



**Columbia Center
on Sustainable Investment**

A JOINT CENTER OF COLUMBIA LAW SCHOOL
AND THE EARTH INSTITUTE, COLUMBIA UNIVERSITY

**Workshop on
Strengthening Knowledge-Sharing and Coordination
of Negotiation Assistance
For Developing Host Countries**

**18-19 June 2014
Columbia University
New York**

PROGRAM

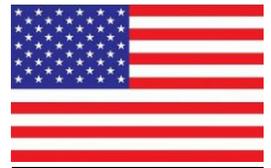
Organized by

Columbia Center on Sustainable Investment

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ABOUT THE COLUMBIA CENTER ON SUSTAINABLE INVESTMENT

The **Columbia Center on Sustainable Investment (CCSI)**, formerly the Vale Columbia Center on Sustainable International Investment, is a leading applied research center and forum for the study, practice and discussion of sustainable international investment. CCSI focuses on analyzing important topical policy-oriented issues and constructing and implementing an investment framework that promotes sustainable development and the mutual trust needed for long-term investments that can be practically adopted by governments, companies and civil society. The Center undertakes its mission through interdisciplinary research, advisory projects, multi-stakeholder dialogue, educational programs, and the development of resources and tools. CCSI regularly collaborates with other Earth Institute centers and faculty, as well as institutions worldwide, integrating our expertise in law, economics and investment with diverse fields of sustainable development. www.ccsi.columbia.edu

ABOUT THE SPONSORS

The U.S. State Department's Bureau of Energy Resources, acting through the Energy Governance and Capacity Initiative (EGCI), and the Australian Department of Foreign Affairs and Trade (DFAT) have provided grants to support this workshop and the development of the online web portal. The views expressed in this workshop and on the online portal do not necessarily reflect the views of the United States, the Commonwealth of Australia, or CCSI.

U.S. State Department

The Bureau of Energy Resources ensures that the State Department's diplomatic efforts advance U.S. interests in having access to secure, reliable, and ever-cleaner sources of energy and support global energy governance and access. The EGCI program seeks to assist countries in building their capacity to manage their oil and gas sectors responsibly, transparently, and in a manner that benefits their populations.

Australian Department of Foreign Affairs and Trade

The role of DFAT is to advance the interests of Australia and Australians internationally. This involves working to strengthen Australia's security; enhancing Australia's prosperity; delivering an effective and high quality aid program and helping Australian travelers and Australians overseas.

Background and Objectives for the Workshop

The Columbia Center on Sustainable Investment (CCSI) has been working with partners from academia, civil society and government for the past three years to explore how to more effectively support low-income, resource rich countries in their preparation for, negotiation and implementation and monitoring of large-scale investment projects.

In particular, CCSI, together with the Humboldt-Viadrina School of Governance (now the Governance Center for Natural Resources), convened a workshop at Columbia University in July 2012 to discuss the availability of comprehensive negotiation support for developing country host governments. At that workshop, the participants confirmed the findings in the workshop's [background paper](#), including identifying a number of gaps in the types and extent of negotiation support available (see Annex A) as well as a general lack of knowledge-sharing and coordination among government departments, donors and the negotiation support providers assisting governments in the preparation, negotiation, implementation and monitoring of large-scale investment projects.

Following the 2012 workshop, with support from the Australian Government, CCSI has been working on improving the accessibility of available tools and resources, facilitating knowledge-sharing among governments, negotiation support providers, donors and other stakeholders and improving the coordination of negotiation support. In particular:

- 1. Online portal:** The CCSI has designed a user-friendly online [portal](#) that brings together existing tools and resources and provides additional information to stakeholders in relation to negotiating large-scale investment contracts. A Beta version of the portal will be launched at the Workshop and will include:
 - An easy-to-search matrix of existing negotiation support initiatives that will include such search criteria as sector focus, geographical location, response time, funding, and types of expertise/ support. A pdf version of the matrix is currently available on the negotiation support page of CCSI's [website](#);
 - A roadmap of the negotiation process to help countries visualize the stages of preparing for, negotiating and implementing and monitoring complex contracts; and
 - An annotated library of relevant tools and resources (including databases of existing and past contracts, model contracts, best practice guides, monitoring and evaluation tools and resources for understanding legal and fiscal terms and contract provisions) with respect to each negotiation stage described in the roadmap.

It is envisaged that the portal will serve as a resource for government officials and their support staff, in-house lawyers, advisors and consultants, as well as for development partners and negotiation support providers assisting governments.

This workshop will solicit feedback from participants on the content, usability and features of the online portal as well as on strategies for dissemination.

- 2. Coordination of negotiation assistance and capacity building:** In the first half of 2014, CCSI convened a small working group to facilitate discussion on how to improve the coordination of negotiation assistance and associated knowledge-sharing activities and to provide input on the design of the online portal.

The composition and objectives of a more inclusive coordination group to continue the conversation will be a topic of discussion at the workshop. The workshop will also serve as a forum for participants to discuss and agree on principles that can be implemented by existing negotiation support providers and their funders to address some of the identified gaps in negotiation support.

Monrovia Declaration

At a [workshop](#) organized by HVSG in Monrovia, Liberia, in July 2013, CCSI's proposal for an information-sharing and coordination portal was endorsed as one of three complementary approaches that could be pursued to improve negotiation support to resource rich developing host country governments. The other two approaches – namely to explore the feasibility and desirability of a contract negotiation support center and a rapid response advisory unit to mobilize expert support for contract negotiations – are being led by the Governance Center for Natural Resources.

G7 Strengthening Assistance for Complex Contract Negotiations (CONNEX) initiative

Momentum for CCSI's knowledge-sharing and coordination activities has been strengthened by the interest of the Group of 7 (G-7) in strengthening negotiating assistance. At the 39th G-8 Summit at Lough Erne, Ireland in 2013, leaders of the G-8 countries recognized the need for expanded assistance for negotiating complex contracts to improve the development outcomes of such contracts. At the next Summit to be hosted in early June 2014, the G-7 aims to further this work by announcing an initiative to improve the ability of existing negotiation support providers to address some of the gaps in negotiation support including the ability to respond quickly and efficiently to the needs of developing host country governments in the preparation for, negotiation, implementation and monitoring of large-scale investment contracts.

Wednesday, 18 June 2014

08:30 – 09:00 **Arrival of participants**, Breakfast

09:00 – 09:15 **Welcome and Introduction**

Lisa Sachs, Director, Columbia Center on Sustainable Investment (CCSI),
Columbia University

09:15 – 09:45 **Sponsors' Opening Remarks**

David Mortlock, Director for International Economic Affairs at National
Security Staff, the White House

09:45 – 12:30 **Session 1: Presentation and feedback – Beta version of the online
portal**

Sophie Thomashaussen, Legal Researcher, CCSI

A presentation of the features of the online portal in relation to the negotiations roadmap, repository of tools and resources and searchable database of negotiation support providers.

The content of the website as well as its ease of use, functionality and layout will then be discussed, including what additional features and information could be included to improve the website.

Key questions:

- Is the content of the roadmap pitched at the right level?
- Are the tools and resources clearly presented? What other types of tools and resources should be included? How can these be kept up-to-date?
- Should the content be expanded to include tools and resources with a regional focus (e.g. specific to Africa, Central Asia, or other regions)?
- Feedback on the matrix:
 - How is the searchability of the matrix?
 - Should any additional information about negotiation support providers be included?
 - Is the list of negotiation support providers sufficiently expansive? Should any additional negotiation support providers be included? If so, should there be a vetting procedure for including new initiatives?

- What features of the website more generally could be improved to enhance usability?
- Are there elements that could be added to the portal that would be useful to users (for example, webinars)? How could these be developed and managed?

12:30 – 13:30 **Lunch**

13:30 – 15:00 **Session 2: Dissemination Strategy**

Moderator: *Michael Jarvis*, World Bank Institute

It is important that potential users are aware of the portal so that it can achieve its aims of increasing the accessibility and use of existing resources and tools, acting as a guide to the process of negotiating long-term deals and facilitating coordination among negotiation support providers and donors. This session will focus on strategies for dissemination, as well as how the workshop participants and members of the coordination group can assist with this dissemination.

Key questions:

- How can use of the website, tools and resources, be promoted and facilitated?
- What is the scope to link up with other organizations, websites and platforms for dissemination purposes?
- How can the portal be used to improve institutional capacity?
- What should the role of the coordination group and other workshop participants be in the dissemination strategy and/ or the “vetting” of the content on the online portal?

15:00 – 15:15 **Coffee/ Tea break**

15:15 – 16:30 **Session 3: Role of a coordination group**

Moderator: *Joe Bell*, Of Counsel at Hogan & Lovells and ISLP Board Member

The convocation of a coordination group, as a more inclusive version of the working group could provide a forum for members to update each other on new initiatives focusing on support to governments preparing for, negotiating and monitoring the implementation of investment projects, better coordinate such initiatives and promote capacity-building through knowledge-sharing and information exchange. This session explores in

more detail the purpose, composition and role that such a coordination group could take.

Key questions:

- Composition of coordination group: Building on the composition of the working group and the participants of this workshop, who should form the core members of a coordination group? Should any other initiatives or stakeholders be represented?
- What is the appetite for an annual/ bi-annual meeting to facilitate coordination and experience sharing, or to discuss substantive matters relation to negotiation support? Should these already be set in the calendar?
- What is the most practical way to ensure continuing and effective communications among coordination group members? Regular calls? An e-mail list? Any other effective alternatives to meetings in person?
- How can the coordination group be used to coordinate negotiation support?
- What are the next steps to formalize the coordination group?

Thursday, 19 June 2014

08:30 – 09:00 **Arrival of participants, Breakfast**

09:00 – 10:30 **Session 4: Updates on Negotiation Support Initiatives: The G7, World Bank, the Natural Resource Governance Institute (formerly RWI-NRC), UNDP, GIZ, ISLP, and the African Legal Support Facility**

Moderator: *Guenter Nooke*, Special Representative for Africa of the German Chancellor

10:30-12:00 **Session 5: What is the scope for improved coordination among existing negotiation support providers and their funders, including to address identified gaps in comprehensive negotiation support?**

Moderator: *Matthew Genasci*, Principal, Mining Policy Group

For a list of gaps identified in the provision of negotiation support to developing country host governments see Annex A.

Key questions:

- To what extent are negotiation support providers coordinating their activities? Could/should more be done? If so, what role could the portal or other mechanisms play?

- To what extent could the portal or another mechanism be used to channel requests for support to existing negotiation support providers, and ensure they are reaching the appropriate provider?
- To what extent are existing initiatives planning to and/or able to address some of the identified gaps, either individually or collectively?

12:00 – 13:00

Lunch

13:00 – 15:00

Session 6: Discussion of principles on how *existing* negotiation support providers can address the gaps in negotiation support

Moderator: Marti Flacks, Deputy Director, Office of Energy Programs, U.S. Department of State

Key questions:

- In what ways can existing negotiation support providers address the gaps in negotiation support?
- Is there support for the adoption of principles/commitments by each major negotiation support provider and donor to address the gaps?
- What would be required for the implementation and monitoring of such principles?
- What are the next steps?

15:00 – 15:15

Tea/ Coffee break

15:15 – 16:45

Session 7: Capacity-building support to host governments: A stock take of short-term trainings and discussion of scope for training standardizations

Moderator: *Andrew Barnes*, Director - Southern Africa Section, Australian Department of Foreign Affairs and Trade

Several organizations and initiatives are providing trainings or capacity building programs for host governments and other stakeholders; some are taking steps to formalize these trainings around specific modules or tools. This session will take stock of some of the current training offerings and explore whether it would be beneficial to coordinate such trainings and/or to standardize certain aspects of the content.

Key questions:

- For what types of trainings is there most demand/need?

- Who is providing such trainings? What efforts are underway to scale up or to standardize these trainings? Updates of initiatives from GIZ, the World Bank, AMDC, and IM4DC.
- Would it be useful to coordinate or standardize certain aspects of short-term training courses and capacity building initiatives? If so, how might this be done?

16:45 – 17:00 **Closing remarks**

Annex A

Gaps in Negotiation Support

This Annex summarizes the findings of the gaps in negotiation support identified in Part III of the [background report](#) prepared for a workshop on Contract Negotiation Support for Developing Host Countries held at Columbia University on July 18-19, 2012.

1. A lack of assistance in relation to non-legal expertise: Non-legal expertise, including financial/economic experts, financial modelers, sector experts, investment bankers for financial structuring, and development specialists, is less readily available than legal expertise. The weakest area in terms of availability of support relates to assistance targeted to industry-specific technical expertise. In particular, the following type of experts are in short supply:

- **Sector specific experts** to help compile and interpret geological data, analyze global sector trends, understand technology developments, sustainable development challenges, environmental management concerns, etc.
- **Industry experts** with commercial skills or access to critical information help build the government's credibility and confidence when dealing with the company's negotiating team. Conflicts of interest, high fees charged by industry experts and government fears of confidentiality breaches when instructing an industry expert limit governments' access to these.
- **Assistance in the management aspects** relating to establishing a government negotiation position and assembling a negotiating team of experts to prepare for and carry out a negotiation.

2. Limitations of existing legal assistance: While there are a number of organizations providing legal support in all phases of negotiations, there are still a number of gaps in the type, scope and extent of available legal support. These include:

- **Limited non-fee paying legal assistance:** Providers of non-fee based or subsidized legal advice to governments often have limited funding to do so and are therefore constrained in the amount of support they provide. A number of donors providing funding to allow governments to retain advisors also do not provide funding for direct negotiations.
- **Limitations of specialty, timeframe and scope of existing legal assistance:** The legal experts retained by governments do not always have specialist experience in the relevant sector, or in working with and serving the needs of government. For example, transactional lawyers may tend to focus on "getting the deal done," which may not include a long term view of the terms of the deal for the country or revenue management issues. Moreover, the assistance may be limited in

timeframe or scope according to the resources and mandate of the negotiation support provider/ donor rather than by the needs of the government.

Strong monitoring standards are required to ensure that the advice provided is real, tangible and practical. It is also preferable for lawyers to be involved over a long term, in order to develop relationships with government clients.

- **Limitations of experience and relationships with the government:** Not all experts may have the incentive (or the experience) to create ownership within the broader confines of government, for example, working to build the trust of the government and working slowly in order to obtain buy-in from competing government groups for the negotiation strategy. Experience working with governments, as well as long term involvement, is important.
 - **Limitations imposed by government procurement processes and funding:** A government's ability to engage effective legal advice may be affected by its procurement processes. These processes may require that legal services are engaged by tender, with the contract generally being awarded to the lowest bid. In some cases, this may mean that the government does not receive the highest quality advice.
3. **Timing of support:** It is important for government to put together the negotiating team, including both officials and external advisors, at the very start of the negotiation process rather than bring in experts part way through, and to the extent possible, to maintain the same negotiating team throughout the negotiation. Yet governments often do not seek help with negotiations at an early stage, putting them at a disadvantage in the negotiations from the outset. On occasion, the support of external assistance is only sought after negotiations have already begun (and a term sheet already agreed, for example). Late requests for assistance might be due to political sensitivities, to inexperience, to lack of funding, and/or to the desire to maintain control over the negotiation.
 4. **Lack of availability of support to governments following conclusion of a contract:** Other than limited capacity-building workshops, there appears to be only limited negotiation support dedicated to the implementation, enforcement and monitoring of the contracts or to strengthening governments' capacity to do so.
 5. **Long-term assistance:** Many negotiation support providers provide assistance for particular projects and for limited phases of those projects only. The assistance is not provided over the long term, to build up the capacity of a particular ministry, agency or national resource company.
 6. **Knowledge management and sharing:** There is generally a lack of availability of documentation such as "best practice" guides in terms of policy frameworks, legal and fiscal terms, contract provisions, etc., as applicable to common law and civil law countries. In addition, accessing past or existing contracts as precedents, models or for comparison can be

difficult. There is limited knowledge sharing between countries and regions of concluded contracts and related documents and there can also be a lack of co-ordination between different teams (e.g., across different sectors) within one country. Countries also lack contract management systems to enable monitoring and enforcement of contractual terms over the long term of the project.

- 7. Sector focus of available support:** Most of the existing initiatives provide support for negotiations of oil, mining and gas contracts but not other types of large-scale investment contracts, for example in relation to large-scale land or infrastructure investments.

Annex B

Participants List

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