

2017 High Level IIA Conference: - Closing Plenary

October 11, 2017

Ms. Patience Okala

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Nigerian Investment Promotion Commission

Your Excellences;

Distinguished Ladies and Gentlemen,

In 2016, the Government of Nigeria came up with a reform oriented and balanced new model Bilateral Investment Treaty (BIT) to promote sustainable development and inclusive growth. The challenge for us was how to move forward with tackling the existing stock of our old generation Treaties, which still bite. It should therefore come as no surprise that our expectations from this IIA Conference were very high given the work we needed to get done in order to take our BITs through Phase 2 of the reform process.

As indicated at the Opening Plenary, we had commenced the process of mapping the content of all our BITs using 20 critical and reform-oriented provisions as a first step in Phase 2 of our reform process. This was done to enable us establish at a glance, the content of each BIT and determine a way forward on its review, where necessary.

However, flowing from useful engagements at this Conference, it is obvious that much more work needs to be done in relation to determining appropriate next steps for dealing with each of the Treaties. What is abundantly clear is that there is no one formula or option that could be applied to all the Treaties. Whether in relation to joint interpretation, amendment, replacement of Treaties, referencing global standards or engaging multilaterally, there is no one size fits all solution.

We are also considering challenges emanating from the enforceability of some reform-oriented provisions in our new model especially with regard to referencing global standards, which we inserted to ensure that foreign investment protection does not come at the cost of our right to regulate.

Beyond that, the government of Nigeria is already considering an amendment to the core investment promotion facilitation and protection provisions of its National Investment Law, the Nigerian Investment Promotion Commission (NIPC) Act No. 16 of 1995 in order to ensure that the safeguards inserted in our model BIT are replicated in the National Law. This is to ensure that we do not lose through our National Law, gains that we have made in our BITs.

On the whole, we found the Conference to be very beneficial. Specific takeaways for us will include the need for a more coordinated and inclusive approach in the negotiation and reform of our Treaties to ensure that the processes are aligned. We will therefore be proposing steps towards the synchronization of negotiating Teams dealing with Investment Agreements at the bilateral, regional and continental levels.

We have also identified the need to take proactive steps in creating awareness in the public service in relation to our international commitments under our Treaties, so that officials of the State are aware of what our obligations are.

Having reformed our model Treaty, we are looking to track the weight given to some of our reform-oriented provisions by Arbitral Tribunals. With regard to our existing stock of old generation Treaties, we have learnt a lot from experiences of other countries represented at this Conference and will work towards identifying which of UNCTAD's 10 Policy Options would be most appropriate in dealing with specific Treaties. However, since this is an evolving process, there will be need for continuous engagements (such as this Conference) and capacity building for negotiators, as each country cannot achieve these reforms in a bubble.

Lastly but very importantly, we acknowledge and appreciate the technical assistance and consistent support of UNCTAD over the years, especially in relation to Phase 1 of our reforms. However, like Oliver Twist, we are asking for more and counting on the guidance, technical support and expertise of UNCTAD to provide hand-holding support to walk us through Phase 2 of our reforms.

Thank you.

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