

# Contractually Speaking....

Towards better deals with CONNEX

December 2021

## **Webinars highlighting technology continue focus around sharing digital infrastructure**

With the pandemic continuing and travel restricted, we continue to take to the airwaves to raise awareness of themes related to contract negotiation, working with key institutions in the natural resource arena.

In early December, CONNEX, the IGF and GIZ organized the third webinar in the *New Tech, New Deal* series, this time concentrating on sharing digital infrastructure.

Boris Dolgonos, CONNEX Advisory Committee member and partner at Gibson, Dunn & Crutcher LLP, reflected on the challenges and opportunities in this fast moving area. Boris made some excellent points regarding the need for a dialogue to look at the evolving aspects of a mining contract.

"Historically, companies have provided very little information to governments and local communities. In many cases, this information was limited to quarterly or annual reports that disclosed high-level financial results – the bare minimum necessary for the calculation of royalties and taxes.

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## **Supporting Colombia on the social license to operate**

### **CONNEX-sourced experts support government in Antioquia on renewable energy and social impacts**

Getting new large-scale mining projects right is quite a challenge, especially in jurisdictions where parts of the public are skeptical of mining activities in general. Ensuring responsible extraction processes and a lasting 'social-license-to-operate' demands a lot from the mining companies and the regulators alike. The initial licensing process is key. The earlier gaps or uncertainties are addressed, the easier it is to set a greenfield mine on the right track.

In that respect, the provincial government of Antioquia in Colombia approached CONNEX with a request specifically geared towards very practical questions that wedded social, environmental and sustainability questions for the Greenfield project Quebradona. The mine's deposit is predominantly copper, but also contains gold and silver.

CONNEX's project partner, Santiago Perez Ospina (Director for Mining Development, Mining Secretariat of the Provincial Government of Antioquia) provides some insights:

"We felt empowered. The most important aspect is that it put us on the same level on a technical level. We are the mining authority, but we knew that technically, we were not at the same level as the company. The company had 1200 experts and we were five people sitting in a room reading their reports which took them 14 years to create. In a short span of time, we were able to have the international expertise, which helped to create a balance."

The work included expert teams of DMT (Germany), RESOLVE (Canada) and Phoventus (Canada) totaling 118 days. The regional government requested a technical assessment of the planned investment with a focus on social and environmental aspects like water use, the use of renewable energy, and agreements with surrounding communities.

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# **Supporting government in Antioquia, (con't.)**

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Santiago commented, "The social experts provided us with a different view of what the impact of projects of this scale can have. We have big mining projects in Antioquia, but not copper projects. The impacts are regional. And CONNEX experts really knew the details of the projects, the demographic situation, the land and the country as a whole, which really helped in the negotiation. It was different having international experts who really knew the country, as opposed to an expert from a far-off country who knew very little about Colombia. Indeed, they partially understood our soul."

Discussing the practical aspects of CONNEX's support, Santiago commented, "It reminded us of the purpose of international cooperation. With CONNEX, it was directly helping us. It was not a "soft" project, with hard to define results. It was what international cooperation should really be - tangible. This is the challenge, let's tackle it and solve it together."

As in CONNEX's mine closure support in Argentina, which led to a national discussion and to legislation on mine closure, our support has a positive knock-on effect throughout Colombia.

Santiago notes, "we are the only region that has its own mining authority. Outside of Antioquia, Bogota manages all the other 31 mining regions. We have been discussing a great deal with the national mining agency and we knew the project's risks. We looked for an entity that helped us to lower the risk - CONNEX. That is how we are helping other regions. We said, 'Look, it is not something that we have to do by ourselves - there are agencies who can help us.' That is one way to manage risks. By talking to the national agency, we are talking to the other 31 states."

## **IGF webinar on shared digital infrastructure, (con't.)**

*(continued from p. 1)*

Investors were reluctant to share additional information, such as geological surveys, environmental impact, and safety data. Technology has helped us gather greater information, which is often more current and more relevant to government officials. We now can have daily information about volume of product, market prices, water and power usage. Governments can monitor compliance with contracts on a real-time basis. Also, very importantly, to help monitor impacts, particularly to the environment.

No relationship can be reduced into a contract that is relevant for 40-50 years. Periodic review clauses need to be incorporated, requiring companies and governments to review rights and benefits every several years, particularly in areas like technology, which is constantly developing, and fiscal allocation, which is influenced by constant changes in demand and market pricing.

To understand the future, we can project a little with technologies for some materials, like gold, copper and iron, that have been around for hundreds if not thousands of years. However, for lithium, cobalt and rare earths, demand is developing rapidly, as are



technologies for extraction, and it is difficult to predict how these markets and technologies will develop."

The webinar series brought many salient points out which have resonance in all four corners of the planet. Given the advances, technology will remain integral to mining's future. *Left, experts hailed from Brazil, Canada, Germany, The Netherlands and the U.S.*

## **'Team Deutschland' to launch mine closure webinar**

Following up its experience in mine closure in Argentina, CONNEX is working with its colleagues in German development cooperation to produce an extended webinar related to the subject. "Team Deutschland" consists of CONNEX, as well as the joint sector program „Extractives and Development" at the German Federal Institute for Geosciences and Natural Resources (BGR) and the Deutsche Gesellschaft für Internationale Zusammenarbeit (GIZ) GmbH. Besides working on mine closure within development cooperation, the BGR has opened up a Centre of Excellence on Mine Closure at Cottbus Nord, in the German state of Brandenburg. From CONNEX's side, we intend to highlight our experience in supporting the Argentinian government (in the Catamarca region) with financial guarantees in mine closure.



*Zollverein in Essen, celebrating mining's past and economically serving the future.*

Germany is no stranger to the closing of mines and industrial sites. Cottbus Nord aside, the Ruhrgebiet is quite literally littered with former industrial plants. These "cathedrals of steel" have set the bar for local and regional development through tourism. The steel equivalent of the French cathedral Chartres is Zollverein in Essen, Germany – welcoming up to one million visitors per year pre-pandemic as well as achieving UNESCO World Heritage status.

**The webinar will be 23 March 2022 (afternoon German time), link in the next issue.**

## **Array of Berlin events next year to highlight the value of better negotiated deals**

The post-pandemic world will likely launch a great deal of international investment projects to serve as economic boosters to many countries and indeed regions, which have suffered from the pandemic.

Mining and infrastructure are two of the most prominent sectors in which new investment agreements will be concluded.

To raise the importance of "getting it right" and having a generational pay-off, CONNEX will be launching a high-level forum in Berlin and a series of peer learning sessions in 2022.

The forum, which will bring together partner governments, thought leaders, multilateral institutions and development partners, intends to offer a way-forward to the transformation that the world needs. Indeed, these contracts will transform society and leave a generational legacy, due to their length. In that sense, sustainability, resilience and the increasing

need to be circular will be highlighted. The peer-learning sessions to follow the high-level forum are to share best practices, to identify additional needs of partner governments, design roadmaps for governments and build individual capacity to help address short-term needs.

The subjects of the sessions intend to include the following:

- Extractive industries contracts and climate change (just transition)
- Building capacity to manage PPP contracts for sustainable infrastructure development
- Financing transformative investment projects and ensuring debt sustainability
- Practicalities of clause development – i.e. stabilisation, socio-environmental, economic and the increasing importance of circularity.

**More details to follow in the coming weeks and months....Stay tuned.**

# *AC Member - Dr. Cielo Magno – Civil Society’s increasing relevance*

*Advisory Committee member discusses dialogue between civil society and government*

## **What brought you into the area of working in civil society?**

My exposure to civil society work while I was a student leader in the university during college years introduced me to the work of civil society. My experience with civil society showed me how they can engage government and influence policy.

## **Are CSOs more in dialogue with governments or more in debate? Is that country specific or is there a trend?**

It depends on how open the government is in engaging civil society. I had opportunities where the government is very open to partner with civil society in implementing projects and programs and in formulating policies. My experience on EITI implementation in the Philippines showed the openness of the government at that time to reform the extractive sector and to consider the CSO as a significant partner in doing it. As a member of civil society, I have also experienced that my opinions were valued as important inputs in policy making.

## **In that respect, do you see the chances for a government and a CSO on the same side of the table in contract negotiation?**

Yes and one helpful element is having data to drive the discussion. The data sets the tone or baseline of the conversation. The second important element is understanding who are the principals when contracts are being negotiated. In the case of the Philippines, the people own the natural resources. The government represents the people and therefore accountability is clear in terms of on whose behalf they



*Before serving on CONNEX’s Advisory Committee (AC), Cielo was previously the coordinator of Bantay Kita - Publish What You Pay in the Philippines.*

should negotiate. CSOs can play the role of a watchdog to minimize government capture. And if data are available, then debates become more objective and reasonable.

## **Are there any civil society trends that you see in a post-pandemic world?**

We see that during the pandemic, opportunities to participate were reduced. One reason is the challenge in logistics and the difficulty of engaging face to face. The urgency to come up with policy decisions should not compromise the consultative process of decision making. So in the post-pandemic world, we should explore ways to restore the consultative and participatory process through use of technology and other innovations.

## **Capacity is usually the key word when mentioning CSOs and contracts. How much work is there to go? In the Philippines and elsewhere?**

There is a significant need to improve the capacity of civil society organizations. In





the case of the Philippines, we have alternative lawyers and experts who are members of the civil society and can engage in contract negotiation. However, ideally, communities should be able to participate in contract negotiation, especially indigenous communities. There is a huge gap in this area. I have personally looked at the legal documents governing agreements between indigenous communities and mining companies and we can see a lot of inconsistencies with respect to the quality of these legal documents. Capacities of communities have to be built to ensure that agreements and arrangements are not disadvantageous to them.

**PWYP has focused on the extractive sector and focused on what companies paid. Do you see it as a whole going towards other massively important (and expensive) sectors like infrastructure?**

Yes, public monitoring should not be limited to the extractive sector. Other government procurement should be covered and mechanisms have to be developed for the public to easily check and monitor government procurement.

*CONNEX wishes you, our readers, the very best for the holidays. This year was most certainly a challenge. We hope that you have stayed safe and healthy this year and remain so into the future.*

*Our best wishes to you and to your families for 2022 and we look forward to continue working with you.*