies in the slow, difficult path of building customary international norms – the very path taken by the IMF, World Bank, and others decades ago. Customary international law is forged through state practice and *opinio juris* (the sense of legal obligation). In the sovereign debt arena, the equivalent is creditor and debtor practice, underpinned by a shared belief that certain creditors must be preferred for the greater good. The World Bank, AfDB, and IMF did not attain their quasi-immune status automatically or by unilateral assertion; it emerged from repeated episodes of governments choosing to prioritize those debts, and other creditors acquiescing, until it became standard practice.[12] Over time, this practice was reinforced by official pronouncements, G7 communiqués, Paris Club policies, IMF lending frameworks – amounting to an *opinio juris* that debts to these institutions are “not to be treated” in restructurings.[13]

African institutions are, by comparison, newcomers on the stage. To date, their track record in crisis situations, compared to other MDBs, may still be viewed as limited. Additionally, the consistency of treatment by sovereign borrowers is not yet sufficient to crystallize a global custom. In fact, one could argue that the quest to establish a customary PCS for Afreximbank and its peers has been undermined by inconsistent state practice by the very countries that champion these banks. For instance, even as the African Union urges respect for Afreximbank’s PCS, some of its member states have categorized Afreximbank’s loans as ordinary commercial debts in recent restructurings. In Ghana’s ongoing debt workout, the government acknowledged that it had ceased payments to Afreximbank for two years and explicitly sought to restructure those obligations.[14] Zambia, likewise, included about $45 million owed to Afreximbank in the scope of its debt treatment plan. By treating these debts as part of the general pool subject to rollover or haircuts, the authorities (arguably reluctantly) are acting contrary to the ideal of PCS. This inconsistent practice dilutes the claim that a binding norm exists to shield African multilateral loans. It sends a message seized upon by other creditors and rating agencies that, Afreximbank can be asked to share the pain. As one observer noted, "*PCS only works when other creditors agree to it*,"[15] and in these cases they clearly did (or are) not. In short, African states and the broader creditor community have not yet acted in a sufficiently uniform way that would elevate Afreximbank or similar banks to the same untouchable status as the IMF, AfDB, or World Bank. The foundation for a new customary norm is being laid, but it is far from fully set when the very pioneers of the norm sometimes deviate under pressure.

On the positive side, momentum can build. Every time an African multilateral financial institution is treated preferentially; for instance, getting paid when others are not, or being excluded from a restructuring, it contributes to state practice in favour of PCS. Likewise, vocal assertions by states that they consider these institutions to be preferred creditors (as seen in African Union declarations) contribute to the *opinio juris*. These are building blocks for the future. But until such practice is more consistent and widespread, claims of PCS will remain fragile. It is telling that Afreximbank has reportedly even inserted PCS clauses into individual loan contracts with sovereigns,[16] as if to belt-and-suspenders its treaty rights. Ultimately, customary status cannot be self-proclaimed; it must be recognized by others. And recognition, in this context, is a currency earned over time through trust and demonstrated behaviour.

The contradiction is therefore stark: African multilateral lenders seek preferred status, yet their strongest proponents on the global stage – African sovereigns themselves, have sometimes failed to uphold that very status in practice. This tension is not merely anecdotal; it is structural, recurring, and revealing. The next section turns more deliberately to this paradox, exploring the systemic pressures, institutional incentives, and market responses that have shaped and, at times, compelled this pattern of seemingly self-defeating behaviour.

The Paradox of African States' Actions

African governments, though best positioned to entrench the preferential status of their own multilateral banks, have often found themselves compelled to do otherwise. The very states that would benefit from the insulation of these institutions, have at times acquiesced in treating them as ordinary creditors, thereby making the formation of a PCS norm more difficult. This paradox is often driven by necessity. When a country's debt burden becomes unsustainable, governments must weigh their immediate financial survival against longer-term principles. Under IMF-supported programs and G20 Common Framework negotiations, African sovereigns have faced strong external pressure (and economic incentives) to include all but the truly untouchable creditors in burden-sharing arrangements. For example, in Zambia's and Ghana's cases, officials initially expressed reluctance to impose losses on Afreximbank, recognizing the development role it plays and fearing damage to the relationship. Yet, as talks evolved, the Paris Club and other major creditors made it clear that no deal would go forward unless all creditors (save those with universally recognized PCS) contributed comparably.[17] In Zambia's deal, this meant Afreximbank's claims were effectively treated as part of the commercial debt stock to be restructured. In Ghana, despite initial hopes to spare certain lenders, reality intervened: the finance ministry formally invited Afreximbank to discuss restructuring terms in line with its IMF program.[18] African states found themselves in the uncomfortable position of appearing to breach obligations from the Afreximbank treaty (which, as noted, promised no such impairments) in order to secure urgently needed relief and IMF support. By prioritizing short-term liquidity and IMF goodwill, they inadvertently undercut the very argument for treating Afreximbank as inviolate.

This is not to single out African governments for blame; they operated under duress and within a system that gives them little leverage. It does, however, highlight a vicious circle. The lack of universally acknowledged PCS for African MDBs means these banks are swept into restructurings, which in turn prevents the emergence of a track record that could solidify their PCS. Each such instance becomes a precedent cited by rating agencies and other creditors to argue that Afreximbank or the TDB is essentially behaving (and being treated) like a commercial lender. Indeed, Fitch's downgrade explicitly cited the growing perception that Afreximbank's sovereign loans are not immune to restructuring.[19]

From the market’s viewpoint, if a multilateral lender acts in ways considered akin to a commercial bank: charging above MDB concessional interest rates[20] and lacking a clear preferential shield in crises, then it will be judged more as a commercial risk. Thus, we see African states caught in a bind: to gain PCS for their institutions, they need to treat them as sacrosanct, yet in moments of fiscal distress, they are compelled to treat them as just another creditor, thereby postponing the very recognition that could help avert future crises. This all brings us to a major impasse. On one hand, African countries must push for and enforce preferential treatment for Afreximbank and its regional peers during restructurings. On the other hand, they lack the political and financial weight to resist the collective demands of the Paris Club, non-traditional lenders, and bondholders, who continue to insist, often successfully, on full comparability of treatment. What, then, is to be done? The answer, it would seem, lies not merely in asserting equity but in securing the architecture that makes it possible. A fundamental restructuring of the global financial order is not, as I argue in the next section, a consequence of fairness but its necessary condition. Breaking the cycle will require more than moral claims. It will demand coordinated action, credible design, and international legitimacy. Until then, actions will continue to speak louder than words, and each decision to include an African multilateral financial institution in a debt overhaul sends a powerful signal to the wider world.

Reforming the Global Financial Architecture: Prerequisite to Recognition

Given these complexities, it is not unreasonable to argue that a redefinition of the global financial order must come first. Without it, equitable recognition of African multilateral institutions' PCS may remain out of reach. In truth, such recognition cannot create the order it seeks to benefit from. Rather, an objective, system-wide standard for who qualifies as a “preferred” creditor may need to emerge before institutions like Afreximbank can enjoy unquestioned PCS. Recent discussions at global financial fora such as the G20 have underscored the need for clarity on this front.[21] Draft criteria suggest factors like an institution’s shareholder mix, its development mandate, the concessionality of its lending, and its track record of providing net positive financial flows to countries in crisis as potential determinants.[22][23] The logic is that if a lender is truly multilateral (with broad membership) and if it reliably supports distressed countries by adding new money or relief (rather than just extracting debt service), then there is a compelling case to shield it from losses so it can keep playing that stabilizing role. This is the model commonly used to justify the World Bank and others maintaining PCS: during crises, they often step up with fresh funds or soft financing, effectively refinancing themselves and helping the country recover, which mollifies other creditors. For African institutions with more limited resources, meeting such a threshold is challenging, unless global rules change to provide them with more support.

The African Union and the Alliance of African Multilateral Financial Institutions (AAMFI) clearly view the recognition of the latter's PCS as a matter of equity and an integral part of architecture reform. They contend that the global system remains biased towards post-World War II institutions, and that acknowledging Africa's own banks as preferred creditors would be a step toward levelling the playing field. However, it may be that the cart is before the horse. True reform of the international financial system, including greater voice for Africa, rebalanced voting powers, and possibly a formal sovereign debt resolution framework (that, amongst others, clearly identifies the necessary criteria for PCS), might be what enables a wider set of institutions to attain PCS. Put differently, a robust and fair global financial architecture would come with a clearer, rules-based determination of who gets preferred status, rather than leaving it to ad hoc "judgment calls".[24]

At present, pinning the hope of architectural reform on the immediate recognition of AAMFIs PCS puts the onus on reluctant creditors to change their behaviour first. A more realistic path in this author's view, might be to continue building alliances (as AAMFI is doing), engaging fora like the G20 to methodologically shift opinions, and demonstrating through action that African institutions can and will ramp up provision of the kind of support during crises that justifies their preference. Over time, such efforts could pave the way for an objective standard, perhaps even codified in future guidelines or agreements that says, for example: any multilateral meeting XYZ criteria shall be treated as a preferred creditor. Until that day, and absent the adoption of an interim intermediate PCS framework, these determinations will, unfortunately, remain politicized and case-by-case, reflecting power imbalances more than principles.

The Consensual Reality of Sovereign Workouts

It is also vital to remember a blunt reality: in the current international order, sovereign debt restructuring has no bankruptcy court or statutory regime to impose outcomes. There is no global sovereign bankruptcy law that one can invoke to enforce PCS or any other rule. Every debt workout is essentially a negotiated, consensual process (though underpinned by considerable political pressure, no doubt, but ultimately requiring creditors' agreement).[25] The absence of a binding international insolvency framework means that recognition is the coin of the realm. If key creditors choose not to recognize an entity's PCS, there is no court to stop them from pursuing equal treatment. Conversely, if the major players (say, the G20 creditors and big bondholders) collectively agree to exempt a certain creditor, that agreement becomes the practical law of the case. In essence, sovereign restructurings are governed by a form of custom and comity rather than hard law. This underscores why the debate over Afreximbank's status is so important and yet so frustrating: it ultimately comes down to whether the international creditor community can be persuaded (politically or morally) to accord AAMFIs like Afreximbank the same courtesy it extends to the IMF, AfDB or the World Bank. Until a formal sovereign debt resolution mechanism is established, these matters will be settled in negotiating rooms, not courtrooms[26] – and in those rooms, consent and consensus are king. Afreximbank cannot force other creditors to stand down; it can only appeal to the collective sense of fairness, precedent, and self-interest. In Ghana, Zambia, and beyond, we have seen how difficult that persuasion can be when creditors are themselves under pressure to minimize losses.

Conclusion

PCS remains one of the more elusive constructs in sovereign finance. At worst it is a recognition of collective bias; and at best, it is a marker of political intent, a signal of perceived institutional value, and a practical tool that can fortify a lender's position in times of stress. For AAFMIs such as Afreximbank, the promise of PCS carries significant benefits: lower borrowing costs, better protection of balance sheets in crisis, and enhanced credibility with global capital markets. Yet as this analysis has demonstrated, PCS is neither a right proclaimed into existence nor a status granted by treaty clauses alone. Under the current framework, it is a privilege earned through consistent treatment and collective market validation. That validation, in turn, is embedded in an architecture that has long favoured the institutions of the post-war order (the

IMF, World Bank, and their peers). Their status is not just historical but viewed by the market as functional – underpinned by their concessional lending, universal membership, and system-wide stabilising role.

AAMFIs make a compelling case, much of which this author aligns with. They were born of necessity, carry the development aspirations of a continent, and increasingly serve as key financiers when others hesitate. Their legitimacy is evidenced by treaty commitments, African Union communiqués, and admirable efforts by the AAMFIs. Yet, ironically, African states themselves have at times treated Afreximbank as a commercial lender, diluting the emergence of customary practice and weakening its claim to PCS. Afreximbank's own evolving experience in Ghana and Zambia is instructive: despite treaty-based claims, it seems unlikely to be spared from restructuring, and external creditors are taking note. As long as other lenders do not consent to Afreximbank's exclusion, and provided debtor governments continue to treat it as an ordinary creditor under pressure, the claim to PCS will remain more aspirational than actuality.

This is the painful paradox: to be treated as preferred, African multilateral financial institutions must be spared during crises; but to be spared, they must first be seen as preferred. In a world without a binding statutory sovereign debt regime, this circular challenge can only be broken through deliberate, sustained action. That means consistent precedent-setting practice by debtor states, measured restraint from other creditors, and demonstrable crisis-time efficacy by the institutions themselves. Over time, these actions may crystallise into customary international law, just as they once did for the existing PCS beneficiaries.

But custom generally takes time to form, and the path to it will remain narrow unless the architecture that undergirds PCS is itself transformed. Thus, a fundamental restructuring of the global financial system; one that clarifies the criteria for PCS and widens the circle of recognition, has to be pursued more vigorously now more than ever – not as the fruit of equity but its precondition. Until such reform materialises, interim innovations such as a distinct PCS category for regional multilaterals could bridge the gap. Such a category, while not offering full insulation, may permit only limited forms of restructuring, such as time-bound moratoria or payment deferrals. This approach, which could reconcile fairness with functionality, may be the pragmatic lifeline needed to shield AAMFIs, while also buying time for consensus to build.

Ultimately, PCS lives or dies by market recognition. It is confirmed by collective assent rather than court decree and sustained by precedent not pronouncement. Until the system evolves, and/or the rules rewritten or at least clarified, AAMFIs will have to negotiate their way to preference one case, one crisis, one negotiation at a time. Their success will depend not solely on legal clauses or policy statements, but on whether global actors begin to perceive them, as they once did the Bretton Woods and peer institutions, to be too essential to impair and too stabilising to exclude.

Fortunately, the momentum for global financial reform is gathering. Under South Africa's G20 presidency and broader calls for debt architecture innovation, African voices matter now more than ever. The presidency offers a rare and timely platform through which African governments and institutions can advocate for clearer, more equitable rules around creditor hierarchy, and begin to define a framework where regional development banks are assessed not against inherited benchmarks, but in light of their evolving role in regional (and global) stability. Seized with coherence and resolve, this moment could align architecture and equity for Africa's financial institutions, making preference a practice rather than a promise.

Footnotes

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[1] Fitch, "Fitch downgrades Afreximbank to one notch above 'junk'" (Reuters, 4 June 2025) https://www.reuters.com/world/africa/fitch-downgrades-afreximbank-one-notch-above-junk-2025-06-04/#:~:text=LONDON%2C%20June%204%20%28Reuters%29%20,management%20policie accessed 12 June 2025

[2] Patrick Bolton, Mitu Gulati and Ugo Panizza, ‘Preferred Creditor Puzzle: Sovereign Debt Markets’ (VoxEU, 30 March 2023) https://cepr.org/voxeu/columns/preferred-creditor-puzzle-sovereign-debt-markets accessed 12 June 2025.

[3] For the avoidance of doubt, references to African multilateral financial institutions in this analysis, expressly excludes the AfDB unless otherwise stated.

[4] Olabisi D Akinkugbe, ‘Strengthening the African Financial Architecture: Why African Multilateral Financial Institutions Should have the Same Preferred Creditor Status as MDBs’ (AfronomicsLaw, February 5, 2025) https://www.afronomicslaw.org/category/analysis/strengthening-african-financial-architecture-why-african-multilateral-financial accessed 12 June 2025

[5] International Monetary Fund, Sovereign Debt Restructuring – Recent Developments and Implications for the Fund’s Legal and Policy Framework (26 April 2013) IMF Policy Paper https://www.imf.org/external/np/pp/eng/2013/042613.pdf accessed 10 June 2025.

[6] Article 34, Vienna Convention on the Law of Treaties (adopted 22 May 1969, opened for signature 23 May 1969, entered into force 27 January 1980) (Trans-Lex) https://www.trans-lex.org/500600/_/vienna-convention-on-the-law-of-treaties-of-1969 accessed 12 June 2025.

[7] Chris Humphrey, What Makes an MDB an MDB? Southern led Multilateral Banks and the Sovereign Debt Crisis (ODI Global Working Paper, 23 January 2025) 23 https://media.odi.org/documents/What_makes_an_MDB_an_MDB.pdf accessed 11 June 2025.

[8] Akinkugbe, ‘Strengthening the African Financial Architecture’ (n 3).

[9] African Export–Import Bank, ‘AAMFI Welcomes AU Ministers’ Decisions on African Multilateral Financial Institutions’ Preferred Creditor Status’ (Afrexim, 11 April 2025) https://www.afreximbank.com/aamfi-welcomes-au-ministers-decisions-on-african-multilateral-financial-institutions-preferred-creditor-

status/#:~:text=The%20African%20Union%E2%80%99s%20rejection%20of,development%
accessed 11 June 2025.

[10] Ibid.

[11] Although Afrexim is established under a treaty and has international legal personality, its operational characteristics such as near-market-based lending terms, partial private ownership, and its treatment (so far) in recent sovereign debt restructurings place it closer to commercial creditors in practice. As a result, Afrexim and similar institutions are often described as having a hybrid legal and functional status.

[12] This recognition evolved incrementally: first through sovereign conduct in the 1980s, when multilateral claims were deliberately excluded from restructurings; then through operational frameworks such as the HIPC Initiative in the 1990s, which shielded multilateral lenders while requiring relief from others; and later through market behaviour and institutional design, including program conditionality, cross-default clauses, and creditor coordination. Over time, this pattern of exclusion matured into a widely observed (though still informal) norm.

[13] Reuters, “Battle over ‘baby multilateral s’ may trap Zambia, Ghana in longer debt default” (Reuters, 24 April 2025) https://www.reuters.com/world/africa/battle-over-baby-multilaterals-may-trap-zambia-ghana-longer-debt-default-2025-04-24/ accessed 12 June 2025.

[14] Reuters, “Fitch downgrades Afreximbank to one notch above ‘junk’” (Reuters, 4 June 2025) https://www.reuters.com/world/africa/fitch-downgrades-afreximbank-one-notch-above-junk-2025-06-04/ accessed 12 June 2025.

[15] Humphrey (n 6).

[16] Humphrey (n 6).

[17] Reuters (n 10).

[18] Reuters (n 1).

[19] Fitch Ratings, Fitch Downgrades Afreximbank to 'BBB-'; Outlook Negative (4 June 2025) https://www.fitchratings.com/research/sovereigns/fitch-downgrades-afreximbank-to-bbb-outlook-negative-04-06-2025 accessed 10 June 2025.

[20] Humphrey (n 6). Neither Afrexim nor the Eastern and Southern African Trade and Development Bank publicly discloses the financial terms of their lending, but selected loan details have been reported in the press. A recent $750 million Afrexim loan to Ghana reportedly carried an interest rate close to 10 percent; a $500 million loan to Tunisia was reported at 10.2 percent; and a $400 million loan to Zimbabwe in 2023 carried a 10.2 percent rate, rising to 12.2 percent in the event of default.[1] These rates are significantly higher than those offered by legacy MDBs, which typically lend at concessional rates with maturities of 30 to 40 years, compared to seven to ten years for the Ghana loan and six years for Zimbabwe.

[21] G20 Eminent Persons Group on Global Financial Governance, Making the Global Financial System Work for All (October 2018) 40 https://www.globalfinancialgovernance.org/files/g20epg-full%20report.pdf accessed 12 June 2025.

[22] Humphrey (n 6).

[23] These criteria are referenced here for illustrative purposes and to acknowledge positions currently being advocated by some market actors and commentators. Their inclusion does not imply endorsement by this author.

[24] Reuters (n 10).

[25] Chapter 8: The Sovereign Debt Restructuring Process (Conference on Sovereign Debt, IMF Legal Department draft, 4 September 2018) 1 https://www.imf.org/-/media/Files/News/Seminars/2018/091318SovDebt-conference/chapter-8-the-debt-restructuring-process.ashx accessed 12 June 2025

[26] Lee C Buchheit, Mitu Gulati and others, Sovereign Debt Restructuring: A Model Law Approach (Duke Law Scholarship Repository, 2016) https://scholarship.law.duke.edu/faculty_scholarship/3163/ accessed 12 June 2025.