



Embassy of Liberia

Ref. 254/LEB/2013

13 September 2013

Dear Honourable Minister,

I extend my compliments and belated congratulations on your assumption to the post of Minister of Internal Affairs and have the honour to forward for your attention, the attached document with an annex.

The document is the outcome of the mediation, following a complaint submitted by Sustainable Development Institute (SDI) and Friends of the Earth Europe (FoEE), alleging that Arcelor Mittal had breached the OECD guidelines for Multinational Enterprises, in relation to the dis-functioning of the Country Social Development Fund (CSDF).

Though the outcome and recommendations of the mediation have been acceptable to, and the document subsequently signed by Arcelor Mittal, SDI and FoEE, it is important to note, as per the communication, that it has no legal bearing and it is therefore up to the authorities in Liberia to determine if the recommendations can be helpful, regarding the CSDF.

I therefore kindly urge you to consider the recommendation for a Round table meeting in Monrovia, which would include the Government of Liberia as well as interested entities in the private sector and International Donors, in order to share and discuss the experiences and findings of the mediation process and determine how best the recommendations could be of use, in the interest of the beneficiaries and the country at large.

With sentiments of high esteem,

Kind regards.

A handwritten signature in black ink, appearing to read 'Francis Tuan Karpeh'.

Francis Tuan Karpeh
AMBASSADOR

Hon. Morris Dukuly
Minister of Internal Affairs
Ministry of Internal Affairs
Monrovia, Liberia

Cc.: Minister of Lands, Mines and Energy

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Recommendation

An improved ArcelorMittal County Social Development Fund (CSDF) in Liberia

Prepared by the Luxembourg National Contact Point

Supported by ArcelorMittal, Sustainable Development Institute of Liberia and
Friends of the Earth Europe

Brussels/London/Luxembourg/Monrovia July 2013

This statement was prepared by the National Contact Point of the Government of Luxembourg with full agreement of Sustainable Development Institute in Liberia, Friends of the Earth Europe and ArcelorMittal. It sets out the preferred development and framework of the County Social Development Fund in Liberia. It was prepared as a collaborative effort as part of the process defined by the Organisation for Economic Co-operation and its Guidelines for Multinational Enterprises.

Introduction

In 2006, the Government of Liberia and ArcelorMittal entered into a 25-year Mineral Development Agreement (MDA) under which AM is obliged to provide an annual contribution of three million US dollar into the so called County Social Development Fund (CSDF): for the benefit of Nimba, Bong and Grand Bassa counties. The Terms of Reference laid out by the Dedicated Funds Committee (DFC) that is charged with overseeing the Fund states that twenty per cent of this amount is to be allocated to communities directly affected by AM operations in the above mentioned counties. In 2011, the Sustainable Development Institute (SDI) in Monrovia and Friends of the Earth Europe (FoEE) submitted a complaint to the Luxembourg OECD National Contact Point (NCP) claiming that ArcelorMittal, headquartered in Luxembourg, breached the OECD Guidelines for Multinational Enterprises in relation to the dis-functioning of the CSDF; **from here on 'the Fund'**. Following a review of the complaint, the NCP of Luxembourg¹ decided to facilitate a mediation process, as prescribed by the OECD Guidelines for Multinational Enterprises, between concerned parties. ArcelorMittal was in full support of the process as a means to improve the Fund to benefit the Liberian people.

In August 2012 the Luxembourg NCP appointed a mediator² in order to find common ground between the parties and develop recommendations for an

¹ The OECD National Contact Point of the Netherlands supported Luxembourg in their endeavor to find a positive solution and agreement between the parties.

² Dr. van Putten is a former member of the World Bank Inspection Panel, the African Development Bank Independent Review Mechanism, reviewed the Complaints Mechanism of the Asian Development Bank and is at present Senior Advisor to the European Investment Bank Complaints Mechanism through which she is engaged in mediation of projects, past projects include the



improvement and/or renewed structure of the Fund. The mediator made two fact-finding visits to Liberia³. Based on discussions between NCP, ArcelorMittal, SDI and FoEE, the NCP has prepared this proposal for how the Fund could be improved. It contains a number of measures that are designed to strengthen and improve the current structure and management of the Fund. ArcelorMittal, SDI and FoEE fully support the recommendations and wishes to propose the Government of Liberia to consider the recommendations presented in this document.

Proposed recommendations:

Temporary De-block 20% of the Fund

1. At present the Fund is blocked and does not disburse funds to new projects while the annual payments to the Fund have continued by ArcelorMittal in accordance with its Mineral Development Agreement. As a result, under the supervision of the DFC, no projects have been selected or implemented in the 3 counties since early 2012, while the needs and expectations of the communities are high. According to information shared with the mediation team, members of the communities are impatient and dissatisfied with the workings of the Fund, especially in the areas surrounding ArcelorMittal's facilities. Consequently, the parties would like to propose an immediate activity, as an ad hoc procedure, deviating from the current Fund governance process that would release 20% of the annual funds to benefit local residents that live in ArcelorMittal impacted areas.

The proposal is to identify a selection of priority projects that would be financed by the Fund. These projects would be identified by ArcelorMittal. There is a clear understanding that qualifying projects would need to be in line with the County Development Agenda(s) (CDA), and would be selected and subject to comprehensive consultation with the affected communities, civil society groups, the County Project Implementation Unit(s) and the County Development Management Committee(s) (CDMC). All projects would be designed to benefit communities that are directly affected by ArcelorMittal's operations and thus be in the vicinity of the operations of ArcelorMittal. There will be full transparency and monitoring of the projects selected and a list of projects will be published. This should be an interim measure to commence during 2013, and in anticipation of the implementation of an agreed reform of the Fund.⁴

Bujagali Dam, a Hydro-power project in Uganda with severe impact on the people in the project area.

³ The visits provided the necessary information to support and conclude the mediation process. The site-visit Report (Annex A) formed the basis for this statement.

⁴ See also paragraph 15 concerning the proposed Round Table in Liberia. This issue could be part of the discussion at the Round Table.



Transform the Fund into a Trust or Foundation, as an independent legal entity

2. Instead of proposing an entire new structure of the Fund, this document outlines a proposal to improve the current Fund, by transforming it into a **Trust or Foundation**, as an independent legal entity. Operated through a separate Trust or Foundation, the Fund would continue to contribute to the County Development Agenda in line with the Poverty Reduction Strategy Paper for Liberia. The model of a Trust or Foundation should be further developed and studied by experts who have the relevant experience of designing such social/community funds.
3. As an **overall objective** the Fund should implement a **simpler system** that would allow for greater accountability, speed and transparency in implementing relevant qualified projects to meet the needs of the people.
4. The proposal is for the current CSDF governance structure that is set out by the government to be replaced by a **Board of Trustees and an implementing agency; from here on the Agency**. The Board of Trustees should comprise the following constituents in equal measure by (1) the Government of Liberia; (2) representatives of civil society and communities; and (3) the company/companies that contribute to the Fund. Decisions should be made by consensus, and if required, voting procedures should apply where each constituency group has an equal number of votes. In case of voting, a majority is required and at least one member of each constituency should agree to the proposal. The different members of the Board are selected from within their own constituencies. The proposed 'Foundation' would be subject to relevant laws and regulations of Liberia and must be subject to and account for an annual independent audit. In addition, it is proposed that Liberia Extractive Industries Transparency initiative (LEITI) would retain observer status at the Board of Trustees to review and monitor the payments made to the counties, offer advice and place the workings of the Fund on their website, as part of its broader remit.
5. **The role for the Board of Trustees is to supervise and oversee the Fund, but have no direct involvement in the selection and management of the projects.** The role of the Board of Trustees is to create the architecture and procedures for the work of the Agency. It would oversee its activities and commission independent audits.
6. **Another important role for the Board of Trustees would be to serve as an Appeal Mechanism** for the Fund. This would allow any county resident to raise a concern, either with proposed or rejected projects or with the execution of the projects, and have the right to lodge a complaint with the



Board of Trustees. Eligibility criteria for complaints should be developed, including a process and time frame for the handling of complaints.⁵

7. The daily management and selection of projects would be executed by **The Agency**, as one of its prime responsibilities. The Agency would be chosen through a publicly announced tender procedure and appointed by the Board for a pre-determined period, e.g. a three year-term. Detailed qualification criteria would need to be defined, including but not limited to the following: a registered office in Liberia; proven track record of project review and implementation; the ability to guide organisations and residents in the relevant counties in how to best design proposals according to pre-defined principles, profound knowledge of Liberian law and the County Development Agenda(s), and experience about how to engage stakeholders in the process.

The Agency would have at least the following functions and expertise among its staff: office manager; financial director with knowledge of controlling, auditing and procurement rules; project engineering; social and environmental impact assessments; community work; and public consultation and communication experience.

The Agency is accountable to the Board of Trustees, and communicates on a regular basis to civil society, the legislature and relevant Ministries. It should communicate, facilitate and coordinate the Fund's activity in all relevant counties, and liaise directly with the Project Implementation Units, the County Development Officers, the County Development Management Committees, and non-governmental and civil society organisations that work with local communities.

8. The recommendation is that the management and administration **costs associated with the Board of Trustees, the Implementing Agency and audit fees** of the Fund should be proportionate.⁶ These administrative costs should be financed by the Fund itself.

The Agency will ensure that citizens in communities where projects are undertaken are informed about the progress of project selection and implementation. The Agency should prepare an annual stakeholder engagement plan and a communication policy, to be approved by the Board of Trustees.

9. A clear schedule for the project approvals and a time line for implementation should be developed, published and agreed by the Agency.

⁵ Complaints Mechanisms and their procedures exist with most Multilateral Financial Institutions, such as the World Bank, and for example the OECD. These systems can serve as a model for the proposed Appeal mechanism.

⁶ According to International Standards that rank from 12 to 15 % as a maximum (UN).



10. At the county and local community level, there is need for substantial guidance and support for individuals and organisations for how to define, design and develop their projects and how to prepare project proposals to the Fund.

Make the Board of Trustee's Guidelines legally binding and introduce audit and procurement rules

11. Strong and clear Guidelines for the DFC already exist. These need to be adapted to the new structure and adhere to the applicable laws that govern Trusts and Foundations in Liberia.
12. The Fund should be subject to independent auditing. A professional audit firm should carry out these **audits**, according to international accounting standards, and make recommendations for the good use of the Fund.⁷ Audits should also cover performance and development outcomes of the projects.
13. Procurement rules and regulations should be clearly defined and contracts should only be granted based on merit against pre-defined criteria. These should be followed at all times including during tender procedures for contractors and sub-contractors. Contracted organisations and their directors that do not have a demonstrable track record or have not performed well in the past should be excluded from new projects.⁸ Misuse or abuse of the Fund's means, would be considered an offence and would be reported to Liberian law enforcement agencies.

Follow-up activities

14. The stakeholders of this process recommend to the Government of Liberia and to donors and companies that are involved in the so called **Liberia Development Alliance (LDA)** to support the process of further improving and professionalizing the structure and management of the Fund.⁹
15. Finally, the stakeholders recommend the Government of Liberia to consider organizing a Round Table in Monrovia, to bring together all the relevant parties, including the different government ministries and agencies, representatives of civil society and the private sector, as well as interested donors and international observers. The general understanding is that the CSDF, alongside other similar funds, constitute important sources of revenue

⁷ We also see a role for the National General Auditor to assess how the Fund is functioning.

⁸ For at least 3 years.

⁹ One of the stakeholders in the LDA suggested that the follow up of the Luxembourg NCP process of mediation with the outcome of an agreed statement about how to improve the Fund, could be taken up by the LDA as a pilot project.



for the country, and could play an effective role in the socio-economic development of Liberia.¹⁰

16. SDI and FoEE together with other civil society groups will continue monitoring the process implementation and will inform NCP Luxembourg about the progress.

Prepared by:

The National Contact Point of Luxembourg

Supported by

ArcelorMittal

Peter Kukielski

A blue ink signature of Peter Kukielski, consisting of a large, stylized 'P' followed by 'Kukielski'.

Sustainable Development Institute

Silas Siakor

A black ink signature of Silas Siakor, written in a cursive style.

Friends of the Earth Europe

Magda Stoczkiewicz

A blue ink signature of Magda Stoczkiewicz, featuring a large, stylized 'M' followed by 'Stoczkiewicz'.

¹⁰ The stakeholders and the Luxembourg NCP are pleased to support the government of Liberia in organizing this important round table.