THE LEGAL PROTECTION OF DEVELOPING COUNTRIES IN AFRICA IN INTERNATIONAL LOAN TRANSACTIONS

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ABSTRACT

Due to their poor economies and several other factors, most developing countries in Africa gladly take the option of international loan transactions to fund their annual budgets and execute capital projects that are expected to help foster the development of their country's economy. This article evaluates the extent of legal protection available to developing countries in Africa when undertaking these international loans transactions. It considers whether or not there are sufficient clauses in these loan agreements to protect the interest and future of developing countries that take on these international loans, the financial aid given to these countries by international financial institutions (IFIs) and the collateral used to obtain these loans to know whether or not they outweigh the economic benefits of the Loan. This article appraised these international loan transactions and the international financial institutions that offer these loans to determine whether or not they have positively and adequately helped these developing countries as expected or as claimed. It observes that these international financial institutions have through these international loan transactions indeed taken giant steps to aid the economies of developing countries by providing them with financial aid when needed, however, the impact of these international loan transactions on the economies of developing countries have over time revealed that these international loan transactions are padded primarily with the interest of the developed and rich countries who are owners/shareholders of these International Financial institutions that offer these loans as they have critically employed steps, policies and clauses in the loan agreements that aim at solely protecting their own interest far above those of the developing countries who are helpless and in dire need of these funds. The article suggests ways developing countries can be legally protected when undertaking these international loan transactions and other viable options available to them.

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INTRODUCTION

International loan transactions are common transactions in developing countries in Africa. They serve as a quicker alternative for government of countries that are unable to domestically fund their budget deficits and capital projects. International loans are generally regarded as loans made by one nation to another nation or by international financial institutions to government of countries usually evidenced by an agreement to repay the loan with interest[i]. These type of loans are obtained by a borrower from a foreign lender as opposed to domestic lending. International loans transactions exist as a means of channeling foreign savings to government of other countries who are in need to such funds. It is an important resource that serves as an aid to the financial struggles of developing countries.

In order to give credence to the aim of this article it will be imperative to briefly discuss on developing countries, international financial institutions, foreign aid, international loan transactions, international loan agreements which are the key discuss of this article.

Developing Countries

According to the United Nations (UN), a developing country is a country with a relatively low standard of living, undeveloped industrial base and a moderate to low Human Development Index (HDI). This index is a comparative measure of poverty, literacy, education, life expectancy, and other factors for countries worldwide. The index was developed in 1990 by Pakistani economist Mahbub ul Haq, and has been used since 1993 by the United Nations Development Program in its annual Human Development Report[ii].

In other words, a developing country is a country having a low standard of living and a low level of industrial production, it is not yet highly industrialized and needs financial or technical aid to improve[iii]. It is a nation that is financially and economically weak in itself and does not have the ability to sustain itself and meet its basic needs, hence it relies on support from well to do nations to help and build itself. Developing countries are also referred to as Third World Countries and most of the developing countries in the world are found in Asia and Africa[iv]. The common features peculiar to developing countries includes: poverty, low standard of living, poor economy, lack of standard infrastructure, burden of international debt, corruption

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etc. These and other numerous features are the peculiarities of most, if not all, developing countries especially in Africa. They are the prevalent problems developing countries battle with and has made them under developed and reliant on foreign loan and aid with the expectation that it will aid them in building and growing themselves so as to create equality in global development.

International Financial Institutions (IFIs)

International financial institutions (hereinafter referred to as "IFIs") are institutions that provide financial support for global economic and social development activities especially in developing countries[v]. IFIs assist developing countries with development/production facilities and resources, growth of international trade etc. It aims at rendering assistance to its members (which includes developing countries) by proffering advice on developmental projects, providing finances and support for the execution of such projects. The objective of IFIs include:

1. To reduce poverty and promote better standard and conditions of human living globally.
2. To promote sustainable economic, social and institutional development.
3. To promote regional co-operation and integration.

In the case of IFIs, they achieve their objectives by giving of loans, credits and grants to the government of countries in need of its aid. However, funding from IFIs are usually tied to particular projects that focus on economic and socially sustainable development. In addition to providing the needed fund for executing the projects they also provide technical and advisory assistance to their borrowers and conduct extensive research on development issues[vi]. The role of IFIs in developing countries includes;

a. Providing financial support services to developing countries through loans and grants for capital and infrastructural projects.
b. Providing technical support & expertise knowledge services on development matters.
c. To assist developing countries in their effort to achieve monetary and financial stability.
d. To create sustainable economic growth in developing countries.
e. To help reduce poverty rates.
f. To enhance sustainable development.
g. Aiding the capacity of these developing countries to improve their domestic infrastructure.
h. Supporting quality healthcare initiative.

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i. Helping developing countries to eradicate diseases such as, HIV/AIDS, polio, malaria etc

j. Developing the standard of living in developing countries etc.

IFIs provide financial aid for such project/programs as enunciated above. They provide either long or short term loans for such programs, for example IMF and World Bank provide loan for over 15-20 years and 35-40 years respectively depending on whether the borrowing county is regarded as middle income or low income[vii].

- **The origin and present structure of International Financial Institutions:**

After the world war the world's economy was in shamble, the impact of the war culminated into a great depression such that neither the United States nor Great Britain had the resources to single handedly prevent the worldwide depression, as a result a set of multilateral institutions were needed to rebuild, provide a safety net and structure the postwar economy. With this vision at heart a meeting was held in Bretton Woods, New Hampshire in 1944 by the US and major European Nations who then founded the International Monetary Fund (hereinafter referred to as IMF), the World Bank previously known as IBRD and the International Trade Organization (ITO), these institutions are popularly known as the Bretton Woods Institutions[viii]. They were established for the reconstruction of Europe and to set up mechanisms for international cooperation to manage the global financial system. During the 2008-09 global financial crisis and the current COVID-19 pandemic IFIs (particularly the World Bank and IMF) were central in helping low income countries cope with the crisis/pandemic and granted aid for their economic recoveries.

The owners/shareholders of IFIs are usually government of nations, although some international organizations occasionally figure as shareholders/owners. IFIs are usually established or chartered by more than one country which makes the activities of these IFIs subject of international law because it involves more than one country. The most prominent IFIs are creations of multiple nations, although some bilateral IFIs are in existence (i.e. those established between only two countries). Examples of prominent IFIs include; The World bank, The IMF, Regional Development Banks such as The African Development Bank, Asian Development Bank etc. The world largest IFI is the European Investment Bank[ix]. The major IFIs in operational in Africa are: The International Monetary Funds (IMF), the World Bank and the African Development Bank. These IFIs have different specific objectives, areas of

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specialization and expertise, for example, the IMF focuses on promoting international financial stability, macroeconomic stability and growth of member countries, the World Bank is focused on helping member countries to "reduce poverty, particularly by focusing on the institutional, structural, and social dimensions of development, while the African Development Bank has a regional mandate to "contribute to the economic development and social progress of its regional members," with an operational focus on agricultural and rural development, human resource development, private sector development, governance, economic integration and cooperation and environmental and gender issues. Despite their differences in area of focus, there are areas of overlap like in the financial sector reform and some kind of similarities in the broad types of contribution that they make to capacity building and in the mechanisms through which these contributions are made. The emphasis that these institutions have placed on coordination strengthens the effectiveness of their contributions to capacity building. These IFIs are the major source of financial and technical support to the government of developing countries in Africa and to private businesses investing in these developing countries. They play a significant role in the privatization and regulation of public utilities and natural resources. These IFIs share in the mission of combating poverty[x].

Foreign Aid

Foreign aid is another major way developing countries get funding. In this case a borrowing country (usually a developing country) enters into an agreement (like a loan agreement) with another country (usually a developed country) to provide them with funds which will be paid back at an agreed period, on agreed terms and conditions and agreed interest rates[xi]. Such agreements are usually secured with a collateral (such as the national assets of the borrowing country). A very good example of foreign aid are the loans China recently gave to some countries in Africa like Nigeria on very stringent terms and conditions, as at 31st March, 2022 Chinese loan to Nigeria is at about USD 3.121 Billion with an interest rate of 2.5%, a tenure of about 20years and grace period (moratorium) of 7years, with some of the country's national assets as collateral[xii]. Similar Chinese loans were given to Kenya, Ethiopia, Angola, Zambia[xiii] etc.

Foreign aid can further include help or support from international institution like Red cross, NGOs, religious organizations etc. willingly rendered to another country (usually a developing country) for the benefit of the recipient country. Such aid can take the form of loans, grant or

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gift. Foreign aid are however not restricted to capital, it can also take the form of food, supplies, services, Military assistance etc[xiv]. Unlike loans gotten from International Financial Institutions (IFIs) which are usually restricted to particular projects, loans gotten from foreign aid are most times not restrictive and the borrowing country are allowed to be deicide how to use the loan sum.

International Loan Transactions

International loan transactions are a kind of financial transactions that take place between parties from at least two different countries. Parties to international loan transactions may be individuals, multinational companies and even countries[xv].

This article will narrow down its focus to international loan transactions between countries, thus, in this light international loan transaction are regarded as a transnational monetary/credit transaction between two or more foreign countries that requires settlement in foreign currency[xvi].

International Loan Agreements

International financial transactions are usually evidenced through loan agreements which contain legal terms and clauses that specify the legal obligation of each party to the agreement. Loan agreements help to formalize loan transactions and are very beneficial to all parties to the transactions:

a. For the borrower, the loan agreement provides a vivid record of the loan details that enables him fulfill his own obligations like: the amount loaned, the interest rate and repayment plan which makes it easy to keep track of the payments made.
b. For the lender, the loan agreement makes it easy to enforce the borrowers promise to repay the loan sum and empowers the lender to take recourse if the borrower defaults in paying back the loan[xvii].

Loan agreements may be international or domestic but both have the same features, international loan agreements are transnational in nature and used to evidence international transactions between an individual and a foreign institution or two or more countries or between an international financial institution and a borrowing country etc, while domestic

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loan agreements are used in loan transactions between a domestic borrower and a domestic lender domiciled in the same country.

Features of an international loan agreement includes:

a. The date the loan agreement commences
b. The name, address and personal details of the parties to the loan agreement (i.e the borrower and the lender), this makes it clear on who the parties to the agreement are.
c. The loan amount i.e the amount of money the borrower is receiving from the lender.
d. The interest rate to be charged on the loan.
e. Collateral: where applicable the loan agreement would state the property that would be used as collateral for the amount being borrowed if the borrower defaults in repaying the loan.
f. The method of repayment, for example whether it will be a lump sum payment or by installment and if there would be a penalty for early
g. The repayment schedule which outlines the deadline for repaying the loan and where applicable, the date for the repayment of each installment.
h. Dispute resolution, this would state the mode of resolving disputes that may arise in the course of the transaction such mode of resolution could be litigation, arbitration etc.
i. The choice of law i.e the jurisdiction's law that will govern the agreement.
j. Severability clause which states that all the terms of the loan agreement are independent of each other, such that if one condition is deemed unenforceable by a court that would not mean all other conditions are unenforceable.
k. Breach and defaults: this would state what would happen if the borrower fails to pay the loan sum as at the specified date for re-payment and the options available to the lender to seek redress.

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LEGAL ISSUES CONFRONTING DEVELOPING COUNTRIES IN INTERNATIONAL LOAN TRANSACTIONS

Developed countries have individually and through International Financial Institutions (IFIs) which are owned by them (as most of the developed countries are major shareholders in most IFIs for example the United states of America is the largest shareholder in the world bank and IMF) taken certain steps to facilitate economic development and render some forms of assistance to promote the standard of living in developing countries in Africa. These developed and rich countries that have excess funds have either directly or through their shareholdings in these IFIs channeled these funds through financial assistance to the national treasury departments of these developing countries who have balance of payments problems so that they can receive credits and loans to pay off their obligations, execute projects that would foster their economy and readjust their economic policies[xviii].

However, to receive this financial assistance the borrowing country must be a member of the IFI and the member country must agree through a "letter of intent" to implement changes in its fiscal, economic and monetary policies. The loans are disbursed in phases to ensure that the receiving country moves forward with the reforms required of it and the borrowing country is expected to pay back the loan on a rigorous schedule (with interest) because the loans are intended to be a temporary assistance. The IFIs also provide technical assistance on fiscal and monetary policy, regulatory procedures, tax policy and collection of statistics among other issues, these assistance are said to be aimed at strengthening developing country's ability to reform and properly manage their macroeconomic policies. The IFIs dispatch their experts and private consultants to train and educate the government officials of these developing countries[xix]. Several developing countries in Africa like Nigeria, Kenya, Ethiopia etc, have benefitted from such loans and technical assistance. Thus, developing countries and IFIs can in a way be said to have shown concern and care to the plight of developing countries in Africa and have in their own ways taken steps to make loans and aids available to developing countries in Africa for developmental purposes. However, can it truly be said that these loans and aids have helped the economic development of these developing countries in Africa?

Irrespective of the help so rendered by developed countries and IFIs to developing countries in Africa through loans and aid, the reality is that these foreign loans and aid have only helped to make these developing countries poorer and their economic growth slower and have of a truth not lived up to expectation. They have conversely boosted the cycle of poverty and derailed

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sustainable economic growth of developing countries in Africa. Despite the fact that more than US$300 billion has apparently been disbursed into the African continent since 1970 through foreign loans and aid the economic growth and human development of the region has remained at the lowest[xx]. These foreign loans and aid come with several legal issues and negative aspects which include:

a. Indirect colonialism/Economic interference: The International Financial Institutions (IFIs) happen to be the creation of countries that colonized most of the developing countries in Africa and even after gaining political independence these developing countries are still dependent on their colonial masters economically (through these IFIs) and began taking loans from them. This fact makes the entire relationship between the IFIs and the developing countries seem like a continued indirect colonialism as these developing countries have become debtors to the IFIs (their colonial masters) and have had to dance to their tunes in form of policies. Indirect colonialism negatively impedes on the economic independence and sovereignty of the borrowing country.

b. Poor collective bargaining power: Most international loan transactions infringe upon the bargaining power of developing countries. Collective bargaining which is a process of negotiating fair terms in a contract arrangement is usually poor or totally not obtainable in most international loan agreements, this is because most of the developing countries that take these loans/aid do so from a desperate and weak economic position and due to their financial inadequacies they accept the stringent conditions attached to the loans/aid with little or no form of collective bargain on the terms and conditions of the loans.

c. Destructive policies: Another negative aspect of these foreign loans and aid are the destructive policies that the developing countries most adopt into their economy in order to access these loans/aid and because of their helplessness most of these developing countries would accept these unfavorable conditions and policies. As dependent countries they have no choice but to listen and adhere to the biddings of the IFIs since it is he who plays the piper the dictates the tune, the IFIs own the money and the developing countries are in dire need of the money so they have no choice but to do whatever the IFIs place as conditions for them to secure the loan. Majority of these foreign loans are built around conditions that dictate to these developing countries how to run their political and economic lives. Some of the

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conditions for IFI loans (especially that of IMF and World Bank) usually refer to policies that member nations are expected to follow when using the funds in order to be able to cope with their balance of payment problems, such conditions usually include: Liberalization or abolition of foreign exchange and import controls, devaluation of the country's local currency, domestic anti-inflammatory programs that will control bank credits and government deficit by reducing government spending, increase taxation etc, abolition of consumer subsidies on food stuff, hospitality to foreign investment etc[xxi] all of which erode the liberty of borrowing countries to run their economies as they deem fit, rather they are bound by the policies of these IFIs which are imposed on them via loan conditions that indirectly empowers lending nations/institutions to interfere in the economy of developing countries[xxii].

d. Toxic loan clauses:

Another very critical legal issue confronting developing countries is the issue of certain clauses included in the loan/aid agreements which threatens the sovereignty and future of the borrowing countries. For example, "the sovereignty immunity clause" which a common feature in Chinese loan agreements that prevents borrowing countries from raising sovereign immunity as a defense where a dispute arises or where the Chinese government proceeds to take over a national assets used as security for the loan, another of such clause is "the confidentiality clause" that shields loan agreements from public scrutiny by imploring the borrowing country to keep the loan agreement confidential and out of public reach. Such stringent and hostile clauses gives an insinuation that the lending country or institution has an ulterior motive in granting the loan[xxiii].

e. Choice of Law/mode of dispute resolution: In international loan transactions especially where the lender is a foreign country there is usually the terrible issue of applicable laws and mode of dispute resolutions. Generally the borrower and lender ought to jointly agree on a neutral choice of applicable law that would govern their transaction and mode of resolving any dispute arising in the course of the transaction, as to bring about balance and impartiality but in reality the lender nation usually impose their choice mode of dispute resolution and the laws of their own country as the applicable law for the transaction and the borrowing country out of desperation agree to it. A good example is the agreement between China and

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Nigeria in which China gave loan to Nigeria and imposed the Chinese laws as the laws governing the loan transactions rather than a law neutral to both countries[xxiv].

Effect of Loan Conditions of the Economy of the Developing Countries

It has been observed from reports all over the globe that the imposition of these funds policies and loan conditions on the developing countries have not improved their socio economic and political conditions at all, rather it has adversely affected the people's standard of living by increasing the prices of basic necessities without a corresponding increase in wages which has often provoked protests from workers in these countries like in Nigeria. Policies such as the devaluation of the local currency of these borrowing countries inflicts heavy losses on domestic producers by raising the cost of importing essential materials for their local productions. The weak industrial base and relative limited resources of the developing countries subjects them to import material input and since trade liberalizations have opened their doors to foreign competitors, as a result of these loan policies, their weak industries are robbed of their protection and they are at the same time under the huge burden of repaying debts[xxv].

Using Nigeria as a case study, Nigeria's external borrowing dates back to the colonial period like in 1958 when the World Bank loan was granted to finance the Borno railway extension and like every other developing country Nigeria's experience has also shown that the devaluation of the local currency and other related conditions for these loans exerts a contradictory impact on real output and employment and yet many developing countries have continued with these deadly policies. When Nigeria approached the IMF for loan in 1983 the conditions for the loan where bitter pills which IMF forced down the throat of Nigeria such as massive cut in public subsidies like fuel subsidy, which made life difficult for the citizens and in June the then Military president (General Babangida) announced the structural adjustment program (SAP) for the period of July 1986-June 1988 for the country. SAP was regarded as a recipe for social and political instability in Nigeria, there were riots during this period many local plants were closed for lack of material inputs and spare parts which led to massive retrenchment of workers. The adverse effect of SAP program which consists of the loan policies of the IMF still lives with Nigeria today. The so called economy recovery programs and the SAP were all drafted within the policy framework recommended by the World Bank and the IMF. It was expected that when these policies are implemented in Nigeria the economy would improve, but the policy designers (the IFIs) failed to realize that for a developing country with a weak industrial base such a policy would only succeed if they overcome the limitation of import substitution i.e. creating a good

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industrial environment such as good road, electrification, water, good communication system, affordable and relevant education, basic health services, investment in human capital etc. The absence of this adequate industrial base made it difficult to sustain these policies, thus rather than help Nigeria these policies caused high rate unemployment, inflation etc and sadly Nigeria and other developing countries have still not learnt any lessons, they are still undergoing the exercise of devaluing their currencies to satisfy these IFI policies[xxvi]. Most developing countries (like Nigeria) depend greatly on imported goods and their poor industrialization and devaluation with its accompanying policies has led to increase in the cost of imported products, materials and machineries which in turn leads to increase in production cost, increase in local products prices and rise in inflation resulting to increase in the price of finished goods & services. This shows that devaluation and these accompanying policies of the IFIs which are conditions for granting loans to developing countries are never a solution to achieve the objective of making developing countries grow economically. These policies only lead to an increase in the price of goods and services with no corresponding increase in the wages of workers; thus, it is appropriate to indicate that the IFIs operate loan policies that favor the rich and developed owners above the developing countries.

Majority of the IFIs make a lot of wrong policies that turn out bad and affects the developing countries seriously. The World Bank and the IMF even agreed to the fact that they have made a lot of wrong policies, they however defend their failure by maintaining that most of the developing countries delay their approach to the funds until their economies are no longer breathing[xxvii]. These IFIs of a truth miscalculate the anatomy of the domestic economy of developing countries. Thus, it can be inferred that developing countries are used are a testing ground for these western policies and left to face the repercussion when the policies turn out bad. In which case, it can't be completely said that the IFIs have truly responded to the need of developing countries[xxviii].

Foreign Loans and Collateral

Foreign loans and aid are usually secured using the national assets of the borrowing country as collateral for the loan such that in any event that the borrowing country defaults in any of the loan conditions or is unable to repay the loan within the specified time the lending nation will be entitled to take over the national asset used as collateral and collect the revenue generated from the asset to recover the loan. For example, sometime in 2021 there were widespread reports indicating that Uganda had surrendered one of its national assets (the Entebbe

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International Airport) to China for defaulting in the repayment of the 2015 loan granted to it by China for the purpose of refurbishing the Airport and the Chinese government refused to re-negotiate certain toxic clauses in the loan transactions. Also in a 2014 loan transaction Kenya used it Mombasa port as collateral for securing the loan. Zambia also did same when it used its Kenneth Kaunda International Airport, Zambia broadcasting corporation and National power and utility company (whose revenue China is reportedly collecting to settle Zambia's financial obligation to them) as collateral for loan[xxix]. This brings us to a very crucial question: Does the national assets used as collateral outweigh the economic benefit of the loan itself?

The path in which the discussion in this article has followed definitely answers the question in the affirmative. It seems obvious that the national assets of borrowing countries used as collateral far outweigh the economic benefit of the foreign loans and aid they aim at securing. This is so because majority of these loans/aid systematically pile up the debt burden of borrowing/developing countries in Africa to a point where these countries struggle to repay their debts, maintain the collateral assets and build their economy all at the same time and this makes them likely to lose the assets to the lending nation where they fail to repay the loans within the stated timeframe[xxx]. These national assets if well maintained under local policies stand a better chance of generating more income and contributing positively to the growth of the country's economy than when they are used as mere collaterals for foreign loans and stand the risk of being taken over by the creditor nation if there is a default in any of the loan conditions.

HINDRANCES TO EFFECTIVE LEGAL PROTECTION FOR DEVELOPING COUNTRIES IN INTERNATIONAL LOAN TRANSACTIONS

Legal protection in international loan transactions has to do with the provision of legal terms, clauses and conditions that adequately protects all parties to the transactions without jeopardizing the interest and welfare of any of the parties. It aims at providing fairness, equality and ensuring a collective bargaining power for all parties, however, in reality these legal terms and clauses that ought to provide the needed protection for parties to the loan transaction are usually lacking or not given so much importance especially as it affects the borrowing countries who are desperate to get these loans/aid. Rather lending countries are known for including toxic

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and hostile clauses that protect only themselves leaving the borrowing countries inadequately protected. There are several factors responsible for this and they constitute a hindrance to adequate legal protection for these developing countries when they engage in such international loan transactions, these factors include:

a. **Poverty:**

   Most developing countries in the world have a very high poverty index with a large number of their population living in extreme poverty despite all the God-given resources of these countries. What follows is that majority of the people in these developing countries are poor, hungry, uneducated and unable to meet their basic needs of life[xxxi]. This makes their average citizen uneducated, uninformed and unable to contribute to the growth of their country's economy which resultantly makes their economy weak, helpless and dependent on loans/aid for its growth. This is one of the reasons why developing countries are heavily dependent on loan/aid for their survival and even willing to give up their sovereignty to get these loans.

b. **Poor Education:**

   Due to poverty, majority of the populace in developing countries are either illiterates or poorly educated because they cannot afford quality education. This directly affects the quality of individuals in the leadership positions of these developing countries, as they are likely to have a high number of poorly educated persons making national decisions and handling strategic positions in governance who may not know the importance of such legal terms and clauses in loan transactions that ought to protect their country or may not be bold enough to bargain with the well-educated personnel of these lending countries/institutions. This makes them very likely to bow to the conditions of the lending nation because of their weak position.

c. **Poor/weak economy:**

   Most developing countries suffer from a poor and weak economy. They lack sufficient finances to fund their budgets, execute capital projects and grow their economy and this makes them largely dependent on loans for survival as they have no capable means of generating funds within.

d. **Financial Illiteracy:**

   Most developing countries suffer from financial illiteracy. They lack understanding of the financial system, financial concepts and the inability to make wise financial

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decisions like when to spend, when to save, effective budget managing etc. The effect of financial illiteracy are poor economic choices that adversely leads to a weak and poor economy, inability to develop their own local policies as it best suits them rather they depend on foreign policies that are based to western ideologies and do not best solve their problems[xxxii].

e. **Political Instability:**

The economy of most developing countries are interwoven with their politics and the instability in the politics of these developing countries is another factor that negatively affects the development of their economies. Issues such as inconsistent and unstable government policies, insurgency, terrorism, kidnapping, weak leadership etc., are reasons why these developing countries are not an attraction to both local and foreign investors and this has hampered both foreign and local investments that would have led to the development of businesses and given room for their economies to thrive, therefore they remain desperately in need of loans to the point of being willing to sacrifice their sovereignty.

f. **Corruption:**

Corruption is another factor hindering the effective legal protection of developing countries in international loan transactions. The term corruption refers to the use of one's office or position for personal or group gain, it has to do with unprofessional and unethical actions such as bribery, nepotism, patronage, conflict of interest, divided loyalty, influence peddling, misuse or stealing of government property, selling favors, embezzlement, fraud, extortion, under or over invoicing, misappropriation etc. The funds gotten from international loans and aids are usually embezzled by leaders and government officers of the borrowing countries instead of using the funds for capital projects that would generate income and build their economy. Thus, because the aim is to embezzle these funds the government officers are much more interested in getting the loans at any cost and do not mind jeopardizing the interest of their countries to do so, that is why they are quick to sign these monstrous loan agreement that do not give any form of protection to their county[xxxiii].

g. **Improper capital markets:**

Most developing countries do not have viable capital markets where they can raise funds for capital projects. As in the case of developed countries, they have strong and active capital markets and their government through bonds and stocks raise money for

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projects and do not have to seek external borrowings but in the case of developing countries, their capital markets are weak and unable to generate funds for their government and this makes them heavily reliant on external borrowing to fund their economy[xxxiv].

h. **Lack of professionals in governance:**

Most developing countries have the attitude of sacrificing competence and expertise on the altar of reward for partisan politics and this has contributed in murdering their economy because the persons who are appointed to manage and take decisions for the economy are so appointed on political basis without having the requisite knowledge of the economy and the expertise to manage it. Such persons may not even know the necessary clauses that must be in loan agreements for the good of their country, they merely dance to the tune of the government that appointed them even to the detriment of the economy.

i. **Credit worthiness:**

Failure to adhere to the loan conditions of financial institutions and lending nations disqualifies a borrowing country from future loans and because these developing countries are hugely dependent on loans for their survival, they give in to any conditions posed by the lending institutions/nations without any form of resistance so as to guarantee future borrowings[xxxv].

SECURING LEGAL PROTECTION FOR DEVELOPING COUNTRIES IN INTERNATIONAL LOAN TRANSACTIONS

Despite the overwhelming issues confronting developing countries in Africa, ensuring their adequate legal protection when they engage in international loan transactions is non-negotiable. Hence, what must be done to ensure that developing countries in Africa are legally protected when dealing with international financial institutions and lending nations?

a. **Legal terms and clauses:**

One of the ways to ensure that developing countries are adequately protected is by ensuring that all necessary legal terms and clauses are well thought out, considered and provided for in the loan agreement. Examples of these legal terms/clauses include: the applicable law that would govern the transaction, mode of dispute resolution,

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severability clause, collateral, interest rate, mode/schedule of repayment etc. The borrowing countries must manifest their part of the collective bargaining and use same to protect their interest and refuse toxic clauses that may be imposed by the lending nation[xxxvi].

b. **Sovereignty:**

Under international law, every country is sovereign and independent, they have the power and authority to rule their affairs without any form of foreign interference. Therefore, developing countries must resist any move from IFIs and lending nations to control their economy through loan policies, conditions and toxic loan clauses. They must be bold to identify and resist anything that would indirectly take away their economic sovereignty.

c. **Resist unfavorable loan conditions:**

Although IFIs and lending nations are mainly business entities and would want to protect their funds by imposing policies and conditions that the borrowing countries must meet before they can access the loan, developing countries must be sensitive and refuse any unfavorable policy and conditions that will have a negative impact on its economy. The developing countries must learn to see themselves as business entities too, they need the loans while the IFIs make profit through the interest on the loans, therefore they must protect themselves rather than bow to the pressure of unfavorable loan conditions that can cripple its economy[xxxvii].

d. **Alternatives to Loan/Aid:**

Another way out is for developing countries to reduce their dependence on foreign loans/aid and seek better market alternatives that would have positive impact on their economy. For example, encouraging foreign direct investments (FDI), building strong capital markets through which their governments can sell bonds and stocks to raise funds, microfinance etc. A reduction in the quest for loans/aid would reduce the powers of the IFIs and lending nations to dictate the tune because they know that there are better alternatives rather than when they are aware that developing countries cannot do without them.

e. **Local policies rather than western policies:**

It is well known that IFIs and lending nations usually dictate how the funds given through loans/aid are to be used. They design economic policies for the developing countries and monitor its implementation, this ought not to be so. Developing countries

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should be allowed to decide and take responsibility of how to use the money they borrowed and would pay interest on. Rather than imposing western designed policies on developing countries, the IFIs and lending nations should relinquish control and allow local policies and innovations take root. Developing countries should be allowed to invest their funds in their own local innovations rather than western imposed innovations that may not meet their needs[xxxviii].

f. **War against corruption:**

One of the factors that would make it easy for IFIs and lending nations to give up control of loan/aid funds is where developing countries can ensure accountability and transparency in the use of these funds. Corruption is usually the reason why IFIs and lending nations insist on creating strict policies and conditions for the loans and monitor same. But if the borrowing country can be seen to have ripped itself of the menace of corruption and can show strict accountability and transparency then it would be easy for them to have their way in the use of these loans/aid[xxxix].

g. **Experienced professionals:**

Developing countries must work towards ensuring that experts and professionals are employed to manage the affairs of their countries and economies. Professionals who are financially literate and can make informed financial decisions on when to spend, when to save, when to borrow and how to effectively use borrowed funds so that they can be repaid timeously and ensure that their countries are adequately protected when they take foreign loans and aid[xl].

RECOMMENDATIONS

To ensure the legal protection of borrowing/developing countries when engaged in international loan transactions, these borrowing countries must ensure that:

a. They resist any move to take away their economic sovereignty through loan policies and conditions by voicing out and resisting any condition that do not sit well with them.
b. They include legal clauses in the agreement that will ensure their own protection.
c. Where it is inevitable to borrow, loans and aid gotten must be properly utilized for optimum economic impact.

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d. They look out for concessional loans that are fair rather than non-concessional and less generous.
e. They must avoid loans that are opaque, confidential and shrouded in secrecy in which the lenders usually have hidden intentions.
f. They must begin to build for themselves alternatives to external borrowings such as building their capital markets, encouraging foreign direct investment (FDI) etc.
g. They must avoid accumulation of debts without long term strategy on how to repay.

CONCLUSION

In recent times, due to the fall in crude oil prices and after effect of the COVID-19 pandemic many African countries have resorted to borrowing in order to fund their economy and this has made the issue of foreign loans and aid inevitable[xli]. Therefore, it is crucial to ensure that developing countries in Africa taking up these foreign loans/aid are adequately and legally protected from some of these monstrous loan conditions, policies and clauses that are shrouded in the loan agreements. For the betterment of the countries involved and the continent of Africa at large the economic growth of individual countries must never be compromised and all hands must be on deck to reject ill driven loans and aid no matter the cost.

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