

Energy Charter Expert Meeting

NAMIBIA

A1 Energy dimension in investment and sustainable development

- Namibia is energy deficient at the moment and the cost of electricity is comparatively high, which works against investments in manufacturing and the national industrialization agenda
- We are in the process of internalizing the sustainable development goals which includes goal 7: Ensuring access to affordable, reliable, sustainable and modern energy for all
- Intended Nationally Determined Contributions commit to 89% reduction of projected GHG emissions by 2030 (thus aiming to become virtually completely dependent on renewable energy)

A1 Energy dimension in investment and sustainable development

- Market reform is currently under way to facilitate renewable electricity generation and distribution in particular (single buyer model, IPP policy, feed-in-tariffs, net metering, renewable energy portfolio in national supply strategy, wheeling agreements)
- In terms of investment policy, there are no restrictions on foreign investment in Namibia's energy sector, although the sector is comprehensively regulated like everywhere else
- There is a nexus with the eradication of poverty, thus domestic and household level investment in energy sector is also very important

A2 Domestic rules regarding foreign investors in energy sector

- National treatment and MFN apply
- Mergers and acquisitions require approval by the Competition authority

New investment promotion bill:

- Requires prior approval of change in ownership or transfer of licenses, permits, authorizations
- Confirms that Foreign investors qualify for application for concessions, licenses etc.
- Provides for prior approvals of investments against transparent criteria outlined in the bill
- Provides for reservation of categories of investment for certain categories of investors (not currently foreseen to become applicable to the energy sector)

A2 Domestic rules regarding foreign investors in energy sector

- Provides for Performance agreements (which can include local sourcing, SME development, transfer of skills, development objectives)
- Note in the concept paper: “Performance agreements should be used sparingly as necessary to achieve public policy objectives” – this needs to be balanced by equivalent provisions in power purchase agreements such as draconian political force majeure guarantees and take-or-pay provisions.

A2 Domestic rules regarding foreign investors in energy sector

Regarding land and real estate:

New commercial land reform bill:

- Majority control by foreign entities in the ownership of commercial land will be prohibited in favour of lease agreements

Regarding ownership and control:

New economic transformation bill

- Specific requirements for joint ventures with Namibians and part ownership by Namibian entities in commercial businesses above a threshold size

A3 Balance between energy investment promotion and national sustainable development

- First, these are not the only considerations. There is no need for development objectives to be traded off against energy investments. There is a very strong interest in energy investment at present, also in renewables, driven more by market demand than specific legal provisions
- Foreign investors have not raised any of the domestic rules with us as a barrier
- We have a highly favourable environment for renewable energy investment as an integral part of sustainable development
- Balance is not an issue right now in our case. Should it be an issue anywhere?

B3 Measures to mobilize sustainable energy investments

- We need to drive the cost of electricity down through enhancing competition, abandoning the single producer / distributor model, encouraging private sector investment, creating room for renewable technologies, without being tied in the long term to specific technologies or tariffs (since the field is changing so fast)
- Policy provision is needed for renewable energy portfolios and frequent reviews of these in national power supply strategies, thus creating transparency and predictability vs competition between renewables and fossil fuel/traditional sources
- Wheeling agreements are needed to enable the creation of renewable energy markets at country level (i.e. to enable a customer to choose to buy from a specific energy source even though there is no direct transmission system between producer and consumer)

B3 Measures to mobilize sustainable energy investments

- Net metering systems and feed-in-tariffs at municipal level are needed to encourage small scale / household investment in renewable energy production
- Incentive/credit/financing schemes are needed for our future micro-investors to enable the urban poor to acquire e.g. PV systems to earn an income from their roofs

C1 Predictability transparency, stability of legal and regulatory framework

- Foreign Investment Act, 1990
- Export Processing Zone Act, 1995
- New Investment Promotion Bill
- New Special Economic Zones Bill
- Bilateral investment treaties – phasing them out

C2 How is (our) confidence in the energy market ensured (structure and prices)

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- In our experience, a clear and comprehensive investment law is more important than bilateral investment treaties; clear national energy supply and market policies and strategies
 - Off take tariffs in PPAs should reflect the technology capability of a particular investment, the lifespan of the investment and the cost of financing that investment and NOT an upfront specification of an arbitrary tariff/bid tariff
 - Fair power purchase agreements are needed that do not require government securitization (offtake agreements) against political force majeure and which do not lock developing countries into any particular technology
 - Avoid take or pay provisions in PPAs, but to let producers compete and find markets/clients

C3 How can the rule of law and market confidence be improved and strengthened

- Clear and transparent investment legislation confirming national treatment and MFN, investor rights and obligations, simplified investment procedures (one-stop-shop)
- Transparent international procurement processes (but so many unsolicited proposals from the private sector!)
- Clear licensing procedures and conditions
- International arbitration on disputes but first exhaust domestic legal remedies

UNCTAD World Investment Network IIA issues

Note:

“The majority of new cases invoked bilateral investment treaties (BITs), most of them dating back to the 1990s. In about one third of all cases last year foreign investors relied upon the Energy Charter Treaty, which by now is the most frequently invoked treaty (87 cases), followed by the North American Free Trade Agreement (56 cases), and the Argentina–United States BIT (20 cases).”

THANK YOU
