Analyzing the Legal Regime For International Investment Arbitration In Nigeria Under the International Centre For Settlement of Investment Disputes

John Funsho Olorunfemi[1]
Musa Godwin Omale[2]
Helen Ibiere Jumbo[3]

Abstract

International investment arbitration under the ICSID framework represents a distinct regime of investor–State dispute settlement (ISDS), characterized by its delocalized structure, limited judicial interference, and self-contained enforcement mechanism. This paper critically examines Nigeria's legal regime governing ICSID arbitration, focusing on the interaction between the ICSID (Enforcement of Awards) Act, the Nigeria Investment Promotion Commission Act, and the Arbitration and Mediation Act 2023. Using a doctrinal methodology grounded in statutory analysis, arbitral jurisprudence, and comparative authority, the study interrogates issues of consent, jurisdiction, tribunal constitution, third-party funding, security for costs, annulment, and enforcement. Particular attention is paid to the constitutional and procedural implications of automatic recognition and enforcement of ICSID awards by the Supreme Court of Nigeria, as well as the tension between treaty-based enforcement obligations and the doctrine of sovereign immunity at the execution stage. The paper evaluates whether Nigeria's framework adequately balances investor protection with state sovereignty, especially in light of evolving global reform debates and the 2022 ICSID Rules. The study finds that although Nigeria has maintained an arbitration-friendly posture since ratifying the ICSID Convention, ambiguities persist within its enforcement architecture. Specifically, the absence of a defined limitation period for filing ICSID awards may generate procedural uncertainty, particularly where annulment proceedings are pending. The paper recommends targeted procedural reform through judicial rule-making to enhance coherence, constitutional clarity, and predictability within Nigeria's investment arbitration regime.

Keywords: Appointment of Arbitrators, Arbitral Review Tribunal, Enforcement of Awards,ICSID, International Investment Arbitration, Nigeria, Sovereign Immunity

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[1] Ph.D; BL,Reader,Faculty of Law, University of Nigeria, Enugu Campus. Email: John.olorunfem@unn.edu.ng . Corresponding Author

[2]Ph.D; BL Deputy Comptroller General, Nigeria Customs Service, musaomale6@gmail.com

[3]Ph.D ; BL) Research fellow, Faculty of Law, University of Aberdeen, Scotland Email: ibiere.jumbo.16@aberdeen.ac.uk

1. Introduction

International investment arbitration, commonly described as Investor–State Dispute Settlement (ISDS), provides a neutral framework for resolving disputes between foreign investors and host States. In fact, international commercial arbitration and investment treaty arbitration are close relatives.[4]

In much that is written today about international arbitration there is a distinction made between what is referred to as commercial arbitration-the arbitration of disputes between parties to contracts with arbitration clauses-and so called and investment arbitrations, disputes between host nations and investors. Investment arbitration is undertaken to resolve disputes between a foreign investor and host state and is also known as investor-State Dispute Settlement (ISDS), and differs from an International Commercial Arbitration (ICA) dispute due to the nature of the claim and the parties involved. They are commonly not covered by the general literature on commercial arbitration[5].

The international center for settlement of investment Disputes (ICSID) was established by the convention on the settlement of investment Disputes (ICSID Convention)[6] between states and Nationals of other states on March 18 1965. It came into force on October 14 1966. ICSID arbitrations bring into play a collection of practice areas, making it a relatively specialized subject; in particular its proceedings and by a complex interplay of conventional and International themes which are in most cases governed by International law.[7]

Nigeria occupies a significant position within this architecture. It ratified the ICSID Convention in 1965 and enacted the ICSID (Enforcement of Awards) Act to domesticate its obligations. In addition, the enactment of the Arbitration and Mediation Act 2023 (AMA 2023), modernised Nigeria's general arbitration framework and aligned domestic law more

[4]Stephan Wilske, Martin Raible & Lars Markert, 'International Investment Treaty Arbitration and International Commercial Arbitration – Conceptual Difference or Only a "Status Thing"?' (2008) 1 Contemp. Asia Arb. J. 213

[5]Christian Bühring-Uhle, Lars Kirchhoff & Gabriele Scherer, Arbitration and Mediation in International Business (2nd ed, Kluwer Law International 2006) 35-36;

[6]ICSID Convention, Regulations and Rules https://icsid.worldbank.org/resources/rules-and-regulations/convention/overview (accessed 20 September 2025); Nigeria is the first to ratify the ICSID convention. ICSID Annual Report 2025, see https://www.google.com/url?sa=t&source=web&rct=j&opi=89978449&url=https://icsid.worldbank.org/sites/default/files/publications/ICSID_AnnualReport2025_ENG.pdf&ved=2ahUKEwjV6N798-WSAxVKWkEAHb6gIbMQFnoECB0QAQ&usg=AOvVaw3Bs6Eobo4nDo8bSy4Um-Zg (Accessed 19 February 2026). See also World Bank Group 60 years of ICSID ; https://icsid.worldbank.org/sites/default/files/documents/ICSID%20Timeline%20-%2060%20years%20of%20ICSID.pdf?utm_ (Accessed 19 February 2026).

[7] Julian D.M. Lew, Loukas A. Mistelis & Stefan M. Kröll, Comparative International Commercial Arbitration (Kluwer Law International 2003) 5.

closely with the UNCITRAL Model Law. Together with the Nigeria Investment Promotion Commission Act (NIPC Act), these instruments constitute the backbone of Nigeria's legal regime for investment arbitration.

Despite this apparently robust framework, Nigeria's experience in recent high-profile disputes—including the arbitration underlying Federal Republic of Nigeria v Process & Industrial Developments Ltd[8] and the award rendered in Zhongshan Fucheng Industrial Investment Co Ltd v Federal Republic of Nigeria[9], has exposed structural tensions within its investment arbitration regime. These disputes have raised fundamental questions regarding the scope of consent to ICSID arbitration, the constitutional coherence of automatic award recognition by the Supreme Court, and the practical limits imposed by sovereign immunity at the execution stage.

This article critically interrogates whether Nigeria's ICSID implementation framework adequately balances three competing imperatives:

(1) investor protection and arbitral finality;

(2) constitutional supremacy and fair hearing guarantees; and

(3) preservation of sovereign immunity in execution proceedings.

While the literature has largely focused on doctrinal explanations of ICSID procedures, insufficient attention has been paid to the constitutional implications of Nigeria's enforcement model and its interaction with domestic judicial power.

Consequently, the paper attempts to address the following research questions;

1. How effectively do Nigerian domestic statutes—particularly the AMA 2023 and the Nigeria Investment Promotion Commission Act—facilitate or complicate consent to investor–State arbitration under ICSID?

2.To what extent is Nigeria's implementation of the ICSID Convention through the ICSID (Enforcement of Awards) Act constitutionally coherent, particularly regarding automatic recognition and enforcement of awards by the Supreme Court?

3. Does Nigeria's ICSID regime strike an appropriate balance between investor protection and the preservation of state sovereignty, especially in light of sovereign immunity at the execution stage?

4. Should Nigeria reform its ICSID enforcement framework—particularly regarding limitation periods for filing awards—to enhance procedural fairness without undermining the finality principle of ICSID arbitration?

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[8] [2023] EWHC 2638 (Comm)

[9] No. 23-7016, 2024 WL

Adopting a doctrinal and comparative methodology, this study analyses the interaction between the ICSID Convention, the ICSID (Enforcement of Awards) Act, the AMA 2023, and relevant case law. It argues that although Nigeria has embraced arbitration as a tool for investment promotion, aspects of its enforcement structure remain under-theorised and potentially vulnerable to constitutional challenge. The article proposes measured procedural reforms—particularly regarding limitation periods for filing ICSID awards and clearer regulation of execution against State assets to strengthen coherence between international obligation and domestic constitutional order.

By situating Nigeria's regime within broader debates on delocalisation, sovereign immunity, and arbitral legitimacy, the article contributes to the evolving scholarship on the domestic constitutionalisation of investor–State arbitration.

2. Nature of International Investment Disputes

Typical examples of investment disputes are disagreements within the Petroleum industry. Petroleum disputes can arise from concession agreements between Nigeria and a concessionaire, in the bid by an international investor, to acquire the right for a term of years to produce and sell petroleum subject to the payment of necessary fees and levies by the concessionaire to the Federal Government of Nigeria, (usually represented by Nigerian National Petroleum Company (NNPC). Disputes can also arise from production sharing contracts under which international investors such as Shell Petroleum Development Company of Nigeria, Chevron Texaco Nigeria Ltd, Exxon Mobil Producing Nigeria Unltd, Agip Oil Company, Total Fina Elf Petroleum Nigeria Limited and Pan Ocean Oil Corporation[10] there is also pure service or risk service contracts whereby the investor provides services in consideration of payment of remunerations. Agip Energy and National Resources Nigeria Limited, Elf Aquitaine Nigeria Services Limited and Nigus Petroleum are among international companies that have entered into such service contracts.

Thus, when a contracting party (say the NNPC) alters its existing contractual obligation or denies contractual right of a foreign investor, or where the foreign investor decides to breach the basic terms of the contract, disputes are bound to arise.

[10]See generally, John Funsho Olorunfemi,'Section 11 of the Nigerian Petroleum Act is Empty'(2010) 2(1) Petroleum, Natural Resources and Environmental LawJournal1-22 https://www.researchgate.net/publication/322273684_SECTION_11_OF_THE_2004_NIGERIAN_PETROLEUM_ACT_IS_EMPTY.(Accessed 3 September 2025).

The sharing of profits and losses under joint venture agreements constitutes another avenue for investment disputes. This may come in the form of equity shares or non-equity participation. The applicable law in the enforcement of the contracts could also be a source of investment disputes.[11]

3. Consent to arbitrate under ICSID

Even though most of these aforementioned disputes are subject to arbitration, some investment disputes are reserved for the national courts because of their nature, and at times, because of the agreement of the parties to exclude arbitration as one of the dispute resolution mechanisms. For instance, Honduras' denunciation of the ICSID Convention in February 2024 effectively excludes ICSID arbitration for future investment disputes, reserving them for national courts or alternative domestic mechanisms to assert sovereign control.[12] Similarly, the United Kingdom's withdrawal from the Energy Charter Treaty, announced in February 2024 and effective from February 2025, removes access to international arbitration for certain energy-related investment disputes, channeling them towards national judicial systems.[13]

This situation is not peculiar to these countries. In some Arab States, for example, under the United Arab Emirates' amended Federal Law No. 3 of 2022 on Commercial Agencies, effective from June 2023, disputes arising from commercial agency contracts must first be heard by the Commercial Agencies Committee, with arbitration only possible thereafter, thereby initially reserving jurisdiction to a national body.[14]More particularly, Venezuela's Foreign Direct Investment Law of 2014 mandates that all foreign investments are subject to the jurisdiction of Venezuelan courts, thereby requiring disputes to be resolved domestically without recourse to international arbitration.[15] The legislators and courts in each country must balance the domestic importance of promoting trade and commerce and the settlement of disputes.[16]

[11]ibid

[12] International Centre for Settlement of Investment Disputes (ICSID), "Notice of Denunciation of the ICSID Convention by the Republic of Honduras," 24 February 2024,https://icsid.worldbank.org/news-and-events/communiques/honduras-denounces-icsid-convention, accessed 19th February 2026.

[13] United Kingdom Energy Charter Treaty Withdrawal Notice, announced 22 February 2024, effective 22 February 2025.https://www.gov.uk/government/news/uk-withdrawal-from-the-energy-charter-treaty. accessed 19th February 2026.

[14] United Arab Emirates Federal Law No. 3 of 2022 on Commercial Agencies, effective 1 June 2023.

[15] Venezuela Foreign Direct Investment Law, Decree No. 1.258, enacted 6 October 2014.

[16]See M Sornarajah, The International Law on Foreign Investment (Cambridge University Press 1994) 9; E I Nwogugu, The Legal Problems of Foreign Investment in Developing Countries (Manchester University Press 1965) 65

Parties are also free to adopt ICSID or submit to other arbitrations under the Nigeria Investment Promotion Commission (NIPC) Act[17] or under the Nigerian Liquefied Natural Gas (Fiscal Incentives, Guarantees and Assurance) Act (NLNG Act)[18] depending on the nature of dispute

An aggrieved share holder in the company can issue a letter of notification to the government, formally notifying government and the other shareholders of a dispute in respect of a substantial matter arising from the provisions of the NLNG Act to government representatives in accordance with paragraph 22 of the schedule to the Act who shall make serious efforts to resolve amicably such dispute. But in the event of failure to reach amicable settlement within 90 days of the letter of notification such dispute maybe submitted to arbitration before the ICSID.

The NIPC Act, by virtue of section 26 thereof also provides that:

> (1) Where a dispute arises between an investor and any government of the federation in respect of an enterprise to which this Act applies, all efforts shall be made through mutual discussion to reach an amicable settlement.
>
> (2) Any dispute between an investor and any government of the federation in respect of an enterprise to which this Act applies which is not amicably settled through mutual discussion may be submitted at the option of aggrieved party to arbitration.
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> (3) Where in respect of any dispute, there is disagreement between the investor and the Federal Government as to the method of dispute settlement to be adopted, the International Centre for Settlement of Investment Dispute rules apply.

The AMA 2023 provides the overarching legal framework for arbitration in Nigeria, including implications for consent in investment disputes. Section 1 of the AMA delineates the scope of application, stating that the Act applies to all commercial arbitrations (domestic and international) conducted in Nigeria or where the seat is Nigeria, unless parties agree otherwise, emphasizing the enforceability of arbitration as a primary dispute resolution method. This implies that consent to arbitration can manifest through various channels beyond traditional clauses, such as statutory provisions or treaties, to promote access to justice and efficient resolution.

For normal commercial arbitration, consent is formalized in an arbitration agreement as contained in Section 2 of the AMA, which requires the agreement to be in writing (, in a

[17]Nigerian Investment Promotion Commission Act, Cap N117,LawsoftheFederationofNigeria (LFN) 2004
[18] Nigeria Liquefied Natural Gas (Fiscal Incentives, Guarantees and Assurances), (NLNG) Act, Cap N87, LFN 2004

contract clause, separate agreement, or electronic form) and covers disputes arising from a defined legal relationship. This provision mirrors Article 7 of the United Nations Commission on International Trade Law (UNCITRAL) Model Law on International Commercial Arbitration, which similarly defines and requires a written form for arbitration agreements to ensure certainty and enforceability, allowing comparison to other methods like court referrals or statutory mandates.

In contrast, under investment arbitration, consent can be found not only in direct agreements but also in bilateral investment treaties (BITs), multilateral agreements, or domestic laws that unilaterally offer arbitration to investors. For instance, laws like the Nigeria Liquefied Natural Gas (Fiscal Incentives, Guarantees and Assurances) Act specifically mention submission to ICSID for certain disputes, serving as a standing offer of consent from the state to qualifying investors, without needing a separate arbitration agreement. This flexibility in investment arbitration enhances investor confidence by bypassing potential biases in national courts and aligning with international standards.

It is up to the parties to determine the type of investment disputes that they desire to have decided under ICSID. ‘’Consent to such arbitration is to the exclusion of any other remedy in accordance with Section 26 (3)(a) of the NIPC Act".

In Interocean Oil Development Company & Interocean Oil Exploration Company v. Federal Republic of Nigeria[19], two U.S. companies (Interocean) alleged that they lost investment in Pan Ocean Oil Company which held interests in OML 98 and OPL 275 licences due to actions by Nigerian actors. Claims were brought under Nigeria’s domestic investment law (the Nigerian Investment Promotion Commission Act, “NIPC Act”), with arguments grounded in breach of customary international law principles, including indirect expropriation, denial of justice, and state responsibility. Nigeria raised jurisdictional objections (e.g., non-registration with the NIPC), and attempted to disqualify tribunal members, but the tribunal maintained jurisdiction. On 6 October 2020, the ICSID Tribunal dismissed all claims on the merits, concluding Nigeria did not breach its obligations or unlawfully deprive Interocean of its investment. Significant costs were awarded against the claimants. The Tribunal’s jurisdiction was upheld even though claims were based solely on Nigeria’s domestic investment statute, not a bilateral investment treaty. This expanded the scope of investor-state arbitration beyond traditional treaty bases. The Tribunal accepted that customary international law obligations (e.g., against expropriation) could be asserted under

[19] ICSID Case No. ARB/13/20

the NIPC Act — enriching investment law jurisprudence by bridging domestic statutory protections with customary international standards. The decision clarified that state responsibility requires a high standard of attributable conduct, and private or third-party actions that do not equate to state action will not give rise to liability, a significant interpretive stance for future claims.

The key provisions relating to denunciation of awards under the ICSID convention can be placed in contradistinction to the position at the AMA 2023, which deals with revocability of arbitration agreements. Section 3 of AMA provides that an arbitration agreement is irrevocable, except by the agreement of the parties or the leave of court. The court has upheld the sanctity and irrevocability of arbitration agreement due to it being a contract which ordinary laws of contract applies to, as can be gleaned from the case of Misr (Nig.) Ltd. v. Salah El Assad[20].

Articles 70-72 of the ICSID Convention govern the denunciation and withdrawal of the consent of a party to arbitrate. Except the parties reserved their rights to unilaterally withdraw their consent they are usually bound by the consent to arbitrate.

It was held in Blue Bank International and Trust (Barbados) Ltd. v Bolivarian Republic of Venezuela[21] that Venezuela's withdrawal from ICSID did not affect cases filed before its effective withdrawal date. However, National laws and investment treaties can be amended to revoke consent before the commencement of an ICSID proceeding. In Philip Morris Brand SARL, Philip Morris products S.A. and Abal Herman's S.A. v Oriental Republic of Uruguay[22], it was held by the tribunal that once consent has been perfected, it could not be unilaterally revoked.

National courts have, or are at least perceived to have, an inherent prejudice. Judges who are usually drawn from a nationality may not necessarily be able to maintain the neutrality required to settle disputes arising from international business transactions or even disputes between parties from different countries. The procedure followed in National courts is in accordance with the law set down on each state. These are major limitations to litigation as an appropriate dispute resolution mechanism for the settlement of international investment disputes.

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[20](1971) 1 All N.L.R. 172

[21] ICSID case No. ARB 12/20 (5)

[22] ICSID Case No. ARB /10/7(6) See also Aron Broches Mathew C. Porterfield "Aron Broches and the withdrawal of unilateral offers of consent to investor-state arbitration" (August 2014) <https://www.iisd.org/itn/en/2014/08/11/aron-broches-and-the-withdrawal-of-unilateral-offers-of-consent-to-investor-state-arbitration/> accessed 12 September 2025

4. Appointment of arbitrators under ICSID

ICSID comprises a governing body, the Administrative Council and the secretariat with its principal office in ICSID . It maintains a panel of conciliators and a panel of Arbitrators with high moral character and recognized competence in the fields of law, commerce, industry or finance.[23]. The tenure of panel members has a renewable period of six years.[24]

The challenge to the appointment of an arbitrator under ICSID is similar to that of other arbitral legal regimes in that the grounds for challenge are based on lack of Independence and bias. The additional grounds of manifest lack of quality[25] is however elastic and amorphous. Relevant judicial decisions however, interpret this concept of manifest lack of quality to include namely, the strict Standard, the reasonable doubt standard and the appearance of bias standard.[26] The burden of proof is on the party applying for the disqualification of an arbitrator.[27] The standard of proof is not higher than those required for the challenge of an arbitrator for normal international commercial arbitration.[28]

In Nigeria, the appointment of arbitrators is governed by the AMA. Section 6 of the AMA addresses the number of arbitrators, allowing parties to agree on the number (defaulting to three if not specified), while Section 7 outlines the general appointment procedure, emphasizing freedom of choice and nationality non-discrimination. However, Section 59 of the AMA applies strictly to international commercial arbitration, providing tailored rules for such cases, including that no person shall be precluded by nationality unless parties agree otherwise. In default of party agreement on appointment, the designated appointing authority (, a court or institution specified in the agreement or under the Act) intervenes to appoint arbitrators, differing from the ICSID system where appointments are drawn from a pre-established panel of arbitrators maintained by the Centre, with the Chairman making default appointments if needed.[29]

This contrast highlights ICSID's specialized, institutionalized approach versus the AMA's more flexible, party-driven mechanism with fallback to an appointing authority. The grounds

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[23] ICSID Convention Articles. 3 and 4

[24] *Ibid* Article 15

[25] *Ibid*, Article 14.

[26] *Sayak Chatterjee & Ankit Singh, 'Standards of Disqualification of an Arbitrator under the ICSID Convention' (2019) 1 Indian Arbitration Law Review 156*

[27] ICSID Art 57.

[28] *Fábrica de Vidrios Los Andes, C.A. and Owens-Illinois de Venezuela, C.A. v Bolivarian Republic of Venezuela (ICSID Case No ARB/12/21) Reasoned Decision on the Proposal for Disqualification of Arbitrator L Yves Fortier, QC (28 March 2016); Nations Energy, Inc and others v Republic of Panama (ICSID Case No ARB/06/19) Decision on the Proposal to Disqualify Dr Don M Wallace, Jr (7 September 2011)*

[29] J. F. Olorunfemi et al., "Raising the Bar on Appointment of Arbitrators Under the Arbitration and Mediation Act 2023" International Arbitration Law Review, (2024) Issue 3, 207-220.

for challenge under the AMA (Section 8) include circumstances giving rise to justifiable doubts about the arbitrator's independence or impartiality, or lack of agreed-upon qualifications, which are similar to ICSID's grounds but applied through a challenge procedure involving the tribunal or appointing authority.

5. Conduct of Arbitral Proceedings under ICSID

Under the ICSID Convention and Rules, parties have significant autonomy in determining the arbitral procedure. They may agree on the rules governing the proceedings, including adopting institutional rules such as the ICSID Arbitration Rules or customizing their own procedures to suit the dispute. If the parties fail to agree on the procedure, the tribunal has the authority to determine the rules, ensuring fairness, efficiency, and compliance with the Convention (under Article 44 of the ICSID Convention). This default mechanism prevents procedural deadlocks and allows the tribunal to adapt to the specific needs of the investment dispute. The scope of the jurisdiction of ICSID is limited both as to eligible parties and as to the subject matter.[30] As is the case with the international Court of Justice (ICJ), the Convention permits a Tribunal, constituted under it, to decide a dispute ex et bono if the parties so agree.[31] In 1978, ICSID issued what is known as ICSID Additional Facility Rules. the ICSID Secretariat may under the additional facility Rules, administer arbitration or conciliation proceedings between a State and a National of another State which do not fall within the provision of the ICSID Convention.

The Additional Facility Rules allow ICSID to administer arbitration or conciliation proceedings outside the strict jurisdictional limits of Article 25 of the ICSID Convention.

They apply where either the State or the investor's home State is not a Contracting State, or the dispute does not arise directly out of an "investment" as required by Article 25. Unlike Convention arbitration, additional Facility awards do not benefit from Article 54 automatic enforcement and must be enforced under the New York Convention or domestic arbitration laws.

In short, the Additional Facility expands ICSID's administrative reach but lacks the self-contained enforcement regime of Convention awards. This additional facility is said to be

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[30]*Ibid* Art 25(1)

[31] See Atlantic Triton Company Limited v People's Revolutionary Republic of Guinea (ICSID Case No ARB/84/1) Award (21 April 1986); Statute of the International Court of Justice, art 38(2)

available where, for instance one of the parties is not a contracting State or the national of a contracting State[32].

Nwakoby[33] explains that since the proceedings are not under the provisions of ICSID Convention, they generally depend on the national laws for their efficacy and, by virtue of article 20 of the Additional Facility Rules, the proceedings may only be held in countries which are parties to the Convention on the Recognition and Enforcement of Foreign Arbitral Awards(New York Convention) so that the resultant award will be deemed to be Convention award and enforceable as such.

Issue on jurisdiction can be taken during the arbitral proceedings as preliminary point but the arbitrators reserve the right to take this point at the conclusions of arbitral proceedings even though there are usually fewer cases of successful attack on jurisdiction probably due to the diligence of the Centre to take necessary precautionary steps.[34]

The jurisdiction of ICSID tribunals is primarily determined under Article 25 of the ICSID Convention, requiring a legal dispute arising directly out of an investment, involving a Contracting State and a national of another Contracting State, with written consent. In the Nigerian context, this is supported by the AMA, particularly Section 14, which enshrines the competence-competence principle, allowing the arbitral tribunal to rule on its own jurisdiction, including objections regarding the existence or validity of the arbitration agreement. This aligns with the delocalized nature of ICSID proceedings while ensuring domestic enforceability.

Jurisdiction therefore does not only mean the authority of the Centre to determine disputes but, rather, describes the disputes which are amenable to arbitration at ICSID and the requirements which must be satisfied for parties to have their dispute resolved under the auspices of ICSID.[35]

Firstly, arbitrators have to use the law chosen by the parties to the dispute. Secondly, in case of absence of such a choice, the tribunal shall apply the law of the Contracting State

[32]G.C Nwakoby, The Law and Practice of Commercial Arbitration in Nigeria (2nd ed, Iyke Ventures Production 2004) 201

[33]*Ibid.*

[34]See, for example, Československa obchodní banka, a.s. v Slovak Republic (ICSID Case No ARB/97/4) Decision of the Tribunal on Objections to Jurisdiction (24 May 1999) (1999) 14 ICSID Rev—FILJ 251, 256.

[35]RossP.Buckley,SomeJurisdictionalDifficultieswithAustralia'sRatificationoftheICSIDConvention,2AsiaPAC.L. REV.92(1993).

party to the dispute (including its rules on the conflict of laws) and such rules of international law as may be applicable.

ICSID amended Arbitration Rules 2022 introduces some significant reforms among which is the provision on Third Party Funding (TPF) under Rule 14. TPF refers to an arrangement where a non-party finances a claimant's arbitration in exchange for a share of any award.

The rule requires the disclosure of the existence and identity of third-party funders.

The purpose is to prevent conflicts of interest and enhance transparency.

ICSID does not prohibit TPF but regulates it through disclosure obligations. TPF raises issues of: arbitrator independence, security for costs, and promotes Access to justice and discourage speculative claims. Another reform is the introduction of security for costs, which is a procedural measure requiring a claimant to provide financial assurance that it can pay an adverse costs award.

Under Rule 53, Tribunals may order security where justified. The requesting party must show circumstances such as: financial instability of claimant, abuse of process, presence of third-party funding combined with inability to satisfy costs. ICSID tribunals should therefore exercise caution because Investment arbitration is premised on access to justice and excessive security orders may deny legitimate claims.

In contrast Section 61 of the AMA Abolishes the common law torts of maintenance and champerty, legitimising TPF in Nigeria.

Section 62 also Imposes mandatory disclosure of the funder's name and address to the tribunal and parties, required at the commencement or immediately after an agreement is made. It also allows tribunals to order security for costs while Section 91(1): Defines "Third-party funder" and "Third-party funding arrangement".

6. Revision and Annulment of award under ICSID

In ICSID arbitration, the difference between annulment and revision lies in the nature of the challenge: annulment targets the procedural integrity of the process, while revision addresses newly discovered evidence that would change the outcome. On the other hand, In international arbitration, the terms annulment and setting aside are often used interchangeably to describe the process of nullifying an award. However, a key technical difference exists based on the legal framework under which the arbitration is conducted: The term "annulment" is most strictly used for awards rendered under the ICSID Convention.

On the other hand, Setting aside typically refers to the challenge of awards in national courts at the seat of arbitration.

Application for annulment may be made to the Secretary-General within 120 days from the date of the award on the following grounds:

(i) That the tribunal was not properly constituted.

(ii) That the tribunal has manifestly exceeded its powers.

(iii) That there was corruption on the part of a member of the tribunal.

(iv) That there has been a serious departure from a fundamental rule of procedure.

(v) That the award has failed to state the reasons on which it is based.

The Tribunal is composed of a three–man ad-hoc committee appointed by the Chairman of the Administrative Council who may order stay of enforcement of part or all the award during the pendency of the application for revision or annulment proceedings and the Committee has thirty days within which to determine whether the stay shall continue where the Secretary General had given notice of provisional stay to parties in respect of application for annulment. A party may request a re-submission of the dispute to a new tribunal constituted in accordance with the provisions of the Convention. Since the power to annul, revise, correct or interpret an award is vested on the Review Tribunal, it means that the intervention of the court is limited to recognizing a certified ICSID award that has been duly filed in the Supreme Court. During the pendency of the application for annulment, either party to the agreement may apply for stay of enforcement and execution of the award, so as not to render nugatory the pending application for annulment or impeachment pending before the committee.

The grants for the interpretation, revision and annulment of ICSID award under Article 50, 51 and 52 of the ICSID Convention are similar to the corresponding grants under UNCITRAL Model Law under articles 34 & 36, The New York Convention under Articles V and the AMA under Section 55. Also the arbitral tribunal can interpret and revise an award under the aforementioned legal regimes. However, an application for setting aside an award or recourse against an award under these legal regimes can be made to a competent court. Although, this does not amount to an appeal over an award, the jurisdiction of an Ad-Hoc review tribunal under ICSID entails steering a middle course approach between the finality of investment arbitration and an appeal mechanism for rectifying the errors of arbitral tribunals. Annulment proceedings can only be brought before an Ad-hoc review tribunal under the ICSID convention. Notably, the AMA has now borrowed an aspect of this by introducing the Award Review Tribunal under Section 56, which provides an optional internal review mechanism for applications to set aside awards before resorting to court, aiming to enhance efficiency and reduce judicial burden—similar to ICSID's ad hoc committee but applicable to all arbitrations under the AMA. Furthermore, it should be noted that most of the grants for annulment pose difficulty in any earning a successful annulment. For instance, an ICSID award may only be annulled for absence of reason but most unlike on adequacy of reasons for their award. However, it seems easier to attack an award where there is manifest excess of power and where the arbitrator fails to consider all the claims submitted by the parties.

The grounds for setting aside an award under Section 55 of the AMA provides inter alia for some of this grounds obtainable in investment arbitration. They are: incapacity of party to arbitration agreement, invalidity of arbitration agreement under the law, the award is not arbitrable and the award is against public policy of Nigeria. These grounds align with international standards but provide a domestic lens for challenging awards, contrasting with ICSID's more limited annulment grounds focused on procedural integrity.

It has been argued that the failure to apply the correct principle on choice of law based on conflict of law may constitute manifest excess of power, why an incorrect application of that flaw may not give rise to an annulment, because the type of sanction is equivalent to a revision of the award on the merits[36].

There must be serious departure from the procedure adopted by the arbitrators such as where they deviated from the applicable law before there can be in successful attack on the award.

In Federal Republic of Nigeria v Process & Industrial Developments Ltd[37], the English Commercial Court (Robin Knowles J) set aside arbitral awards arising from a 2010 Gas Supply and Processing Agreement (GSPA) between Nigeria and Process & Industrial Developments Ltd (P&ID), a British Virgin Islands company. The GSPA formed part of Nigeria's Accelerated Gas Development policy and contemplated that Nigeria would supply "wet" gas to facilities to be constructed by P&ID, which would process the gas and return "lean" gas for domestic power generation while retaining natural gas liquids for sale. Neither party performed its primary obligations: Nigeria supplied no gas, and P&ID constructed no processing facilities. In 2012, P&ID commenced arbitration seated in London; in 2015 the tribunal issued a liability award finding Nigeria in repudiatory breach, and in 2017 a final award of approximately US$6.6 billion plus 7% interest (later exceeding US$11 billion). Nigeria challenged the awards under sections 67 and 68 of the English Arbitration Act 1996,

[36]Wang Guiguo, 'The ICSID Annulment Mechanism: Practice, Problems and Alternatives' (2014) 2(2) China Legal Science 29-54, 53.

[37] [2023] EWHC 2638 (Comm)

alleging lack of jurisdiction and serious irregularity grounded principally in bribery, corruption, and perjury. Following an eight-week trial with extensive disclosure and witness evidence, the Court held that the GSPA had been procured through bribery of Nigerian officials and that P&ID had continued to rely on corrupt payments during the arbitral process. The Court further found that material evidence had been deliberately withheld from the tribunal and that perjured testimony had been advanced, thereby tainting the arbitral process. Applying the test for serious irregularity causing substantial injustice, the Court concluded that Nigeria had been deprived of the opportunity to present its case on a true factual basis. The awards were accordingly set aside in their entirety, representing one of the most significant judicial interventions in support of arbitral integrity in recent English arbitration jurisprudence. The judgment underscores the English courts willingness to uphold arbitration while intervening decisively where the process is shown to have been corrupted.

7. Recognition and enforcement of award under ICSID

Enforcement under ICSID is governed by Article 54 of the ICSID Convention, requiring each Contracting State to recognize and enforce ICSID awards as if they were final judgments of its own courts, without review except through the Convention's internal mechanisms. In Nigeria, this is implemented via the ICSID (Enforcement of Awards) Act, which mandates enforcement by the Supreme Court. Comparatively, under the AMA, recognition and enforcement of arbitral awards (including international ones) are provided for in Section 57, allowing any party to apply to the court for enforcement. Grounds for refusing recognition or enforcement are outlined in Section 58, including: (i) incapacity of a party; (ii) invalidity of the agreement; (iii) due process violations (., improper notice or inability to present case); (iv) award beyond scope of submission; (v) improper composition or procedure; (vi) award set aside or suspended at the seat; (vii) non-arbitrability of the subject matter; or (viii) contrary to public policy. This mirrors UNCITRAL Model Law Article 36 and the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York Convention) Article V, providing a streamlined process while allowing limited defenses, distinct from ICSID's automatic enforcement but complementary in promoting finality for investment awards.

By article 54(1) of the ICSID Convention,

> Each Contracting State shall recognize an award rendered pursuant to the Convention as binding and enforce the pecuniary obligations imposed by

> that award within its territories as if it were a final judgment of a court in that State.

A Contracting State with a Federal Constitution may enforce such an award, in or through its federal courts, and may provide that such courts shall treat the award as if it were a final judgment of the courts of a constituent State.

A party seeking recognition or enforcement in the territories of a contracting State shall furnish to a competent court or other authority, which such State shall have designated for this purpose a copy of the award certified by the Secretary-General. Each contracting State shall notify the Secretary-General of the designation of the competent court or other authority for this purpose and of any subsequent change in such designation.[38] Execution of the award shall be governed by the laws concerning the execution of judgments in force in the state in whose territories such execution is sought.[39]

Each contracting state shall take such legislative or other measures as may be necessary for making the provisions of the Convention effective in its territories.[40]In pursuance of articles 54 and 69 of the ICSID Convention, Nigeria enacted the ICSID (Enforcement of Awards) Act 39 which provides that:

> Where for any reason it is necessary or expedient to enforce in Nigeria an award made by the International Centre for Settlement of Investment Disputes, a copy of the award duly certified by the Secretary General of the Centre aforesaid, if filed in the Supreme Court by the party seeking its recognition for enforcement in Nigeria, shall for all purposes have effect as if it were an award contained in a final judgment of the Supreme Court, and the award shall be enforceable accordingly.

Section 1 thereof provides that where for any reason it is necessary or expedient to enforce in Nigeria an award made by the International Centre for Settlement of Investment Disputes, a copy of the award duly certified by the Secretary-General of the Centre aforesaid, if filed in the Supreme Court by the party seeking its recognition for enforcement in Nigeria, shall for all purposes have effect as if it were an award contained in a final judgment of the Supreme Court, and the award shall be enforceable accordingly.[41]The Chief Justice of Nigeria is empowered under section 1(2) to make or adopt any rule of court necessary to give effect to the above provision. The effect of the above provision is that ICSID awards cannot be

[38]*ICSID Convention, Article* 54(2).
[39]*Ibid.* Article 54(3).
[40]*Ibid,* Article 69.
[41]ICSID(Enforcement of Awards) Act*, CapI20, LFN 2004.* Section 1(1).

subjected to the normal enforcement proceedings; it is only required to be filed with the Supreme Court and when so filed, it takes effect without more, as the final judgment of the apex court.

According to Adebayo Adaralegbe,[42] this creates a constitutional dilemma as it is open to argument that the mere process of filing an award and automatically deeming it the judgment of the court does not involve the exercise of judicial powers requiring compliance with the constitutional provision as to fair-hearing.

The role of the court in Nigeria to facilitate and support the arbitral process has statutory and judicial backing. The jurisdiction of a court in Nigeria to exercise judicial power is limited by the law establishing it as well as other constitutional provisions and laws. First, the constitutional provisions that guarantee fair hearing under section 36(1) of the 1999 constitution admits of exceptions under section 36(2) (a) and (b). The ICSID (enforcement of award) Act is one of such exceptions allowed under section 36 (2) (a) and (b) of the 1999 constitution.

Second, Section 19(d) of the 1999 Constitution enjoins the Federal government of Nigeria to respect international law and treaty obligations as well as seek settlement of international disputes by negotiation, mediation, conciliation, arbitration and other forms of adjudication.

Third, Section 64 of the AMA which is similar to Article 5 of the UNCITRAL Model law prohibits the court in Nigeria from entertaining an Action which is subject of arbitration. This is demonstrated in a long line of cases.[43]

Thus, Adaralegbe's argument seeks to overlook the annulment provisions of ICSID under article 52 of the ICSID Convention and the fact that the filing of an ICSID award in the Supreme Court does not make it a judgment of the Supreme Court but it makes the ICSID award to be enforced in the same manner as a Supreme Court judgment would be enforced.

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[42]A. Adaralegbe, "Challenges in Enforcement of Arbitral Awards in Capital-Importing States: The Nigerian Experience" (2006)23(5) J Int'l ARB 401, 419.

[43] Savoia (2000) 12 NWLR (Pt 682) 539; MV Lupex v Nigerian Overseas Chattering and Shipping Ltd (2003) 15, NWLR (Pt 844) 469; Niger Care Development Company Ltd v Adamawa State Water Board (2008) LPELR-1997 SC; AG Kwara v Olawale (1993) 1 N.W.L.R. (Pt 272) 651; Royal Exchange Assurance v Bentworth Finance (Nig) Ltd (1976) 11 S.C. 183; Rabo v Leadway Assurance Company Ltd, N.N.L.R. 146; Ogun State Housing Corp v Ogunsola (2000) 14 N.W.L.R. (Pt 687); Statoil (Nig) Ltd v NNPC [2013] 14 NWLR (Pt 1373) 1; Nigerian Agip Exploration Limited v NNPC (2014) 6 C.L.R.N 150 ;; Mitsui Engineering & Shipbuilding Co Ltd v Easton Graham Rush, High Court, Singapore, 16 February 2004, [2004] SGHC 26, [2004] 2 S.L.R.(R) 14;; Rabo, N.N.L.R 146. Stabilini Visinoni (2014) L.P.E.L.R. 23090 (CA). See J. F. Olorunfemi "Anti-Arbitration Injunction in Nigeria: A Review of Shell Petroleum Development Company of Nigeria Limited (SPDC) v Crestar Integrated Natural Resources Limited" International Arbitration Law Review, (2022) Vol 25(1), 13-25.

The combined effect of articles 53 and 54 of the ICSID Convention is that an ICSID award is binding and shall not be subject to any appeal or to any other remedy except those provided for in the Convention. The ICSID Act was therefore enacted to bolster up investor's confidence to assure them of equal treatment. An award under the ICSID Additional Facility Rules can also be enforced under the AMA 2023.

Another likely problem associated with the enforcement of an ICSID award in some other Contracting States is the principle of a Sovereign State or State Agency.[44]A renowned commentator[45] stated that the ICSID Convention establishes a complete jurisdictional system, but that nevertheless, there remains the question of the forcible execution of awards against a losing party, if that party is a state or a state agency.

According to Broches, in many countries such execution, at least against a state, is not possible. In this respect, the ICSID Convention[46] does not seek to change the law in force in Contracting States. As the present trend towards erosion of the immunity of States, and in particular of State agencies, continues, ICSID award will become increasingly capable of enforceable execution. Enforcement and execution of ICSID awards are not conterminous. Enforcement means recognition of the validity of arbitral award and the legal force therein, while execution entails using the ordinary legal machineries in force in ensuring that the successful party complies with the terms of the award. It means carrying out the award into completion. Execution is a step further than enforcement. The essence of this distinction is that enforcement proceeding is not subject to sovereign immunity but the execution process is actually subject to the plea of sovereign immunity.[47]

Nwakoby[48] suggests "the parties can circumvent and avoid the hardship and injustice inherent in the plea of sovereign immunity by insisting that the state sovereign party at the time of entering into the contract should waive the right to the plea of sovereign immunity.

[44]See For instance the case of Liberian Eastern Timber Corp. (LETCO) v. The Government of the Republic of Liberia (1994) 2 ICSID Rep. 383 & 390 where the request to attach certain Liberian property in United States was rejected by a United States District Court in Southern New York due to the claim of sovereign immunity from execution by Liberia. It was held that it had not waived the immunity by agreeing to arbitrate. The District Court of Columbia also refused to execute a*LETCO* award in United States against the Liberian Embassy's bank account in United States on the basis of the Sovereign immunity of that country from execution.

[45]A. Broches, "Arbitration Investment Disputes", *Documents and Collected Papers* Part II, Clive. M. Schmitthoff (1974-1980, Oceana Publications Inc), 7.

[46] ICSID Convention, Article 55

[47]See *Benvennti v. Bonfant SRL (BB) v. Government of the People's Republic of the Congo* (1993) ICSID Rep. 368 *Senegal v. SOAB* 1 (1994) 2 ICSID Rep. 1564; *Liberian Eastern Timber Corp. (LETCO) v. The Government of the Republic of Liberia* (1994) 2 ICSID Rep. 383 ; G.C. Nwakoby, "ICSID Arbitration Practice – Plea of Sovereign Immunity", (2002) 6Mod Prac J Fin and Inv L. *MPJFIL,* Vol. 6 Nos. 1 – 2, (2002),38 – 40. See also K.I. Vibhute, "Waiver Of State Immunity By An Agreement To Arbitrate And International Commercial Arbitration", *J.B.L.*(*Sweet &Maxwell* , November, 1988) 560.

[48]Nwakoby Ibid

Where a State party waives the right to the plea of sovereign immunity , the party shall not be allowed to raise it at the time of execution as parties are bound by the terms of their contract. In Zhongshan Fucheng Industrial Investment Co. Ltd. v. Federal Republic of Nigeria[49], A Chinese investor, Zhongshan Fucheng Industrial Investment Co. Ltd., invested in a free-trade zone development project in Ogun State, Nigeria, under a contract with state entities. The joint venture relationship deteriorated and Nigeria (or Ogun State) terminated the agreements, evicted the investor and its executives, prompting arbitration under the China-Nigeria BIT (2001). The underlying arbitration arose under the Bilateral Investment Treaty between the People's Republic of China and the Federal Republic of Nigeria (2001), which includes an offer to arbitrate investor-state disputes. Zhongshan invested in Nigeria by participating (through subsidiaries) in the development and management of the Ogun Guangdong Free Trade Zone and an associated industrial park pursuant to joint-venture agreements with Ogun State and related entities. After years of investment and infrastructure development, Ogun State abruptly terminated contractual arrangements and Nigerian police actions led to the detention and forced exit of Zhongshan executives.

Zhongshan contended that these acts, attributed to Nigeria under customary international law, amounted to breaches of the BIT's fair and equitable treatment, nondiscrimination, protection obligations, and prohibition on uncompensated expropriation. An ad hoc arbitration seated in London, conducted under UNCITRAL rules, concluded in March 2021 that Nigeria breached its BIT obligations and awarded damages to the complainant. Zhongshan is widely recognized as the first final adverse investment treaty award against Nigeria, signaling that Nigeria can be held liable under international investment frameworks for misconduct by state or state-associated entities.

8. Conclusion

International investment arbitration provides a neutral framework for resolving disputes between foreign investors and host States. It differs fundamentally from international commercial arbitration due to the public law dimensions of the dispute, the involvement of sovereign States, and the applicability of international treaty and customary law standards.

Since there is no time limit within which to file an ICSID award for enforcement, it has been argued that there may be a situation where an ICSID award, which is the subject of annulment proceedings, would be filed at the Supreme Court as prescribed under the ICSID

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Act and before a stay of proceedings is granted thereby prejudicing the proceedings of the tribunal. This may be so since what is required to enforce a certified ICSID award is simply to file it in the Supreme Court and it becomes binding and capable of being executed as a judgment of the court under the Sheriffs and Civil Process Act.[50]

We therefore recommend that the Chief Justice should in exercise of his power to make regulations to give effect to the ICSID Act, prescribe limitation of time within which an ICSID award could not be filed. We suggest a period of 120 days after which the commencement of annulment proceedings would have been statute-barred and if the proceedings had already commenced during the period, at the conclusion of the proceeding of the tribunal. Under the Convention, the position is that an ICSID award is the equivalent of a final domestic judgment, if such a judgment can be enforced, so can an ICSID award. It should, however, be remembered that the Convention imposes a direct international obligation on the State party to the dispute to comply with the award, and failure to do so would constitute a clear violation of an international treaty and expose the non-complying State to sanctions under International law, including proceedings against it in the International Court of Justice under Article 64 of ICSID.

Even though the strict standard test maybe desirable in order to discourage unnecessary attack on the integrity and reputation of the arbitrators, there is the need to strike a balance that will protect the legitimacy and effectiveness of arbitral process by adopting the reasonable man's test and that of appearance of bias.[51]

The principal objective of an arbitration institution is to provide arbitration services, either as the sole or principal purpose, or as ancillary to other functions. ICSID has been more preferable to most investor host states and other investors primarily because it is interpendent of the intervention of national courts, less expensive and timely.

Following the 2022 ICSID Rules Reform: Modernisation in Practice, ICSID's most recent major institutional reform was the adoption of the 2022 ICSID Rules and Regulations, which came into force on 1 July 2022. These are the first substantive amendments in over 15 years and reflect extensive global consultation. The key Features of the 2022 Rules are efficiency and cost reduction, mandatory case management conferences to streamline issues early in proceedings and defined procedural timelines for key stages (e.g., preliminary objections,

[50](Cap. S 6, *LF.N,* 2004). See also Andrew Okekeifere, 'The Enforcement and Challenge of Foreign Arbitral Awards in Nigeria' (1997) 14(3) J Int'l Arb 119. |

[51]*Chatterjee* and *Singh* (n 26)

award deadlines). Optional expedited arbitration by consent for faster resolution is also part of the new reforms. These measures aim to shorten timeframes and reduce costs.