



## FINAL STATEMENT

**by the Luxembourg National Contact Point (Lux NCP) for the  
OECD Guidelines for Multinational Enterprises (hereafter: the  
Guidelines)**

**with support from Netherlands National Contact Point**

on the Specific Instance raised by

**Friends of the Earth Europe (FoE) and Sustainable Development  
Institute of Liberia (SDI)**

Against

**ArcelorMittal Liberia**

### OECD Guidelines for Multinational Enterprises

The Guidelines are annex to the OECD Declaration on International Investment and Multinational Enterprises. They are recommendations providing principles and standards for responsible business conduct for multinational corporations operating in or from countries adhering to the Declaration. They provide voluntary principles and standards in areas such as employment and industrial relations, human rights, environment, information disclosure, combating bribery, consumer interests, science and technology, competition, and taxation.

The implementation of the Guidelines is voluntary, however OECD Governments and a number of non-OECD Governments are committed to encourage multinational enterprises operating in or from their territories to observe the Guidelines wherever they operate, though considering the specific situation of the host country.

Each OECD member state is obliged to establish a National Contact Point (NCP) to deal, among others, with complaints submitted by civil society organisations and to offer its good offices to establish if the Guidelines have been violated by multinational enterprises and try to find an agreement between the parties. At the end of the procedure the NCP publishes a statement and makes recommendations how to resolve the issue in a congruent way for all parties involved.



## **Details of the parties involved**

### **The notifiers**

#### **Sustainable Development Institute of Liberia (SDI)**

Sustainable Development Institute of Liberia (SDI) in collaboration with Friends of the Earth Europe (FoE) initiated the Specific Instance against ArcelorMittal Liberia.

SDI<sup>1</sup> is a non-governmental organization based in Liberia which *“works to transform decision-making processes in relation to natural resources and to promote equity in the sharing of benefits derived from natural resource management in Liberia. The organization’s vision is a Liberia in which natural resource management is guided by the principles of sustainability and good governance and benefits all Liberians. Its activities cover a range of crosscutting issues including: governance and management; the environment; state and corporate social responsibility; economic and social justice for rural populations; and the democratic participation of ordinary people in government management of natural resources.”*

#### **Friends of the Earth Europe (FoE)**

Friends of the Earth Europe (FoE) is a non-governmental organization based in Belgium. According to its website<sup>2</sup>, FoE *“campaigns for sustainable and just societies and for the protection of the environment, [...] increases public participation and democratic decision making. Greater democracy [...] achieves environmental, social, economic and political justice and equal access to resources and opportunities for men and women on the local, national, regional and international levels.”*

#### **The company (ArcelorMittal)**

ArcelorMittal<sup>3</sup> was created through the merger of the multinational companies Arcelor and Mittal Steel in 2006. Currently, ArcelorMittal is the world’s leading steel and mining company. The company operates in 60 countries and employs about 245,000 people worldwide. ArcelorMittal is also among the five largest producers of iron ore in the world. It is the first company to have brought a greenfield iron ore project into operation in the last 20 years in West Africa, with the first shipment of iron ore from the mines in Liberia

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<sup>1</sup> <http://www.namati.org/organizations/sustainable-development-institute/>

<sup>2</sup> <http://www.foeeurope.org/about/english.htm>

<sup>3</sup> <http://www.arcelormittal.com/>



made in September 2011. In 2012 it exported 2 million tonnes of iron ore from Liberia, and expected to ship approximately in excess of 5 million tonnes in 2013. Its Phase 2 expansion will increase shipments to 15 million tonnes annually from late 2015.

ArcelorMittal has its worldwide headquarters in Luxembourg and is listed on the stock exchanges of New York, Amsterdam, Paris, Luxembourg, Barcelona, Bilbao, Madrid and Valencia.

### **The context of ArcelorMittal's operations in Liberia**

ArcelorMittal negotiated a 25-year concession with the Government of Liberia (GoL) to operate an iron ore mine in Nimba in the north-east of Liberia. The contract document is called the Mineral Development Agreement (MDA). The MDA was first negotiated in 2005 between Mittal Steel and the National Transitional Government of Liberia and was re-negotiated in 2006 after the presidential elections and ratified by the Liberian Legislature in 2007. ArcelorMittal is obliged by the MDA to pay US\$ 75 million over the 25-year span of the concession, through annual instalments of US\$3 million into the CSDF<sup>4</sup> which should be spent to benefit communities in the counties where the company operates. Furthermore, as outlined in the Terms of Reference of the CSDF 20% of the US\$3 million should be spent on communities immediately affected by ArcelorMittal Liberia's operations.

After several years of rehabilitating the infrastructure which was severely damaged during the 1989 – 2003 civil war, ArcelorMittal was able to start its initial operations in September 2011. On the ground ArcelorMittal's operations are located in Nimba County (the mine), Bong County (the rail track and quarry) and Grand-Bassa (the port). After being extracted, the ore is transported by railway 240 km to Buchanan from where it is shipped to steel plants in Europe and the Far East.

### **Consideration of the notification**

On 24 January 2011 FoE/SDI submitted a Specific Instance against ArcelorMittal under the Guidelines raising a number of concerns in respect of the operations of ArcelorMittal in Liberia. The allegations were made in reference to Chapter II, articles 1, 7, 11 and Chapter VI, articles 1 and 5 of the Guidelines. The Initial Assessment published by the Lux NCP in October 2011 sets out the key points of these concerns and alleged breaches of the Guidelines<sup>5</sup>.

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<sup>4</sup> County Social Development Fund

<sup>5</sup> As explained more extensively in the Notification (attached to this document)



Since the complaint was filed by FoE/SDI to the NL NCP for the reason that ArcelorMittal is listed on the Amsterdam Stock exchange, the chairman of the NL NCP forwarded the notification to the Lux NCP on May 24 2011. As stated previously ArcelorMittal is headquartered in Luxembourg which is an OECD member state which also adheres to the Guidelines. The Dutch NCP offered its assistance in dealing with this Specific Instance and the Lux NCP accepted the proposition to handle this case together with the Dutch colleagues, as well for the procedural as for the mediation process.

The Lux NCP sent an acknowledgement of receipt to both parties on July 18 2011 and decided that the issues raised, merited further consideration within the limitations of the mandate of NCPs. After having accepted the case the Lux NCP drafted and published the Initial Assessment.

### **Process following the notification**

According to the Guidelines the NCP offered a platform for discussion to both parties and gave them the opportunity to consider their mutual interests with the aim to resolve their differences under the guidance of the NCPs. Both NCPs engaged in consultations with the notifiers and the representatives of ArcelorMittal. Meetings between FoE, ArcelorMittal and the Lux and NL NCP took place on June 8 2012 in Luxembourg and July 18 and 20 2012 in London where SDI also participated. The conciliation process can be divided in three parts, the first concerning a bribery allegation, the second concerning additional concerns raised by FoE and SDI (detailed below), and the third concerning the management of the County Social Development Fund (CSDF).

### **Donation of the pick-up trucks**

FoE raised a concern regarding the donation of 100 pick-up trucks to the Government of Liberia in August 2008. The company stated that the donation of vehicles was in direct response to an appeal from The President of Liberia for logistical support to manage the challenge associated with the rise in food prices and give the legislators access to vehicles to carry out their duties, reach their constituencies and support agricultural activities in rural areas, and that this donation had been made with the understanding that the Ministry of Internal Affairs would ensure proper use and monitoring of the vehicles.

FoE declared that these pick-up trucks were assigned to legislators instead of the Ministry of Agriculture, and alleged that most of the legislators were using these vehicles in Monrovia and not for agricultural activities in their constituencies.



The NCPs made it clear from the beginning to the complainants that it would be out of the mandate of the NCP to judge whether ArcelorMittal had acted in compliance with domestic or international laws. Thus this part of the complaint would fall outside of the OECD complaints procedure that is a non-judicial mechanism.

At the meetings in London between the involved parties and in agreement with FoE/SDI the decision was made to exclude this item from the mediation process.

### **Additional concerns brought into the process by FoE/SDI**

During the meetings in London FoE required that the items “key recommendations on page 9; items 8 to 13” of the report by SDI and FoE “Working for development – ArcelorMittal’s mining operations in Liberia” should be addressed too. The representatives of ArcelorMittal accepted to take position on these claims even though they were not part of the initial complaint.

The recommendations 8 to 13 of the report “Working for Development” published by SDI and FoE are the following:

8. Ensure that affected communities are the true beneficiaries of the County Social Development Fund. A first step is to guarantee that at least 20% of the funds benefits directly affected communities.
9. Construct, maintain and operate health facilities in the concession area using modern equipment and procedures with accepted international standards.
10. Provide training for Liberian citizens for skilled, technical, administrative and managerial positions.
11. Conduct its operations in accordance with the environmental protection and management law of the Republic and undertake regular environmental audits and assessments.
12. Ensure stricter control of subcontractors in terms of employment, health and environmental impact.
13. Negotiate and enter into a legally binding agreement that will ensure that ArcelorMittal will not conduct mining or exploration activities in the East Nimba Nature Reserve. This agreement should guarantee the integrity and maintenance of the status of the area for the entire period of the 25-year mining concession. If ArcelorMittal is not willing to enter into such an agreement, it should return this area to the Liberian state.



All the issues raised were discussed and the conclusions about the different matters of contention were the following, point-by-point:

The item under point 8 was clearly identified as being part of the CSDF issue and has been treated as such in the “Terms of Reference – Fund Mediator” that outlines the mediation process.

ArcelorMittal presented its responses on all the other requested items.

Re point 9: ArcelorMittal states that the health, safety and environment (HSE) facilities have been updated considerably since the publication of the report that was based on a site visit by the complainants in 2009. In December 2012 the Lux NCP and the mediation team visited some of the facilities (the mediation team visited a hospital in Yekepa for instance) and can confirm the high level of infrastructure in the light of the geopolitical situation of ArcelorMittal’s operations. A last grievance concerning the Buchanan hospital remains, as the Liberian Government required 50 beds which it does not have. ArcelorMittal declares that due to the development of medical care, people are not required to stay overnight in hospitals for many cases, so the number of required beds is sufficient for the population it supports. ArcelorMittal ensures that they will continue to meet its MDA commitments...

Re point 10: The representative of ArcelorMittal declares that they fulfil entirely their obligations related to the training of Liberians and that they build schools and facilities for this purpose. The mediation team visited some of this infrastructure during the first visit in Liberia in November 2012. ArcelorMittal declares that they are well ahead of the benchmark of five years ago and that they are close to the goals of the ten year benchmark.

Re point 11: ArcelorMittal carried out and commissioned extensive research work on the flora and fauna in the areas where it is operating and even in the East Nimba Nature Reserve which is part of the concession of ArcelorMittal. Experts in many domains (e.g. butterfly experts) and independent researchers from universities (e.g. UK: Oxford, Cambridge) were flown to Liberia to conduct research. Publications are also publicly available about the scientific work done in these areas, the East Nimba Nature Reserve is currently one of the most documented areas in Liberia.

Re point 12: Among others ArcelorMittal engages itself seriously in road safety campaigns in Liberia. Many signs can be seen along the roads and ArcelorMittal is regularly educating its employees, subcontractors and local communities about the dangers of road and rail traffic. As an example, ArcelorMittal forbids its employees and subcontractors to carry people in open pickup trucks. Health and



safety briefings are held on a daily basis. ArcelorMittal does not accept breaches of its health and safety rules by its own employees or employees of subcontractors, and requires regular health and safety reporting including near misses. Subcontractors that do not comply or show demonstrable improvements with the HSE rules of ArcelorMittal will have their contracts terminated.

Re point 13: ArcelorMittal declares having no intention to start any operation inside the East Nimba Nature Reserve, and beyond this ArcelorMittal engages itself to protect this area against anyone who tries to explore and/or exploit the reserve illegally<sup>6</sup>. The NCP recommends that ArcelorMittal confirms this in a public statement.

### **Main focus of mediation: County Social Development Fund**

The issue about the County Social Development Fund was identified as being the main item of concern following the decision to exclude the bribery allegations of the complaint. Both parties acknowledged that there was enough common ground to focus on this single issue. In this light, during the meeting of July 20 2012 in London, discussions were held in order to evaluate the options for a mediatory attempt on the issue related to the management of the County Social Development Fund (CSDF).

Finally all parties agreed on the appointment of an expert Mediator to address the shortcomings of the existing fund structure and draft a proposal to be presented to the Liberian Government for an improved County Social Development Fund in Liberia, based on recommendations supported by the parties.

The situation put forward in the complaint by FoE describes a public dissatisfaction with the manner in which the Mineral Development Agreement (MDA) and the County Social Development Fund (CSDF) are implemented and handled by ArcelorMittal Liberia. FoE and the Auditor General of Liberia stated that reports of misappropriation and malpractices of the fund are widespread and it seems that none of those implicated in the alleged misuse of money from the fund have ever been at least investigated or punished.

In the light of the information provided by the notifiers and to enhance the chances to conclude this process in a timely, effective and transparent manner, both parties agreed on the appointment of an expert mediator whose mission was to provide the necessary elements to draft the proposal<sup>7</sup>.

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<sup>6</sup> Furthermore, ArcelorMittal issued a Statement about the East Nimba Nature Reserve. (attached to this document)

<sup>7</sup> Therefore the parties agreed on a "Terms of reference" for the "Fund mediator" (attached to this document)



## Fact finding missions in Liberia

A first fact finding mission to Liberia was organised from November 27 2012 to December 4 2012. The mission was conducted by the Lux NCP who accompanied the mediator, along with a Luxembourg foreign office diplomat, representatives of ArcelorMittal and a representative of SDI (hereafter: the mediation team). During the mission the mediation team met several ministers and representatives of the government as well as many local players and stakeholders. The mining activities in Yekepa were visited as well as ArcelorMittal's operations along the rail track from Yekepa to Buchanan and finally ArcelorMittal's facilities and shipping operations in Buchanan. The mediation team used the opportunity to hold some meetings with the local communities and authorities and was welcomed in a positive way by all institutions and people visited.

## The projects

The mediation team visited much of the infrastructure funded exclusively by ArcelorMittal e.g. schools, a hospital, a theatre, roads, etc. These projects were implemented and managed by ArcelorMittal Liberia according to and in some instances beyond the specific obligations it is subject to under the MDA.

To substantiate the allegations raised in the complaint the mediation team was shown some projects which were financed through the CSDF and authorised by the Dedicated Fund Committee (DFC)<sup>8</sup> and the County Development Management Committee (CDMC)<sup>9</sup>. Many of these projects had failed (e.g. latrines without any connection to water; energy plant which broke down due to a lack of maintenance) or construction that had not even been completed.

The huge discrepancy between the quality and completion of projects triggered the frustration of the local communities which had witnessed the difference between ArcelorMittal infrastructure and the ones provided through the CSDF which seemingly had not met the needs of the affected communities (school, latrines, energy plant, etc.). Based on the observations made by the mediation team, it can be concluded that as a consequence the high expectations of the communities combined with the low completion level of the projects had increased local distrust in the Government.

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<sup>8</sup> The Dedicated Fund Committee or DFC secretariat, is charged with the responsibility of managing the County Social Development Funds of Bong, Nimba, and Grand Bassa counties under the Mineral Development Agreement.

<sup>9</sup> The CDMC is in charge of the management of the CSDF and of the projects funded by the CSDF at county Level.





## **The stakeholders**

On the basis of the above mentioned information and after having briefly viewed the situation in the field, the mediation team met the Chairman and the Vice Chairman of the DFC in separate meetings. It became obvious that among the officials themselves a divided opinion seemed to exist about how the CSDF should be managed and even of the DFC itself. The main issue seemed to be whether such a fund should be led and managed at national level or through a structure where decisions are taken at county level.

Visits to international institutions and observers<sup>10</sup> showed clearly that the country is at a historic crossroads, notably also in regards to decentralization that could have a deep impact on the overall governance structure of the country. This factor merits to be considered as the only authority with the means to restructure the DFC, and consequently also the CSDF, is the Liberian Government.

The team also perceived that at the time of this visit, the country did not have an effective operating administrative infrastructure, especially at county level, and a lack of capacity at both national and county levels. Elections in Liberia are at a national level and therefore County Superintendents<sup>11</sup> and other county officials are appointed by the President of Liberia.

## **The Fund**

The activities by CSDF are currently frozen by the DFC following the widespread allegations and several reports by the Auditor General of Liberia and the NGOs about the misuse of the funds. Consequently new projects are neither financed nor implemented. Given that people often complained about the lack of information, the current situation is not satisfying for the communities and frustration is growing and bears a potential risk for social unrest.

Another aspect which does not help the issue is the limited amount of money that can be spent, compared to the needs and demands at local level. ArcelorMittal pays US\$3 million annually which is distributed between 3 counties to the benefit of dozens of districts. At the time when the work of the Fund will recommence the counties need to consider whether the funds should be invested into one big project or several smaller projects. At the time of the visit there did not seem to be any common ground between local county-level stakeholders on this issue.

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<sup>10</sup> EU mission; World Bank; Gba Community Forest Management Body; LEITI (Liberian Extractive Industries Transparency Initiative); CENTAL (Center For Transparency and Accountability in Liberia); General Auditing Committee (State Auditor); GIZ (Deutsche Gesellschaft für Internationale Zusammenarbeit); UNDP (United Nations Development Program); SIDA (Swedish International Development Cooperation).

<sup>11</sup> The Superintendent represents the Government and is the highest-ranking decision maker in every county.  
Document drafted by the Luxembourg National Contact Point  
Guidelines for multinational enterprises



## **Second fact finding mission**

During the second mission the mediator met again with several representatives from the international community who all pursue the same aim to help the country to set up a proper working administration. The main question discussed was how to involve these organizations and how to set up a mechanism (including financing and monitoring systems) which could possibly be used by other foreign companies operating in Liberia that are facing similar issues as ArcelorMittal. To have a predefined structure to implement and to run a social fund in Liberia could lower the administrative work and expenses and facilitate the administration of such funds. Improved transparency and widespread information accessible to the public about the projects and the investments would certainly contribute to the general satisfaction.

## **Conclusion and final dialogue with both parties**

The Lux NCP organised a meeting on March 6, 2013 in London involving, the notifiers, the company, the mediator and both NCPs to discuss the report<sup>12</sup> of the mediator and to find common ground to come to an acceptable outcome for all parties.

After numerous bilateral conversations and meetings with the parties the mediator could finalise a document presented under the form of a recommendation supported by the parties to be handed over to the Liberian Government. It is clear that a successful restructuring of the management of the CSDF is only possible with the active involvement of and endorsement by the Liberian Government.

Of all the options assessed, the most promising alternative retained in the recommendation is to transform the CSDF into a Trust or Foundation as an independent body. The Board of Trustees' role would be to set the general guidelines. It would be composed in equal numbers of representatives of the Government, civil society organisation(s) and ArcelorMittal. The Board would also be used as 'board for grievances' which would be empowered to hear appeals lodged against rejected projects or the quality of the implementation of projects.

The day-to-day work, which includes the selection and execution of the projects, would be done by an independent institution (Implementing Agency) selected by a public tender, under the lead of experienced experts and professionals who are accountable to the Board of Trustees and the state auditor.

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<sup>12</sup> This report is confidential between parties



### **Temporary resolution for the CSDF supported by ArcelorMittal and FoE/SDI**

The company and the notifiers are aware that before the Fund will be restructured a certain period of time will pass. To help the communities in the short term and to mitigate further the frustration by the potential beneficiaries, both parties suggest that ArcelorMittal and a representative of SDI select, after consultation with the communities and local authorities, a number of projects in line with the County Development Agenda (CDA) that could be financed to the tune of 20% of the CSDF and benefit directly affected communities. The implementation of these identified projects should follow the new procedures and regulations for the Fund and could serve as a testing ground for the new setup.

### **Findings of the Lux NCP**

Following the successful conclusion of the mediation process led by Dr Maartje van Putten and the final recommendation supported by both parties that was communicated to the Liberian Government on September 13 2013, the Lux NCP closed the complaint. The Lux NCP will not carry out additional examination of the allegations contained in the FoE/SDI complaint or make any further investigations. The Lux NCP, in close cooperation with the NL NCP, congratulates the parties for their efforts in reaching a mutually acceptable outcome and for constructively engaging in the meetings.

### **Concluding Remarks**

The mediation process was characterized by an open and constructive conversation between parties. After addressing the other issues in the complaint, all parties agreed that the issue of Fund management would be the centrepiece. The selection of the outside Fund management mediator, Dr Maartje van Putten, was consensual and swiftly made; she has operated to the satisfaction of all Parties.

In this context, early engagement with senior officials of the Liberian Government was important, also as opinions about the new structure of the Fund among Parties proved to be fairly consensual.

Despite the fact of the positive outcome of the mediation, the process will not necessarily end in a significant change of the management of the Fund if the Liberian Government doesn't follow up on the recommendations. However, the bridges built between SDI and ArcelorMittal open the potential for future dialogue between all



stakeholders on this issue. Furthermore, as SDI and ArcelorMittal share similar views about the management of the CSDF and implementation of the identified projects, there is potential for communities and civil society representatives to engage with ArcelorMittal in a meaningful way about discussing their issues and address them to the Liberian Government.

The NCP considers that the Guidelines are recommendations to all enterprises operating in and from all OECD member states and countries adhering to the Guidelines. However, the applicability of the Guidelines should be guaranteed in every country whether it is an OECD member state or not. Consequently, civil society organisations established in non-adhering countries (like SDI) are entitled to file complaints with the NCP in the home country of an enterprise and/or if it is found that this is not possible, notifiers should have the means to file a complaint in a country where the enterprise is listed on the stock exchange.

The NCP notes that ArcelorMittal's website addresses its approach to "corporate sustainability" and that the company has also committed to operate responsibly by investing in community programs, supporting employees who are supporting local communities and managing the company's human rights, anti-corruption and environment impact. However, the NCPs encourage ArcelorMittal to sustain management control systems that ensure that its operations anywhere in the world are in harmony with OECD Guidelines.

The Lux NCP also notes that ArcelorMittal regularly reports on its corporate social responsibility policies and performance. The latest report "responsible business, sustainable growth" confirms the company's commitment to engage proactively with the communities affected by the company's operations.

### **The Learnings**

1. The forward-looking nature of the process was critical, although, of course, real or perceived issues in the past were addressed during the meetings in an open, yet confidential atmosphere among Parties;
2. Field-visits are for some cases, like this one, essential for a satisfactory outcome of the applications of the OECD Guidelines. As the independence of the NCP is of the essence, these costs were absorbed by the NCP's involved, Luxemburg NCP in particular. It is often in the interest for a positive outcome that budget is made available to cover these costs;



3. The recommendations to the Liberian Government, made by the NCP's, with full support of the Parties, may provide a useful template for issues and possible solutions for other similar company-funded community funds;
4. The cooperation between Luxemburg NCP (lead) and NL NCP (supporting) was, also in the opinion of the Parties, excellent.

This final statement concludes the complaint process under the Guidelines.

- Attached: - Notification;
- Initial Assessment;
  - Terms of reference of the Mediator;
  - Recommendation & Annex;
  - ArcelorMittal's statement on East Nimba Nature Reserve;
  - Letter send from the Liberian Embassy to the Liberian Government.

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