



COVID-19 and Investor State Dispute Settlement provisions:

Challenges and actions to protect the economic recovery in Africa

African Union Commission and Overseas Development Institute

Introduction

The African continent is currently progressing an ambitious regional integration agenda consisting of different phases and topics, including the key topic of regional investment provisions. Unfortunately, current Covid-19 pandemic is providing a new context for these negotiations. Governments need to protect the health of the population from the effects of the pandemic, including by introducing several restrictions on the activities of people and institutions. They have also deployed a wide range of policies and actions to secure the provision of healthcare. Governments have further aimed at protecting incomes and livelihoods of people affected by the lockdowns restrictions, and have introduced measures and policies to speed up the economic recovery after such a economic crisis.

These policies have been designed and implemented with the aim of providing the best immediate response to a social, humanitarian and economic crisis. These responses may have changed the rules and policies affecting investors and their investments. Some investors may see this as a violation of the rules that apply to their investments in the countries in which they operate.

Many African countries have negotiated Bilateral Investment Treaties (BITs) that include provisions around Investor-State Dispute Settlement (ISDS). If BITs do not include limitations to the use of ISDS such as the right to regulate, there is a risk that investors may make use of these provisions to request compensation to the host State in cases of additional costs or loss of profits generated by the interventions adopted during the middle of the crisis.

Objectives of the event

The purpose of this event is twofold. Firstly, it aims to discuss the use of ISDS by investors in the current context and assess the impact that it may have on African states. It will discuss both the legality of potential claims and the economic assessment of the ISDS actions. Secondly, the event will discuss the options available to governments to protect their countries and people from these claims. It also aims to explore the political discussions that can be undertaken with the agreement of counterparts to, for example, suspend the scope of these provisions.

Structure of the event

Opening remarks

African Union Commissioner for Trade & Industry, H.E. Amb Albert Muchanga
United Kingdom Ambassador to Ethiopia, H. E. Amb Alastair McPhail CMG OBE (TBC)

Chair: Dr Max Mendez-Parra (ODI)

The event will consist of this panel of specialists:

- Suzy Nikièma (International Institute for Sustainable Development)
- Makane Moïse Mbengue(University of Geneva)
- Hamed El Kady (UNCTAD)
- Prudence Sebahizi (African Union Commission)

Introductory remarks will be followed by questions from the audience.

Organisation

The event will be co-organised by the AUC and ODI. Given the current worldwide travel restrictions, the event will be virtual. The AUC will coordinate the event's logistics. Interpretation into the AU official languages will be available.

Date

The event is scheduled for on 14th December 2020 from 12:30 -14:30 (GMT+3)