



Terms of reference - FUND MEDIATOR

Background

1. Under the Mineral Development Agreement dated December 28, 2006 between the Liberian Government (GoL) and ArcelorMittal (AM) the latter undertook to make a social contribution of \$3mln per year for a period of 25 years into the County Social Development Fund (the Fund) to support development projects in the three counties that are host to its operations.
2. The Fund is managed by the Dedicated Funds Committee (DFC), which is chaired by the GoL, and in which ArcelorMittal is represented. The DFC approves all requests for funding submitted by the County Development Management Committees for Nimba, Bong and Grand Bassa.
3. The disbursement of funds and the implementation of projects supported through the Fund have been hampered by observations of serious shortcomings and wrong use of funds. External observers have also alleged that there was misuse of funds and misalignment between objectives of the Fund and the implementation of projects. The latter led Friends of the Earth Europe (FoE) and Sustainable Development Institute for Liberia (SDI) to file a complaint (Specific Instance dated January 24, 2011) against ArcelorMittal based on allegations that the company would have breached the OECD Guidelines for Multinational Enterprises. The complaint was filed through the OECD National Contact Point (NCP) of the Netherlands, and subsequently through the OECD NCP of Luxembourg.
4. The NCP of Luxembourg accepted the complaint and with the help of the Netherlands NCP initiated the process with discussions with the parties and also facilitated a joint meeting under their auspices. While the complaint included several other points, all parties (FoE, SDI and AM) concluded at their meeting on 20 July 2012 in London that there is sufficient ground for a collaborative effort to draft a proposal for a governance Framework for an 'Extractives' Development Fund' but would address the shortcomings of the existing fund structure. The draft proposal for a Framework should be developed as a collaborative effort by the Parties based on the recommendations made by an expert Mediator that will be appointed by the Luxembourg NCP, with support from the Netherlands NCP.



Process

5. Considering the fact that both GoL and AM are represented at the DFC, it is recognized that the Liberian authorities have a prominent role in managing the DFC. It is therefore a shared intention of the NCP's of Luxemburg and the Netherlands to share a draft for such a Plan, as supported by AM, FoE, SDI, with the Liberian authorities in an early stage in order include the Liberian authorities in resolving the issues of the Instance.
6. The Parties have asked the NCP-Luxemburg to appoint an expert-mediator, the Fund Mediator, who will provide the necessary ingredients for such recommendations. They expect the mediator to submit his findings to the Parties and the NCP's before yearend 2012. All costs of the mediator will be assumed by NCP-Luxemburg. Parties commit to each other and the NCP's that they will respect the process and each others' contribution.
7. In executing his/her assignment the Fund Mediator will:
 - review the official and unofficial audits and evaluations made on the efficiency, effectiveness and inclusiveness of the Fund since its beginning, including reference to possible misuse of the Fund's intentions, statues and operating procedures;
 - Engage with the Government of Liberia, other members of the DFC and county-stakeholders;
 - Solicit opinions from other relevant stakeholders, including but not limited to the communities affected by AM's mining operations, on how to improve the workings of the Fund;
 - Make recommendations to SDI, FoE and AM on such improvements which should reflect a shared view by all the Parties.

It is expected that the Fund Mediator will make 3 visits to Liberia.

8. The above assignment will be undertaken under the responsibility of NCP-Luxemburg, with support from NCP-NL; the assignment will be done under the operating procedure of the OECD Guidelines. All cost of the Fund Mediator will be assumed by the NCP-Luxemburg NCP. The NCP-NL will assume its own costs in the support role to the NCP-Luxemburg.
9. The mediator will operate in an unbiased way and ensure that all parties involved, including interviewed parties in Liberia, will be guaranteed that the process is transparent and unbiased.

Luxemburg November 23, 2012