



UNCTAD High-level International Investment Agreements (IIA) Conference 2018

Ms. Betty Maina

Principal Secretary, State Department of Investment and Industry, Ministry of Industry, Trade and Cooperatives, Kenya

1. We thank UNCTAD for giving Kenya an opportunity to add its voice in the discussions towards forging appropriate mechanisms for our countries to develop as well as meet the sustainable development goals.
2. During both Phase I and II periods, Kenya undertook policy reforms through the development of draft Kenya Investment Policy, draft Kenya Model Investment Treaty, and continuously negotiating texts that provide for provisions that safeguard the country's right to regulate, ensuring responsible investment, while providing protection to investors. In advancing these reforms, Kenya has made reference to global standards including those relating to human rights, environmental protection and investor obligations.
3. These developments are in consonance with the proposals contained in the UNCTAD's Road Map for IIA Reform and its Guiding Principles for Investment Policy for Sustainable Development and investment facilitation.
4. Kenya is also actively involved, through the UNCITRAL Working Group III, in discussions and negotiations on reforming investment dispute settlement. Kenya's submissions have been around incoherence and inconsistency in arbitral decisions which raises concerns of predictability and legitimacy. It has focused on the annulment or review procedures in the ICSID and New York Conventions that do not provide for correction mechanism, among others.
5. With regard to the improvement of the overall investment policy coherence for sustainable development, Kenya has developed an IIA policy to guide in the negotiation, conclusion, implementation and management of IIAs, which is aligned to both the regional investment models and UNCTAD's reform action plan.

6. The draft policy focuses on facilitating, encouraging and increasing high value investments that contribute to sustainable development, and protects both the investor and the state, providing a balance of the rights and obligations between state and investors, while preserving the right to regulate.
7. Of import is the provision for a sequential mechanism for settlement of investment disputes, in addition to establishing an early alert and monitoring mechanism to identify at-risk investments while working closely with investors and relevant parties to prevent potential disputes
8. The key issues that remain to be addressed include the need for countries to focus on streamlining administrative procedures, simplifying of business registration procedures; and providing adequate after care services.
9. In taking forward these discussions, UNCTAD is ideally positioned as a multilateral forum, and thus the discussions and recommendations from this meeting should form UNCTAD's policy action plans.