APPLICATION OF INVESTOR-STATE-DISPUTE SETTLEMENT IN FOREIGN DIRECT INVESTMENTS IN AFRICA: INVESTIGATING A CASE BEYOND PRE-EMINENCE OF THE JUDICIARY IN NIGERIA

Olaniyi Felix Olayinka

ABSTRACT

The concept of foreign direct investment has always been approached by developing nations of Africa as a process towards drawing the right capital and skills from foreign investors as a way of attaining development. The concept has not been considered as mutually rewarding where it can be said and seen that the contracting states have equal status and mutual respect for each other. The study adopts doctrinal mode of investigation as it finds that states in Africa are desperate at engaging investor nations to extract and market huge deposit of natural deposit, the investor nations pursue their profit motives without regard to environmental safety and general rights of host communities. While the domestic courts do not indulge them, international arbitration panels with intimidating arbitral awards are usually deployed to regulate host nations' exercise of their sovereign powers. The study therefore argues that notwithstanding the fact that decisions are given against the investor states through the domestic courts, investor states still have their ways, by pulling the strings of arbitration panels. The study concludes that states in Africa should draw their developmental plans along the path of indigenous technology and domestic innovations or should at best seek regional integration in Africa.

Keywords: Indigenous People; Foreign Direct Investments; Investor-State-Dispute Settlement; Control of Natural Resources; Equality of States

1.0 Introduction

The pre-colonial communities in Africa were in a state of primitive innocence, of which farming, animal husbandry, fish farming were going on at subsistentlevel.[1] Western states showed up under various guises such as evangelism, voyage of discovery, and trade. Upon the discovery of the huge deposit of natural resources, communities in Africa were conquered and distributed among the

*LL.B (LASU), LL.M (Ife), LL.D (Pretoria); Senior Lecturer Faculty of Law, Redeemer's University, Ede, Nigeria; Solicitor and Advocate, Supreme Court of Nigeria; E-mail: olayinkaf@run.edu.ng; niyilayinka@gmail.com; https://orcid.org/0000-0003-2335-797X

[1] W Rodney, *How Europe Underdeveloped Africa* (London/Dar es Salaam: Bogle-L'Ouverture/Tanzania Publishing House 1972) 68.

western states that participated in the Berlin Conference.[2] Colonization of communities explained the loss of the indigenous people's right to determine their socio-political, economic and cultural ways of life.

At independence, the colonial administration put in place political structure that produced subservient leaders who subscribed to the western held position that states in Africa could only develop through adoption of foreign direct investment. Consequently, multinational companies that engaged in major extraction of natural resources emerged and their operations resulted in the loss of interests in agricultural vocations and eventual forced relocation of indigenous communities.[3]

Having subscribed to foreign direct investment with their former colonial masters, the newly independent countries were not able to attain 'development status.'[4] Opinions are then divided on the path to development of states in Africa. A group of authors argue in support of 'imposed development' arguing oil exploration was expected to bring economic growth to Africa, while others subscribe to 'home conceived development.' [5]

The need to adequately protect the business interests of foreign investors led to the introduction of Investor-State Dispute Settlement (ISDS), adopted on the principles of access to justice being exclusive to investor states. The school of thought which subscribes to imposed development argues further that any state action that leads to loss of profit of multinational corporations (MNCs) are liable to being tried before ISDS panel.[6] The school of thought, which is disposed to

---

[2] M Rosenberg, 'The Berlin Conference to Divide Africa: The Colonization of the Continent by European Powers,' 30 June, 2019 <https://www.thoughtco.com/berlin-conference-1884-1885-divide-africa-1433556> accessed 8 August, 2020.
[3] Global Ideas, 'Nigerian King Takes Oil Spill Battle to Italy,'<https://www.dw.com/en/nigerian-king-takes-oil-spill-battle-to-italy/a-39636077>Accessed 19 July 2020.
[4] PWO Oguejiofor, 'The Interrelationships Between Western Imperialism and Underdevelopment in Africa' (2015) 6 *Arts and Social Sciences Journal* 1.
[5] Rodney (n 1) 24, 25; Oguejiofor (ibid); Z Wai, 'Whither African Development? A Preparatory for an African Alternative Reformulation of the Concept of Development,' *Africa Development*, (2007) XXXII, (4), 82); U Udok& EB Akpan, 'Gas Flaring in Nigeria: Problems and Prospects,' (2017)(5)(1) *Global Journal of Politics and Law Research* 20; JG Frynas et al, 'Maintaining Corporate Dominance After Decolonization: The „First Mover Advantage" of Shell-BP in Nigeria' (2000) 27/85 Review of African Political Economy 407–09; OO Amao, 'Corporate Social Responsibility, Multinational Corporations and the Law in Nigeria: Controlling Multinationals in Host States,' *Journal of African Law*, 52, 1 (2008), 92, 94; OF Olayinka, 'Right to Equality and Non-Discrimination in the Governance of Natural Resources in Africa: Issues and Challenges on Sustainable Development in Nigeria' in JCN Ashukem (2025 eds) *Handbook on Business, Human Rights, and the Environment in Africa.* Springer Nature Switzerland AG, 484.
[6] Thomson Reuters, 'Investor-State Dispute Settlement (ISDS)' <https://uk.practicallaw.thomsonreuters.com/0-624-

self-reliance leads agitation for 'self-determined development.'[7] The group condemns the forced relocation of indigenous peoples, being event that endanger their existence on ecological violations and loss of opportunity to carry on their various vocations. The school condemns the connivance of political leadership in the indulgence of atrocities of MNCs. It refers to the omission of government to enforce anti-gas flaring court ruling decided in *Gbemre v. Shell Petroleum Development Corporation of Nigeria Ltd and ors*.[8]It asserts further that the motive of creating an investment court for Africa is to give legal protection for multinational corporations in the place of domestic legal system, towards sustenance of neo-colonialism.[9]

With the foreign direct investment (FDI), some contend that such may be mutually beneficial to parties where there is equality among states. Attention is drawn to colonialism, which denotes a political and economic relation in which sovereignty of communities in Africa rested on the power of western states that colonized them.[10] The former colonial states' design for the former colonies was to have the later as consumers of foreign made products. This lopsided relation is anti-development for the colonies and this influenced Kidane's submission that the ISDS is a tool in the hands of investor nations to relegate African domestic legal system to the background.[11]

As such, some countries in Africa have been having critical views on prospects of the FDI, ISDS to contribute to their development.[12] This influenced the adopted

---

6147?transitionType=Default&contextData=(sc.Default)&firstPage=true)> accessed 23 January 2026.

[7] I Shai, 'The Right to Development, Transformative Constitutionalism and Radical Transformation in South Africa: Post-colonial and de-colonial Reflections,' (2019) 19 *African Human Rights Law Journal* 501;);W Mignolo, *The Darker Side of Western Modernity: Global Futures, De-colonial Options* (2011) xxvi- xxvii.
; OF Olayinka, 'Gas Flaring as "Hell on Earth" for the Indigenous Peoples of Africa: "Coloniality" and Sustainable Development Goals and the Effect on the Niger-Delta Zone of Nigeria,' Paper Presented at the Workshop Sponsored by the Modern Law Review, U.K.; University of Exeter, UK and University of Witwatersrand, South Africa on Climate Litigation in Africa - 26 and 27 August 2020, University of Witwatersrand, Johannesburg, South Africa 23.

[8](2005) AHRLR 151.

[9] BL Gunn, 'Protecting Indigenous Peoples' Lands: Making Room for the Application of Indigenous Peoples' Laws within the Canadian Legal System,' (2007) 6(1) *Indigenous Law Journal* 33.

[10] Shai (n 7) 501.

[11]Kon Kidane, 'The Culture of Investment Arbitration: An African Perspective,' *ICSID Review – Foreign Investment Law Journal,* (2019)34(2) 411–433.

[12]MF Qumba, 'The Exhaustion of Local Judicial Remedies in Investor-State Dispute Settlement: A Proposal for the African Continental Free Trade Agreement on Investment Protocol' 25 (2021) *Law, Democracy & Development* 159, 160.

position that states in Africa should look within for logistic support and collaborations towards self-reliant economy.[13]
.

The issue is whether a nation that desperately looks for investors to tap resources within its territory, having not developed its manufacturing environment ever get a mutually beneficial bilateral treaty. The study seeks to highlight whether it matters that judgment against MNCs is made by national law courts or by international arbitration panel, if the motive of FDI remains that of control and management of natural resources in host states.

The study is divided into eight sections with the first having given the background information. The second section discusses indigenous people and participation in an economy. The third section explores the domestic legal system and quality of justice which emanates from independent judiciary and impartiality. The fourth section investigates the conception of investment treaties and quality of justice. The fifth section examines ISDS proceedings which violate the concept of equality of nations, judgment being pro foreign investors. The sixth section analysis control of natural resources, in a way that violates right to self-determination and the rule of law. Section seven provides on foreign direct investments and development. Section eight makes recommendations and conclusion.

The thesis in this study is foreign control of natural resources in Africa and the legal system to sustain the identified exploitations. States in Africa can only develop when they go into business with countries that appreciate their status as equals, as sovereign nations. The states in Africa should be resolute in their plans to develop by embracing indigenous technologies and innovations and should at best look towards members of the African Union for desired support.

2.0Indigenous People and Participation in an Economy

Hitherto, traditional African economies were 'subsistent' economies, operating in small villages where farming, hunting, and fishing went on. The communities looked after themselves independently with little reference to the rest of the world.[14] Given that dispensation, the issue of being dominated by some foreign interests could not have arisen. In the circumstances, the United Nations defines 'Indigenous Peoples' as follows:[15]

---

[13] Wai (n 5) 78
[14] Rodney (n 1) 68.
[15] See the United Nations Special Rapporteur of the Sub-Commission on Prevention of Discrimination and Protection of Minorities - Martínez Cobo, in his 1986 report on the 'Study of the Problem of Discrimination Against Indigenous Populations', Cobo Report UN Doc E/CN4/Sub2/1986/7 and Add. 1-4. I Watson, 'Aboriginal relationships to the Natural World: Colonial "Protection" of Human Rights and the Environment,' (2018) 9(2) *Journal of Human Rights and the Environment*, pp. 119–140, 123.

> Indigenous communities, People and nations are those which, having a historical continuity with pre-invasion and pre-colonial societies that developed on our territories, consider themselves distinct from other sectors of the societies now prevailing on those territories, or parts of them. They form at present non-dominant sectors of society and are determined to preserve, develop and transmit to future generations our ancestral territories, and our ethnic identity, as the basis of our continued existence as Peoples, in accordance with our own cultural patterns, social institutions and legal system.

The indigenous peoples have in so many cases been pushed out of their ancestral homes to give way for the economic interests of other more dominant groups and large-scale development initiatives such as large-scale extraction of natural resources.[16] This caused a major devastation to the livelihoods of indigenous pastoralist and hunter-gatherer communities in Africa. It hindered the prospects of expanding areas under crop production and the general pursuit of the subsistent farming that was in vogue.[17]

In a bid to site major projects that would entail forcing the indigenous peoples to relocate from their ancestral homes, makes it obligatory for the government to consult with the community, to obtain its free, prior, and informed consent, according to customs and traditions.[18] Article 6(1) stipulates that governments should: 'Consult the peoples concerned, through appropriate procedures and in particular through their representative institutions, whenever consideration is being given to legislative or administrative measures which may affect them directly.'[19]

The Convention on International Labour Organization in Article 6(2) provides for: [20]

> Consultations with indigenous peoples should be carried out prior to exploration or exploitation of mineral and sub-surface resources, and prior to relocation. The consultation

[16]EE Njieassam and MLM Mbao, 'Reflections on the Right to Development for Indigenous Peoples' in CC Ngang et al (2018 eds.) *Perspectives on the Right to Development*. South Africa: Pretoria University Law Press, 700; Shai (n 7) 501; Princess Duruike, 'Climate Change Litigation and Corporate Accountability in Nigeria: The Pathway to Climate Justice?' A Thesis Submitted in Partial Fulfillment of the Requirements for the Degree of Master of Laws in The Faculty of Graduate and Postdoctoral Studies (Law) The University of British Columbia (Vancouver) May 2018, 6, 7.
[17] Shai (n 7) 501.
[18] Leif Wenar and Jeremie Gilbert, 'Fighting the Resource Curse: The Rights of Citizens Over Natural Resources, (2020) 30 (19) NW. J. HUM. RTS. 47, 48.
[19]Article 6(1) of Convention on International Labour Organization 2013,
[20] Article 6(2) ILO 2013..

> shall be undertaken, in good faith and in a form appropriate to the circumstances, with the objective of achieving agreement or consent to the proposed measures.

Indigenous people should be duly consulted, with a view to ensure they have economic base on which to participate actively in production. On another hand, participating in the economy entails having acceptable principle and formula of distribution of returns from production, such that benefit-sharing is expected to be equitable. Development is attained when there is no exploitation or conflict in respect of resource and benefit sharing.[21]

The state's obligation to make consultations flow from the obligation to provide enabling environment for inclusive participation in the national economy.[22] In most cases the affected marginalized indigenous communities are neither consulted nor compensated. [23]

With colonialism and westernisation, indigenous peoples lost the right to determine how natural resources on their ancestral parcel of land can be used and the control of their land vests on other interests, which are foreign and superior to them. This development violates provisions of international jurisprudence on the right to freely dispose of natural resources, which focusses precisely on indigenous peoples' rights to natural resources.[24]

The indigenous people's perception of sustainable economic development is that means of livelihood should be protected to safeguard humanity,[25]and that the right to life and human right violation in host states are of little concern to investor states. The imposed economy in states in Africa is about the control of natural resources of which investor states, represented by multinational corporations (MNCs) are vanguards.[26] Multinational corporations (MNCs)

---

[21] ILO (ibid) Article 6(1) .
[22] Section 16(1)(a)(3) CFRN 1999. Constitution of the Federal Republic of Nigeria 1999 Chapter C23, Laws of the Federation of Nigeria, 2004
[23] Report Of The African Commission's Working Group OfExperteOn Indigenous Populations/Communities adopted by The African Commission on Human and Peoples' Rights at its 28th ordinary session, 2005, INGWIA 26,38; Olayinka (n 5) 493.
[24] J Anaya & Robert Williams, 'The Protection of Indigenous Peoples' Rights over Lands and Natural Resources Under the Inter-American Human Rights System,' (2001) 14 *Harvard Human Right Journal* 33, 79.
[25] Principle 8,United Nations Conference on the Human Environment (Stockholm Declaration) 1972 <https://thefactfactor.com/facts/law/civil_law/environmental_laws/stockholm-declaration/871/> accessed 21 July 2025.
[26]Frynas et al (n 5) 407–09; Amao (n 5) 92, 94; Olayinka (n 7) 2.

transverse the nooks and crannies of the global economic order in the exploration and exploitation of resources for their economic gains.[27]

The histories of indigenous peoples in Africa, particularly under colonization and post - colonial era have been marked by discrimination, marginalization, ethnocide, genocide and, unfortunately, violations of their fundamental rights.[28]The imposition of major business ventures to exploit natural resources hold at the expense of indigenous peoples who are forcefully displaced from their place of origin. Large-scale infrastructure projects and company concessions take place in the name of national economic development, which displace and impoverish many indigenous communities. Given the fact that the soil nutrient enhances the growth of crops, and economic trees, the imposed economic trend, soil and land degradation adversely affect the traditional farming vocations of indigenous peoples in Africa.[29] As such, indigenous laws, border on social relations, in which human to human, gender and equality, fairness, violence and vulnerability, and harms and injuries were explored. Environmental issues cover land, water, non-human life, which discourages 'the future ends now mentality.'[30]In terms of production and prospects of participation by indigenous peoples, it is noteworthy to emphasise that oil prospecting started in Nigeria in 1906, and in 1914, the Oil Ordinance No. 17 reserves exclusive right on oil exploration to British citizens and British companies.[31] All the foreign MNCs in the oil and gas sector operate in joint venture partnership with the Nigerian National Petroleum Company (NNPC), through which Nigeria regulates and participates in the Country's petroleum industry.[32]Crude oil extraction with impunity by the MNCs takes after the exploitative and undignified slave trading of the able bodied Africans, violation of the right to self-determination, which manifested in colonialism.

3.0Domestic Legal System and Quality of Justice

Section 6(1) and (2) Constitution of the Federal Republic of Nigeria (CFRN) grants authority to the courts to adjudicate on any dispute that can be resolved by application of the law.[33] By necessary implication, the section vests in the courts, broad remedial powers to provide appropriate relief when an infringement or threatened violation of a right is established. The Constitution of

---

[27]Obiajunwa Ama, 'Investor-State Arbitration and African States: A Proposal for a Pan-African Investment Court' Thesis submitted for the Degree of Doctor of Philosophy Year 2020 Canterbury Christ Church University, 82.
[28] ILO (n 19) above.
[29] Principle 4, Stockholm (n 25); Udok& Akpan (n 5) 25; Duruike (n 16) 6, 7.
[30] See Indigenous Law Research Unit (ILRU), Faculty of Law, University of Victoria, Canada.
[31] Y Omoregbe, 'The legal framework for the production of petroleum in Nigeria' (1987) 15 *Journal of Energy and Natural Resources Law* 273 at 274.
[32]Udok& Akpan (n 5) 20.
[33] section 6(6)(a) and (b) CFRN

Nigeria recognizes judicial review,[34] wherein the judiciary acts as the guardian of the values of the constitution and the custodian of the ideals of the founding fathers.[35] Law assumes life when a court has interpreted it. The Judiciary guides the provisions of the Constitution from violation and regulates the rights and obligations of persons, government or authority in actions and proceedings coming before it.[36]

In the circumstances, judicial review establishes that courts are guardians of the rights and obligations of parties, emanating from business relationship they have entered into. In reviewing cases, the courts are guided by the principles of supremacy of the Constitution.[37] Mendes thus concludes that the judiciary consequently shapes the boundaries of business rights and defines the contracting parties' rights and obligations.[38] Judges breathe life into the provisions of the Constitution, treaties, memorandum of understanding in order to enhance industrialization and development.[39]The issue of having to depoliticize investment disputes are sorted out by provisions of law. It is trite that jurisdiction of a court is conferred by statute and a court lawfully exercises jurisdiction in relation to an action before it, with certain conditions.[40] A court has to be well established by law and constituted in such manner as to secure its independence and impartiality, as regards number and qualifications of members of the bench and no one is disqualified for any reason; the subject matter is within a court's jurisdiction and there is no feature of the case, which prevents the court from exercising its jurisdiction; the case is initiated by due process of law and upon fulfilment of any condition precedent to the exercise of the jurisdiction. Other attributes of a court include neutrality of a judge over a matter coming before him.[41] Where a matter comes before a judicial officer, such that he has personal interest, he has to step aside under the principles of *Nemo judex in causa sua,* that he cannot be a judge over a case in which he is interested.

---

[34] Section 6 CFRN
[35] T Regassa, 'Making Legal Sense of Human Rights: The Judicial Role in Protecting Human Rights in Ethiopia,' (2009) (3) (2) *Mizan Law Review* 325.
[36]Section 6(6)(b) CFRN (n 22).
[37]*Marbury v Madison*, 1 Cranch 137, 2 L.Ed.60 (1803).
[38]CH Mendes, 'Fighting for Their Place: Constitutional Courts as Political Actors. A Reply to Heinz Klug' (2010) 3 *Constitutional Court Review* 34.
[39]BK Twinomugisha, 'The Role of the Judiciary in the Promotion of Democracy in Uganda (2009) 9 *African Human Rights Law Journal*20.
[40] See section 36(1) CFRN 1999; See also *Tukur v The Government of Taraba State & Others* (1997) LPELR 3273 (Sc) *Zakari v Nigerian Army & Another* 2015)5 SCM 252 Muhammed JSC at pp 277-278 restating conditions conferring jurisdiction Bairamian FJ in *Madukolu& Others v Nkemdilim* (1962) 2 SCNL 341 at 348.
[41]Bairamian FJ in *Madukolu& Others v Nkemdilim* (1962) 2 SCNL 341 at 348

Without independence, the judiciary is unable to act fairly and fearlessly.[42] A way by which the desired independence of the judiciary can continuously ensure impartiality of judicial officers is by adopting the doctrine of separation of powers. Separation of powers is the provision of the Constitution, which vests in each organ the scope of authority which each organ should cover,[43] as a safeguard for impartiality, a fair trial and independence of the judiciary.[44] The political organs which ordinarily seek the judiciary to validate their existence opt to have fusion of power with the judiciary.[45]

The government as such resent the judiciary when it checks executive excesses.[46] On occasions when decisions are given, which is against the political organs, subventions and logistics support are withheld from judiciary as it lacks financial autonomy. This position pushes foreign investors' call to depoliticize industrial disputes by the creation of state investment courts.

Consequently, African Union (AU) projects that towards the realization of its Agenda 2063, by 2023, not less than seventy per cent of AU Member States must have judiciaries that are independent, with judgments on a fair and timely basis, and that the rule of law has to be entrenched.[47] Cases of delay in court proceedings arise on account of plethora of cases and few judicial officers and ineffective judicial support gadget, which makes for the need to embrace mediation and arbitration. This brings the need to exhaust local remedies before foreign investors can bring an investment claim under the International Investor-State Dispute Settlement (ISDS) mechanisms and even before filing an action before domestic courts.[48]

4.0 Investment Treaties and ISDS Proceedings and Quality of Justice

---

[42]Johann van der Westhuizen, 'A Few Reflections on the Role of Courts, Government, the Legal Profession, Universities, the Media and Civil Society in a Constitutional Democracy' (2008) 8 *African Human Rights Law Journal* 259

[43]C O'Regan 'Checks and Balances Reflections on the Development of the Doctrine of Separation of Powers Under the South African Constitution' (2005) 1 *Potchefstroom Electronic Law Journal* 15; CC Ngang, 'Judicial Enforcement of Socio-economic Rights in South Africa and the Separation of Powers Objection: The Obligation to Take "Other Measures"' (2014) 14 *African Human Right Law Journal* 659.

[44]Section 153(1)(i) of the 1999 Constitution of the Federal Republic of Nigeria; Section 125(3), the Constitution of Ghana, 1992; Sec 103(2) of the Malawian Constitution, 1994; section 165(1) of the South African Constitution 1996.

[45] ANE Amissah, 'The Role of the Judiciary in the Governmental Process: Ghana's Experience (1976) (13) *Afr. L. Stud*. 4; Philip Ogunmade, Democracy: Rule of Law Still a Mirage, *This Day* (Nig.), 25 Aug. , 2005, See also Okechukwu Oko, 'Seeking Justice in Transitional Societies: An Analysis of the Problems and Failures of the Judiciary in Nigeria' (2005) (31)(1) *Brook. J. Int'L L.* 17.

[46]Ogunmade (ibid); Oko (ibid).

[47]Qumba (n 12) 175.

[48]Qumba (n 12)157.

Investor State Dispute Settlement (ISDS) is a unique instrument of public international law, which grants foreign investors, being private parties, the right to sue a host nation, in a forum other than that nation's domestic courts. Under existing international investment agreements, bilateral investment treaties (BITs), certain international trade treaties between the investor's home nation and the host nation.[49]ISDS or investment court system (ICS) is a system through which countries can be sued by foreign investors for certain state actions affecting foreign direct investment (FDI).[50] ISDS provisions are contained in many international agreements including free trade agreements, bilateral investment treaties, multilateral investment agreements, national investment laws, and investment contracts.

If an investor from one country (the 'home state') invests in another country (the 'host state'), both of which have agreed to ISDS, the host state can be liable on loss recorded by investor state if it violates rights accruing to the latter, under public international law. Investor states have rights not to have property expropriated without prompt, adequate, and effective compensation. Investor state may sue the host state in neutral arbitration panel rather than in the domestic courts of the host state.[51] This system most often takes the form of international arbitration between a foreign investor and the nation receiving the FDI.

To bring an ISDS claim before an arbitral tribunal, an investor from one country must have an investment in another country, both of these countries must have agreed to ISDS, and the foreign investor must claim that the state has violated one or more of the rights granted to the investor under the treaty. ISDS claims are often brought under the rules of the International Centre for Settlement of Investment Disputes of the World Bank (ICSID).[52] Treaties including these provisions have a positive effect on foreign direct investment (FDI) flows between signatory countries.[53]

The ability of law courts in Africa to deal with commercial arbitration in a manner towards meeting economic targets and commitment to the Sustainable

---

[49] 'Recent Developments in Investor-State Disputes,' <http://unctad.org/en/PublicationsLibrary/webdiaepcb2013d3_en.pdf> accessed 23 July 2025.
[50] 'What Do the Data Say About the Relationship Between Investor-State Dispute Settlement Provisions and FDI? | PIIE,' <http s://piie.com/blogs/trade-investment-policy-wat ch/what-do-data-say-about-relationship-between-investor-state). piie.com> Accessed 11 March 2025.
[51]Thomson Reuters, 'Investor-State Dispute Settlement (ISDS)' <https://uk.practicallaw.thomsonreuters.com/0-624-6147?transitionType=Default&contextData=(sc.Default)&firstPage=true> accessed 25 July 2025.
[52] 'Press Corner' https://ec.europa.eu/commissi on/presscorner/home/en). European Commission - European Commission> accessed 25 July 2025.
[53] PIIE (n 50).

Development Goals (SDGs) and African Union's Agenda 2063 is a subject of controversy. Not less than 33 out of the 54 African countries are yet to properly address the issue of impartiality and independence of the judiciary in their states.[54] In the circumstances, Foreign Investors opt for legal system which is able to appreciate the premium they place on their investment and maximum profit-making motives, which they argue the domestic courts do not give. The argument paves the way for establishment of investment court system, which ordinarily will not hold without condemning the efficacy of domestic legal system. The promoters of Investment Court System argue on the need to de-politicise disputes of which the domestic court system is being alleged of violation of rules against impartiality.[55]

Based on the submissions, the investor state dispute settlement mechanism was therefore deployed as standardised method of resolving disputes.[56] However, there are reservations on inequality and unfairness against capital-importing continents like Africa;[57] that ISDS does not afford level playing ground in what looks like a revised version of colonization. Bilateral treaties and the ISDS proceedings have host African States serving as respondents and not applicants in ISDS cases.[58]

The motive of creating investment courts for Africa is not isolated from the need to give legal protection for multinational corporations operating in host states. It is submitted in certain quarters that the imposition of commercial arbitration in the place of domestic legal system is a propagation of neo-colonialism.[59] Consequently, notwithstanding a nation's strong rule-of-law records, issue of partiality of domestic courts could possibly arise due to the sensitive and at times highly political character of the cases at hand.[60] The issue of soft-landing for MNCs on the abuse of hospitality brings the issue of rule of law and applicable bodies to dispense justice to the front burner.[61] The fact that most arbitral awards are in favour of foreign investors gives weight to that assertion.[62] This is

---

[54]Qumba (n 12) 170.
[55] Christian Tietje et al, 'The Impact of Investor-State-Dispute Settlement (ISDS) in the Transatlantic Trade and Investment Partnership' Study Prepared for Minister for Foreign Trade and Development Cooperation, Ministry of Foreign Affairs, The Netherlands, 2014), 69,70.
[56] Ben Juratowitch, 'The Relationship Between Diplomatic Protection and Investment Treaties' (2008) 23(1) *ICSID Review - Foreign Investment Law Journal* 10–35.
[57] Gus. Van Harten, Investment Treaty Arbitration, Procedural Fairness, and the Rule of Law, in International Investment Law and Comparative Public Law (Thomas Wälde & Stephan W. Schill (2010 eds), Oxford University Press.
[58]Qumba (n 12)172.
[59] Gunn (n 9) 33.
[60] Tietje et al (n 55) 68.
[61] Ama (n 27) 82.
[62] Sooraj Sharma, 'Investor-State Dispute Settlement Mechanism: The Quest for a Workable Roadmap' (2013) *Merkourios-Utrecht J. Int'l & Eur. L.,* 29, 88.

coupled with the fact that host nations are sued when they hesitate to meet up extra obligations that are not contained in signed treaties.

The history of investment treaty law and arbitration is largely a post-colonial one. During colonial era, investments were protected by imperial legal systems, which were transplanted into the colonies. In parts of the world, where colonialism did not take place, diplomacy and force were occasionally used to protect aliens and their property.[63] As a follow up to the discovery of natural resources in Africa, the western investors opted to protect their investment in extraction and control of such by the introduction of treaties and arbitration.

Indeed, the International Centre for Settlement of Investment Disputes of the World Bank (ICSID) Convention specifically provides in Article 27 what is meant to replace the traditional system of diplomatic protection.[64] ISDS was a solution to two evident problems: first, unreliable and disjointed reliance on diplomatic protection; and second, biased or ineffective domestic remedies.

As such, Qumba considers the social-political and economic transition of states in Africa and submit that the issue is beyond impartiality, de-politicisation of disputes, expertise, rule of law violation and having to establish a review mechanism for African courts.[65] The issue is western control of natural resources in Africa and the legal provisions to sustain the control and management.

5.0 ISDS Proceedings and Inequality of Nations

International instruments provide on states' right to self-determination, the right to freely determine one's political status and to freely pursue economic, social and cultural development.[66] This assumes the right of nations to go into international trade on the principles of equality of nations. States in Africa suffered deprivation of their right to self - determination for not less than five centuries and discrimination and deprivation continues by way of neo-colonialism after flag independence of states in Africa.

Colonialism denotes a political and economic relations in which sovereignty of a nation or a people, otherwise known as a colony rest on the power of another nation, which makes such an impostor nation an empire.[67] This lopsided relation hinders development in the colonies.

---

[63] Dominic Dagbanja, 'Can African Countries Attract Investments Without Bilateral Investment Treaties? The Ghanaian Case' (2019) 40(2) *Australasian Review of African Studies* 2.
[64] Section 27 ICSID (n 52).
[65] Qumba (n 12)175.
[66] Article 1(1) International Covenant on Civil and Political Rights (ICCPR) 1966, adopted by the General Assembly of the United Nations on 19 December 1966 and the International Covenant on Economic, Social and Cultural Rights (ICESCR) 1966.
[67] Shai (n 7) 501.

The Nineteenth Century was an age of military conquest of Africa, when most communities in Africa were coerced to come under colonial rule .[68] The colonial process of dispossessing indigenous peoples of their ancestral land varied across the countries. In certain situations, African leaders were held to have consented to colonization with the use of treaties bearing the signatures of traditional rulers in Africa.[69] The treaties were void having no genuine consent of the leaders who were illiterates and ignorant of treaties allegedly signed.
Level playing ground for business transaction is desired to arrive at mutually beneficial business terms. Development is realized where the right to self-determination and sovereignty over natural resources is asserted. On account of in-equality of nations, the FDI on the basis of which bilateral treaties and ISDS are made are just trappings which benefit the investor nations. This position is attributed to the fact that FDI is not meant to transform a host nation to develop to the status of industrialised nations. Consequently, investors protect their profit-making motives through the profit and capital repatriation from the host countries.

Investment treaties provide foreign investors with access to ISDS for redress against host states for breaches emanating from the treaties. However, on the basis of environmental degradations, host states should be able to access the ISDS directly since they have the powers to nationalise or expropriate foreign investments.[70] Majority of foreign investors enjoy substantive legal protection with the ISDS. The introduction of ISDS provides a two-tier justice system, by which foreign investors are subject to a set of rules different from domestic investors. This development violates the principles of equality and the rule of law, with negative economic consequences for host nations.[71]

African States argue that ISDS system is not a better option, given the exorbitant costs of arbitration proceedings.[72] The ISDS also allows foreign investors to challenge legitimate public welfare measures given the fact that when host States pay exorbitant damages, it depletes funds budgeted for well-being of citizens.[73] It is then claimed that local courts are critical, if not indispensable on the resolution of investor-State disputes.

African countries do not tap into the benefits which the ISDS offers because they hardly invest in foreign countries.[74] Host States have no corresponding right to

---

[68] SJ Ndlovu-Gatsheni, 'Genealogies of Coloniality and Implications for Africa's Development' (2015) (XL)(3) *Africa Development27*.
[69] ibid.
[70]Obiajunwa (n 27) 83.
[71] 'Red Carpet Courts | CEO'<https://corporatee urope.org/sites/default/files/2019-06/Red%20 Carpet%20Courts_1.pdf> accessed 25 July 2025.
[72]Qumba (n 12) 172.
[73]Ibid.
[74]Dagbanja (n 63) 4.

bring an original claim against a foreign investor under the treaties. It is however argued in certain quarters that host nations should have the right to initiate fresh actions and counter-claims against investors as a means of getting redress on investors' misconduct.[75]

It is argued that domestic courts lack sufficient expertise on technical topics within the field of international investment law, public international law, and international trade.[76] The concerns raised on the competences of adjudicators on ability to calculate damages, in multilateral investment court is considered also in terms of alleged inadequacies of existing arbitrators not having sufficient competence to correctly calculate damages in ISDS. It requires knowledge of the principles of international law governing damages.[77]

The argument on alleged incompetence of domestic courts does not hold as Nigeria has specialized courts such as the National Industrial Court.[78] It may as well establish courts specializing in international trade. Certification courses may even be organized to train and re-train stakeholders on international trade.

The secrecy surrounding negotiations of treaties and operation of investor-state arbitration aid the leakages in state purse.[79] As such, critics state that treaties are written so that any legislation or domestic courts' decisions that cause profit loss or a decrease in profit qualifies as a treaty violation, which is actionable under ISDS.[80] As such, Kidane argues that the ISDS is a tool invented by western countries to impose western interests by substituting African domestic legal values with western system.[81] For instance, native law focusses on reconciling parties while English law aims at apportioning blame as between the parties.[82] The love and brotherhood culture in Africa put a premium on cordial relationship in the home and community fronts. Kinsmen are expected to live in

[75] Arnaud de Nanteuil, 'Counterclaims in Investment Arbitration: Old Questions, New Answers?' 17 August 2018 <https://brill.com/vi ew/journals/lape/17/2/article-p374_6.xml> Accessed 25 July 2025.
[76] Tietje et al (n 55) 68.
[77]Jonathan Bonnitcha et al, 'Damages and ISDS Reform: Between Procedure and Substance' 7 August 2021, 27, 28.
78 NIC, History, <https://nicnadr.gov.ng/history> Accessed 1 February 2025. On 4th of March, 2011 when the President of the Federal Republic of Nigeria assented to the Constitution (Third Alteration) Bill, 2010 which amended the 1999 Constitution to include the NIC.
[79]Obiajunwa (n 27) 10.
[80] Sweetland, Edwards, Haley, 'Shadow Courts: The Tribunals That Rule Global Trade' *Colombia Global Reports. pp. Chapter: Introduction* (2016) <https://www.worldcat.org/oclc/933590566>.accessed 25 July 2025.
[81] Kidane (n 11).
[82]Teslim O Elias, *The Nature of African Customary Law* (Manchester University Press 1956) 268–9. Cited in: Kidane (n 11); OF Olayinka, 'Property Ownership and Corruption: Effect on Sustainable Development of Africa', (2021) (III)(I) *Economics and Law*30.

harmony, where differences can be resolved amicably, where family ties are maintained.

6.0 Control of Natural Resources, Right to Self-Determination and The Rule of Law

Nigeria has bilateral investment agreements (BITs) in force, mostly with western countries and they are linked to the exploration and trading in natural resources, particularly, oil and gas.[83] The MNCs are conscious of their profit-making motives just as they deploy technologies that are cheaper, notwithstanding the environmental degradation such causes in the host communities. In addition to environmental degradations, MNCs also infringe on the human rights of citizens of host states in the course of their exploitation of resources and maximisation of profit. The right to life and right to health are threatened on account of compromised environment arising from violation of the eco-system in host communities.[84] Extraction of mineral resources in endowed countries in Africa result in land degradation and environmental abuses by the MNCs such that affect the agriculturally based vocations of indigenous peoples, and which by extension affect their sustenance and welfare.[85]

Litigation by host communities is an adaptive measure which has western origin. The conversations on investor state dispute settlement arise on the need to sustain corporate exploitation and exploration of natural resources in host states.
The 2004 Model Dutch BIT acknowledges that the objectives of promoting and protecting investments can be achieved without compromising health, safety and environmental measures of general application.[86] ISDS has advanced greatly since its adoption in the mid-20th Century. It has now become a common tool for investors to use in order to enforce their rights against host states.[87]In the course of natural resources exploration, which affect right to health of host communities, such cases are swept under the carpet and is compounded as right to counter-claim arises only when there is a pending case. In the circumstances, host communities experience access to justice challenges and litigations has not been effective means to have remedies for wrongs done against them.

[83]Bettina Müller & Cecilia Olivet, 'ISDS in Nigeria's Investment Regime Reforms and the Threat of Joining ECT, September 2022.
[84] Section 33(1) CFRN, 1999; Principle 8, Stockholm (n 25).
[85]G l o b a l I d e a s , ' Nigerian King Takes Oil Spill Battle to Italy'<https://www.dw.com/en/nigerian-king-takes-oil-spill-battle-to-italy/a-39636077>Accessed 19 July 2025.
[86] Tietje et al (n 55) 66.
[87]Ibid.

The right to self-determination is contained in many instruments.[88] The International Covenant on Civil and Political Rights (ICCPR) provides: 'All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.'[89] Africa lost existing self-reliant economy to western styled economy adjudged to be a better alternative. Of particular reference is the colonial pact between France and its colonies, which accords France the prior right to buy or reject any natural resource found in the land of the Francophone countries.[90]This pact comes in conflict with the provisions of International Covenant on Economic, Social and Cultural Rights, (ICESCR) 1966, which provides that all peoples may, for their own ends, freely dispose of their natural wealth and resources and that in no case may a people be deprived of their means of livelihood.[91]

7.0 Development Through Foreign Direct Investments

Globalisation and enablement of closer relations between states foster international trade, which affords transfer of knowledge, skills and technological knowhow as positive contributions of MNCs.[92] A study conducted establishes that foreign direct investment attraction are not generally product of bilateral investment treaties. Precisely, Ghana shows that the country attracts most of its investments from countries with which it has no bilateral investment treaties.[93]
South African government also resolved to drop international investment arbitration. The Country regards the ISDS as a system that jeopardises its national interests by subjecting it to an "unpredictable international arbitration that may constitute direct challenges to legitimate, constitutional and democratic policy making.[94] Furthermore, in August 2018, Tanzania tendered notice of its intention to terminate the Tanzania-The Netherlands BIT and the termination became effective in April 2019.[95] Agitation for self-determined development is thus a reaction to threat to economic activities otherwise regarded as 'imposed development' and 'development aggression. '

[88] Article 1 of the UN Charter; UN General Assembly Resolution 1514(XV); Common Article 1 of ICCPR and the ICESCR (n 66); P Oyugi, 'The Right to Development in Africa: Lessons From China,' in Carol C Ngang, SergesDjoyou Kamga and Vusi Gumede (2018 eds) *Perspectives on the Right to Development in South Africa* (Pretoria University Law Press) 273, 280.
[89] Art 1(1) ICCPR.. Article 1(1) ICESCR, 1966; Article 20(1) African Charter 1981 (n 66).
[90]S Jabbar, 'How France Loots its Former Colonies' *Africa Must Change* 11 April 2018 <https://www.africamustchange.com> Accessed 4 January 2020.
[91]Preamble; Article 1(2) ICESCR (n 66).
[92]Obiajunwa (n 27) 84.
[93]Dagbanja (n 63)71.
[94]Qumba (n 12) 159.
[95]Ibid.

In response, indigenous peoples have called for the recognition of a right to 'self-determined development,' to exercise control over all their natural wealth and resources, subject to the relevant provisions of international law.[96] Focus of indigenous peoples henceforth is to seek the protection of their traditional territories from further encroachment.[97] The rights assertion has the backing of the African Charter, which provides that colonized or oppressed peoples shall have the right to free themselves from the bonds of domination by resorting to any means recognized by the international community.[98]

The case of *Gbemre v. Shell Petroleum Development Corporation of Nigeria Ltd and ors*,[99] raises the hope of deploring litigation to protect the environment. In that case, the Court considered the failure to carry out an environmental impact assessment of the effect of the gas flaring by the Shell Petroleum Development Company of Nigeria Limited (SPDC).

The Court found that the gas flaring in the course of oil exploration and production activities in the Applicants' community was a gross violation of their fundamental right to healthy environment, which extends to sustain their right to life and the right to dignity of human person The argument is that prohibition of gas flaring would adversely affect revenue accruing to the state under its mono-product economy.[100]Thus, the state connives with the oil companies as it omits to implement provisions of law and as it fails to enforce court decisions capable of disturbing the profit flow to it and to MNCs.

The Government of Nigeria failed to enforce the Court's decision. The argument is that prohibition of gas flaring would adversely affect revenue accruing to the state under its mono-product economy. The Government's posture however conflict with Goal 16 SDG which mandates the state to promote peaceful and inclusive societies for sustainable development, access to justice and the promotion of the rule of law.[101]

Under the Shell / NNPC joint operation, the state is mainly concerned with oil revenue maximization and fiscal sustenance. In terms of economic expediency however, the political will has thus been absent to enforce the law.

ISDS is for the MNCs to protect their investments, there is no seriousness in the aggressor seeking redress against victims except for the Shell Netherland

---

[96] Article 1(2) International Covenants on Human Rights;Article 21(1) and 21(2))) African Charter 1981,
ICSID
[97]Wenar and Gilbert (n 18) 43.
[98]Article 20(2) African Charter, 1981.
[99](2005) AHRLR 151.

[101] Sustainable Development Goal, 2015 -2030.

frivolous cases against Federal Republic of Nigeria (FRN).[102] The Shell ISDS claims are pulled from time to time to influence the exercise of sovereignty of Nigeria. The ISDS is deployed to frustrate host states from discharging their obligation to apply the state resources for the benefit of citizens in line with the terms of social contract on security and welfare. ISDS operates as checks on the FGN to suppress the agitations of the host communities for friendly environment. It explains the circumstances in which FRN fail to enforce the FHC order on the same Shell to stop gas flaring in Gbemre& Others v Shell Petroleum.[103]

This position informs the contention that the State and its agents are the greatest violators of climate related laws in Nigeria. The state as such defaults in providing security and equal freedom under the rule of law, as the citizens are not protected from undue violation of the right to life and to live in dignity, in a hygienic environment. The envisaged FDI on the basis of which bilateral treaties and ISDS are made are just trappings which benefit the investor nations.

7.1 ISDS Claims Against Nigeria

The objective of having bilateral investment treaties *(*BITs) is to give investors a platform to directly enforce substantive rights rather than the unpredictable political or diplomatic process, hitherto employed. Investment treaties provide for ISDS, which to the investor states is a more reliable forum for investors to enforce specific protection, articulated in a treaty. Consequently, multinational corporations in host nations is able to intrude on the internal affairs and policy-making obligations of host states.

In *Shell Petroleum N.V. and the Shell Petroleum Development Company of Nigeria Limited v. Federal Republic of Nigeria,*[104]a claim was registered in February 2021 by Shell Petroleum, a Dutch oil company, operating in Nigeria, relying on the 1992 Netherlands - Nigeria bilateral investment treaty (BIT). The claim was registered after the Nigerian Supreme Court in 2020 upheld a ruling of the Nigerian Federal High Court that was given in 2010, in favour of communities affected by massive oil spills in the Niger Delta region around 1970.

The inadequacies of litigation as adaptation measure on degradation of environment is seen in the more than 50 years of damage, destruction of lives and properties in host communities. After exploring domestic channel of legal process, the game of degradation - in - perpetuity is seen in the case filed before the ISDS.

---

[102] Tietje et al (n 55) 66.
[103]Gbemre& Others v Shell Petroleum 2005.

[104]ICSID Case No. ARB/21/7

Also, in *Shell Nigeria Ultra Deep Limited v. Federal Republic of Nigeria,*[105]the Anglo-Dutch oil company Shell and Eni sued Nigeria before an arbitration tribunal over reallocation of the license for oil exploration field OPL 245 by the government in 2006 to the Nigerian oil company Malabu Oil & Gas. The European companies registered the ISDS claim shortly after the license was reallocated to Malabu. Shell and Eni asked for $1.8 billion in compensation. The huge damages being sought establishes that the ISDS claim is leveraged by foreign investors to coerce host state from asserting sovereignty and control on natural resources.

8.0 Recommendations and Conclusion

8.1 Recommendations

8.1.1 ISDS And Democratic Values

Some authors submit that investor-state arbitration limits the powers of African governments to make legitimate democratic decisions because of the fear of arbitral actions, anchored on breaches of substantive protections contained in their International Investment Agreements (IIAs).[106] It is alleged that ISDS suffer democratic deficit based on the fact that investor-state arbitration is a private mechanism with wider implications on the domestic matters and living standards of citizens of a state. With governments empowered by their citizens through elections to superintend the affairs of their countries, it is envisaged that governments as the compliant institution on citizens' conduct must make policies that are pragmatic and strictly premised on constitutional provisions of the state. The public nature of investor-state dispute settlement transcends its private and commercial law origin, because, state parties to arbitral proceedings represent their citizens and offset any awards with public funds.[107]

The position adopted here on democratic deficit in Nigeria explains the omission by the Federal Government of Nigeria's (FGN), to enforce anti gas flaring order of Federal High Court (FHC) of Nigeria in the case of *Gbemre v. Shell Petroleum Development Corporation of Nigeria Ltd and ors*.[108] This is an indication of the fact that the FGN is indifferent to any form of legal system, whether at the level of domestic court or arbitration panel. It is then argued that having to resolve domestic issues by foreign states and investors, through foreign territorial tribunals are issues borne out of the legitimacy crises of ISDS.[109] The fact remains that the right to self-determination is far from being asserted in Africa and neo-colonialism is strongly felt.

Where foreign investors are required to litigate disputes through domestic courts rather than directly taking their claims to international arbitration, this

[105]ICSID Case No. ARB/07/18; Müller & Cecilia Olivet (n 83) 6.
[106]Obiajunwa (n 27) 14.
[107]Obiajunwa (n 27) 31.
[108](2005) AHRLR 151
[109]Obiajunwa (n 27) 11.

might build the capacity of local courts.[110] Domestic judicial systems would reassume their roles as the primary fora for disputes involving claims by foreign investors, and investor state tribunals would provide an extra layer of protection against any deficiencies in domestic legal processes.

8.1.2Reforms of Nigeria's International Investment Treaties

As a result of the legitimacy crisis, both developed and emerging economies are currently re-evaluating their approaches to ISDS through various institutional reform approaches as well as international investment agreements (IIAs), including bilateral investment treaties (BITs).[111] If Nigeria is keen on avoiding further ISDS claims that could cost the state billions of dollars,[112] it has to avoid foreign direct investment and stringent bilateral treaties. It should rather promote indigenous innovations and productions. Mismanagement and public sector corruption have to stop so that the right infrastructure for production can be put in place.

The Federal Government of Nigeria has to adopt industrialization, looking inwards on indigenous technology. The perception of development being projected as attainable through foreign direct investments (FDIs), with the transfer of knowledge and skills and technological knowhow has to change.[113] Successive regimes in Nigeria expend tax payers fund on foreign trips to woo foreign investors. It is not patriotism that motivates foreign trips to woo new investors having not fixed the challenges that made companies to relocate to Ghana, and other neighbouring states[114]that provide more conducive environment to manufacturing. Foreign trips to woo unwilling foreign investors amounts to mis-management of scarce resources because no foreign investor can operate where power generation and supply is erratic.[115]

8.1.3Equality in Regional Integration

When states in Africa desperately seek foreign direct investment from their former colonial authorities, they gloss over the fact that equality among trading partners is sine qua non to development. Consequently, bilateral treaties are hurriedly conceived and sealed between investor states and host states. This

---

[110]Qumba (n 12) 175.
[111]Qumba (n 12)158.
[112] Müller & Olivet (83) 7.
[113]Obiajunwa (n 27) 84.
[114]OF Olayinka, 'Economic Development, Democratisation and the Rule of Law in Ghana and Nigeria' in ME Addadzi-Koom et al (2022 eds.) *Democratic Governance, Law, and Development in Africa: Pragmatism, Experiments, and Prospects* Palgrave Macmillan Springer Nature, Switzerland, 462.
[115]Dare Olawin et al, 'Nationwide Blackout as Grid Suffers 10th Collapse in 2024,' 6 November 2024<https://punchng.com/nationwide-blackout-as-grid-suffers-10th-collapse-in-2024/?amp> accessed 25 July 2025.

explains in part why host states do not stand any chance to industrialize through FDI. In the circumstances, the provisions of The African Continental Free Trade Area is commendable. Article 3 provides on the general objective being to:[116]

(a) create a single market for goods, services, facilitated by movement of persons in order to deepen the economic integration of the African continent and in accordance with the Pan African Vision of 'An integrated, prosperous and peaceful Africa' enshrined in Agenda 2063;[117]

States in Africa are advised to promote industrial development through diversification and regional value chain development. They are as such enjoined to look within the region, for financial and technological support, which assures of equality in relations and development.

8.2Conclusion

The study acknowledged the growing phenomenon among political leadership in states in Africa having embarked on several foreign trips to woo foreign investors. The question of whether host nation's abdication of responsibility to own and control natural resources can be handled beneficially on their behalf by foreign investors.

The study found that investor states that have enjoyed the benefit of managing natural resources exclusively under colonialism are desirous of sustaining the same under un-even bilateral treaties, ISDS and arbitral awards that are outrageous. The study further found that a host nation should first put in place conducive environment for manufacturing and should curtail public sector corruption to successfully procure the right manufacturing infrastructure.

It was argued that an investor nation aims at profit maximization in host nations and that issues of ensuring that extraction of natural resources without causing pollution of the environment is secondary.

It was further argued that the introduction of international investment panel in the place of domestic courts is to protect the investment particularly profit target of MNCs. The exploitative tendencies associated with the FDI drew the condemnation of 'self-determined development agitators' who argued that resources in a state have to be applied for the benefit of citizens just as they embraced assertion of right to self-determination of host nations. It was

[116] Article 3(a) The African Continental Free Trade Area, 2018, Agreement Signed at Kigali, on this 21st day of March in the year 2018.
[117] Ibid.

established that inability of states in Africa to relate on equal basis with investor states is enough to stop such relationship as such has never been of benefit to host nations.