

MAY 2026

POLICY PAPER

# Exploring the Link Between Foreign Investment and Illicit Financial Flows in Africa under the African Continental Free Trade Area Regime : Insights from the Real Estate Sector in Kenya and Nigeria

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IRENE WANJIRU KARIUKI



*The Organisation for Economic Co-operation and Development estimates that Africa loses as much as USD 60 billion each year in illicit financial flows (IFFs). Undoubtedly, the IFFs strip substantial amounts of resources from African countries, and the immediate impact is a reduction in national expenditure and investment. This translates into inadequate public services, including hospitals, schools, national security, and transport infrastructure. It also contributes to rising unemployment, which in turn fuels higher crime rates, persistent poverty, and related socio-economic challenges.*

*One anticipated success of the African Continental Free Trade Area (AfCFTA) is increased intra-and extra-African investment. This, however, will not come without consequences, including a likely rise in financial and related crimes. As African economies continue to open up and attract foreign investment, there is a growing need to balance the benefits with the potential risks of IFFs, and to propose practical mitigation measures—lest illicit outflows ultimately erode the gains generated by new investments.*

*This brief explores the relationship between foreign investment and IFFs in Africa by assessing the legal framework under the AfCFTA, as well as the regulatory and enforcement gaps that may allow IFF actors—often operating under the guise of legitimate investors—to operate across the continent. The brief also offers recommendations that, if implemented, can significantly contribute to the fight against IFFs.*

**IRENE WANJIRU KARIUKI**

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# 1. Introduction

This policy brief seeks to answer one central question: how can the implementation of the AfCFTA empower State Parties to track, measure, and prevent IFFs facilitated through foreign investment across the African Continent? It argues that while the AfCFTA has potential to significantly accelerate foreign investment in Africa, this potential should be accompanied by intentional and co-ordinated efforts to curtail IFFs, which may otherwise undermine—or in the long run outweigh—the benefits derived from such investments. While not all foreign investment inherently facilitates IFFs, concerns arise around certain structures, including special purpose vehicles, which can intentionally or inadvertently be used to channel illicit funds out of the continent.

If the AfCFTA framework is effectively applied to curb IFFs, it can help retain resources to support its implementation, which is capital-intensive. Successful implementation of the AfCFTA is expected to lead to higher wages, poverty reduction, improved living conditions, and increased government revenues through taxation. Moreover, once operational, the AfCFTA can serve as a vehicle to enhance transparency and strengthen cooperation in the fight against IFFs.

This brief begins with an overview of Africa's foreign investment legal landscape, highlighting developments both before and after the AfCFTA. It then examines the links between foreign investment and IFFs in Africa, illustrating how this relationship emerges. Next, the brief focuses on the real estate sector in Nigeria and Kenya as an example of a sector with the potential to both attract foreign investment and facilitate IFFs. Finally, it presents a set of recommendations for tackling IFFs, including practical steps that State Parties can take to support these efforts.

The research methodology combines doctrinal analysis with a qualitative case study approach. The doctrinal method is used to analyze the text of the AfCFTA and the AfCFTA Protocol on Investment, while the qualitative approach examines case examples from the real estate sector in Nigeria and Kenya. In particular, the brief provides an overview of the nature of foreign investment in the sector in both countries and explores illustrative cases demonstrating how real estate has been exploited to facilitate IFFs.

The focus on the real estate sector is informed by its rapid growth globally and within both countries, where it serves as a key driver of economic development. At the same time, the sector remains highly vulnerable to IFFs, making it a compelling case study for the issue under investigation.

This brief makes a significant contribution to academia and is relevant to both legal practitioners and policymakers. It explores a relatively underexamined area in African legal scholarship and seeks to bridge the gap between international economic law and financial regulation by examining how the AfCFTA, a regional trade law instrument, can be leveraged to combat IFFs.

Furthermore, the brief aims to foster interdisciplinary dialogue by incorporating insights from international economic law, investment law, and financial regulation. It will be useful to legal practitioners by informing legal strategies, compliance practices, and contract drafting in line with AfCFTA requirements. For policymakers, the brief can help guide policy, legal, and regulatory reforms related to IFFs, particularly in aligning national investment and financial regulation frameworks with the objectives of the AfCFTA.

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IFFs are defined as “money illegally earned, transferred, or used” (The World Bank Group, 2016). This money originates from both illegal activities—such as drug trafficking, human trafficking, and illicit trade—and legal activities that undermine development, such as aggressive tax avoidance (United Nations & Office on Drugs and Crime (UNODC), 2020). The United Nations Conference on Trade and Development (UNCTAD)–UNODC Task Force broadly categorizes IFFs into four sources: (1) tax and commercial activities; (2) illegal markets; (3) corruption-related IFFs; and (4) exploitation-type activities and the financing of crime and terrorism (UNCTAD, 2020). Therefore, practices such as bribery, embezzlement of funds, and other forms of corruption that generate transnational financial flows are key sources of IFFs.

IFFs commonly occur in two stages: the generation of illicit income, and the management of that income—often through a process known as money laundering. The objective is to conceal the illicit proceeds and the means by which they were obtained (AU/ECA Conference of Ministers of Finance, Planning and Economic Development, 2015)(AU/ECA Conference of Ministers of Finance, Planning and Economic Development, n.d.)(AU/ECA Conference of Ministers of Finance, Planning and Economic Development, n.d.)(AU/ECA Conference of Ministers of Finance, Planning and Economic Development, n.d.). While methods of laundering continue to evolve, the ultimate goal remains the same: to make illicit proceeds appear legitimate.

The Report of the High-Level Panel on Illicit Financial Flows from Africa (popularly known as the Mbeki Report) established that IFFs from Africa increased from about USD 20 billion in 2001 to USD 60 billion in 2010, underscoring the need to treat IFFs from Africa with great seriousness, given their damaging impact on the continent’s development (AU/ECA Conference of Ministers of Finance, Planning and Economic Development, 2015).

## **2. Foreign Investment and IFF Risks in Africa: The Case of the Real Estate Sector in Kenya and Nigeria**

### **2.1 Overview of Foreign Investment and the Risks of IFFs in Africa**

Foreign investment is important—and often essential—for developing countries, but it plays an even more significant role in many African economies. This is attributed to several factors, including: (1) many of the world’s poorest countries are located in Sub-Saharan Africa; (2) many African countries have relatively small tax bases and lack robust systems to effectively monitor and collect taxes; (3) in the context of efforts to address Africa’s foreign debt challenges, foreign investment is expected to help offset reduced external financing; and (4) foreign investment has been shown to positively impact local firms and labor markets in host countries, which is particularly important in economies with high unemployment (African Development Bank, 2020).

The investment landscape in Africa has undergone significant changes in recent years, particularly following the adoption of the AfCFTA Protocol on Investment (Protocol) in February 2023. The Protocol seeks to promote cooperation on investment matters across the continent by, among other objectives, reducing the fragmentation of investment regulations. It represents a paradigm shift in Africa’s regional investment legal landscape, with multiple benefits expected for State Parties.

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Prior to the AfCFTA, the investment legal regime in Africa was highly fragmented, largely due to the diversity of national investment laws and policies, as well as the existence of multiple regional instruments among members of various trading blocs—such as the Common Market for Eastern and Southern Africa, the Economic Community of West African States, the East African Community, and the South African Development Community (International Trade Administration, 2024).

The AfCFTA, while primarily aimed at facilitating, enabling, and protecting intra-African investors and their investments, is also expected to promote and encourage extra-African investment (Chidede, 2020). This is to be achieved through measures that enhance market stability and regulatory predictability. However, third-country investors seeking to invest in a State Party may need to establish relationships with enterprises registered in other State Parties in order to benefit from AfCFTA's protections, as the Protocol ties the definition of an "investor" and "investment" to registration within a State Party (Chidede, 2020).

Full implementation of the Protocol has the potential to make African markets more attractive to foreign investors, boosting both intra-African and extra-African investment. By providing clearer and more predictable rules, the Protocol can address key challenges faced by investors, including infrastructure constraints, divergent investment policies, and inconsistencies in institutional and regulatory frameworks, as well as the multiplicity of regional investment instruments across the continent (Agarwal et al., 2024).

From the investor's perspective, the motivation to invest is driven by the expected return on investment (Edoun, Dipita, and Motsepe, 2016) corruption and inappropriate transfer pricing and maladministration. With tax being one of Africa's main sources of revenue, current and past researches revealed that, illicit financial flows (IFFs). However, if left unchecked, this motivation can also give rise to illicit activities such as tax evasion, corruption, and transfer pricing, resulting in capital outflows from the continent. This is enabled, among other factors, by the exploitation of gaps in financial and tax laws in host states, as well as the use of foreign investment vehicles to launder money.

Various studies have linked foreign investment to IFFs in developing countries (Fabricio and Zdenek, 2012). One such link arises where developing countries, due to persistent IFF activities, face a continuous need for capital inflows, leaving them structurally dependent on foreign investment (Ortega and Sanjuán, 2023). This creates a cyclical dynamic: while foreign investment brings in capital to support economic growth, IFFs simultaneously drain these resources, generating a recurring need for additional investment to compensate for the losses. As IFFs continue to deplete resources, countries remain trapped in a pattern of dependence on external capital, while the resulting outflows undermine financial stability and long-term development.

Another link between foreign investment and IFFs occurs in the international investment arena. Developing host countries often enter into investment treaties that may inadvertently enable multinational corporations (MNCs) to leverage their power and influence to engage in IFF-related activities—benefiting themselves while harming host economies. MNCs may also exploit both overt and covert regulatory and governance gaps in developing states, allowing illicit financial activities to go undetected (Olabode, 2024).

A further link emerges when developing countries conclude inequitable multilateral or bilateral treaties that grant unrestricted rights to repatriate profits to the home state, thereby limiting the host state's ability to tax and collect revenue from foreign investors (Olabode, 2024). Such treaties can also provide strong protections for foreign investors' assets, constraining the ability of host states to take action—even in cases involving illicit financial activities.

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The AfCFTA, through its Protocol on Investment, seeks to influence the design and orientation of international investment agreements with non-State Parties. In particular, Article 49(4) of the Protocol encourages State Parties to consider its provisions when negotiating new or reviewing existing agreements. While this constitutes a soft obligation, it establishes a framework for aligning future treaties with the principles and objectives of the AfCFTA, including more balanced investor-state relationships. In so doing, the AfCFTA has the potential to help restore a balance that has long been lacking in investment treaties between African States and foreign investors.

Importantly, several provisions of the Protocol, while not directly addressing IFFs, embed principles that indirectly address the gaps that typically facilitate such flows. In particular, the principles of transparency and accountability are highlighted in the Protocol, with Article 39 requiring State Parties to establish measures that enhance transparency in financial reporting, disclosure, accounting, and audit practices. The pre-ambule of the Protocol also affirms the desire to promote accountability in a fair, transparent and predictable investment environment.

Article 31 emphasizes the role of State Parties to promote and enforce measures against corruption, money laundering, terrorism financing, and bribery. Article 32 obliges investors to comply with all relevant domestic and international laws in the conduct of their operations, while Article 37 prohibits corruption and related practices by investors.

By fostering transparency and accountability among investors, and by prioritizing compliance with domestic and international legal frameworks, the Protocol not only helps rebalance the relationship between states and foreign investors but also enhances safeguards against IFFs—thereby reinforcing Africa’s fiscal integrity while continuing to promote foreign investment.

## 2.2 IFFs in the Real Estate Sector in Kenya and Nigeria

Foreign investment in the real estate sector is historically common globally, but it is reported that Africa has, over the years, attracted less investment in this sector despite its high and growing population (Ogunba and Akpan, 2015). Some of the reasons associated with this paucity of foreign investment include political risks, legal restrictions on ownership rights, the lack of reliable information and statistics to inform investor decisions, and an unfavorable investment legal environment (Ifeanacho and Udobi, 2025). The AfCFTA is, however, expected to improve the investment environment, thereby increasing foreign investment in the real estate sector across African countries.

The real estate sector is generally one of the most vulnerable sectors in relation to IFFs. It is, in fact, considered one of the oldest sectors through which money laundering has thrived over the years (Cameron, 2023). This is because the sector presents a platform for laundering and moving large amounts of money through single transactions (Cameron, 2023). Additionally, the relative ease of renting, leasing, and selling real estate properties facilitates the concealment of illicit financial sources. This, in turn, enables IFFs actors to integrate illicit funds into the formal financial system, making it increasingly difficult for law enforcement agencies to trace these funds back to their original criminal activities.

It is therefore unsurprising that real estate agents and legal professionals operating in this sector are classified as reporting entities—designated non-financial businesses and professions—under the Financial Action Task Force (“FATF”) Recommendations. The FATF was established by the G7 countries with the mandate to “set up and promote internationally recognized standards to fight money laundering.” These standards, known as the FATF

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Recommendations, establish an international framework for combating money laundering and the financing of terrorism, which member countries are required to implement in accordance with their national contexts (Financial Action Task Force, 2024).

There have been various reports linking money laundering and other IFFs to the real estate sectors of Kenya and Nigeria. Recently, Kenya's Financial Intelligence Unit (FIU) flagged multiple real estate agencies that were deemed to be high risk for money laundering (Nation Media Group (NTV Kenya), 2025). Furthermore, according to the Kenyan National Money Laundering and Terrorism Financing Risk Assessment Report of 2021, the real estate sector was ranked as highly vulnerable to money laundering, which has informed increased efforts by the FIU to ensure real estate players comply with anti-money laundering laws and regulations (The Ministry of National Treasury and Economic Planning- Kenya, 2023).

Some case examples in Kenya where the real estate sector has been used to launder money include a publicized case involving the purchase of property in Karen estate, one of Nairobi's upmarket areas, in 2016. The property was valued at USD 3 million, raising money laundering suspicions and leading to an investigation by Kenya's FIU. Following the investigation, it was discovered that the proceeds used to purchase the property had been obtained from corruption and other illicit activities, facilitated through shell companies established in tax havens (Wawire and Ayieko, 2023).

In a separate case, the U.S. Federal Bureau of Investigation and Internal Revenue Service Criminal Investigation revealed how COVID-19 funds stolen from the U.S. were transferred to Kenya and used to purchase, among other assets, prime real estate such as beachfront properties in the country (Otieno, 2022).

According to a report by the Inter-Governmental Action Group against Money Laundering in West Africa (GIABA), some of the factors that make the real estate sector attractive to criminals seeking to launder money include the absence of an average market price for real estate property, as well as the prevalence of bulk cash payments in the sector (GIABA, 2008). The report further notes that "...investing in a hotel, restaurant or shopping mall offers further advantages, especially because it brings with it business activities that use extensive cash transactions where co-mingling of legitimate and illicit funds may go undetected" (GIABA, 2008).

Among the key objectives of the AfCFTA are increased market access, harmonization of investment policies, reduced trade barriers, and enhanced exchange of information, which can help address barriers to international investment, including in the real estate sector, which falls within the scope of the Protocol. Specifically, Article 3(4)(h) of the Protocol clarifies that its provisions apply to real estate investments intended for economic benefit or other business purposes. Accordingly, the real estate sector is brought within the framework established by the AfCFTA.

If the above case examples are anything to go by, it is evident that the real estate sector is already affected by criminal actors exploiting the system. The AfCFTA and the Protocol have the potential to create a more attractive and secure environment for investment in the real estate sector across the continent, which may ultimately lead to increased foreign investment in this sector. However, since increased foreign investment in real estate may also be exploited by criminals, it is crucial for State Parties to implement strong regulatory safeguards and enforcement measures, and to collaborate and exchange information, in order to prevent illicit financial activities and ensure the full realization of the benefits of foreign investment.

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### 3. Framework for Prevention and Control of IFFs under the AfCFTA

While the AfCFTA does not explicitly address IFFs, it includes provisions that may indirectly combat them. Article 22 of the Protocol obliges State Parties to permit transfers relating to an investment only after the payment of the requisite taxes and duties. Furthermore, Article 23 provides exceptions, allowing restrictions on transfers in cases involving criminal offenses, recovery of illicit proceeds, money laundering, or the financing of terrorism. This suggests that the Protocol can be a double-edged sword, as it promotes economic integration while also being potentially exploitable by criminals seeking to move illicit funds within and beyond Africa.

Several AfCFTA protocols include provisions that can support the fight against IFFs. Article 14 (which relates to customs cooperation and mutual administrative assistance) of the Protocol on Trade in Goods calls for cooperation in customs administration and mutual administrative assistance. Article 17 (relating to subsidies) of the Protocol on Trade in Services encourages the exchange of information among State Parties, while Article 39(4) (on corporate governance) of the Investment Protocol requires State Parties to implement measures enhancing transparency in financial reporting, disclosure, accounting, and audit practices, in line with international standards and best practices.

The Investment Protocol also places specific obligations on both investors and State Parties to help prevent IFFs. Article 31 requires States to promote and enforce measures against corruption, money laundering, terrorism financing, and bribery. Article 37 prohibits investors from offering or promising advantages to influence public officials and obliges them to cooperate with host States in preventing and eliminating corruption in public governance.

Article 40 requires investors to ensure that all transactions with related or affiliated entities are conducted at arm's length and at fair market value, in accordance with the host State's regulations and international best practices. This provision targets transfer pricing, which is one of the most commonly used methods of moving illicit funds. While arm's-length pricing is legal, manipulation practices such as mis-invoicing to shift profits and evade taxes constitutes an IFF (Shay, 2016). For example, a subsidiary in Country A might pay USD 10 million as "consultancy fees" to a related company in Country B, when the actual cost is only USD 1 million, thereby effectively transferring funds illicitly.

The framework embedded in the AfCFTA therefore presents opportunities which, if successfully implemented, can support the detection, prevention, and control of IFFs under the AfCFTA regime.

### 4. Conclusion and Recommendations

The brief set out to address how the implementation of the AfCFTA can empower State Parties to track, measure, and prevent IFFs facilitated through foreign investment in Africa. The framework for the prevention and control of IFFs under the AfCFTA, as discussed above, can be further strengthened through practical measures undertaken by State Parties to curb IFFs across the African continent.

Targeted and proactive action by State Parties is essential. At the domestic level, institutional and regulatory reforms should directly address the IFFs menace. Countries should enact and enforce laws that curb IFFs and limit their enablers. Additionally, State Parties without

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fully operational FIUs should accelerate and prioritize their establishment, as these units play a critical role in detecting and preventing illicit flows. Importantly, FIUs should not operate in isolation but should collaborate with other public agencies and ministries, in line with the “whole-of-government” approach recommended by the United Nations General Assembly in its resolution A/RES/80/126 adopted on 15 December 2025. It is important to note, however, that challenges such as financial constraints in some African countries hinder full operation of FIUs, leading to varying levels of capacity across the continent.

Recent developments in Africa demonstrate concerted efforts to strengthen the continent’s anti-money laundering and counter-terrorism financing framework. These include the enactment or amendment of various countries’ anti-money laundering laws in line with the FATF recommendations. If all State Parties align their national laws with FATF guidance, with the support of national FIUs, the AfCFTA framework can be adequately complemented.

The AfCFTA emphasizes the exchange of information and collaboration among State Parties, and countries have recently taken steps in this direction. For example, in March 2025, the Eswatini FIU signed a memorandum of understanding with Rwanda’s FIU to promote cooperation in the sharing of financial intelligence (Rwanda FIU, 2025). To maximize the impact of such efforts, State Parties need improved infrastructure to facilitate cooperation and strengthen their capacity to collect and disseminate information. Collective and individual efforts by State Parties, supported by political will, are critical for the realization of AfCFTA’s vision of enhanced cooperation against IFFs.

Investing in research on IFFs and building the capacity of various institutions at the domestic level will also contribute to their eradication. One key challenge facing efforts to combat IFFs in Africa is the lack of capacity among key institutions responsible for their detection and prevention. There is a need to strengthen the capacity of officers across the entire prosecution chain, from investigators to prosecutors and the judiciary.

This can be achieved through the development of an IFF curriculum for the investigators, prosecutors and judicial officers. Such training would equip investigators with the technical skills and financial tools needed to detect and track IFFs, enhancing their proactivity. For prosecutors, it would improve their understanding of the complex legal landscape surrounding IFFs, enabling more effective case prosecution. For judicial officers, a structured curriculum would strengthen their understanding of the legal landscape, as well as the financial and forensic evidence presented in such cases. In turn, this would better equip them to make informed decisions and contribute to the development of jurisprudence that shapes the legal framework on IFFs.

Additionally, it would be beneficial to promote complementarity between the AfCFTA framework and existing domestic and international frameworks related to IFFs. For example, the African Convention on Preventing and Combating Corruption currently operates as a separate framework from the AfCFTA. Given that the AfCFTA lacks robust and direct anti-corruption measures, aligning it more closely with the provisions of the African Convention on Preventing and Combating Corruption could help fill these gaps, thereby further strengthening the AfCFTA’s capability to curb and mitigate IFFs.

Widening the scope of available remedies and avenues for accessing them could further enhance the effectiveness of IFF mitigation efforts. For instance, the opportunity to initiate prosecution of IFF-related cases could be extended beyond State prosecutorial offices to include civil society actors, non-governmental organizations (NGOs) and affected private citizens. This approach could improve oversight and accountability, while also helping to reduce the backlog in State prosecutorial offices, enabling more timely enforcement. Moreover, civil society actors and NGOs may have greater financial flexibility to support the costs associated with pursuing such cases.

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In conclusion, the above discussion demonstrates that the AfCFTA will likely contribute to increased foreign investment in Africa. The brief has illustrated that the AfCFTA is a double-edged sword; while it presents significant potential for economic development for African States, it also carries the risk of exacerbating challenges such as IFFs. It is therefore crucial for State Parties to collaborate to maximize the benefits of the AfCFTA while effectively mitigating its potential negative impacts.

Issues relating to IFFs are fundamentally linked to the broader international financial architecture. Accordingly, a prudent way forward is for Africa to adopt a shared African Union position to strengthen the implementation of laws and regulations governing IFFs and to avoid a race to the bottom among African States. This could take the form of binding mechanisms at the African Union level that establish minimum standards for all States.

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## ABOUT THE AUTHOR



### IRENE WANJIRU KARIUKI

Irene Wanjiru Kariuki is an Advocate of the High Court of Kenya with expertise in international economic and business law, commercial law, finance law, and illicit financial flows. She advises public and private actors, including foreign investors, public companies, and civil society organizations, on investment, trade, and regulatory compliance matters in Kenya and across Africa. Ms. Kariuki currently serves as legal counsel for a regional company in Kenya, with her work often intersecting with policy, particularly regulatory frameworks, governance, and legal mechanisms to combat illicit financial flows.

She is an active member of several professional bodies, including the Law Society of Kenya, the Association of Certified Anti-Money Laundering Specialists (ACAMS), the Institute of Certified Secretaries of Kenya, the East Africa Law Society, the Commonwealth Lawyers Association, the International Compliance Association (ICA), and the Chartered Institute of Arbitrators.

Ms. Kariuki holds a Master of Laws (LL.M.) degree from the University of Nairobi and has published numerous legal research papers and blog articles. She has presented at national and international conferences, including the 2026 World Bank Land and Property Research Conference, the 2025 Law and Development Conference at the University of Hawaii at Manoa USA, the AIRESS International Conference on First Years of Functioning of the AfCFTA: Challenges and Prospects in Morocco, the 4th South Asian International Economic Law Network Conference in Sri Lanka, and the 6th Biennial African International Economic Law Network Conference 2023 in Ghana, among others.

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Rocade Rabat Salé - 11103  
Email : [contact@policycenter.ma](mailto:contact@policycenter.ma)  
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Fax : +212 (0) 537 71 31 54



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