



SIXTH PLENARY MEETING OF THE POLICY DIALOGUE ON NATURAL RESOURCE-BASED DEVELOPMENT

Jointly organised by the OECD Development Centre and the G7 CONNEX Initiative

Building collective knowledge for actionable policies

ANNOTATED AGENDA

22-23 June 2016 - OECD, Paris (OECD Conference Centre)

ABOUT THE POLICY DIALOGUE

The Policy Dialogue on Natural Resource-based Development is a **multi-year intergovernmental process of knowledge sharing and peer-learning among OECD and Partner natural resource producing countries** on how to harness natural resources for structural transformation and more inclusive and broad-based development. Compared to other fora, the added value of the Policy Dialogue on Natural Resource-based Development lies in its unique structure designed to facilitate the generation, systematisation and access to tacit and newly developed collective knowledge through collaborative OECD and non-OECD evidence-based policy analysis.

The Policy Dialogue focuses on four Work Streams: **(i) Shared Value Creation and Local Development; (ii) Revenue Spending and Natural Resource Funds; (iii) Getting Better Deals and (iv) Detecting and preventing corruption risks in the extractive value chain.**

The Policy Dialogue is a cross-directorate OECD initiative, led by the Development Centre and involving relevant Directorates that can contribute or lead in specific policy domains, namely, the Centre for Tax Policy and Administration (CTPA), Development Cooperation (DCD), Environment (ENV), Financial and Enterprise Affairs (DAF), Global Relations Secretariat (GRS), Legal Directorate (LEG), Public Governance and Territorial Development (GOV), Trade and Agriculture (TAD). The Policy Dialogue is a pilot of the Knowledge Sharing Alliance (KSA) initiative.

For more information visit the website: <http://www.oecd.org/dev/natural-resources.htm>

ABOUT THE G7 CONNEX INITIATIVE

The G7 Initiative on Strengthening Assistance for Complex Contract Negotiations (CONNEX) was launched in June 2014 at the Brussels G7 Summit with a view to “providing developing country partners with extended and concrete expertise for negotiating complex commercial contracts, focusing initially on the extractives sector”. For more information visit the website: http://www.bmz.de/g7/en/Entwicklungspolitische_Schwerpunkte/Connex/index.html

OBJECTIVES, STRUCTURE, FORMAT OF THE EVENT AND PARTICIPANT EXPECTED CONTRIBUTION

This two-day meeting will bring together representatives of governments, extractive industries, civil society and think tanks and will afford opportunities to advance the work under the different Streams of Work, according to the roadmap agreed upon at the [Fifth meeting of the Policy Dialogue on 2-3-4 December 2015](#). The first day will feature sessions to advance work under Work Streams 1 and 2. The second day will be devoted to the Negotiation Support Forum, a joint initiative of the OECD Policy



Dialogue and the G7 CONNEX Initiative, undertaken as part of Work Stream 3 - Getting Better Deals.

The objectives of the meeting are as follows:

Work Stream 1 - Shared value creation and local development

- Following the endorsement of the *Framework on Collaborative Strategies for In-Country Shared Value Creation: Extractive Projects*, it was agreed to use the *Framework* as a reference tool to carry out *Country Reviews on Resource-based Value Creation*. An inception report on opportunities for in-country value creation in the copper value chain in Kazakhstan will be presented on 22 June. The *Framework* shall also support the development of Country Mining Visions in collaboration with the African Minerals Development Centre. A *Compendium of Practices* will take the form of an on-line living tool showcasing concrete examples of how public-private collaboration can work in practice. The *Compendium* will foster cross-fertilisation of practices, mutual learning, and inform any necessary future revisions and adjustments of the *Framework*. The meeting will provide the opportunity to discuss a first set of practices for inclusion in the *Compendium* and learn from participating government and industry representatives about how they are using and promoting the *Framework*.

Work Stream 2 –Revenue Spending and Natural Resource Funds

- Following the endorsement of the *Lessons Learned of the Comparative Analysis on the Performance of Stabilisation Funds and Investment Options*, participants in the Fifth Plenary Meeting of the Policy Dialogue on Natural Resource-based Development agreed to undertake further analysis to investigate how to use natural resource revenues to support the implementation of the 2030 Agenda for Sustainable Development. The meeting will afford opportunities to discuss and validate a questionnaire designed to collect the experiences of developing and emerging economies in natural resource revenue spending, feeding into a preliminary stock-taking by end of 2016. Participants are expected to agree on the roadmap for future work in 2017-2018. The session will also feature a thematic discussion on sub-national revenue sharing mechanisms.

Work Stream 3 – Getting better deals

- The CONNEX Negotiation Support Forum (NSF), a joint initiative of the Policy Dialogue and G7 CONNEX Initiative, was launched at the last meeting of the Policy Dialogue in December. The NSF aims to help governments reinforce their capacity for contract negotiation and to improve the quality of advice by service providers. Three main issues will be addressed in 2016: i) how to handle pressure for renegotiation, especially in a scenario of declining commodity prices and explore options for appropriate responses; ii) improve understanding and level of practice around contract stabilizers (stabilization, renegotiation clauses) as well as mechanisms to increase responsiveness to changing circumstances with a view to developing a common baseline for automatic adjustment; and iii) produce a check-list to assist governments with the assembly of multidisciplinary teams and elaborate Model Terms of Reference for the selection of advisors, also serving as a reference to compile a possible roster of national and international experts.
- On-going activities under this work stream further include the work carried out on mineral pricing issues, which aims to strengthen government's capacity in contract negotiations and assist revenue authorities in verifying mineral product prices. At the last meeting, participants agreed to extend the analysis to thermal coal and bauxite. Progress results will be presented at the Seventh Plenary Meeting scheduled for 30 November and 1-2 December at the OECD in



Paris.

Work Stream 4 – Detecting and preventing corruption risks in the extractive value chain

- The Typology on Corruption Risks in the Extractive Value Chain was presented at the [2016 OECD Integrity Forum](#) on 20 April 2016 and at the regional expert seminar on “Impact of Corruption Prevention Measures at National and Sectoral Level”, 26-27 May 2016, Issyk-Kul, Kyrgyz Republic, jointly organised by the OECD Anti-Corruption Network for Eastern Europe and Central Asia and the Secretariat of the Organization for Security and Co-operation in Europe (OSCE). The Typology will serve as a standard diagnostic tool for demand-driven assessments of corruption risk in resource-rich countries to provide practical recommendations on preventing and fighting corruption in the extractive sector.

The meetings of the Policy Dialogue **depart from** the traditional conference format distinguishing between speakers and audience. **Every participant** plays a role as both **a knowledge holder and a knowledge recipient** while the **OECD Development Centre** acts as **a neutral knowledge broker**, by contributing to framing the issues and facilitating the generation, systematisation and access to tacit or newly developed collective knowledge.

Participants are not only expected to share relevant experience, policies and case-studies but also to clearly articulate their knowledge needs and indicate which countries they would like to learn from to build or further refine their knowledge base. **In this interactive setting, there are no prepared speeches, official statements or long presentations. Proposed guiding questions** aim at helping participants prepare their contributions and identify relevant issues and questions they would like to see addressed during the meeting.

Reference documents are distributed ahead of the meeting in order to help participants prepare their contributions, support the discussion and move the process forward. Participant contributions are expected to be short, narrative in style and reactive to other interventions.

The event will be closed-door and held under Chatham House Rule of non-attribution of sources in order for participating countries and stakeholders in the multi-stakeholder consultation to engage in frank and thought-provoking discussions. It is expected that this method of work will be conducive to the establishment of a trustworthy environment where participating countries engage in frank and open exchanges that could pave the way for the collective development of new knowledge as well as innovative and mutually beneficial policy solutions and outcomes.

DAY 1 - Multi-Stakeholder Plenary Meeting

22 June (Room CC12, OECD Conference Centre)

8:00 – 9:00 Registration & Breakfast

9:00 – 9:10 *Welcoming remarks by H. E. Mr Pierre Duquesne, Ambassador and Permanent Representative of the Republic of France to the OECD, and Chair of the Governing Board of the Development Centre [TBC]*

9:10-13:00 **Co-Chairs: Liberia and Norway**

Hon. Sam G. Russ, Deputy Minister of Operations, Ministry of Mines, Lands and Energy, Republic of Liberia and Mr Pål Arne Davidsen, Senior Adviser, Private Sector Development, Department for Economic Development, Gender and Governance, Norwegian Agency for Development Cooperation (Norad), Norway

Session 1 – From concept to action: operationalising the Framework on Collaborative Strategies for In-Country Shared Value Creation (Work Stream 1)

Objectives:

- Discuss a first set of practices for inclusion in the on-line *Compendium of Practices* complementing the *Framework on Collaborative Strategies for In-Country Shared Value Creation: Extractive Projects*
- Present the findings of an inception report on opportunities for local value creation in the copper value chain of Kazakhstan

9:10-10:00 **Session 1A – *Tour de Table* on the use of the Framework**

Participants in the Policy Dialogue are expected to report on any efforts undertaken since the formal endorsement of the Framework on 29 February 2016 to promote its wide use and application across governments, industry and civil society.

Kick-off interventions by:

- Ms Esther Mmbaga, Ag. Director of Local Content, National Economic Empowerment Council, Prime Minister's Office, Tanzania
- Ms Isabelle Ramdoo, African Minerals Development Centre (AMDC)
- Mr Wolfgang Kraus, Senior Associate, IPIECA

10:00-11:00 **Session 1B – Building an on-line Compendium of Practices**

Session 1B will kick-off a continuous learning process on how the *Framework* can be implemented. Session 1B will offer the opportunity to discuss the first set of practical examples on how the actionable recommendations under each step of the *Framework* can work in practice. This work intends to contribute to supporting the implementation of the 2030 Sustainable Development Agenda and inform any necessary future revisions and adjustments of the *Framework*. Participants in the meeting will be invited to comment and provide feedback and further details on

the first set of selected practices as well as to suggest any additional examples that could enrich the Compendium.

Kick-off interventions by:

- Dr Lahra Liberti, Head of Unit, Natural Resources and Development, OECD Development Centre
- Mr Johannes Danz, Research Associate, German Federal Institute for Geosciences and Resources

Guiding questions:

- *What were the key enabling factors for government and industry stakeholders in fostering collaboration in the selected examples?*
- *What were the specific roles of government and industry stakeholders, and how were those roles determined?*
- *Were there any challenges in the selected examples, and if so, how were they overcome?*

11:00 -11:30 Coffee Break

11:30 - 13:00 Session 1C – Going national

The present sub-session will focus on identifying the opportunities and potential for unlocking in-country shared value creation and linkage development. The discussion will showcase the example of Kazakhstan’s copper value chain based on the *Inception Report on Opportunities for Value Creation in Kazakhstan’s Copper Value Chain* developed by the OECD Development Centre in collaboration with the Global Relations Secretariat as part of the Eurasia Competitiveness Programme.

Kick-off interventions by:

- Dr Lahra Liberti, Head of Unit, Natural Resources and Development, OECD Development Centre
- Mr Kanat Baitov, Deputy Chairman, Committee of Industrial Development, Ministry of Investment and Development, Republic of Kazakhstan
- Mr Michael Peen, Chief Commercial Officer, KAZ Minerals

Guiding questions:

- *What are the key enabling factors and challenges for expanding in-country value creation related to copper in Kazakhstan?*
- *What role can the Framework on Public-Private Collaboration for In-Country Shared Value Creation have in supporting development in Kazakhstan’s copper sector?*
- *What areas of opportunity for in-country value creation related to Kazakhstan’s copper value chain would benefit the most from more targeted follow up work?*

For reference:

Report on opportunities for Value Creation in Kazakhstan’s Copper Value Chain

13:00 – 14:30 Buffet lunch (Château, Room R. Ockrent)

14:30 -17:45 | **Session 2 – Mobilising domestic resources for development: getting the most out of natural resource revenues through effective spending (Work Streams 2)**

Co-Chairs: Chile [TBD] and Kazakhstan

Mr Dastan Umirbayev, Executive Director of Macroeconomic Analysis and Forecasting Department, Ministry of National Economy, Kazakhstan

The Addis Tax Initiative has stepped up efforts to mobilise domestic resources for development, including through taxation and management of revenue from natural resources. The extent to which natural resources contribute to development largely depends on the ability of governments to collect and manage revenues and negotiate good contracts. The recent downturn in commodity prices is placing considerable fiscal and macroeconomic pressure on many resource-rich countries with taxes, jobs, and exports falling. Governments need to manage this revenue shortfall and fully understand the implications of practices that may result in the erosion of their tax base, including transfer pricing issues. The Policy Dialogue is building developing countries' capacity to better understand how minerals are priced. This will assist revenue authorities to improve their collection efforts. The Policy Dialogue also offers a space to discuss how developing countries can use natural resource revenues to support the implementation of the SDGs.

Objectives:

- Discuss and validate the draft questionnaire that will be used to collect participants' experiences on revenue spending practices.
- Discuss and agree on the roadmap for 2016-2018 .

14:30 – 15:45 | **Session 2A – Mechanisms for revenue management and spending**

Participants will discuss existing practices and mechanisms for revenue management and spending. Input will be sought on a draft questionnaire submitted for validation with a view to collecting responses feeding into a preliminary stocktaking of existing literature and country experiences to be tabled at the Seventh Meeting of the Policy Dialogue in December 2016. Participants will further discuss the milestones for proposed thematic dialogues: on sub-national revenue sharing and special-purpose investment vehicles in 2016, and direct distribution and earmarking practices in 2017. These thematic dialogues will inform the development of guidance and lessons learned on effective public spending and investment to support the implementation of the 2030 Sustainable Development Agenda by end of 2018.

Kick-off interventions by:

- Dr. Adam Dixon, Reader in Economic Geography, University of Bristol and Consultant

Guiding questions:

- What mechanisms/options are there for domestic expenditure and investment of natural resource revenues?

- *How do different mechanisms/options interact (positively or negatively) with other natural resource revenue management policies in particular (e.g. revenue stabilisation)?*
- *How do declining natural resource revenues affect different mechanisms/options for domestic expenditure and investment of natural resource revenues?*

For reference:

Draft questionnaire on mechanisms for expenditure and public investment of natural resource revenues

15:45 - 16:15 Coffee Break

16:15 - 17:45 Session 2B – Thematic Focus on sub-national revenue sharing mechanisms

This session will feature the first of a series of thematic discussions on spending mechanisms. The focus of the session will be on improving understanding of the design and implementation of sub-national revenue sharing regimes and their impacts on the quality of public spending to achieve development outcomes. The Natural Resource Governance Institute (NRGI) and United National Development Program (UNDP) have recently carried out a comprehensive global survey of natural resource revenues sharing regimes. The session will offer the opportunity to share lessons learned from country experiences.

Kick-off interventions by:

Ms. Varsha Venugopal, Subnational Capacity Building Officer, Natural Resource Governance Institute (NRGI)

Guiding questions:

- *What are the pros and cons of sharing natural resource revenues?*
- *How to address challenges associated with sub-national revenue sharing systems to transform natural resource wealth into development outcomes*
- *What lessons can be drawn from relevant country experiences? Which systems have proven more effective?*

For reference:

Natural Resource Governance Institute (NRGI) and United National Development Program (UNDP) report on natural resource revenue sharing

17:45 - 18:00 Concluding remarks by Mr Mario Pezzini, Director of the OECD Development Centre

DAY 2 – Multi-Stakeholder Plenary Meeting of the CONNEX Negotiation Support Forum

23 June (Room C, OECD Conference Centre)

8:00 - 9:00 Registration & Breakfast

9:00 – 9:15 **Welcoming remarks by**

H.E. Mr. Kazuo Kodama, Ambassador and Permanent Representative of Japan to the OECD

Mr Günter Nooke, Personal Representative of the German Chancellor for Africa, Federal Ministry for Economic Cooperation and Development (BMZ)

H.E. Mr Abdoulaye Magassouba, Minister of Mines and Geology, Republic of Guinea

9:15 – 10:45 **Co-Chairs: Germany and Guinea**

Mr Günter Nooke, Personal Representative of the German Chancellor for Africa, Federal Ministry for Economic Cooperation and Development (BMZ) and H.E. Mr Abdoulaye Magassouba, Minister of Mines and Geology, Republic of Guinea

Session 3 – Drivers in natural resource contract (re-)negotiations and the swinging pendulum of bargaining power.

Parties enter into agreements with a set of expectations and on the basis of certain assumptions. The diversity of interests of the parties, the long term nature of the investment and the irreplaceable nature of the asset can result in a change in priorities over time. Production and cost conditions may turn out to be different from what was originally expected and general economic conditions may considerably vary. So, in most cases natural resource contracts will be subject to pressure for change, due to the modification of the parties' bargaining positions due to factors that may be internal or external to the contract. Governments usually ask for renegotiations to increase the share of benefits from the investment be it in terms of finance, control, labour, and technology. Investors may ask for renegotiations for reasons that are business oriented, for example in times of depressed prices affecting the viability of the project. This session will discuss the driving forces behind natural resource contracts, shifts of bargaining positions creating pressure for contract change and the major causes of renegotiations.

Objectives:

- Understand the drivers behind the negotiation of natural resource contracts
- Understand the impact of such factors as currency volatility, price cycles, costs, volumes and quality of resources on the economic viability of extractives projects
- Understand the main causes and common issues of renegotiations

Moderator: Mr Joseph Bell, Chair of the International Senior Lawyers Project Board (ISLP)

Kick-off interventions by:

- Mr Nava Touré, Secretary General, Ministry of Mines and Geology, Republic of Guinea
- Dr Kojo Busia, Acting Coordinator, African Minerals Development Centre (AMDC), UN Economic Commission for Africa
- Mr Amir Shafaie, Senior Legal Analyst, Natural Resource Governance Institute
- Mr Serge Matesco, Vice President Development Funds & Institutions, Total

Guiding questions:

- *What are the key elements of risk and return that affect the investor's decision-making process?*
- *How are risks allocated between governments and investors during the life cycle of extractive projects?*
- *What are the common causes and main issues of renegotiation for host governments and investors?*

For reference:

Draft report on mechanisms for stabilising contracts in the extractives sector

10:45 – 11:15

Coffee break

11:15 – 13:00

Session 4: The impact of the commodity bust on natural resource contracts and governments' response options.

Governments need to manage the revenue shortfall resulting from declining commodity prices and at the same time maintain or attract investments. This session will discuss the tension between fiscal policy objectives and the interest for host governments to provide some flexibility in the execution of contracts to ensure, where appropriate, continuity of extractive operations as a source of employment, foreign currency and technology. Possible options that balance pressure for short-term reactions with the need to preserve the revenue generating capacity over the long-term will be explored. Lessons learned from past and recent renegotiations undertaken under sharp decline of commodity prices will be shared.

Objectives:

- Understand intensity and duration of commodity busts and how they vary among commodities.
- Share past and current experience in contract renegotiations and understand implications and risk associated with reactions to short-term pressures and rash changes in tax regimes and contract terms.
- Explore possible appropriate response options reflecting the types of commodities, the stages of project development and the quality/volume of production.

Moderator: Hon. Sam G. Russ, Deputy Minister of Operations, Ministry of Mines,

Lands and Energy, Republic of Liberia

Kick-off interventions by:

- Mr. Bambang Gatot Ariyono, Director General of Mineral and Coal, Ministry of Energy, Republic of Indonesia [TBC]
- Mr Mamadou Dikouma, Secretary General, Ministry of Mines and Industrial Development, Republic of Niger [TBC]
- Mr Paulo de Sa, Practice Manager, Energy & Extractives, The World Bank Group

Guiding questions:

- *How are mining, oil and gas companies responding to the commodity bust?*
- *Under which circumstances a party can be relieved from contract performance? Is renegotiation the only option or are there other available alternatives (e.g. termination, suspension, right of first refusal?)*
- *Under what circumstances a sharp decline in commodity prices may lead to revisit specific contract terms? What lessons can be drawn from past experience?*
- *What types of appropriate options can host governments consider to alleviate pressure on the mining, oil and gas industry without compromising long-term revenues?*
- *What types of safeguards can be put in place to avoid further pressure for renegotiations as the economic circumstances change again (e.g. caps on cost recovery in production sharing agreements, limiting tax breaks in time and scope)?*

For reference:

Draft report on mechanisms for stabilising contracts in the extractives sector

13:00- 14:30 Buffet lunch (Château, Room G. Marshall)

14:30- 15:45 **Session 5 – Legal techniques for ensuring dynamic stability and adaptation to changes of circumstances**

This session will discuss legal techniques that can act as “contract stabilizers”. Stabilization clauses have been used to prevent or limit modification of contracts by unilateral government action. However, the lack of flexibility often associated with these types of clauses has led to an accumulation of frustration leading to sharp conflict or has fallen short of the objective to prevent renegotiations. This session aims to explore how the quest for stability and the need for flexibility can be reconciled. The OECD Development Centre’s analysis aims to improve understanding around the level of practice on contractual stability, renegotiation clauses and revision mechanisms. The stocktaking will offer a basis for investors, lenders and governments to pursue innovative drafting approaches which balance the legitimate interests and expectations of all parties. While no silver bullet solution exists, as each deal reflects context specific considerations, broadening the shared knowledge base to work towards options for balanced and durable contracts can help countries (re-) negotiate better deals.

Objectives:

- Stocktaking analysis of stabilization, renegotiation clauses and review mechanisms

- Identify challenges and issues to be addressed

Moderator: Prof. Fabien Nkot, Senior Advisor, Office of the Prime Minister, Republic of Cameroon

Kick-off interventions by:

- Ms. Estherine Lisinge Fotabong, Director, Programme Implementation and Coordination, NEPAD
- Professor Peter Cameron, Director, Centre for Energy, Petroleum and Mineral Law & Policy, School of Social Sciences, University of Dundee, UK
- Ms Salli Anne Swartz, Attorney at Law, Partner, Artus Wise, Paris

Guiding questions:

- *Which types of contractual clauses provide for adequate basis for dealing with pressures for contract change?*
- *What lessons can be drawn from contractual practice, in particular with respect to objective triggers for renegotiations (e.g. thresholds) providing for ex ante risk allocation which can help avoid conflict between the parties?*

For reference:

Draft report on mechanisms for stabilising contracts in the extractives sector

15:45 – 16:00

Coffee break

16:00- 17:30

Session 6: Using contracts as an optimal risk sharing process: towards Pareto optimality.

The increased volatility in commodity prices and the evolving economic conditions and geopolitical tensions accelerate the need of shaping contractual relationships by reasonable flexibility to minimise disruptions. Contractual terms usually reflect the conditions at the time of the conclusion of the contract or at best provide for progressive fiscal terms or sliding scales systems. Beyond the incorporation of automatic adjustment mechanisms into specific clauses, this session will explore the possibility of defining a common baseline and process for negotiating enduring contracts that can accommodate significant changes of circumstances within agreed parameters, providing easy reference for dealing with changes. The objective of embarking on this exercise is to work towards Pareto optimality, according to which no party gains any undue economic benefit as a result of the change of circumstances over time. Exploring options through which the position of both parties can be better off or the position of one of them can be better off without worsening the condition of the other party will help define a new dynamic equilibrium reflecting an equitable solution to both parties.

Objectives:

- Review the practice around flexible and responsive mechanisms for adaptation of contract terms.
- Discuss metrics and parameters for automatic adjustments to change of circumstances

Moderator: Mr Boris Dolgonos, Attorney, Jones Day

Kick-off interventions by:

- Ms Christina Konvicka, Fiscal & Regulatory Affairs Advisor, Exxon Mobil
- Trinidad and Tobago [TBD]
- Mr Marc Frilet, Managing Partner, Frilet-Société d'Avocats and Vice-president of the French Institute of International Legal Experts (IFEJI) and Mr Ken Haddow, Kenneth Haddow Associates LTD.

Guiding questions:

- *What types of automatic adjustment mechanisms currently exist and are they effective to adapt contracts to changed circumstances?*
- *Is it possible to develop innovative contractual approaches providing for adaptation of economic and fiscal conditions without renegotiation where some unforeseen changes occur above a certain threshold?*
- *Can parties' contractual expectations be translated into metrics dynamic to changes of circumstances?*
- *Which economic and financial parameters need to be agreed upon and which factors need to be considered in developing a common baseline and process for enduring contracts?*

For reference:

Draft report on mechanisms for stabilising long-term contracts in the extractives sector

17:30-18:00 ***Closing session: Roadmap and deliverables of the CONNEX Negotiation Support Forum for 2016-2018***

Moderator: Mr Nicola Bonucci, Director for Legal Affairs , OECD

Dr Lahra Liberti, Head of Unit, Natural Resources and Development, OECD Development Centre

Mr Günter Nooke, Personal Representative of the German Chancellor for Africa, Federal Ministry for Economic Cooperation and Development (BMZ)

H.E. Mr Abdoulaye Magassouba, Ministre des Mines et de la Géologie, Republic of Guinea