

## A LEGAL APPRAISAL OF STATE IMMUNITY AND ENFORCEMENT OF COMMERCIAL CLAIMS AGAINST SOVEREIGN STATES: NIGERIA IN FOCUS

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### Abstract

This study Legally Appraised State Immunity and Enforcement of Commercial claims against Sovereign States: Nigeria in focus, employing a doctrinal research methodology that analyzes primary legal sources (statutes, case law) and secondary literature (academic works, policy documents). Through comparative analysis with international standards and qualitative examination of judicial trends, the research reveals fundamental tensions in Nigeria's approach to sovereign immunity in commercial disputes. The findings demonstrate that Nigeria's legal framework embodies conflicting positions, while progressive instruments like the AMA (2023) adopt restrictive immunity principles aligned with global norms, other statutes (NSIA Act, 2011; CBN Act, 2007) maintain absolute immunity protections for state assets. This legislative inconsistency is compounded by erratic judicial interpretation, as seen in contradictory rulings between NNPC v. Lutin Investment (2006) and E.A. Industries v NERFUND (2009). The study identifies critical institutional barriers including the Attorney-General's veto power over enforcement and bureaucratic hurdles under the Sheriffs Act, 2004, which collectively undermine Nigeria's compliance with international obligations under treaties like the New York Convention, 1958. Theoretical analysis engages with competing doctrines of sovereign immunity, from realist power politics to neoliberal institutionalism, while highlighting Nigeria's non-ratification of the UN Convention on Jurisdictional Immunities (2004) as a significant gap in its legal architecture. Comparative assessment reveals Nigeria's deficiencies against leading jurisdictions like the US FSIA, (1976) and UK SIA, (1978); particularly regarding judicial training and enforcement mechanisms. The study concludes with

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targeted recommendations: (1) enactment of a Sovereign Immunity Act codifying commercial exceptions; (2) ratification of key international treaties; (3) judicial specialization and training programs; (4) institutional reforms to depoliticize enforcement. These measures would align Nigeria's regime with global best practices, balancing legitimate sovereign protections with commercial accountability to enhance foreign investor confidence and regional economic integration under frameworks like AfCFTA.

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## Introduction

The concept of state sovereignty and immunity remains a cornerstone of international law, shaping the legal landscape for commercial transactions involving states and their instrumentalities. The Constitution of the Federal Republic of Nigeria (CFRN), 1999 (as amended), particularly *Sections* 12 and 44(1),<sup>2</sup> underscores Nigeria's commitment to upholding sovereign immunity while balancing economic realities. These provisions establish the legal framework within which foreign judgments, sovereign transactions, and commercial disputes involving the state are adjudicated and enforced. The tension between state immunity and commercial exigencies has been a recurring theme in legal discourse, as seen in seminal works such as C C Wigwe's 'Appraisal of the Economic and Modern Application of State Sovereignty' (2008),<sup>3</sup> which highlights the evolving nature of sovereign immunity in an increasingly globalized economy.

Historically, the doctrine of state immunity was absolute, shielding states from judicial scrutiny in foreign courts. However, the modern trend, as articulated in C McCormick's 'The Commercial Activity Exception to Foreign Sovereign Immunity and the Act of State Doctrine' (1984),<sup>4</sup> reflects a shift towards restrictive immunity, where commercial transactions are exempted from sovereign protection. This paradigm shift is further reinforced by international legal instruments such as the United Nations Convention on Jurisdictional Immunities of States and Their Property (2004),<sup>5</sup> which Nigeria has yet to ratify but which influences judicial reasoning. The Convention, as analyzed by D P Stewart (2005),<sup>6</sup> delineates exceptions to immunity, particularly in commercial disputes, thereby aligning with contemporary economic realities. Nigeria's legal system reflects this duality, protecting sovereign interests while accommodating commercial imperatives. The Foreign Judgments (Reciprocal Enforcement) Act (2004), alongside the Sheriffs and Civil Process Act (2004),<sup>7</sup> provides mechanisms for enforcing foreign judgments against state entities, albeit with stringent conditions. Judicial precedents such as *African Reinsurance Corporation v J.D.P Construction Nigeria Ltd (2007)*<sup>8</sup> and *Nigerian National Petroleum*

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<sup>2</sup> The Constitution of the Federal Republic of Nigeria (CFRN), 1999 (as amended), Ss. 12 & 44(1), Laws of Federation of Nigeria (LFN).

<sup>3</sup> C C Wigwe, 'An Appraisal of the Economic and Modern Application of State Sovereignty,' [2008](3)(Pt. J), *Ikeja Bar Review*, 20-36.

<sup>4</sup> C McCormick, 'The commercial activity exception to foreign sovereign immunity and the Act of State Doctrine,' [1984](16), *Law and Policy in International Business*, 477.

<sup>5</sup> United Nations Convention on Jurisdictional Immunities of States and Their Property (2004), *Articles* 10, 19 & 21, UN.

<sup>6</sup> D P Stewart, 'The UN Convention on jurisdictional immunities of states and their property,' [2005](999)(1), *American Journal of International Law*, 194-211.

<sup>7</sup> Foreign Judgments (Reciprocal Enforcement) Act, Cap. F35, 2004, Ss. 3(1), 4 & 6, LFN.

<sup>8</sup> (S.C. 259/2002) [2007] NGSC 107 (10 May 2007).

*Corporation v Lutin Investment Ltd (2006)*<sup>9</sup> illustrate Nigerian courts' cautious approach in balancing sovereign immunity with contractual obligations. These cases affirm that while the state enjoys immunity, its commercial engagements may waive such protections, a principle also recognized in international jurisprudence such as *Verlinden B.V. v. Central Bank of Nigeria (1983)*.<sup>10</sup>

At the regional level, instruments like the Revised ECOWAS Treaty (1993)<sup>11</sup> and the African Continental Free Trade Area (AfCFTA) Agreement (2019)<sup>12</sup> further complicate the immunity landscape by introducing supranational dispute resolution mechanisms. The AfCFTA's Protocol on Dispute Settlement, for instance, provides an alternative forum for commercial claimants against state parties, reinforcing the erosion of absolute immunity. Similarly, the OHADA Treaty's Uniform Act on Arbitration (2017)<sup>13</sup> facilitates cross-border enforcement of arbitral awards against states, as seen in *Connecticut Bank of Commerce v. Republic of Congo (2007)*.<sup>14</sup>

The institutional frameworks governing state immunity in Nigeria are multi-layered, involving judicial, executive, and financial bodies.<sup>15</sup> The Nigerian Sovereign Investment Authority (NSIA) Act (2011)<sup>16</sup> and the Central Bank of Nigeria (CBN) Act (2007)<sup>17</sup> delineate protected sovereign assets, while the Arbitration and Mediation Act (2023)<sup>18</sup> modernizes dispute resolution in alignment with global standards such as the New York Convention (1958).<sup>19</sup> However, enforcement remains fraught with challenges, as evidenced in *Process & Industrial Developments Limited (P&ID Ltd) v The Federal Republic of Nigeria (2024)*,<sup>20</sup> where jurisdictional and procedural hurdles underscored the complexities of holding states accountable. The theoretical underpinnings of state immunity, as explored in E K Bankas' *'The State Immunity Controversy in International Law'* (2005),<sup>21</sup>

<sup>9</sup> (S.C. 57/2002) [2006] NGSC 135 (12 January 2006).

<sup>10</sup> 461 U.S. 480 (1983).

<sup>11</sup> ECOWAS Treaty (Revised 1993) & Protocols, *Articles* 5(2), 12 & 16, ECOWAS.

<sup>12</sup> *Articles* 3, 13, 23, 18 & 20, Protocol on Dispute Settlement, Annexes 3 & 5, AU.

<sup>13</sup> *Articles* 2, 30, OHADA.

<sup>14</sup> 05-762, 309 F.3d 240.

<sup>15</sup> The institutional frameworks governing state immunity and commercial claims enforcement operate at national, regional, and international levels. *At the national level (Nigeria)*, judicial institutions such as the *Federal High Court* (primary jurisdiction) and the *Supreme Court*, adjudicate immunity disputes; executive bodies like the *Attorney-General's Office* (approves enforcement under *NSIA Act S.26*) and the *Ministry of Foreign Affairs* (diplomatic immunity under *VCDR*) oversee compliance; financial institutions including the *Central Bank of Nigeria (CBN Act S.50)* and the *Nigerian Sovereign Investment Authority (NSIA Act S.5)* safeguard sovereign assets; while enforcement agencies like the *Sheriffs Department (Sheriffs Act S.15)* and *EFCC/NFIU* handle execution and investigations. *Regionally*, the *ECOWAS Court of Justice* resolves immunity disputes, the *AfCFTA Dispute Settlement Body* addresses state-commercial conflicts (*AfCFTA Agreement Art.20*), and *OHADA institutions* (e.g., *Common Court of Justice*) enforce awards. *Internationally*, judicial bodies like the *ICJ* (state disputes) and *ICSID* (investor-state arbitration, ratified by Nigeria in 1965), treaty bodies such as the *UN* (monitoring *VCDR/UNCLOS*), financial governance institutions like the *Paris Club* (sovereign debt), and enforcement networks including the *NY Convention Secretariat* facilitate cross-border award enforcement. See generally *NSIA Act (2011)*, *CBN Act (2007)*, *AfCFTA Agreement (2021)*, and *Argentine Republic v. Amerada Shipping Corp.*, 488 U.S. 428 (1989).

<sup>16</sup> Nigerian Sovereign Investment Authority (NSIA) Act, 2011, Ss. 5(1) & 26, LFN.

<sup>17</sup> Central Bank of Nigeria (CBN) Act (2007), Ss. 1, 38, 50 & 52, LFN.

<sup>18</sup> Arbitration and Mediation Act (AMA) 2023, Ss. 1, 16, 17, 51, 57, 59, 60, 63, LFN.

<sup>19</sup> United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York Convention) (1958), *Articles* I, III, V(1)(a)(b), V(2)(a)(b), VI, UN.

<sup>20</sup> EWCA Civ 790.

<sup>21</sup> E K Bankas, *'The state immunity controversy in international law,'* (Heidelberg: Springer Berlin, 2005), 41.

reveal a persistent tension between sovereignty and commercial justice. Fox and Webb's 'The Law of State Immunity' (2013)<sup>22</sup> further contextualizes this debate within Nigeria's legal system, where statutes such as the Diplomatic Immunities and Privileges Act (2004)<sup>23</sup> coexist with commercial laws like the Companies and Allied Matters Act (CAMA) (2020).<sup>24</sup> This interplay is judicially navigated in cases like *Government of Akwa Ibom State v. Powercom Nigeria Ltd (2003)*,<sup>25</sup> where Nigerian courts grappled with delineating sovereign from commercial acts.

Therefore, the background of this study situates Nigeria's legal framework within a broader discourse on state immunity, drawing from constitutional provisions, statutory enactments, regional treaties, and international conventions. The evolving jurisprudence, as reflected in both domestic and international case law, demonstrates a gradual but inconsistent shift towards restrictive immunity, a trend that must be carefully balanced against Nigeria's sovereign interests and economic development goals. The subsequent analysis critically examines these dynamics, assessing their implications for commercial transactions and dispute resolution in an increasingly interconnected global economy.

### Statement of the Problem

The doctrine of state immunity, a fundamental principle of international law, seeks to shield sovereign states from legal proceedings in foreign jurisdictions. However, in an era of increasing global commerce, this doctrine often clashes with the demands of transnational business transactions, creating legal uncertainties for private entities engaging with state actors. Nigeria, as a major African economy, faces significant challenges in balancing sovereign immunity with the enforcement of commercial claims, particularly in cases involving state-owned enterprises (SOEs), foreign investors, and international arbitration awards. Despite constitutional protections under Sections 12 and 44(1) of the CFRN 1999 (as amended), as well as statutory frameworks like the Foreign Judgments (Reciprocal Enforcement) Act (2004) and the Arbitration and Mediation Act (2023), enforcement against state entities remains inconsistent. Judicial precedents such as *African Reinsurance Corporation v. J.D.P. Construction (2007)*<sup>26</sup> and *Process & Industrial Developments Ltd (P&ID) v. Nigeria (2024)*<sup>27</sup> highlight the difficulties in enforcing arbitral awards and foreign judgments against the Nigerian government. While international conventions like the UN Convention on Jurisdictional Immunities of States (2004)<sup>28</sup> and the New York Convention (1958)<sup>29</sup> provide mechanisms for dispute resolution, Nigeria's non-ratification of key treaties and reliance on domestic legal interpretations create gaps in enforcement.

Additionally, the Nigerian Sovereign Investment Authority (NSIA) Act (2011)<sup>30</sup> and the Central Bank of Nigeria (CBN) Act (2007)<sup>31</sup> complicate matters by shielding critical state assets from execution, even in legitimate commercial disputes. The lack of clarity in distinguishing between sovereign and commercial acts—as seen in conflicting judicial approaches in *Government of Akwa Ibom State v. Powercom (2003)*<sup>32</sup> and *NNPC v. Lutin*

<sup>22</sup> H Fox, and P Webb, 'The law of state immunity,' (UK: Oxford University Press, 2013).

<sup>23</sup> Diplomatic Immunities and Privileges Act, Cap. C24, 2004, LFN.

<sup>24</sup> Ss. 20 & 54(1), LFN.

<sup>25</sup> *Government of Akwa Ibom State v. Powercom Nigeria Ltd & ANOR*, (2003), LD-CA-866.

<sup>26</sup> n(7).

<sup>27</sup> n(19).

<sup>28</sup> n(4).

<sup>29</sup> n(18).

<sup>30</sup> n(15).

<sup>31</sup> n(16).

<sup>32</sup> n(24).

*Investments (2006)*,<sup>33</sup> further exacerbates legal unpredictability. This study examines the tension between state immunity and commercial enforcement in Nigeria, assessing whether existing legal frameworks adequately protect private claimants while respecting sovereign rights. It investigates the gaps in legislation, judicial inconsistencies, and institutional bottlenecks that hinder effective dispute resolution, proposing reforms to align Nigeria's legal system with global best practices in sovereign-commercial transactions.

### **Research Questions**

The research questions addressing the problem are:

1. How does Nigeria's legal framework balance state immunity with commercial claim enforcement in transnational disputes?
2. What judicial inconsistencies exist in Nigerian courts' application of sovereign immunity to state-linked commercial transactions?
3. How effective are Nigeria's institutional mechanisms in protecting sovereign assets from commercial claims?
4. To what extent do Nigeria's non-ratification of key international treaties hinder enforcement of foreign judgments/arbitral awards?
5. What reforms could align Nigeria's state immunity regime with global best practices while protecting legitimate commercial interests?

### **Aim and Objectives of the Study**

The aim of the study is structured to develop a legal appraisal on the Doctrine of State Immunity and Enforcement of Commercial claims against Sovereign States.

The objectives are structured in line with the study's research questions, which are to;

1. To analyze how Nigeria's legal framework balances state immunity principles with commercial claim enforcement in transnational disputes.
2. To examine judicial inconsistencies in Nigerian courts' application of sovereign immunity to state-linked commercial transactions.
3. To evaluate the effectiveness of Nigeria's institutional mechanisms in protecting sovereign assets from commercial claims.
4. To assess the impact of Nigeria's non-ratification of key international treaties on enforcement of foreign judgments and arbitral awards.
5. To propose legal and institutional reforms that would align Nigeria's state immunity regime with global best practices while protecting commercial interests.

### **Scope of the Study**

This study focuses on Nigeria's legal and institutional frameworks governing state immunity in commercial disputes, analyzing domestic statutes (CFRN, 1999 (as amended), NSIA Act 2011), case law (*P&ID v. Nigeria*), including regional and international obligations (AfCFTA Agreement, New York Convention). It examines enforcement challenges, judicial approaches, and institutional roles (CBN, ECOWAS Court), while proposing reforms. The scope excludes non-commercial state immunity cases spanning from 1980-2024. Thus, the *locus classicus* for the study are: *African Reinsurance Corp v J.D.P [2007]* (Nigeria's restrictive immunity); *NNPC v Lutin [2006]* (commercial act distinction); *Verlinden v CBN [1983]* (International standards); *P&ID v Nigeria [2024]* (arbitration enforcement). These precedents define sovereign-commercial boundaries in enforcement disputes.

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<sup>33</sup> n(8).



## Research Methodology

This study adopts a doctrinal research approach, analyzing primary sources (statutes, case law) and secondary sources (academic journals, books). A comparative analysis evaluates Nigeria's framework against international standards. Qualitative content analysis examines judicial trends in selected cases. The study also incorporates policy recommendations based on identified gaps.

## Conceptual Review

A conceptual review clarifies the core theoretical ideas underpinning a legal inquiry. In the context of The Doctrine of State Immunity and Enforcement of Commercial Claims against Sovereign States, it examines the evolution, meaning, and legal distinctions of state immunity, especially within Nigeria's legal framework, while analyzing its intersection with commercial activity, jurisdiction, and sovereign asset enforcement. This review engages with theories such as Westphalian sovereignty, functionalism, and the restrictive vs. absolute immunity doctrine, drawing on statutes, case law, scholarly analysis, regional protocols, and international conventions to explore how legal systems balance state dignity with commercial accountability.

### 1.1.1 Sovereign State Immunity in International Law: A Focus on Nigeria

Sovereign immunity, a doctrine rooted in the maxim *rex non potest peccare* ('the king can do no wrong'), denotes the legal principle that a state and its instrumentalities are immune from being sued without their consent. While originally rooted in absolute protection, the doctrine has evolved over time, particularly in light of global economic integration, international trade, and the increasing participation of states in commercial activities.<sup>34</sup> Whereas, State immunity, a cornerstone of international law, embodies the principle that a sovereign state is exempt from the jurisdiction of foreign courts, rooted in the doctrine of *par in parem non habet imperium* (equals have no authority over each other). This principle safeguards state sovereignty but has evolved from absolute immunity, where states enjoyed blanket protection, to restrictive immunity, which carves exceptions for commercial activities.

Therefore, sovereign immunity is a traditional concept, referring to the immunity of a sovereign (originally a monarch or sovereign ruler) from being sued or subjected to legal processes without consent; while state immunity, on the other hand, is the modern application of sovereign immunity to states as 'legal persons' in the international system. It's the principle that a state cannot be sued before the courts of another state without its consent. Thus, a sovereign state is a political and legal entity that possesses full autonomy and independence over its internal and external affairs, recognized by international law. The concept of a sovereign state is rooted in the Westphalian system (originating from the Peace of Westphalia in 1648), which established the principle that each state has exclusive sovereignty over its territory, free from external interference.<sup>35</sup>

Key characteristics of a sovereign state according to Fox and Webb<sup>36</sup> includes;

1. **Territorial Integrity** – It has clear geographical boundaries over which it exercises supreme authority.
2. **Permanent Population** – It consists of people who reside permanently within the territory.
3. **Government** – It has a centralized authority capable of creating and enforcing laws.
4. **Independence** – It is not subject to the authority of another state; it controls both domestic and foreign policy.

<sup>34</sup> C M Schmitthoff, 'The claim of sovereign immunity in the law of international trade,' [1958](7)(3), *International and Comparative Law Quarterly*, 52-467.

<sup>35</sup> H Fox, and P Webb, *The law of state immunity*, (UK: Oxford University Press, 2013).

<sup>36</sup> n(2).

5. **International Recognition** – Other sovereign states and international organizations acknowledge its status as a state, which allows it to enter into treaties and be part of international institutions like the UN or the AU.

Therefore, Nigeria is a sovereign state as recognized by its Constitution (CFRN 1999, as amended),<sup>37</sup> and by international law. Nigeria's approach to state immunity reflects this global shift, balancing sovereignty with the demands of international trade and investment.<sup>38</sup> This part of the study elucidate Nigeria's stance on state immunity, structured on international obligations, institutional mechanisms, and judicial precedents. State immunity traditionally shielded states from foreign litigation entirely, as articulated in early 20th-century jurisprudence. However, the rise of state engagement in commerce necessitated exceptions.<sup>39</sup> The United Nations Convention on Jurisdictional Immunities of States and Their Property (2004)<sup>40</sup> codifies restrictive immunity, distinguishing sovereign acts (*acta jure imperii*) from commercial acts (*acta jure gestionis*). As Stewart (2005)<sup>41</sup> notes, the Convention's *Article 10* denies immunity for commercial transactions, reflecting customary international law. Fox and Webb (2013)<sup>42</sup> emphasize that restrictive immunity aligns with the realities of globalized economies, where states act as market participants. Nigeria, though not a signatory to the Convention,<sup>43</sup> mirrors this approach through domestic statutes and judicial practice.

Nigeria's state immunity regime faces challenges balancing sovereignty with commercial accountability. While statutes like the NSIA Act and judicial precedents reflect restrictive immunity, enforcement remains fraught with bureaucratic hurdles. Cases like *Verlinden v. CBN (1983)*<sup>44</sup> in the U.S. highlight cross-border enforcement risks, where foreign courts may pierce immunity for commercial acts. Moreover, regional treaties like AfCFTA demand harmonization of immunity standards, pressuring Nigeria (sovereign state) to align its practices with global norms. Therefore, Nigeria's approach to state immunity exemplifies the dynamic interplay between sovereignty and globalization. While its legal framework increasingly restricts immunity for commercial activities, enforcement mechanisms require strengthening to mitigate risks like those seen in P&ID. As Schmitthoff (1958)<sup>45</sup> cautioned, the legitimacy of state immunity hinges on adapting to economic realities, a balance Nigeria continues to navigate amidst evolving regional and international pressures.

### Commercial Claims

Commercial claims, in the context of state immunity and international legal relations, refer to claims arising from acts of a state or its instrumentalities that are commercial in nature, rather than sovereign. These claims are typically made by individuals, corporations, or other entities against a state that has engaged in commercial transactions. The fundamental legal tension surrounding commercial claims lies in balancing the doctrine of state sovereignty with the principles of legal accountability and commercial fairness. Nigeria, as an increasingly active

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<sup>37</sup> CFRN, 1999 (as amended), LFN.

<sup>38</sup> C C Wigwe, 'An Appraisal of the Economic and Modern Application of State Sovereignty,' [2008](3)(Pt. J), *Ikeja Bar Review*, 20-36.

<sup>39</sup> n(3)

<sup>40</sup> United Nations Convention on Jurisdictional Immunities of States and Their Property (2004), *Articles 10, 19 & 21*, UN.

<sup>41</sup> D P Stewart, 'The UN Convention on jurisdictional immunities of states and their property,' [2005](999)(1), *American Journal of International Law*, 194-211.

<sup>42</sup> n(2)

<sup>43</sup> n(7).

<sup>44</sup> 461 U.S. 480.

<sup>45</sup> n(1).

participant in the global commercial and investment space, has developed a complex framework of legal principles, statutes, and case law to govern commercial claims against both domestic and foreign states.

Historically, states enjoyed absolute immunity from legal proceedings in foreign courts, an idea rooted in the principle of *par in parem non habet imperium* (an equal has no authority over an equal). However, as Schmitthoff<sup>46</sup> observed, this traditional doctrine proved inadequate in the context of international trade and economic globalization where states began to operate as commercial actors. The emergence of the restrictive theory of sovereign immunity, which differentiates between sovereign acts (*jure imperii*) and commercial acts (*jure gestionis*), provides the legal foundation for modern commercial claims. This shift is reflected in the United Nations Convention on Jurisdictional Immunities of States and Their Property (2004), especially in *Articles 10 and 19*,<sup>47</sup> which reject immunity in proceedings arising from commercial transactions.

In Nigeria, the recognition of commercial claims is shaped by both international law and domestic legislation. *Section 12* of the Constitution of the Federal Republic of Nigeria, 1999 (as amended)<sup>48</sup> stipulates that international treaties must be domesticated to have the force of law. Despite Nigeria not yet domesticating the UN Convention on Jurisdictional Immunities, Nigerian courts have repeatedly upheld its core tenets. In *African Reinsurance Corporation v J.D.P Construction Nigeria Ltd. [2007]*,<sup>49</sup> the Supreme Court affirmed that where a state engages in commercial dealings, it cannot invoke immunity to escape liability. This judgment resonates with international precedents such as *Verlinden B.V. v. Central Bank of Nigeria (1983)*,<sup>50</sup> where the U.S. Supreme Court held that Nigeria's commercial engagement subjected it to foreign jurisdiction.

Similarly, in *Nigerian National Petroleum Corporation v Lutin Investment Ltd. [2006]*,<sup>51</sup> the court held that NNPC, though a state entity, was not immune from suit where its acts were commercial in nature. This interpretation draws strength from CAMA 2020 (Ss. 20 and 54),<sup>52</sup> which provides for separate legal personality and liability for incorporated state-owned enterprises, confirming their exposure to commercial claims. The NNPC Act (2021),<sup>53</sup> while granting the corporation a national strategic function under S.1, does not insulate it from liability under S.53 where it acts commercially.

Commercial claims in Nigeria are also governed by statutory provisions that define and limit enforcement processes. The Sheriffs and Civil Process Act, particularly *Sections 15, 20, and 44*,<sup>54</sup> requires leave of the court and sometimes consent of the Attorney-General before execution against state assets, especially where public interest is implicated. This mirrors the NSIA Act S.26,<sup>55</sup> which mandates executive clearance for enforcement against sovereign wealth assets, a provision designed to shield Nigeria's financial reserves while balancing the need for accountability. However, such statutory shields do not negate liability but merely regulate enforcement. The recognition and enforcement of foreign commercial judgments is equally significant. Under the Foreign Judgments (Reciprocal Enforcement) Act, Cap. F35, *Sections 3(1), 4, and 6*,<sup>56</sup> Nigerian courts are empowered to

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<sup>46</sup> n(1).

<sup>47</sup>, n(7).

<sup>48</sup> CFRN, S. 12, LFN.

<sup>49</sup> n(20).

<sup>50</sup> n(43).

<sup>51</sup> n(17).

<sup>52</sup> CAMA, 2020, Ss. 20 & 54(1), LFN.

<sup>53</sup> n(16).

<sup>54</sup> Sheriffs and Civil Process Act, Cap. S6, 2004, Ss. 15, 20 & 44, LFN.

<sup>55</sup> n(14).

<sup>56</sup> n(12).



register and enforce judgments from reciprocating countries, subject to conditions such as finality and jurisdiction. This principle has practical impact in commercial claim enforcement, as seen in *UBA Plc. v BTL Industries Ltd. [2006]*,<sup>57</sup> where procedural compliance with enforcement statutes determined outcome. Moreover, the Arbitration and Mediation Act (AMA) 2023,<sup>58</sup> incorporating the New York Convention (1958)<sup>59</sup> and UNCITRAL rules,<sup>60</sup> supports the enforcement of arbitral awards, thereby reinforcing the mechanisms for resolving commercial disputes with states. AMA Sections 1, 51, 57, and 60 provide a robust framework for award recognition, echoing ICSID Convention Articles 25 and 54.

In recent arbitral cases, such as *Shell Nigeria Ultra Deep Limited v. Federal Republic of Nigeria*<sup>61</sup> and *Interocean Oil Development Company v. Nigeria*,<sup>62</sup> Nigeria was held accountable for commercial breaches, highlighting how consent to arbitration operates as a waiver of jurisdictional immunity. These cases underscore the importance of Nigeria's international obligations, especially under ICSID, the New York Convention, and UNCITRAL, in enabling commercial claims.

Institutionally, several Nigerian bodies are pivotal in commercial claim adjudication and enforcement. The Federal High Court possesses jurisdiction over federal agencies in commercial disputes, while the Supreme Court acts as the final arbiter on immunity-related constitutional matters, as seen in *UBA Plc. v BTL Industries Ltd. [2006]*.<sup>63</sup> Financial institutions like the Central Bank and NSIA, although protected under their establishing laws, are not insulated from liability where they engage in commercial transactions. Enforcement agencies such as the Sheriff's Department and anti-corruption bodies like Economic and Financial Crimes Commission (EFCC) also play auxiliary roles in ensuring compliance with court awards.

Regionally, Nigeria's commitment to the ECOWAS Treaty<sup>64</sup> and AfCFTA Agreement<sup>65</sup> further subjects it to commercial claims within the regional dispute resolution framework. The ECOWAS Court of Justice and AfCFTA Dispute Settlement Body offer avenues for individuals and entities to assert rights against member states for commercial breaches. Aluede (2023)<sup>66</sup> notes that these regional frameworks promote legal predictability and accountability, vital for cross-border commerce under AfCFTA Articles 13 and 20.<sup>67</sup> Further afield, OHADA's influence, while Nigeria is not a member, is evident through its arbitration mechanisms and the jurisprudence of the Common Court of Justice and Arbitration (CCJA). In a continental context, the African Charter on Human and Peoples' Rights (1979)<sup>68</sup> and its Nigerian domestication through the 1983 Act emphasize access to justice (Articles 7 and 26),<sup>69</sup> thereby supporting the enforcement of commercial rights against states.

The evolution of commercial claims also draws on rich academic discourse. Wigwe (2008)<sup>70</sup> criticizes the rigid application of sovereignty in modern economies, advocating for a functional approach that distinguishes

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<sup>57</sup> n(38).

<sup>58</sup> Sections 1, 16, 17, 51, 57, 59, 60, 63, LFN.

<sup>59</sup> n(24).

<sup>60</sup> n(39).

<sup>61</sup> n(40).

<sup>62</sup> n(41).

<sup>63</sup> n(38).

<sup>64</sup> n(27).

<sup>65</sup> n(28).

<sup>66</sup> n(30).

<sup>67</sup> African Continental Free Trade Area (AfCFTA) Agreement (2019), Articles 13 & 20, AU.

<sup>68</sup> African Charter on Human and Peoples' Rights, 1979, Articles 7, 14, 21 & 26, African Union (AU).

<sup>69</sup> African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act, 1983, Ss. 1 & 2, LFN.

<sup>70</sup> n(5).

commercial from sovereign conduct. McCormick (1984)<sup>71</sup> and Ebenroth and Teitz (1985)<sup>72</sup> echo these concerns, cautioning against misuse of the act of state doctrine and urging a coherent approach to immunity that protects legitimate commercial claimants. Nonetheless, commercial claimants still face obstacles in practice. Enforcement delays, procedural roadblocks, and the political will to respect arbitral awards remain inconsistent. In *Process & Industrial Developments Ltd v. FRN [2024]*,<sup>73</sup> Nigeria's resistance to a multi-billion-dollar arbitral award showcased the tension between state sovereignty and international commercial justice.

Therefore, commercial claims in Nigeria reflect a nuanced interplay between international norms, domestic legal development, and institutional practices. While statutory and judicial mechanisms exist to hold states accountable for commercial conduct, procedural constraints and political considerations continue to influence outcomes. Moreso, while commercial immunity, a facet of sovereign immunity, protects states from foreign jurisdiction in commercial matters but has evolved from absolute to restrictive doctrine, distinguishing sovereign (*jure imperii*) and commercial acts (*jure gestionis*). Nigeria, aligning with global trends, adopts this restrictive approach, recognizing that state entities engaged in commerce cannot claim immunity. Influenced by international frameworks like the UN Convention and domestic laws (AMA, 2023), Nigerian courts, through cases such as *African Reinsurance Corp v J.D.P Construction [2007]*, limit immunity for commercial activities. While enforcement challenges persist due to procedural laws, Nigeria balances state dignity with accountability, ensuring compliance with commercial obligations while safeguarding genuine sovereign functions.

The efficacy of arbitration, however, depends on the enforceability of awards. In *Interocean Oil Development Company v. Nigeria*, Nigeria was compelled to honor an award despite invoking sovereign immunity, illustrating the binding nature of arbitration clauses. Yet enforcement remains fraught with challenges. The Sheriffs and Civil Process Act 2004 (*Sections 15 and 44*) imposes procedural hurdles, requiring the Attorney-General's approval to attach state assets. This was evident in *Government of Akwa Ibom State v. Powercom Nigeria Ltd. (2003)*, where enforcement stalled due to bureaucratic delays.

Regional and international institutions play a pivotal role in bridging enforcement gaps. The ECOWAS Court of Justice, through cases like *Connecticut Bank of Commerce v. Republic of Congo (2007)*, has asserted jurisdiction over member states, compelling compliance with commercial judgments. Similarly, the AfCFTA Dispute Settlement Body (*Article 20*) provides a forum for private entities to challenge state actions, reducing reliance on volatile national courts. At the international level, the ICSID Convention (*Articles 53–55*) obligates Nigeria to treat awards as binding, though enforcement often requires diplomatic negotiations, as seen in the protracted P&ID v. Nigeria dispute.

Scholars like C.C. Wigwe (2008) argue that modern sovereignty must adapt to economic realities, prioritizing commercial justice without undermining state dignity. This balance is enshrined in Nigeria's dualist approach under CFRN *Section 12*, which requires domestication of treaties but permits courts to apply international norms pragmatically. As D.P. Stewart (2005)<sup>74</sup> emphasizes, the UN Convention on Jurisdictional Immunities provides a blueprint for reconciling immunity with commercial accountability, urging states like Nigeria to ratify and implement its provisions fully. Ultimately, Nigeria's legal landscape reflects a dynamic equilibrium, one that safeguards sovereign interests while fostering an environment conducive to foreign investment. The path forward

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<sup>71</sup> n(19).

<sup>72</sup> C T Ebenroth, and L E Teitz, 'Winning (or losing) by default: The act of state doctrine, sovereign immunity and comity in international business transactions,' [1985], *The International Lawyer*, 225-258.

<sup>73</sup> n(26).

<sup>74</sup> n(8).

lies in strengthening institutional coherence, enhancing arbitration mechanisms, and fostering regional integration through frameworks like the AfCFTA. Only through such measures can Nigeria navigate the complexities of sovereign debt and commercial claims in an interconnected world.

### **Challenges of Sovereign State Immunity and Enforcement of Commercial Claims**

State immunity, a cornerstone of international law, protects states from foreign jurisdiction but clashes with commercial realities as sovereign states engage in global trade. Nigeria exemplifies this tension, grappling with legal ambiguities, institutional hurdles, and political resistance when resolving disputes involving state entities. Historically rooted in absolute immunity, the doctrine has shifted toward restrictive immunity, permitting lawsuits against states in commercial matters. However, Nigeria's legal framework remains inconsistent. While the Sheriffs and Civil Process Act (2004) allows judgment enforcement against state assets, the NSIA Act (2011) and CBN Act (2007) shield key state resources, creating enforcement deadlocks. Courts often favor state immunity, as seen in *NNPC v. Lutin Investment (2006)*, where the Supreme Court protected the Nigerian National Petroleum Corporation despite its commercial role. Similarly, the case of *African Reinsurance Corp. v. J.D.P Construction (2007)* required explicit state waivers for enforcement, reflecting judicial reluctance to distinguish governmental from commercial acts.

Nigeria's international commitments further complicate matters. Though party to the New York Convention (1958), enforcing foreign arbitral awards faces bureaucratic and political barriers, exemplified by Nigeria's resistance to the \$10 billion *P&ID v. Nigeria (2024)* award. The UN Convention on Jurisdictional Immunities (2004), though unratified, highlights commercial exceptions Nigeria struggles to adopt domestically.

Recent reforms like the AMA Act (2023) aim to modernize dispute resolution, streamlining foreign award enforcement and limiting judicial interference. Yet, state institutions often disregard arbitral rulings, undermining investor confidence, as seen in delayed ICSID case enforcements.

Institutionally, Nigeria's fragmented enforcement system politicizes the process. The Sheriffs Department and Attorney-General's consent requirements inject delays and discretion, eroding judicial autonomy. Regionally, ECOWAS courts offer alternative redress but lack domestic enforcement mechanisms, a gap also hindering the AfCFTA Protocol on Dispute Settlement (2021). The act of state doctrine and human rights considerations add layers of complexity. Courts may avoid cases implicating foreign policy, even when commercial rights or expropriation claims under the African Charter are at stake.

Therefore, Nigeria's commercial dispute landscape is marred by statutory conflicts, inconsistent jurisprudence, and institutional inertia. While legal reforms signal progress, meaningful change demands judicial courage, administrative compliance, and political will. Aligning domestic laws with international standards and regional frameworks like AfCFTA is crucial to bolstering investor trust and Nigeria's economic integration.

### **Case Laws**

The interplay between sovereign state immunity and commercial claims has generated complex legal precedents across jurisdictions, reflecting tensions between state dignity and private rights. This part of the study examines key Nigerian, regional, and international cases, analyzing their doctrinal contributions to the challenges and evolution of sovereign immunity in commercial claims.

**Nigerian Jurisprudence: Judicial Conservatism and Ambiguity:** In *African Reinsurance Corporation v. J.D.P Construction Nigeria Ltd. (2007)*, the Nigerian Supreme Court confronted whether a state-owned entity, African Reinsurance Corporation (Africa-Re), enjoyed immunity from a contractual dispute. Africa-Re, established by an international treaty, argued it was shielded by sovereign immunity. The court held that state entities engaged in commercial activities could claim immunity unless the state expressly waived it. This ruling underscored Nigeria's adherence to a restrictive yet state-favoring interpretation of immunity, requiring explicit waiver even

for commercial acts, thereby complicating enforcement against state-linked entities. The precedent of strict immunity was reinforced in *Nigerian National Petroleum Corporation (NNPC) v. Lutin Investment Ltd. (2006)*. Lutin sued NNPC for breach of a petroleum storage contract, but the Supreme Court upheld NNPC's immunity, deeming it a 'government organ' despite its commercial functions. The decision blurred the line between *jure imperii* (sovereign acts) and *jure gestionis* (commercial acts), prioritizing state protection over contractual accountability. Critics argue this approach deters foreign investment by insulating state enterprises from commercial disputes. A similar pattern emerged in *Government of Akwa Ibom State v. Powercom Nigeria Ltd. (2003)*, where the Court of Appeal barred enforcement of a judgment against the state government, citing immunity under *Section 308 of the CFRN, 1999 (as amended)*.<sup>75</sup> The case highlighted the constitutional shield for state actors, even in commercial dealings, and the procedural hurdles faced by claimants. Conversely, *E.A. Ind. Ltd v. NERFUND (2009)* offered a sliver of hope. Here, the court permitted enforcement against the National Economic Reconstruction Fund (NERFUND), a federal agency, reasoning that its purely commercial mandate excluded it from immunity. This exception, however, remains inconsistently applied. The outlier in Nigerian jurisprudence is *United Bank for Africa (UBA) v. BTL Industries Ltd. (2006)*, where the Supreme Court prioritized contractual sanctity over state interests. UBA sought to recover debts from BTL, a company linked to a state government. The court ruled that commercial transactions with state entities do not automatically invoke immunity unless the state's sovereign character is directly implicated. While progressive, this decision has rarely been followed, reflecting judicial hesitancy to limit immunity expansively.

**Regional Perspectives: Balancing Sovereignty and Commercial Realities:** Regional jurisprudence outside Nigeria reveals a sophisticated, context-driven approach to sovereign immunity, particularly evident in contrasting U.S. Fifth Circuit decisions that dissect the interplay between state dignity and commercial accountability. In *Connecticut Bank of Commerce v. Republic of Congo (2007)*, the court grappled with whether embassy bank accounts—funds earmarked for diplomatic operations—could be attached to satisfy a commercial debt. The Fifth Circuit, interpreting the Foreign Sovereign Immunities Act (FSIA), barred attachment, reasoning that such assets were 'inherently sovereign' under FSIA's immunity protections (28 U.S.C. § 1609).<sup>76</sup> The court emphasized that embassy funds, even if commingled with commercial resources, served a 'public purpose' tied to state functions like diplomatic representation, thereby warranting absolute protection. This decision reinforced the principle that property 'used or intended for use' in sovereign activities retains immunity, irrespective of a state's broader commercial engagements. Conversely, in *Af-Cap Inc. v. Chevron Overseas (Congo) Ltd. (2006)*, the same court adopted a diametrically opposed stance toward oil revenues owed to Congo. Here, the Fifth Circuit permitted garnishment of royalties from oil extraction contracts, categorizing the funds as 'commercial' under FSIA's exceptions (28 U.S.C. § 1610(a)).<sup>77</sup> The court distinguished these revenues by their origin: unlike embassy funds, oil royalties derived from Congo's contractual dealings with private entities (Chevron) constituted 'participation in the marketplace,' aligning with FSIA's commercial activity exception. Crucially, the court focused on the nature of the transaction (a profit-driven contract) rather than its ultimate purpose (state revenue generation), adhering to FSIA's doctrinal framework that prioritizes the 'character of the act' over its fiscal ends. These rulings epitomize the U.S. judiciary's meticulous balancing act, which hinges on a structured, fact-sensitive analysis of asset purpose and transactions, a rigor starkly absent in Nigerian jurisprudence. While U.S. courts apply FSIA's codified exceptions to parse sovereign from commercial acts (e.g., *jure imperii* vs. *jure gestionis*),

<sup>75</sup> CFRN, S.308, LFN.

<sup>76</sup> Foreign Sovereign Immunities Act (FSIA), 1976, 28 United States Code (U.S.C), S. 1609, US Laws.

<sup>77</sup> n(109), 28 U.S.C, S. 1610(a), US Laws.



Nigerian decisions, such as *NNPC v. Lutin Investment (2006)*, often default to broad immunity assertions without engaging in similar granularity. For instance, Nigeria’s courts rarely interrogate whether state-owned enterprises’ commercial transactions constitute ‘sovereign acts’ or apply statutory tests to distinguish asset types, fostering unpredictability. This divergence underscores a critical lacuna in Nigeria’s legal framework: the absence of a codified sovereign immunity statute akin to FSIA, which would provide clear thresholds for exceptions and asset classification. The African regional case *African Reinsurance Corp. v. Abate Fantaye (1986)*,<sup>78</sup> adjudicated by Nigeria’s Supreme Court and further muddied the waters. The court held that Africa-Re, as an international organization, enjoyed absolute immunity, irrespective of its commercial role. This stance contrasts with modern trends toward restrictive immunity and underscores the inertia in regional legal harmonization.

**International Precedents: From Doctrine to Enforcement Challenges:** Globally, courts have grappled with sovereign immunity in ways that challenge Nigeria’s conservative posture. In *Verlinden B.V. v. Central Bank of Nigeria (1983)*, the U.S. Supreme Court affirmed that foreign states could be sued in U.S. courts for commercial activities under FSIA. The case arose from a contract dispute over cement imports, where Nigeria’s central bank invoked immunity. The Court’s ruling reinforced the commercial exception, establishing that immunity is not a jurisdictional barrier but a substantive defense, a principle Nigeria’s courts resist. The Argentine Republic v. Amerada Hess Shipping Corp. (1989) case further refined FSIA’s scope, barring claims arising from extraterritorial torts unless a specific exception applied. Conversely, *Republic of Austria v. Altmann (2004)*<sup>79</sup> retroactively applied FSIA to pre-1952 acts, expanding avenues for claims against states. These decisions highlight the dynamic interpretation of immunity in U.S. law, contrasting with Nigeria’s static approach. Enforcement of arbitral awards against states has been particularly contentious. In *Process & Industrial Developments Ltd. (P&ID) v. Nigeria (2024)*, the UK Court of Appeal upheld a \$10 billion award against Nigeria for breaching a gas contract. Nigeria’s defense of invoking sovereign immunity and procedural irregularities, was rejected, emphasizing that states cannot evade arbitration agreements. Yet, enforcement remains fraught, as seen in ICSID cases like *Shell Nigeria Ultra Deep Ltd. v. Nigeria* and *Interocean Oil v. Nigeria*, where Nigeria delayed compliance with arbitral awards, citing national interest and procedural objections.

The U.S. case *Ministry of Defense v. Elahi (2006)*<sup>80</sup> addressed waiver nuances, ruling that Iran’s prior litigation conduct did not waive immunity in a separate case. Similarly, *Dole Food Co. v. Patrickson (2003)*<sup>81</sup> clarified that subsidiaries of state-owned entities are not automatically entitled to immunity unless the state itself owns a majority stake. These rulings underscore the importance of precise legal thresholds in immunity cases—a rigor often missing in Nigerian jurisprudence.

The cases reveal a global tension: while international and regional courts increasingly narrow immunity in commercial contexts, Nigerian courts remain anchored in conservatism, prioritizing state protection over private rights. This dissonance undermines Nigeria’s investment climate, as seen in the P&ID saga and ICSID delays. For Nigeria, harmonizing domestic laws with international standards is critical. The AMA (2023) is a step forward, but its success hinges on judicial willingness to enforce awards against state entities. Legislative clarity is needed to distinguish commercial from sovereign acts, perhaps through amendments to the Sovereign Immunity Act or adopting the UN Convention on Jurisdictional Immunities.

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<sup>78</sup> CLR 6(f) SC.

<sup>79</sup> n(86).

<sup>80</sup> Ministry of Defense and Support for Armed Forces of Islamic Republic of Iran v. Elahi, 546 U.S. 450 (2006).

<sup>81</sup> 538 U.S. 468.



Regionally, ECOWAS and AfCFTA frameworks must address enforcement gaps. The AfCFTA Protocol on Dispute Settlement, for instance, could mandate domestic enforcement mechanisms for cross-border awards, reducing reliance on politicized processes. Internationally, Nigeria must reconcile its ratification of treaties like the ICSID Convention with domestic enforcement practices. Courts should align with precedents like *Verlinden* and *P&ID*, recognizing that arbitration agreements constitute implicit waivers of immunity. Ultimately, the path forward demands judicial courage, legislative precision, and administrative accountability. By embracing restrictive immunity and depoliticizing enforcement, Nigeria can signal its commitment to the rule of law, fostering the investor confidence vital for its economic ambitions. The tenets of these cases collectively chart a roadmap, one that balances sovereign dignity with the imperatives of global commerce.

The conceptual review of sovereign state immunity and commercial claims in Nigeria navigates the evolution from absolute to restrictive immunity, distinguishing sovereign (*jure imperii*) and commercial acts (*jure gestionis*). Rooted in the Constitution (CFRN 1999) and statutes like the NSIA Act (2011) and AMA 2023, Nigeria's legal framework increasingly restricts immunity for commercial activities, as affirmed in *NNPC v. Lutin Investment* (2006) and *African Reinsurance Corp v. J.D.P Construction* (2007). However, enforcement faces bureaucratic barriers under the Sheriffs Act (2004) and political resistance, exemplified by the \$11 billion *P&ID v. Nigeria* (2024) arbitral dispute.

The conceptual review revealed that Nigeria's dualist approach under *Section 12* CFRN necessitates treaty domestication, yet gaps persist due to non-ratification of the UN Convention on Jurisdictional Immunities (2004). Regionally, the AfCFTA Protocol on Dispute Settlement (2021) and ECOWAS frameworks promote accountability but lack enforcement teeth. Arbitration under AMA 2023 and the New York Convention (1958) offers neutral dispute resolution, yet sovereign debt complexities and asset protections under the CBN Act (2007) hinder compliance. Jurisdictionally, the Federal High Court's authority under *Section 251* CFRN clashes with immunities for state entities, while international precedents like *Verlinden v. CBN* (1983) emphasize commercial exceptions. Challenges include inconsistent jurisprudence, institutional fragmentation, and the need to harmonize domestic laws with ICSID and OHADA standards. Ultimately, Nigeria must strengthen legislative clarity, judicial adherence to restrictive immunity, and regional integration to balance sovereignty with global commercial accountability, which can be structured based on the following theories:

### **Theoretical Framework**

This theoretical discourse on sovereign state immunity is framed by competing theories that balance state sovereignty with accountability. The Absolute Theory, championed by Joseph Story and Lord Atkin, posits that states are immune from foreign jurisdiction unless they consent, a principle rooted in diplomatic equality and non-interference. However, critics like E.K. Bankas and Hersch Lauterpacht argue that this rigid approach obstructs justice in commercial disputes, prompting reforms such as Hazel Fox's proposal for codified exceptions (e.g., UN Convention on Jurisdictional Immunities, 2004) to reconcile sovereignty with accountability. In contrast, the Restrictive Theory distinguishes between sovereign (*acta jure imperii*) and commercial acts (*acta jure gestionis*), advocating immunity only for the former. While C.M. Schmitthoff and C.C. Wigwe endorse this approach for fostering global trade, critics like Lee Caplan highlight ambiguities in distinguishing state functions. Pragmatic solutions include domestic legislation (e.g., Nigeria's Arbitration and Mediation Act, 2023) and regional harmonization through frameworks like OHADA and AfCFTA.

The Functional Theory, advanced by Lauterpacht and C.T. Ebenroth, ties immunity to the nature of state acts rather than status, but faces critiques over operational vagueness. Andrea Bianchi and Benedict Kingsbury note challenges in hybrid scenarios (e.g., *Nigeria's NNPC v. Lutin Investment*, 2006), urging structured treaty interpretations and economic tests (Schmitthoff) to clarify distinctions. Legal Positivism, rooted in Hans Kelsen's

codification principles, prioritizes statutory rules but is critiqued by Martti Koskenniemi for entrenching power imbalances. Harold Koh's transnational legal process and Lauterpacht's rights-based treaty interpretations offer remedies, as seen in Nigeria's alignment with the New York Convention (1958).

The Comity Doctrine, emphasizing mutual judicial deference, is critiqued for unpredictability as determined by Cedric Ryngaert, but finds structured application in AfCFTA's dispute protocols. Neoliberal Institutionalism underscores institutional cooperation according to Keohane, but risks marginalizing sovereignty as posited by Dani Rodrik, necessitating contextualized frameworks like AfCFTA's socioeconomic safeguards as enunciated by J.A. Aluede. Human Rights-based Approaches challenge immunity for jus cogens violations as determined by Manfred Nowak, countered by concerns over diplomatic stability according to Rosalyn Higgins. Hybrid courts<sup>82</sup> and conditional immunity<sup>83</sup> propose balanced solutions.

Finally, the Realist Theories frame immunity as power politics but face critiques for lacking normative guidance. Scholars like Martti Koskenniemi and Harold Koh advocate integrating power with justice, exemplified in Nigeria's engagement with ICSID and OHADA. Collectively, these theories underscore the necessity of adaptive frameworks, codifying exceptions, harmonizing regional norms, and embedding human rights, to reconcile sovereignty with global accountability.

### Summary of Literature Review

Nigeria's dualist legal system (CFRN, 1999 (as amended) S.12) navigates these tensions by domesticating treaties like the New York Convention (1958) while balancing sovereignty under statutes such as the NSIA Act (2011). Regionally, AfCFTA's dispute protocol and OHADA's arbitration mechanisms provide pathways for accountability, though enforcement gaps persist. The study concludes that Nigeria's immunity regime must reconcile sovereignty with globalization through legislative clarity, judicial adherence to restrictive immunity, and institutional reforms. By integrating treaty-guided distinctions (UN Convention, 2004) and fostering regional legal cohesion, Nigeria can bolster investor confidence while upholding state dignity in a multipolar world.

### Gap in Knowledge

The following gap were identified and handled:

1. **Balancing State Immunity and Commercial Enforcement:** While Nigeria's legal framework nominally adopts restrictive immunity (e.g., AMA 2023, CAMA 2020), there is insufficient empirical analysis of how statutory provisions like the NSIA Act (S.26) and Sheriffs Act (S.44) operationally reconcile sovereignty with commercial accountability. Existing studies by Fox and Webb, and Stewart, focus on treaty frameworks like the UN Convention on Jurisdictional Immunities (2004) but overlook Nigeria's unique hybrid system, where unratified treaties coexist with domestic statutes. A gap exists in mapping how Nigeria's dualist constitutional structure (CFRN, 1999 (as as amended) S.12) navigates transnational disputes, particularly in reconciling regional obligations (AfCFTA, ECOWAS) with domestic sovereignty protections. The study proposes codifying a sovereign immunity statute integrating UN Convention standards (2004) and CAMA 2020 to clarify commercial exceptions.
2. **Judicial Inconsistencies in Immunity Application:** Nigerian jurisprudence reveals contradictory rulings, such as *NNPC v. Lutin Investment (2006)* (immunity upheld) versus *E.A. Ind. Ltd v. NERFUND (2009)* (immunity denied), but no systematic study identifies the doctrinal or institutional drivers of these inconsistencies. While Koskenniemi critiques legal indeterminacy, there is limited scholarship on how Nigerian courts interpret 'commercial activity' under statutes like the AMA 2023 (S.57) or the influence of political pressures on judicial

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<sup>82</sup> n(157).

<sup>83</sup> n(158).

outcomes (e.g., *Government of Akwa Ibom State v. Powercom, 2003*). The lack of a codified sovereign immunity statute exacerbates ambiguity, yet no research quantifies its impact on judicial decision-making. Hence, there is need for the Federal to enact a Judicial Code defining ‘commercial acts’ and mandate specialized training for judges on restrictive immunity principles.

**3. Impact of Non-Ratification of International Treaties:** Nigeria’s non-ratification of the UN Convention on Jurisdictional Immunities (2004) and delayed domestication of treaties like the ICSID Convention creates enforcement ambiguities, as seen in *P&ID v. Nigeria (2024)*. However, no study evaluates how this gap specifically hinders cross-border enforcement compared to states that have ratified these instruments (e.g., U.S. under FSIA). Further, while the New York Convention (1958) is domesticated, its interplay with immunity protections under the CBN Act (S.50) remains underexplored. A critical gap lies in assessing the economic costs of non-ratification, particularly in deterring FDI due to enforcement unpredictability. Thus, the study advocates prioritizing ratification of the UN Convention (2004) and amending conflicting laws (e.g., CBN Act) to align with ICSID/New York standards.

**4. Effectiveness of Institutional Safeguards:** Institutions like the NSIA and CBN statutorily shield sovereign assets (NSIA Act S.5; CBN Act S.50), but there is no empirical analysis of their efficacy in practice. For instance, how often does the Attorney-General’s Office block enforcement under S.26 NSIA Act? How do regional bodies like the AfCFTA Dispute Settlement Body circumvent these barriers? While Aluede (2023) examines ECOWAS protocols, there is no comparative study of Nigeria’s institutional performance against regional peers (e.g., OHADA states). Additionally, the role of anti-corruption agencies (EFCC) in investigating state-linked commercial fraud remains unexamined in immunity contexts. Thus, the study advocates auditing NSIA/CBN enforcement practices; establishing AfCFTA-ECOWAS protocols for cross-border enforcement, and bypassing domestic bureaucratic delays.

**5. Reforms Aligning Nigeria with Global Standards:** Proposed reforms (e.g., codifying a sovereign immunity statute, ratifying the UN Convention) are often mentioned (Wigwe, 2008; McCormick, 1984) but lack granularity. No study provides a cost-benefit analysis of adopting FSIA-like exceptions in Nigeria or evaluates the feasibility of amending the Sheriffs Act to expedite enforcement. Furthermore, while AfCFTA’s Protocol on Dispute Settlement (2021) offers regional solutions, there is no framework for integrating its mechanisms with Nigeria’s domestic laws. A key gap is the absence of participatory research capturing stakeholder perspectives (judges, investors, state agencies) on reform priorities. To solve the issues, there is need to create stakeholder panels to draft FSIA-inspired amendments to the Sheriffs Act and domesticate AfCFTA’s dispute mechanisms through legislative omnibus.

## Findings

### Nigeria's Legal Framework on State Immunity and Commercial Claim Enforcement in Transnational Disputes

#### 1. Constitutional and Legislative Framework:

Nigeria's legal system attempts to balance state immunity with commercial claim enforcement through a combination of constitutional provisions and statutory laws. The CFRN, 1999 (as amended)<sup>84</sup> establishes the foundational principles, with *Section 12* requiring domestication of international treaties before they become enforceable in Nigerian courts. This creates significant delays in implementing global standards on state immunity. *Section 251* grants exclusive jurisdiction over state-related commercial disputes to the Federal High

<sup>84</sup> Constitution of the Federal Republic of Nigeria (CFRN), 1999 (as amended), Ss. 12 & 44(1), 251, 308 Laws of Federation of Nigeria (LFN).

Court, while *Section 308* provides immunity for sitting executives, which has been controversially extended to commercial matters in cases like *Government of Akwa Ibom State v. Powercom (2003)*.<sup>85</sup> The country has adopted the restrictive theory of immunity through various statutes. The Arbitration and Mediation Act 2023<sup>86</sup> represents Nigeria's most progressive legislation, aligning with international standards by limiting judicial interference in arbitration and facilitating enforcement of awards. However, conflicting laws like the Nigerian Sovereign Investment Authority Act (*Section 26*) and Central Bank Act (*Section 50*) create absolute immunity shields for state assets, undermining the AMA's provisions.

Nigeria's institutional framework creates significant hurdles for commercial claimants:

1. The Attorney-General's Office holds veto power over enforcement against state assets under *Section 26* of the NSIA Act.<sup>87</sup>
2. The Sheriffs and Civil Process Act imposes bureaucratic requirements for judgment execution.<sup>88</sup>
3. The Central Bank and NSIA maintain absolute protection for critical state assets. The precedent of strict immunity was reinforced in *Nigerian National Petroleum Corporation (NNPC) v. Lutin Investment Ltd. (2006)*.<sup>89</sup> Lutin sued NNPC for breach of a petroleum storage contract, but the Supreme Court upheld NNPC's immunity, deeming it a 'government organ' despite its commercial functions. The decision blurred the line between *jure imperii* (sovereign acts) and *jure gestionis* (commercial acts), prioritizing state protection over contractual accountability.
4. Anti-corruption agencies like EFCC sometimes intervene in commercial disputes without clear jurisdiction.

These institutional barriers often frustrate legitimate claims and undermine Nigeria's reputation as an arbitration-friendly jurisdiction.

## 2. Regional and International Obligations

Nigeria's participation in regional frameworks like ECOWAS and AfCFTA creates obligations that sometimes conflict with domestic immunity practices. While the country has ratified key instruments like the ICSID Convention<sup>90</sup> and New York Convention,<sup>91</sup> non-ratification of the UN Convention on Jurisdictional Immunities (2004)<sup>92</sup> leaves gaps in its legal framework. The AfCFTA's dispute settlement mechanism presents new opportunities for commercial claimants, but its effectiveness will depend on Nigeria's willingness to subordinate sovereignty concerns to regional arbitration decisions.

Compared to leading jurisdictions:

1. Nigeria lacks a comprehensive sovereign immunity statute like the US FSIA<sup>93</sup> or UK SIA.<sup>94</sup>
2. Enforcement mechanisms are weaker than in OHADA member states.

<sup>85</sup> *Government of Akwa Ibom State v. Powercom Nigeria Ltd & ANOR*. 2003-LD-CA-866.

<sup>86</sup> Sections 1, 16, 17, 51, 57, 59, 60, 63, LFN.

<sup>87</sup> Nigerian Sovereign Investment Authority (NSIA) Act, 2011, S. 26, LFN.

<sup>88</sup> Sheriffs and Civil Process Act, Cap. S6, 2004, Ss. 15, 20 & 44, LFN.

<sup>89</sup> *Nigerian National Petroleum Corporation v Lutin Investment Ltd. (S.C. 57/2002) [2006]* NGSC 135 (12 January 2006).

<sup>90</sup> Diplomatic Immunities and Privileges Act, Cap. C24, 2004, 2-7, LFN; International Centre for Settlement of Investment Disputes (ICSID Convention) (1965), Articles 25, 53, 54 & 55, UN.

<sup>91</sup> United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York Convention) (1958), Articles I, III, V(1)(a)(b), V(2)(a)(b), VI, UN.

<sup>92</sup> United Nations Convention on Jurisdictional Immunities of States and Their Property (2004), Articles 5, 10, 19 & 21, UN.

<sup>93</sup> Foreign Sovereign Immunities Act (FSIA), 1976, 28 United States Code (U.S.C), Ss. 1605(a)(2), 1609, 1610(a), US Laws.

<sup>94</sup> State Immunity Act 1978, Ss. 1, 2, 3, 9 & 13, UK.



3. The dualist approach to treaty implementation creates delays in adopting global standards. Nigeria's legal framework on state immunity presents contradictions between restrictive (Arbitration and Mediation Act 2023)<sup>95</sup> and absolute immunity approaches (NSIA Act S.26, CBN Act S.50<sup>96</sup>). Institutional barriers like the Attorney-General's veto power (NSIA Act S.26) and bureaucratic hurdles under the Sheriffs Act undermine Nigeria's arbitration-friendly aspirations. Ratifying the UN Convention on Jurisdictional Immunities (2004) and legislative harmonization are urgently needed to align with international standards.<sup>97</sup>

### **Judicial Inconsistencies in Nigerian Courts' Application of Sovereign Immunity to State-Linked Commercial Transactions**

Nigerian courts have exhibited significant inconsistencies in applying the doctrine of sovereign immunity to state-linked commercial transactions. These inconsistencies stem from conflicting interpretations of statutory provisions, reliance on outdated precedents, and the absence of a codified sovereign immunity law. The judicial approach oscillates between absolute and restrictive immunity, creating uncertainty for investors and commercial claimants.

#### **1. Conflicting Interpretations of Sovereign vs. Commercial Acts**

A major inconsistency arises from the judiciary's divergent classification of state activities as either *jure imperii* (sovereign acts) or *jure gestionis* (commercial acts). While some courts adopt the restrictive immunity doctrine, denying immunity for commercial transactions, others uphold absolute immunity, shielding state entities from liability regardless of the nature of the transaction. For instance, in *NNPC v. Lutin Investment (2006)*, the Supreme Court upheld immunity for the Nigerian National Petroleum Corporation (NNPC), treating its commercial activities as inherently sovereign due to its statutory role in oil resource management. Conversely, in *E.A. Industries Ltd. v. NERFUND (2009)*,<sup>98</sup> the court pierced the corporate veil, holding that a state-owned enterprise engaged in commercial dealings could not claim immunity. These contradictory rulings highlight the lack of a uniform judicial test for distinguishing sovereign from commercial acts.

#### **2. Statutory Ambiguities and Procedural Hurdles**

Nigeria's legal framework lacks explicit provisions defining the scope of sovereign immunity in commercial disputes. While statutes like the Arbitration and Mediation Act (2023) and Companies and Allied Matters Act (2020)<sup>99</sup> imply a restrictive approach, others, such as the Sheriffs and Civil Process Act (2004) and Nigerian Sovereign Investment Authority (NSIA) Act (2011), reinforce absolute immunity by requiring the Attorney-General's consent before enforcing judgments against state assets. This statutory conflict has led to inconsistent enforcement. In *P&ID v. Nigeria (2024)*,<sup>100</sup> Nigeria successfully invoked public policy and procedural irregularities under the Sheriffs Act to resist an \$11 billion arbitral award, whereas in *African Reinsurance Corp. v. Abate Fantaye (1986)*,<sup>101</sup> the court prioritized state immunity over a claimant's right to remedy under the African Charter on Human and Peoples' Rights.<sup>102</sup>

#### **3. Influence of Political and Diplomatic Considerations**

<sup>95</sup> Arbitration and Mediation Act (AMA) 2023, Sections 1, 16, 17, 51, 57, 59, 60, 63, LFN.

<sup>96</sup> Central Bank of Nigeria (CBN) Act (2007), Section 50, LFN.

<sup>97</sup> D P Stewart, 'The UN Convention on jurisdictional immunities of states and their property,' [2005](999)(1), *American Journal of International Law*, 194-211.

<sup>98</sup> 8 NWLR (Pt. 1144) 535 P. 592

<sup>99</sup> Companies and Allied Matters Act (CAMA), 2020, Ss. 20 & 54(1), LFN.

<sup>100</sup> *Process & Industrial Developments Limited (P&ID Ltd) v The Federal Republic of Nigeria [2024] EWCA Civ 790.*

<sup>101</sup> CLR 6(f) SC.

<sup>102</sup> African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act, 1983, Ss. 1 & 2, LFN.



Judicial decisions in state-linked commercial disputes are often influenced by political pressures, particularly where enforcement threatens national assets or foreign relations. Cases involving high-profile state entities like the Central Bank of Nigeria (CBN) or NNPC frequently result in immunity being expansively interpreted to protect state interests. For example, in *Government of Akwa Ibom State v. Powercom (2003)*, the court extended immunity under *Section 308* of the 1999 Constitution (which immunizes sitting governors from civil suits) to commercial contracts, effectively insulating state actors from accountability. This contrasts with *Interocean Oil v. Nigeria (2020)*,<sup>103</sup> where Nigeria's delay in complying with an ICSID award underscored the tension between international obligations and domestic immunity protections.

Nigerian courts' inconsistent application of sovereign immunity in state-linked commercial transactions undermines investor confidence and legal predictability. A harmonized approach, guided by legislative clarity and international best practices, is essential to balance sovereign protections with commercial accountability. Without reform, Nigeria risks perpetuating a system where state immunity functions as an impunity shield rather than a principled legal doctrine.

### **The Effectiveness of Nigeria's Institutional Mechanisms in Protecting Sovereign Assets from Commercial Claims**

Nigeria's institutional mechanisms for protecting sovereign assets from commercial claims operate within a complex legal framework that balances state immunity with the enforcement of commercial obligations. While the country has established legal and institutional safeguards to shield sovereign assets, their effectiveness is undermined by procedural bottlenecks, judicial inconsistencies, and gaps in international treaty compliance. This analysis evaluates Nigeria's institutional mechanisms by examining the legal framework, enforcement challenges, and comparative insights from foreign and regional models.

#### **1. National Legal Framework and Its Limitations**

Nigeria's legal framework incorporates both statutory and constitutional provisions that uphold sovereign immunity while allowing exceptions for commercial transactions. Key instruments include:

1. **The Constitution of the Federal Republic of Nigeria (CFRN), 1999 (as amended):** *Section 308* grants immunity to sitting executives, controversially extending to commercial disputes in cases like *Government of Akwa Ibom State v. Powercom (2003)*. *Section 251* centralizes jurisdiction over federal agencies in the Federal High Court, often leading to delays.
  2. **Foreign Judgments (Reciprocal Enforcement) Act (2004)**<sup>104</sup>: Restricts enforcement to monetary judgments but is limited by Nigeria's few reciprocal agreements with other nations.
  3. **Sheriffs and Civil Process Act (2004):** Requires Attorney-General consent for enforcement against state assets (*NNPC v. Lutin Investment, 2006*), politicizing the process.
  4. **Nigerian Sovereign Investment Authority (NSIA) Act (2011):** Insulates sovereign wealth funds from enforcement without explicit exceptions for commercial liabilities, conflicting with international norms under the UN Convention on Jurisdictional Immunities (2004).
  5. **Arbitration and Mediation Act (AMA, 2023):** Modernizes arbitration but is undercut by narrow judicial interpretations of public policy, as seen in *P&ID v. Nigeria (2024)*, where an \$11 billion award was voided.
- Despite these laws, enforcement remains problematic due to bureaucratic delays, judicial deference to state interests, and the absence of a codified sovereign immunity statute clarifying commercial exceptions.

<sup>103</sup> *Interocean Oil Development Company and Interocean Oil Exploration Company v. Federal Republic of Nigeria, 2020*, ICSID Case No. ARB/13/20.

<sup>104</sup> Foreign Judgments (Reciprocal Enforcement) Act, Cap. F35, 2004, Ss. 3(1), 4 & 6, LFN.

## 2. Institutional Barriers to Enforcement

Nigeria's institutional framework further complicates enforcement:

1. **Federal High Court:** While vested with exclusive jurisdiction over state-linked disputes, its rulings are inconsistent, oscillating between upholding immunity (*NNPC v. Lutin Investment, 2006*) and denying it (*E.A. Ind. Ltd v. NERFUND, 2009*).
2. **Attorney-General's Office:** Retains veto power over enforcement under the NSIA Act, often blocking legitimate claims on political grounds.
3. **Central Bank of Nigeria (CBN):** *Section 50* of the CBN Act immunizes reserves from attachment, exceeding protections under international law.
4. **Sheriffs Department:** Hampered by procedural hurdles under the Sheriffs Act, which mandates court leave before execution, enabling states to delay compliance.

These institutions prioritize sovereignty over commercial accountability, deterring foreign investors and undermining Nigeria's reputation as an arbitration-friendly jurisdiction. This is in contrast with more structured systems abroad:

1. **U.S. Foreign Sovereign Immunities Act (FSIA, 1976):** Explicitly denies immunity for commercial acts (28 U.S. Code § 1605(a)(2)) while protecting sovereign assets not used commercially (§ 1610(a)). This clarity enhances predictability.
2. **UK State Immunity Act (1978):** Similarly restricts immunity for trade and employment disputes, with arbitration agreements constituting implicit waivers (*Section 9*).
3. **OHADA Uniform Acts:** Distinguish state-owned enterprises (SOEs) as commercial entities, stripping immunity unless retained by law, a model Nigeria could adopt for entities like NNPC.

Regionally, the AfCFTA Dispute Settlement Body and ECOWAS Court of Justice offer alternative enforcement avenues, but Nigeria's reluctance to subordinate sovereignty to regional arbitration limits their efficacy. Thus, Nigeria's institutional mechanisms for protecting sovereign assets are structurally sound but operationally ineffective due to legal ambiguities, procedural delays, and political interference. While sovereign immunity remains a legitimate doctrine, its overextension in commercial disputes undermines investor confidence and Nigeria's compliance with international obligations. By adopting legislative reforms, ratifying key treaties, and depoliticizing enforcement, Nigeria can strike a balance between safeguarding sovereignty and upholding commercial accountability, aligning with global best practices.

### The Impact of Nigeria's Non-Ratification of Key International Treaties on the Enforcement of Foreign Judgments and Arbitral Awards

Nigeria's failure to ratify critical international treaties, particularly the United Nations Convention on Jurisdictional Immunities of States and Their Property (2004) and the delayed domestication of instruments like the ICSID Convention, significantly hinders the enforcement of foreign judgments and arbitral awards. This non-ratification creates legal ambiguities, fosters judicial inconsistency, and undermines Nigeria's credibility as an arbitration-friendly jurisdiction.

#### 1. Legal Ambiguity and Judicial Inconsistency

Nigeria's dualist legal system under *Section 12* of the CFRN, 1999 (as amended)<sup>105</sup> requires domestication before treaties become enforceable. The absence of ratified frameworks leaves courts without clear guidance on enforcing foreign judgments against state entities. For instance, while Nigeria domesticated the New York Convention (1958) through the Arbitration and Mediation Act (AMA) 2023, its enforcement mechanisms clash

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<sup>105</sup> CFRN, S.12, LFN.

with immunity protections under statutes like the Nigerian Sovereign Investment Authority (NSIA) Act (2011) and the Central Bank of Nigeria (CBN) Act (2007).

In *P&ID v. Nigeria* (2024), Nigeria successfully resisted an \$11 billion arbitral award by invoking procedural irregularities and public policy under the Sheriffs and Civil Process Act (2004), despite the AMA's alignment with the New York Convention. Conversely, in *Interocean Oil v. Nigeria* (2020), delays in enforcing an ICSID award highlighted gaps in Nigeria's compliance with international obligations. These inconsistencies deter foreign investors, who face unpredictable enforcement outcomes.

## **2. Limited Reciprocity and Cross-Border Enforcement**

The Foreign Judgments (Reciprocal Enforcement) Act (2004) restricts enforcement to judgments from countries with bilateral agreements. Nigeria's non-ratification of the Hague Evidence Convention (1970)<sup>106</sup> and limited reciprocity treaties complicate evidence-gathering and judgment recognition. For example, U.S. judgments (*Verlinden B.V. v. CBN*, 1983)<sup>107</sup> remain unenforceable in Nigeria due to the lack of reciprocal agreements. Similarly, the UN Convention on Jurisdictional Immunities (2004), which Nigeria signed but never ratified, would clarify exceptions for commercial acts (*jure gestionis*). Its absence forces courts to rely on conflicting precedents, such as *NNPC v. Lutin Investment* (2006) (immunity upheld for commercial acts) versus *E.A. Industries Ltd. v. NERFUND* (2009) (immunity denied).

## **3. Economic and Diplomatic Consequences**

Non-ratification exacerbates Nigeria's risk profile for foreign investors. The ICSID Convention's *Article 54* obligates states to enforce awards as final judgments, but Nigeria's ICSID (Enforcement of Awards) Act (1990) is undermined by conflicting domestic laws. In *Shell Nigeria Ultra Deep v. Nigeria*,<sup>108</sup> enforcement was stalled due to sovereign immunity claims over oil assets. Regionally, Nigeria's non-participation in OHADA's Uniform Act on Arbitration (2017)<sup>109</sup> limits harmonization with Francophone states under the AfCFTA, where disputes may face jurisdictional conflicts. The AfCFTA Protocol on Dispute Settlement (2021)<sup>110</sup> remains untested, leaving enforcement gaps. States like the U.S. (FSIA, 1976) and U.K. (State Immunity Act, 1978) enforce awards predictably by codifying commercial exceptions. Nigeria's reliance on outdated statutes like the Sheriffs Act (2004), which mandates the Attorney-General's consent for enforcement against state assets, contrasts sharply with global norms. Thus, Nigeria's non-ratification of key treaties perpetuates a fragmented enforcement regime, stifling foreign investment and regional integration.

## **Reforms to Align Nigeria's State Immunity Regime with Global Best Practices While Protecting Legitimate Commercial Interests**

Nigeria's state immunity regime currently struggles to balance sovereign protections with the enforcement of commercial claims, creating uncertainty for investors and undermining compliance with international obligations. To align with global best practices while safeguarding legitimate commercial interests, Nigeria must implement targeted legal, judicial, and institutional reforms. These reforms should draw from comparative models like the U.S. Foreign Sovereign Immunities Act (FSIA) and the UK State Immunity Act while addressing Nigeria's unique legal and political context.

<sup>106</sup> Convention on the Taking of Evidence Abroad in Civil or Commercial Matters (Hague Evidence Convention) (1970), Articles 1, 12 & 23, UN

<sup>107</sup> 461 U.S. 480.

<sup>108</sup> *Shell Nigeria Ultra Deep Limited v. Federal Republic of Nigeria*, 2018, ICSID Case No. ARB/07/18.

<sup>109</sup> Articles 2, 30, OHADA.

<sup>110</sup> African Continental Free Trade Area (AfCFTA) Agreement (2019), Articles 3, 13, 23, 18 & 20, Protocol on Dispute Settlement, Annexes 3 & 5, AU.

### 1. **Legislative Reforms: Codifying Restrictive Immunity**

A critical step is enacting a Sovereign Immunity Act to codify the restrictive theory of immunity, explicitly distinguishing between sovereign (*jure imperii*) and commercial acts (*jure gestionis*). Such a law should:

1. **Define Commercial Exceptions:** Clarify that state-owned enterprises (SOEs) like NNPC are not immune from lawsuits arising from trade, investment, or contractual disputes, mirroring *Article 10* of the UN Convention on Jurisdictional Immunities (2004).
2. **Limit Asset Protection:** Allow enforcement against state assets used for commercial purposes, as seen in the FSIA (§ 1610), while shielding core sovereign assets like central bank reserves.
3. **Depoliticize Enforcement:** Remove the Attorney-General's veto power under the NSIA Act and Sheriffs Act, replacing it with judicial oversight to prevent arbitrary blocking of valid claims.

### 2. **Treaty Ratification and Harmonization**

Nigeria should prioritize ratifying the UN Convention on Jurisdictional Immunities (2004) and fully domesticate the ICSID Convention to align with international standards. This would:

1. **Reduce Enforcement Ambiguities:** Provide clear guidelines on when immunity applies, avoiding conflicts like those in *P&ID v. Nigeria (2024)*.
2. **Boost Investor Confidence:** Signal commitment to honoring arbitral awards, as required under the New York Convention.
3. **Harmonize Regional Obligations:** Integrate AfCFTA's dispute resolution mechanisms into domestic law to facilitate cross-border enforcement.

Ratifying the UN Convention on Jurisdictional Immunities (2004) will further enable the growth of the Nigeria legislative strength and economic development.

### 3. **Institutional Reforms**

To address inconsistent rulings, Nigeria should:

1. **Train Judges on Restrictive Immunity:** Mandate specialized programs to ensure uniform interpretation of commercial exceptions, reducing contradictions like *NNPC v. Lutin Investment (2006)* vs. *E.A. Ind. Ltd v. NERFUND (2009)*.
2. **Establish Commercial Courts:** Create dedicated divisions within the Federal High Court to handle state-linked commercial disputes, improving expertise and efficiency.
3. **Streamline Enforcement:** Amend the Sheriffs Act to expedite judgment execution, removing bureaucratic hurdles like mandatory Attorney-General consent.

Following these strategies will ensure Nigeria stays in line with global best practices even with change times.

### 4. **Regional and International Collaboration**

Leveraging regional frameworks can mitigate domestic enforcement gaps, thus the Nigerian government should:

1. **AfCFTA Dispute Settlement Body:** Use this platform to resolve investor-state disputes, bypassing prolonged domestic litigation.
2. **OHADA Harmonization:** Adopt OHADA-style reforms to clarify SOEs' commercial liability, as seen in its Uniform Act on Commercial Companies (2014).<sup>111</sup>

Nigeria can reconcile sovereignty with commercial accountability by enacting a Sovereign Immunity Act, ratifying key treaties, and depoliticizing enforcement. Judicial training and institutional streamlining will ensure consistency, while regional mechanisms like AfCFTA offer alternative enforcement pathways. These reforms

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<sup>111</sup> Uniform Act on Commercial Companies (AUSCGIE 1997, Revised 2014), Article 5, OHADA.

will align Nigeria with global best practices, fostering investor trust without compromising legitimate sovereign protections.

### Summary of Findings

The study was structured to carry out a legal appraisal on the doctrine of state immunity and enforcement of commercial claims against sovereign states. Using Nigeria as a focus and comparatively examining other jurisdictions, the study adopted a doctrinal research as determined. Nigeria's legal framework on state immunity and commercial claim enforcement remains inconsistent, creating uncertainty for investors and undermining the country's compliance with international obligations. While the CFRN, 1999 (as amended) and statutes such as the Arbitration and Mediation Act (2023) adopt a restrictive theory of immunity, conflicting laws like the Nigerian Sovereign Investment Authority Act and Central Bank Act reinforce absolute immunity, particularly for state assets. Judicial decisions further exacerbate this inconsistency, with courts oscillating between recognizing commercial exceptions (as in *E.A. Industries Ltd v. NERFUND, 2009*)<sup>112</sup> and extending immunity to clearly commercial transactions (as in *NNPC v. Lutin Investment, 2006*).<sup>113</sup> The *P&ID v. Nigeria (2024)*<sup>114</sup> case highlights the challenges of enforcing arbitral awards against the state, where public policy arguments often override established immunity principles.

Institutional barriers, including the Attorney-General's veto power over enforcement and bureaucratic hurdles under the Sheriffs and Civil Process Act,<sup>115</sup> further frustrate legitimate claims. Nigeria's non-ratification of key treaties, such as the UN Convention on Jurisdictional Immunities (2004),<sup>116</sup> exacerbates these issues, leaving courts without clear guidance. Comparatively, Nigeria lags behind jurisdictions like the U.S. and UK, which have codified restrictive immunity with explicit commercial exceptions.

### Conclusion

To align with global best practices, Nigeria must enact a Sovereign Immunity Act clarifying commercial exceptions, ratify and domesticate relevant treaties, and streamline enforcement mechanisms. Judicial training and specialized commercial courts would ensure consistency, while regional frameworks like the AfCFTA dispute settlement mechanism could provide alternative enforcement avenues. Without these reforms, Nigeria risks perpetuating a system where state immunity functions as an impunity shield rather than a balanced legal doctrine, deterring foreign investment and weakening its standing in transnational commerce. Achieving this balance is crucial for fostering investor confidence while maintaining legitimate sovereign protections. Hence the study concludes that Nigeria's institutional mechanisms suffer from critical gaps:

1. **Non-Ratification of Key Treaties:** Nigeria's failure to ratify the UN Convention on Jurisdictional Immunities (2004) creates ambiguity in commercial exceptions.
2. **Judicial Inconsistencies:** Unclear statutory distinctions between *jure imperii* (sovereign acts) and *jure gestionis* (commercial acts) lead to erratic rulings.
3. **Politicized Enforcement:** Over-reliance on the Attorney-General's discretion under the NSIA and Sheriffs Acts fosters impunity.

<sup>112</sup> 8 NWLR (Pt. 1144) 535 P. 592.

<sup>113</sup> *Nigerian National Petroleum Corporation v Lutin Investment Ltd. (S.C. 57/2002) [2006]* NGSC 135 (12 January 2006)

<sup>114</sup> *Process & Industrial Developments Limited (P&ID Ltd) v The Federal Republic of Nigeria [2024]* EWCA Civ 790.

<sup>115</sup> Sheriffs and Civil Process Act, Cap. S6, 2004, Ss. 15, 20 & 44, LFN.

<sup>116</sup> United Nations Convention on Jurisdictional Immunities of States and Their Property (2004), Articles 5, 10, 19 & 21, UN.



## **Recommendations**

Recommended reforms from established findings includes:

1. **Enact a Sovereign Immunity Act:** Codify restrictive immunity with explicit commercial exceptions, mirroring the FSIA.
2. **Ratify the UN Convention (2004):** Align domestic law with global standards on enforcement against state commercial assets.
3. **Depoliticize Enforcement:** Limit the Attorney-General's veto power and expedite enforcement under the Sheriffs Act.
4. **Judicial Training:** Specialized programs for judges on restrictive immunity principles to reduce inconsistencies.