

This report represents the views of the rapporteurs on the discussions among the participants of the respective break-out session. It does not represent the views of the UNCTAD Secretariat or its member States.

UNCTAD High-level IIA Conference

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Break-out sessions: Regional investment policy processes and their contribution to Phases 1 and 2 of SD-oriented IIA reform

“Developing countries: Africa”

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This session was stimulating, active and with an immense exchange of information on good practice on the African continent.

At the outset it is imperative to note Africa has been the most proactive continent with the regional economic organisations being the driving force. There are 8 RECs, some are very active ECOWAS, COMESA SADC and EAC other less so. As the speakers identify this has led to much cross fertilisation of ideas.

We can identify common denominators in policies in the RECs, I would like to highlight three that the speakers mentioned

1. The importance of sustainable development and the correlated need for quality investments
2. Right to regulate to achieve development goals
3. Balancing rights of States and the rights and obligations of investors

For example, the SADC model BIT ensures the language of the treaty, in the rights and obligations of the investor puts the needs of the SADC countries at the forefront.

The impact of reform efforts on the investment landscape is at both macro and micro level. The macro impact is a more engaged AU and the adoption of Pan African Investment Code in 2016. This establishment of a strong African voice benefitted from the support from UNCTAD and IISD. The Pan African Investment Code acts as a bridge between RECs and AU to the negotiation of the investment protocol at the AfCFTA.

At the micro level there is an opportunity to take stock of existing outdated treaties concluded 10-20 years ago and still in force. These are the treaties that present a considerable challenge to African countries and exposes them to ISDS. This stock take has allowed for a review and possible renegotiation (modernisation) of BITs to place centrally sustainable development.

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Further at national level countries are starting to and have developed new legislation in this area. The macro and micro impacts have come about with technical assistance and training provided by UNCTAD and IISD.

As the speakers pointed out the positive role played UNCTAD and IISD has been indispensable to the forward move on sustainable development-oriented IIA reform on the continent.

I will leave with these two final thoughts that speakers have raised with great skill. First, AfCFTA process has to be owned by African countries. Reform has to occur from within Africa for Africa. Second, there is a challenge that is to foster continuing policy coherence between the different national, regional and continental levels.

It must be celebrated that African countries have moved from investment rule takers to investment rule makers

Thank you UNCTAD for an excellent event.