

**Remarks at UNCTAD High Level IIA Conference
13 November 2019, Geneva
Opeyemi Abebe**

**Breakout Session: Multilateral Processes and their contribution to Phases 1 and 2 of
SD-oriented IIA reforms “Promoting and facilitating investment”**

DRAFT

Protocol:

The Commonwealth Investment Facilitation Program aims at helping member states design investment promotion policies and regulations that are embedded in their national level trade/development policies, identifying the potential sectors of investments and connecting with investors within the Commonwealth in order to facilitate intra-Commonwealth investments as directed by the Ministers of Trade in their recent meeting. Creating an enabling environment to facilitate investments through regulatory reforms is critical for small states with limited ability to offer incentives for FDI attraction. To this end, we are supporting:

- The Caribbean Association of Investment Promotion Agencies (12 Commonwealth Caribbean Countries) on a project to Improve the Business Climate by Strengthening the Procedures to Start a Business in the Caribbean. Action plans have been developed for each country and are being implemented.

On the topic of this IIA Forum which is Phase 2 of reforms, I would like to start again with the overview of Phase one and the designated areas by UNCTAD

Phase one: Safeguarding the right to regulate while protecting investment., Ensuring responsible investment, Promoting and facilitating investments, reforming dispute settlement, Enhancing systemic consistencies.

For Phase two, UNCTAD proposes Ten policy option choices for dealing with the Old stock of investment treaties-

I believe the more critical question is how many countries are actively engaging in the process of reform for the IIA regime?

In our work experience, a number of small states and developing countries are yet to appreciate the need for prioritizing the reform of their IIA regimes, either because they have as yet not had an ISDS case or the policy makers do not fully understand the urgency of the issue.

While a few number of Commonwealth developing countries are at the fore front of reforms of their IIA regimes and have taken steps reflected in the Phase 2 options of Terminating BITS, Replacing and are engaging in the multilateral process, many more of the smaller and most vulnerable countries are yet to engage in these processes. So for us at the Commonwealth Secretariat, our interventions so far are still focused more at the Phase one of reform which is basically building the capacity of member states to enhance their ability to negotiate new IIAs incorporating their sustainable development objectives in these agreements and rethinking the substantive clauses in their new IIAs to include reform provisions.

In this regard for example, the Commonwealth Secretariat partnered with IISD and UNCTAD to recently host a CARICOM forum on IIAs and we also partner with IISD to sponsor participation at the Annual Forum for Developing Countries Investment negotiators. The next FORUM is scheduled to take place in Thailand in February 2020

The Commonwealth Secretariat has also put together a guide on integrating sustainable development into International Investment Agreements. This Guide will make it easier for developing countries to negotiate IIAs consistent with their sustainable development objectives. The provisions that are discussed provide alternatives to existing IIA models that may be a new starting point for negotiations. In addition, the Guide will be a useful reference tool during negotiations to evaluate the costs and benefits of different approaches.

In linking FDIs to sustainable development, Policy makers must be able to reflect on how these investments would impact on.

- a. The environment;
- b. Human rights;

- c. Labour rights;
- d. The rights of indigenous peoples;
- e. The interests of local communities;
- f. Social policies (e.g. human health, employment);
- g. Domestic development policies.

By incorporating the above listed development objectives, countries can modify their existing IIA regime by referencing global standards and other treaties that they have signed up to- on of the 10 possible options under phase 2 reforms.

On the current multilateral efforts at reforms of IIA regime, there is not much in the ongoing process that deals with reforms of substantive clauses in IIA. These reform efforts are also not dealing with the issues of investor obligations encapsulating the SDGs or preserving the right to regulate. Neither does it deal with inconsistencies in treaty interpretation and the right of states to counter claim.

There is there for still the need for governments to continue to pursue IIA reforms at the national level or through their regional processes.