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Abstract

Good governance reforms aim at transforming African state bureaucracies into efficient, transparent, and accountable institutions. These policies are inserted into the national administrative apparatus by means of conditions attached to the financial support of the World Bank and the International Monetary Fund (IMF). Although the conditions exactly match the priorities of these international financial institutions (IFIs), they are not set by them; paradoxically they are (in theory) set by the government requesting a loan. This paradox, the article argues, has to be understood primarily in legal terms. A close reading of a number of loan documents signed by the representatives of the IFIs and the government of Malawi demonstrates how responsibility for good governance reforms is ascribed to the government of Malawi, which "owns" the reforms. The article further shows that the elaborate conditionality attached to loans fuses legal logic and economics in a characteristic "normativity of numbers." By normativity of numbers I refer to the use of economic data, and the introduction of systems of personnel management and expenditure monitoring, as conditions in the loan documents.
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**The Normativity of Numbers: World Bank and IMF Conditionality**

Good governance reforms aim at transforming African state bureaucracies into efficient, transparent and accountable institutions. These policies are inserted into the national administrative apparatus by means of conditions attached to the financial support of the World Bank and the International Monetary Fund (IMF). Although the conditions exactly match the priorities of these international financial institutions (IFIs), they are not set by them; paradoxically they are (in theory) set by the government requesting a loan. This paradox, the article argues, has to be understood primarily in legal terms. A close reading of a number of loan documents signed by the representatives of the IFIs and the government of Malawi demonstrates how responsibility for good governance reforms is ascribed to the government of Malawi, which "owns" the reforms. The article further shows that the elaborate conditionality attached to loans fuses legal logic and economics in a characteristic "normativity of numbers." By normativity of numbers I refer to the use of economic data, and the introduction of systems of personnel management and expenditure monitoring, as conditions in the loan documents. 

…conditionality links the Bank’s financial support to implementation of a program of reforms critical for the country’s economic and social development… conditions usually reinforce the level of country ownership needed to ensure the implementation of reforms. (World Bank 2003)

On 8 December 2000, Malawi’s Governor of the Reserve Bank and Minister of Finance sent a so-called Letter of Intent to Horst Köhler, then the International Monetary Fund’s Managing Director, requesting “support from the Fund under a three year Poverty Reduction and Growth Facility (PRGF) arrangement in the amount of SDR 45. 11 million (65 per cent of quota) and… debt relief under the enhanced HIPC Initiative” (IMF 2001a:47). The attached memorandum outlines a comprehensive set of measures the government of Malawi intends to adopt “under a program with the aim of alleviating and reducing poverty and promoting equitable growth” (ibid.) including a whole range of measures to improve the performance of the government. For example, paragraph 11 states that “government will continue to broaden and deepen other structural reforms by putting in place effective systems of expenditure control and monitoring; … prioritizing recurrent government expenditure…; furthering civil service reform…” (ibid.:50).

The emphasis on expenditure control, prioritizing government expenditure, and civil service reform in this letter reflects the agenda of the international financial institutions (IFIs) at the time, which continues to be dominated by the key word “good governance” – as the current Poverty Reduction Strategy Papers (PRSPs) demonstrate. This article seeks to contribute to a better understanding of how the good governance agenda is inserted into the national administrative apparatus of aid-dependant Third World countries by means of conditionality –
the *terminus technicus* for the policy measures financed with a loan. It presents a close reading of various loan documents signed between the IFIs and the government of Malawi from the 1990s to the beginning of the 21st century. The analysis focuses on the legal dimension of these documents – how they transform the IFIs’ policy prescriptions into conditions set by the government requesting financial assistance. Tracking this transformation from external advice into self-imposed conditions is important since it shows how the IFIs “govern at a distance,” to use a phrase coined by Miller and Rose (1990). For the representatives of the IFIs it is therefore crucial to link conditionality with country ownership: only if it is the countries’ governments that set the conditions is it possible to state that “conditions reinforce the level of country ownership” (IMF 2002a). This statement is at odds with the common perception of how loans work, and yet it is at the heart of the concept of conditionalism as I will show in detail below.

In the documents I analyzed, the conditions spelled out in the government’s letter typically consist primarily of numbers. These numbers become standards against which Malawi’s progress is to be measured, referred to as “quantitative performance criteria.” At a deeper level, use of these numbers also marks the installation of whole systems of number collection, a more sophisticated structural conditionalism which is a characteristic feature of policy measures pertaining to governance issues in the PRSP1. The emphasis on numbers and the collection of numbers in the conditions is referred to in this article as “normativity of numbers.” The normativity of numbers is a hybrid combination of legal techniques and economics in the conditions attached to a loan. Here the term refers to the use of economic data and the introduction of systems of personnel management and expenditure monitoring as conditions in the loan documents.

The legitimization of development interventions by means of economic theory and statistics has been examined by a number of critical studies drawing on Foucaultian ideas. The first studies in this vein were mainly concerned with discursive formations and the construction of the category of “underdeveloped” (Escober 1995; Ferguson 1994; Secher Marcussen and Arnfred 1998). This focus has also informed subsequent studies examining various aspects of international development such as good governance in Africa (Abrahamsen 2000) and the role of scientific knowledge in modernizing Egypt (Mitchell 2002). These and other studies proved to be hugely influential, but they also had a tendency to represent development discourse as monolithic and all-powerful – while in fact it is not a coherent system and often fails to turn people in the Third World into docile subjects (cf. Harrison 2003; Mosse 2005). Recent studies acknowledge this critique and have shifted their attention from broad discursive formations to technologies of governing and surveillance (e.g. Craig and Porter 2003; Murray Li 2007). The role of legal thinking in regard to technologies of governing, however, has not been addressed explicitly in these studies. The present article seeks to fill that lacuna. This does not imply that the policies and operations of the IFIs have not been analyzed from a legal perspective. A number of studies by critical legal scholars (Anghie 2004; Falk et al. 2006; Gathii 1999; Rajagopal 2003) have examined the IFIs’ relationship with Third World countries in terms of a hegemonic or neo-colonial regime, but have done so at a fairly abstract level within a public international law frame of reference. This article adopts a different perspective. While the legal studies tend to adopt a macro-level
perspective, this essay zooms in on the micro-level. It is more interested in understanding how conditionality operates, how Good Governance programs are inserted into Malawi’s administration, and how mundane legal details play a crucial role in these processes. It does not dismiss the statement “conditionality strengthens country ownership” as cynical newspeak, but takes it seriously, examining how the representatives of the two major IFIs (the World Bank and the International Monetary Fund (IMF)) arrive at this understanding.

The term legal is not readily associated with the plethora of memoranda, loan documents, and systems of calculation that constitute the IFIs’ “technical assistance.” This is no coincidence; the legal status of these documents is ambiguous. Loan documents inhabit a grey area in the interstices of soft law, technical norms, public international law, and international private law. They are not “soft law,” i.e. legally non-binding, since the violation of certain conditions affects disbursement, and the repayment of the loan with interest is a contractual obligation. The conditions themselves, on the other hand, do not amount to contractual obligations according to the legal opinion of the IFIs, because they are set by the government requesting financial assistance. Here I use the terms legal logic and legal technology to draw attention to the fact that they are designed with possible legal consequences in mind although they might not constitute legal obligations in the strict sense of the word. The designers of conditionality apply legal thinking in order to avoid language associated with contractual obligations, as I will show in more detail below.

The PRSPs, which were introduced in 1999, constitute the most comprehensive attempt at improving national economies yet (Craig and Porter 2003; Gould 2005). PRSPs are characterized by a sophisticated mix of “structural benchmarks” (often referred to as soft conditions), and “performance criteria” (also known as hard conditions). Soft conditions tend to address areas outside the ambit of the economic and financial core-activities of the IFIs – issues such as governance, human rights, and democratization. Hard conditionality, on the other hand, usually includes mandatory macro-economic goals – reduction in government expenditure or inflation rate, for example – although structural conditions such as the establishment of specialized government agencies or the enactment of legislation can also be performance criteria. In principle the violation of performance criteria affects disbursement of a loan, whereas non-compliance with benchmarks would not necessarily affect disbursement.

The hard conditions attached to Structural Adjustment were soon perceived to be too rigid and at odds with country ownership, as well as with the government’s responsibility for policy measures and their implementation. Even within the Bank there was wide agreement that the hard conditionality of the 1980s had to be replaced by more flexible instruments. We see this in a paper presented at the World Bank’s 12th Annual Bank Conference on Development Economics in April 2000 by Paul Collier, then director of the World Bank’s Development Research Group. Collier pointed out that one of the consequences of conditionality in the 1980s “was that governments would be undertaking policy change against what they considered to be their interests, except for the receipt of aid” (Collier 2000:9). Benchmarks are supposed to address this issue and give more autonomy to the government because of their greater flexibility. My article takes issue with this view and argues that more sophisticated conditions allow the IFIs to penetrate the state bureaucracy to an unprecedented degree.
In particular, this article focuses on the current key-concept in international development, good governance, and examines how legal technologies are fused with systems of data collection, budget planning, and accounting in the conditions attached to the loan agreements between the IFIs and Malawi. The article begins with a sketch of the emergence and subsequent adoption of the good governance agenda by the IFIs. Then it investigates how various types of hard and soft conditionality are reconciled with country ownership by drawing on a close reading of a number of loan documents. This is followed by a discussion of the normativity of numbers, the conversion of numbers representing economic data, and the collection of numbers into conditions.

**Good governance**

Good governance has become the key-concept in international development during the second half of the 1990s. Without uttering this password it has become impossible to qualify for international foreign aid. Good governance is about transforming “dysfunctional” state bureaucracies into efficient and transparent service-providers that are accountable to the public and subject to the rule of law. It is hailed as the new remedy for underdevelopment and poverty by the officials of the Bretton Woods institutions, especially with regard to Africa where parasitic bureaucrats and their primordial affiliations appear to frustrate all development efforts (World Bank 1989). Good governance emerged as the central concept in development assistance in the 1990s and its advent heralded an era of much more intrusive interference in the domestic affairs of governments of developing countries, especially in sub-Saharan Africa (Abrahamsen 2000; Craig and Porter 2003). In the late 1980s and the early 1990s, the IFIs called for a radical overhaul of the state institutions to accord with the neoliberal dogma that decreed how best to create favorable conditions for economic development. Governance reform was promoted as the tool or instrument that would contribute to “sustainable economic and social development” (World Bank 1992:5) and “macroeconomic stability, external viability, and orderly economic growth” (IMF 1997:1).

The booklet *Governance and Development*, published in 1992, was the World Bank’s first general statement of the new development agenda. It defined governance as “the manner in which power is exercised in the management of a country’s economic and social resources for development” (1992:3). According to the Bank, the key dimensions of governance are “public sector management, accountability, the legal framework for development, and information and transparency” (1992:6) – civil service reform constituting one of the centerpieces of policy reform. Although this was the first publication to be exclusively devoted to good governance, the Bank had addressed the problem of state bureaucracies in developing countries earlier. In 1989, a World Bank report on sub-Saharan Africa mentioned “deteriorating governance” as one of the main causes of the crisis in Africa. It held the expansion of state services and the dominant role of the state in the economy after independence responsible for elusive economic growth, juxtaposing the “simple but functioning administrations…managed by expatriates” of the colonial era with the bloated, inefficient, and corrupt bureaucracies that arose after independence, forcing economic activity into the informal sector (World Bank 1989:30). In line with this neo-liberal critique of the

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2 The World Bank and the IMF are also referred to as Bretton Woods institutions. Both organizations were established by the Bretton Woods agreements signed by the delegates from 44 Allied governments in Bretton Woods, New Hampshire in July 1944.
interventionist state, World Bank experts designed instruments to transform inefficient African state institutions into an “enabling environment” by “defining and protecting property rights, providing effective legal, judicial and regulatory systems, [and] improving the efficiency of the civil service” (World Bank 1991).

The IMF, the World Bank’s sister organization, followed suit and adopted its Guidelines Regarding Governance Issues in 1997 (IMF 1997). The IMF Managing Director at the time, Camdessus, stated in an address to the United Nations Economic and Social Council that “good governance is important for countries at all stages of development.” Of course, he did not omit to point out that “the responsibility for governance issues lies first and foremost with the national authorities” (IMF 1997:2). This statement reflects the policy of the IFIs to place responsibility for policy reform with the government receiving a loan. Hence, both organizations are keen to point out that country ownership of reforms and conditionality are not at odds.

**Conditionality and country ownership**

Good governance and other reforms require slots to be inserted into the national polity. These slots are the conditions of a loan, the government’s commitment to implement specific policy reforms. The loans of the World Bank are referred to as credit agreements and those of the IMF as loan agreements or loan arrangements. Credit agreements and loan agreements are split into two separate parts: a letter to the World Bank or the IMF signed by the representatives of the government (usually the Minister of Finance or the president of the reserve bank), and the credit agreement or the loan agreement. If this letter is addressed to the World Bank, it is referred to as the Letter of Development Policy; if to the IMF, it is called a Letter of Intent. The letter is a document in which the government seeking financial assistance describes a set of policy measures it intends to finance with the requested loan. These policy measures are the conditions of the credit or loan respectively.

After the Bank or the Fund decides to honor the request of the government, a credit agreement (World Bank) or loan arrangement (IMF) is signed. The agreement includes clauses on the undertakings of the borrowing government and the World Bank/IMF, the terms of the loan, and the repayment obligations of the borrower. In addition, the borrowing government “declares its commitment to the objectives of the Project […] and, to this end shall carry out […] the project with due diligence and efficiency.” However, the agreement does not include a description of the project or program to be financed with the credit or loan. Instead, the government intention to implement a specific program and the exact description of the program are embodied in the Letter of Policy or the Letter of Intent. In other words, it is the government, not the World Bank or the IMF, that sets the conditions of the loan in the letter—which is a government document. The Bank or the Fund then declares the intention to disburse the money as long as the government honors its intention declared in the letter.

The split of the loan documents is crucial for the construction of ownership and conditionality. According to the World Bank, “conditionality links the Bank’s financial support to implementation of a program of reforms critical for the country’s economic and social development […] commitment to reform is essential, and conditions usually reinforce the level of country ownership needed to ensure the implementation of reforms supported
under adjustment loans’ (World Bank 2003). The position of the IMF is similar: “When a country borrows from the IMF, its government makes commitments on economic and financial policies – a requirement known as conditionality” (IMF 2002a). From the perspective of the representatives of the Bretton Woods institutions, the split into Letter of Policy or Intent, on the one hand, and credit or loan agreement, on the other hand, guarantees country ownership of the reforms since the conditions of the loan are set by the government.

The World Bank and the IMF deal differently with the ramifications arising from ownership and state sovereignty although the result is similar. According to the World Bank lawyers the credit agreement signed with a member state includes the conditions at the request of the government applying for a loan whereas according to the IMF lawyers the conditions do not constitute a legally binding agreement at all. Credit agreements signed between the World Bank and borrowing member states’ are considered to be agreements between two parties governed by public international law (Broches 1959; Delaume 1982; Head 1996). The credit agreement includes a provision that gives the World Bank the right to suspend disbursement if the program described in the Letter of Policy is not carried out “with due diligence and efficiency.” Hence, the lending institution is entitled to suspend disbursement of the credit if the borrowing government fails to implement the conditions of the Letter of Policy. Since the conditions are spelled out in the Letter of Policy, a government document, characterizing ownership as a consequence of conditionality seems logical from the perspective of World Bank representatives.

In referring to “arrangements” rather than agreements, the IMF has gone even further than the World Bank to avoid any contractual implications. Gold⁸ has argued in one of the few discussions of the legal character of the Fund’s stand-by arrangements that the term “agreement” does not imply any “intention to contract” by the IMF (1980). Gold states: “the adoption and performance of a program are the responsibility of a member” (1980:36). He makes a clear distinction between the Letter of Intent and the arrangement: “The two stand-by documents, the letter of intent and the stand-by arrangement, do not constitute an international agreement under which the member undertakes obligations to observe its objectives and policies” (Gold 1980:43).⁹

His argument refers to stand-by agreements, the regular form of IMF balance-of-payment support in the 1970s, but it also pertains to all subsequent loan facilities: the Structural Adjustment Facility (SAF) and the Enhanced Structural Adjustment Facility (ESAF) of the 1980s and 1990s, as well as the Poverty Reduction and Growth Facility and the HIPC initiative which replaced ESAFs in 1999. In spite of these changes in the Fund’s policy Gold’s arguments were never substantially altered and continue to define the legal character of all “arrangements” of the Fund with borrowing countries.¹⁰

Gold is surprisingly frank about the IMF’s motives in avoiding any contractual implication. He argues that the non-obligatory character of the Fund’s arrangements has advantages for both parties – the Fund and the government. He observes that “[t]o bind governments by agreement to observe their objectives and policies, so that departures from them would be breaches of obligation, could exacerbate political tensions and increase the difficulties of negotiation [with the Fund]” (Gold 1980:37). By using “arrangements,” the involved parties leave the fiction of sovereignty intact, and avoid legal and democratic accountability for
policy reforms that “may impose hardship for a time on the populace as a whole or on sections of it” and “can provoke domestic political controversy and become a cause of friction even within a government,” as Gold puts it (1983:37).

Since the 1980s, when the concept of conditionality was introduced, the Bank and the IMF have developed a whole range of different types of conditions tailored to the perceived needs of the borrowing governments. Both organizations have harmonized their policies to avoid overlaps and conflicts between their respective conditions. To avoid these conflicts, both organizations in principle use the same types of conditions so as to complement each other in their “arrangements” with borrowing countries (IMF and WB 2001). They have developed four types of conditionality: prior actions, performance criteria, structural benchmarks, and program reviews:

Prior actions are measures that a country agrees to take before the Fund’s Executive Board approves a loan and before the initial disbursement takes place. [...] Performance criteria (PCs) are specific conditions that have to be met for the agreed amount of credit to be disbursed. There are two types of PCs: quantitative and structural.

- Quantitative PCs typically refer to macroeconomic policy variables [...].
- In arrangements where structural reforms are an essential part of the economic program, structural PCs are also used. These vary widely across programs but could, for example, include specific measures to restructure key sectors [...].

Structural benchmarks are similar to structural PCs, except that individual benchmarks are less critical for meeting the program’s objectives. Thus, benchmarks may help the Board assess a country’s progress on structural reforms, but failure to achieve them would not necessarily interrupt Fund funding.

Another important monitoring tool is the program review, which serves as an opportunity for a broad-based assessment [...]. Reviews are used to discuss policies and introduce changes to the program that may be necessary in light of new developments. [IMF 2002a]

Prior actions and performance criteria are viewed as hard conditions because they are a condition for disbursement of the credit. Structural benchmarks, on the other hand, are considered to be soft because they would only affect disbursement under exceptional circumstances (for example, massive failure to implement a whole range of structural benchmarks without providing the lending institution a satisfactory explanation). According to the IFIs, structural benchmarks merely serve as points of reference for assessing a country’s progress and monitoring the government’s progress in implementing the reform program (IMF 2001b:3-20).

Recent reports and policy papers of the World Bank and the IMF characterize hard conditionality in the form of performance criteria as being too inflexible and inconsistent with the principle of country ownership (Collier 2000; IMF 2001b; IMF and World Bank 2001). Of course, the Bank and the Fund did not give up performance criteria and other hard conditions completely. However, by emphasizing the flexibility of soft structural benchmarks, both organizations have tried to avoid the impression that they punish governments for failing to implement certain policies. Soft conditionality has been presented responsive to the needs of the borrowing governments because it gives them more leeway in adapting to changed circumstances.
The 1990s expansion beyond the financial-economic issues traditionally addressed by the IFI programs has resulted in the growth of conditionality. The current PRSPs continue this trend and cover all aspects of the national economy, from measures designed to increase agricultural production to policies aimed at improving education and governance (cf. GoM 2002). PRSPs are characterized by a complex mix of hard and soft conditionality, ranging from quantitative performance criteria to structural requirements such as establishment of a system to prioritize expenditure management.

In Malawi’s case, the Poverty Reduction Strategy process with its more complex conditions has not resulted in more leeway for the government. On the contrary, in 2002 the IMF blocked the disbursement of $45 million for balance-of-payment support because of government overspending and corruption allegations against several Cabinet ministers – despite the fact that these were structural benchmarks. Since 2000 it has become common for bilateral donor agencies to stop financial support because of misuse of funds or corruption allegations. So far it seems that only the IFIs and other donor agencies benefit from the greater flexibility afforded to them by the new conditionality in the PRSPs, whereas the government of Malawi faces tougher sanctions than under the Structural Adjustment regime in cases of misbehavior.

The normativity of numbers

“Getting the numbers right” is at the core of what staff and consultants at the World Bank and the IMF do – and the sheer amount of data collected by the IFIs is staggering. A policy document of the Bank and the Fund would be incomplete without extensive statistics and tables on every aspect of a country’s economy, from data on the Gross Domestic Product to social indicators such as school enrolment. These numbers enable policy planners to determine the state of the national economy and predict future development.

In his ethnography of the IMF, Harper (1998) traces the transformation of numbers from their initial collection by visiting missions to their eventual arrival on the desks of managers and directors in Washington D.C. He observes how important numbers are for the functioning of the IMF. Echoing Levi-Strauss he describes their transformation as a conversion of numbers from a “raw” state into a “cooked, meaningful” state in country reports and loan documents. According to Harper, the transformation of numbers into a “cooked” state enables the staff of the Fund to assess the present situation.

Harper, however, fails to address one important issue: the normativity of numbers. Numbers develop a particular normative character when they become part of the conditionality of the loan documents. Numbers may acquire normativity in two ways. First, the number itself can transform into a norm when it is part of the conditions attached to the loan and second, the collection of specific numbers using standardized methods can constitute a condition. Typical examples of the former are targets for economic growth, inflation, and public expenditure. The second type of normativity of numbers exemplifies the neo-liberal trend toward systems of self-control. The operation of the new systems of management and control depends on the collection of reliable and standardized data. For example, the installation of computerized personnel and payroll management, expenditure planning, and accounting are conditions of
The civil service reform program. These systems are supposed to function as instruments of self-control that are operated by the government or private consultants without any direct intervention from the IFIs.

The government’s Letter of Policy or Letter of Intent includes stated objectives of policy reforms. Many of these targets are represented as numbers touching on all aspects of economic and social development, including Gross Domestic Product, inflation rate, government expenditure, revenues, and average life expectancy. The stated targets or objectives are based on estimates of Malawi’s economic situation at the time – estimates obtained using scientific methods of data collection and processing. They are, however, not fixed; they can change under specific circumstances. For example, by stating that the reduction of the deficit is an “objective,” the Letter creates some discretionary room for the World Bank and the government: better data collected in the future might indicate that the original goal is no longer realistic – and a new goal, based on better estimates of the present and the future, might be formulated. As a form of “scientific knowledge,” estimates are by nature subject to change if data collection and processing are improved.

The collection of quantitative data is crucial for policy planning and implementation. Contemporary systems of management and auditing depend on reliable sets of quantitative data (cf. Porter 1995; Rose 1999; Strathern 2000). Numbers are only useful if they are collected according to standardized methods; otherwise they cannot be used to assess the country’s progress in relation to a specific standard. In order to receive standardized sets of statistical data, the World Bank and the IMF provide the government of the borrowing country with the necessary technology to collect the required numbers.

When the first World Bank mission for governance reform visited Malawi in 1993, it was surprised that the exact number of people employed by the civil service was unknown. The Bank therefore financed, through the Second Institutional Development Program, a civil service census – “a critical first step in the development of a personnel management information system (PMIS)” (World Bank 1994:19).12 The civil service census was conducted in October 1995 (GoM 1996). The data collected through the census could be fed into the PMIS including a computerized payroll system, which was eventually introduced in 1998, and a personnel management system. The data thus acquired could be used for other measures such as functional reviews of ministries and the retrenchment of staff identified as redundant.

Another crucial element of the civil service reform was the establishment of the Medium Term Expenditure Framework (MTEF). MTEF is a technology developed by the World Bank in the 1990s to enable the government to plan and prioritize expenditure in line with available financial resources in a period of three to five years. MTEF was introduced in Malawi as a condition of the First Fiscal Restructuring and Deregulation program in 1996. The important contribution of MTEF is that it enables the government “to prioritize” expenditure in a time-frame that transcends the traditional yearly budget planning. To “prioritize” does in fact mean that the ministries have to identify their priority activities. High-priority activities will receive available funding while low priority activities receive less funding, or no funding at all if they cannot be sustained. Low-priority activities are usually earmarked for privatization. MTEF is at the heart of the measures to control government expenditure, and constitutes a structural
performance criteria. It is a technology that is supposed to balance the tasks of a ministry, expenditure, and available funding. The Letter of Development Policy of the Second Fiscal Restructuring and Deregulation Program (1998) stated the aim of MTEF:

The aim will be to correct deviations from the budget and adjust expenditures against changes in resource availability. To enable control over salary payments, expenditure monitoring will also include monthly comparison and reconciliation of payroll and personnel based on the ongoing audit of civil servants.

Of course, MTEF is not supposed to operate in isolation: it is part of an encompassing system of interlocking tools serving specific purposes. Specifically, it is connected to the computerized payroll and personnel management system, which in turn rely on data collected during the civil service census. MTEF was introduced together with a number of instruments “to assist line agencies in defining their mission, goals, and program objectives, and Activity Based Budgets (ABB) to enhance program costing and classification in budget representation” (World Bank 2001:1). A system of monthly cash allocations, the so-called cash-budget, and a Credit Ceiling Authority (CCA) were also introduced to check overspending, which was endemic in Malawi’s ministries during the 1990s.

The government established several specialized government agencies to implement these systems. For example, it set up the Public Sector Change Management Unit to conduct functional reviews of all ministries aimed at evaluating how the ministries performed, as well as at earmarking functions for outsourcing to the private sector. Furthermore, the government established the Finance and Audit Committee of Principal Secretaries and the Special Cabinet Committee on Budgetary Measures to monitor expenditure and check overspending. The Ministry of Finance was responsible for the prioritization of expenditure and in each ministry so-called MTEF committees were formed to ensure the application of MTEF in their respective ministries (World Bank 1998).

It is well-known that policy documents do not reflect the messy practice of implementation (cf. Mosse 2005:14-15). In 1998, a World Bank report stated “the MTEF process was undermined in the past by some serious weaknesses in implementation including: (i) lack of involvement of senior managers – both Ministers and civil servants; (ii) lack of clear decisions on … allocations based on explicit choices and trade-offs under which expenditures in non-essential items are reduced sharply or completely cut providing room for more expenditure in priority areas…” (World Bank 1998:7). In 2000 another report noted that “the poor quality and lack of timely access to fiscal and macroeconomic data continues to be a serious constraint on budget monitoring” (World Bank 2001:3). During my fieldwork between 1999 and 2002 senior civil servants I spoke to confirmed these observations. According to informants I spoke to in 2000 the Ministry of Health continued to defy the system of prioritization through MTEF and consequently overspent due to loopholes in the cash budget system. By 2002 all functional reviews had been concluded and most systems and instruments including the Personnel Management Information System were implemented.

Conclusion

This article examined in detail how various types of conditionality operate as technologies of governing in the relationship between the IFIs and the government of Malawi. In particular it
focused on the way conditionality is intended to respect country ownership, on the one hand, and to ensure the insertion of a set of policies aiming at reforming the civil service and tackling corruption, on the other. A close reading of the loan documents reveals how the reconciliation of conditionality with country ownership essentially depends on a legal logic fused with technologies of data collection, computation, and calculation – a process which creates and uses a particular “normativity of numbers.”

This analysis of the loan documents signed by the representatives of the IFIs and the government of Malawi shows that legal thinking plays an important role in the design of conditions. From the perspective of the IFIs, conditions do not qualify as contractual obligation and in fact both organizations strive to avoid terms, such as “agreement,” which are associated with legal obligations. This, however, does not mean that the loan documents are not shaped by legal considerations. As I showed, legal thinking permeates all aspects of these documents. It is ironic that representatives of the Bank and the Fund resort to legal language to ensure that they do not appear to impose conditions on sovereign governments or enter contractual obligations.

The expansion into new areas of intervention beyond the realm of financial and economic policies under the banner of good governance in the 1990s, as well as the perceived rigidity of conventional conditionality, have spurred the development of more sophisticated conditions such as structural benchmarks. The rise of structural conditionality culminated in highly complex sets of conditions in requests for Poverty Reduction loans, which include a wide range of performance criteria and benchmarks – both quantitative and structural. The new conditionality, which increased considerably during the 1990s, mainly serves to insert systems facilitating self-control into the bureaucracies of Third World countries. Technologies of number collection such as payroll management or MTEF constitute attempts to effect the transformation of the administrative apparatus according to the principles of good governance and neoliberal public management, while placing responsibility for this transformation with the government. Conditionality functions similarly to an installation program on a personal computer used to download software from a specific company. Once installed, this software executes a number of functions, requires regular updates, and is not compatible with software from other sources.

At a more general level, the article is a call to pay more attention to the legal dimension in the critical anthropological study of development discourse and international financial institutions. Anthropologists and critical lawyers could do more to elucidate the role of legal techniques in these processes. An approach that delves more deeply into the documents of the IFIs as legal instruments can contribute to a better understanding of the idiosyncrasies and paradoxes that characterize the operations of the World Bank and the IMF.

Notes
2. “The [Special Drawing Right] SDR is an international reserve asset, created by the IMF in 1969 to supplement the existing official reserves of member countries. SDRs are allocated to member countries in proportion to their IMF quotas. The SDR also serves as the unit of account of the IMF and some other international organizations. Its value is based on a basket
of key international currencies.” (IMF Factsheet Special Drawing Rights, August 2006). At the time SDR 45.11 million was the equivalent of US $ 34,915,140.


4. In 1999 World Bank and IMF jointly introduced Poverty Reduction Strategy Papers (PRSPs) to replace Structural Adjustment programs. PRSPs are documents prepared by governments requesting financial support or want to qualify for the HIPC trajectory to get their debts cancelled. According to the World Bank PSRPs are "country-driven", aimed primarily at reducing poverty and supposed to be the result of a "participatory" process involving all "stakeholders". PRSPs are comprehensive documents covering all aspects of a country's economy which are compartmentalized into "sectors".


6. See also World Bank (1989; 1994).

7. It is disputed whether credit agreements with other entities than governments of member states such as companies in member states are governed by public international law or domestic law (Head 1996). Here my analysis is limited to agreements signed with the government of Malawi.


9. On the legal aspects of IMF conditionality in general, see Denters’ comprehensive study (1997).

10. “Fund arrangements are not international agreements and therefore language having a contractual connotation will be avoided in arrangements and program documents” (IMF 2002b).

11. The overlap or conflict between Bank and Fund conditionality is known as cross-conditionality.

12. Throughout the history of modern statecraft the census has been one of the principal instruments of control both in the metropolitan center and the colonies (cf. Appadurai 1993, Rose 1999:215-222).

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