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1.0 Introduction

I will briefly describe specific challenges facing Zambia on issues related to IIAs, share the experience with regard to deficiencies and challenges arising from the international IIA regime, and look at the different possibilities of reforming IIAs. In doing so I will endeavour to give examples of how Zambia is considering addressing some of the challenges and deficiencies of the IIAs.

2.0 Challenges facing Zambia on IIAs

Zambia has signed twelve (12) BITs with other countries since 1966 and is currently negotiating with a number of countries. It is also important to note that Zambia has only **ratified five** of the 12 IPPAs since 1966. The Table below outlines the number of countries Zambia has signed BITs with.

No.	Country	Date of Signing	Date of Ratification
1	Germany	1966	1972
2	Switzerland	1994	1995
3	China	1996	pending
4	Croatia	2000	pending
5	Egypt	2000	pending
6	Cuba	2000	pending
7	Belgo-Luxemburg Economic Union	2001	pending
8	France	2002	2014
9	Netherlands	2003	2014

10	Italy	2003	2014
11	Finland	2005	pending
12	UK & Northern Ireland	2009	pending

I wish to note that many of these International Investment Agreements (IIAs) have been generally concluded on the basis of a model agreement presented by larger our partners. In most of these Agreements emphasise has been on the protection of foreign investment. This is particularly true in the case of Germany-Zambia BIT that was negotiated immediately after Zambia’s independence. Nevertheless, the new IIAs include more sophisticated investment protection provisions as well as more liberalization commitments.

It is important to underscore here that current investment provisions are increasingly being formulated as part of agreements that encompass a broader range of issues, including notably trade in goods and services, and other factors of production. Recent agreements tend to encompass a broader range of issues that in the most comprehensive agreements may include not only investment protection and liberalization, but also trade in goods and services, intellectual property rights, competition policy, government procurement, temporary entry for business persons, transparency, the environment, and labour rights. For example the recent treaties Zambia has concluded with countries such as Canada, Mauritius and Turkey are comprehensive and detailed. The question is what has led to all these changes in IIAs reforms?

2.1 Change in Circumstance

Since the 1990s, the universe of agreements has expanded enormously, for example by the end of 2004, the number of BITs had reached 2,392. Nevertheless, by the end of 2004, more than 85 BITs were the product of renegotiation. Most of these renegotiation is the result of changed circumstances, especially the conclusion of other international agreements the terms of which must be harmonized with the BITs. For example, most of the BITs signed by Zambia is with the **Central European Countries** and these were done prior to their accession to the European Union (EU) in 2004. As a result, Zambia needs to agree on a package of BIT amendments and interpretations in the interest of avoiding incompatibilities between the requirements of EU membership and Zambia’s BIT obligations. There is need to address these difficulties with a specific provision to ensure policy coherence, for example Zambian BITs and regional agreements such as the SADC Investment Protocol, the COMESA-EAC-SADC FTA, or EU Partnership Agreements.

2.2 Increased sophistication and complexity

As noted by most of their literature by UNCTAD (2006, 2012, 2003, and 2014) International investment rules are becoming increasingly sophisticated and complex in content. For example, the experience by countries in North American Free Trade Agreement has in an effort to define an **obligation** with greater specificity and thereby to clarify its scope and application. The recent IIAs negotiations have included significant revisions to the wording of various substantive treaty obligations. One major impetus for these revisions stems from the North American Free Trade Agreement (NAFTA) among Canada, Mexico and the United States. Because of a number of arbitrations under the investor-state dispute resolution provisions of NAFTA member countries have been prompted the parties to reconsider some of the language used in their IIAs. For example, Canada and the United States have modified the language of their IIAs and other investment agreements to clarify the meaning of “**Fair and Equitable Treatment**” and the concept of **Indirect Expropriation**.

There is fundamental uncertainty regarding the meaning of the **Fair Equitable Treatment in as far as some of the** obligation are concern. For example Zambian may be ill-equipped to meet some of the more demanding interpretations of the obligation for example in the Mining Sector.

2.3 Increased number of investor-State disputes

Although Zambia has not had noticeable investor-State disputes, worldwide the number of disputes submitted to arbitration has increased substantially in recent years. For example, until 1998 only 14 cases had been brought before International Centre for the Settlement of Investment Disputes, and only two awards and two settlements had been issued (UNCTAD, 2005)

However, by November 2005, 132 such disputes had been submitted. Another 87 treaty-based arbitrations not involving ICSID had been instituted as of the end of 2004, compared with two as of the end of 1994. Of the 219 claims known as of the end of 2005, almost 70 per cent had been filed during the prior four years. These figures do not include cases where a party has issued a notice of intent to submit a claim to arbitration, but has not yet actually commenced the arbitration. If these cases are submitted to arbitration, the number of pending claims will certainly be much more than these figures.

The increase in the number of claims can be attributed to many reasons however, to a larger extent these may be attributed to the greater complexity of the recent IIAs, and the regulator difficulties in their proper implementation. Further, greater transparency in the arbitration (for example within the North America Free Trade Agreement (NAFTA) may also be a factor in giving greater visibility of Investor-State Disputes.

3.0 Examples of Options to the Challenges and Deficiencies

Obviously, the issues raised above points to the need to review substantial provisions in IIAs, especially provision on national treatment, MFN Treatment, Fair and Equitable Treatment, and Expropriation. Careful considerations needs to be given to these issues when draft BITs to avoid unintended results arising out the interpretation of the clauses mentioned above. Attempt must be made to give greater clarity to these provisions. In order to address these issue the following are some of the measures that the Zambian Government has instituted:

- First, Zambia is ascertaining how best to integrate these agreements into their economic development policy by retain sufficient policy space to promote economic development, without undermining the effectiveness of the IIA. Zambia underscore the importance of IIAs in promoting economic development by providing a stable, predictable and transparent environment for foreign investment.
- Second, we are establishing and maintain policy coherence in the face of a large number of interacting IIAs. As an initial matter, this entails creating a coherent national development approach that integrates investment, trade, competition, technology and industrial policies. As new IIAs are negotiated, each will be reviewed carefully to ensure that it is consistent with and, in fact, promotes the state's economic development.
- Third, we working with UNCTAD and COMESA to ensure that we have sufficient capacity to analyse the scope of obligations into which are entering before we conclude an IIA. They also need to improve developing countries capacities to understand the economic and social implications of the commitments contained in IIAs.

Further, the Government has also appointed a multi-sectoral and multi-skilled Technical Committee to renegotiate some of the signed BITs to bring them in line with the current legislation. The GRZ Technical Committee comprises of the following institutions:

- Ministry of Commerce, Trade and Industry
- Ministry of Justice
- Ministry of Finance
- Ministry of Foreign Affairs
- Ministry of Labour and Social Security
- Zambia Development Agency
- Citizen Economic Empowerment Commission
- Consumer Competition and Protection Commission.

I want to underscore the fact that finding a development-oriented balance in future IIAs that adequately addresses these issues remains a challenge. As you would realise from the discussion here

today, the burden of addressing these challenges weighs disproportionately on developing countries, because they often lack the human and financial resources to implement agreements. Therefore, I wish to underline the importance of capacity building technical cooperation to help developing countries in assessing various policy options before entering into new agreements and to assist them in implementing the commitments made. UNCTAD can play a role in this regard.

Finally, I wish to thank UNCTAD for cooperation with Zambia on issues related to IIAs. More specifically I noted the technical assistance and advice on the Zambian model BIT. This assistance was based on UNCTAD's investment policy framework for sustainable development (IPFSD). In this context, I would want propose that UNCTAD must update and expand IPFSD to reflect recently developed Sustainable Development Goals (SDGs) action plan, and to feed into the 2015 SDG Summit.

I thank you all for attention