



Fourth Workshop on Contract Negotiation Support for Host Developing Countries

22-23 July 2013, Monrovia

Workshop Report

Organized by
HUMBOLDT-VIADRINA School of Governance

Hosted by
Liberia National Investment Commission

Supported by



Background

In 2011, the HUMBOLDT-VIADRINA School of Governance (HUMBOLDT-VIADRINA) and the Vale Columbia Center on Sustainable International Investment (VCC) initiated the Negotiation Support Initiative (NSI). It aims at identifying the availability of expert support for developing countries negotiating large scale, complex investment projects in order to evaluate how existing support could usefully be expanded. Through this process, the NSI seeks to provide and improve practical information and support for host developing countries to avoid the conclusion of sub-optimal contracts with investors due to a lack of local know-how and expertise. Sub-optimal complex contracts prevent a country from enjoying the full long-term benefits of its assets, thereby potentially leading to, among other things, substantial loss of public revenue; natural resource degradation and depletion; environmental or safety hazards; loss of access to assets for local communities, and the non-achievement of larger development goals of a country.

The Fourth Workshop on Contract Negotiation Support for Host Developing Countries, took place in Monrovia, Liberia, July 22-23, 2013. It was meant to lead to a decision about the development of a concrete organizational approach for the support of developing countries as they prepare, negotiate or monitor large-scale investment projects involving complex contracts. The workshop brought together 54 participants, comprising members of the Initiative's Steering Committee, African government officials, investors, and lawyers, as well as representatives of existing initiatives, members of civil society, donors, multilateral organizations, and academics. The list of participants can be found in Annex I of this report.

Session 1: Update of the Negotiation Support Initiative and Presentation of the Liberia Case Study

1.1 Presentation of Preliminary NSI Matrix Outcomes

- HUMBOLDT-VIADRINA and VCC are currently extending the *Negotiation Support Matrix*, an information tool that shows available expert support for host country governments engaged in contract negotiations. A preliminary analysis of 14 existing institutions engaged in negotiation support showed gaps with regards to support for other sectors than extractives, the policy setting stage (e.g., connecting concessions with national development goals) and the monitoring and pre-negotiation phases (particularly environmental and social impact and financial structure), as well as multi-disciplinary expert support for negotiations (geologists, tendering and procurement experts, fiscal and tax management experts, occupational health and work safety experts, etc.) and in-country support available within a short timeframe.

1.2 Case Study: Challenges and Potential of Natural Resource Governance in Liberia

- Since 2005, the Government of Liberia has signed numerous agreements with foreign investors in the mining and agriculture sectors. In the course of this process, Liberia has made - and continues to make - significant progress aimed at improving the governance of the natural resources sector. Liberia is among the first African countries to implement the

Extractive Industries Transparency Initiative (EITI) process, and also incorporated the forestry sector in its framework. Despite the progress made, however, the Government of Liberia continues to face challenges regarding the management of expectations from local communities affected by investment projects vis-à-vis the interests of concessionaires as well as regarding the timely intervention of stakeholders on issues with the potential to impede the progress and the timeline for the implementation of the Mineral Development Agreement.

Session 2: Updates of Selected Other Initiatives/Organizations Involved in Contract Negotiation Support

- The *African Legal Support Facility* (ALSF) is obtaining an increasing number of requests (one per week) and has to prioritise due to human and resource constraints. First lessons learned from an ALSF capacity building project with the Pan African Lawyers Union (PALU) indicate that in-country training has proven more effective than a regional approach.
- The *World Bank Extractive Industries Technical Advisory Facility* (EI-TAF) would like to shift gradually from recipient-executed to more Bank-executed support, implying that preparatory and generic institutional support will become more prominent vis-à-vis support targeting negotiations of individual transactions. Knowledge sharing and capacity building remain within the focus of the EI-TAF. The World Bank is further investigating the use of framework agreements to speed up the process of expert hiring for the Bank's projects that are recipient-executed. For example, the Bank recently approved and funded a contract between Sierra Leone and a law firm, allowing *inter alia* for the firm to hire non-legal experts through a comparatively efficient hiring procedure.
- The planned *World Bank Trust Fund for the legal and local development aspects and transparency of extractive industry development in Africa* (AFR EI TF) will require that countries benefitting from the fund will be active participants in implementing EITI. Transactions will only be supported through recipient-executed agreements. Bank-executed agreements may be used for projects addressing *inter alia* the social and economic impacts of mining. Fragile countries will face different arrangements regarding concessional funding.

Session 3: Discussion and Deliberations on Next Steps Based on Three Complementary Approaches to Negotiation Support

3.1 Information-sharing and Coordination Mechanism

- With support of an AusAid grant, the VCC will pursue the development of an *Information-sharing and Coordination Mechanism*, encompassing the Negotiation Support Matrix developed jointly by VCC and HUMBOLDT-VIADRINA and a more detailed roadmap of the negotiation process. The results of this process will be made available in a multidimensional online portal. Concurrently, a series of workshops leading to the development of a new curriculum for training as a capacity building tool will be organized.

3.2 Contract Negotiation Support Centre

- The concept of a *Contract Negotiation Support Centre*, outlined in the first preparatory paper for the workshop,¹ is based on the idea of a call centre drawing on in-house expertise and outside experts in order to deliver speedy answers to questions related to contract negotiations which can be answered over the phone or through e-mails. If the Centre should not be able to deliver the needed support, it would refer the requester to other suitable organizations.

3.3 Rapid Response Advisory Unit

- The *Rapid Response Advisory Unit*, outlined in the second preparatory paper² for the workshop, would encompass a small Unit mobilizing multi-disciplinary teams of international experts ready to step in when governments need timely and affordable advice before and during negotiations. The Unit would manage an escrow account out of which the expert teams requested by governments would be paid.

The three approaches were understood as being located on a continuum, ranging from mere Information Sharing, through a Support Centre to a Rapid Response Unit. Depending on the degree of support the effort could move – perhaps over time – from the information element to active rapid response.

Summary of Discussions

Gaps and Needs with Regard to Contract Negotiation Support

- Participants confirmed that support during the preparatory process and the pre-negotiation phase of contracts is of critical importance for host country governments;
- Participants repeatedly alluded to the receptivity of governments towards negotiation support mechanisms as having a significant impact on the outcome of negotiations; it was therefore suggested that a new support mechanism should work with pilot countries first in order to convince others to join;
- Participants underlined that South-South cooperation should be promoted to enable host country governments to share their experiences as well as best practices and build local capacity.

General Questions Related to the Rapid Response Advisory Unit

- The workshop participants discussed whether framework/retainer agreements with service providers (including in-country experts) would be needed to ensure that qualified experts can be gathered on comparatively short notice;

¹ http://www.humboldt-viadrina.org/w/files/negotiation-support-initiative/monrovia-si_nsi_preparatorypaperi_website.pdf.

² http://www.humboldt-viadrina.org/w/files/negotiation-support-initiative/nsi-workshop-preparatory-paper-ii-rapid-advisory-unit_website.pdf.

- There is a question of the need for formal arrangements on a general or case-by-case basis between the Unit and host country governments;
- In view of questions concerning the background of the experts and the potential impact of the Unit on local capacity building efforts, it was discussed whether the selection of in-country expert teams should be made by the host government concerned, based on an expert roster developed and maintained by the Unit which would include both local and international service providers.

Collaboration with Existing Institutions

- A new mechanism might benefit from the infrastructure and resources of a larger “host” institution. It was questioned, however, whether an existing organization would be credible and willing or capable to adapt rapidly to the ambitious concepts presented;
- Regional development banks or institutions, such as the African Development Bank and the International Senior Lawyers Project, were mentioned as possible candidates for collaboration.

Funding Mechanisms

- Participants underlined the distinction between funding the establishment of a facility combining the three support approaches and the actual services of the facility;
- With regards to the actual services of the mechanism, it was suggested to explore private sector funding through general or contract specific contributions in more detail. Attendant business representatives confirmed that investors might be more inclined to support an escrow account as a neutral source of funding than supporting governments directly;
- The possibility of a trust fund for the new mechanism modelled after the EITI Multi-Donor Trust Fund was brought up.

Session 4: Establishment and Mandate of a Task Force

- The meeting resulted in a consensus, the “*Monrovia Declaration*” (Annex II). In the Declaration, a *Task Force*, consisting of eminent members from academia, practitioners and host country representatives, was mandated to seek the establishment of a facility that combines the three approaches outlined and discussed during the workshop in order to improve existing negotiation support and address the gaps identified throughout the Negotiation Support Initiative consultative process initiated by HUMBOLDT-VIADRINA and VCC. The three complementary approaches were understood as a continuum. It was agreed that they should be realised through a collaborative process integrating existing institutions delivering negotiation support.

Larissa Dietrich, 22.08.2103

Annex I: List of Workshop Participants

	Name of Participant	Position/Organisation
NSI Steering Committee		
1	Davis, Natty	Chairman, National Investment Commission
2	Eigen, Peter	Advisory Board, HUMBOLDT-VIADRINA School of Governance
3	M'cleod, Herbert	Special Advisor, Office of the President, Sierra Leone
4	Sauvant, Karl	Resident Senior Fellow, Vale Columbia Center on Sustainable International Investment
5	Wells, Lou	Herbert F. Johnson Professor, Emeritus, Harvard Business School
Workshop Participants		
6	Al-Dennis, B.	Director, Natural Resource Tax Unit, Bureau of Internal Revenue, Ministry of Finance
7	Anderson, Jerome	Concessions Advisor, IBI International / GEMS USAID, Liberia
8	Bailey, Christopher	Government Relation Consultant, Putu Iron Ore Company (PIOM)
9	Boakye, Daniel	The World Bank
10	Chesson, Jeff	Officer in Charge of Marketing, National Investment Commission
11	Cooper, Seward	Legal Advisor to the President, Ministry of State
12	Dobraja, Inguna	Country Representative, World Bank, Liberia
13	Dolgonos, Boris	Jones Day
14	Dorliae, Kou	Attorney, Ministry of Justice
15	Earley, David	Liberia Chamber of Commerce
16	Garteh, Grisper	Director of Finance & Administration, National Investment Commission
17	Garley, Chea B.	Assistant Minister, Ministry of Agriculture
18	Gbaintor, Nya	Attorney, Liberia Maritime Authority (LMA)
19	George, Jeffery	National Port Authority
20	Gray, Naomi	Attorney, Ministry of State
21	Gray, Momolu	Special Assistant to the Chairman, National Investment Commission National Investment Commission
22	Gwenigale, Raymond	Comp. Global Consultant

- Negotiation Support Initiative -
 - Fourth Workshop on Contract Negotiation Support for Host Developing Countries - July 22-23, 2013 -
 Workshop Report

23	Hage, Tony	Liberia Chamber of Commerce
24	Kamara, Stanley	United Nation Development Program (UNDP)
25	Karr, Othello Z. B.	Officer in Charge of Concession, National Investment Commission
26	Kitange, Victor	International Monetary Fund, IMF
27	Konneh, Ansu	Director of Communications & CSR Western Cluster Ltd/ Vedanta
28	Ladipo, Tunde	Consultant, National Investment Commission Africa Governance Initiative (AGI)
29	Land, Bryan Christopher	EI Practice Leader (Africa), The World Bank
30	Massaquoi, Jonathan	Technical Consultant, Putu Iron Ore Company (PIOM)
31	Mattner, Mark Ph.D	GIZ, Natural Resource Governance in Liberia
32	McClain, Randolph	President, National Oil Company of Liberia (NOCAL)
33	Mulbah, Eric	Liberia Agriculture Company (LAC)
34	Mulbah, Zinnah	Environmental Protection Agency
35	Neufville, Motimah	Liberia Chamber of Commerce
36	Nkot, Fabien	Senior Advisor to the Prime Minister of Cameroon
37	Nyemah, Oblayon	Executive Director, Liberia Institute of Public Administration (LIPA)
38	Nyemah, Saah	Legal Advisor, Cavalla Rubber Corporation (CRC)
39	Obwona, Marios	IBI International/ GEMS USAID, Liberia
40	Padmore, Gerald	Vice President, Newmont International Service Ltd & SMFG
41	Russ, Sam	Deputy Minister - Technical Services, Ministry of Land Mines & Energy
42	Shaikh, Amir	Legal Counsel, African Legal Support Facility, (ALSF)
43	Shakarova, Anna Amnunovna	Economic Development Program Director , International Senior Lawyers Project
44	Sendolo, Patrick	Minister, Ministry of Land Mines & Energy
45	Sheehan, Christopher	Technical Adviser, Natural Resources Tax Unit, Ministry of Finance, Liberia, Adam Smith International
46	Sheriff, Melvin	Head of Secretariat, Inter-Ministerial Concession Committee (IMCC), National Investment Commission
47	Tokpa, Sampson S.	Head of LEITI Secreteriat, Liberia, Liberia EITI
48	Tunis, Quinton	Financial Controller , National Investment Commission

· Negotiation Support Initiative ·
 · Fourth Workshop on Contract Negotiation Support for Host Developing Countries · July 22-23, 2013 ·
 Workshop Report

49	Weah, Patrice	Liberia Institute of Public Administration (LIPA)
50	Wilson, Olee D.	Liberia Business Association
51	Yeanaye, Alex	African Development Bank, Liberia
Support Team		
52	Dietrich, Larissa	Research Associate, SI Sustainable Integrity GmbH
53	Thomashausen, Sophie	Law and Policy Researcher, Vale Columbia Center on Sustainable International Investment
54	Toledano, Perrine	Lead Economics and Policy Researcher, Vale Columbia Center on Sustainable International Investment

Annex II Monrovia Declaration

REPUBLIC OF LIBERIA

NATIONAL INVESTMENT COMMISSION

MONROVIA DECLARATION

Outcome of the Fourth Workshop on Contract Negotiation Support for Developing Host
Countries

Hosted by GOVERNMENT OF LIBERIA and the HUMBOLDT-VIADRINA School of
Governance
July 22 – 23, 2013

The Fourth Workshop on Contract Negotiation Support for Developing Host Countries has ended in Monrovia. The workshop provided a forum for discussion about a concrete organizational approach for support for developing host countries as they prepare, negotiate or monitor complex contracts for large-scale investments, for example in natural resource or infrastructure projects. The workshop was hosted by the Government of Liberia, represented by the National Investment Commission, and organized in collaboration with the HUMBOLDT-VIADRINA School of Governance from Berlin, Germany.

Participants who were largely made up of African government officials, investors, and lawyers as well as representatives of existing initiatives, members of civil society, donors, multilateral organizations and academics reached a consensus on what is referred to as the MONROVIA DECLARATION. The Monrovia Declaration recognizes that there are important gaps when it comes to strengthening the capacity of least developed country governments as they prepare for, negotiate and monitor large-scale complex contracts for large-scale investment projects. In order to address these gaps in the most adequate and effective manner, it has been decided to pursue three complementary approaches in order to improve existing negotiation support:

1. Information-sharing and Coordination Mechanism, possibly taking the form of a multidimensional online database or portal,
2. Contract Negotiation Support Centre enabling interaction between the support requester and experts providing advice or information via email or telephone,
3. Rapid Response Advisory Unit, mobilizing multi-disciplinary teams of both local and international experts ready to step in when governments need timely and affordable advice before and during negotiations.

A Task Force has been mandated to elaborate and shape the approaches and support their implementation. The secretariat of the Task Force will be based at the HUMBOLDT-VIADRINA School of Governance in Berlin.

REPUBLIC OF LIBERIA

NATIONAL INVESTMENT COMMISSION

The MONROVIA DECLARATION also alluded to the gains that the Government of Liberia has made in the governance environment of the extractive industries, particularly:

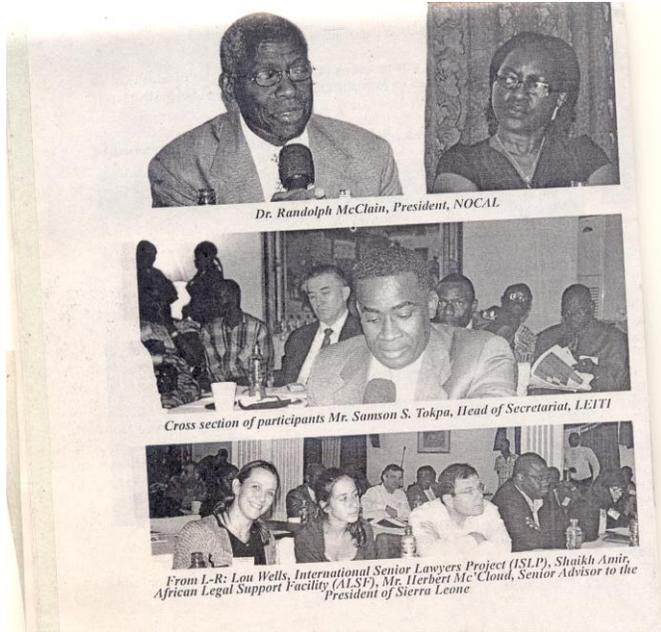
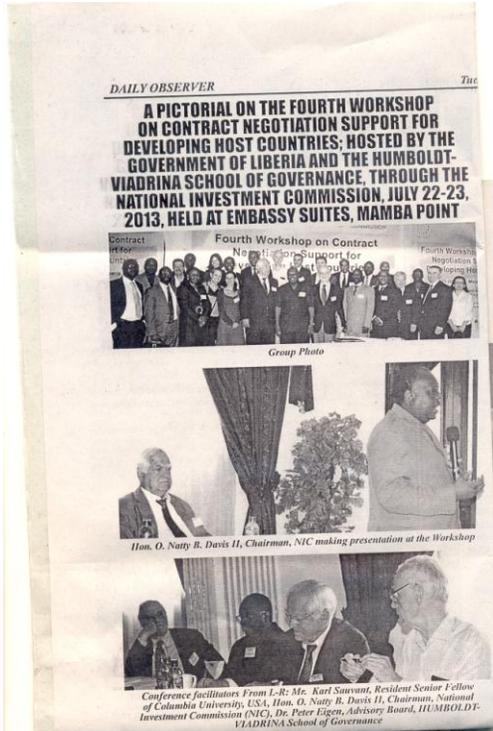
- Liberia was among the first African countries to implement the Extractive Industries Transparency Initiative (EITI) process. It also innovatively incorporated the forestry sector in its framework, which is called Liberia-EITI (LEITI). Pursuant to the LEITI Act of 2009, the LEITI also recently in May 2013 concluded an audits of the process by which each material concession, contract and licenses, was awarded by the Government in respect of forestry, mining, oil & gas and agriculture.
- The formulation of a land rights policy in which the Government recognizes and protects Private Land rights.
- The establishment of a National Bureau of Concession to monitor and ensure compliance with concession agreements.

As host to the workshop, the Government of Liberia, through National Investment Commission Chairman, Hon. O. Natty B. Davis, understands and appreciates the complexities of negotiation. The country is therefore proud to be at the forefront of international discussions that could yield in the creation of a new mechanism to fill the existing gaps in support provided to developing host country governments, who lack the capacity to fully address the issues and challenges related to the natural resource governance environment.

- Negotiation Support Initiative -
 - Fourth Workshop on Contract Negotiation Support for Host Developing Countries - July 22-23, 2013 -
 Workshop Report

Annex III: Press Coverage

1. Daily Observer, July 23, 2013



2. Frontpage Africa, July 23, 2013



See further <http://www.frontpageafricaonline.com/news/general-news/6627-lack-of-capacity-remains-challenge-to-contract-negotiation.html> (last accessed August 12, 2013)

3. Inquirer, July 30, 2013



call upon the TIC's personal possessions doc
intervention. exe
NIC Identifies Gaps get
Cont'd from front page ac
dis
together several partners approaches and support
including African government officials, their implementation and
investors, and lawyers as well as representatives of the secretariat of the Task
existing initiatives, members of civil society, donors and multilateral organizations reached a consensus on what is referred to as the M O N R O V I A DECLARATION.
The workshop provided a forum for discussion about a concrete organizational approach for support for developing host countries as they prepare, negotiate or monitor complex contracts for large-scale investments like in natural resource or infrastructure projects.
According to a release, the Monrovia Declaration recognizes that there are important gaps when it comes to strengthening the capacity of least developed country governments as they prepare to negotiate and monitor large-scale complex contracts for large-scale investment projects.
In order to address these gaps in the most adequate and effective manner, it has been decided to pursue three complementary approaches in order to improve existing negotiation support and those approaches include Information-sharing and Coordination Mechanism and Contract Negotiation Support Centre amongst others.
Meanwhile, a Task Force has been mandated to elaborate and shape the environment.

Co
Be
not
the arg
doc
of
inf
po
oth
tot
ex
E
A
Cc
Lil
foi
id
cc
Ei
P
Vi
cc
p
W
J

4. New Democrat, July 24, 2013, published on allafrica.com, <http://allafrica.com/stories/201307251004.html> (last accessed August 12,2013)

Liberia: NIC Capacity Strengthened

By Varney M. Kamara, 24 July 2013

In order to fully understand the complexities surrounding concessionary discussions in the management of Liberia's natural resources, the National Investment Commission (NIC), the chief negotiator of the country's natural resources, Tuesday ended its fourth workshop in Monrovia, which is aimed at enhancing the capacity of the government representatives during concessionary deliberations between the GOL and investors.

The two days' seminar, which took place at the Embassy Suit Hotel, Mamba Point, Monrovia, is also targeted at lending NIC/GOL officials the technical know-how during contract negotiation and support to developing countries as well as addressing human resource gaps within the country's investment climate. "The National Investment Commission has ended fourth round of seminar which borders on contract negotiation support for developing countries. The workshop provided the forum for discussion about a concrete organizational approach for support for developing countries as they prepare, negotiate or monitor complex contracts for large-scale investments," a statement, quoting the outcome of the seminar, read by NIC Chairman O. Natty B. Davis, said.

"One of the most important things about this workshop is that it's going to prepare us (NIC) for pre-concessionary discussions. Knowing the value of what we have is very important to this forum and for the entire country, especially when it comes to the management of our resources," Chairman Davis said at Tuesday's press briefing following the end of the seminar.

He praised HUMBOLDT-VIADRINA School of Governance from Berlin, Germany, the lead sponsor of the partnership workshop, including other partners within the international community that are supporting the country's investment transformation agenda. "Participants who were largely made up of African government officials, investors, and lawyers as well as representatives of existing initiatives, members of civil society, donors, multilateral organizations and academics reached a consensus on what is referred to as the Monrovia Declaration," Chairman Davis said at the press briefing.

Adding, "The Monrovia Declaration recognizes that there are important gaps when it comes to strengthening the capacity of least developed country governments as they prepare for negotiation and the monitoring of large-scale complex contracts for large-scale investment projects."

In order to address these gaps in the most adequate and effective manner, he said participants at the two days' discussions concluded on three complementary approaches in order to improve existing negotiation support, including information-sharing and coordination mechanism, contract negotiation support center that would enable interaction between the support request and experts providing advice or information via email or telephone, as well as the setting up of a rapid advisory unit, which would be charged with the duty of mobilizing multi-disciplinary terms of both local and international experts ready to step in when governments need timely and affordable advice before and during negotiations.

Mr. Peter Eigen, representative of the Humboldt-Viadrina School of Governance at the workshop for his part praised the effort of the NIC and lauded the country's partners for addressing challenges faced by the commission. "We expect that the outcome of these workshops will complement the resources that Liberia is blessed with," says Karl Sauvart, representative of the Vale Columbia Center on Sustainable International Investment, one of several sponsors of the NIC seminar.