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International investment in West Africa and the controversy of arbitral award enforcement: A case study of the Zhongshan Fuecheng case

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Abstract

Foreign investment in West Africa has grown drastically over the last 20 years, but challenges with the enforcement of awards still undermine investor confidence and the regional legal framework. This article explores the conflict between foreign investment protection and state sovereignty in the context of the Zhongshan Fuecheng case, the test case that has come to symbolize the difficulties of enforcing international arbitral awards in the region. Through a doctrinal research method, the research investigates the extent to which national judiciary responses, political considerations, and inherent systemic weaknesses result in ambiguity in the implementation process. The Zhongshan Fuecheng case also exemplifies the general problem West African states are confronted with in balancing the desire to attract and maintain foreign investment, with the constraints of international obligations and domestically-informed policies. The article contends for strengthened harmonization of domestic law with international standards, enhanced judicial capacity, and a more predictable environment for investor dispute resolution to address the challenges in arbiral award enforcement. the end of the day, the case offers important predictions regarding the future of investment governance in West Africa and the imperative for the reforms necessary to create a stable and reliable investment climate.

Keywords: Arbitration, Arbitral awards, Investors, West Africa, International investment

International investment has become a significant dynamic in the economic development strategies of West African states, and the region has witnessed a surge in the inflow of foreign direct investment owing to resource endowments, expanding markets, and infrastructural and industrial development. However, while governments consider attracting and retaining foreign investment to be a key priority, there is a growing prominence of ensuring the integrity of the legal framework for investments. Among the focal points of these activities are the investor-state dispute settlement procedures, especially through international arbitration, offering neutrality, predictability, and enforceability, which are considered essential traits in comparison with domestic courts (Qumba, 2021). Despite signing widely trade-friendly Bilateral Investment Treaties and mooting international arbitration agreements, West Africa is cropping up in controversies relating to the enforcement of such awards. These trends appear to be tied to more deep-seated structural dynamics, including politics, institutional incapacity, and the friction between these global agreements and the national political level (Antai etal, 2025). The dispute between Zhongshan Fuecheng Investment Company and the Nigerian government in Ogun state provides a helpful lens to further the discussion in this chapter of how non-enforcement of these awards can engender even more complex disputes entwining law, politics and diplomacy. It therefore becomes important to offer answers to fundamental queries about how failure in enforcement can affect arbitration in West Africa, what the dispute offers about the dynamic interrelationship between global rules of investments and domestic governance mechanisms, and how such controversy can affect investor confidence in the region (Antai, 2024). In these regards, therefore, the discussion gives an explanation about global investments and conducts an analysis of the applicable legal framework concerning arbitration and enforcement, conducts a critical analysis concerning Zhongshan Fueching Investment Company, and offers an assessment about prospects concerning management and determination of investments in West Africa. In dealing with these issues, the discussion will follow through from explaining global investments in West Africa, undertaking an analysis regarding the applicable legal framework in arbitration and enforcement, offering analysis concerning Zhongshan Fueching Investment Company, and ending with an assessment related to prospects concerning management and determination of global investments in West Africa (Chaisse & Olaoye, 2023).

Conceptual and Theoretical Framework

This study is based on a conceptual and theoretical framework related to international investment law, arbitration theory, and issues of state sovereignty in the context of the West African region. From a conceptual standpoint, international investment is interpreted as the movement of capital, technology, and management across borders, generally governed and protected by bilateral investment treaties, multilateral instruments, and national laws and regulations (Acharya, 2019). These treaties are intended to establish a stable environment for investment by granting investors certain rights such as equal and non-discriminatory treatment, protection from expropriation and access to recourse mechanisms. Hence, in this regard, arbitration has special significance as a mechanism to offer a neutral place to resolve investment claims “that are increasingly at risk of being subjected to domestic political pressures or judicial factors”. Compliance with the rulings of these panels is, therefore, an essential part of the investor protection scheme, as it allows the decisions to be practical and effective even in different legal traditions (Aidonojie etal, 2024).

Theoretically, the current research builds on international legal positivism and the transnational legal process theory. The international legal positivism treats treaty-law as a binding “source of law” which States must adhere to, and it aids in the delineation of the legal bases of the investor–state relationship (Norton, 2018). As a “theoretical companion” to this conception, the transnational legal process theory suggests on an analytical level that the enforceability of international legal instruments, such as arbitral awards, depends not only on the legal formalism of rules but also on social interactions among domestic and international judiciaries, state and non-state actors, and even within broader socio-political and economic contexts (Jefferies, R. (2021).

The tension between these paradigms is most pronounced at the stage of enforcement, where matters of national sovereignty, public interest, and political realities confront the rights of investors, leading to a field of legal ambiguity. In the case of Zhongshan Fuecheng, these tensions are played out to the extreme, illustrating how conceptual ideas of arbitration, state responsibility and the protection of international investment can be utilised – and tested in actual practice (Antai etal, 2024). Set against this conceptual/theoretical background, the article aims to understand are multiple layers of difficulty both in enforcing the arbitral award in West Africa and more specifically, tensions between the international norms, domestic law, and the practice of investment governance (Aidonojie etal, 2024).

The Landscape of International Investment in West Africa

The international investment regime in West Africa has undergone a remarkable transmutation in the last couple of decades, under the impact of global shifts in capital flows, regional developments, and the growing significance of transnational law in the rules governing transnational economic activity. Historically, foreign direct investments in West Africa remained mostly focused on the resource-extractive industries, beginning with oil, gas, and minerals, where transnational companies sought to exploit the vast resource base in these sectors. However, with time, the nature of the investments in West Africa has transformed as well. Although the base industry in these continents' investments in West Africa remained the same, there was an increased push into the realms of infrastructural development, communication technology, agriculture, and newer alternatives in the source of power generation, based on rising global influences (Laryea & Fabusuyi, 2021).

The legal framework in which international investments in West Africa operate affects the level of attractiveness of the region to foreign direct investment. Most ECOWAS countries have signed Bilateral Investment Treaties (BITs) and other multinational agreements whose intention was to ensure that foreign investments in the region enjoy protection in terms of guarantees such as fair treatment, protection against expropriation, and the right to international arbitration (Majekodunmi etal, 2024). All these agreements and arrangements are part of an expanded framework of sophisticated management of investments. At the national level, most countries have developed investment codes or policy documents that ensure that the promotion of investment takes place in the context of balancing development considerations. However, the efficacy of such documents or policy frameworks differs from country to country (Akinola, 2024).

Regional institutions are also part of the legal framework of protection of investments. The Organisation pour l'Harmonisation en Afrique du Droit des Affaires (OHADA) ensures that there is a uniform business law regime in most West African countries, although not all members of ECOWAS are part of this organisation. They offer increased predictability and legal certainty to investments due to the harmonised commercial law and the supranational court.

In turn, the ECOWAS Court of Justice has played a small part in defining the framework regarding economic integration and legal harmonisation. All these mechanisms aim at instilling investor confidence through the setting of clear rules and mechanisms and the resolution of disputes.

Nevertheless, several challenges continue to exist in the West African investment environment. Political risk constitutes one of the most prevalent issues in the region. Political instability in the form of coup d'états, civil unrest, or changes in policy can exist in many nations in this region of Africa. Usually, such volatility contributes to scepticism towards long-term investments. The region is facing another problem with contract repudiation. In most cases, the courts are inefficient and could result in contract repudiation or simply not adjudicating the dispute. The judiciary in these countries is generally not independent (Ceesay, 2020).

Corruption and uncertainty about regulation may exacerbate the problem. The bureaucracy, the complicated system of licences and policies and the uneven enforcement may all contribute to various troubles in relation to investment facilitation. Conflicting or unpredictable legislation and public policies that are inconsistently or unpredictably enforced can increase transaction costs and potential for dispute. This lacuna has been a large part of what has made international arbitration such a focal way of protecting investor rights in West Africa, and the enforcement of these awards, as in Zhongshan Fuecheng, can have a broad impact in shaping the investment landscape in West Africa (Giupponi & Yu, 2022).

Role of Arbitration in Ensuring the Protection of Investors

Arbitration has come to the fore as a key instrument for the protection of investors in the present world investment system and in areas such as West Africa, where the domestic legal system is tested on all fronts, its strength, its predictability and its independence. Generally, the investor prefers arbitration because of its impartiality, so that disputes are no longer subject to the jurisdiction of the domestic judiciary of the host state but rather presented to panels of experts in the area of public and private international law, expertise in which could not always be found in the domestic tribunals in complex disputes arising from the interpretation of rules and norms under both governing treaties and commercial contracts. In addition, such awards enjoy superior enforceability when compared to domestic awards through such global standards as the Convention Establishing the World Bank Group, in particular in the framework of ICSID, and in any case under the New York Convention, where the basic aim consists in ensuring that such awards enjoy little procedural formality in being enforced in any foreign country in accordance with the rules of private international law (Ofodile, 2019).

In West Africa, the difference between the International Centre for Settlement of Investment Disputes (ICSID) and non-ICSID arbitration affects investor protection in important ways. ICSID arbitration, organised through the Washington Convention, boasts of an enforcement machinery that binds all member states to enforce such awards as final domestic judgments without any review or challenge at the local level based on any flaw in the award itself. Evidently, such finality and predictability make such arrangements appealing in jurisdictions where there may be uncertain or readily influencable courts (Akpanke etal, 2022). But all such disputes in West African countries are not subject to ICSID jurisdiction, hence the need to opt for other forms of arbitration, such as ad hoc arbitration in accordance with UNCITRAL rules and institutional arbitration conducted through such forums as the ICC. These non-ICSID awards are enforced through enforcement procedures under the New York Convention, which, although widely accepted in West Africa, allows local courts to decline enforcement in important but limited circumstances, like breach of public policy or any irregularities in forming such tribunals. In such a manner, the difference between ICSID and non-ICSID arbitration makes all the difference in the protective scope that such jurisdictions offer such foreign investors (Bondar, 2015).

The enforcement of arbitration awards in Africa and West Africa, in particular, is characterised by controversy despite the widespread adoption of the New York Convention. Most countries in West Africa are party to the Convention and are therefore obliged to enforce foreign arbitration awards, except on limited grounds. In theory, there would be predictability and uniformity in the enforcement process. In practice, internal enforcement challenges persist (Anifowose etal, 2024). The judiciary in most countries has limited expertise in the area of international arbitration, leading to uncertainty in the enforcement process due to a lack of understanding of the Convention rules. Political considerations make the execution process complicated in any case, but all the more so when the award touches on the sovereignty of the state, or when state property is subject to attachment. Sovereignty concerns, such as alleged interference with regulatory sovereignty or an alleged financial burden, give states a justification for refusing enforcement of awards (Pączek, 2023).

It is obvious from these contrasts that the results of the enforcement of arbitral awards in Africa can be diverse. On the plus side, there are several cases which are indicative of robust compliance with international law, where efficient enforcement of the law is recognised and ensured transparently. These are important reminders of what can happen when strong legal frameworks exist, and the will of the government happens to meet its commitments under the relevant international treaty (Antai etal, 2024). On the other hand, there are numerous high-profile cases where the challenge of enforcement was shown to reveal significant vulnerabilities in many countries' legal frameworks, where awards have been dragged through the courts and effectively nullified after many years through legislative or political means. For example, where there have been challenges in high-stakes cases related to large-scale projects in sectors such as oil or infrastructural development, enforcement challenges have ridden investor sentiment to widespread criticism (Pączek, 2023).

The Zhongshan Fuecheng Case: A Detailed Examination

The case between Zhongshan Fuecheng, a private investment company in China, and the government of Nigeria began from an investment plan in the state of Ogun, which was first offered through the framework of public–private partnerships. At the time Zhongshan Fuecheng accessed Nigeria, it was with hopes based on expectations that the long-term plans regarding industrial development in which it intended to engage would go through. But things turned sour when there was alleged government interference with the security of the investment. It was argued that Nigeria violated the rights of the investor in terms of unlawful interference, denial of previously granted rights, and expropriation without compensation, although the case was brought to international arbitration after failed efforts at resolving the issue through friendly means between the two parties (*Zhongshan Fucheng Industrial Investment Co. Ltd v. Federal Republic of Nigeria, 2024*).

After the announcement of the award, Zhongshan Fuecheng pursued enforcement in other jurisdictions, including the United Kingdom, where the investor invoked the principles under the New York Convention to register the award. The UK High Court recognised the award, which was significant not just in the sense of recognising the award, but of giving the investor the ability to enforce against Nigerian state property in the UK. In Nigeria, there was a stronger push back from government agencies that expressed dissatisfaction with the conclusion of the award and hold that questions arising from the award, including ruling on issues of sovereignty and public policy, should be considered through review by Nigerian courts (Antai etal, 2024). These cases demonstrate how challenging it is to enforce investor-state awards in West Africa, where courts frequently have to deal with issues of politics or the economic consequences of enforcement (Reece & Gültutan, 2025).

The response by the Nigerian government to the potential enforcement was symptomatic of a tougher attitude towards what it saw as excessive or praeter naturallem arbitral awards. The government's unease at the "strange situation" that non-Nigerians could so easily seize Nigerian assets in foreign courts under such awards seemed very much an internally oriented policy statement (Ogu, Enyia & Antai, 2024). It is safe to assume such concerns are valid in a world where global nationalism is on the rise. Indeed, the diplomatic dimension of the case has surfaced in reports of Nigeria's intention to rely on Chinese diplomatic influence to contain the fallout from the award (Antai etal, 2024). In the broader global legal context, there was scrutiny from all quarters regarding Nigeria's attitudes during the enforcement stage, on the understanding that how Nigeria treated the enforcement stage would be telling, in terms of the investment climate it was projecting. The politics-of-investment debate was thus very relevant in that Nigeria was confronted not just with the prospect of considerable financial exposure, but its posture was apparently vulnerable to reputational risk generated from its challenge to the validity of a principle of inter-nation arbitral award. The example of the Zhongshan Fueching award thus raises questions about the difficulties of inter-nation arbitral enforcement in West Africa (Akpamgbo & Udegbunam, 2024).

The Disputes of Enforcement

The execution phase of the Zhongshan Fuecheng full award demonstrates how the recognition and enforcement of a West African award encapsulates within it the difficulties that arise from balancing the competing interests of the protection of international investments and the sovereignty of West African states. On the point of the conflict or contradiction between state sovereignty and the state's responsibility in terms of international investment agreements, in the current award, this is one of the central issues in the case of the award (Antai etal, 2024). The respondent state argued in fact in all the cases that its refusal to enforce was informed by its sovereignty in relation to its internal affairs, and it thus had the right to protect the public interest from being affected by foreign interference when asked to turn away from local laws when responding to the demands of the parties who claim execution of such awards. These poles of argument have a long-standing tradition to justify the denial of the performance in any state subject to foreign powers, but within the context of the application of the arbitration agreement, such kinds of claims expose the enforcement process in West Africa (**Kramer,** 2025).

The activities of the national courts are vital to the process where the result of international arbitration is made to create an effective cause of action (or other rights that can be enforced). Judicial review of West African states' levels is highly uneven, and uneven capacity and competence greatly influence the predictability of enforcement (Antai etal, 2024). The courts are confronted with the challenging task of enforcing state obligations under the New York Convention or any other applicable treaty in the field of investment agreements, while at the same time refraining from undermining the requirements of due process or the rules of the country in the manner of sovereign immunity (Edet, Antai & Itafu, 2022). In the Zhongshan Fucheng case, immunity, procedural fairness, and the appropriate margins of review form issues of law of considerable difficulty. These concerns are all exacerbated by chronic domestic judicial inattentiveness, lack of specialised knowledge pertinent to international arbitration, and a probable susceptibility of the domestic judiciary to both direct and indirect politicised influence (Olajide, 2020).

Any procedural or substantive disputes in a judicial or doctrinal sense have been successively overshadowed by a few practical challenges that, before the judgment, further obstruct enforcement in Pickering cases. The first is a matter of tracing responsive state-related entity property, which is a daunting task in countries where the administration of state assets is anything but transparent. In addition, even when assets are located, states have developed sophisticated anti-enforcement schemes, converting ownership into public companies or trusts, conferring diplomatic and functional immunities, or trying to shield their assets from enforcement. All the above, while openly contestable in law, can be used to delay/dilute the execution of an award (Antai, 2024). The contours of this process are further shaped by the wider international political climate in which the enforcement of any award must take place, since diplomatic considerations color the extent to which this will be pursued in other states and the competitive resistance that will be encountered in such states to that process in cases, to the extent that they have (at any rate) potential (at least) to generate broader diplomatic ripples. Taken together, the cases illustrate the scorecard of investor-state arbitration enforcement in West Africa. They are symptomatic of complex interrelated factors, legal, political, and practical, that determine whether awards are enforceable and that have given rise to questions about the rigour of the dispute resolution system in the region in relation to foreign direct investors (Schacherer, 2024)."

Implications of International Investment in West Africa

The Zhongshan Fuecheng case establishes a major precedent that may impact the flow of foreign direct investment to West Africa. One could say that the presence of such cases adds to the risk perceptions that foreign direct investors would have when trying to enforce

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awards in West Africa. It can therefore be argued that the uncertainty faced by foreign direct investors in carrying out foreign direct investments in West Africa due to increased perceptions of risk in terms of ensuring compliance with awards may affect future foreign direct investments in the region (Ekpenisi etal, 2024). For example, foreign direct investments in other countries where there are strong legal systems. The matter also highlights the need to have prompt legal reforms at the regional level aimed at supporting investor protection and facilitating easier enforcement of arbitral awards. It is important to ensure that the enforcement mechanisms at the domestic level are strengthened in order to ensure that the requirements of international agreements, such as the New York Convention, are fully in place at the domestic level (Hathout, Rahman, & Nor, 2020).

At the same time, there is a need for reforms in the alternative dispute resolution mechanisms in order to ensure that there are fewer inefficiencies in the process, in addition to reducing judicial interference in arbitration (Ekpenisi etal, 2024). By so doing, there will be increased confidence of foreign investors in the country. In terms of wider lessons from the Zhongshan Fuecheng dispute in West Africa, there are important lessons that can be garnered from the larger pool of arbitration disputes instituted against governments, including challenges in the enforcement of awards when faced with state opposition, process delays, and uncertainties in domestic law (Izevbuwa et al).

In fact, there are important lessons in the Zhongshan Fuecheng dispute that can be applied to the African continent as far as greater harmonisation in domestic legal frameworks that can keep in line with global standards in trade and foreign investments based on agreements such as the African Continental Free Trade Area agreement. In fact, there are important lessons in the Zhongshan Fuecheng dispute that can help in the enforcement of investor rights in other trade agreements in Africa, such as the African Continental Free Trade Area agreement that seeks to strengthen trade between African nations through investments (Bore, 2020).

Conclusion and Recommendations

In conclusion, this case highlights that we should be aware of the realities of the international investment flows in West Africa and the recognition and enforcement of arbitral awards. There are a number of important lessons to be learned when considering the Zhongshan Fuecheng case, about the difficulties of investor-state relations in the region, including those arising from state politics, judicial volatility, and the ability of the legal frameworks to advance national sovereignty in these relations. The dispute between Zhongshan and Fuecheng, therefore, provides a window into the wider tensions at play in investor–state relations in the region. Looking ahead, it is expected that the execution of arbitral awards in West Africa will continue to be challenging as it will be influenced by ongoing domestic law reforms, regional integration processes, as well as states' willingness to harmonise with international standards. Building institutional capacity, promoting transparency, and ensuring consistent judicial treatment of arbitral awards will be the key to enhancing investor confidence and enabling West Africa to bring in and hold international investment in a manner that respects national sovereignty.

Several measures can be recommended for addressing challenges similar to those in the Zhongshan Fuecheng Investment Co. Strengthening the regime governing foreign investment in West Africa through further harmonisation of domestic laws to comply with global standards under the New York Convention, as well as other bilateral and multilateral instruments, among others, shall buttress West African states' capacity to confront such challenges moving forward. In addition to increased predictability, clear rules applied consistently and in line with cooperation in the judiciary through proper judicial training on issues related to investment and arbitration can help increase the predictability and security of investments in West Africa. For foreign direct investors in West Africa, following a comprehensive due diligence analysis and working in cooperation with domestic legal practitioners through proper inclusion of dispute resolution mechanisms in agreements can help ensure predictability and security regarding investments in West Africa.

In addition to greater predictability, understanding the limitations of domestic enforcement in West African states, as well as any associated political or other risks, can help foreign direct investors in West Africa reduce associated uncertainties related to future enforcement challenges in West Africa. In addition to greater predictability and security, support at all levels domestic, regional, or through global arbitration agencies, by both governments in West Africa and foreign direct private investors can help ensure observance and effectiveness in enforcement in arbitral awards through specialized agencies or mechanisms in West Africa, which can especially help in promoting increased security of investments in West Africa in the future.

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