



KENYA INVESTMENT AUTHORITY

UNCTAD's High-level IIA Conference (Geneva, 9-11 October 2017); HIGH LEVEL PLENARY SESSION: TAKING STOCK AND MOVING FORWARD – FOCUSING ON INVESTMENT FACILITATION, BY ROSLYN NG'ENO, MANAGER, POLICY ADVOCACY

- 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.
- The Expert's meetings under the auspices of UNCTAD are extremely useful in highlighting the latest trends and developments in BITs and provides critical alternatives and perspectives that can be adopted by countries in their policy developments. It has offered a critical platform over the years to deliberate and share experiences with regard to Investment Agreements Reforms.
- As a country and as especially the Kenya Investment Authority, we wish, at this point, to express our sincere gratitude and appreciation for the support and technical assistance UNCTAD has given us in developing the Kenya Investment Policy among other interventions such as the e-regulations, I guide and the e-opportunities.
- The Kenya Investment Policy which provided for provisions that safeguard the country's right to regulate, ensuring responsible investment, while providing protection to investor, 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.
- Foreign Direct Investment remains the largest and most constant external source of finance for developing economies, and countries especially need investment to meet national development goals and to contribute to the global sustainable goals. In order to attract investments, there is need for effective and efficient facilitative investment regimes.

- Investment agreements may address some elements of the investment regime, given that developing countries negotiate these agreements with the genuine belief that these treaties will attract FDI by creating a positive and conducive investment environment. We however need to ask ourselves serious questions at this forum, are the treaties achieving these objectives? Do developing countries know what they are signing beside the face value formulations?
- A number of studies has determined that there is no clear data demonstrating that being a party to BITs and FTAs leads to greater investment, let alone desirable investment that will promote sustainable development. The concern then, and in reference to the data presented by UNCTAD in its 2017 World Investment Report, is the increasing number of arbitration exposures posed to states by virtue of the dispute resolution mechanism inherent in BITs as well as the interpretation of commitments by tribunals that should be of concern to countries. Meaning that investor-state arbitration, based on the commercial arbitration model, is an inappropriate mechanism to deal with public interest issues, which are in essence, public regulatory disputes.
- As we are tackling phase 2 of IIA Reform, i.e. dealing with our existing stock of treaties, we need to focus on what countries are trying to cure by negotiating treaties. Once we identify these challenges then reform efforts, including policy and regulatory changes can be undertaken around these issues.
- Facilitating investments is now key. The fundamentals of this are: Transparency of procedures and processes (policy stability/harmonization); Efficient and clarity of procedures; Investor services (pre and post establishment); Availability of market (Market access) and; efficient dispute resolution mechanism.
- Countries need to focus on streamlining administrative procedures, simplifying of business registration procedures; providing adequate after care services; and creating effective platforms to dialogue and communicate with the private sector to resolve concerns.
- The recommendation therefore is addressing investor state dispute resolution mechanism as well as looking at the critical concerns of investors regarding the policy stability, legislative protections and effective facilitation. UNCTAD is ideally placed to provide a platform to synthesize these discussions and develop actionable solutions.

- I thank you very much for your kind attention.