FOREIGN INVESTMENT, HUMAN RIGHTS AND NATIONAL DEVELOPMENT: A JURISPRUDENTIAL APPROACH*

Abstract

Human rights are a product of a philosophical debate that has raged for over two thousand years. Respect for human rights is an important index of national and individual development. It seems that a measure of a country's claim to be developed is based on how the human rights of its citizens are protected and enforced. This paper briefly examines the relevant thread passing through the observance of human rights ethos, foreign investment and national development. The discourse is premised on the idea that every process of development including economic must target the dignity of the human person as its terminus ad quem. Specifically, this study demonstrates how foreign investment can lead to national development within the milieu of protection of and respect for human rights.

Keywords: Foreign Investment, Human Rights, National Development, Jurisprudence

1. Introduction

Recent events, such as the Arab uprisings and the global financial crisis, have clearly reinforced the interdependence of human rights, development, peace and security which are the three fundamental pillars of the UN and the cornerstones of its Charter. These events demonstrated that economic growth in the absence of adequate measures to promote inclusive and participatory development is unsustainable. Indeed, an absence of accountability and the rule of law in the economic sphere, inequality, corruption, mismanagement of public resources, austerity measures and conditionalities continue to trigger civil unrest in many parts of the world, which in turn undermine the sustainability of long-term development and growth. Early warning signs of impending and imminent conflicts and the collapse of States are rooted in the continuing denial of fundamental rights in the economic, social and cultural spheres. Unless addressed, the underlying causes of gaps in the development and the economic sphere lead to repetitive cycles of violations, shrinking democratic spaces, entrenched discrimination and a blatant disregard for the rule of law.[1] This study seeks to address the question of the relationship that exists among human rights observance, foreign investment, and national development.

2. Human Rights and Development

Oputa describes a 'right' in its most general sense 'as either the liberty (protected by law) of acting or abstaining from acting in a certain manner, or the power (enforced by law) of compelling a specific person to do or abstain from doing a particular thing. A legal right is thus the capacity residing in one man of controlling, with the assent and assistance of the State the action of others. It follows then that every right involves a person invested with the right, or the person entitled; a person or persons on whom that right imposes a correlative duty or obligation; an act of forbearance

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[1]Integrating Human Rights in Development and in the Economic Sphere' < http://www.ohchr.org/EN/AboutUs/Pages/developmentintheeconomicsphere.aspx> Accessed 14/8/17.

which is the subject matter of the right, and in some cases an object, that is, a person or thing to which the right has reference, as in the case of ownership. A right therefore is in general, a well-founded claim, and when a given claim is recognized by the civil law, it becomes an acknowledged claim or legal right enforceable by the power of the state'.[2]

A right is something that is due to a person by just claim, legal guarantee, or moral principle. It is a legally enforceable claim that another will do or will not do a given act; a recognized and protected interest the violation of which is wrong[3].Definition of the term 'Human Rights' has always been affected by ideological leanings. Thus, the definition accepted within a civil law society might not be accepted by a dictatorship. However, with the internationalization of human rights, the definition can no longer be affected by ideologies. According to Miller, Human rights are 'those claims which are mainly directed towards providing a minimum standard of decent living worthy of man as a human being (never as an animal). For this reason, human rights represent that very fundamental demands or claims which the individual or groups make on themselves and their society/governments; which differ from appeals to benevolence and charity. The rights are the property of man as man without any exception. That is the reason we say that a man without rights is not more than animals'.[4]

The United Nations in 1987 described Human Rights as follows; 'Human Rights could be generally defined as those rights, which are inherent in our nature and without which; we cannot function as human beings[5].The Webster's Encyclopedic Unabridged Dictionary of the English language defines Human Rights as pertaining to, characteristic of, or having the nature of mankind, moral and natural creatures. Human rights are therefore those rights, which all persons everywhere have by virtue of belonging to the human race. They are inherent in any human being simply by the fact of his humanity. Human rights include those civil, political, economic, social, cultural, groups, solidarity and developmental rights which are considered indispensable to a meaningful human existence. For most actors in the field of social and economic development, the use of human rights instruments in policy and programme formulation, implementation and monitoring are imperative for national development. The rights-based approach to development describes situations not simply in terms of human needs, or of developmental requirements, but in terms of society's obligation to respond to the inalienable rights of individuals. It empowers people to demand justice as a right, not as charity, and gives communities a moral basis from which to claim international assistance where needed.[6]

With the establishment of the indivisibility of human rights, a holistic approach to the impact of human rights on development has become imperative. The use of human rights instruments to demand political, social, economic and cultural development have let to the need to streamline human rights in instruments in policy and programme formulation, implementation and monitoring.

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[2]C Oputa, 'Human Rights in the Political and Legal Culture of Nigeria' ,2nd Idigbe Memorial Lectures, Nigerian Law Publications Ltd., Lagos, 1989, pp. 38 – 39 Cited in Okpara Okpara, *Human Rights Law & Practice in Nigeria Vol. 1,* (Enugu: Chenglo Limited, 2005) p.37.

[3] B A Garner (ed.), *Black's Law Dictionary,* (9th Edn, St. Paul Minn., West Group, 2000) .

[4]CMN Chukwudozie, *Introduction of Human Rights and Social Justice*, (Enugu: Ochumba Printing and Publishing Co. 1999) p. 3.

[5]O Okpara, *Op Cit*. p. 41.

[6]K Annan, Secretary-General of the United Nations. Annual Report on the Work of the Organization 1998.

A major value of integrating development policy into a human rights framework is its potential to shift priorities in the political economy of resource allocation and distribution. Within such a framework, the conditions needed to achieve a decent standard of living are to be treated as basic human rights, rather than the uncertain results of charitable actions or policies aimed exclusively at economic efficiency. In this regard, it has been argued that the efficiency criteria of economic policies should aim to foster social cohesion and well-being, instead of considering the social consequences of these policies as side effects that can be remedied separately. Human rights instruments, offer a bridge between ethical standards and the legal obligations of states and other organs of society.

The body of international human rights instruments most commonly referred to in relation to economic and social questions include:

(i) International Bill of Human Rights which comprises the Universal Declaration of Human Rights[7], International Covenant on Economic, Social and Cultural Rights (ICESCR)[8], and International Covenant on Civil and Political Rights (ICCPR)[9] and its two Optional Protocols;
(ii) Convention on the Elimination of All Forms of Racial Discrimination (CERD)[10];
(iii) Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)[11];
(iv) Convention on the Rights of the Child (CRC)[12];
(v) Conventions of the International Labour Organization (ILO), particularly its 'core labour standards' on child and forced labour, discrimination and rights to freedom of association and collective bargaining, which the 86th ILO conference in June complemented with adoption of the Declaration on Fundamental Principles and Rights at Work; and,
(vi) African Charter on Human and Peoples' Rights[13].

These covenants and conventions have been widely signed and ratified by states across the world and overseen by their respective UN treaty monitoring bodies such as the Committee on Economic, Social and Cultural Rights, to which state Parties must report periodically[14]. In 1986 the UN General Assembly adopted the Declaration on the Right to Development which, albeit not enjoying legally-binding status, is often regarded as a holistic vision integrating civil and political as well as economic, social and cultural rights, and striking a balance between national and international human rights responsibilities of states. Again, the 1993 Vienna Declaration and Programme of Action, also states that the right to development is 'a universal and inalienable right and an integral part of fundamental human rights.'[15]

[7]Of 1948.
[8] 1966.
[9] 1966.
[10] 1965.
[11] 1979.
[12] 1989.
[13] 1986.
[14]Third World Network 'Human Rights Approaches To Development' <http://www.twn.my/title/hrdev-cn.htm> Accessed 14/8/17.
[15]*Ibid.*

The concept of sustainable development could be applied in a more practical way, especially in this context of finding a legal framework for encouraging sustainable economic activities in developing countries. Whenever sustainable development is to be applied, it must be clear whether the concept is employed, on the one hand, to articulate an 'international (regional or national) development policy, strategy or agenda on the one hand; or whether it is to inform or direct development *activities*'[16] (for example, investment projects) towards a sustainable path. There is a definite interrelationship between both goals. The strengths of sustainable development as a concept are its value-oriented nature and its capacity to influence international human rights law. It embodies imaginative solutions to environmental, developmental and human rights issues that plague FDI, which can then be used in reshaping international law. Puvimanasinghe suggests[17] that if public international law is to accommodate and implement the goals of sustainable development in resolving conflicts or reinforcing mutual interests, it has to evolve to meet the constantly changing realities engendered by the structure of global society, the growing predominance of transnational business entities, and the increased intervention of non-state actors in domestic and international relations.[18]

It is submitted that human rights, which is a product of international law, and development, can be harnessed into domestic norms for better national development. In a report by the UN High Commissioner for Human Rights on the topic of human rights, trade and investment, attention was drawn to the human rights implications of international and domestic investment regimes. The report challenges the common assertion that foreign investment can promote growth and development in all contexts and that an automatic correlation exists between increased investment and the enjoyment of human rights—particularly economic, social and cultural rights, and the right to development. In its critique, the report addresses the roles and legal obligations of individuals, governments[19] and investors with respect to human rights and investment, as well as the impact of investment agreements, investment liberalization and privatization, on the promotion and enjoyment of human rights. The UN High Commissioner contends that foreign investment has the potential to assist overall social, economic and political development and advance the enjoyment of international human rights, but only if properly regulated. The report emphasizes that the ability of investment to serve as a positive force to promote the enjoyment of human rights depends significantly on the actions of the governments involved. Specifically, under international law, host governments must regulate investment and enter into investment-related agreements in a manner consistent with their international human rights obligations. Host governments must also maintain the flexibility to promote cultural diversity and to implement special measures to protect vulnerable, marginalized, disadvantaged or poor people, including the provision of social safety nets. Host governments must also ensure that their domestic and international investment laws include investor duties in addition to standard investor rights. Domestic and international agreements must contain provisions requiring investors to act in accordance with a host state's overall development goals and

[16]P Schwartz, *Sustainable Development and Mining in Sierra Leone* (2006) 50. cited in S F Puvimanasinghe, *Foreign Investment, Human Rights And The Environment: A Perspective From South Asia On The Role Of Public International Law For Development* (Leiden, Belgium: MartinusNijhoff Publishers, 2007).

[17]S F Puvimanasinghe,*Foreign Investment, Human Rights And The Environment: A Perspective From South Asia On The Role Of Public International Law For Development* (Leiden, Belgium: MartinusNijhoff Publishers, 2007).

[18] S F Puvimanasinghe, *op cit*, pp. 48–9.

[19] Amnesty International, *Human Rights, Trade and Investment* (London: Amnesty International, 2006) p. 34.

human rights obligations. The report points out that, where investment regimes are successful, the effects of investment on the enjoyment of human rights can change over time, leading to progressive improvements in times of prosperity but regression when investment flows decrease, particularly where states pursue policies of investment liberalization without also establishing appropriate social safety nets. Home and host states must realize, the report argues, that even when the effects of investment are positive, the benefits may be short-lived or unstable. Thus, states must regulate investment responsibly, in a sustainable manner that utilizes the resources generated by foreign investment for the long-term well-being of all segments of the population.

3. Human Rights Protection in Foreign Investment Agreements

Investment agreements could address human rights concerns either by directly imposing obligations on investors or by referring to state duties. In practice very few, if any, investment agreements mention human rights or associated fields[20]. For instance, no explicit reference to human rights is found in the Model BITs of Germany (2008), France (2006), China (2003), India (2003), the United Kingdom (2005), or the United States (2004)[21]. The multilateral investment agreement for the Common Market for Eastern and Southern Africa (COMESA), adopted in 2007, lists minimum human rights standards relating to investment as a potential future agenda item for a meeting of ministers. In a similar vein, the EU-Russia Partnership and Cooperation Agreement, which among other things envisages the establishment of a framework for the promotion of investment between the parties, loosely provides that the treaty parties 'endeavour to cooperate on matters pertaining to the observance of the principles of democracy and human rights' by way of regular political dialogue.[22] The writer did not come across any direct reference to human rights protection in any foreign investment or related agreement in Nigeria but international standards have often been applied to hold certain investors liable to the observance of those rights in their operations. A clear instance is the case of the oil companies and the people of the Niger Delta area in Nigeria especially with regard to oil pollution and spillage and gas flaring. To an extent, this dearth of express references is a corollary of the one-sided design of investment agreements that does not address investor obligations. The absence of overt human rights responsibilities of states is rooted in the fact that these agreements are monothematic commercial instruments. Nevertheless, modern investment protection and international human rights law share a common heritage. Both address the same troubling asymmetry, namely the impotence of the individual *vis-à-vis* state power[23]. Indeed, the

[20]OECD, "International Investment Agreements: A Survey of Environmental, Labour and Anti-Corruption Issues" (2008) (reviewing a sample of 296 agreements signed by 30 OECD member countries and 9 non-member countries that adhere to the OECD Declaration on International Investment and Multinational Enterprises). Cited in M Jacob**, "**International Investment Agreements and Human Rights", INEF Research Paper Series, Human Rights, Corporate Responsibility And Sustainable Development, (**Duisburg:** Institute for Development and Peace**,** 2010) p. 13.

[21]C Reiner & C Schreuer, "Human Rights and International Investment Arbitration" in P-M Dupuy, F Francioni& E-U Petersmann (eds), *Human Rights in International Investment Law* (Oxford: Oxford University Press, 2009) 82 (further noting the lack of mention thereof in NAFTA and ECT). For Model BIT texts see the Annexes of Dolzer and Schreuer or the UNCTAD website on international investment agreements ("IIA Compendium"):<http://www.unctadxi.org/templates/DocSearch____780.aspx>. accessed on 10/7/2017.

[22]M Jacob, *op cit*, p.14.

[23]M Hirsch, "Investment Tribunals and Human Rights: Divergent Paths" in P-M Dupuy, F Francioni & E-U Petersmann (eds), *Human Rights in International Investment Law and Arbitration* (Oxford: Oxford University Press,2009) 98, 114. Cited in Marc Jaboc, *ibid.*

rights of aliens are in many ways precursors of modern human rights.[24] The clearest remnants of this overlap are those provisions of human rights conventions protecting property[25]. However, the systemic difference – and thus the cause of the wildly different perception of these two fields of law – is that most contemporary investors are juridical persons possessing financial and political leverage easily dwarfing that of ordinary individuals and in some cases even rivaling that of states. On the other hand, as one scholar has pointed out, all states possess the inherent power to regulate within their jurisdiction, putting even the largest investors at risk.[26]

Certain societal issues such as labour standards, environmental protection, anti-corruption and the economic empowerment of historically disadvantaged groups, i.e. individuals belonging to traditionally underprivileged sectors of society, are occasionally mentioned in investment agreements.[27] This is sometimes done by preambular language, positing, for instance that 'the development of economic and business ties can promote respect for internationally recognized labour rights' and that the objectives of the agreements 'can be achieved without relaxing health, safety and environmental measures of general application'. Besides the preamble, similar wording can occasionally be found in actual treaty provisions. For instance, an agreement can acknowledge that it is 'inappropriate' to encourage investment by weakening or reducing the protections afforded in domestic environmental or labour laws and that, 'each Party shall strive to ensure that it does not waive or otherwise derogate from, or offer to waive or otherwise derogate from, such laws in a manner that weakens or reduces the protections afforded in those laws as an encouragement for the establishment, acquisition, expansion, or retention of an investment in its territory.'[28]

Straight reference to human rights provisions in foreign investment agreements are not popular yet in a broad sense, the law of international investment, like much of public international law, is designed to limit certain types of state action. Sometimes, however, such state action is based on legitimate human rights concerns. The paucity of reported cases to date involving clear invocations of human rights is attributable to various factors. Investors are often adequately protected by the agreements themselves, which impose no obligations on them. Host states cannot request arbitration independently since this is also a preserve of investors. Also, limiting concepts such as jurisdiction and applicable law can provide further obstacles. Furthermore, states might be complicit in a human rights violation or fear setting an inconvenient precedent through their commitment to human rights arguments.

[24]PM Dupuy, □Unification Rather than Fragmentation of International Law? The Case of International Investment Law and Human Rights Law□ *Ibid.*

[25]E.g. Universal Declaration of Human Rights 1948 Art.17.2; European Convention on Human Rights, First Protocol, Art.1; American Convention on Human.

[26]M Jacob, *op cit.*

[27]OECD 143, Table 3.1; L Liberti, □Investissementet Droits de l□Homme□ in P Kahn and W Ben Hamida (eds), *Les Aspects Nouveaux du Droit des Investissements Internationaux*(Nijhoff, 2007) 791-852.

[28]The most prominent examples are the BITs concluded by the United States or Canada following NAFTA.

4. Foreign Investment and Socio-Economic Development

This section considers the impact of FDI on socio-economic development of a country; such as as domestic savings, foreign exchange earnings, national gross investment, government budget, technology transfer, industrialisation processes and poverty alleviation in developing countries like Nigeria. Economic development is an all-encompassing concept. It centers on economic and social progress, but also entails many different aspects that are not easily quantified, such as political freedom, social justice, and environmental soundness. Without a doubt, all these matters combine to contribute to an overall high standard of living. However, empirical evidence has amply demonstrated that all these varied elements of economic development correlate with economic growth. That is, as a general rule, countries with faster economic growth have more rapid improvement in health and education outcomes, progressively freer political system, increasingly more equitable distribution of wealth, and enhanced capacity for environmental management. Therefore, while economic growth does not bring about automatically other aspects of social, institutional and environmental improvements, without economic growth, there are limited prospects for such achievements. This section of the paper aims to highlight the most important channels through which FDI makes a significant and irreplaceable impact on the economic development of the host countries.

There are two arguments on the impact of FDI on the socio-economic development of a country: the mainstream and the radical views. The mainstream view argues that FDI flows to developing countries and creates benefits to both developed and developing countries. The mainstream view's arguments on the useful role of FDI in promoting socio-economic development have built on the gaps model and the Harrod-Domar model. The mainstream view has argued that developing countries on the way to take-off are likely to face three constraints, namely the savings-investment gap, the foreign exchange gap and the fiscal gap. Besides these gaps, skill constraints are likely to remain during the development process[29].In contrast, the radical view argues that FDI flows are harmful to socio-economic development in developing countries[30] This critique is based on the argument that the relationship between developed countries and developing countries is a 'metropolis-satellite relationship' in which developed countries maintain a monopoly over the developing countries and that relationships of dominance and surplus extraction between metropolis and satellite serve both to channel surplus to the developed countries and to sustain underdevelopment[31]FDI has shown its ability to contribute significantly to all three components of growth: FDI increases capital stock, boosts human capital accumulation (though usually unmeasured in labor stock), and speeds up technological advances in host countries. Nevertheless, the most direct impacts of FDI on host economies are through its role in the accumulation of investment[32]For a country like Nigeria that is keen on FDI inflow, it is important to develop a robust

[29](Chenery and Strout 1966; Chenery and Cater 1973; Papanek 1973; Dowling and Hiemenz 1983; Cassen 1986; Mosley 1987; Bacha 1990; White 1992, 1998), as cited in , Pham Hoang Mal , "The Role Of Foreign Direct Investment In Socio-Economic Development", A Case Study Of Vietnam During The Transition Period A thesis submitted in fulfillment of the requirements for the degree of Doctor of Philosophy at Massey University, Turitea Campus, Palmerston North New Zealand , -2001. Available at https://mro.massey.ac.nz/bitstream/handle/10179/2140/02_whole.pdfAccessed on 16/8/17.

[30]countries (Baran 1957, pp. 177, 325; Frank 1966 and 1969; Cardoso 1972, pp. 91-92; Amin 1977, pp. 172-173;Helleiner 1989, pp. 1453-1454). Cited by Pham Hoang Mai, *Op cit.*

[31](Brewer 1980, pp. 159-167, p.971).cited*Ibid.*

[32]Xiaolun Sun, "Foreign Direct Investment and Economic Development What Do the States Need To Do?, prepared for the Foreign Investment Advisory Service for the Capacity Development Workshops and Global Forum on Reinventing

framework for measuring and analysing the developmental impact of FDI on its economy and citizens. This is particularly relevant given the huge gap between the country's high economic growth and low performance in the areas of employment, poverty reduction, and human development, among others. Nigeria can benefit from FDI in its socio-economic existence in the areas of poverty, inequality and unemployment reduction as well as enhance its favourable impact on gender, education, skill and technological transfer, and environment and tax revenue[33].

Employment

FDI has the potential to generate employment both directly, those employed by the FDI Company, and indirectly, those working in its servicing companies. It has also been found that when citizens of the host country are found in management positions, there is greater diffusion of skills which improves the quality of labour. In addition, local workers gain from in-creased employment if the adopted technology is labour-intensive as opposed to capital-intensive technology that requires fewer workers.

Labour Compensation

Multinational corporations (MNCs) may use higher pay to attract highly-skilled local workers and ensure quality and productivity, given the higher cost of monitoring from abroad. Better incentives may also be used to reduce staff turnover and minimize the risk of their productivity advantage spilling over to competing firms. Therefore, FDI has the potential to increase the average wage in the recipient firm and thereby reduce poverty. Conversely, evidence exists that in some countries where FDI generates employment, it may be to the benefit of the more educated, wealthy elites and urban citizens. There are also accusations that MNCs employ unfair competition when taking advantage of low wages and labor standards in the host country and sometimes violate human and labor rights, especially in developing countries where governments fail to enforce such rights effectively.

Gender

FDI has been found to improve the socio-economic status of women. This affects the general society as women's earnings are mostly expended on improving the health and nutritional well-beings of their children.

Environment

It is possible for FDI to reduce environmental problems, thereby contributing to sustainable development in the host country. This often results from the accessibility of MNCs to modern and environmental-friendly technology. The immediate host community of FDI projects can also benefit from some corporate social responsibility activities of the MNCs.However, sizeable FDI is found in extractive industries and this has significant environmental impact. It has therefore been shown that

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Government on Globalization, Role of the State and Enabling Environment and Sponsored by the United Nations Marrakech, Morocco . Available at https://pdfs.semanticscholar.org/f68d/000c399db57f3958a052705ccf6c09c9d053.pdfAccessed*16/8/17.*

[33]"Socio-economic Impact of Foreign Direct Investment: Lessons for Nigeria", <https://www.proshareng.com/news/Nigeria%20Economy/Socio-economic-Impact-of-Foreign-Direct-Investment--Lessons-for-Nigeria-/24863 > Accessed 17/8/17.

there is the likelihood for MNCs to relocate to countries where environmental regulations are lax or non-existent.

Backward Linkage with Local Firms
Domestic firms may benefit immensely from FDI inflows. This often arises from their collaboration in the supply chain and through engagement in subcontracting arrangements with foreign-owned firms. They can also have access to knowledge transfer when they recruit workers with experience in foreign firms and through competition. Joint ownership is another avenue by which local firms benefit from FDI. However, FDI may also crowd out local firms. Therefore, the ex-tent to which local firms may benefit from FDI has been shown to be determined by their ability to enjoy a responsible business environments with technical and credit assistance.

Government Revenue
It is expected that FDI will lead to an increase in tax revenue with which the government can improve on the socio-economic status of its citizens. For this to be possible, it is however important that the tax system in the host country be attractive. There must also be policies in place which ensure that the tax revenue is really collected and that such revenue is used to finance poverty alleviation programs.

The foregoing suggests that FDI inflow is desirable, thereby justifying Nigeria‘s efforts at attracting foreign capital. A major argument is that in addition to the mere quantitative macroeconomic impact, Nigeria needs to evaluate other developmental contributions of the type of FDI it is attracting. Evidence abounds that FDI has the potential to grow the economy of the host country. However, preferences should be accorded to FDI inflows that:

(i) Generate employment: the more labour-intensive the better;
(ii) Create an enabling environment for skill acquisition;
(iii) Do not take advantage of poor, local labour law and enforcement to pay low wages and violate labour rights;
(iv) Allow for the inclusion and growth of women and groups with special needs;
(v) Adopt environmentally-friendly technology;
(vi) Contribute to community development;
(vii) Invest in non-extractive sectors; since a sector like oil has a significant environmental impact;
(viii) Do not take undue advantage of poor, local environmental regulations;
(ix) Are willing to employ local firms in the supply chain and joint ventures;
(x) Do not stifle local competition;
(xi) Foster responsible business environment with technical and credit assistance to local firms; and,
(xii) Do not evade tax through transfer pricing and other illicit financial flow activities.

5. Foreign Investment and National Security
The issue of foreign direct investment and national security, in most countries, has to do with the consideration of the security and interest of the local market while making foreign investment, and while allowing foreign firms to operate within the country. For instance, as a top destination for foreign investment, the United States seeks to strike a balance between national security and its

commitment to open markets.[34] The United States is both the world's largest foreign direct investor and the largest beneficiary of foreign direct investment (FDI). But like every sovereign country, it has sought to temper its embrace of open markets with the protection of its national security interests. Achieving this balance, which has shifted over time, has meant placing certain limitations on overseas investment in strategically sensitive sectors of the U.S. economy[35].For them, the challenge ahead is to reform the process in order to minimize the security risks raised by foreign investment without chilling future investment. More recently, leaders in Europe and the United States have raised concerns over growing investments by China's state-owned and state-backed enterprises. For Nigeria, the issue is seen from a different perspective, the negative effect to foreign investment, the loss of revenue from foreign direct investment due to insecurity. Kidnappings, killings, and corruption seem to be the political cum economic trinity bedeviling Nigeria today. The current state of insecurity and bombings especially in the Northern part of Nigeria has posed serious challenges to the peace and stability of Nigeria macroeconomic environment. The nation has not only suffered colossal loss in terms of infrastructure, properties and viable human lives but also economic sabotage which leads to the displacement of foreign direct investment[36]. Given the key role which foreign direct investment plays in most developing economies especially as a catalyst for economic growth, this is a major cause of concern.

Every investor desires the security of their investment, be it in human or material resources, which is why any good entrepreneur must assess the security situation wherever he wants to invest.[37] Someone in Nigeria can manage and invest in the country probably because there is no other option, but that cannot be said about foreign investors with the level of insecurity in the country. Many international bodies have given Nigeria different ratings, all pointing to the fact that Nigeria is failing in many ways especially security wise; notwithstanding the much expenditure by the nation on security. Some have even gone ahead to predict a year of disintegration for the nation; and that is a cause for concern for any business man thinking of investing in the country.[38]Insecurity is costly not only that it stagnates the growth of Foreign Direct Investment, but the development of any country it is found. Insecurity leads to countries and companies withdrawing their investments from countries with such security challenges like in Nigeria. This happens because every investor aims at making profit, but when expenses grows higher than income, the investor losses; and this is the unavoidable outcomes of situations like the militancy that is rocking Nigeria. Insecurity can also influence the prices of stock making it unstable, which will make investors indecisive about investing.

The simple conclusion to the whole matter is that peace and tranquility is one basic need of the human species, and since business cannot run itself, it goes to say that business thrives where peace

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[34]J Masters and J McBride, 'Foreign Investment and US National Security' <https://www.cfr.org/backgrounder/foreign-investment-and-us-national-security> Accessed 16/8/17.
[35]*Ibid.*
[36]D Oriakhi& P Osemwengie, "The Impact of National Security on Foreign Direct Investment in Nigeria: An Empirical Analysis" *Journal of Economics and Sustainable Development* Vol. 3, No. 13http://www.iiste.org/Journals/index.php/JEDS/article/view/3493Accessed 16/8/17.
[37]J Essien, B Tordee, S Abuba& F Igbara, 'The Impact of National Security on Foreign Direct Investment (FDI) In Nigeria' (2015) *IOSR Journal of Business and Management (IOSR-JBM) Volume 17, Issue 5.Ver.*I www.iosrjournals.org.
[38]*Ibid.*

is giving a chance. Nigeria has enjoyed its share of threats to national security just like other developing countries, and has as well done some lot in different ways through different political regimes. This impacts seriously on the economy as it affects even investment behavior both in the local and especially the foreign investors. [39]The work of Essien*et al* found as follows:Firstly, that the trend and nature of the threat to national security has affected the trend of Foreign Direct Investment in the country, showing a relationship between national security and FDI.Secondly, the level and nature of the threat to national security determines the level and trend of FDI in the country. Thirdly, and of course obviously, a solution to the national security challenges will result to a change in the nature and trend of FDI in the country.They recommended that other determining factors of FDI such as diversifying the economy into other sectors other than the oil sector; price moderation through the subsidization of industrial inputs so as to reduce cost of production; improvement of the power sector for steady power supply should be seriously addressed.They identified corruption as a major issue that has been drawing down the country's development process. It was identified as one of the reason the youths do not have jobs, why contracts are not executed as required, why the education sector has fallen in standard *etcetera*. In their work, Oriakhi and Osemwengie[40] investigated the impact of National security on foreign direct investment in Nigeria and found that because FDI is an important source of savings for developing countries and, thus, an engine of growth, the interplay between insecurity and FDI is of paramount concern. They recommended that government at all levels and key actors in policy formulation should adopt strong policy measures by devising more holistic approach to tackling the state of insecurity by entrenching the culture of transparency such that funds allocated to the sector (security) are effectively utilize for equipping the security system to meet 21st century standard. They recommended that government should seek technical assistance in the area of intelligence from advanced countries and finally, proactive measures should be adopted especially in tackling insecurity brought about by natural occurrences.

6. Foreign Investment and Civil and Political Rights

Democratic countries are characterized by high civil and political liberties. Even though democracy is a more complex issue, one can claim that the respect and indulgence of the civil and political rights of the citizens are its most important aspects. Recognition of civil and political rights involve the rights to a decent life, and rights to participate meaningfully in the political process; and be a beneficiary of the dividends of democracy. In a democracy, this means the right of all adults to vote and compete for public office, and for elected representatives to have a decisive vote on public policies'[41] Conversely, civil liberties ideals involve a series of various economic, political and civil liberties enjoyed by the citizens of the country, such as freedom of expression and belief, association and organization rights, rule of law and personal autonomy. In the words of Gastil'Civil liberties are rights to free expression, to organize or demonstrate, as well as rights to a degree of autonomy such as is provided by freedom of religion, education, travel, and other personal rights'[42].Even though higher civil and political liberties imply better democratic institutions, it does

[39]*Ibid.*

[40]Dickson Oriakhi and Presley Osemwengie, 'The Impact of National Security on Foreign Direct Investment in Nigeria: An Empirical Analysis' (2012) *Journal of Economics and Sustainable Development , Vol.3, No.13.*

[41]Gastil 1882, as cited in A Adam & F Filippaios' 'Foreign Direct Investment and Civil Liberties: A New Perspective', <https://kar.kent.ac.uk/5416/1/Adam_and_Filippaios_EJPE_August_18.doc> Accessed *16/8/17.*

[42]Ibid.

not always translate to higher FDI. On the contrary, there have been insinuations that FDI may be lower in such situations. According to Adam and Filippaios, there is no reason to expect that these two liberties affect investment motives. Civil liberties refer to the workplace environment and the organization rights of the workers and to various economic rights. In contrast, political liberties refer to the decision-making process in the country and the way the government chooses which policies to implement.

Several studies have examined the impact of political and civil liberties on multinationals' motives and decisions and vice versa. Greider[43] and Meyer[44] draw similar conclusions, with the first one suggesting that FDI does not have a liberalising effect in autocratic countries and the second one going a step further and supporting that multinational enterprises (MNEs) are actually not only 'robbing' developing nations of their economic sovereignty but also support repressive regimes. However, Harms and Ursprung[45] do not find support for the argument that MNEs show a preference for undemocratic regimes. Instead they propose that more individual freedom attracts FDI. There is also a tendency that MNEs, under the pressure of non-governmental organisations and the shift of FDI from primary sector to manufacturing and service activities, to change their investment behaviour towards countries that broaden the protection of political liberties. In their paper, Adams and Filippainos assumed that high repression of civil liberties is expected to exert a negative effect on the productivity of the workforce. In such an environment workers are not accustomed to taking initiatives, cannot co-operate effectively, and have lower incentives to be productive. This implies lower returns to foreign investments. In this case an increase in economic rights and civil liberties may stimulate the working of the free market, providing better outcomes for productivity and growth.

However, as civil liberties rise, the productivity of the workforce increases, but at the same time adverse powers may come into play. Labour unions and special interest groups begin to form and gain power increasing their ability to extract rents from the Multinational Enterprises (MNEs). According to their research, Political liberties' repression effect to FDI comes through a different channel. For instance, elections act as a disciplining device for the policymaker. When elections are free and fair, voters will punish the officeholders that deliver 'bad' economic outcomes. This will induce the officeholder to provide sound economic policies. In support of the above argument, it has been arguee[46] that non-democratic autocratic rulers have a shorter time horizon since policy changes, e.g. due to a violent revolution, are more frequent in non- democracies. The above suggest that in countries where political liberties are low – i.e. the electoral mechanism does not work efficiently – economic policies and outcomes are less efficient compared to policies in countries with high political liberties. Less efficient government policies have a negative effect on the returns of FDI, and therefore reduce the amount of FDI that a country receives.

[43]W Greider, *One World, Ready or Not: The Manic Logic of Global Capitalism* (New York: Touchstone, 1998). Cited in Adams and Filppainos.*Ibid.*

[44]W Meyer, *Human Rights and International Political Economy in Third World Nations: Multinational Corporations, Foreign Aid and Repression* (Westport: Praeger, 1998) cited in Adams and Filppainos. *Ibid.*

[45]P Harms, and HW Ursprung, 'Do civil and political repression really boost foreign direct investments?'*Economic Inquiry* 40, 651-663. Cited in Adams and Filppainos.*Ibid.*

[46] Olson (1993) and McGuire and Olson (1996),as cited by Adams and Filippaios, *Ibid.*

However, after testing the empirical validity of their analysis with respect to the effects of civil and political liberties on FDI, from a normative point of view, the results presented appeared disturbing. As their results show, a particular type of FDI can be attracted from countries where the civil liberties are (slightly) repressed. Then developing countries may face a vicious dilemma: to choose between low economic well-being (low growth) and low political well-being (low civil liberties). They proposed a way out; FDI does not come necessarily under the form of efficiency-seeking activities. A country, therefore, may attract FDI by promoting the abilities and the knowledge of its local labour force. This process can only be accomplished with sound educational and other public policies and with a reasonable amount of civil and economic liberties. The final answer to the above dilemma may be policies in favour of democracy and towards attracting FDI that is motivated by such other factors other than efficiency reasons.

7. Foreign Investment and Economic, Social and Cultural Rights

This section examines the relationship between economic rights and the inflow of foreign direct investment. Foreign investors care about economic freedoms, rather than political freedoms, in making decisions about where to locate capital. Hence more democratic countries may receive less Foreign Direct Investment (FDI) flows if economic freedoms are not guaranteed. One reason could be that democratizing developing economies are often unable to push through the kind of economic reforms that investors desire due to the presence of competing political interests. This could potentially explain why countries like China and Singapore that rank poorly on the democracy index but are relatively high on the property rights index do well in terms of FDI inflows[47].In the light of the foregoing therefore, the need to attract FDI is imperative particularly given its importance and role in the growth process of developing economies. These consequently advance why so much effort has tirelessly been geared mostly by developing nations towards its attraction.[48] Thus, it is being argued that countries that enjoy economic prosperity or grow faster are those in which the individuals and groups enjoy economic freedom. Moreover, freer economies are supposed to attract more investment.[49]

In another study[50], on the impact of foreign direct investment on Nigeria's economic growth over the period of 1999 – 2013, the findings revealed that economic growth is directly related to inflow of foreign direct investment and statistically significant at 5% level. This implies that a good performance of the economy is a positive signal for inflow of foreign direct investment. It can be concluded that foreign direct investment is an engine of economic growth. Therefore, there is need to have a stable political and economic environment and improve on the critical infrastructure level of security at all levels in the country. Systems of governance should be based on accountability, transparency, effective and efficient resource. Furthermore, government needs to liberalize the foreign sector in Nigeria so that all barriers to trade such as arbitrary tariffs; import and export

[47]A Mathur&K Singh, 'Foreign direct investment, corruption and democracy', (2013) *Applied Economics*, *vol. 45, issue 8,* 991-1002: <http://econpapers.repec.org/article/tafapplec/45_3ay_3a2013_3ai_3a8_3ap _3a991-1002.htm> Accessed 17/8/17.

[48]KB Ajide and PB Eregha, 'Economic Freedom And Foreign Direct Investment In ECOWAS Countries: A Panel Data Analysis' (2014)*Applied Econometrics and International Development* Vol. 14-2.

[49]*Ibid.*

[50]KM Adeleke, SO Olowe& FOOluwafolakemi, 'Impact of Foreign Direct Investment on Nigeria Economic Growth' (2014) *International Journal of Academic Research in Business and Social SciencesVol. 4, No. 8.*

duties and other levies should be reduced so as to encourage investors. Another study examined the effect of foreign direct investment on economic growth in Nigeria from the period 1981 to 2015 and found that foreign direct investment has a positive and significant effect on gross domestic product. It was also found that exchange rate has a positive but not significant effect on gross domestic product. Thus, the study concluded that foreign direct investment has a positive effect on economic growth in Nigeria as opposed to the findings and belief of some researchers and other stakeholders that foreign direct investment has a negative effect on the growth of the economy. It was recommended that government should improve the state of infrastructures in the country in order to encourage meaningful investments in the economy. Also, the Central Bank of Nigeria should come-up with policies that will help to stabilize the Naira exchange rate *vis-à-vis* the major currencies of the world, like the United States Dollar. This will boost the investors' confidence in the economy.[51]

8. Conclusion

Respect for and protection of human rights constitutes a demand before the desired national development through foreign investment. The task of finding a proper link through the three variables of human rights, foreign investment and national development is the major objective of this study. The work found that in devising policies to encourage investment and to increase the flow of the benefit to the host country, a developing country's overall human rights profile is of crucial importance. A country's human rights laws and enforcement are much more important in attracting foreign investment than are special incentives which are costly and frequently ineffectual. Hence, the level of inclination of foreigners to invest in an economy depends on the level of security of investment and of themselves which they perceive exists in such an economy as guaranteed by the relevant legal regime and level of enforcement. This is because an investor whose security is insecure in the host State is usually wary of the variables that necessarily affect his life and dignity and such investment. It is in the light of the foregoing that the significance of this study cannot be overemphasized. The study has both theoretical and practical significance. Theoretically, the study adds to knowledge especially as it relates to the legal regime for foreign investment and its implications on the economic and social life of the people. Practically, it has suggested a practical approach to the much sung mantra for foreign investment especially in developing countries.

[51]EI John, 'Effect of Foreign Direct Investment on Economic Growth in Nigeria' (2016) *European Business & Management*, *Volume 2, Issue 2*, 40-46.