

An Appraisal of the Legal Framework for Foreign Direct Investments (FDIs) in Nigeria and Implications for Food Security

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Abstract

Nigeria as a country has been facing food security challenges at the national and household levels. These have been exacerbated by poverty, climate change, insecurity, smuggling of food and agricultural products into the country, lack/poor infrastructure and unfriendly business environment for investment. This paper examines the legal regime of Foreign Direct Investments (FDIs) in Nigeria and its impact on Nigeria's Food Security status. The paper identified four (4) major dimensions of food security which include: food availability, food accessibility, food utilization and stability. This paper further notes that as a country with sound economy where there are job/employment opportunities for her citizenry to earn a living and have access to adequate/nutritious food for a healthy living, diversification of the economy, good healthcare system, technology transfer, human and infrastructural development, security of lives and properties etc. are also imperative. These factors enhance and ensure food security at the national and household level. The paper discovered that FDI is one of the international economic concepts required by any developing country (including Nigeria), to improve and stimulate her economy in order to attain food security. The research work adopted the doctrinal research method using statute books, journal articles, text books; law reports, internet materials etc. It concluded that for Nigeria to attain food security, the country must be willing to explore more benefits offered by FDI in the agricultural and other related sectors so as to stimulate the economy of Nigeria and create jobs for the citizenry. The paper recommended amendment of the Land Use Act to remove those offending sections stifling acquisition of land as it affects foreign investment; Similarly, the paper shows that the Custom operational guidelines should be revisited in order to remove bottlenecks and excessive documentations at the ports which further impedes food security. It further recommended for a comprehensive policy and legal framework for FDI in Nigeria as this will provide stable and conducive legal environment that is capable of supporting the growth potential and flow of foreign investment in the agricultural and other relevant sectors in Nigeria as this will boost the country's food security status.

Key Words: *Investments, Foreign Direct Investment, Food Security*

JEL Codes: *F35, K40, L66*

Introduction

Nigeria no doubt is a country with abundant rich natural and human resources, even though the country abysmally occupies the back seat in the wagon of global economic prosperity and amongst the food secured countries of the world. With Nigeria's economy plagued by conflicts, ever growing trade imbalance, mounting debt crisis, decreasing external flow of resources, increasing marginalization by the new international division of labour among other

issues; As such, Nigeria cannot certainly assert itself in the new world order dictated by economies with financial wherewithal (Ikoni, 2014: 178). This situation has been exacerbated by systemic failures by way of corruption, political instability, insecurity and bad leadership. Others challenges include rapid growth of public expenditures, decline in oil earnings, borrowing from international community at non-concessional interest rates, overdependence on imports without encouraging local production and regulatory failures.

Experience therefore has shown that the way out for Nigeria is in trade and investment. Additionally, Foreign Direct Investments (FDI) remains as a pathway towards solving some of these challenges in the economy (Ikoni, 2014). This will go a long way in boosting the economy of Nigeria in addition to improving Nigeria's human resources capital, ensure large expanse of land for cultivation and investment in agriculture is improved, while ensuring food security is attained. Foreign Direct Investment therefore came about as a result of ever increasing interdependence and cooperation in the area of economic development (Sa'adu, 2015) amongst independent nations by way of technology transfer, employment creation, investment in the manufacturing, agricultural, educational, financial and other sectors of a given country. It benefits the global economy, including investors and recipients. Hence, it is inevitable for any nation (either developed or developing economies).

It is against this background that the study seeks to appraise the legal framework for Foreign Direct Investments (FDIs) in Nigeria and its implications on food security. To achieve this objective, this paper has been divided into five sections as follows: section one is the introduction; section two deals with conceptual clarifications of investment, Foreign Direct Investment and food security. Section three deals with an evaluation of the extant laws on Foreign Direct Investment in Nigeria and its implications on food security. Whilst section four made an expose on how food security can be achieved through FDI. The concluding section makes recommendations on the need for more laws that would promote FDI especially in the agricultural sector in Nigeria.

Conceptual Clarifications

It is pertinent to make clarifications with respect to certain concepts used in this paper. They include: Investments, Foreign Direct Investments and Food Security.

Investment

The term investment can be viewed from different perspectives. Thus, the *Black's Law Dictionary* defines investment as: 'expenditure to acquire property or otherwise assets in order to produce revenue.' Investment can further be conceived as the placing of capital or laying out of money in a way intended to secure income or profit' (Garner, 2004). It is therefore an act of allocating resources with the expectation of generating an income from such action. An individual acquires an asset or item with the aim that it generates income or appreciates in value overtime. Usually when an item or good is purchased for investment purposes, the intents are not usually that it is consumed, but to use it in the future for wealth creation. According to Obitayo,

Investment refers to the accumulation of real capital goods, which yield[s] a future flow of goods and services. Economic literature has understood the positive relationship between investment and economic growth, and the critical role which investment plays as an engine of growth. Investment increases the productive capacity of an economy, generates income and improves the standard of living of the people. Higher rates of investment lead to faster technological progress which enhances the competitiveness of an economy in the global market. Investment comprises public and private investment. Public investment spending (e.g. on infrastructural facilities) compliments aids and its efficiency while expan[ding] private sector investment. Private sector investment can be classified into medium-long-term capital and short-term working capital. Obitayo (2006: 51)

Investment therefore may take several forms which include: an enterprise; shares, stocks and other forms of equity participation in an enterprise; bonds, debentures, other debt instruments and loans; futures, options, and other derivatives; turnkey, construction, management, production, concession, revenue sharing, and other similar contracts; intellectual property rights; licenses, authorizations, permits, and similar rights conferred pursuant to domestic law; other tangible or intangible, moveable or immovable property, and related property rights, such as leases, mortgages, liens, and pledges (Eze and Eze : 2017).

Foreign Direct Investment (FDI)

Foreign Direct Investment (FDI) presupposes an investment made by a firm or individual in one country into business interests located in another country. It refers to a direct capital importation in the sense that the foreign business entity is involved in the venture either wholly or in partnership with others (Alegimelen, 2006). It involves direct control and participation in the operation of the recipients' firms. On another note, FDI could be referred to as a commercial act wherein a person or an entity from one country deploys substantial resources from that country to another country in order to establish commercial operations or acquire income generating tangible assets, or take effective control or significant degree of influence over the management of such operations or assets with the expectation of obtaining a return on such investment (See OECD, 2008).

FDI is generally a long term investment which presents a lot of advantages to a host country. It is one of the forms of Foreign Investment. Foreign Investment on its part connotes all that means whereby capital, technology, as well as other managerial expertise is sourced outside the country by a State. It covers such

activity such as manufacturing, agricultural, trade, provision of services and so on. According to Akper in his article titled, *Infrastructural Development as an Imperative for Attraction of Foreign Investment Promotion and Protection in Nigeria*, he opines

Foreign investment involves the transfer of tangible or intangible assets from one country to another for the purpose of use in the country to generate wealth under the total or partial control of the owner of the assets. Foreign investment has also been defined as 'injection of such foreign sourced resources directly into the real sector of the economy. The resources are converted not just into financial assets such as shares and bonds but factories, goods and services. (Akpe, 2006: 103)

The concept of Foreign Investment therefore depends largely on the flexibility and methodology of its pursuits within a given economic policy. It is majorly categorized into two forms to wit: Foreign Direct Investment (FDI) and Portfolio Investment (Ikoni, 2014), otherwise referred to as Indirect Foreign Investment. Portfolio Investment involves investment in shares or other securities traded on a securities exchange or capital trade point. In other words, it is an investment made in securities and other financial assets issued in another country. It is where a company takes controlling shares in a business concern in another country. In the recent times, loans to government otherwise known as foreign debts have also been seen or classified as the third category of Foreign Investment (See Robert, in Ikoni, 2014).

This paper however focuses on FDI, an international economics concept which has today played a greater role in the internationalization of business.

Reacting to changes in technology such as new information technology systems as well as decline in global communication costs –this has ultimately made management of foreign investments far easier than it used to be in the past, growing liberalization of the national regulatory framework governing investment in enterprises, changes in capital markets as well as great changes/improvements which have occurred in terms of size, scope and methods of FDI. It is a major driver of the economic growth and a source of non-debt finance for the economic development of the country. FDI can be vertical or horizontal; it is vertical when a multinational acquires an operation that either acts as a supplier or distributor. It is where an investment is made within the supply chain, but not directly in the same industry, whilst horizontal FDI occurs when a company initiates a similar operation or business model in another country. A direct investor in an FDI may be an individual, an incorporated or unincorporated private or public enterprise, a government, a group of related individuals, or group of related incorporated and or unincorporated enterprises which have a direct investment enterprise -The foreign investor in direct investment enterprise owns 10% or more of the ordinary shares or voting power of an incorporated enterprise or the equivalent of an unincorporated enterprise.operating in a given country other than the country of residence of the direct investor. Usually direct investment enterprise may be subsidiaries, associates or branches. (Eze *et al*, 2017)

FDI helps the economic situation of developing countries and at the same time facilitates progressive internal policy reforms. It helps in employment creation, transfer of technology, increased domestic competition and other positive externalities. In Nigeria for instance, FDI has helped the country so much in infrastructure development and revenue generation and has enormous potential to stimulate food security through provision/transfer of technological know-how for improved/mechanized agricultural production. These can have reverberating effects in areas like creation of employment, and encouraged exports of local products.

Food Security

Indeed, Food Security is a flexible concept which has attracted several definitions by scholars, government institutions, Non-governmental organizations, major stakeholders in agriculture, and economists. It is one of the major elements of development and poverty alleviation and has been the goal of many international and national public organizations (Bajagai, 2018). Food Security was first defined in 1974 at the World Summit as ‘availability at all times of adequate world food supplies of basic food stuffs to sustain a steady expansion of food consumption and to offset fluctuations in production and prices (See United Nations Report of the World Food Conference cited in Iweoha, Omoregie, Alabi & Idahosa: 2017). This definition was however expanded by the Food and Agriculture Organization (FAO) in 1983, wherein it was stated that Food

Security refers to: ‘ensuring that all people at all times have both physical and economic access to the basic food that they need (Iweoha, *et al*, 2017). The 1996 World Food Summit gave a more robust definition of Food Security as thus: "Food security at the individual, household, national, regional and global levels is achieved when all people, at all times, have physical and economic access to sufficient, safe and nutritious food that meets their dietary needs and food preferences for an active and healthy life" (Bajagai, 2018). This definition appreciated the various stages/levels for achievement of food security which can be at the individual level, household, national, regional or global level. This is to say that a nation can achieve food security status/level as a nation but an individual in the said nation may not have access to sufficient, safe and nutritious food and vice versa. Access to sufficient, safe and nutritious food is one of the basic elements of food security. This can be achieved by the purchasing/economic power of the individual/party to purchase or have access to sufficient, safe and nutritious food at every particular point in time. This definition is all encompassing and has been accepted widely as containing all the requisite ingredients for a better appreciation of the concept.

The World Health Organization (WHO) attempted an expansion on the concept when it stated that food security means that:

- (a) all people at all times have both physical and economic

- access to enough food for an active, healthy life;
- (b) the ways in which food is produced and distributed are respectful of the natural processes of the earth and thus sustainable;
- (c) both the consumption and production of food are governed by social values that are just and equitable as well as moral and ethical;
- (d) the ability to acquire food is ensured;
- (e) the food itself is nutritionally adequate and personally and culturally acceptable; and
- (f) the food is obtained in a manner that upholds human dignity (Bajagai, 2018).

Dimensions of Food Security

The above definitions of the concept have introduced four (4) main dimensions/pillars of food security to wit: Food Availability; Food Accessibility; Food Utilization and Stability. They are discussed thus:

(a) Food Availability:

This dimension of food security relates to the supply of food through food production, distribution and exchange (Gregory, 2005). It is determined by a variety of factors which includes: land ownership and use. Food availability may be adversely affected, for instance due to development or urbanization, land supposedly used for agriculture could be used for urbanization whereby infrastructures such as airports, roads, factories, buildings etc are built on arable lands. Similarly, such lands could be lost to

desertification, soil erosion, flooding and salinization. In some situation, the use of land, water and energy to grow food often competes with other uses which can affect food production, soil management, livestock breeding and management, crop selection, breeding and management and harvesting. Food availability dimension therefore expects sufficient quantities of quality food from domestic agricultural production or from imports for both present and the future generations.

Apart from the requirement of food production, food distribution is another concept that makes up food availability. Food distribution takes care of the storage, processing, transportation, packaging as well as marketing of food. Therefore, availability of functional Food Chain Infrastructure, storage technologies on farms of will affect the amount of food wasted in the distribution process. Where the cost of transportation infrastructure is high, it affects supply of agricultural/farming inputs required for food production such as water, fertilizer, improved seedlings, etc. It also affects the prices of moving food from the place of production or harvest usually between the rural areas to urban areas where they are produced to areas where they are consumed/purchased (Okaphor, 2017). The requirement of bartering, exchange or cash economy is very fundamental in determining food acquisition. Around the world today, very few households are self sufficient thereby creating the need for trade by barter, exchange or cash economy in order to acquire food

(Gregory, 2005) and to ensure food security. This therefore, requires efficient trading systems and marketing institutions which can affect food security (Gregory, 2005).

(b) Access to Food:

This dimension of food security refers to the affordability and allocation of food as well as preferences of individuals and households (Gregory, 2005). It opines that even though, there may be adequate supply of food at the national or international level, that this may not guarantee food security at the household or individual homes. Thus, according the UN Committee on Economic, Social and Cultural Rights, the causes of hunger and malnutrition are not often as a result of food scarcity, but due to an inability to access available food, usually owing to poverty and lack of funds (UN, 1999). Access to food therefore depends on whether the household has enough income to purchase food at the prevailing rate in the market or has the resources to grow its own food. Access to food can be direct or economic access. It is direct when a household produces food using human and material resources to grow food but it is indirect economic access when food items are produced or purchased elsewhere to feed the household (FAO, 1997). Therefore, assets of a household which includes the income/earning, land, inheritance, gifts, products of labour are the determining factor to a household's access to food -note that a household may have access to enough and nutritious food, it may however, not assure adequate food intake of all household members. Ultimately, this

dimension further provides that access to food must be available in socially acceptable ways without resorting to emergency food supply, begging, stealing, scavenging or other coping strategies (United States Department of Agriculture, 2008).

(c) Food Utilization:

This third dimension of food security addresses not only how much food people eat but also what and how they eat the food. It covers food preparation, intra-household food distribution, water, sanitation, as well as health care practices. It is referred to as the metabolism of food by individuals. Therefore, to achieve food security within the understanding of this concept, the food eaten must be safe/secure and it has to be enough in quantity and quality so as to meet the physiological requirements of each individual. Other notable concepts affecting food utilization include: food safety, food choice access to healthcare.

(d) Stability:

Stability of the three (3) dimensions of food security refers to the ability to obtain/have access to safe and quality food overtime and in sufficient quantity. This dimension considers those snags that negatively affect the actualization of any of the three (3) dimensions discussed. For instance, at the production level, natural disasters, erosion, desertification, drought and flooding could result in crop failure or low food production and harvest. Similarly, unrests, civil war, herdsmen attack on farmers and farmlands, insecurity, banditry, and insurgency also negatively affects

food production, food availability and access to food. Furthermore, poor transportation system, bad roads, instability in markets resulting in food price hike can cause transitory food insecurity.

Review of Extant Laws Relevant to Foreign Direct Investments in Nigeria

Given Nigeria's natural resources base and large market size, the country became an investment bride for foreign investors. However, this has not also been the case as investors face one constraint or another in an effort to set up an investment in Nigeria. Some of the major constraints to attracting investments in Nigeria includes: inconsistency in government policies, poor/inadequate legal and institutional framework to protect the investment of foreigners, political instability, insecurity, corruption, poor infrastructure (Babatunde, *et al*, 2013). The Federal Government therefore has made conscious effort aimed at vigorously pursuing economic policies geared towards liberalizing and promoting competition and investment in the Nigerian economy –See the case of *AG Lagos State v. Eko Hotels Ltd* (2006) 18 NWLR Pt. 1011, p. 378, where the decision of the apex court reposed more confidence on the safety of investment made in Nigeria by foreigners pursuant to the laws of the land no matter who the other party is, as the court is ready to give an unbiased assessment of the facts and the law. It is in this direction and to reaffirm its commitment to market led economy that, the Nigerian government enacted and continued to update relevant legal instruments that promote, cooperate and enhance competition and at the same time regulate and protect foreign investments in Nigeria. These laws include:

Nigerian Investment Promotion Commission (NIPC) Act

This Act formerly known as NIPC Decree No. 16 1995 was enacted to encourage, coordinate and monitor enterprise establishment and operations in Nigeria. It lays out Nigeria's current investment framework and has the main purpose of removing all obstacles on the way of the transference of foreign capital into Nigeria by foreign investors who incorporate companies in Nigeria or who make equity investments into Nigerian Companies or advance loans to local associates/subsidiaries (Eze *et al*, 2017). The Act established the Nigerian Investment Promotion Commission (NIPC), a corporate body with the purpose of administering the Act (See Section 1 of NIPC Act Cap N117, LFN 2004). The Commission serves as one-stop government agency charged with the responsibility of promoting, facilitating and monitoring of all investments in Nigeria. It represents an investment facilitation mechanism where relevant government agencies are brought to one location, coordinated and streamlined to provide efficient and transparent services to investors. The Commission shortens and simplifies administrative procedures for the issuance of business approvals, licenses, permits as well as company incorporation thereby removing bottlenecks usually faced by investors whilst establishing and running business and ultimately reducing the cost of doing business in Nigeria (Zakari, Aliero & Abdul-Quadir, 2012).

The NIPC has the responsibility of ensuring the realization of the maximum benefits of the policies of liberalization and deregulation of the national economy. It opened all sectors including the agricultural and food production sector to foreign participation except for a short negative list which covers those sectors of investment

prohibited to both foreign and Nigerian investors. They include production of arms and ammunitions, production of and dealing in narcotics drugs and psychotropic substances, production of military and paramilitary wears and accoutrement including those of the Police and Customs, Immigration and Prison Services and such other items that the Federal Executive Council may from time to time determine (See Sections 18 and 31 of NIPC Act Cap N117, LFN 2004). It allowed for 100% foreign ownership in all sectors with the exception of the petroleum sector where FDI is limited to joint ventures or production sharing contracts arrangements (FAO, 2021). NIPC provides statistical data and information on the Nigerian economy, good investment climate, regulatory and legal framework as well as sector and industry specific information which is aimed at aiding existing and prospective investors in making informed business decisions. (FAO, 2021)

Companies and Allied Matters Act (CAMA), 2020

The Companies and Allied Matters Act is the principal legislation on the formation and regulation of business entities in Nigeria. The new/amended CAMA repealed and replaced the CAMA Cap C 20 LFN 2004 whilst introducing several corporate legal innovations aimed at enhancing the ease of doing business in Nigeria. It makes provision to the effect that every foreign company or person that intends to do business in Nigeria shall incorporate a separate company in Nigeria for that purpose. The Act however exempted certain foreign companies from the registration requirements. They include:

- (i) companies invited to Nigeria by or with the approval of the Federal Government of Nigeria to execute any specified individual project;

- (ii) companies in Nigeria to execute a specific individual loan project on behalf of a Donor country or international organization;
- (iii) companies owned by foreign governments and engaged solely in export promotion activities in Nigeria; and
- (iv) engineering consultants and technical experts engaged on any individual specialist projects under contract with any of the governments in Nigeria or their agencies, or with any other body or person where such contract has been approved by the Federal Government of Nigeria.

The Act established the Corporate Affairs Commission (CAC) and empowered the Commission among other functions to regulate and supervise the formation, incorporation, registration, management and winding up of companies (See Section 8 of NIPC Act Cap N117, LFN 2004). The Commission is Nigerian company's house, where filings in relation to the corporate structure and existence of business entities are made. Filings required to be made at the CAC include appointment/change of directors, shareholders, company secretary and external auditor. Companies are also required to make filings in relation to share capital increases and reductions, business reorganization and change of name or registered address.

Some of the new innovations made by the Act with the further aim of enhancing the ease of doing business for both foreigners and Nigerians alike include:

- (i) provision for single-member/shareholder companies (See Section 18(2) of NIPC Act Cap N117, LFN 2004). The new CAMA now makes it possible to establish a

- private company with only one (1) member or shareholder. This is in contrast with the requirement of the 1990 Act, which requires two or more persons to form and incorporate a company.
- (ii) introduction of electronic filing, electronic share transfer and e-meetings for private companies (See Section 176(1) of NIPC Act Cap N117, LFN 2004) – The new CAMA makes provision for electronic filing, electronic share transfer and e-meetings for private companies, and
- (iii) replacement of Authorized Share Capital with Minimum Share Capital (See Section 27 of NIPC Act Cap N117, LFN 2004) – The concept of “authorized share capital” has now been replaced in the new Act with the concept of “minimum share capital”. With this development, Promoters of businesses do not need to pay for shares not needed in the immediate term.

Despite the new innovations made by the Act, some of its provisions inserted into the Act seem to be a challenge to the friendly business environment for foreign investors and Nigerians alike which the Act is purporting to promote. For instance, by Section 394 of CAMA, the threshold for small companies has now changed from a maximum annual turnover of 2million NGN to a maximum annual turnover of 120million NGN, with over 5000% increase, thereby setting a high target to smaller companies who may not have such capacity. Similarly, the small company's net asset value (to make up for inflation rates and fluctuations) is capped at 60million NGN as opposed to the previous 1million NGN. This increase creates rather

a wide profit margin which clogs company's transition from small businesses to medium scale and others. The Minimum Share Capital for companies was also increased; this further makes it an uphill task for private companies to shift their services, businesses as the Act requires that businesses that want to change operations or services will still have to re-incorporate them as a new company rendering new services.

National Office for Technology Acquisition and Promotion (NOTAP) Act

This Act lays down the procedure for transfer of capital where the capital transferred is a foreign technology, to wit: technical expertise, plant, machinery, engineering supply, training facilities, trademarks and patent rights. The improvement of agriculture and the status of farmers are linked to the transfer of technology and know-how that are as a result of FDI inflows. The Act provides for the registration of technology provided by a foreign entity to a Nigerian Company. The Act, the Guideline and Manual issued thereunder set out a list of foreign technology agreements that are registrable – Technical know-how agreements, management services agreements, technical services agreement, consultancy agreements, software license agreements, value added services agreements, trademark license agreements, research and development agreements, franchise agreement, and hotel management agreements, the requirements for the registration of these agreements, applicable fees and the timeline for registration. For instance, the Act provides that the commercial contract or the agreement in respect of such a technology is required to be registered with the NOTAP office not later than sixty (60) days from the execution or conclusion of the contract (See

Section 4 of National Office for Technology Acquisition and Promotion (NOTAP) Act, Cap N62 LFN, 2004).

In the meantime, an understanding of the Act is relevant, as the registration of the foreign technology agreement forms the basis for the repatriation of fees under the agreement through the Official Market. Thus a registration made pursuant to the NOTAP Act provides that in the event of any dispute between a foreign investor and a Nigerian over technology imported into the country, the applicable law shall be either Nigerian law or the law of a neutral country and not the law of the investor's country (See Section 5 of National Office for Technology Acquisition and Promotion (NOTAP) Act, Cap N62 LFN, 2004). This provision of the Act has been commended as being laudable for protecting the transferee of the technology who the law is presumed to be of weaker bargaining status as at the time of the contract (Eze *et al*, 2017).

Foreign Exchange (Monitoring, Miscellaneous Provisions) Act

This Act established the Nigerian official autonomous foreign exchange market (Official Market) –See Section 1(1), where foreign currency transactions are to be consummated between the public and authorized dealers; among the authorized dealers; the authorized dealers and authorized buyers; among authorized dealers, authorized buyers, the public and the Central Bank of Nigeria. Under section of the Act, it listed the sources of foreign exchange that can be traded at the market to include: forex in domiciliary accounts which are maintained in Nigerian Banks; held or imported into Nigeria by Nigerian nationals resident in Nigeria or in the Diaspora; export proceeds from both visible and invisible trade, proceeds from oil exports; forex imported or held by foreign missions, international organizations; forex imported

for direct investment into Nigeria; forex provided by the CBN and from other sources as the Minister of Finance may specify in a published gazette. Eze *et al* (2017), noted that notwithstanding the plethora of lists, the apex bank remains the major source of foreign exchange for the market. The above speaks volume of the efficaciousness of the market as an alternative source of foreign exchange for end users. Nonetheless, the Act regulates dealing in foreign currency in Nigeria, prohibits any unlicensed dealing in foreign currency and penalizes such unlicensed activity.

It is therefore to be noted that the overall purpose of the Foreign Exchange Act is to liberalize the flow of foreign exchange within the economy at a market determined rate. This however has not been achieved because of the malpractices being played by the participants in the market to wit: the authorized dealers and buyers who engage in round tripping and fraudulently picking up the forex brought to the market by the CBN and speculatorily selling them to end users at a very high rate (Eze *et al*, 2017).

Immigration Act, 2015

Immigration Act 2015 and the regulations issued thereunder, regulate the entry and exit of persons from Nigeria. The Act which was assented to by President Goodluck Jonathan in October 2015 repealed the Immigration Act of 1963. It established the Nigeria Immigration Services as an independent unit rather than an appendage of the Ministry of Internal Affairs with powers to control and manage the departure and entering of people into Nigeria. The Act also requires Nigerian businesses with foreign participation to obtain a business permit, prior to the commencement of business. In addition to this, companies seeking to employ foreigners are required to

apply and obtain expatriate quota positions for the relevant number of expatriates they intend to employ. Such approval will cover technical and management staff which a foreign investor may require to operate the business post-investment. The Act also requires the expatriates who occupy the positions for which the expatriate quota was approved to obtain combined expatriate residence permits and alien cards, which grants foreigners the permission to live and work in Nigeria (Eze *et al*, 2017).

These provisions as contained in the Immigration Act are quite commendable as it will check the influx of foreigners into the country to parasite on Nigeria's economy and yet undermining her food security, under the guise of Foreign Direct Investment (FDI). In the recent times, there has been grave allegation that the perpetrators of most of the security issues especially as it relates to attack on crop farmers in Nigeria are foreign herders from other countries. One wonders how they were able to beat the Immigration point despite the elaborate provisions of the Act as to foreigners/herdsmen coming into Nigeria. The activities of these so called foreigners has become a serious threat to country's food security as crop farmers are no longer safe in going to the farms for fear of being hacked down, raped or their farmlands destroyed.

Investments and Securities Act (ISA), 2007

The Act was enacted by the National Assembly of the Federal Republic of Nigeria as an Act to repeal the Investments and Securities Act, 1999 and to establish the Securities and Exchange Commission (SEC) as the apex regulatory authority for the Nigerian capital market as well as regulation of the market to ensure the protection of investors, maintain fair, efficient and transparent market and reduction of

systemic risk and related matters –This is contained in the long title to the Investments and Securities Act, 2007. The Act requires SEC to maintain separate registers of Foreign Direct Investments and Foreign Portfolio Investments –See Section 8(k) of Investments and Securities Act and the whole essence is for the Commission to monitor the volume of Foreign Direct Investments into the economy at each point in time so as to enable policy makers to assess the impact of the policies on FDI at each point in time. On the part of settlement of investment disputes, the Act established the Investments and Securities Tribunal (IST) –Section 274 to exercise the jurisdiction –The jurisdiction of the Tribunal is provided for in Section 284(1) of the Act, powers and authority conferred on it by the Act. The IST has the overriding objective to ensure efficient resolution of capital market disputes with fairness, flexibility and transparency (See Section 290(1); Order 2 Rule 1 of the Rules).

Customs and Excise Management Act

The Act provides for goods that are prohibited from being imported or exported from Nigeria, as well as the duty on imported goods. The Act gives investors a sense of whether the major raw materials utilized by target companies can be imported into Nigeria, if not readily available in Nigeria. It also gives foreign investors a sense of whether goods manufactured by targets can be exported to other countries. The ban on the importation of agricultural products such as rice in order to ensure food sufficiency and food security was implemented by the Nigerian Custom Services albeit some loopholes. The tact manning of the various borders brought to the greatest minimal the smuggling and importation of foreign rice and other agricultural produce which are produced in

Nigeria thereby stifling and frustrating local production.

Despite the foregoing, the custom policy the custom policy in terms of clearing of imported goods constitutes major obstacles to foreign investors. The ban on the long list of items (See list on Federal Government website - <https://www.export.gov/apex/article2?id=Nigeria-Prohibited-and-Restricted-Imports>) which the World Trade Organization has repeatedly sought to eliminate, the illegal levies on imported goods which are often issued at the ports thereby increasing the cost of importation as well as delays at the ports in the process of clearing the imported goods are some of the challenges underlying the workings of Nigerian customs (Eze, 2015) thereby impeding Foreign Direct Investment. Some of the delays have been attributed o disputes between Nigerian agencies over the interpretation of custom regulations as well as frequent changes in customs guidelines. Similarly, the process involved in documentations at the various custom agencies and stages are quite bulky and indeed a great burden on investors requiring the completion of these customs forms as provided in the Customs guidelines –See Investment Policy Review on Nigeria by the United Nations Conference on Trade and Development.

Economic Recovery and Growth Plan (ERGP)

This is the policy of the Federal Government of Nigeria, a medium term all round developmental initiative which focused on restoring growth, investing in people and building a globally competitive economy. It was launched in April, 2017 and it was this plan that led the drive to review previous policy decisions. The aims of ERGP include:

- (i) to stabilize macroeconomic environment;
- (ii) achieve agricultural and food security;
- (iii) improve transportation infrastructure; and
- (iv) drive industrialization whilst focusing on SMEs (Deloitte, 2018)

The ERGP has several achievements which impacted Foreign Direct Investment as well as Food Security in Nigeria, some of the achievements includes:

- (a) the Introduction of the Voluntary Asset and Income Declaration Scheme (VAIDS) and its effective implementation is gradually restoring the efficiency of the Nigeria's tax system (Deloitte, 2018). VAIDS has been used to track the investments in Nigeria with a view to taxing them accordingly. The data of foreign investors doing businesses in Nigeria and taxes payable have been accordingly collated and indeed VAIDS has improved Nigeria's tax regime thereby generating revenue for the country;
- (b) in the area of agriculture and food security, the ERGP has continued to ride on the success of the CBN Anchors Borrowers' Programme, wherein over 550billion NGN has been disbursed by the CBN to well over 250,000 farmers under the scheme which saw more than 80% of the fund going into rice production. This singular policy was a major boost to the proliferation of local rice in the Nigerian market which gave a hot chase to the banned/smuggled foreign rice in the Nigerian market - The Federal Government in addition to banning the importation of foreign rice and other agricultural foods,

went ahead to announce the closure of all land borders in Nigeria. The announcement was made by President Muhammadu Buhari on the 20th of August, 2019 wherein he stated that smuggling of rice and other agricultural produce was threatening Nigeria's food sufficiency and that Nigeria's preference for foreign goods especially food items such as rice, has continually impoverished the Nigerian farmers and adversely affected domestic government policies (such as ERGP) towards boosting the agricultural sector and ensuring food security.

- (c) the ERGP saw to the increase of the budgetary allocation to the Agricultural sector. For instance, in 2018, the sum of 118.98billion NGN was budgeted for the agricultural sector, this was a significant improvement of about 15billion NGN higher than the previous year.
- (d) other projects launched under this scheme include: (i) Accelerated Agricultural Development Scheme (AADS) and (ii) Commissioning of the West African Cotton Company Limited (WACOT), Rice Mill in Argungu, Kebbi State with the production capacity of 120,000 metric tons, African Soil Information Service (AFSIS) pilot project all geared towards enhancing productivity within the agricultural sector. (Deloitte, 2018)

Challenges to Foreign Direct Investments in Nigeria

Despite these laws which have been put in place for the promotion of FDI in Nigeria, the level at which the country has been able to attract FDI is abysmally low and even

lower with respect to FDI in the agricultural sector. The existing legal framework has more often than not been inadequate to address some of the challenges and provide an investment climate for FDI. The following therefore are the factors identified as constituting major problems to conducive FDI environment in Nigeria:

- (a) Inadequate Infrastructure: Lack of adequate infrastructure in Nigeria ranges from power supply to good roads and other means of transportation and communication. When there are no good roads, goods, food and other materials cannot be moved from one place to another. Nigeria's rail network for instance is poorly managed and the railway line does not cover all the parts of Nigeria especially where food can be moved from one place to another. Investors are forced to travel across the country via the roads which take more time and are also in a very bad condition. This increase the cost of doing business and negatively affects investors.
- (b) Insecurity and Terrorism: Cases of kidnapping, killings and terrorist attacks have become the order of the day in Nigeria. This remains a threat to the security of the nation as a whole. The spate of these terrorist attacks by way of bombings and random killings by the Islamic sect (*Boko Haram*) particularly in some parts of Northern Nigeria, has increased and reduces the confidence of investors in governments ability to find lasting solution. These attacks present a business threat to both foreign investors and their local counterparts. Where the government fails to curtail these security issues, it will continue to affect capital inflows into Nigeria's economy. The

Northern part of Nigeria which has vast arable land for agriculture has been worst hit by this security situation and it has also been observed that Northern Nigeria appears to be the least attractive area to foreign investors due to such insecurity challenges (Okpi, 2017).

- (c) Land Ownership and Acquisition: The Land Use Act vests ownership of all lands and things attached thereto, in the State, to be held in trust for the benefit of all Nigerians. Section 1 of the Act makes provision to the effect that to acquire interest in land, the State Governor shall issue a statutory right of occupancy which vests interest in the purchaser of the land for a fixed term (See Section 8 of the *Land Use Act*). The implication of the above is that the interest is not permanent and will usually revert back to the State Governor upon the expiration of the statutory right of occupancy. The owner who has the right of occupancy can only transfer his interest in the property with the consent of the Governor. This position of the Land Use Act deters foreign investment in Nigeria, hence there is need to amend the Land Use Act in that regards accordingly, whilst urging State governments to make process of obtaining Governor's consent faster, easier and less cumbersome.
- (d) Others include: administrative and bureaucratic bottlenecks, Inter-agency conflicts, disregard for rule of law as well as unstable regulatory framework

Actualizing Food Security in Nigeria through Foreign Direct Investment: The Pros and Cons

Generally, FDI has been applauded owing to its numerous benefits which includes the following: Job creation –job creation attempts to provide a stable source of income, which in turn improves household welfare and food security during high and low periods of economic shocks and food production cycles. Wealth creation/revenue generation –wealth creation and revenue generation increases competition that benefits the economy by stimulating economic growth and development. Other benefits of FDI includes: technology transfer, economy diversification, enhancement of human and infrastructural development as well as enhancing food security.

Nigeria remains an investment destination for foreign investors who are willing to invest in the agricultural sector so as to boost the country's food security status. This is owing to her large population in addition to vast arable land for farming and agricultural purposes. However, the country is beset with food insecurity which has been exacerbated by climate change. Climate change poses serious threat to food security through erratic rainfall patterns and decreasing crop yield thus leading to increased hunger thus leading to drought, desertification, deforestation, erosion and flooding. The agricultural sector therefore can benefit from technology transfers and technical know-how through FDI which will lead to greater domestic productivity, increase in production and employment, in addition to reduction in domestic prices. In Ghana for instance, investment by a transnational company contributed to a significant increase in total production of palm oil. Also in Uganda, companies such as Tilda (U) Ltd contributed to the growth of

rice production which doubled in the last decade after the introduction of a new variety of rice called NERICA (See Slimane,Huchet –Bourdon & Zitouna, 2013).

FDI enhances infrastructural development, these include: good road network, good transportation system, food storage, processing and packaging facilities. Therefore, where there is poor transportation infrastructure, it will lead to increase in the price of agricultural materials required for food production such as water, fertilizers and other relevant inputs. It will also affect the price of movement of food from the place of production usually in the rural areas to the urban areas where they are consumed. Access to food is one of the key determinants of food security, as discussed in earlier sections. This dimension of food security opines that an adequate supply of food at the national or international level does not itself guarantee food security at the household or individual homes in the nation that have enough food to eat. It provides for physical and economic access to food. Thus an individual/household's economic access to food is determined by the earning capacity of such an individual or household. According to the UN Committee on Economic, Social and Cultural Rights, the causes of hunger and malnutrition are not often as a result of food scarcity, but due to an inability to access available food, usually owing to poverty and lack funds. FDI being a veritable tool for employment/job creation and enhancement of human development will enhance the earning capacity of individual's and household's access to adequate food and for a healthy living, thus ensuring food security. (United Nations Committee on Economic and Cultural Rights, 1999)

FDI can increase Nigeria's export capacity thus increasing the country's

foreign exchange earnings. More so, the foreign capital inflows will augment the supply of funds for investment thereby promoting capital formation in Nigeria. Furthermore, FDI stimulates local investment by increasing domestic investment through links in the production chain when foreign firms buy locally made inputs or when foreign firms supply intermediate inputs to local firms (Djokoto, 2012). However, FDI has been criticized as having negative impacts on the Agricultural Sector and indeed on Food Security. They include:

- (a) Damage to the Environment as a Result of Pollution Arising from the Activities of Investors through FDI. –The activities of the International Oil Companies (IOC) who engage in oil exploration activities in the Niger Delta area have caused oil spillages which have destroyed farmlands and aquatic lives. The activities of these multinationals have constituted greater percentage of cases of land pollution and degradation and a serious threat to food security (See the following cases: *Nwadiaro v. Shell Petroleum Development Company Nigeria Ltd* (1990) 5NWLR (Pt. 150), 322; *Elf Nigeria Ltd v. Opere Sillo* (1994) 6NWLR Pt. 350, 258; *Shell Petroleum Development Company Nigeria Ltd v. Isaiah* (2001) 11NWLR Pt. 723, 168.). People in these areas no longer rely on subsistence farming to survive as the oil spillages have destroyed their farmlands, crops, streams, lakes etc. leading to zero food production.
- (b) FDI undermines the mechanism of improvement of rural infrastructure, accompanied by government subsidies to subsistence farms which should have resulted in encouraging

the development of local markets for the products of small farms. (Djokoto, 2012)

- (c) Other challenges arising from large scale land acquisitions for agricultural purposes, such as lack of transparency in the transfer of title, lack or no proper consultation with the local stakeholders or non-recognition of the rights of local stakeholders, nonpayment of compensation, locking of large tracts of land for a very long time say 50 years, displacement of local small holders, loss of grazing land for pastoralists. (Djokoto, 2012)

Conclusion and Recommendations

FDI no doubt has played a huge role and will continue to stimulate economic growth and development of Nigeria as far as the laws can allow. The Federal Government of Nigeria from the period of President Olusegun Obasanjo have taken concrete efforts to improve the role of FDI through necessary policies and laws to support foreign investors in Nigeria. A review of the laws showed that Nigerian legal regime is FDI friendly even as the country would continue to make amends where there exists a need for such. The new CAMA 2020 is a testimony of the current government's commitment to create a business friendly environment for both Nigerians and foreign investors. This is commendable as the benefits of FDIs outweigh its disadvantages.

The most food secured countries of the world are those countries whose business environment is favorably disposed to foreign direct investments (Okaphor, 2017). Statistics showed that countries like Singapore, Ireland, United States of America, United Kingdom, Netherlands,

Switzerland, Finland, Canada, Australia, France have continued to maintain their lead as the most food secured countries of the world, not because they have the highest number of farmers or the most arable land, but via strong commitment to ensuring food security. However, these countries in addition to boosting the economy of their nations and with relevant economic policies have further strengthen their position via achieving the four dimensions of food security to wit: food availability, food accessibility, food utilization and stability. To achieve food security therefore, Nigeria should strive to encourage and promote FDI in order to stimulate the economy of country. This is in addition to improving and making concerted efforts towards eliminating other social disorders such as insecurity, corruption, herdsmen attacks on farmers, political instability and inconsistency in government policies. This is because investments thrive when investors are certain that their return on investment will be guaranteed in countries that value lives and properties. In addition, there is need to amend the Land Use Act especially with respect to those sections which stiffens acquisition of interest on land. This is because investors need to have access to land especially investors in the agricultural sector, hence where laws make access to land difficult, investors tend to resort to investing in other countries where there exists less stringent procedure in land acquisition. Where there is high cost of production or doing business in a particular country, the investors may not be disposed to doing business in the said country. It is the recommendation of this paper for a comprehensive FDI policy and legal framework as obtainable in some other developing economies (like China) as this will provide stable and conducive legal environment that is capable of supporting the growth potentials and flow of foreign

investments into Nigeria's agricultural and other relevant sectors in order to enhance food security.

As part of the effort to remove some of the bottlenecks and administrative bureaucracies witnessed at the ports, customs and other agencies' requirements, the Nigerian government should reduce the number of agencies operating at the ports, this had earlier been implemented but enforcing such directives appears cumbersome as these agencies have one way or the other found their way back into the seaports. On another note, adequate infrastructure should be put in place by the government through massive rural-urban infrastructure scheme, transportation, market, electricity, water, storage/preservative facilities so as to attract the flow of foreign investment to the Nigeria's agricultural and other relevant sectors as this will stimulate food security. This is because a developing country like Nigeria cannot export her agricultural products competitively into the international market without these infrastructures in place. Government can raise capital to put these infrastructures in place through adequate taxing, trade liberalization, private sector participation, cutting revenue leakages as well as improved governance and capabilities.

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