

Book Review: *Nigerian Foreign Investment Law and Policy*, 2nd Edn., 2021 by Emmanuel I. Kachikwu¹

Adjunct professor **Bayo ADARALEGBE²**

Abstract

This book review examines Nigerian Foreign Investment Law and Policy by Emmanuel I. Kachikwu, situating the work within the broader evolution of public international law governing the treatment and protection of foreign investment. It begins from the foundational principle of state sovereignty and the prerogative of states to regulate the admission and operation of foreign investors within their territory. The review then contextualises the transformation of investment protection through key historical developments, including the shift from the protection of “aliens” to the protection of corporate investments, the global expansion of the capitalist economic model, decolonisation, and the ideological tensions of the Cold War. Against this backdrop, Kachikwu’s analysis is critically assessed in light of the relationship between sovereignty, expropriation, the international minimum standard of treatment, and the quest for legal stability in a geopolitical environment where Western investments were often vulnerable in newly independent states. The review highlights the book’s continuing relevance for understanding Nigeria’s foreign investment regime and for contemporary debates on the balance between regulatory autonomy and the legal protection of foreign capital.

Keywords: foreign investment law, state sovereignty, international minimum standard, expropriation, decolonisation, Nigeria, investment protection, investment policy, public international law, legal stability.

JEL Classification: K22, K33

DOI: 10.62768/IILJ/2026/6/1/06

Please cite this article as:

Adaralegbe, Bayo, ‘Book Review: *Nigerian Foreign Investment Law and Policy*, 2nd Edn., 2021 by Emmanuel I. Kachikwu’, *International Investment Law Journal* 6, issue 1 (February 2026): 68-83.

1. Introduction and Context: The Treatment and Protection of Foreign Investment

Under Public International Law, nation-states are sovereign. An important attribute of their sovereignty is that they are able to decide how they treat foreigners and their investments within their territory. Under Public International Law, a country is at liberty to decide that foreigners are not permitted within its territory; or where they are welcome, they are not allowed to do any business at all or limited business or own

¹ This book review is dedicated to Professor Muthucumaraswamy Sonarajah, Emeritus Professor, National University Singapore who taught me the mores of the Law of Foreign Investment in Graduate School more than two decades ago.

² Bayo Adaralegbe - LLB(Ife); LLM & PhD (CEPMLP, University of Dundee, Scotland); Adjunct Professor Centre for Petroleum, Energy, Economics and Law (CPEEL), University of Ibadan, Nigeria, badaralegbe@ninemwellslegal.com.

property or work. The United States, with a very long history of protecting its citizens outside its territory, played a significant role in influencing Customary International Law principles to contain a minimum standard of treatment for foreigners to protect them and their investment in host countries³.

The legal protection of foreigners and their investment, however, took a radically different complexion following significant developments in international affairs. First, the foreigner, originally referred to as ‘alien’ when societies were organised around kingdoms and before the advent of modern nation-states, gave way to the artificial person that became the main purveyor for businesses/investments around the world. Protection thus shifted essentially to the foreigner’s investment from aliens’ lives and liberty in host countries. Next was the capitalist economic model, championed by the West, that encouraged companies to actively engage in cross-border trade and investment to be able to satisfy an insatiable appetite for profit that contributed in sustaining Western economies. These developments in the international economic political order contributed in changing the protection of foreigners and their investment in host states forever. As a result of Colonial rule, a lot of tension existed between former Colonial masters and newly independent countries. There was also a cold war between the capitalist United States and the old Soviet Union in Eastern Europe over the ideological superiority of capitalism over communism. The Arab world was not left out because of the cultural and religious cleavage between this world and the West, whose companies were active investors in Arab countries, largely because of their hydrocarbon resources that not only provided healthy returns on investments but also solved the security of supply problems of the West to sustain their industrialisation. Layered on this is the hostility that historically existed between the US and its Latin American neighbours. The result is that foreign investments from the West were very vulnerable everywhere. These investments were routinely expropriated by host countries. A well-known case in point is Col. Muammar Ghaddafi, who, as soon as he seized power in Libya in 1969, proceeded to expropriate American and British Oil companies in Libya. Even though every country is free not to admit foreigners and their investments within its territory, once a foreigner is admitted into a country, a minimum standard of treatment for these foreign investments is expected according to Customary International Law that a country is not allowed to fall below without violating international law⁴.

2. Emergence of the Law of Foreign Investment

The minimum standard of treatment was originally developed to protect natural persons and had to be adapted for the protection of the legal person and its investments in host countries as modernisation began⁵. The foreign investor is interested essentially

³ For some details see Chibike Amucheazi, Chidebe Matthew Nwankwo, and Fochi Nwodo, “A Reassessment of the Challenges of Enforcement of Foreign Judgments in Nigeria: The Need for Legislative Reform to Ease Business,” *Journal of Private International Law* 20, no. 2 (2024): 473–499, <https://doi.org/10.1080/17441048.2024.2377407>.

⁴ Filip Balcerzak and Konrad Turnbull, “The Role of Customary International Law in International Investment Law Remedies: The Curious Case of Natural Resources,” in Panos Merkouris et al. (eds.) *Custom and Its Interpretation in International Investment Law*, (Cambridge: Cambridge University Press, 2024), 284–306.

⁵ Ohiocheoya (Ohio) Omiunu and Ifeanyichukwu Azuka Aniyie, “Evidence of Subnational Government

in how the host country treats it in four principal areas: (1) would it be allowed to carry on business and own property in the host country? (2) would its investments not be expropriated by the host country? (3) would it be allowed to transfer its profits out of the host country? (4) in the event of a dispute concerning its investments in the host country, would it be able to avoid the host country's courts and legal system and be allowed to use either a third country's court (typically from the West) or arbitration (International Commercial Arbitration or Investor-State Treaty Arbitration)? The last is very important. Investors from Western countries would love to have their disputes litigated before courts in their home states⁶. However, under Public International Law, it is the national courts of the host state that have jurisdiction over investment disputes. These foreign investors are used to their democratic culture of true separation of powers between the executive, legislative and judicial arms of government. They are apprehensive that the executive government, which is typically a respondent in investment litigation, has an overbearing influence on the judiciary in these host states. It is therefore important for them to have, as an option, the ability to pursue their claim against these respondent governments outside their host state courts. These principles are encapsulated in treatment standards known as Expropriation; Fair and Equitable; Most Favoured Nation; National Treatment; Protection and Security; and Denial of Justice. This area is a very distinct branch of law, known as the Law of Foreign Investment.

Following the recognition of non-state actors (i.e. natural and artificial persons created under and subject to municipal/national law of a sovereign state) as having direct and enforceable rights in international law, those Customary International Law standards that were developed to protect the alien, but pursued on their behalf by their home states against a host state, were retrofitted in ways that allowed the foreign investor to directly invoke those standards against host states under Multilateral and Bilateral Investment Treaties that were concluded between mostly developing states and Western – states that typically have most of these investors. Direct expropriation the Col. Ghaddafi way is very rare these days because of developments in this area, resulting in jurisprudence in international investment law cases that heavily penalise countries that directly expropriate foreign investment. What obtains now is indirect or creeping expropriation made possible by a host state's legislation that targets the income stream of foreign investors, largely through taxation.

Before the successful experimentation with investment treaties as a means for foreign investment protection, Western scholars in some quarters floated the theory of internationalisation, for foreign investment protection. In its purest form, this theory holds that because sovereign states who are subject to, and regulated by international law, are parties to foreign investment contracts (state contracts), international law applies directly to these contracts. The clear intention was to ensure that these state contracts levitated above the municipal law of the host state within which they were created⁷. The

Sovereign Boundary Percolation in Nigeria,” *Regional & Federal Studies* 34, no. 3 (2024): 293–313, <https://doi.org/10.1080/13597566.2024.2306546>.

⁶ Mariana Zhong and Zeyu Huang, “Substantive Protections: A Comprehensive Analysis of the Complexities of Expropriation in International Investment Law,” *Global Arbitration Review*, Insight, October 27, 2025, <https://globalarbitrationreview.com/guide/the-guide-investment-treaty-protection-and-enforcement/third-edition/article/substantive-protections-comprehensive-analysis-of-the-complexities-of-expropriation-in-international-investment-law>.

⁷ Yener Kandogan, “Destination of Foreign Investment and Trade from Autocratic Countries,” *Emerging*

theory of internationalisation and its influence, however, waned and failed to gain universal acceptance around the early 1970s.⁸

This writer's first encounter with this arcane area of law started at the Nigerian Law School. Dr Emmanuel Kachikwu had been invited as a Guest Lecturer by the Nigerian Law School that year. His reputation had arrived before him as an SJD degree holder from Harvard University, reputed to have been completed under two years and Chief Counsel, Texaco Group Overseas Nigeria. The theme of his lecture was on the 'Law of Foreign Investment in Nigeria.' I hopelessly failed to comprehend any part of that lecture and I was evidently not alone in the hall that felt this way that day. That year, he published the first edition of his book.⁹ Years after this experience, I was very fortunate to be taught this subject area in my graduate school at the Center for Energy Petroleum, Mineral Law and Policy (CEPMLP) University of Dundee, Scotland, the United Kingdom by the pre-eminent global authority in the area today, Professor M. Sonarajah. Prof Sonarajah's seminal work, *The International Law on Foreign Investment*, first published in 1994 and now in its 5th Edition¹⁰ builds on earlier major works in this area – *The Minimum Standard of International Law Applied to Aliens* by Andreas Roth;¹¹ *Government Guarantees of Foreign Investment* by A. A. Fatourous;¹² *The Legal Problems of Foreign Investment in Developing Countries* by E. I. Nwogugu.¹³ The World Bank authored two volumes of a book titled *Legal Framework for the Treatment of Foreign Investors*.¹⁴ In the specific context of Nigeria, late Dr Khrushchev Ekwueme's relatively recent book *Protection of Foreign Investment in Context: Nigeria's Investment Laws, Treaties, and Petroleum Agreements*¹⁵ deserves mention.

Markets Finance and Trade (2025): 1–14, <https://doi.org/10.1080/1540496X.2025.2559925>.

⁸ Prosper Weil, one of the proponents of the theory, admits that it was unsuccessful and not well received and pronounced it dead. See Prosper Weil, 'The State, the Foreign Investor and International Law: No Longer a Stormy Relationship of a Menage a Trois' ICSID Review Foreign Investment Law Journal, vol. 15 No. 2 (2000) 401–406. Another scholar also stated of the theory, 'The concept of internationalisation per se may be a concept in juridical retreat.' See Richard B. Lillich 'The Law Governing Disputes Under Economic Development Agreements: Re-examining the Concept of 'Internationalisation' in R. B. Lillich and C. N. Brower (eds) *International Arbitration in the 21st century: Towards 'Judicialisation' and Uniformity?* (Transnational Publishers, 1994.) See also Stephen I. Pogany 'Economic Development Agreements' ICSID Review Foreign Investment Law Journal, Vol. 7 No (1992).

⁹ Emmanuel Ibe Kachikwu *Nigerian Foreign Investment Law and Policy* (Mikzek Law Publications Limited, 1988).

¹⁰ Muthucumaraswamy Sornarajah, *The International Law on Foreign Investment* (Cambridge University Press, 5th Edition, 2021).

¹¹ Andreas H. Roth, *The Minimum Standard of International Law Applied to Aliens* (A. W. Sijthoff, 1949).

¹² Arghyrios A., Fatourous, *Government Guarantees of Foreign Investment* (Columbia University Press, 1962).

¹³ Edwin I. Nwogugu, *The Legal Problems of Foreign Investment in Developing Countries* (Manchester University Press, 1963)

¹⁴ World Bank, *Legal Framework for the Treatment of Foreign Investors* (Volumes I and II, 1992). See also Daniel, D. Bradlow & Alfred Escher (eds.). *Legal Aspects of Foreign Direct Investment* (Kluwer Law International, 1999); Robert Pritchard (ed) *Economic Development, Foreign Investment and the Law* (Kluwer Law International, 1996); Ingrid Delupis *Finance and Protection of Investment in Developing Countries* (Gower Press Ltd, 1973).

¹⁵ Khrushchev Ekwueme, *Protection of Foreign Investment in Context: Nigeria's Investment Laws, Treaties and Petroleum Agreements* (Nomos Verlagsgesellschaft, 2007). See also Bernard Blankenheimer 'The Foreign Investment Climate in Nigeria', *Vanderbilt Journal of Transnational Law*, vol. 10, issue 4, Fall 1977: 589-600; Jerome F. Donovan 'Nigeria: Still Safe for US Investors', *Vanderbilt Journal of Transnational Law*, vol. 10, issue 4, Fall 1977: 601-612.; Oserheimen A., Osunbor 'Nigeria's

That first encounter must have created such a huge impression on me at that time, enough for me to have written my LL. M Dissertation in the area titled *Legal Protection Techniques for Foreign Investment and Their Effectiveness in the Petroleum Sector of Developing Countries: A Case Study of Nigeria*¹⁶ closely followed by a doctorate degree with focus in a related area-Investor-State Treaty Arbitration.

3. Evolution of Foreign Investment Policy and Law in Nigeria

Three broad phases of Nigeria's approach to foreign investment can be identified. There was a period when Nigeria did not have a clear policy. This was the era immediately following Nigeria's independence. It was, however, during this period that Nigeria became a signatory to the Washington Convention on Investment Disputes between States and Investors of other States¹⁷ (ICSID Convention). Nigeria was the very first signatory to this hugely important multilateral convention and went on to domesticate it in the form of the International Centre for Settlement of Investment Disputes (Enforcement of Awards) Act that came into force in 1967. During this period, Nigeria also signed up for the Convention on the Recognition and Enforcement of Foreign Arbitral Awards of 1958.¹⁸ Both multilateral conventions allow foreign investors in Nigeria to avoid Nigerian courts in favour of international commercial or investment arbitration. This writer suggests that Nigeria signed up to these conventions because of the influence of Professor Olawale Teslim Elias, who was Attorney General of the Federation between 1960 and 1966. Professor Elias was a Public International Law expert of international acclaim who authored influential books and articles on Public International Law¹⁹ and eventually became judge and then President of the International Court of Justice at The Hague, Netherlands.

This era, however, quickly gave way to a palpably hostile era once the military consolidated power, which it seized in 1966 in Nigeria. Buoyed by petrodollar that was pouring into the country at that time, the military suddenly remembered old colonial wounds and introduced the Nigerian-Enterprise Promotion Decree in 1972.²⁰ This law restricted foreign investment to certain sectors of the economy (the oil sector was excluded)²¹ and forced foreign investors to maximum equity ownership in certain businesses they were engaged in. The rationale for the law was explained to be that the deck was skewed in favour of foreign investments during colonial rule, hence the need to address this imbalance through the law. It was also during this era that the military expropriated British Petroleum and changed its name to African Petroleum on account of its home country, Great Britain hobnobbing with apartheid South Africa, something

Investment Law and State Control of Multinationals' *ICSID Review Foreign Investment Law Journal* Vol. 3 Nol (1988).

¹⁶ Bayo Adaralegbe, *Legal Protection Techniques for Foreign Investment and their Effectiveness in the Petroleum Sector of Developing Countries: A Case Study of Nigeria* (Unpublished LLM Dissertation University of Dundee, 2003) on file with the writer.

¹⁷ Nigeria became a signatory to this Convention on 13 July 1965.

¹⁸ Nigeria signed up for this Convention on the 17th of March 1970.

¹⁹ See for instance, Teslim O. Elias *Modern Law of Treaties* (Oceana, 1974)

²⁰ See generally Ifeanyi Achebe 'The Legal Problem of Indegenisation in Nigeria: A Lesson for Developing Countries', *Hastings International Comparative Law Review*, vol. 12, no. 3, 1989.

²¹ Sally Udoma 'Negotiating Legally Sound E & P Agreements in Nigeria' in the *Nigerian Energy & Natural Resources Annual* 2003, p. 56.

that greatly irritated the Nigerian military ruling class at that time.²²

Once Nigeria started getting out of pocket from its petrodollar earnings and the economy began to manifest signs of distress, persuaded by international economic institutions, Nigeria changed its policy towards foreign investments, abandoning its hostile posture towards them. Thus, not only was the Nigerian Enterprises Promotions Act watered down over time by amendments, it was ultimately repealed and replaced by the Nigerian Investment Promotion Commission Act (NIPC Act) in 1995. It was also during this period that the Nigeria LNG (Fiscal Incentives, Guarantees and Assurances) Act was passed in 1989 during General Babangida's rule to assure NLNG promoters and shareholders who were foreign investors, a \$3.8Billion project (at that time the most capital intensive on the African continent) that their investments were secure in Nigeria. Nigeria started to enter into Bilateral Investment Treaties in 1990, a period that coincided with the beginning of the country's pacifist posture towards foreign investment.²³ These Bilateral Investment Treaties gave similar assurances contained in the NIPC Act and the NLNG Act. The African Continental Free Trade Agreement (ACFTA), a multilateral trade and investment treaty that Nigeria is a signatory to,²⁴ and the Presidential Order on Ease of Doing Business introduced in 2022 are some of the more recent efforts in the current pacifist era.

The NIPC Act does not only allow foreign investors to do business in nearly all areas of the Nigerian economy, it also guarantees foreign investments against expropriation; guarantees foreign investors the transfer of their profit out of Nigeria and guarantees that disputes pertaining to foreign investment will not mandatorily have to be settled before Nigerian courts, but under the ICSID regime. The Nigeria LNG Act governing the NLNG project, which preceded the NIPC Act, also contains the above guarantees, including allowing the free transfer of profit²⁵ and additionally stabilises the fiscal regime of the NLNG investment, a first and so far stand-alone provision in Nigeria. Within the pacifist era, two legislative and executive efforts, however, have to be mentioned. The Nigerian Oil and Gas Industry Content Development Act of 2010 unpretentiously promotes Nigerian businesses over foreign businesses that are dominant in the Nigerian petroleum sector. As pointed out above, as an attribute of its sovereignty, every state has the right in international law to make laws excluding foreign investment or dictating the extent of foreign investment participation within its territory. In that sense, the Nigerian Oil and Gas Industry Content Development Act is justified as long as Nigeria has not compromised its sovereign powers in treaties or conventions it has concluded with the home countries of these investors.²⁶ The recently introduced and now

²² This was done through the Acquisition of Assets (British Petroleum Company Limited) Act, Cap 3, 1979. Nigeria paid compensation of \$71.98Million to BP in accordance with international law against BP's demand of \$421Million. See Sarah, A. Khan *Nigeria: the Political Economy of Oil* (Oxford University Press, 1994).

²³ Nigeria concluded its first Bilateral Investment Treaty with France (a Western country) on 27 February 1990. That Treaty came into force on 19 August 1991. Since then, Nigeria has concluded thirty-one Bilateral Investment Treaties, mostly with developed/Western countries. The most recent being with Morocco concluded on 3 December 2016 but not yet in force.

²⁴ Nigeria signed this treaty on 7 July 2019 and ratified it on 5 December 2020.

²⁵ At that time the transfer of profits by foreign companies required the approval of the Minister of Finance under the Exchange Control Act of 1962.

²⁶ See Bayo Adaralegbe 'Balancing Nigeria's Local Content Requirement with its Bilateral Investment Treaty Commitments' presentation at the Global Local Summit on Oil and Gas organised by Oil & Gas IQ,

ill-fated Expatriate Employment Levy (EEL) must also be mentioned. This regulation mandates expatriate workers to pay certain levies. Among others, the EEL sought to regulate expatriates working remotely for Nigerian companies but who are not physically in Nigeria. In that regard, the EEL exceeds the primary law, the Immigration Act, that it derives from. The Immigrations Act limits itself to regulating expatriates that are physically within Nigeria.

Section (1) of the Immigration Act provides that ‘subject to the provisions of this section, this Act shall apply to persons entering or leaving Nigeria and to persons who are at any time therein after the commencement of this Act. Section 14 of the Act also provides that the Act shall apply to persons entering or leaving Nigeria and to persons who are at any time therein after the commencement of this Act. Also, Section 116 of the Act defines ‘Immigrant’ as any person who is not a Nigerian citizen or persons accorded immunity for reasons of diplomatic status, who enters or seeks to enter Nigeria. While Rule 3.2.1 of the EEL provides that expatriate workers subject to the EEL are those who are non-citizens employed ‘within’ Nigeria (which is consistent with the Act), Rule 3.6.1 of the EEL contradicts this by providing that ‘In the case of a cross-border assignment or secondment where expatriates temporarily work in a foreign country, such employer shall pay the EEL, where the expatriate involved occupies a quota position in a company operating in Nigeria.’ In effect, the EEL imposes a levy on expatriates that are not in Nigeria when the Act that it is made pursuant to only applies to foreigners who have entered into Nigeria, consistent with the concept and principle in international law applicable to the treatment of foreigners by host states.

The penchant for issuing regulations that exceed the primary law that they derive from in Nigeria and the approach of our courts to repeatedly annul such regulations was the focus of a recent article of this writer.²⁷ As a matter of concept and based on the public international law principle of territoriality, as explained above, as a sovereign country, a country’s powers regarding the treatment of foreigners only extend to foreigners that are physically within that country²⁸ except, for tax purposes where a foreigner that is not in Nigeria is generating income from within Nigeria but based outside Nigeria.²⁹ It is to be noted that the government announced the ‘suspension’ of the Expatriate Employment Levy.³⁰

4. Nigerian Foreign Investment Law and Policy: Book Review

Two things remain constant in the international petroleum industry: developing countries are geologically favoured with large deposits of hydrocarbon resources globally but lack the financial resources and know-how to develop these resources

London, 2007; Bayo Adaralegbe ‘Local Content and its Discontent: An Examination of Local Content Legal Regimes of Oil Rich Developing Countries’ University of Ibadan CPEEL Lecture 2021.

²⁷ Bayo Adaralegbe ‘Legal Regime for the Assignment of Interests in Nigeria’s Upstream Petroleum Sector: A Critique of *Moni Pulo vs Brass Exploration*, DPR’s 2014 and 2021 Guidelines and the Petroleum Industry Act of 2021’, *Journal of World Energy Law & Business* Volume 15, Issue 1, February 2022: 22–37, <https://doi.org/10.1093/jwelb/jwa b040>.

²⁸ But see the Foreign Corrupt Practices Act of the US, 1977.

²⁹ Section 105 Companies Income Tax Act

³⁰ Damilola Aina ‘FG Suspends the Implementation of the Expatriate Employment Levy’ Punch Newspapers, 8 March 2024, <https://punchng.com/just-in-fg-suspends-implementation-of-expatriate-employment-levy/>.

themselves. Because of the security supply problems regarding their industrialisation and a quest for profit fuelled by capitalism, foreign investors from the West were dominant in hydrocarbon development in developing countries right after the era of the seven sisters that morphed into behemoth multinationals around the world.³¹ The result is that the international petroleum industry largely shapes developments of the law and policy of foreign investments around the world. At the time of publishing the second edition of his book, Professor Kachikwu had had under his belt appointments as General Counsel and Executive Vice Chairman of ExxonMobil Nigeria; Group Managing Director Nigeria National Petroleum Company; Nigerian Minister of State, Petroleum Resources; Chairman of the Organisation of Petroleum Exporting Countries, Visiting Professor in a number of universities, including Harvard, and also author of about twelve books, principally on Contract, Petroleum, Gas and Foreign Investment, a truly rich tapestry of very top-level public, private and international sector experience, as well as scholarly work in the petroleum sector. In that sense, one can hardly think of a more qualified author to produce a work of this nature.

In its Preface to the first edition of the book, the author states that ‘between the time when the first draught of the book was developed and now, over four revisions have had to be made to bring its contents abreast with the jet pace developments that occurred in the legal, tax and policy regime of this field of study’. It has to be pointed out that at that time, the military ruled the country with decrees that did not undergo scrutiny or public hearings; petrodollars still flowed in with ease, especially after the Gulf War; the country’s population was still manageable, and Nigeria was still very much in its phase of hostility towards foreign investments. It was shortly after the publication of the first edition of this book that this hostile era came to a sudden screeching halt and was replaced with a gradual shift that embraced foreign investments. Thus, previous government policy directions of state-owned enterprises funded directly by government subventions gave way to an era of privatisation of these state-owned enterprises and a liberalised economy. For the privatisation program to succeed help was needed foreign investors who possessed the capital required to buy out the government and acquire these state-owned enterprises.³² Ditto liberalisation that not only guaranteed large capital required but also the know-how in areas that the country’s semi-controlled state economy was not previously exposed to, such as telecommunications. This resulted in a raft of laws that were introduced after the first edition of the book that generally affect foreign investments in the country³³ and in specific sub-sectors.³⁴ These major developments eminently justify the publication of this second edition.

In the first edition of the book, the author states that the book ‘is the first book

³¹ Daniel Yergin *The Prize: The Epic Quest for Oil, Money & Power* (Free Press, 1990).

³² Lawrence Azubuike ‘Privatization and Foreign Investments in Nigeria’, *Tulsa Journal of Comparative and International Law*, vol. 13, issue 1, 2005: 59-89.

³³ Public Enterprises (Privatisation and Commercialisation) Act, 1999; Investment and Security Act, 2007; Companies and Allied Matters Act, 1991; Companies and Allied Matters Act (Amended) 2020; Nigerian Investment Promotion Commission Act, 1995; Foreign Exchange (Monitoring and Miscellaneous Provisions) Act, 1995; Finance Act, 2023; Immigration Act, 2015; Federal Competition and Consumer Protection Act, 2018.

³⁴ Electricity Acts of 2005 and 2023; Nigerian Communications Acts of 1999 and 2003; Coastal and Inland Shipping (Cabotage) Act, 2003; Nigerian Maritime Administration and Safety Agency Act, 2007; Nigeria LNG (Fiscal Incentives, Guarantees and Assurances) Act, 1989; Nigerian Oil and Gas Industry Content Act, 2010.

in Nigeria to review the Laws and Policies affecting foreign investment in Nigeria...³⁵ As pointed out, there are a number of solid academic works in the corpus of International Law on the protection of foreign investment. This book, however, does not set out to discuss the outer legal principles in public international law on the protection of foreign investment. Rather, this book is unique and the very first study on how Nigeria treats foreign investment, the laws that support foreign investments, the policy underpinning those laws, the interaction between foreign investment and Nigeria's economy and Nigeria's economic development generally. The book is divided into four parts of 10 chapters containing 273 pages.

In chapter 1 the author describes Nigeria and its complexities, its economic history from the early 1960s and painstakingly traces the country's economic development, the rise of its gross domestic product and its fall and the various economic remedial programs, including the structural adjustment policy of the 1980s. He discusses strategic subsectors like Agriculture, Manufacturing, Banking and Finance and Energy. As will be expected, he also discusses the impact of the oil boom on the economy. He highlights milestone projects and their failings and the civil war. The chapter ends with a discussion of doing business in Nigeria and how Nigeria has fared with the help of rich statistics and drawing very useful comparators with countries like Ghana, South Africa, the United Arab Emirates and Singapore, relying on the World Bank's ease of Doing Business Index of 2018. In chapter 2, he tests popular assumptions concerning foreign investments, especially by Western writers and international economic institutions, i.e. that technology transfer, industrialisation, foreign exchange and capital are the gains of foreign investment. The author briefly discusses the competing theories around foreign investments in developing economies and agrees that foreign investments are beneficial to these economies. He draws on MTN's story in Nigeria and the technology transfer that occurred under the Peugeot Automobile Nigeria project (among others) to justify his conclusion. A graph of Foreign Direct Investment (FDI) inflows into Nigeria between 2008 and 2018 showing a sharp rise of FDI inflows into the country around 2013 and its steady decline afterwards is included.

In chapter 3, the author discusses existing laws that support foreign direct investment and portfolio investment in Nigeria. The mechanics of these laws are explained, such as provisions that deal with registration under the Companies and Allied Matters Act regarding foreign investors; the Nigerian Investment Promotion Commission Act and the full range of protection it offers foreign investors and their investments in Nigeria; the Immigration Act and its requirement for permits that validate the foreigner working in Nigeria; the National Office of Technology Transfer Acquisition and Protection Act and its requirement for registration of certain types of contracts. The chapter also discusses the tax regime and details tax treaties that Nigeria has concluded. In chapter 4, while the author notes that the country's business climate has improved, especially because of efforts to diversify the economy, he explores the various drawbacks that investors encounter in the country and lists uncertainties in fiscal and monetary policies, crude oil volatility and foreign exchange volatility as issues that perennially create problems for investments. He also discusses the country's security situation, poor infrastructure, power, corruption and regulatory constraints. Finally, he discusses the quality of the domestic legal system broadly and specifically its dispute settlement

³⁵ Back cover of the first edition of the book.

system and the land administration system in Nigeria³⁶.

In chapter 5, foreign direct investment policies in Africa and Nigeria are discussed, from an era of initial scepticism that led to restrictions to intense competitions among African states for FDI. He concludes that while the oil sector in Nigeria has done well, the manufacturing sector has done poorly. According to him, the current infrastructure deficit and the need for technology transfer for industrialisation make FDI necessary at this time. He also discusses sustainable investments and takes the view that the lack of quality enabling laws, corruption, lack of transparency and the absence of the rule of law and the need to protect intellectual property to encourage innovation are bound to compromise the high standard of business climate that foreign investors are otherwise used to. In his opinion, land ownership, local legal systems, and tax incentives need to be addressed. In chapter 6 the author painstakingly identifies the incentives that Nigeria has in place for businesses in different phases and categories and different legal instruments and of different types of holidays, tax credits, capital allowances, tax exemptions, duty drawbacks, subsidies, export expansion grants, export development funds, double taxation reliefs, and others. The author refers to guarantees in the Nigerian Investment Promotion Commission Act, such as compensation where there is expropriation; repatriation of profits; and access to the ICSID Centre in the event of disputes. The author also discusses tax and levy waivers under the various Economic/Free Trade Zones available in Nigeria. Finally, he discusses the elaborate incentive provided in the Ease of Doing Business of 2017 available to investors. In his opinion, considering Nigeria's vast human and natural resources, and the debasing of its GDP, Nigeria is under performing in attracting foreign investment. He counsels that, despite its good incentives, attention needs to be paid to an effective and efficient implementation of these incentives for Nigeria to be able to attract optimal foreign investment.

In chapter 7, the author identifies a number of examples of Nigeria's friction with foreign investments – MTN's controversial remittances, and Virgin Atlantic, HSBC and UBS's unfortunate exit from the country. He refers to a number of important policies designed to support the country's treatment/promotion of foreign investment from the '60s and why they failed, notably the import substitution industrialisation and export promotion industrialisation strategy. While this policy was executed successfully by other developing countries (like South Korea), it failed in Nigeria and merely resulted in the creation of assembly plants rather than made in Nigerian goods. The author examines specific industrialisation policies and agencies designed to support foreign investment in Nigeria. For him, to accelerate foreign investments in the country, strong political will, education and human capital development, a viable economic model and the right infrastructure are required³⁷. Agencies discussed in this chapter include the Bank of

³⁶ For a comparative level see Faccio, Sondra. "Investment Contracts and the Reform of Investment Arbitration: Towards Sustainability." *ICSID Review – Foreign Investment Law Journal* 38, no. 3 (Fall 2023): 625–643. <https://doi.org/10.1093/icsidreview/siad026>.

³⁷ For other authors point of view see Vicente Cateia, Júlio, Luc Savard, and Clailton Ataídes de Freitas, "Economic Impacts of Infrastructure Investment with Different Funding Mechanisms: Evidence from Guinea-Bissau," *Cogent Economics & Finance* 10, no. 1 (2022), <https://doi.org/10.1080/23322039.2022.2101226>; and, Tewodaj Mogues and Tolulope Olofinbiyi, "Budgetary Influence under Information Asymmetries: Evidence from Nigeria's Subnational Agricultural Investments," *World Development* 129 (May 2020): 104902, <https://doi.org/10.1016/j.worlddev.2020.104902>.

Industry, Nigeria Investment Promotion Commission (NIPC), Standard Organisation of Nigeria, Nigeria Export Promotion Council, Ogun Guangdong Free Trade Zone, Federal Competition and Consumer Protection Commission, the Ministry of Trade and Industries, United Nations Industrial Development Organisation, and the Presidential Enabling Business Council. It is interesting to note that well before the current administration added the Digital Economy to the Ministry of Communication, the author already called for an introduction of this Ministry in his book stating that it is desirable to harness innovation and the digital revolution.

In chapter 8, the author talks about global conflicts, economic recession, the effect of prices of commodities, and its impact on inflation, foreign exchange, the Nigerian economy and lessons from this overdependence on imports that resulted in the ban of 41 items, inadequate infrastructure, the interstate roads that are being added, lack of access to credits in the Agriculture sector and Small and Medium sized Enterprises and the Central Bank of Nigeria's (CBN) initiative to improve this through a credit culture. The author lists Nigeria's strength as being the largest economy in Africa by GDP, a well-diversified ICT, Agriculture, Solid Minerals, Trade, and Manufacturing sectors. He argues that despite a similar profile in terms of being colonised and being historically agrarian, East Asian economies have achieved far more than African countries and Southeast Asian countries, not because of ideology but because of right policy choices and efficient implementation. According to him, China's business model is public ownership and not a free market and yet it is very successful.

In chapter 9 the author highlights a number of significant trends and a breakdown of FDI statistics into Africa between 2013 and 2017, showing an increase in diversification to sectors other than natural resources with the US, South Africa, the UK, India, and France leading investments into Nigeria. The data shows that the retail and consumer products sector shows promise with 4% FDI, while the Power sector also showed potential. Nigeria leads FDI in Sub-Saharan Africa in the period of review. The author also mentions legal reforms by some countries, such as China and the United Arab Emirate, that have influenced FDI, especially investment screening procedures that have become common. The author argues that manufacturing sectors are hardly affected by foreign ownership restrictions. He also argues that there is a correlation between a country's industrial policies and laws and its FDI. According to him, 2017 represented the lowest number of international investment agreements since 1983 and old generation international investment agreements were undergoing reforms. Investor-State dispute settlement claims were high and about 60% of them were won by investors at the end of 2017. Drawing on useful lessons from previous chapters, the author concludes with chapter 10 and argues that there is evidence that, despite its benefits, Nigeria has not maximised the vast benefits of FDI. He calls on the government to address insecurity, arbitrary tariffs, import and export duties and such other levies. He notes that FDI has been unduly focused on the oil sector without any serious impact on industrial development and calls for a national investment policy with a clear focus on prioritising FDI, especially in sectors such as Agriculture, Mining and Manufacturing³⁸. He says that the existing regulatory framework needs to be improved, there have to be investments in

³⁸ These aspects have been developed in time in the specialized literature: Joseph Dery Nyeadi and Charles Adjasi, "Foreign Direct Investment and Firm Innovation in Selected Sub-Saharan African Countries," *Cogent Business & Management* 7, no. 1 (2020), <https://doi.org/10.1080/23311975.2020.1763650>.

physical and human capital, and regional integration must be taken advantage of as well as a review of external tariffs, while linkages should be deepened, and institutions should be strengthened.

In a country where follow-up editions that update information and perspectives are a rarity, this author must be congratulated for this effort. Even though by its title this book is both on policy as well as law, the author does not mask his immersion and expertise in economic and developmental policy. Nevertheless, legal practitioners – court-going lawyers, as well as transaction and in-house lawyers – will find in this book one of the sharpest tools in their shed. Law teachers would also find the book a very useful aid both for teaching and research. The data, statistics and conclusions drawn in the book provide sufficient basis to support a number of hypotheses. Judges, arbitrators and expert witnesses appearing before them will find several conclusions reached in this book useful to support their analysis and conclusions in investment and even commercial disputes. Public servants, policy moulders in relevant strategic governmental agencies and bodies, such the Ministry of Trade and Investment, Central Bank of Nigeria, Nigeria Investment Promotion Commission, National Office for Technology Acquisition and Promotion, Export Agencies and Free Processing Zones; Legal, Economic and Policy research centres such as the Institute of Advanced Legal Studies, Nigerian Institute of Social and Economic Research, National Institute of Policy and Strategic Studies, as well as international and regional economic bodies and banks, will all surely find this study of immense benefit. Finally, foreign investors operating in Nigeria as well as prospective ones will find in this book a night vision goggle to navigate the sometimes-hazy business/investment environment in Nigeria.

5. Third Edition of the Book: A Proposed Outlook?

This book is not free from shortcomings. The book extols greatly the benefits of foreign investment for a developing economy like Nigeria. Unfortunately, nowhere in the book does the author discuss the ills and risks inherent in foreign investments in developing economies. International not-for-profit organisations and academic writings have copiously documented cases of foreign investors exploiting weak legal systems in developing countries, especially in the Niger Delta area, to abuse human and environmental rights. This has, in turn, resulted in a mushrooming of transnational tort litigation initiated by host oil communities in Nigeria, not in Nigeria, the appropriate forum for these disputes according to public and private international law principles, but in the United States and Europe, especially England and the Netherlands, jurisdictions that are not in any way connected to the disputes. Host communities are turning away from their own national courts the very same way foreign investors are sceptical about these courts.³⁹ More recently, the P&ID judgement that almost caused Nigeria

³⁹ See, for instance, the *Bodo Community & Ors v The Shell Petroleum Development Company of Nigeria Limited*; *Friday Alfred Apan & Anor vs Royal Dutch Shell Plc & Shell Petroleum Development Company of Nigeria*; *Kiobel vs Royal Dutch Petroleum Limited*, all alleged environmental rights/human rights violation cases that occurred in the Niger Delta but that were litigated in English, Dutch and US Courts respectively in the last ten years also See Yakubu Belgore ‘Problems with Oil Pollution Injury Litigation in the Nigerian Legal System: Can Nigerian Litigants Gain access to Courts in England and the USA? (Unpublished PhD Thesis, CEPMLP, Dundee, 2003); Bayo Adaralegbe ‘Nigerian Oil Pollution Claims: Are US Courts Really that Viable?’ ThisdayLaw, Thisday Newspaper June 20, 2006, <https://allafrica.com/sto>

\$11 billion and the seizure of Nigeria's presidential jets in France, both resulting from foreign investment disputes expose what can go terribly awry with foreign investments in a developing country. The Attorney General of the Federation recently inaugurated a seven-man committee under the chairmanship of the former Attorney General of Lagos State, Olasupo Sashore, SAN, to, among others, review agreements concluded by the government for Accelerated Gas Development Projects in order to avoid 'potential landmines or other forms of liability and achieving a final closure against predatory investors'.⁴⁰ A second committee was simultaneously set up to review Bilateral Investment Treaties and the Nigerian Investment Act. It is important to note that in the country's quest to attract foreign investments, while, as pointed out, there have a lot of reforms in our laws and through the introduction of conventions and treaties that Nigeria has concluded to improve foreign investment treatment and protection in Nigeria, this is the very first time that Nigeria will be assessing (and hopefully addressing) the risks inherent in foreign investment. In that sense Nigeria may well be entering a fourth phase of its approach to foreign investments.

This writer would have been happier if the author had devoted some time to the introduction of Bilateral Investment Treaties, their workings and effect on foreign investments in the country. As Kachikwu's data shows in this book, the US is one of the leading sources of foreign investment in Nigeria. Yet, Nigeria and the US have not concluded any BIT of arrangement. What are the lessons to be drawn from this by Nigeria and other developing countries? Are BITs (that home countries increasingly depend on to protect their investors and investment) overrated and oversold to developing countries? The Nigerian Investments and Securities Tribunal, created under the Nigerian Investment Securities Act and mentioned in chapter 9 of the book, is not an international tribunal that can deal with foreign investment disputes as contemplated by foreign investors and their home countries. Also, it would have been good to see a discussion around the legal efficacy of stabilisation laws. Nigeria LNG (Fiscal Incentives, Guarantees and Assurances) Act stands alone in the country today with this provision, while the Petroleum Industry Act seeks to blunt the effect of stabilisation clauses in Production Sharing Contracts. Is this such a sound idea? Stabilising the fiscal regime of foreign investments, especially in energy projects, with a long gestation, is now a huge concept today and has generated a lot of interest in academic works⁴¹ and in the jurisprudence of Investor-State Treaty Arbitration. While the first edition of the book contained a rich bibliographical section, this is missing in the second edition. The author must, however, be commended for using footnotes in this second edition, as against end notes that were used in the first edition of the book. End notes can make reading very tedious.

Finally, in at least one reference, the date of the article cited is not provided (footnote 124 page 50), while footnote 241 does not carry any information.

ries/200606200760.html, p. 42.

⁴⁰ See John Chucks Azu 'Nigeria: P&ID-FG Raises Committee to Audit Agreements, Agdp MOUs' allAfrica.com, <https://allafrica.com/stories/20241110301.html>, visited on 14 November 2024.

⁴¹ See for instance, Peter D. Cameron *International Energy Investment Law: The Pursuit of Stability* (Oxford University Press, 2nd Edition, 2021).

6. Conclusions

In conclusion, Kachikwu's work remains a significant contribution to the understanding of Nigeria's foreign investment framework, offering a nuanced analysis of the enduring tension between sovereign regulatory authority and the demands of international investment protection in a historically and politically complex environment.

Considering the state of our economy, it is fair to say that more reforms are bound to take place in the policy and law of foreign investments. As Nigeria evolves on its journey to attract more foreign investments, it is important to also create guardrails to ensure the country and its people do not suffer from the inherent risks of foreign investment. I therefore look forward to welcoming the third edition of this very useful book and congratulate its author for a job well done.

Bibliography

1. Achebe, Ifeanyi, 'The Legal Problem of Indegenisation in Nigeria: A Lesson for Developing Countries', *Hastings International Comparative Law Review*, vol. 12, no. 3, 1989.
2. Adaralegbe, Bayo, 'Legal Regime for the Assignment of Interests in Nigeria's Upstream Petroleum Sector: A Critique of *Moni Pulo vs Brass Exploration*, DPR's 2014 and 2021 Guidelines and the Petroleum Industry Act of 2021', *Journal of World Energy Law & Business* Volume 15, Issue 1, February 2022: 22–37, <https://doi.org/10.1093/jwelb/jwa b040>.
3. Adaralegbe, Bayo, 'Nigerian Oil Pollution Claims: Are US Courts Really that Viable?' *ThisdayLaw*, *Thisday Newspaper* June 20, 2006, <https://allafrica.com/stories/200606200760.html>.
4. Amucheazi, Chibike, Chidebe Matthew Nwankwo, and Fochi Nwodo, "A Reassessment of the Challenges of Enforcement of Foreign Judgments in Nigeria: The Need for Legislative Reform to Ease Business," *Journal of Private International Law* 20, no. 2 (2024): 473–499, <https://doi.org/10.1080/17441048.2024.2377407>.
5. Azubuike, Lawrence, 'Privatization and Foreign Investments in Nigeria', *Tulsa Journal of Comparative and International Law*, vol. 13, issue 1, 2005: 59–89.
6. Balcerzak, Filip and Konrad Turnbull, "The Role of Customary International Law in International Investment Law Remedies: The Curious Case of Natural Resources," in Panos Merkouris et al. (eds.) *Custom and Its Interpretation in International Investment Law*, (Cambridge: Cambridge University Press, 2024), 284–306.
7. Blankenheimer, Bernard, 'The Foreign Investment Climate in Nigeria', *Vanderbilt Journal of Transnational Law*, vol. 10, issue 4, Fall 1977: 589–600.
8. Bradlow, Daniel D. & Alfred Escher (eds.). *Legal Aspects of Foreign Direct Investment* (Kluwer Law International, 1999).
9. Cameron, Peter D., *International Energy Investment Law: The Pursuit of Stability* (Oxford University Press, 2nd Edition, 2021).
10. Cateia, Júlio Vicente, Luc Savard, and Clailton Ataídes de Freitas, "Economic Impacts of Infrastructure Investment with Different Funding Mechanisms: Evidence from Guinea-Bissau," *Cogent Economics & Finance* 10, no. 1 (2022), <https://doi.org/10.1080/23322039.2022.2101226>.
11. Delupis, Ingrid, *Finance and Protection of Investment in Developing Countries* (Gower Press Ltd, 1973).

12. Ekwueme, Khrushchev, *Protection of Foreign Investment in Context: Nigeria's Investment Laws, Treaties and Petroleum Agreements* (Nomos Verlagsgesellschaft, 2007).
13. Elias, Teslim O., *Modern Law of Treaties* (Oceana, 1974).
14. Fatourous, Arghyrios A., *Government Guarantees of Foreign Investment* (Columbia University Press, 1962).
15. Jerome F. Donovan 'Nigeria: Still Safe for US Investors', *Vanderbilt Journal of Transnational Law*, vol. 10, issue 4, Fall 1977: 601-612.
16. Kachikwu, Emmanuel Ibe, *Nigerian Foreign Investment Law and Policy* (Mikzek Law Publications Limited, 1988).
17. Kandogan, Yener, "Destination of Foreign Investment and Trade from Autocratic Countries," *Emerging Markets Finance and Trade* (2025): 1–14, <https://doi.org/10.1080/1540496X.2025.2559925>.
18. Khan, Sarah A., *Nigeria: the Political Economy of Oil* (Oxford University Press, 1994).
19. Lillich, Richard B. 'The Law Governing Disputes Under Economic Development Agreements: Re-examining the Concept of 'Internationalisation' in Lillich, R. B. and C. N. Brower (eds) *International Arbitration in the 21st century: Towards 'Judicialisation' and Uniformity?* (Transnational Publishers, 1994.)
20. Mogues, Tewodaj and Tolulope Olofinbiyi, "Budgetary Influence under Information Asymmetries: Evidence from Nigeria's Subnational Agricultural Investments," *World Development* 129 (May 2020): 104902, <https://doi.org/10.1016/j.worlddev.2020.104902>.
21. Nwogugu, Edwin I, *The Legal Problems of Foreign Investment in Developing Countries* (Manchester University Press, 1963).
22. Nyeadi, Joseph Dery and Charles Adjasi, "Foreign Direct Investment and Firm Innovation in Selected Sub-Saharan African Countries," *Cogent Business & Management* 7, no. 1 (2020), <https://doi.org/10.1080/23311975.2020.1763650>.
23. Omiunu, Ohiocheoya (Ohio) and Ifeanyichukwu Azuka Aniyie, "Evidence of Subnational Government Sovereign Boundary Percolation in Nigeria," *Regional & Federal Studies* 34, no. 3 (2024): 293–313, <https://doi.org/10.1080/13597566.2024.2306546>.
24. Osunbor, Oserheimen A., 'Nigeria's Investment Law and State Control of Multinationals' *ICSID Review Foreign Investment Law Journal* Vol. 3 Nol (1988).
25. Pogany, Stephen I., 'Economic Development Agreements' *ICSID Review Foreign Investment Law Journal*, Vol. 7 No (1992).
26. Pritchard, Robert (ed) *Economic Development, Foreign Investment and the Law* (Kluwer Law International, 1996).
27. Roth, Andreas H, *The Minimum Standard of International Law Applied to Aliens* (A. W. Sijthoff, 1949).
28. Sondra, Faccio. "Investment Contracts and the Reform of Investment Arbitration: Towards Sustainability." *ICSID Review – Foreign Investment Law Journal* 38, no. 3 (Fall 2023): 625–643. <https://doi.org/10.1093/icsidreview/siad026>.
29. Sornarajah, Muthucumaraswamy, *The International Law on Foreign Investment* (Cambridge University Press, 5th Edition, 2021).
30. Weil, Prosper, 'The State, the Foreign Investor and International Law: No Longer a Stormy Relationship of a Menage a Trois' *ICSID Review Foreign Investment Law Journal*, vol. 15 No. 2 (2000) 401–406.
31. Yergin, Daniel, *The Prize: The Epic Quest for Oil, Money & Power* (Free Press, 1990).
32. Zhong, Mariana and Zeyu Huang, "Substantive Protections: A Comprehensive Analysis of the Complexities of Expropriation in International Investment Law," *Global Arbitration Review*, Insight, October 27, 2025, <https://globalarbitrationreview.com/>

guide/the-guide-investment-treaty-protection-and-enforcement/third-edition/article/substantive-protections-comprehensive-analysis-of-the-complexities-of-expropriation-in-international-investment-law.