



global witness

Update on the Renegotiation of the Mineral Development Agreement between Mittal Steel¹ and the Government of Liberia

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After a lengthy renegotiation process throughout 2006, on 28th December 2006 the Government of Liberia and Mittal Steel AG signed an amended contract, which was passed into law by the Liberian Parliament in May 2007.

The amended contract, which has been almost completely re-written, addresses the most onerous provisions of the original agreement and gives Liberia a real chance of extracting reasonable benefits from the concession. The major changes to emphasise are:

- The single biggest problem with the original contract was that it gave Mittal complete freedom to set the price of iron ore. It is this price that forms the basis not only of the royalty rate but also ultimately of the project's taxable income. Furthermore, because all the ore will be sold to Mittal's affiliates, the contract encouraged transfer pricing, thus potentially depriving Liberia of substantial revenue. Under the amended agreement the price is set under the arms length rule, which means that it will be based on the international market price of the ore.
- The original contract gave the company a generous five year tax holiday which was extendable for an unlimited period. This had the direct consequence of depriving Liberia of potentially valuable tax revenues. The tax holiday has been abolished.
- The capital structure remains the same, but the obligations of the Concessionaire are now guaranteed by the parent company. The debt equity ratio of the company cannot now exceed 3 to 1 and despite that Liberia's share cannot fall below 15% ownership.
- The original contract transferred two of Liberia's major public assets – the port and the railway infrastructure between Yekepa and Buchanan – to the Concessionaire. These assets have been transferred back to the Liberian Government and Mittal does not have the exclusive right to use the infrastructure.
- The stabilisation clause had the potential to undermine Liberia's right to regulate on important public policy areas such as human rights, the environment and taxation. In the amended agreement the stabilisation clause has been substantially restricted. However, the stabilisation clause still supersedes Liberian law on income tax, royalties and other payments due to government. This still falls short of international best practice.
- The provisions regarding equitable treatment have been deleted. These provisions had the potential to restrict the government's ability to promote economic policies by, for example, favouring local enterprise or providing favourable conditions to other

¹ Now Arcelor Mittal.

foreign companies. According to the amended contract Mittal will still benefit from the same favourable conditions that the Government may grant to any other person with respect to the exploration or production of the same minerals occurring in substantially similar economic conditions. This equitable treatment cannot however be backdated and applies only in relation to other iron ore producers.

- The agreement now relates only to iron ore and no other unspecified minerals. The right to additional minerals is now reserved to the government, not the company.
- Provisions in the original agreement that allowed the company to operate a private security force failed to establish the limits of Mittal Steel's authority, or to set operating parameters for the security force. The new contract states that the private security forces will conduct themselves within the provision of the law and in accordance with the Voluntary Principles on Security and Human Rights. While this is a positive development, a commitment to a purely voluntary code of conduct does not allay the concerns about the selection process for the security forces, which have not been addressed.
- The amended agreement respects the rights of third parties, for example people arrested by security forces or those who need the use infrastructure within the concession area. While protecting existing rights of access to water for those who live and work in the area, there is still no clarity of about the scope of these obligations.
- The governing law of the contract has been changed from United Kingdom to Liberian Law.
- Social obligations have increased and bring better and more detailed benefits, such as free health care for all Mittal employees, more jobs for Liberians and a requirement that ensures that within 5 years all senior managers will be Liberians.
- The Concessionaire no longer has the right to possess any public land outside the concession area at no additional cost. According to the amended contract acquisition of public land by the Concessionaire, outside the concession area is now subject to negotiation between parties in good faith, as and when the concessionaire requests. Additional public land outside the concession area is not considered to be part of concession area. Provisions that raise constitutional and international human rights issues concerning property rights of private land owners have been deleted. However, the definition of private and public land ownership could still create challenges to traditional or customary rights of persons and communities over land.

However, there are still a number of issues which have not been addressed and constitute departures from best practice:

- The confidentiality clause, which remains unchanged, commits the Government to stringent provisions of confidentiality and non-disclosure. This is irreconcilable with the need for transparency in accessing natural resources and managing their exploitation, especially in post-conflict countries, where responsible management of natural resources is a critical step towards poverty reduction. It is arguable that the original contract would not have been so bad, had it been open to public scrutiny. The fact that now, in Liberia, the precedent has been set to keep contracts confidential, means that, in the absence of public scrutiny, there can be no assurance that future mineral or other deals will not be as bad as the original Mittal deal.
- Mittal's overseas tax structure in connection with the concession remains unchanged. This means that the extremely favourable tax structure set up by the company dictates that Mittal could choose to extract any profits it makes from Liberia, thus undermining the country's chance of creating local long term investment for development.

- The clause which limits the power of the Government to inspect without prior notice is still in the contract and is at odds with legislation in force in the world's main mining centres.
- The Concessionaire retains the unfettered right to "remove, extract and use" timber for free except for protected species insofar as they do not interfere with or hinder the operations.
- The provisions in the contract on environmental protection and management were deleted and replaced. There is a requirement to comply with the Environmental Protection and Management Law of Liberia. However the contract should also include reference to other laws such as standards for water or air quality, which are relevant for mining operations. There should also be provisions about obligations of the Concessionaire regarding mine closure, land reclamation and post closure, including a guarantee by the Parent company that funds will be available to close the mine. In the amended contract the company has very limited mitigation and restoration duties, as well as obligations regarding environmental damage. This creates a limitation on the consequences and liabilities that could otherwise fall under the Concessionaire's duties.

By renegotiating the contract Mittal Steel has shown that it is possible for a multinational company to act responsibly and negotiate a deal that remains profitable and safeguards the interests of the host country and its people. However, the real benefits of this contract to Liberia can only be truly assessed as the company starts its operations. President Sirleaf has stated that the renegotiation of the Mittal agreement may serve as a model for future contract arrangements in Liberia such as Firestone, LAC and other agreements, which will go through the same process of international review.