

**Remarks at UNCTAD High Level IIA Conference
13 November 2019, Geneva
Jose Chinjamba, AIPEX**

**Breakout Session: Regional investment policy process and their contribution to Phases 1
and 2 of SD-oriented IIA reforms “Developing countries: Africa”**

Ladies and Gentlemen, good afternoon.

ON BEHALF OF AIPEX – ANGOLAN AGENCY FOR PRIVATE INVESTMENT AND PROMOTION OF EXPORTS, I WOULD LIKE TO EXPRESS OUR GRATITUDE TO UNCTAD FOR THE INVITATION THAT WE RECEIVED TO ATTEND THIS MEETING AS A SPEAKER.

According to the UNCTAD database and to a recent study by the Transnational Institute (TNI), there were 106 ISDS cases against African states in the past 25 years. In all these cases, African states have agreed or ordered to pay foreign investors a sum of 4.6 billion U.S. dollars. Angola considers this a dramatic scenario for African countries.

Our country has never been a respondent in investor–state arbitration. However, the negative experience of other countries has led us to exercise caution in negotiations, and to explore new approaches to investment agreements and dispute settlement.

Before I get to these new approaches, let me give you a quick overview of Angola’s investment treaties. We have concluded 14 BITs, with 5 in force. We have also signed 6 treaties with investment provisions (TIPs), 5 of which are in force. All are listed in UNCTAD’s database.

Most of our IIAs are old-generation treaties, with the exception of one treaty that is different from all the others: this is the Cooperation and Facilitation Investment Agreement, or CFIA, that we concluded with Brazil in 2015, which has been in force since 2017.

Our treaty with Brazil doesn’t focus on investment protection, but on cooperation between states and investment facilitation. For example, it doesn’t cover fair and equitable treatment (FET) or indirect expropriation, to protect the right to regulate. With Brazil we

committed to developing common thematic agendas on investment, covering topics of practical relevance for investors, such as transfers, issuance of visas, cooperation on environmental and technical standards, etc. Our treaty also includes principles for corporate social responsibility. Finally, it doesn't provide for investor–state arbitration. Instead, it focuses on dispute prevention by national ombudspersons and a joint committee of the two states. This joint committee has the mandate elaborate a dispute settlement procedure for arbitration between states.

Our other treaties in force were concluded in 1997 (with Italy and Cape Verde), 2003 (with Germany) and 2009 (with Russia). Those are old-generation treaties, with outdated provisions. Angola has not yet adopted a systematic reform strategy, for example, through renegotiation or termination. At national level, we have been focusing on improving the quality of new investment treaties we are negotiating.

In Angola, we want our IIAs to promote sustainable development, protect investors while safeguarding the state's right to regulate, and minimize arbitration risks. In this regard, we have taken into account best practices including UNCTAD's Investment Policy Framework for Sustainable Development. We have also counted on the assistance of the International Institute for Sustainable Development (IISD) for advice in investment negotiations.

At the regional and African level, we understand that bringing sustainable development to Africa depends on increased flows of investment in agriculture, transportation, health and sanitation, education, tourism, renewable energy, among other areas. Foreign investment has a key role to play, and states must regulate it to meet these objectives. Accordingly, we have supported the new and innovative model agreement of the Southern African Development Community (SADC), of which we are a member.

We are also committed to the AfCFTA investment protocol, to be negotiated in 2020. We would like to highlight three ideas for this continental protocol:

First, it should aim at facilitating investment for sustainable development. Investing in Africa is subject to excessive bureaucracy, lack of transparency in government action, corruption, and lack of coordination between government institutions. These constraints negatively affect investment performance. The protocol should simplify processes and facilitate investments that bring sustainable development to Africa.

Second, the protocol should give rights only to investors who are committed to making **responsible investments** that promote sustainable development, human rights and environmental protection. States should have the right to sue investors who fail to comply with their obligations.

Third, dispute settlement. The protocol should prioritize flexible mechanisms for settling investment disputes, for example, negotiation between states. Only after the investor has exhausted local remedies in the host state, the protocol could provide for arbitration between States.

As a final point, coordination among states is essential for investment agreements to bring the highest possible sustainable development benefits to all Africans. Next year, Angola is planning to host a meeting of Portuguese-speaking governments on investment agreements. We will count with technical support from the IISD in this regard and would like UNCTAD to support this initiative as well. Our objective is to allow governments to learn and share experiences with each other and with experts, and to prepare for bilateral, regional, and continental negotiations.

Thank you.