



SUBMISSION

The Impact of IMF and World Bank Conditionalities on Human Rights in South Africa

10 September 2026

Attention: Office of the High Commissioner for Human Rights

The Institute for Economic Justice (IEJ) would like to thank the United Nations Human Rights Council (UN HRC) and the Office of the High Commissioner for Human Rights (OHCHR) for the opportunity to make an input to the OHCHR report on the human rights impact of conditionalities applied by international financial institutions (IFIs), to be presented to the UN HRC at its 64th session.

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1. Introduction

This submission aims to inform the UN report, by sharing a perspective on IFIs conditionalities in South Africa. This will be done through an analysis of the country's borrowing landscape and the impact that conditionalities have had for human rights realisation. In South Africa, we find that the public borrowing landscape is the prerogative of the Executive, often the Minister of Finance. This is as per the Public Finance Management Act ([PFMA](#)), which marginalises the role of Parliament in IFI borrowing. As such there are no guards against the acceptance of

conditionalities that could violate human rights, with no room for adequate parliamentary oversight or public comment in the public borrowing process.

The rest of the submission will be structured as follows. Section two of our submission will cover the framework for public borrowing, showing how conditionalities work and how they are mainly negotiated by IFI officials and National Treasury officials, without any parliamentary process or even discussion with the Cabinet. Section three shows how the policy conditionalities and recommendations of two loans, taken from the IMF in 2020 and the World Bank in 2022, contributed to the regression in the realisation of socioeconomic rights. Section four details some of the necessary safeguards to ensure that conditionalities do not impinge on human rights. Section five concludes the submission.

2. The framework for IFI borrowing in South Africa

The legal and institutional framework for IFI borrowing in South Africa makes the country vulnerable to taking up conditionalities that may violate human rights. The National Economic Development and Labour Council ([NEDLAC](#)) Act of 1994 establishes that in South Africa, the Executive carries out socioeconomic policies that have been collectively crafted by all representatives of society. Meanwhile, Parliament exists to act in the public interest and ensure that the Executive does not overstep its powers. This configuration breaks down when it comes to IFI loans. Parliament and other social partners are not accorded a role in the uptake of loans from IFIs. As we show below, this enables the Executive, in pursuit of its goals, to take on loans that have conditions that may violate human rights.

IFIs as a special case: Part of the critical failure comes from the mischaracterisation of IFI loans as simply another method to finance public spending. At least two aspects of IFIs are unique compared to market lending and warrant careful consideration by borrower countries. First, IFIs are overtly political institutions. Bilateral creditors are wholly owned by governments. Their mandates and operations are a result of internal political processes which recipient countries may not be party to. Multilateral lenders are made up of member states, which also influence the policy and structure of these institutions in line with members' foreign policy stances. The two preeminent IFIs, the World Bank and the IMF, have governance structures which favour the interests of Western nations, in particular, the United States. This is expressed in the voting power percentages of member countries in the World Bank and IMF. Second, IFI lending often contains conditions that do not appear necessary to guarantee loan repayment. These can include conditions around the provision of social services, and the ownership and operation of key economic resources such as electricity.

Policy conditions directly impact Parliament's work in that some conditions may limit its ability to enact legislation promoting specific socioeconomic rights. For instance, lawmakers in the future may want to enact legislation that further prioritises the provision of education, healthcare, or social security. They could have their efforts limited by the National Treasury's pre-existing commitments to cut public spending to acquire a loan from an IFI.

The nature of conditionalities: Conditionalities appear to have evolved, with institutions such as the World Bank purporting to affirm on-going policies, instead of simply making prescriptions.¹ This is termed ‘prior actions’,² and has been copied by other IFIs. South Africa’s Presidential Climate Commission (PCC)³ claims that these “do not have the danger of dictating policy change going forward”.⁴ This position can be challenged on at least three bases. First, the term ‘prior actions’ is a misnomer, as IFIs have used it to refer to policy or legislation that has been proposed but is not yet concluded. For example, a US\$300 million [loan](#) from the African Development Bank (AfDB) and a US\$1 billion [loan](#) from the World Bank were conditioned on the state amending the Electricity Regulation Act (proposals mooted but not enacted at the time of the loan). Second, prior actions may reinforce or entrench harmful policies. Prior actions may impinge on Parliament’s ability to enact legislation that aims to realise the public’s constitutional rights. This would, among other things, undermine the doctrine of the separation of powers in that Executive action (the acceptance of conditionalities) unduly restricts Parliament’s powers to make appropriations. Third, the very nature of policy making within a polity means that diversions from initially agreed upon policies is possible. Nonetheless, policy conditionalities create a policy lock-in that could restrain the policy space of future democratically-elected governments.

Executive discretion: Parliament has limited room to scrutinise IFI loans and the conditions attached to them. No framework guides the Minister of Finance as to the principles to be observed when negotiating IFI loans. Section 72 of the PFMA says, “[t]he Minister, *on conditions determined by the Minister*, may authorise another person to sign a loan agreement when the Minister borrows money in terms of section 66 (2) (a)”.⁵ This unfettered discretion results in a process where only the National Treasury (and occasionally the Cabinet) is involved in acquiring IFI loans.

The process of borrowing from IFIs, during the height of the Covid-19 pandemic (2020-2022), featured a relatively wide, though superficial, process of consultation compared to [later IFI borrowing](#). The IMF and World Bank Covid-19 loans were presented to NEDLAC, but labour unions and community organisations had [limited room](#) in the decision-making process, especially when it came to macroeconomic policy choices, which formed an integral part of the loans. Furthermore, these loan agreements were presented to, and approved by, Cabinet. However, the public has no access to information relating to Cabinet deliberations on IFI loans. While presentations to Cabinet and NEDLAC are a step in the right direction, such

¹ Koeberle, S. Conditionality Revisited Concepts, Experiences, and Lessons. Conditionality: Under What Conditions. P. 76. URL:

<https://documents.worldbank.org/en/publication/documents-reports/documentdetail/524471468320048931/conditionality-revisited-concepts-experiences-and-lessons>. Accessed: 02-02-2025

² Bretton Woods Project. 2021. What is World Bank Development Policy Financing?. URL: <https://www.brettonwoodsproject.org/2021/03/what-is-world-bank-development-policy-financing/>

³ According to its website, The Presidential Climate Commission is a “The Presidential Climate Commission is an independent, multi stakeholder body established by President Cyril Ramaphosa.” The Presidential Climate Commission’s purpose is to “oversee and facilitate a just and equitable transition towards a low-emissions and climate-resilient economy.”

⁴ Presidential Climate Commission. 2023. A Critical Appraisal of South Africa’s Just Energy Transition Investment Plan. P. 20

⁵ Republic of South Africa. 1999. [Public Finance Management Act](#). Section 72.

advancements remain futile if there is no legally-binding framework that includes all stakeholders in the IFI borrowing processes, ensuring that the Executive makes recommendations that are more favourable, with less stringent policy conditionalities. After the Covid-19 pandemic period, the process of IFI borrowing has become narrower. The National Treasury, under the banner of various programmes, such as the Metro Trading Services, or the Just Energy Transition, has taken loans without the prior approval of the Cabinet,⁶ [Parliament](#), or NEDLAC.

Lack of transparency: The National Treasury has consistently failed to be transparent on conditionalities, even when Parliament has attempted to hold it to account and elicit this information. After Parliament’s Standing Committee on Finance expressed concerns about conditionalities in the Covid-19 loans from the IMF and the World Bank, the National Treasury Deputy Director-General of the Budget Office assured them that “[t]here are no conditions attached to the loan. It is a budget support loan”.⁷ Table 1 below shows that the response from the Deputy Director-General was incorrect and misleading.

3. The impact of IFI conditionalities on human rights

In Table 1 below, we detail the human rights impact of ‘soft’ and ‘hard’ policy conditionalities in South Africa since 2020.⁸ We use the IMF and World Bank loans borrowed immediately after the Covid-19 pandemic as there has been sufficient time to study their effects. We find that the policy conditions, whether soft (as in the case of the IMF) or hard (as in the case of the World Bank), generally had a negative impact on the public. In particular, we find that the push by the two IFIs to secure fiscal austerity following the pandemic contributed to a violation of the rights to education, healthcare, and social assistance.

Table 1: Human right impact of South Africa’s Covid-19 loan conditions.

Loan	Conditionality Recommendation /	Effect	Rights violation
IMF 2020	Removal of Covid-19 pandemic era government support. ⁹ Pandemic era support includes tax deferrals for qualifying businesses, top-ups to social grants, and the	The Department of Social Development temporarily removed, then immediately reinstated the SRD grant (between April 2021 and August 2021). ¹⁰	The state reneged on its obligation to provide over 10 million people, who were long-term unemployed, had meagre income, or lost jobs during the Covid-19, the ability

⁶ Cabinet decisions such as the approval of policies and bills are captured in Cabinet statements. See for example the [Cabinet statement](#) published on 26 August 2026.

⁷ National Treasury. 2023. Medium Term Budget Policy Statement: Public Hearings Presentation. P. 13. URL: [2023 Revised Fiscal Framework and Revenue Proposals: National Treasury & SARS response to public submissions | PMG](#), accessed: 14-04-2024

⁸ ‘Soft’ policy conditionalities refer to those set of policy actions that a government purportedly undertakes voluntarily, and there are no explicit punitive measures stipulated if such actions are not followed. It differs from ‘hard’ conditionalities where policies are enforced top-down from the IFI to the government and there is clear punishment for failure to complete or implement IFI recommended policies.

⁹ National Treasury and South African Reserve Bank. 2020. Letter of Intent.

¹⁰ South African Government News Agency. 2021. [Social relief distress grant comes to an end](#).

	scaling up of the SRD grant to increase coverage.	The National Treasury, which is against the grant, has placed unconstitutional measures against potential recipients, aimed at decreasing the beneficiaries for the grant.	to survive. This was a violation of the Constitutionally-enshrined right to social assistance (Section 27 of the Constitution).
IMF 2020	Long-term suppression of government spending after Covid-19 pandemic, to achieve lower debt-to-GDP. Reduction in the public sector wage bill-to-GDP ratio. ¹¹	In addition to the nominal expenditure ceiling, the National Treasury has used a targeted primary surplus to limit spending growth. This has meant lower than inflation allocation for key sectors such as education and healthcare, among others. This has translated to hiring freezes across the public service and underinvestment in social infrastructure across the public sector, which most of the public depends on.	Lower-than-inflation allocations to education, healthcare, and other social services negatively affects the quality of service provision. This is a violation of people's right to basic education, healthcare, and safety . And in contravention of the progressive realisation of these rights.
World Bank 2022	The World Bank's satisfaction with South Africa's macroeconomic policy framework.	The World Bank approved macroeconomic policy framework is underpinned by fiscal austerity and monetary tightening. The government has further tightened measures to ensure spending restraint, such as pursuing higher primary surpluses, even in the face of slow real GDP growth.	Fiscal austerity has contributed to the government underinvesting in infrastructure such as water and sanitation. This is a violation of the right to water .
World Bank 2022	The continuation of Covid-19 grants (in particular the Social Relief of Distress grant).	The withdrawal of the SRD grant is reversed and the grant is funded for the outer fiscal years (2022/23).	The revival of the SRD grant in the outer years was an affirmation of the state's obligations to provide social assistance to those who are unable to provide sufficiently for themselves.
World Bank 2022	'Digital social protection' which includes the use of electronic means of applying and disbursing grants.	The National Treasury instructs the Department of Social Development to permit only online applications for the SRD grant. Potentially leaving out millions of potential beneficiaries that do not have access to digital infrastructure. The attempt	For potentially millions of people who do not have access to electronic means to do an online application for grants, the right to social assistance is violated.

¹¹ National Treasury and South African Reserve Bank. 2020. Letter of Intent.

		to automate the process also meant an automatic rejection of people who otherwise qualify for the SRD grant.	
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4. Best practices in IFI borrowing

The nature of IFI conditionalities calls for a process of wide stakeholder engagement backed by a legal mechanism to ensure participation, transparency, and accountability. This is because, as seen in Table 1 above, IFI conditionalities go beyond financial considerations such as simply assuring that the borrower has sufficient capacity to repay a loan. Rather, they have a tangible impact on the economic and social developments of a borrower country. The conditionalities which accompany IFI loans to South Africa need to be scrutinised for their alignment with the Constitution, national and international law, and established government policies. Below we detail multiple avenues through which the Executive can be held accountable and for the broader public to participate in the decision-making over IFI loans and their accompanying conditionalities.

Parliament and the Executive: South Africa’s Constitution establishes that Parliament must “provide mechanisms to ensure that all Executive organs of state in the national sphere of government are accountable to it”.¹² An example of such a mechanism is the Budget vote, which allows Parliament to evaluate whether the Ministry of Finance and government departments “kept the promises of the previous year and spent taxpayers’ money properly”.¹³ Parliament enjoys oversight power over the National Revenue Fund (NRF),¹⁴ to which IFI loans are allocated. Parliament exercises this oversight through, among other things, assessments of appropriations and direct charges on the NRF.¹⁵ It can scrutinise public finances through the Standing Committee on Public Accounts (SCOPA),¹⁶ reviewing Auditor-General’s reports,¹⁷ and questioning the Executive in parliamentary sessions.¹⁸ In addition, the Constitution requires Parliament to facilitate public debate in its legislative and oversight process, including oversight of the NRF.¹⁹ A more ambitious step would be the enactment of legislation which explicitly requires that Parliament ratify IFI loans. This move has garnered support from Parliament’s Standing Committee on Finance in [2023](#) and [2025](#). Furthermore, this would be keeping up with the global standards.

Oversight trends: The requirement of parliamentary approval in the acquisition of IFI loans is established globally, although there are differences in the authority given to Parliament. A

¹² Parliament of the Republic of South Africa. Oversight and Accountability Model. Asserting Parliament’s Oversight Role in Enhancing Democracy.

¹³ Parliament of the Republic of South Africa. Oversight and Accountability Model: Asserting Parliament’s Oversight Role in Enhancing Democracy.

¹⁴ Republic of South Africa. 1996. Constitution of South Africa. Section 21N.

¹⁵ Republic of South Africa. 1996. Constitution of South Africa. Section 214.

¹⁶ Republic of South Africa. 1996. Constitution of South Africa. Section 57(1).

¹⁷ Republic of South Africa. 1996. Constitution of South Africa Section 188 read with Section 57(1).

¹⁸ Republic of South Africa. 1996. Constitution of South Africa. Section 92(2) and (3).

¹⁹ Republic of South Africa. 1996. Constitution of South Africa. Section 59(1)(a) and Section 72(1)(a).

survey jointly conducted by the Inter-Parliamentary Union and the World Bank in 2013 found that:

- Among the 99 selected countries,²⁰ 59% had laws that required parliament to ratify loan agreements with IFIs before they became effective.²¹
- In 83% of the countries that require ratification by parliament, the Executive has, in effect, no ability to override parliament's ratification authority.²²
- However, in some countries (such as Ethiopia and Tonga), parliamentary ratification is required only for loans above a certain threshold.²³
- In 47% of countries where parliamentary ratification is a legal requirement, Parliament can only accept or reject an IFI loan, while in 29% parliament can request amendment to the loan agreement.
- Only in 58% of countries, where parliaments are given authority to ratify, are they also involved at some stage in the loan approval process.²⁴
- 46% of parliaments that are involved in the loan approval process are also consulted with before loan negotiations.²⁵

Human rights framing: Parliament can rely on human rights-based frameworks in their considerations of IFI finance and conditionalities. The Constitution acknowledges that international law will shape domestic law and provides specific provisions²⁶ detailing how it is incorporated into South African law. Additionally, human rights and sovereignty are further protected by international law. South Africa has ratified the International Covenant on Economic, Social and Cultural Rights (ICESCR),²⁷ which is one international instrument that promotes human rights across global states, affirming rights related amongst others to social security²⁸ and an adequate standard of living.²⁹ Incorporating this into domestic law means that South Africa must use the ICESCR as a guiding tool for executing executive oversight.

International law also embraces the right to economic sovereignty. The Charter of Economic Rights and Duties of States adopted by the UN General Assembly on 12 December 1974 clearly states that: Every state has the sovereign and inalienable right to choose its economic as well as its political, social, and cultural systems by the will of its people, without outside interference,

²⁰ Countries for which data was available through three sources: parliament, World Bank, and the IMF.

²¹ Inter-Parliamentary Union. 2013. Parliamentary Oversight of International Loan Agreements & Related Processes: A global survey. p.6

²² Inter-Parliamentary Union. 2013. Parliamentary Oversight of International Loan Agreements & Related Processes: A global survey. P. 7

²³ Inter-Parliamentary Union. 2013. Parliamentary Oversight of International Loan Agreements & Related Processes: A global survey.

²⁴ Inter-Parliamentary Union. 2013. Parliamentary Oversight of International Loan Agreements & Related Processes: A global survey. p. 12

²⁵ Inter-Parliamentary Union. 2013. Parliamentary Oversight of International Loan Agreements & Related Processes: A global survey. P. 9

²⁶ Republic of South Africa. 1996. Constitution of South Africa. Sections 231-233.

²⁷ Basson. Y. 2021. The Compliance of the South African Social Security System with the International Covenant on Economic, Social and Cultural Rights" *Obiter*, 41(4), pp. 850-87.

²⁸ United Nations. 1976. International Covenant on Economic, Social and Cultural Rights. Article 9.

²⁹ United Nations. 1976. International Covenant on Economic, Social and Cultural Rights. Article 11. This provision includes the right to adequate food, clothing and housing and to a commitment of continuously improving the lives of citizens.

coercion, or threat.³⁰ This is reinforced by Article 1 of the ICESCR and by a resolution of the United Nations General Assembly on external debt and development, which says that the advancement of finance or other forms of assistance to developing countries should not come at the expense of “national ownership, strategies and sovereignty”.³¹

Loan principles: Following UN General Assembly resolutions that emphasise the importance of responsible lending and borrowing, UNCTAD established agreed principles to guide sovereign lending and borrowing.³² These principles are shown in Table 2 below. A common thread in these 15 principles is the understanding that the sovereign, which is the state, is *only* acting on behalf of its citizens. Thus, before a loan agreement is concluded there should be mechanisms put in place, initiated by both the lender and borrower, to ensure that (1) citizens, through public representatives, agree to take on the loan, and (2) all of the details of the loan are publicly available through an online debt registry. Parliament is the most appropriate institution to determine public approval.

Table 2: UNCTAD principles of promoting responsible sovereign lending and borrowing

Lenders	Borrowers
Agency - lenders should recognise that government officials are responsible for protecting public interest.	Agency - governments have the responsibility to protect the interests of their citizens when taking on debt.
Informed decisions - lenders must provide information to ensure that borrowers are making informed credit decisions.	Binding agreements - governments must recognise that a loan agreement is a binding obligation that must be honoured, absent exceptional circumstances.
Due authorisation - lenders must ensure that the credit extended has been appropriately authorised.	Transparency - governments must put in place arrangements to ensure proper approval and oversight of sovereign borrowing.
Responsible credit decisions - lenders must provide a realistic estimation of a borrower's capacity to repay.	Disclosure and publication - Relevant terms and conditions of a loan should be disclosed by the state, be universally available, and be freely accessible in a timely manner through online means to all stakeholders, including citizens.
Project finance - lenders involved in financing a project must conduct their own investigation to ensure that financing is used as intended and	Project finance - borrowers must conduct an investigation into the financial, social, and environmental implications of its borrowing to finance a project.

³⁰ Tyranski, J (1992). The Economic Aspects of Sovereignty and Self-Determination in Contemporary International Law. Basic Issues, No 1. pp 25-40.

³¹ United Nations General Assembly. 2022. External debt sustainability and development. Resolution adopted by the General Assembly on 14 December 2022. P.2.

³² UNCTAD. 2012. Principles of Promoting Responsible Sovereign Lending and Borrowing.

lenders must be aware of the socio-economic implications of their lending.	
International cooperation - lenders must comply with UN sanctions imposed against a government.	Adequate management and monitoring - the borrower must put in place a debt sustainability and management strategy, and have an auditor independently assess recent borrowed money.
Debt restructuring - where borrowers cannot repay, lenders must act cooperatively and in good faith to reach a consensual rearrangement for the payment.	Avoiding incidence of over-borrowing – sovereign states should borrow if it will spur additional private or public investment, with the social return at least as great as the loan interest rate.
	Restructuring - if a restructuring of sovereign debt obligations becomes unavoidable, it should be undertaken promptly, efficiently, and fairly.

Need for skills: The Inter-parliamentary and World Bank joint study into parliamentary oversight on IFI loans found that low technical competency and institutional issues (such as lack of structured engagements) lead to weak parliamentary oversight even where the legal structure exists. Training has been done with some degree of success in other African countries that have recently faced even more pressing problems of debt distress.³³ Members of Parliament who participated in the training however still reiterated the salience of greater transparency from the Executive, to enable more effective oversight.³⁴

5. Conclusion

This submission shows how excessive discretion given to the Executive in negotiating and approving loans from IFIs has led the government to accept conditionalities that have negatively impacted the realisation of socioeconomic rights in South Africa. A remedy to this problem is the establishment of an alternative borrowing framework wherein Parliament can ratify proposed IFI loans. This would allow members of Parliament as well as other social partners to scrutinise the conditionalities attached to IFI finance with the goal of ensuring that these do not violate human rights, and in particular socioeconomic rights. We therefore call on the United Nations Human Rights Council to support the implementation of a borrowing framework that prioritises the acquisition of IFI finance on fair terms and which advances the realisation of human rights.

³³ AFRODAD. 2023/24. Parliamentary Oversight Role for Prudent Public Debt Management. Policy Brief.

³⁴ AFRODAD. 2023/24. Parliamentary Oversight Role for Prudent Public Debt Management. Policy Brief. P. 2