LE GOUVERNEMENT
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Ministère de l'Économie
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# Summary document: Findings from two site visits to Liberia by the Luxembourg OECD National Contact Point Mediation Team in relation to Recommendation: an improved ArcelorMittal County Social Development Fund in Liberia

This document provides a short summary of the two site visits made by the Mediation Team to Liberia[1]. It summarizes the main findings from discussions held with a range of stakeholders and meetings with several officials in Monrovia, with regards to the workings of the County Social Development Fund (CSDF) [also called The Fund from here on]. This was on the initiative by the Organization for Economic Cooperation and Development (OECD) Luxembourg National Contact Point that decided to propose mediation following a complaint submitted by the Sustainable Development Institute (SDI) from Liberia and Friends of the Earth Europe (FoEE). The complaint alleged that ArcelorMittal, headquartered in Luxembourg, breached the OECD Guidelines for Multinational Enterprises in relation to the dis-functioning of the CSDF. The mediation offered by the Luxembourg National Contact Point was welcomed by both complainants and ArcelorMittal, including stakeholders in Liberia. The work undertaken is based on the OECD[2] *Guidelines for Multinational Enterprises.* The Guidelines are supported by an implementation mechanism of National Contact Points (NCPs) that assist enterprises and their stakeholders to take appropriate measures to implement the guidelines. The NCP of Luxembourg facilitated the process supported by an especially appointed mediator to identify various options for how The Fund could be improved.

The Mediation statement '*Recommendation: an improved ArcelorMittal County Social Development Fund (CSDF) in Liberia*' is based on the following information gathered during the site visits:

1. ArcelorMittal pays US$3 million annually into the Fund. This is a substantial amount, considering that the 2012/13 national budget for Liberia amounted to around US$650 million. According to the Mineral Development Agreement (MDA) between the Government of Liberia (GoL) and ArcelorMittal[3], the US$3 million "shall be managed and disbursed for the benefit of Liberian Communities in Nimba, Bong and Grand Bassa Counties by a dedicated committee to be formed by the CONCESSIONAIRE and the

[1] In November/December 2012 and January 2013

[2] OECD: Organization for Economic Cooperation and Development.
The mission of the Organization for Economic Co-operation and Development (OECD) is to promote policies that will improve the economic and social well-being of people around the world. The OECD provides a forum in which governments of 43 countries work together to share experiences and seek solutions to common problems. We work with governments to understand what drives economic, social and environmental change. We measure productivity and global flows of trade and investment. We analyse and compare data to predict future trends. We set international standards on a wide range of things, from agriculture and tax to the safety of chemicals.

[3] The Mineral Development Agreement (MDA) dated August 17, 2007 between the Government of Liberia and Mittal Steel Holdings A.G.



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GOVERNMENT."[4] In addition to the contribution to the Fund, ArcelorMittal finances other kinds of activities nationally, in the above-mentioned counties and near the operations of ArcelorMittal.[5] All in all, the US$3 million will be of a less relative importance over time as the operation is expected to grow, from roughly 4 million tons of iron ore produced in 2012 to 15 million tons once the second phase of the investment has been implemented.

2. Investments made from The Fund should not replace 'normal' payments by the State to the counties. The money in the Fund is **additional money.**[6] There is a general understanding that payments from the Fund are intended to mitigate the effects of the mine in the counties where ArcelorMittal operates. This conclusion can be drawn from article 3.2 of the CSDF Guidelines that describes the procedures for the selection, approval and management of development projects funded through the CSDF. Article 3.2 notes: "Each PIU [Project Implementation Unit] will ensure that a minimum of 20% of its county's annual allocation or share of projects proposed in a year will be spent in communities **in close proximity to the operations** of the concessionaires".

3. The GoL has signed several Concession Agreements with other mining companies. The concessionaires China Union Liberia[7] and BHP Billiton[8] also pay annual contributions to a central fund, facilitated through the CSDF, to benefit counties affected by their operations. Each of these funds has its own structure. The payments to the fund(s) from the different companies go to dedicated ESCROW accounts for each company where the money is earmarked for projects in counties for where the industrial activity is undertaken.

4. At present the funds contributed by ArcelorMittal to CSDF[9] is blocked; meaning that no new projects are approved through the DFC, but that previously approved projects that are currently being implemented are being honoured through payments from the Fund. The stakeholders acknowledge

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[4] Idem article 12 of the MDA.

[5] Statutory requirements

[6] Article 12 of the Mineral Development Agreement dated August 17, 2005 between Mittal Steel Holdings A.G. and the Government of Liberia notes: [...], *the CONCESSIONAIRE shall provide an annual social contribution of US$ three (3) million which shall be managed and disbursed for the benefit of Liberian communities in Nimba, Bong and Grand Bassa Counties by a dedicated fund committee to be formed by the CONCESSIONAIRE and the GOVERNMENT. Disbursements and allocations by the committee to the said counties of the annual social contribution shall be subject to final GOVERNMENT approval, provided, however, that all disbursement or allocation to the said Counties shall be, on an annual basis. [...] Disbursements and allocations by the committee and the GOVERNMENT shall be subject to independent audit in accordance with generally accepted accounting principles."*

[7] China Union Liberia US$3,5 million for Bong, Margibi and Montserrado county

[8] BHP Billiton pays an annual contribution of US$400.000 to Nimba, Bong, Grand Bassa and Rivercess Counties.

[9] If this is also the case for the other funds is unknown.

that improvements made in the management of the CSDF, could have a positive influence on the CSDF and other similar types of funds.

**Response from communities**

5. The Mediation Team held a few meetings in villages with community representatives and visited projects financed by the CSDF. In all meetings[10] many complaints were expressed. A general and often expressed complaint was about the lack of information about the approved and implemented projects and the procedures that had been followed. Community members felt that projects had been imposed on them. "We have been trying to track the usage of the Fund but we do not get insight about the spending". And "There is a gap between local and national information sharing." A follow-up suggestion was made about how the new structure of the Fund could include a clear transparent procedure that could be followed step-by-step.

6. Often implemented projects were not what people had asked for and no reasons had been given for the decision. In one community the Mediation Team found latrines that had been funded by the CSDF, however, the facilities were unfinished, locked and no water was available. [People had to carry water from elsewhere to use the latrines.] "We need assessments before a project starts". In one case there was a complaint about the Project Implementation Unit (PIU) and how the town hall meetings had failed to provide the necessary information, "They could not give a breakdown of the costs".

7. In the communities visited there was a serious distrust in the construction companies contracted to implement projects funded by the CSDF. There was a general belief that money had disappeared and that at political level/politicians had given contracts to their 'cronies' (see also below Par. 30 concerning the Report of the Auditor-General). There was no perceived monitoring of the projects or contracts in place. According to some villagers the monitoring "Should be done jointly with civil society, those that awarded the contract and the national government."

8. Many projects were never finalized such as road construction. On another project the remark was made "They did not ask the community. They just placed for example a latrine and did not even finish it." The Mediation Team

[10] During the first visit meetings took place with communities in Nimba County (a town hall meeting in Yekepa, a meeting near the mine operations in a hospital and a visit to a school both financed by ArcelorMittal); in Bong County visits were made to a community near the train-track, a school (financed by ArcelorMittal) and another community in the area; in Grand-Bassa county the team visited a community college financed by the Fund and held a town hall meeting with civil society representatives of different groups such as youth organizations and a women's organization from Buchanan.

visited the place and noted there was no water available for the latrines. And the comment was made "Even finished projects have serious issues." According to SDI, 21 projects were implemented and only 7 completed.[11]

- Some comments were made referring to too high expectations by residents and complaints of "some people who advocate their own plans". These comments we understood as a reference that the Fund never will satisfy everybody and all needs. Its scope is limited given the amount of money than can be spent versus the needs and demands at local level.

## Report of the Auditor-General

9. On 6 February 2012 the Auditor-General of Liberia, an official Government Authority, published the following reports: "*Grand Bassa County ArcelorMittal Social Development Fund for the Period May-September 2009*" and "*Nimba County ArcelorMittal Social Development Fund for the Period May-September 2009.*" and "*Bong County ArcelorMittal Social Development Fund for The Period 1 April-30 September 2009.*" These reports are important reference documents in order to guarantee that errors of the past will be prevented in the future.

10. In its Report on Grand Bassa County the following critical notes were made: "*The Management of the Grand Bassa County Social Development Fund was replete with series of financial, administrative malpractices, political disagreement which considerably undermined the implementation of targeted projects for the people of Grand Bassa. Considerable amount of the county's SDF was spent on administrative cost coupled with wasteful expenditure while developmental projects were being sidestepped. This was a common practice in the management of the SDF in the three benefiting counties namely Bong, Nimba and Grand Bassa.*" [...] "*The participation of politicians such as legislators and ministers in the administration and implementation of the SDF effectively conflicts with their respective role relative to oversight, monitoring and evaluation. To achieve the policy intend of the SDF, it is essentially significant that its management is completely professionalized without the dominant participation of political stakeholders.*"

11. Other rather critical conclusions made in the Grand Bassa Report by the Auditor-General concern an incomplete Management Structure. With a reference to the CSDF Guidelines and the need for a project engineer to be appointed as part of the project management team, the report noted the appointment of and payment to a 'Project Consultant' without a job description and no evidence for work performed. Another reference is made to

[11] A figure SDI received from the DFC

the approval of Funds without project details such as technical drawings and specifications for the proposals. There is a mention of the approval and payment for a non-existing project[12] and the "blanket amount" of US$ 400.000 for the college project expended on salaries, benefits and other costs without any evidence of a formal budget for running the college,"[13] and financial irregularities that "amounted to US$ 88.500."[14]

12. In the other two County Reports similar notes are made such as: *"The Management of the Nimba County Social Development Fund was replete with series of financial, administrative malpractices, political disagreement which considerably undermined the implementation of targeted projects for the people of Nimba. The amount of US$ 121.386 of the county's SDF was spent on administrative cost while developmental projects were being sidestepped. This practice observed in the management of the SDF in the three benefiting counties namely Bong, Nimba and Grand Bassa Counties has affected the designed purpose of the Social Development fund. To achieve the policy intend of the SDF, it is essentially significant that its management is completely professionalized without the dominant participation of political stakeholders. The participation of politicians such as legislators and their respective role relative to oversight, monitoring and evaluation."*[15]

13. The Reports of the former Auditor-General confirmed what the Mediation Team was told by stakeholders in the three counties.

## The DFC Secretariat

14. The Dedicated Fund Committee (DFC) Secretariat can request supplementary and clarifying information from the counties. There is a standard DFC template for project proposals. All proposals should be in line with the County Development Agenda (CDA) that is implemented by the County Council. It is understood in this context that each CDA is aligned to the national Poverty Reduction Strategy, which in itself is an important plan for both the GoL as well as all international donors, including the World Bank and the International Monetary Fund.

15. In general there is a **clear structure for the project approval process**. The DFC reviews all project proposals within a month of receipt; the DFC reserves

[12] According to the Report par. 24 on page 10: US$ 55,000.00 was paid to a firm for the rehabilitation of eight roads within the Central Buchanan Area, Grand Bassa County while it is indicated that "no contract was entered into, no payment voucher was prepared by the project accountant, no bidding was carried out and no Project Proposal and invoices were submitted." According to the Auditor-General this is a violation of the Public Procurement Act.
[13] Idem, par 35 page 12.
[14] Idem, par. 39 page 13.
[15] Auditor- General Report in Nimba County par. 4-5-6 page 2.

the right to request additional information from the CDMC, PIU or others; the DFC approves the proposals in consensus among its members, the Government and concessionaire(s) representatives to the Board. The DFC secretariat will communicate all decisions. The PIU is allowed to request tenders or bids for projects not approved yet by the DFC; all projects must be implemented in the form and manner in which they were approved by the DFC. The PIU will communicate with and seek approval from the DFC for any decision to change a component or an entire project.

16. Another recurring topic during the Mediation Team's discussions in Liberia was the need for **capacity building**; in Liberia in general, and in the rural communities in particular. The question was often raised whether part of the fund should be used for capacity building. Most respondents agreed with this notion. Parts of the Fund could indeed be dedicated for an agreed period and an agreed percentage for example of 1/3 of the Fund, towards capacity building. An institution like the World Bank invests a lot in capacity building. It would be important to raise awareness about what it is, and why it is important, especially since it might not always be as visible and tangible as the building of, for example, a school or the installation of water pumps.

## The Phenomenon of Social Funds

17. Social funds related to the operations of the extractive industry are not totally new phenomena. Already for quite some years the World Bank advises its client countries to create such funds with the purpose to ensure that affected communities at least benefit from the economic development as a form of mitigation. It is often called 'a benefit-sharing scheme'[16] which involves the establishment of a social fund-type of mechanism to transfer project money to affected communities.

    The structure of social funds is different depending on the region, stability of the countries, and circumstances of the legal and regulatory frameworks, the participatory role of the relevant enterprise(s) and other institutions such as civil society organizations and the national and local capacity to manage such funds. There is not any standard format or generic mechanism for social funds. In this chapter the differences in the structure of some of such funds are briefly described.

18. According to an expert[17] "Studies made by the World Bank, the ICMM, IFC and other institutions have showed that five models have been used for these purposes:"

- Government implementation: where a Company makes direct payment to

[16] Advice from Mr Abdou Bekhechi, a retired International Business Lawyer at the World Bank.
[17] Idem footnote 16

a Government which in turn implement a social development program to benefit affected communities,

- Third party implementation – where a company engages a partner, such as a local or international NGO, to work with local communities in designing and implementing projects, or a company supports an existing initiative being implemented by others;
- Company Foundation – where a company establishes a separate legal entity (foundation or trust) to carry out the community investment or compensation program;
- Internal community relations department – where a company works directly with communities to design and implement projects using its own staff;
- And Hybrid model – a model that either uses two or more of the other models together, or combines elements of both of them."

### Different MDA's compared

19. In 2007, the MDA between the GoL and ArcelorMittal was the first of its kind in Liberia, which required the setup of an annual social contribution to the country of Liberia. Article 12 of that MDA stipulates an annual contribution of US$ 3 million. The governance model for the Fund was given by a Presidents decree. The MDA provides no details concerning the specific composition (formation) of the dedicated committee that should oversee the running of the Fund.

    The MDA states that "disbursements and allocations by the committee and the GOVERNMENT shall be subject to independent audit in accordance with generally accepted accounting principles." Who can initiate and commission these audits, and who will bear the cost of such audits, is not stipulated in any detail.

### China Union

20. In 2009, the GoL entered an MDA with China Union. In this MDA, a social contribution is also included: "the Concessionaire shall provide an annual social contribution of US$3,5 million which shall be managed and disbursed for the benefit of Liberian communities in the counties affected by its Operations."

21. The forming of a committee for the management of the fund is required. In somewhat more detail, it describes what this committee and the Government of Liberia are responsible for. "A development committee shall be appointed by or selected in accordance with procedures established by the Government. Such committee shall develop an annual budget in consultation with the

Government and the Concessionaire, and the Government shall make disbursements from the general revenue account in which such funds are deposited in accordance with such budget and the instructions of the committee. The budget and disbursements by the Government shall be public and shall be subject to the same audit procedures provided for expenditures by the Government and as may be further provided by Law. Periodic reports and audit reports shall be made available to the Concessionaire and to the public."

**BHP Billiton**

22. In 2010, the GoL entered into an MDA with BHP Billiton. Again, this MDA required the concessionaire to pay money into a social fund. Yet, the MDA is more detailed compared to the earlier MDAs discussed. In this MDA, specific rules that this committee has to adhere to are stated as:

- "The Company shall at all times have at least one representative on the Committee." This clearly gives the company a position in the committee, but its importance (the weight of this position) may be influenced greatly by the total number of members in the committee.
- "Structures and processes will be established to provide for the participation (in a decision-making or advisory capacity as the Government shall determine from time to time) of officials, businesses and residents from the affected counties in the identification and selection of projects to be supported with funds from the Annual Social Contribution." What exactly these structures and processes entail is not provided in more detail.
- "No funds shall be dispersed from the Annual Social Contribution, if, in the Company's view, the disbursement of the funds or the project supported by the funds would cause the Company to be in violation of applicable law, including any applicable anti-corruption laws." This provides the company with clear leverage, but also with the responsibility, to act and stop a process if it sees things go wrong. However, what the Company's views have to be based on (e.g. an independent audit?) is not made clear. Also, the possibility of getting funds back after they have been disbursed is not discussed either.
- "Funds from the Annual Social Contribution may be disbursed (A) only for direct delivery of services and community infrastructure improvements, and not to fund the general work programs of administrative offices or officials save funding of customary and reasonable compensation and benefits for the Committee's administrative assistant and of reasonable amount for basic office supplies, and (B) except as provided in Exhibit 8, only for the benefit of Liberian communities in the affected counties." It is interesting to see that this is the first time the MDA provides information concerning the payment of running the fund, from the fund, in the form of an administrative assistant and basic office supplies.

23. As an alternative mechanism, the MDA provides the example of **establishing a "trust arrangement"**. This quite clearly provides an alternative mechanism in case the proposed mechanism does not work properly according to an audit, which also the company has the right to initiate. The MDA also discusses the "governance of the community development and infrastructure investments". It clearly points towards the political neutrality and transparency that should be adhered to in the selection of the community projects.

It also states that, in principle, no direct payments to individuals will be made. It furthermore gives the company the right to independently audit, at its own expense, any disbursement, expenditure, or projects coming from the Annual Social Contribution.

24. In summary, below are a number of points concerning the three MDAs that were discussed above:

- All three MDAs require the concessionaires (the companies) to set up an annual social fund.
- All three MDAs prescribe that such a fund is to be managed by a (dedicated) committee.
- None of the three MDAs provide details concerning the exact formation of these (dedicated) committees, other than that certain players should or may play a role, exact entities and numbers are not provided.
- None of the three MDAs provide any details concerning the cost of running the fund, and whether these should be paid for by the fund. Only the MDA with BHP Billiton states that an administrative assistant, cost and supplies within reason, can be paid for from the fund.
- None of the three MDAs describe exactly whether or not the annual contribution is part of the National Budget, or not, and whether the Budget Act applies to these funds.
- All three MDAs leave a lot of room for interpretation.
- The MDA of BHP Billiton, the latest of all three, mentions the need for political neutrality and transparency.
- The BHP Billiton MDA includes a mention of the option for a trust arrangement and refers to political neutrality and transparency.
- The fact that there are rather substantial differences between the different MDA's, one probably only can explain that over time the learnings from the first fund have been incorporated: progress made based on earlier experiences.

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