

EXAMINATION OF THE AfCFTA AND FOREIGN DIRECT INVESTMENT IN NIGERIA

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Abstract

This study examined the African Continental Free Trade Area (AfCFTA) on Foreign Direct Investment (FDI) in Nigeria. Despite Nigeria's ratification of the AfCFTA Agreement in 2020, constitutional, statutory, and treaty-based constraints hinder its full implementation, creating legal uncertainties for investors. The research employs doctrinal, comparative, and empirical methodologies, analyzing Nigeria's domestic laws (CFRN, 1999 (as amended), the NIPC Act (2004), and the AfCFTA Ratification Act (2020)), regional frameworks (for example, ECOWAS Revised Treaty), and international treaties (for example, Nigeria-China BIT, WTO agreements). Key findings reveal that Section 12 of the CFRN, 1999 (as amended), mandates domestication of treaties, yet Nigeria lacks an AfCFTA Implementation Act, leaving investor protections unenforceable in domestic courts. Nigeria's NIPC Act and CAMA 2020 conflict with AfCFTA's liberalization obligations, particularly in expropriation compensation and dispute resolution mechanisms. Judicial delays, federal-state jurisdictional tensions, and weak customs infrastructure impede compliance with AfCFTA's trade facilitation goals, and overlaps between Nigeria's BITs and AfCFTA's emerging investment protocols risk forum-shopping and inconsistent arbitration outcomes. The study recommends enacting an AfCFTA Implementation Act to domesticate treaty obligations, harmonizing the NIPC Act with AfCFTA's investment protections and dispute settlement standards, strengthening judicial efficiency and customs modernization to align with AfCFTA's requirements, and adopting sustainable FDI policies inspired by global models (including Ghana's arbitration frameworks, South Africa's BIT reforms). The study averred that without urgent reforms, Nigeria risks reduced FDI inflows, non-compliance penalties, and diminished leadership in Africa's economic integration under AfCFTA.

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Introduction

The African Continental Free Trade Area (AfCFTA) represents a transformative economic integration initiative designed to enhance intra-African trade and investment by eliminating trade barriers and fostering a single market for goods and services. Nigeria, as Africa's largest economy and a key signatory to the AfCFTA Agreement, stands to experience profound legal and economic implications, particularly in the realm of Foreign Direct Investment (FDI). Foreign direct investment (FDI) refers the investments from other nations which aid economic socio-economic and political development. The successful implementation of AfCFTA in Nigeria depends on the alignment of its domestic legal framework with regional and international trade obligations.

The Constitution of the Federal Republic of Nigeria (CFRN), 1999 (as amended)² serves as the supreme legal instrument regulating trade, investment, and international agreements. *Section* 4(2-5) delineates legislative powers between the federal and state governments, while the Exclusive Legislative List (Second Schedule, Part I) grants the federal government exclusive authority over international trade (Item 6) and foreign investment (Item 32). Additionally, *Section* 12(1) mandates that no international treaty, including AfCFTA, shall have domestic legal effect unless enacted by the National Assembly. This constitutional requirement underscores the necessity for domesticating AfCFTA through legislation, hence, the AfCFTA Ratification Act, 2020³, to ensure its enforceability in Nigeria. Furthermore, Chapter IV of the Constitution safeguards fundamental rights that are crucial for investor confidence, including protection against arbitrary expropriation (*Section* 44(1)) and the right to fair hearing in disputes (*Section* 36(1)). These provisions align with the principles of investment protection under AfCFTA and other international treaties. As noted by C. C. Wigwe⁴, the evolution of sovereignty in developing countries necessitates a balance between domestic legal autonomy and adherence to international obligations, particularly in trade and investment regimes.

Nigeria's domestic legal framework on FDI is primarily governed by statutes such as the Nigerian Investment Promotion Commission Act (NIPC Act), 2004⁵, which guarantees foreign investors unrestricted transfer of capital and profits (*Section* 17) and protection against expropriation without fair compensation (*Section* 18). The Act also provides for dispute resolution mechanisms (*Section* 20), including arbitration under international treaties, which is critical for enforcing AfCFTA's investment protocols. The Companies and Allied Matters Act (CAMA), 2020⁶, further facilitates FDI by allowing foreign companies to register as Nigerian entities (*Section* 18) and enhancing corporate governance standards (*Section* 839), thereby improving investor confidence. Additionally, the Foreign Exchange (Monitoring and Miscellaneous Provisions) Act, 1995, ensures access to foreign exchange for international transactions (*Section* 15), while the Customs and Excise Management Act (CEMA), 2004, empowers the Nigeria Customs Service to implement AfCFTA's tariff concessions (*Section* 12).

At the regional level, the Economic Community of West African States (ECOWAS) Revised Treaty (1993)⁷ promotes FDI through economic integration (*Article* 3(2)(d)) and harmonization of investment laws (*Article* 54). The AfCFTA Agreement (2018)⁸ builds on this framework by eliminating tariffs on 90% of goods (*Article* 3) and

² Constitution of the Federal Republic of Nigeria (CFRN), 1999 (as amended), Ss. 4(2-5), Second Schedule, Part I, Items 6 & 32, Second Schedule, Part II, Item 7, Ss. 12(1), *Section* 36(1), 44(1) & 162, Laws of Nigeria (LFN).

³ AfCFTA Ratification Act, 2020, Ss. 36(1) & 44(1), LFN.

⁴ C C Wigwe, 'The evolution of permanent sovereignty and its effects in developing countries,' [2019](7)(2), *International Journal of Humanities, Art, Medicine and Sciences*, 13-24.

⁵ Nigerian Investment Promotion Commission Act (NIPC Act), 2004, Ss. 17, 18 & 20, LFN.

⁶ Companies and Allied Matters Act (CAMA), 2020, Ss. 15, 18 & 839, LFN.

⁷ ECOWAS Revised Treaty (1993), *Articles* 3(2)(d) & 54, ECOWAS.

⁸ African Continental Free Trade Area (AfCFTA) Agreement (2018), *Articles* 3 & 18, African Union (AU).

establishing a dispute settlement mechanism (*Article 18*). The draft Protocol on Investment under AfCFTA is expected to introduce further protections, including national treatment and most-favored-nation (MFN) clauses, which will influence Nigeria's investment landscape. Moreso, internationally, Nigeria's obligations in trading is controlled by legal statutes and treaties. While statutes can be considered international laws which have been ratified, treaties remain constitutional legal binding documents.⁹ The foundational Vienna Convention on the Law of Treaties (1969)¹⁰ establishes critical principles for Nigeria's treaty obligations, requiring good faith compliance (*Article 26*), prohibiting reliance on domestic law to avoid international commitments (*Article 27*), and providing interpretive guidelines (*Article 31*). These provisions directly affect Nigeria's implementation of the African Continental Free Trade Area (AfCFTA) agreement. The New York Convention (1958, *Article III*)¹¹ further strengthens Nigeria's investment climate by ensuring enforceability of arbitral awards in cross-border disputes. Bilateral investment treaties like the Nigeria-China BIT (2001, *Articles 3(1), 9, 18*)¹² and Nigeria-UK BIT (1990, *Article 5*)¹³ provide specific protections for foreign investors, including guarantees against expropriation and access to dispute resolution. At the multilateral level, WTO agreements such as General Agreement on Trade and Tariffs and Trade (GATT), (*Articles I, III, XI, XX, XXIV*),¹⁴ General Agreement on Trade in Services (GATS) (*Article XVI*)¹⁵ and Agreement on Trade-Related Investment Measures (TRIMS) (*Article 2*)¹⁶ regulate trade in services and prohibit restrictive investment measures. Additionally, climate agreements including the UNFCCC (1992, *Article 4(1)(b), (5)*)¹⁷ and Paris Agreement (2015, *Articles 2(1)(c), 6*)¹⁸ introduce sustainability considerations into Nigeria's trade and investment framework. Together, these instruments create a comprehensive legal structure that guides Nigeria's international trade relations while balancing domestic priorities with global commitments. The effective implementation of AfCFTA in Nigeria hinges on the harmonization of constitutional provisions, domestic statutes, and international obligations. While the Nigerian Constitution provides a robust foundation for trade and investment regulation, legislative action is required to fully domesticate AfCFTA and resolve potential conflicts with existing laws. Thus, the study hinges its *locus classicus* on the following key judicial precedents shaping Nigeria's trade and investment jurisprudence.

'*Ramanchandani v Ekpenyong* (1975) affirmed treaty domestication under *Section 12* of the Constitution, crucial for AfCFTA implementation. *A-G Federation v A-G Abia State* (2002) reinforced federal exclusivity over trade (Item 6, Exclusive List), impacting AfCFTA's application. *Enekwe v IMB* (2006) clarified investor rights under *Section 44(1)*, while *Trenco Ltd v African Real Estate* (1978) set standards for FDI dispute resolution. Internationally, *Oded Besserglik v Mozambique* and *Mike Campbell v Zimbabwe* illustrate treaty enforcement challenges, and *Global Telecom v Canada* underscores FDI protections under bilateral agreements—all pivotal to Nigeria's AfCFTA-FDI legal framework.'

⁹ C P Gordon, 'Treaty v Statute: A note on Cook v. United States,' [1936](16)(4), *The Southwestern Social Science Quarterly*, 65-72.

¹⁰ Vienna Convention on the Law of Treaties (1969), *Articles 26, 27(12), & 31*, UN.

¹¹ New York Convention (1958), (*Article III*), UN.

¹² Nigeria-China BIT (2001), *Articles 3(1), 9 & 18*.

¹³ Nigeria-UK BIT (1990), *Article 5*.

¹⁴ *General Agreement on Trade and Tariffs and Trade (GATT)*, 1994, *Articles I, III, XI, XX, XXIV*, World Trade Organization (WTO).

¹⁵ General Agreement on Trade in Services (GATS), 1995, *Article XVI*, World Trade Organization (WTO).

¹⁶ Agreement on Trade-Related Investment Measures (TRIMS), 1995, *Article 2*, World Trade Organization (WTO).

¹⁷ United Nations Framework Convention on Climate Change (UNFCCC) 1992, *Article 4(1)(b), (5)*, United Nations (UN).

¹⁸ Paris Agreement (2015), *Articles 2(1)(c) & 6*, United Nations (UN).

From the precedence, this study examines the constitutional, statutory, and treaty-based provisions that govern Nigeria's participation in AfCFTA and their implications for FDI.

Statement of the Problem

The African Continental Free Trade Area (AfCFTA) presents both significant opportunities and complex challenges for Nigeria's economic integration and foreign direct investment (FDI) landscape. Scholars have identified several critical gaps in Nigeria's preparedness for AfCFTA implementation. Wigwe and Akani¹⁹ highlight the persistent tension between domestic legal autonomy and regional integration commitments within ECOWAS frameworks, a challenge that extends to AfCFTA compliance. The NIPC Act (2004) and CAMA (2020), while providing basic investor protections, require substantial revisions to meet AfCFTA's liberalization standards, particularly regarding dispute resolution mechanisms and market access provisions.²⁰ Furthermore, Ogbale and Ogochukwu²¹ note the absence of comprehensive studies examining how Nigeria's complex web of bilateral investment treaties (BITs) with countries like China (2001) and the UK (1990) will interact with AfCFTA's emerging investment protocol.

The literature reveals three significant research gaps. First, there is limited analysis of how judicial precedents like *Ramanchandani v Ekpenyong* (1975) and *A-G Federation v A-G Abia State* (2002) will influence AfCFTA's domestic application. Second, Debrah and her associates²² identify a lack of empirical studies on the practical challenges of harmonizing Nigeria's existing FDI laws with AfCFTA's requirements. Third, as Chukwu *et al.*²³ demonstrate, most existing research focuses on economic impacts while neglecting the crucial legal reforms needed for successful implementation. This study addresses these gaps by systematically analyzing Nigeria's constitutional provisions, domestic statutes, and international obligations to develop a coherent framework for AfCFTA implementation that balances national interests with regional integration goals.

This study structured the following research questions to guide its findings:

1. What are the constitutional constraints on AfCFTA implementation under Nigeria's treaty domestication framework?
2. What are the conflicts between Nigeria's FDI laws and AfCFTA's investment liberalization obligations?
3. What is the interplay between Nigeria's international treaties and AfCFTA's emerging investment dispute settlement mechanisms?
4. What is the legal reforms to harmonize Nigeria's trade governance with AfCFTA while safeguarding national sovereignty?

The geographical scope of the study covers Nigeria's trade relations within Africa, excluding non-African FDI partners unless directly relevant. Its content scope includes examining Nigeria's legal preparedness for AfCFTA implementation, focusing on constitutional, statutory, and treaty-based frameworks governing FDI. It analyzes the CFRN, 1999 (as amended) (Sections 4, 12, 36, 44), domestic laws (NIPC Act 2004, CAMA 2020), and

¹⁹ C C Wigwe, and N Akani, 'An Examination of ECOWAS legal Framework as it affects Rail and Pipeline Transportation,' [2019](9)(1), *The Journal of Property Law and Contemporary Issues*, 1-6.

²⁰ E O Ekhatior, and L Anyiwe, 'Foreign direct investment and the law in Nigeria: A legal assessment,' [2016](58)(1), *International Journal of Law and Management*, 126-146.

²¹ O K Ogbale, and I J Ogochukwu, 'African Continental Free Trade Area and Economic Integration in Africa,' [2022](211)(2), *Africa's International Relations in a Globalising World: Perspectives on Nigerian Foreign Policy at Sixty and Beyond*, 4.

²² Y A Debrah, O E Olabode, F Olan, and R B Nyuur, 'The African Continental Free Trade Area (AfCFTA): Taking stock and looking ahead for international business research,' [2024](30)(2), *Journal of International Management*, 101120.

²³ O N Chukwu, A N Omeje, K E Ofoezie, M O Ugwu, and A J Mba, 'Impact of free trade area on trade, revenue and welfare in Nigeria,' [2024](16)(1), *Global Journal of Emerging Market Economies*, 81-97.

Nigeria's obligations under AfCFTA, ECOWAS, BITs (China/UK), and WTO agreements. It further analyses the conflicts between domestic laws and AfCFTA's liberalization goals, comparative analysis of BITs and AfCFTA's draft Investment Protocol and establishing the efficacy of arbitration under New York Convention (1958). The temporal scope spans 1999–2024, covering key legal reforms.

This study holds critical importance for policymakers and legislators by identifying legal gaps in Nigeria's implementation of AfCFTA. It provides actionable insights for aligning domestic laws (NIPC Act, CAMA) with AfCFTA's investment protocols, enabling evidence-based reforms. This ensures Nigeria maximizes AfCFTA's trade benefits while safeguarding national interests.

For foreign investors and businesses, the research clarifies Nigeria's FDI protections under AfCFTA and existing BITs. By analyzing dispute resolution mechanisms (for example, arbitration under the New York Convention), it enhances investor confidence in Nigeria's trade environment, encouraging cross-border investments and economic growth.

Academics and researchers benefit from the study's comparative analysis of Nigeria's treaty obligations and judicial precedents (for example, *Ramanchandani v Ekpenyong*). It directly addresses three gaps identified in the problem statement: (1) the lack of scholarly analysis on how Nigeria's judicial precedents shape AfCFTA implementation; (2) the absence of empirical studies on harmonizing Nigeria's FDI laws with AfCFTA; and (3) the oversight of legal reforms in existing AfCFTA literature. By systematically examining these underexplored interSections, the study provides a foundational framework for future research on African economic integration and investment law.

Research Methodology

This study adopts a doctrinal legal research method to comprehensively examine AfCFTA's impact on FDI in Nigeria. The methodology is structured as follows:

1. **Doctrinal Legal Analysis:** The study systematically analyzed primary legal sources including; The AfCFTA Agreement (2018) and its protocols; Nigeria's domestic legislation (CFRN, 1999 (as amended), AfCFTA Ratification Act 2020, NIPC Act 2004, CAMA 2020, Customs Act); and relevant case law. This aligns with Wigwe's²⁴ approach in examining ECOWAS legal frameworks, ensuring rigorous textual interpretation of statutory provisions.
2. **Policy Document Review:** Government white papers, AfCFTA implementation reports, and international organization publications (World Bank, UNCTAD) were analyzed to assess policy coherence, following the methodology employed by Chukwu *et al.*²⁵ in evaluating trade impacts.
3. **Comparative Legal Analysis:** Nigeria's statutes and institutional frameworks was benchmarked against select AfCFTA states using Odumosu-Ayanu's²⁶ model for FDI policy comparison, identifying best practices in investment protection and dispute resolution which includes, establishing a robust legal framework that protects foreign investment, ensuring transparency and fairness in investment deals, and providing efficient dispute resolution mechanisms
4. **Empirical Component:** Semi-structured interviews was conducted with randomly selected Legal practitioners twenty (10) from the Department of Jurisprudence and International Law, Faculty of Law, Rivers State University, Government trade officials (10) from the Rivers State Ministry of Commerce and Industry who

²⁴ n(3).

²⁵ n(21).

²⁶ I T Odumosu-Ayanu, 'Foreign direct investment catalysts in West Africa: Interactions with local content laws and industry-community agreements,' [2012](35), *North Carolina Central Law Review*, 65.

also doubled as and FDI stakeholders. This triangulation method, similar to Debrah *et al.*'s²⁷ approach, ensures balanced perspectives on implementation challenges.

The methodology addresses Ekhatior and Anyiwe's²⁸ call for integrated legal-empirical assessments of Nigeria's investment landscape while incorporating Anderson and Beaumont's²⁹ framework for analyzing dispute resolution mechanisms. The study employed content analysis for documents and thematic analysis for interview data, ensuring methodological rigor across both components.

Free Trade and FDI

The study begins by defining free trade as the removal of trade barriers (tariffs, quotas) to enhance cross-border commerce, referencing frameworks like the WTO, AfCFTA, and ECOWAS. Free trade is shown to stimulate economic growth by improving market access, competition, and resource allocation. However, its success depends on legal structures, including Nigeria's NIPC Act (2004) and AfCFTA Ratification Act (2020), which domesticate international obligations under Section 12(1) of the Nigerian Constitution.³⁰

Foreign Direct Investment (FDI) is examined as a catalyst for economic development, bringing capital, technology, and jobs. Nigeria's FDI landscape is shaped by laws like the NIPC Act and Foreign Exchange Act (1995), which protect investors but face challenges such as regulatory bottlenecks and corruption. The interdependence between free trade and FDI is highlighted—trade liberalization under AfCFTA attracts FDI by creating a larger market, while FDI enhances infrastructure and industrial capacity, reinforcing trade efficiency.

Economic and Structural Challenges

Nigeria's reliance on raw material exports perpetuates economic subordination, risking AfCFTA's reinforcement of unequal trade dynamics. Weak trade institutions (for example, Nigeria Customs Service) inflate transaction costs, deterring FDI. Poor transport and energy networks hinder intra-African trade, limiting AfCFTA's potential.

Opportunities for Growth and Regional Integration

Despite challenges, AfCFTA offers Nigeria:

1. **Market Expansion:** Access to 1.2 billion consumers under AfCFTA boosts non-oil exports (agriculture, manufacturing).
2. **Sustainable FDI:** Green energy and tech investments align with global trends.
3. **Legal Reforms:** Strengthening institutions (for example, National Office for Trade Negotiations) and adopting local content laws can balance FDI benefits with domestic priorities.

Theoretical Framework

This study adopts a multi-theoretical approach to analyze Nigeria's legal and economic preparedness for the African Continental Free Trade Area (AfCFTA) and its implications for Foreign Direct Investment (FDI).

Legal Positivism

Grounded in the works of John Austin and H.L.A. Hart,³¹ this theory emphasizes law as a system of rules enacted by legitimate authorities. It provides a framework for assessing Nigeria's domestication of AfCFTA under Section 12(1) of the CFRN, 1999 (as amended), ensuring treaty enforceability. However, critiques highlight its rigidity in addressing socio-economic disparities arising from FDI.

²⁷ n(20).

²⁸ n(18).

²⁹ M A Anderson, and B Beaumont, *'The Investor-State Dispute Settlement System: Reform, Replace or Status Quo?'* (Netherlands: Wolters Kluwer, 2020), 20.

³⁰ n(13); n(14); n(15); n(2); n(4); n(5); n(1).

³¹ H L A Hart, *'The Concept of Law,'* (Oxford: Clarendon Press, 1961).

Economic Integration Theories

Adam Smith's absolute advantage and David Ricardo's comparative advantage support trade liberalization, arguing that removing barriers enhances efficiency and growth.³² However, Heckscher-Ohlin's factor endowment theory reveals structural constraints, as Nigeria's oil dependence limits diversification.³³ New Institutional Economics (Douglass North) stresses institutional quality, underscoring the need for reforms in Nigeria's trade governance to reduce transaction costs.³⁴

Dependency Theory (Andre Gunder Frank)

This critique posits that AfCFTA may reinforce Nigeria's reliance on raw material exports, perpetuating neo-colonial economic patterns. It advocates for industrial policies to shift from dependency to self-sufficiency.³⁵

Developmental State Theory (Chalmers Johnson)

Proposes state-led industrialization, suggesting Nigeria emulate East Asia's model by prioritizing manufacturing, infrastructure, and technology transfer to harness AfCFTA's benefits.³⁶

By integrating these theories, the study evaluates Nigeria's legal compliance, economic vulnerabilities, and pathways to sustainable FDI under AfCFTA.

Legal and Institutional Frameworks

The legal and institutional frameworks governing trade and investment in Nigeria are shaped by a complex interplay of national, regional, and international laws. This essay explores the various components of Nigeria's trade and investment legal structures, focusing on the constitutional and institutional challenges faced in aligning with the African Continental Free Trade Area (AfCFTA). It also examines regional and international legal frameworks, including key judicial precedents, bilateral treaties, and multilateral agreements that influence Nigeria's foreign direct investment (FDI) regime.

At the national level, Nigeria's trade and investment laws are anchored in the Constitution of the Federal Republic of Nigeria (CFRN) 1999, which provides the foundational structure for the country's legal obligations and governance mechanisms. However, the constitutional provisions create significant challenges in the enforcement of international treaties, including AfCFTA, within the country. Sections 4, 12, 36, 44, and 162 of the CFRN establish legal constraints that hinder seamless compliance with AfCFTA's provisions. Section 12(1) of the Constitution mandates that all international treaties must be domesticated by the National Assembly before they can be enforced in Nigerian courts. This provision necessitates the passage of an AfCFTA Implementation Act for the treaty's provisions to be fully operational within Nigeria. This requirement creates a gap, as the AfCFTA itself, though ratified, remains unenforceable until the necessary domestic legislation is enacted. Furthermore, Section 4 of the CFRN grants the National Assembly exclusive control over trade matters, while states retain jurisdiction over local commerce. This division of powers complicates the uniform enforcement of AfCFTA at the state level, as regional or local authorities may interpret and apply trade policies differently. Another area of concern is Section 44(1) of the Constitution, which permits expropriation with compensation. However, the lack of clear valuation standards for compensation presents a conflict with AfCFTA's requirement for "adequate, prompt, and effective" compensation in cases of expropriation, as stipulated in Article 18 of the Investment

³² A Smith, *The Wealth of Nations*, (London: W. Strahan and T. Cadell, 1776); D Ricardo, *On the Principles of Political Economy and Taxation*, (London: John Murray, 1817).

³³ E Heckscher, and B Ohlin, *Interregional and International Trade*, (Cambridge, MA: Harvard University Press, 1933).

³⁴ D C North, *Institutions, Institutional Change, and Economic Performance*, (Cambridge: Cambridge University Press, 1990).

³⁵ A G Frank, 'The development of underdevelopment,' [1966](18)(4), *Monthly Review*, 17-31.

³⁶ C Johnson, *MITI and the Japanese Miracle: The Growth of Industrial Policy, 1925-1975*, (Stanford: Stanford University Press, 1982).

Protocol. This inconsistency creates a legal tension between Nigeria's constitutional framework and the obligations under the AfCFTA agreement.³⁷

Several other key national laws further complicate the legal landscape. The AfCFTA Ratification Act of 2020 formally adopts the AfCFTA, but the absence of full domestication leaves investor protections unenforceable. The Nigerian Investment Promotion Commission (NIPC) Act (2004) offers protections for foreign direct investment (FDI), including guarantees of non-discriminatory treatment and protection against expropriation. However, the provisions of the NIPC Act conflict with the stricter standards outlined in AfCFTA's Investment Protocol. The Companies and Allied Matters Act (CAMA) of 2020 facilitates business incorporation but requires reforms to fully comply with AfCFTA's digital trade provisions. Other relevant laws, such as the Foreign Exchange Act (1995) and the Customs and Excise Management Act (CEMA) (2004), pose challenges to the free flow of trade by introducing trade restrictions and foreign exchange volatility, which undermine investor confidence in the Nigerian market.

The lack of harmonization between Nigeria's legal system and the AfCFTA framework necessitates significant reforms to ensure that the country can fully benefit from AfCFTA's provisions and avoid potential disputes arising from inconsistent legal applications.

Regional Legal Framework

At the regional level, Nigeria's trade policies are influenced by agreements such as the ECOWAS Revised Treaty (1993) and the AfCFTA Agreement (2018). The ECOWAS Revised Treaty promotes regional integration in West Africa but allows for protective measures under Article 54, which could conflict with AfCFTA's emphasis on liberalization. The AfCFTA Agreement itself mandates the elimination of tariffs (Article 3) and ensures investor protections (Article 18), yet Nigeria's dualist legal system complicates the direct enforcement of these provisions. Nigeria's constitutional requirement for treaty domestication means that the country's legal framework must undergo significant adjustments to integrate AfCFTA fully into domestic law.

Judicial precedents also reveal gaps in the enforcement of regional trade agreements. For instance, the case of *Attorney General of the Federation v Attorney General of Abia State* (2002)³⁸ reaffirmed the federal government's supremacy in matters of trade but left ambiguities regarding the enforcement of international treaties. Additionally, the recent case of *Zhongshan Fucheng v Nigeria* (2024)³⁹ highlighted the challenges in enforcing AfCFTA arbitration awards within Nigerian courts, underscoring the need for reform in dispute resolution mechanisms to ensure compliance with regional trade agreements.

International Legal Framework

On the international front, Nigeria's FDI regime is shaped by a combination of bilateral investment treaties (BITs), World Trade Organization (WTO) agreements, and climate agreements. The Nigeria-China BIT (2001) and the Nigeria-UK BIT (1990) provide investor protections such as guarantees of fair treatment, compensation for expropriation, and access to international arbitration.⁴⁰ These agreements, while beneficial for attracting FDI, may conflict with AfCFTA's provisions in some areas, particularly regarding local content requirements and dispute resolution mechanisms.

Nigeria is also bound by WTO agreements, such as the General Agreement on Tariffs and Trade (GATT, 1994) and the Trade-Related Investment Measures (TRIMS) Agreement (1995), which prohibit discriminatory trade barriers and require the removal of local content rules that distort trade. These obligations sometimes clash with

³⁷ n(1).

³⁸ (S.C. 28/2001) [2002] NGSC 10.

³⁹ *Zhongshan Fucheng Industrial Investment Co. Ltd. v. Federal Republic of Nigeria*, No. 23-7016 (D.C. Cir. 2024).

⁴⁰ Nigeria-China BIT (2001), Articles 3(1), 9 & 18; Nigeria-UK BIT (1990), Article 5.

domestic laws like the Oil and Gas Industry Content Development Act, 2010,⁴¹ which mandates local content quotas in the oil and gas sector. Navigating this tension between local content laws and AfCFTA's non-discrimination rules presents a challenge for Nigeria as it seeks to balance national development goals with regional and international trade commitments.

Furthermore, climate agreements such as the United Nations Framework Convention on Climate Change (UNFCCC, 1992) and the Paris Agreement (2015) place additional obligations on Nigeria to ensure that FDI contributes to sustainable development. These global commitments intersect with AfCFTA's investment provisions, creating a need for Nigeria to adopt sustainable investment practices that align with both international climate objectives and regional trade agreements.

Institutional Framework

The institutional framework for implementing trade and investment policies in Nigeria involves a range of national, regional, and international bodies. At the national level, the National Assembly plays a key role in ratifying treaties, but the passage of an AfCFTA Implementation Act remains pending, highlighting the need for legislative action. The Nigerian Investment Promotion Commission (NIPC) is responsible for promoting FDI but requires strengthened dispute resolution mechanisms to handle investor grievances effectively. The Corporate Affairs Commission (CAC) facilitates business registration, though it must modernize its processes to align with AfCFTA's digital trade provisions. The Central Bank of Nigeria (CBN) manages foreign exchange policies, which are crucial for the operation of AfCFTA's Pan-African Payment System (PAPSS), but Nigeria's volatile forex market remains a significant challenge for investors.

Judicial bodies such as the Supreme Court and the Federal High Court play pivotal roles in interpreting constitutional trade conflicts, while the Investment and Securities Tribunal (IST) handles FDI-related cases established by the ISA (2025 as revised).⁴² However, these courts face delays in adjudicating disputes, which undermines the timely resolution of trade and investment issues. At the regional level, the ECOWAS Court resolves trade disputes, but its rulings often face enforcement challenges within Nigeria.⁴³ The WTO Dispute Settlement Body (DSB) plays an essential role in ensuring compliance with global trade rules, but Nigeria's domestic legal framework may limit the effectiveness of these international rulings.

Nigeria's trade and investment legal frameworks face numerous challenges in aligning with regional and international commitments, particularly under AfCFTA. The country's dualist legal system, constitutional limitations, and institutional weaknesses hinder the effective implementation of AfCFTA's provisions. To fully benefit from AfCFTA and attract increased FDI, Nigeria must undertake comprehensive legal and institutional reforms. This includes the domestication of international treaties, harmonization of national laws with AfCFTA standards, and strengthening of institutional capacities to manage trade and investment disputes. Only through such reforms can Nigeria position itself as a key player in the African and global economic landscapes.

Findings

This study employed doctrinal, comparative, and empirical methods of which relevant stakeholders were interviewed with the study's research questions, which are structured to assess AfCFTA's impact on FDI in Nigeria. Legal analysis of Nigerian statutes, AfCFTA protocols, and case law was complemented by policy reviews and benchmarking against best practices from Ghana, South Africa, the U.S., Europe, and Asia. Empirical

⁴¹ Oil and Gas Industry Content Development Act, 2010, Ss. 3(1), 7(1)-(2), 11(1), 16(1)-(5), 28(1)-(2), 38(1)-(3), 68(1)-(5).

⁴² Investments and Securities Act (ISA), 2025 (as revised), Ss. 1-13, 17-20, 28-30, 38-54, 153-160, 224-247, LFN.

⁴³ Gathii J, 'Evaluating the Dispute Settlement Mechanism of the African Continental Free Trade Agreement', African International Economic Law Network, 10 April, 2019, <<https://www.afronomicslaw.org/2019/04/10/evaluating-the-dispute-settlement-mechanism-of-the-african-continental-free-trade-agreement>> accessed on 14th April 2025.

data from interviews with legal experts and trade officials revealed gaps in Nigeria's treaty domestication, legal inconsistency, and dispute resolution inefficiencies. Drawing on models by Wigwe,⁴⁴ Odumosu-Ayanu,⁴⁵ and Debrah and his associates,⁴⁶ the study identifies legal reforms, institutional strengthening, and adoption of sustainable FDI principles as key to aligning Nigeria with AfCFTA's investment framework.

Constitutional Constraints on AfCFTA Implementation under Nigeria's Treaty Domestication Framework

The Constitution should be the main focus when examining AfCFTA in Nigeria because it establishes the framework for treaty domestication and legal enforceability. *Section 12*⁴⁷ mandates that international treaties must be passed by the National Assembly to be applicable domestically, affecting how AfCFTA's provisions are implemented and enforced. Nigeria's ratification of the African Continental Free Trade Area (AfCFTA) in 2020⁴⁸ marked a strategic commitment to continental economic integration. However, the nation's constitutional framework presents formidable barriers to effective implementation, undermining its potential benefits. These constraints, rooted in legal, structural, and institutional provisions, create significant misalignment between Nigeria's domestic governance and AfCFTA's objectives. This section examines these constitutional impediments and their implications for Nigeria's compliance with continental trade obligations.

1. The Domestication Dilemma

A primary barrier lies in *Section 12* of the CFRN, 1999 (as amended),⁴⁹ which mandates that international treaties be enacted into domestic law by the National Assembly to attain legal enforceability. Despite ratifying AfCFTA, Nigeria has yet to pass an AfCFTA Implementation Act, rendering critical provisions; such as investor protections and tariff liberalization schedules, non-justiciable. This legal vacuum creates uncertainty for foreign investors, who cannot rely on Nigerian courts to enforce AfCFTA guarantees like non-discrimination or intellectual property rights. For instance, a foreign firm contesting unfair trade practices under AfCFTA would find no legal recourse domestically, weakening investor confidence. The absence of domestication also stalls the harmonization of national trade policies with AfCFTA's framework, leaving Nigeria in a state of incomplete compliance.

2. Federal-State Jurisdictional Conflicts

Nigeria's federal structure, as delineated in *Section 4*, further complicates implementation. While the federal government oversees international trade, residual powers over 'local trade' reside with the 36 States. This division risks fragmented enforcement of AfCFTA's uniform rules, particularly in areas like agricultural standards, informal cross-border trade, and logistics regulations. For example, a state might impose arbitrary levies on goods moving through its territory, contradicting AfCFTA's pledge to eliminate non-tariff barriers. Such inconsistencies could provoke disputes with other member states, exposing Nigeria to legal liabilities under the AfCFTA Protocol on Dispute Settlement.⁵⁰ The lack of a cohesive intergovernmental coordination mechanism exacerbates these risks, highlighting the tension between constitutional federalism and supranational trade governance.

3. Fiscal Centralization and Revenue Resistance

⁴⁴ C C Wigwe, 'The evolution of permanent sovereignty and its effects in developing countries,' [2019](7)(2), *International Journal of Humanities, Art, Medicine and Sciences*, 13-24.

⁴⁵ I T Odumosu-Ayanu, 'Foreign direct investment catalysts in West Africa: Interactions with local content laws and industry-community agreements,' [2012](35), *North Carolina Central Law Review*, 65.

⁴⁶ Y A Debrah, O E Olabode, F Olan, and R B Nyuur, 'The African Continental Free Trade Area (AfCFTA): Taking stock and looking ahead for international business research,' [2024](30)(2), *Journal of International Management*, 101120.

⁴⁷ CFRN, 1999 (as amended), S.12, LFN.

⁴⁸ AfCFTA Ratification Act, 2020, Ss. 36(1) & 44(1), LFN.

⁴⁹ n(4).

⁵⁰ African Union, 'Protocol on Trade in Goods and Services: African Continental Free Trade Area (AfCFTA),' (African Union Secretariat, 2020).\

Fiscal centralization under *Section* 162,⁵¹ which mandates the pooling of national revenue into the Federation Account for redistribution to states, intensifies subnational resistance to AfCFTA. States derive over 70% of their budgets from federal allocations, largely sourced from oil exports and import duties. Tariff reductions under AfCFTA could shrink this revenue stream, incentivizing states to oppose trade liberalization. For instance, a 10% reduction in tariffs on intra-African imports might disproportionately affect states reliant on federal transfers, triggering political pushback. This fiscal dependency stifles Nigeria's ability to implement AfCFTA's market access commitments, as subnational actors prioritize short-term revenue preservation over long-term trade gains.

4. Judicial Inefficiencies

While *Section* 36(1)⁵² guarantees fair hearing rights, systemic delays in Nigeria's judiciary undermine AfCFTA's dispute resolution framework. Commercial cases often languish for years due to procedural bottlenecks, discouraging private sector engagement with AfCFTA's mechanisms. For example, a Nigerian exporter seeking redress under AfCFTA's Protocol on Rules of Origin might opt for informal settlements rather than endure protracted litigation. This inefficiency also weakens Nigeria's capacity to defend its interests in continental disputes, as sluggish domestic processes delay the formulation of coherent state positions. Consequently, the credibility of AfCFTA's legal architecture is eroded at both national and regional levels.

Conflicts between Nigeria's FDI Laws and AfCFTA's Investment Liberalization Obligations

Compensation Issues

Nigeria's foreign direct investment (FDI) framework exhibits significant tensions with the African Continental Free Trade Area (AfCFTA)'s liberalization goals, risking legal disputes and deterring cross-border investors. A key conflict arises from the Nigerian Investment Promotion Commission (NIPC) Act (2004).⁵³ While *Section* 17 prohibits expropriation without compensation, it omits AfCFTA's Protocol on Investment requirement for "adequate, effective, and prompt" compensation based on market value. This ambiguity leaves Nigeria vulnerable to investor-state claims under AfCFTA's stricter standards.

1. Dispute Resolution

Further friction stems from *Section* 20 of the NIPC Act, which restricts dispute resolution to Nigerian courts or domestic arbitration, conflicting with AfCFTA's preference for expedited international arbitration. Judicial delays, as noted in Nigeria's overburdened courts, undermine AfCFTA's efficiency-driven dispute mechanisms. The Foreign Exchange (Monitoring) Act (1995)⁵⁴ exacerbates tensions: though *Section* 15 guarantees capital repatriation, recurring forex shortages and Central Bank restrictions contradict AfCFTA's mandate for seamless capital mobility, deterring investors.

2. Sectoral Restrictions

Sectoral restrictions under the Companies and Allied Matters Act (2020),⁵⁵ such as limitations on foreign ownership in sectors like mining, also clash with AfCFTA's market access commitments. Additionally, Nigeria's bilateral investment treaties (BITs), such as the Nigeria-China BIT (2001),⁵⁶ create overlaps with AfCFTA obligations thus, risking forum-shopping and legal fragmentation.

⁵¹ n(4), S.162, LFN.

⁵² n(4), S.36(1), LFN.

⁵³ Nigerian Investment Promotion Commission Act (NIPC Act), 2004, Ss. 17, 18 & 20, LFN.\

⁵⁴ Foreign Exchange (Monitoring and Miscellaneous Provisions) Act, Chapter F34 (Decree No. 17 of 1995), S. 15, LFN.

⁵⁵ Companies and Allied Matters Act (CAMA), 2020, Ss. 15, 18 & 839, LFN.

⁵⁶ Nigeria-China BIT (2001), *Articles* 3(1), 9 & 18.

To reconcile these conflicts, Nigeria must amend the NIPC Act to align compensation standards, stabilize forex policies, and harmonize BITs with AfCFTA protocols. Such reforms would reduce compliance risks, enhance investor confidence, and position Nigeria as a leader in Africa's integrated trade agenda.

Interplay Between Nigeria's International Treaties and AfCFTA's Emerging Investment Dispute Settlement Mechanisms

Nigeria's web of international treaties creates a complex interplay with AfCFTA's dispute settlement mechanisms. Existing BITs, like the Nigeria-UK BIT (1990), grant investors access to international arbitration under ICSID⁵⁷ or UNCITRAL⁵⁸ rules, while AfCFTA's Protocol on Dispute Settlement⁵⁹ establishes a continental framework for resolving trade and investment conflicts. This duality risks forum shopping, where investors exploit overlapping jurisdictions to seek favorable outcomes. For instance, a foreign investor could bypass Nigeria's courts or AfCFTA tribunals by invoking BIT arbitration clauses, undermining AfCFTA's harmonization goals. Additionally, Nigeria's dualist legal system under *Section 12* of the Constitution requires domestication of treaties like the New York Convention (1958)⁶⁰ to enforce arbitral awards, creating delays that conflict with AfCFTA's emphasis on swift dispute resolution. The Vienna Convention (1969)⁶¹ further obliges Nigeria to honor treaty obligations in good faith (*Article 26*), but unincorporated AfCFTA provisions remain unenforceable domestically, complicating compliance. To resolve these tensions, Nigeria must streamline its treaty obligations by ratifying AfCFTA's Investment Protocol, clarifying forum selection clauses in BITs, and strengthening domestic arbitration frameworks to align with continental mechanisms, ensuring coherence and reducing investor uncertainty.

Legal Reforms to Harmonize Nigeria's Trade Governance with AfCFTA

Harmonizing Nigeria's trade governance with AfCFTA requires targeted legal reforms that balance compliance with sovereignty. First, enacting an AfCFTA Implementation Act under *Section 12* of the Constitution would domesticate the agreement, ensuring its provisions are justiciable and enforceable in Nigerian courts. Second, amending the NIPC Act (2004) to align expropriation compensation with AfCFTA's "market value" standard and adopting expedited arbitration mechanisms would resolve conflicts with continental investment rules. Third, revising the CEMA Act (2004)⁶² to limit discretionary trade restrictions under *Section 12* and automate customs procedures would enhance compliance with AfCFTA's tariff elimination schedule. Judicial reforms, including specialized commercial courts and mandatory ADR for investment disputes, would address inefficiencies under *Section 36(1)* of the Constitution.⁶³ Concurrently, Nigeria must safeguard sovereignty by invoking AfCFTA's flexibilities, such as transitional protection for vulnerable industries and excluding sensitive sectors from liberalization. Engaging states through fiscal federalism reforms, like revenue-sharing adjustments under *Section 162*, would ensure subnational buy-in. These reforms, coupled with proactive engagement in AfCFTA's rule-making processes, would position Nigeria as a continental leader while protecting strategic economic interests, as structured from the following countries based on international best practices:

⁵⁷ United Nations, International Centre for Settlement of Investment Disputes (ICSID) Arbitration Rules, 2022, ICSID/15, World Bank.

⁵⁸ United Nations Commission on International Trade Law, *UNCITRAL Arbitration Rules (as revised in 2013)*, GA Res 65/22, UN Doc A/RES/65/22.

⁵⁹ n(7).

⁶⁰ New York Convention (1958), (*Article III*), UN.

⁶¹ Vienna Convention on the Law of Treaties (1969), *Articles 26, 27(12), & 31*, UN.

⁶² Customs and Excise Management Act (CEMA), 2004, S. 12, LFN.

⁶³ n(4), Ss.12, 36(1), LFN.

1. Ghana's Legal Harmonization and Institutional Readiness

Ghana stands as a regional leader in aligning domestic law with international trade obligations. Unlike Nigeria's constitutional hurdles (see *Attorney-General of the Federation v Attorney-General of Abia State*),⁶⁴ Ghana swiftly domesticated the AfCFTA, ensuring enforceability under national law. This approach exemplifies best practices for treaty implementation, reducing legal uncertainty for investors.⁶⁵ Ghana has bolstered the Ghana Arbitration Centre, enhancing investor confidence. This parallels international examples like *Global Telecom Holding SAE vs Canada*,⁶⁶ where institutional readiness underpins investor-state arbitration efficiency. Interviews with Ghanaian trade experts⁶⁷ revealed high institutional compliance and legal clarity as key to Ghana's AfCFTA preparedness.

2. South Africa's Investor-State Recalibration and Regional Integration

South Africa's move away from traditional Bilateral Investment Treaties (BITs), replacing them with the Protection of Investment Act 2015,⁶⁸ represents a shift towards sovereignty and regulatory autonomy.⁶⁹ This mirrors global critiques in Sornarajah, 2017 against investor-biased investor-state dispute settlement (ISDS) mechanisms.⁷⁰ Case law like *Oded Besserglik v Republic of Mozambique*⁷¹ shows the challenges of ISDS. South Africa's advocacy for regional courts or AfCFTA-specific mechanisms aligns with Nyombi⁷² and Gathii,⁷³ emphasizing state-state and regional arbitration. Elmardi (2024)⁷⁴ collected expert testimonies showing investor confidence has not diminished post-BITs, provided transparent domestic legislation and court systems are in place.

3. United States Bilateralism and Corporate Sovereignty

The United States (U.S.) practices often prioritize strong ISDS clauses, as in *Zhongshan Fucheng v Nigeria*⁷⁵ and *Global Telecom Holding SAE vs Canada*,⁷⁶ showcasing investor power in bilateral treaty contexts. This has led to critiques on the asymmetrical nature of such treaties.⁷⁷ U.S. multinationals engage deeply in FDI based on host

⁶⁴ (S.C. 28/2001) [2002] NGSC 10 (4 April 2002).

⁶⁵ E O Ekhaton, and L Anyiwe, 'Foreign direct investment and the law in Nigeria: A legal assessment,' [2016](58)(1), *International Journal of Law and Management*, 126-146.

⁶⁶ ICSID Case No. ARB/16/16.

⁶⁷ K Kuhlmann, and A L Agutu, 'The African Continental Free Trade Area: Toward a new legal model for trade and development,' [2019](51), *Georgetown Journal of International Law*, 753.

⁶⁸ Protection of Investment Act 2015, South Africa.

⁶⁹ M F Qumba, 'South Africa's move away from international investor-state: A breakthrough or bad omen for investment in the developing world?' [2019](52)(2), *Dejure Law Journal*, 370.

⁷⁰ M Sornarajah, *The International Law on Foreign Investment*, (Cambridge: UK, USA: Cambridge University Press, 2017).

⁷¹ ICSID Case No. ARB(AF)/14/2.

⁷² C Nyombi, 'A case for a regional investment court for Africa' [2018](43), *North Carolina Journal of International Law*, 68.

⁷³ J Gathii, 'Evaluating the Dispute Settlement Mechanism of the African Continental Free Trade Agreement', African International Economic Law Network, 10 April, 2019, <<https://www.afronomicslaw.org/2019/04/10/evaluating-the-dispute-settlement-mechanism-of-the-african-continental-free-trade-agreement>> accessed on 14th April 2025.

⁷⁴ M Elmardi, *South Africa and the African Continental Free Trade Area: Assessing the opportunities and risks*, (Doctoral dissertation, North-West University, South Africa, 2024).

⁷⁵ No. 23-7016 (D.C. Cir. 2024).

⁷⁶ n(23).

⁷⁷ S Franck, 'Development and Outcomes of Investment Treaty Arbitration,' [2009](50)(2), *Harvard Journal of International Law*, 81.

state legal predictability.⁷⁸ U.S. BITs typically require host states to provide national treatment and most-favoured nation status, best practices enshrined in AfCFTA investment drafts.⁷⁹ Evidence from various scholars,⁸⁰ show that U.S. investors identify regulatory stability and access to arbitration as prime motivators for African investment.

4. Europe's Sustainable FDI and Regulatory Balance

Europe promotes FDI aligned with sustainable development goals. The EU's newer investment treaties incorporate labor, environmental, and human rights clauses,⁸¹ reflecting best practices for holistic development. Furthermore, European practices emphasize consistency and legal certainty, as highlighted by ICSID jurisprudence⁸² and various scholars on sectoral FDI sensitivity.⁸³ Franck⁸⁴ and Chanegriha *et al.*⁸⁵ further provided quantitative evidence of Europe's effectiveness in promoting rule-based FDI inflows, particularly through harmonized dispute mechanisms.

5. Asia's Strategic Integration and Investment Precision

Asia's approach combines strategic BITs (AFTA, Mercosur, and Agadir) and rigorous investor screening, providing balance between openness and national interest.⁸⁶ Countries like Japan and South Korea establish strong investment courts and clear expropriation standards, reducing risk and transaction costs. This practice offers

⁷⁸ N Kumar, 'Explaining the geography and depth of international production: The case of US and Japanese multinational enterprises,' [2000](136)(3), *Weltwirtschaftliches Archive (Review of World Economics, Kiel)*, 442-477.

⁷⁹ T Chidede, 'Substantive Issues the AfCFTA Investment Protocol Should Address' Trade Law Centre, 27th March 2020 <<https://www.tralac.org/blog/Article/14468-substantive-issues-the-afcfta-investment-protocol-should-address.html>> accessed on 26th March, 2025.

⁸⁰ S Morgan, J Farris, and M E Johnson, 'Foreign direct investment in Africa: recent trends leading up to the African Continental Free Trade Area (AfCFTA),' (*Number EIB-242*, U.S. Department of Agriculture, Economic Research Service., 2022); C Calderón, N Loayza, and L Servén, 'Greenfield foreign direct investment and mergers and acquisitions: Feedback and macroeconomic effects,' (The World Bank, Washington, D.C., 2004); M Chanegriha, C Stewart, and C Tsoukis, 'Identifying the robust economic, geographical and political determinants of FDI: An extreme bounds analysis,' [2017](52)(2), *Empirical Economics*, 759-776; M Cherif, and C Dreger, 'Do regional trade agreements stimulate FDI? Evidence for the Agadir, Mercosur and AFTA regions,' [2018](22)(3), *Review of Development Economics*, 1263-1277; L Colen, D Persyn, and A Guariso, 'Bilateral investment treaties and FDI: Does the sector matter?' [2016](83), *World Development*, 193-206.

⁸¹ C Markowitz, and L Langalanga, 'The Rise of Sustainable FDI: Emerging Trends in the SADC Region' 2017 World Commerce Review. <https://saiia.org.za/research/the-rise-of-sustainable-fdi-emerging-trends-in-the-sadc-region/> accessed on 1 April, 2025.

⁸² n(14).

⁸³ L Colen, D Persyn, and A Guariso, 'Bilateral investment treaties and FDI: Does the sector matter?' [2016](83), *World Development*, 193-206; S M Thangavelu, and C Findlay, 'The impact of free trade agreements on foreign direct investment in the Asia-Pacific region,' [2011](1) *ASEAN*, 2010-2029; D S Jarvis, 'Foreign direct investment and investment liberalisation in Asia: assessing ASEAN's initiatives,' [2021](66)(2), *Australian Journal of International Affairs*, 223-264; S Imtiaz, and M F Bashir, 'Economic freedom and foreign direct investment in South Asian countries,' [2017] *Theoretical & Applied Economics*, 1-14.

⁸⁴ n(34).

⁸⁵ M Chanegriha, C Stewart, and C Tsoukis, 'Identifying the robust economic, geographical and political determinants of FDI: An extreme bounds analysis,' [2017](52)(2), *Empirical Economics*, 759-776.

⁸⁶ M Cherif, and C Dreger, 'Do regional trade agreements stimulate FDI? Evidence for the Agadir, Mercosur and AFTA regions,' [2018](22)(3), *Review of Development Economics*, 1263-1277.

valuable lessons for African states.⁸⁷ Studies by Calderón *et al.*⁸⁸ and Büthe and Milner⁸⁹ show that Asia's FDI growth correlates with predictable legal regimes and robust investor protection mechanisms.

Drawing from Ghana, South Africa, the U.S., Europe, and Asia, international best practices emphasize legal predictability, harmonization, institutional capacity, and sustainable investment. Africa's integration under AfCFTA will benefit from a hybrid model fusing regional autonomy with global legal standards, enabled through domestic reform and judicial strengthening thereby boosting FDI.

Summary of Findings

The study was designed to carry out an examination on 'The African Continental Free Trade Area and Foreign Direct Investment in Nigeria,' as such it employed doctrinal, comparative, and empirical methods of which relevant stakeholders were interviewed with the study's research questions, which are structured to assess AfCFTA's impact on FDI in Nigeria. Legal analysis of Nigerian statutes, AfCFTA protocols, and case law was complemented by policy reviews and benchmarking against best practices from Ghana, South Africa, the U.S., Europe, and Asia. Empirical data from interviews with legal experts and trade officials revealed gaps in Nigeria's treaty domestication, legal inconsistency, and dispute resolution inefficiencies. Nigeria's constitutional and legal frameworks present significant barriers to effective implementation of the African Continental Free Trade Area (AfCFTA) and optimal foreign direct investment (FDI) inflows.

Furthermore, The CFRN, 1999 (as amended) domestication requirement (*Section 12*) leaves AfCFTA provisions unenforceable in Nigerian courts, creating legal uncertainty for investors. Federal-state jurisdictional conflicts (*Section 4*) and fiscal centralization (*Section 162*) risk inconsistent trade rule application and subnational resistance to tariff reductions. Judicial inefficiencies (*Section 36*) undermine dispute resolution, while FDI laws like the NIPC Act (2004) conflict with AfCFTA's compensation standards and dispute mechanisms. Overlaps with bilateral treaties (for example, Nigeria-China BIT) further complicate compliance, risking forum-shopping.

Conclusion

Nigeria's incomplete domestication of the AfCFTA Agreement, hindered by constitutional constraints under *Sections 4* (federal-state jurisdictional conflicts), *12* (treaty domestication requirements), *36* (judicial delays), and *162* (fiscal centralization), creates legal misalignment with AfCFTA's investment protocols. For instance, the NIPC Act's vague expropriation compensation clauses and restrictive dispute resolution mechanisms conflict with AfCFTA's stringent standards, deterring foreign investors, due to the risk of prolonged investor-state disputes, tariff revenue losses from AfCFTA's liberalization mandates, and non-compliance penalties, eroding Nigeria's credibility. Without legislative reforms to harmonize laws and strengthen judicial efficiency, Nigeria's FDI inflows and leadership in shaping Africa's economic integration will diminish, ceding opportunities to proactive peers like Ghana and South Africa in the continental free trade arena.

Recommendations

Based on the findings herein, the study recommends as follows:

- i. Enact an AfCFTA Implementation Act to domesticate treaty obligations under *Section 12*; amend the NIPC Act to align expropriation compensation with AfCFTA's "market value" standard.

⁸⁷ J Seifi, 'Investor-State Arbitration v State-State Arbitration in Bilateral Investment Treaties' Transnational Dispute Management 12th March, 2024 (TDM) <<https://www.transnational-dispute-management.com/Article.asp?key=112>> accessed 26th March, 2025.

⁸⁸ C Calderón, N Loayza, and L Servén, 'Greenfield foreign direct investment and mergers and acquisitions: Feedback and macroeconomic effects,' (The World Bank, Washington, D.C., 2004).

⁸⁹ T Büthe, and H V Milner, 'The politics of foreign direct investment into developing countries: increasing FDI through international trade agreements?' [2008](52)(4), *American Journal of Political Science*, 741–762.

- ii. Revise the CEMA Act, 2004 to limit discretionary trade restrictions and automate procedures; harmonize bilateral treaties with AfCFTA protocols.
- iii. Strengthen intergovernmental coordination to resolve federal-state conflicts; upgrade customs infrastructure and judicial training.
- iv. Integrate climate-aligned investment principles from the Paris Agreement into Nigeria's AfCFTA strategy.