

Contractually Speaking....

Towards better deals with CONNEX

June 2022

Contract Dialogues - Prep Session attracts leading organisations to highlight negotiation support

Session serves as input into the online Forum to take place 12-13 September

The programming around the CONNEX Investment Contract Dialogues (CICD) continues to evolve and make progress, with the Preparatory Session taking place in April, which brought together more than 20 experts from a range of institutions working in contracts and negotiation support.

The Preparatory Session was as interactive as it gets on the screen, allowing for less talk and more walk. With short papers provided as inputs on climate change and sustainable infrastructure/PPPs, the experts then "hit the Miro board" – an interactive and collaborative board in which thoughts, ideas and actions were highlighted.

Experts came from the Columbia Center on Sustainable Investment, International Senior Lawyers Project, the Organisation for Economic Cooperation and Development (Investment Division), Government of Antioquia (Colombia), the Natural Resource Governance Institute, several members of CONNEX's Advisory Committee, the African Legal Support Facility, as well as several of CONNEX's experts.

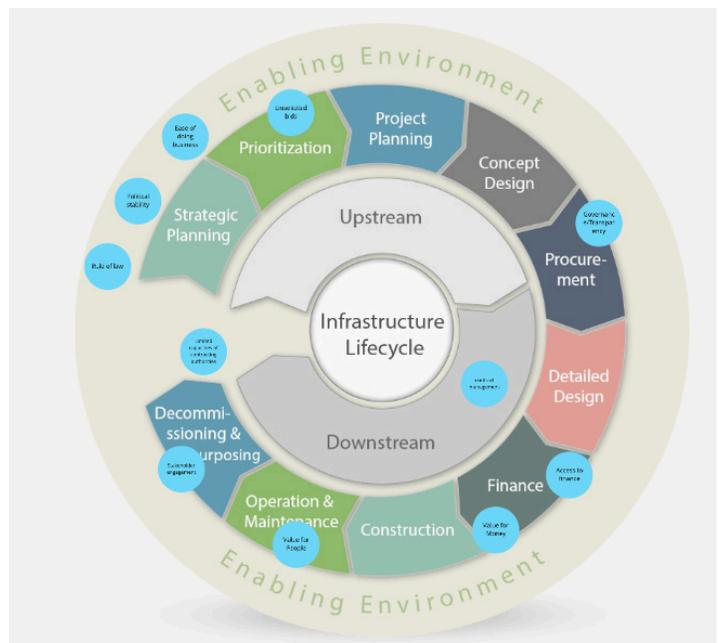
The atmosphere was informal, allowing for the creation of a more formalised network. This "Big Family" is very keen to move investment contracts and negotiation support from the margins to the mainstream.

The Prep Session's three pillars included climate change, sustainable infrastructure and "towards a better clause".

The first two sessions highlighted the twin peaks to climb in the coming years. In infrastructure, over 75% of required infrastructure until 2050 has not been built, both a challenge and an opportunity. The challenge is raising the trillions of dollars needed; the opportunity is to create infrastructure which breaks from the past and is significantly more human centric.

Climate change will equally influence the world in the future. Challenges include dealing with stranded assets, ensuring the availability of critical minerals and also mitigating the impacts of climate change-induced events.

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Above, the infrastructure life cycle, with expert comments concerning facilitating investment and ensuring a more balanced negotiation table.

Contract Dialogues - Prep Session continued...

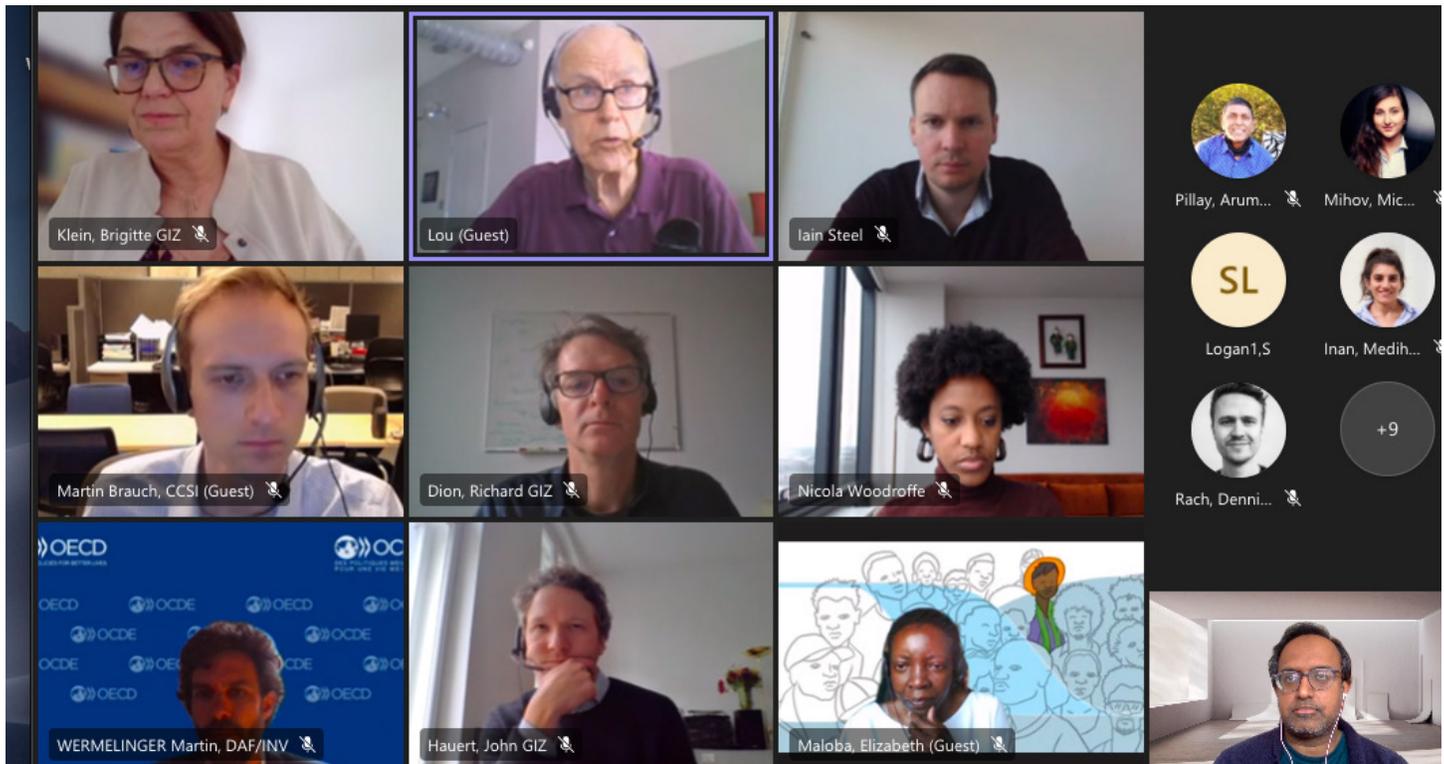
In the final session, participants looked at some of the major clauses in contracts – stabilization, force majeure, arbitration, extension, environmental regulations, decommissioning and fiscal clauses. A quick look at the current situation and what the desired situation was noted, which we hope will serve as an opportunity for a “better clause” to be included in contracts in the very short-term.

One glaring example is the stabilization clause. Long the “don’t touch this contract in any way, shape or form” clause, stabilization has become more sophisticated, including so-called carve-outs for the evolution in policy, notably health, safety and the environment, which should not impact project economics. With the pandemic (as well as the continuing realities of climate change), force majeure clauses will likely need to be adjusted. Long a “boilerplate” clause, force majeure has drawn much more attention in the last months.

The 12-13 September online forum (13:00 - 16:00 CEST each day) is dedicated to sustainable infrastructure and climate change respectively and will also discuss horizon issues, such as critical minerals. Mark your calendar!



Above, Prep Session participants used the interactive Miro Board (above) to detail upcoming issues in which negotiation support may be needed. Below, The participants brought a diverse range of expertise and experience to the April session.



A dear friend of CONNEX, and of Africa, passes away

Herbert M'cleod, a member of our Advisory Committee, worked tirelessly for the continent.

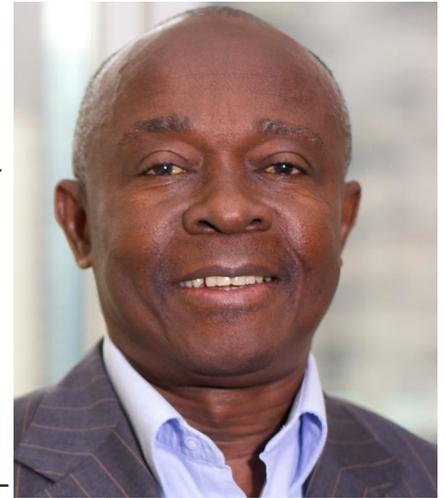
He wasn't that loud, if at all. He was methodic, frank and had a moral compass that was the envie of the world.

Herbert M'cleod spent his entire life dedicated to Africa, including as the UN Resident Representative in the Democratic Republic of the Congo. Other UN posts included Botswana, Eritrea, Cameroon, Ethiopia, and Sierra Leone. He most recently served as the Country Director for the International Growth Center in Sierra Leone and Liberia.

Natty Davis, Co-Chair of CONNEX's Advisory Committee, reflected, "Herbert was my friend, colleague and teacher. But above all a passionate patriot of Sierra Leone. With his abundance of knowledge and experience in development planning, he remained very humbled and in many times unassuming. Herbert was truly a man with a personality one would call two sides of the same coin. Herbert was very committed and hard working, focusing on the task at hand, and on the other hand very personable, fun loving, jovial and easy to get along with. His sudden loss deeply touches me and my family who looked forward to welcoming Herbert into our home every time he visited

Liberia. Rest in peace, dear friend and may light perpetual continue to shine upon you. Sierra Leone has truly lost a dedicated and devoted son..."

Co-Chair Karl Sauvant commented, "When our good friend and colleague, Herbert, left us unexpectedly this past May, he left a void for his family and friends, both at the personal and professional levels. Those of us who had the privilege of knowing and working with him will for sure miss his knowledge and expertise in African development issues, particularly in mining and minerals. But we shall also miss the easy and convivial manner in which he shared that knowledge with us, gently bringing those around him to see a different angle of an issue or clarify concepts in one's mind. Africa and Sierra Leone had the privilege of having Herbert as a son, and we of having him as a friend and colleague. Thank you, Herbert, for all you gave us."



Panel, panel, side event, i.e. getting out of the office

In-person events allow CONNEX to continue emphasizing the value of negotiation support and responding to client governments

CONNEX made an appearance at Mining INDABA in Cape Town, South Africa in mid-May, in which it met a number of partner countries to better understand their negotiation support needs as well as to provide thoughts on a panel on the mitigation of ESG risks. Other panelists included the African Development Bank, World Bank, the British High Commissioner to South Africa, Anglo American and the Natural Resource Governance Institute.

On the panel, CONNEX's Richard Dion took a

step back from mitigating ESG risks on the ground to focus on steps to take before negotiating.

Due diligence is one of the easiest, cost-free and most effective ways to reduce ESG challenges. In short, know your company. What is its track record in the region? Are any communities thoroughly engaged during negotiations? Which senior management will be placed in the country and where were they previously posted?

Panel, panel, side event, continued



Above, Advisor Diara Diallo presents CONNEX to delegations at PDAC, which included Colombia, Argentina and the Dominican Republic.

Whenever any entity, a government or a company is discussing mitigation, it is crucial to look at the contract and what it says with regards to ESG. On a very practical basis, which standards are being used? Are they international standards such as the IFC Performance Standards or just “international” standards. The more specificity in the contract, the less confusion and risk in the 25-30 year project.

Dion commented, “It was good to get out of the office and really engage with partner countries and other actors in the mining sector. CONNEX was quite well received and we had a number of productive meetings with government officials who indicated interest in our negotiation support.”

Just a week later, CONNEX Advisor Diara Diallo was at the Responsible Mining Conference in Berlin, where she shared the stage with DMT technical expert Jason Henriquez to discuss mine closure. In 2020-21, CONNEX experts were active in mine closure in Argentina, focusing on financial guarantees.

No mining event schedule would be complete without Toronto’s Prospectors & Developers Association of Canada (PDAC) conference. Held in person for the first time since 2019, CONNEX hosted an invitation only event for governments to help them better understand our offer. Santiago Ospina Perez (Colombia) and Santiago Dondo (Argentina) joined Diara to provide more specificity to what negotiation support looks like in practice. Santiago Ospina Perez, the Director of Mining Development in Colombia’s Antioquia region, discussed the positive impact that CONNEX experts made. CONNEX’s tailor-made package for Antioquia included social and environmental aspects, as well as renewable energy.

With Diara’s presentation in Berlin as well as the discussion in Toronto, demand for negotiation support services, particularly for mine closure, is increasing.

“Governments are realizing that mine closure should be handled up front, and very often, it is simply not covered in the contract. We would highly encourage governments to handle all aspects of a mine’s lifecycle, particularly its closure, in the initial negotiations,” commented Diara.

