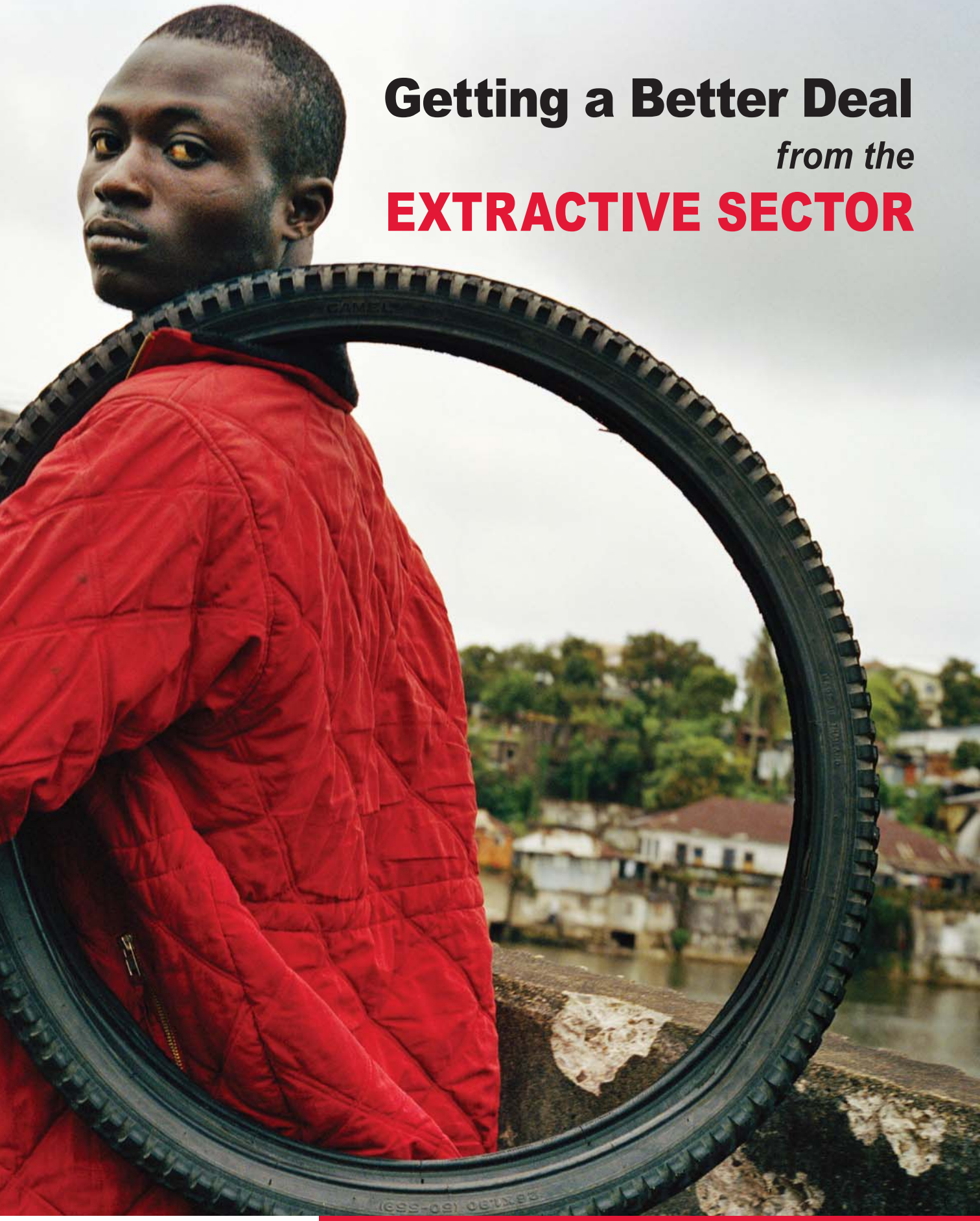
Getting a Better Deal

from the

EXTRACTIVE SECTOR



REVENUE WATCH INSTITUTE

Concession Negotiation in Liberia, 2006-2008

Getting a Better Deal from the Extractive Sector

Concession Negotiation in Liberia, 2006-2008

A report to the
Liberian Reconstruction and Development Committee
Office of the President, Republic of Liberia

by

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Foreword

by Ellen Johnson Sirleaf, President, Republic of Liberia

As we clearly articulated in our *Lift Liberia* Poverty Reduction Strategy, economic revitalization remains one of our four strategic pillars for poverty reduction. Consistent with our commitment to poverty reduction and in line with our economic growth and sustained development efforts, we announced at the onset of our administration a national policy to review all major concession agreements in the country. We made clear that this policy of review would apply to all sectors of our economy and was not an exercise to target specific industries or companies. Our policy of concession contract review was further supported by Liberia's international partners and donor community under the Governance and Economic Management Assistance Program for Liberia signed by the former National Transition Government of Liberia.

Among many competing demands, and with uncertainty in some quarters about the likelihood of success for our efforts, we dedicated ourselves to a critical examination of our largest investment contracts, and undertook the process of renegotiating those agreements we believed could be revised to better serve our country. In the contracts covered by this report we were able, through our negotiation efforts, to secure stronger fiscal terms, increased revenues to the government, and additional employment opportunities for our people. In one contract, we were able to negotiate the transfer of ownership of the Buchanan port, an important piece of our national infrastructure, back to government while retaining investor commitment to rehabilitate the port.

Our constructive engagement with private sector partners in these renegotiations has successfully secured a better deal for our nation and people, while also bolstering trust and building investor confidence in our administration. We aggressively pursued a better deal for Liberia, but we were also careful to make certain that the renegotiations did not threaten the viability of the companies' investments and, represented an opportunity for a better long-term working relationship between the companies and government.

The renegotiation process was not without its challenges, and offered us an opportunity to take a critical look at processes we use for negotiating major concession agreements. It provided

us a chance to examine the legal and policy frameworks supporting the negotiation and the implementation of concession agreements in Liberia. The process also allowed us to look at the policy and institutional linkages between increased revenues from concession contracts and our commitment under our poverty reduction strategy to pro-poor policies and sustained economic development at the community level. In this regard we were able to successfully increase revenue commitments for local communities in both contracts studied by the report. These revenue commitments came in the way of local community funds, support to local industry, and increased investor spending on social benefits and infrastructure for the affected communities. Our challenge, going forward, will be to ensure compliance with the terms of the renegotiated agreements through effective monitoring of both the fiscal and non-fiscal aspects of the contracts. We also want to make certain that the lessons learned during this process become institutionalized through our capacity development and legal reform efforts so that similar benefits can be achieved through all future negotiations. Through the generous support of the Revenue Watch Institute, this report was undertaken and comprehensively documents and examines the renegotiation processes we used, and offers some useful recommendations for institutionalizing the gains we experienced.

The report has served to further discussions within the government on the concession negotiation process. We are also using it to support of our efforts to, among other things, institutionalize the gains from our renegotiation activities through the revision of our Public Procurement Concessions Act. As we pursue our reform agenda, work to revitalize our economy and bring economic growth to our people, it remains important that we document and analyze the processes we use so that we leave a legacy of increased institutional capacity and best practices geared to Liberia's sustainable development. This report represents an important contribution to this effort.

Foreword

by George Soros, Chairman, Open Society Institute

Liberia's natural resources played a central role in the civil war that devastated the country between 1989 and 2003. The trade in conflict diamonds worsened a period of "development in reverse," marked by a 90 percent collapse in GDP over less than two decades. To succeed in its postwar reconstruction, Liberia will now need to convert its vast natural resource wealth into sustainable economic and human development.

Revenue Watch Institute's report, "Getting a Better Deal from the Extractive Sector," highlights one critical aspect of Liberia's strategy for economic recovery: the creation of more equitable terms in natural resource contracts. The report analyzes the review process for Liberia's contracts with Firestone and ArcelorMittal. Liberia's experience offers at least four important lessons for other resource-rich countries.

Countries require long-term vision for the role of extractive industries in development, which in turn demands clear objectives and assessment measures for contracts. The model agenda in Liberia's Poverty Reduction Strategy offers a comprehensive revitalization plan for the natural resource-based economy, including rebuilt infrastructure, social services and employment generation. This strategy reaches well beyond the short-term interest in better fiscal terms to increase domestic resource mobilization. The example of the Buchanan port rehabilitation under the revised terms of Liberia's ArcelorMittal agreement illustrates the close link between development the contract review process.

When approached pragmatically, contract reviews and concession negotiation can benefit both government and industry. The amended Liberian contracts offer significant gains for the state and for the communities where Firestone and ArcelorMittal operate. The new agreements also pose no threat to the companies' profitability, and pave the way for a more stable partnership between the companies and the Liberian government. ArcelorMittal's decision to increase investment in Liberia by half a billion dollars shows plainly that better contractual terms and heightened investor interest can in fact go hand in hand.

To prevent the asymmetries of information and power that result in unbalanced contracts, governments and companies must meet on a level playing field. Therefore, it is imperative that resource rich counties mobilize the human and institutional capacity necessary for successful negotiation. The Open Society Institute helped assemble a team of legal, economic and industry experts to support the Government of Liberia in this effort. However, strengthening the long-term capacity of Liberia's civil and professional sector for complex transactions and negotiations remains a significant challenge. If Liberia hopes to enforce its agreements and negotiate new investments that will support its reconstruction, it will require innovative approaches to capacity development.

Lastly, the leadership of President Ellen Johnson Sirleaf was central to Liberia's concession negotiation process over the years covered in this report. She articulated the key objectives of the negotiations, ensured their integrity and directly intervened to overcome critical deadlocks in the process.

The report is based on in-person interviews with the main actors in the Firestone and ArcelorMittal negotiations. It offers detailed and insightful perspectives on key aspects of natural resource contract negotiation. I strongly recommend the report to civil society activists, journalists, policymakers and development professionals interested in natural resources and economic development.

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List of Acronyms

AmLib	American Liberian Minerals Ltd.
CCRC	Contracts and Concessions Review Committee
CCRC–TS	Contracts and Concessions Review Committee–Technical Secretariat
CMC	Contracts and Monopolies Commission
CPA	Comprehensive Peace Agreement: Accra, August 18, 2003
EBF	Equatorial Biofuels Inc.
ECOWAS	Economic Community of West African States
EGSC	Economic Governance Steering Committee
GEMAP	Governance and Economic Management Assistance Program for Liberia
GEMAP–TC	GEMAP–Technical Committee
IFC	International Finance Corporation
IGCAL	Interim Guidelines for Concession Agreements in Liberia
IMCC	Inter-Ministerial Concessions Committee
IMF	International Monetary Fund
IPPP	Interim Public Procurement Policy & Procedures
ISLP	International Senior Lawyers Project
LAMCO	Liberian American Swedish Minerals Company
LIBCO	The Liberia Company
LIBCN	Liberian Operations, Inc.
LRDC	Liberia Reconstruction and Development Committee
MDA	Mineral Development Agreement
MLME	Ministry of Lands, Mines and Energy
MOA	Ministry of Agriculture
MOF	Ministry of Finance
MOJ	Ministry of Justice
MOL	Ministry of Labor
MOS	Ministry of State, Financial, Legal and Economic Affairs
MPEA	Ministry of Planning and Economic Affairs
MTC	Ministerial Technical Committee
NIC	National Investment Commission

NTGL	National Transitional Government of Liberia
PPCA	Public Procurement and Concessions Act
PPCC	Public Procurement and Concessions Commission
RWI	Revenue Watch Institute
SES	Senior Executive Service
TOKTEN	Transfer of Knowledge Through Expatriate Nationals
UNDP	United Nations Development Programme
USAID	United States Agency for International Development

Executive Summary

1. Introduction

The Government of President Ellen Johnson Sirleaf faced extraordinary expectations, and enormous security and economic challenges when it came into office on January 16, 2006. As part of the Government's larger plans to ensure Liberia's transition to democracy, reduce poverty and spur economic growth, President Sirleaf announced soon after taking office that her Government would review all of the country's concession agreements.

Her announcement was supported by the Governance and Economic Management Assistance Program for Liberia ("GEMAP")[4]; an agreement the National Transitional Government of Liberia ("NTGL") signed in September 2005 with Liberia's international partners and donors to, among other things, review all contracts signed by the NTGL between 2003 and 2006. Under GEMAP, the Mittal Steel Holdings N.V. ("ArcelorMittal") and Firestone Natural Rubber Company LLC ("Firestone") concession agreements, signed in 2005 by the NTGL, were both subject to review by Liberia's Public Procurement and Concessions Commission ("PPCC").

By mid-2006, given the slow start to the GEMAP mandated contract review by the PPCC and, driven by a desire to respond quickly to the high expectations and immense needs of a post-conflict Liberia, the Government began a separate and independent fast track review of the ArcelorMittal and Firestone contracts; the country's two largest concession agreements. The fast track review and negotiating practice adopted by the Government resulted in amended agreements with both ArcelorMittal and Firestone that provided significant gains for Liberia over the original concession agreements signed by the NTGL.

The ArcelorMittal amended agreement had some 30 improvements over the original contract; the Firestone amendment had nearly 40 improvements. These improvements covered gains in transfer pricing, taxes, duties, the agreement term, corporate governance, infrastructure ownership, value-added manufacturing, sovereignty issues, environmental matters and, most important, gains in social benefits (e.g., housing, water and sanitation, education, requirements for Liberian employment and training, and community obligations beyond the concession area).

Both amended agreements resulted in increased investment in Liberia and created new and/or additional jobs for the country.

The ArcelorMittal and Firestone amendments were generally accepted by the Liberian public, ratified by the Liberian National Legislature and have received the support of donor nations, the WorldBank/IMF and international civil society. ArcelorMittal and Firestone have both expressed satisfaction with the outcome of the negotiation process and, following the signing of its amended agreement, the Chairman of ArcelorMittal increased the company's investment in Liberia to $1.5 billion from $1.0 billion citing a renewed partnership with the Liberian Government. The Government has widely cited the re-negotiations of the ArcelorMittal and Firestone contracts as proof of investor confidence that Liberia is "re-opened for business." Liberia's successful negotiations with ArcelorMittal and Firestone have caught the attention of other African governments seeking to maximize value from concession agreements covering their natural resources.

The practice used in the ArcelorMittal and Firestone negotiations is generally understood within the Government, but it has not been studied and documented. In order to develop a more consistently followed negotiating process made up of best practices, the Office of the President, through the Liberian Reconstruction and Development Committee ("LRDC"), asked the Report Team headed by the Senior Legal Advisor, Office of the President and funded by Revenue Watch Institute ("RWI"), to prepare a Report documenting and analyzing the process the Government used to re-negotiate the ArcelorMittal and Firestone agreements.

The LRDC asked the Report Team to identify the factors that led to successful re-negotiations and to examine the practice's transparency and consultative characteristics. The Report Team was also asked to make recommendations on harmonizing the practice used in the ArcelorMittal and Firestone negotiations to the concession negotiating process required by Liberia's Public Procurement and Concessions Act of 2005 ("PPCA"). The LRDC asked the Report Team to comment on the negotiating practice used by Government, specifically the Ministry of Lands, Mines and Energy ("MLME") and the Ministry of Agriculture ("MOA") in negotiations following those with ArcelorMittal and Firestone in order to determine what lessons from these negotiations could be learned. Lastly, the LRDC asked the Report Team for recommendations to further the Government's post-signature concession/investment contract monitoring and compliance efforts.

The Report Team gathered in Monrovia and, starting on May 17, 2008, met with a wide range of people, both in and outside Government, to further its understanding of these questions. (A complete list of all the persons the Report Team interviewed is attached as Appendix I to the full Report.)

The full Report documents what the Report Team learned and includes analyses and recommendations for institutionalizing, harmonizing, and strengthening the practice the Government employed in the ArcelorMittal and Firestone negotiations. The Report Team has organized the full Report in the following manner: In Section 2, the Report Team provides the historical back-

ground that influenced the negotiating practice the Government used in the ArcelorMittal and Firestone negotiations. Sections 3 and 4 describe the ArcelorMittal and Firestone negotiations and their outcomes. Section 5 analyzes the factors that made the negotiating practice used in the ArcelorMittal and Firestone negotiations successful and makes recommendations for institutionalizing those factors. In Section 6, the full Report examines the transparency and consultative nature of the negotiating process used in the ArcelorMittal and Firestone negotiations and makes recommendations for improvements. In Section 7 the negotiating practice used in the ArcelorMittal and Firestone negotiations is compared to the concession negotiation process under the PPCA. In this Section, the current concession negotiating practice at the Ministry of Lands, Mines and Energy and the Ministry of Agriculture are reviewed and recommendations are made to harmonize the negotiating practice used in the ArcelorMittal and Firestone negotiations with the PPCA. Section 8 suggests steps the Government can take to strengthen its ability to monitor and ensure compliance with the terms of its concession agreements. Section 9 concludes the Report.

2. The GEMAP Contract Review Process and the Government's Negotiations with ArcelorMittal and Firestone: Background and History

This section of the full Report explores how the Government's negotiating practice and success in the negotiations with ArcelorMittal and Firestone was influenced by the GEMAP review of concession agreements signed by the NTGL. It also provides the historical context and background for GEMAP and takes a look at the contract review process it mandated.

In June 2006, President Sirleaf launched a separate and independent contract review and negotiating process concurrent with the GEMAP-mandated Contracts and Concessions Review Committee ("CCRC") to fast track review and renegotiation of the ArcelorMittal and Firestone agreements. At that time the CCRC review process was still in the early stages of being deployed. Unlike the CCRC contract review process under GEMAP, the Government's fast track process involved only Government officials and their technical advisors and did not formally include representatives from Liberia's International Partners and civil society. The fast track process, through the creation of an Inter-Ministerial Concession Committee ("IMCC") [2]and negotiating team reporting directly to the President and her Cabinet, was led by Government Ministers and took place in parallel with the separate GEMAP- mandated CCRC review of the ArcelorMittal and Firestone agreements and other NTGL signed concession contracts.

The CCRC process yielded consensus among Liberia's International Partners, civil society and Government that the Government should re-negotiate the ArcelorMittal and Firestone contracts. This consensus helped to insulate from international pressure the Government's decision to move forward with its own review and renegotiation of the ArcelorMittal and Firestone agreements. Investor acceptance and international support for the Liberian Government's decision to re-negotiate the ArcelorMittal and Firestone concession agreements was linked to, and benefited

from, the international support for the GEMAP mandated review process of concession agreements signed by the NTGL.

It is important to note that the GEMAP-mandated review of contracts was not primarily driven by the Government's attempt to benefit from windfall profits received by investors as a result of record high global prices for natural commodities produced by Liberia. Instead the CCRC's review of NTGL contracts was largely driven by Government and international concern at the mismanagement of public finances under the NTGL. The Government's fast track review of the ArcelorMittal and Firestone contracts not only sought to address concerns over the mismanagement of public finances under the NTGL, but also to address the immense social and economic needs of Liberia's post-conflict society.

3. The ArcelorMittal Negotiations

The Government's decision in early 2006 to review and renegotiate the ArcelorMittal concession was risky. The company operating then as Mittal Steel Holdings NV had less than a year earlier—on August 17, 2005—signed a Mineral Development Agreement ("MDA") with the NTGL for the exclusive right and license to explore, develop, produce and market iron ore and associated minerals in the concession area formerly granted to the Liberia American-Swedish Minerals Company ("LAMCO") in a Mining Concessions Agreement dating back to 1960. The ArcelorMittal MDA was the first significant foreign investment in Liberia in more than 20 years and ArcelorMittal's promise of almost $900 million in new investment was badly needed in post-conflict Liberia and signified hope for a better future.

The Government's preparation for review of the ArcelorMittal MDA began in earnest in June 2006 when the President convened an IMCC to review the agreement separately from the ongoing but slower moving CCRC review process. The IMCC was tasked with conducting the review of the ArcelorMittal contract and preparing a report for the President recommending necessary changes. During its review the IMCC received technical assistance from a number of advisors both inside and outside the Government. Unlike the CCRC review process there was no formal mechanism for including the views of non-governmental stakeholders. Largely due to the accessibility of the President, the Government, however, did engage in informal consultations with non-government actors during the IMCC contract review process.

By the first week of August 2006, the IMCC had delivered its report on the MDA to the President. While the report was not specifically marked confidential, it was not viewed as a public document but as a negotiation tool setting out the Government's concerns with the MDA. On August 28, 2006 the CCRC delivered its report on the MDA. The CCRC report supported the Government's decision to renegotiate the ArcelorMittal MDA and concluded, among other things, that the contract ArcelorMittal signed with the NTGL did not conform to Liberian law (e.g., PPCA) at the time of its execution and was not in the country's best interest. The report recommended that the Government consider renegotiating the agreement instead of canceling

it—as cancellation would likely lead to lengthy and costly arbitration. With the CCRC report in hand and the IMCC contract review completed, the President appointed the Government's team for negotiations with ArcelorMittal.

As the Government team readied itself for its initial negotiation with ArcelorMittal, there was significant discussion within the team and among its advisors (e.g., ISLP, LRDC) on the appropriate strategy to use. There were differing views on how aggressive the Government should be in seeking changes to the ArcelorMittal MDA. The team and its advisors were concerned that if the Government pushed too hard or appeared unreasonable in its demands for changes in the MDA, ArcelorMittal would choose to arbitrate instead of negotiate.

The parties agreed to meet in New York in September to begin substantive negotiations. Two factors drove the Government's choice of New York as the venue for the ArcelorMittal negotiations: 1) it was felt that the negotiating team would contend with fewer interruptions in New York and so negotiations would be more efficient; and, 2) the Government's advisors, primarily the legal team from Cravath, was only available in New York. Having the discussions in New York also increased the Government's chances of maintaining a shield of confidentiality around the negotiations. The Government and its technical advisors felt that negotiations conducted through the press would make it harder if not impossible for the Government to reach agreement with ArcelorMittal.

The Government and its advisors decided as a matter of strategy to force the conversation on all Term Sheet issues to be between the Government's lead negotiator and ArcelorMittal's business representatives. Even when ArcelorMittal's lawyers asked a question, the Government's response was to be directed to the company's business people. This was done to avoid getting bogged down in technical legal discussions and allow the parties to reach broad understanding necessary to complete an amended contract. This strategy worked very well because ArcelorMittal had a strong and experienced business team that did not simply defer to the company's lawyers.

Consensus-building within the negotiating team was also an important strategy used by the Government's team to handle critical decisions at various points during the negotiations with ArcelorMittal. To accomplish this, the team agreed that none of its members would speak during the negotiation sessions without first obtaining the permission of the person acting as Chairman of the team for that session. When it became clear during a negotiation session that there might be differing views on the appropriate Government response to a position adopted by ArcelorMittal the Chairman of the negotiating team requested a break and the Government team retreated to a separate room to sort out its position. The negotiating team's discussions were aided by input from its technical advisors. Eventually a decision was reached that all members of the team felt they could support. At that point, the team returned to the negotiations with ArcelorMittal.

Escalation was also used effectively by the Government's negotiating team to break through negotiation deadlock with ArcelorMittal or to finalize internal consensus on a strategic compromise point. The Government team escalated a number of issues to the President for her input and direction.

There were three negotiation rounds between the Government's team and ArcelorMittal in New York. A final round of negotiations was held in Monrovia at the end of December. On December 8, 2006, the parties signed a final confidential Non-Binding Protocol, which provided that the draft amendment to the MDA attached to the Protocol reflected the final agreement between the parties on all issues raised in connection with the Government's review of the MDA. The parties also agreed to meet in Monrovia on December 18, 2006 to finalize the applicable tables for rates associated with ArcelorMittal's custom and duty obligations and to sign the amended MDA. The parties met in Monrovia to finalize appendices to the Agreement. That was quickly done but then ArcelorMittal raised a concern about the withholding tax provisions on contractors and consultants in the proposed draft MDA amendment.

On December 23, 2006, ArcelorMittal's Chairman, Lakshmi Mittal, sent the President an email to try and close a growing gap on the withholding tax provisions between the company and the Government. After direct discussion between the President and Mittal's Chairman on this issue and advice from the Government's technical advisors, the parties settled the withholding tax matter. The Amended ArcelorMittal MDA was signed by both parties on December 28, 2006. The Government subsequently submitted the Agreement to the Legislature. It was ratified by both the House and Senate on April 27, 2007 and subsequently signed by the President.

As part of the ratification process, the Amended MDA was printed into handbills and made a public document. The amended contract was also presented to the National Legislature by the negotiating team in a public hearing that was broadcast on live radio. At the hearing, the Legislature heard from a wide range of stakeholders including company representatives and civil society. The Amended MDA was also the subject of significant media coverage both domestic and international. After several months of debate, the National Legislature ratified the Amended MDA. While the Agreement is indeed public, it is not easily accessible (e.g. posted on a website) like the document, *Summary of the Main Changes Brought About by the Review of the Mittal Mineral Development Agreement* ("Mittal Summary of Changes"[3]); which is posted on the Executive Mansion's website and highlights the gains the Government made in the Amended MDA over the 2005 MDA.

The Mittal Summary of Changes highlights the gains the Government achieved in infrastructure ownership, transfer pricing, debt to equity ratio, withholding taxes, royalty calculation, income taxation, import duties, corporate governance, upfront payment to the Government, sovereignty, social benefits, and environmental protections.

4. The Firestone (Firestone Liberia, Inc.) Negotiations

On April 12, 2005 the NTGL signed a new Concession Agreement with the Firestone Natural Rubber Company, LLC (the "2005 Concession Agreement"). The Sirleaf Government's decision to review this Agreement presented different challenges from its decision to review the ArcelorMittal contract.

Unlike ArcelorMittal, Firestone was an ongoing and fully operational concern with nearly 80 years of doing business in Liberia. It was not a new investor, like ArcelorMittal, motivated to reach agreement to lock-up a much sought-after natural resource in light of climbing commodity prices on the world market. Adding to the challenges the Government faced in its decision to review the 2005 Concession Agreement was the fact that, next to the Government, Firestone is Liberia's largest employer providing nearly 4000 jobs to Liberians—employment critical to maintaining peace and stability in the post-conflict country. The Government recognized that, even with international support for its decision to review the 2005 Concession Agreement, Firestone had little incentive to agree to significant changes to the contract.

In mid-2006, the President convened an IMCC to review the 2005 Concession Agreement and report back to her with recommendations. The review by the Firestone IMCC, like the one conducted by the ArcelorMittal IMCC, was done in parallel with the separate CCRC review of the 2005 Concession Agreement. As in the case with ArcelorMittal, the Government's goal was to fast track review of the Agreement in order to meet critical timelines of the Government's national economic recovery program. The IMCC completed its review and submitted its report to the President. Like the report by the ArcelorMittal IMCC, the report from the Firestone IMCC, while not specifically marked confidential, was viewed as a negotiation tool setting out the Government's concerns with the 2005 Concession Agreement and was not a public document. When the CCRC submitted its report, it also recommended that the Government re-negotiate the contract with Firestone.

In January 2007, with the ArcelorMittal negotiations done, the President constituted the Government's team for the Firestone negotiations. On February 9 and 10, 2007 the negotiating team met with its advisors in Washington, D.C. to finalize the draft Summary of Principal Terms. At this stage, the Government and its technical advisors felt that strict confidentiality was absolutely necessary if the Government was to succeed in its bid to re-negotiate the 2005 Concession Agreement. Given the complex relationship with Firestone, everyone acknowledged that negotiations conducted through the press would make it harder if not impossible for the Government to achieve its objectives.

While Firestone agreed to participate in the meetings, the company was holding to its position that the 2005 Concession Agreement was valid and not subject to review outside the terms of the contract. The negotiating team decided to counter Firestone's position by arguing that the Government had the right, beyond its broad mandate under GEMAP to review all NTGL contracts, to seek changes to the 2005 Concession Agreement under the terms of the Agreement itself.

During the negotiations the Government's team used the same strategy employed in the ArcelorMittal negotiations to build consensus. The team agreed that when it became clear during a negotiation session that there might be differing views on the appropriate response to a position adopted by Firestone, the Chairman of the team would request a break in the negotiations and the Government would retreat to sort out its position. The team also used escalation as negotiating strategy much like the team that negotiated with ArcelorMittal. For example,

on several occasions the negotiating team briefed the President and sought her advice on their discussions with Firestone on fiscal and value-added manufacturing matters.

The Government and Firestone held six formal rounds of negotiations and on November 14, 2007, the parties reached final agreement on all substantive issues that had emerged in connection with the Government's review of the Firestone 2005 Concession Agreement. The agreement and all of its appendices were submitted for final review and approval to the Cabinet and to Firestone's Board for similar review and approval. Those reviews produced a number of additional changes that were later incorporated.

The Government and Firestone signed the Amended & Restated Concession Agreement on February 22, 2008 ("2008 Concession Agreement") at a signing ceremony in Monrovia at the Ministry of Agriculture.

Like the Amended ArcelorMittal MDA, the 2008 Concession Agreement with Firestone was presented to the National Legislature by the negotiating team in a public hearing that was broadcast on live radio. At the hearing, the Legislature heard from a wide range of stakeholders including company representatives and civil society. The amended contract was also the subject of significant domestic and international media coverage. As part of the ratification process, the 2008 Concession Agreement was printed into handbills and made a public document. After several months of public and closed-door debates, the amended agreement was ratified by the National Legislature and signed by the President into law on March 31, 2008.

While the 2008 Concession Agreement is public, it is not easily accessible (e.g. posted on a website) like the document, *Summary of the Main Changes Brought About by the Government of Liberia's Review of the 2005 Concession Agreement with Firestone Liberia, Inc.* ("Firestone Summary of Changes"[4]); which is posted on the Executive Mansion's website and highlights the gains the Government made in the 2008 Concession Agreement over the 2005 Concession Agreement.

The Firestone Summary of Changes document highlights the Government's contract gains in the general applicability of Liberian tax laws to Firestone under the 2008 Concession Agreement, other taxes and duties, transfer pricing, value-added manufacturing, social benefits, and, length of the contract term.

5. The Negotiating Practice used in ArcelorMittal and Firestone: Analysis and Recommendations

Liberia's success in recent re-negotiations of the ArcelorMittal and Firestone contracts can be attributed to several factors: 1) engaged leadership that managed the negotiation process and permitted a clear and direct reporting line from the negotiating teams to the ultimate decision maker; 2) negotiating strategies that supported collaborative and consensus-building efforts of the core negotiating team; and, 3) technical capacity and resources available to the negotiating

team through the integration of world-class advisors at every significant stage of the negotiation process.

To ensure that the Government's negotiating practice produces similar gains in ongoing and future concession negotiations, the Government should institutionalize these factors by: 1) maintaining a clear and direct reporting line to the ultimate decision maker from all negotiating teams; and, 2) strengthening its efforts to grow and scale its own capacity to lead, manage and negotiate complex investment agreements through professional development and training; recruitment; and, education.

The Government can also improve the practice used in the ArcelorMittal and Firestone negotiations by increasing its transparency through the development of formal: 1) mechanisms that require the negotiating team to gather input from non-government stakeholders affected by concession activity; and, 2) policies and regulations governing the public's right to access concession agreements.

Engaged Leadership: President Sirleaf's leadership in the ArcelorMittal and Firestone negotiations was key to the success Liberia achieved. From the beginning of the process, the President managed the negotiating process and allowed a direct reporting line from the Chairman of the negotiating team to herself. Among other things, President Sirleaf: 1) clearly communicated a vision of national priorities to the nation and investors; 2) prioritized concession review by demonstrating an understanding of the national interests and how the operation of a given concession fits into Liberia's national framework (i.e., political, economic and social needs); 3) selected a negotiating team composed of individuals with diverse skills and knowledge; 4) permitted a clear and direct reporting line between herself and the negotiating team; 5) adjusted the size of the core negotiating team as necessary to maintain the integrity and pace of the negotiations; and, 6) empowered and supported the negotiating team by attracting and soliciting technical assistance from appropriate world-class experts in a manner that nurtured a personal commitment by these advisors to the success of the Government's negotiations

The President's leadership in the ArcelorMittal and Firestone negotiations displayed her consistency, integrity (the negotiation team knew they could count on her backing if needed); and involvement. She sought updates, listened to the negotiating team and its advisors, was accessible, was a consensus builder, held people accountable, had substantive knowledge of the issues being negotiated, and was decisive. These leadership characteristics allowed the President to both lead and manage the many players, issues and dynamics during the politically charged atmosphere surrounding the ArcelorMittal and Firestone negotiations.

Collaborative Teamwork: The teamwork of the Government's teams in the ArcelorMittal and Firestone negotiations was an essential element to the success of the negotiation process. The negotiating teams represented a broad cross-section of professional and experiential viewpoints and consensus-building often required the negotiating team to do the hard work of bringing their diverse views, skills and experience together to forge unified Government positions. In both the ArcelorMittal and Firestone negotiations, the team members felt a personal need to

"get it right," driven by a sense that they were going to be held accountable for their positions on the issues by the President, and were ultimately answerable to the Legislature and the people of Liberia. The negotiating team's consensus- building and collaborative efforts involved: 1) initial intense discourse, at times difficult, but essential to the process of building communication and trust; 2) recognition by members of the team that they had been picked by the President to bring particular expertise to the table; 3) development of a clear understanding of each other's positions, strengths, and value to accomplishing the Government's negotiating objectives; and, 4) understanding that issues on which no consensus could be reached on certain key compromises were to be raised to the President with the team's recommendations for final decision.

This process of consensus building and collaboration by the ArcelorMittal and Firestone negotiating teams was aided by the strategies the teams employed during negotiations. For example, none of the members of the negotiating team would speak during the negotiation sessions without first obtaining the permission of the person acting as Chairman of the team for that session. When it became clear during a negotiation session that there might be differing views among members of the negotiating team on the appropriate Government response, the Chairman of the negotiating team requested a break in the negotiations and the Government team retreated to a separate room to sort out its position. This focus on consensus-building and collaboration resulted in shared ownership of the final contract terms by team members, enabling the negotiating team to defend the contracting positions they had adopted before all stakeholders (i.e., the President, Legislature, and Liberian public).

World-class Technical Assistance: The Government's use of top technical advisors in the ArcelorMittal and Firestone negotiations was essential to the gains Liberia experienced. During the negotiations, these advisors prepared and empowered the IMCC negotiating team. Liberia's advisors armed the Government's negotiating team by educating them on the issues, providing recommendations on negotiation strategy, and suggesting options and drafting language for resolving conflicts. Using the latest tools and technologies, and with the resources of some of Americas best law firms (e.g., Cravath in ArcelorMittal and Hogan & Hartson in Firestone) at their disposal, the Government's advisors were able to provide the negotiating team a 24 by 7 support infrastructure.

Throughout the process in both the ArcelorMittal and Firestone negotiations, the role of the Government's technical advisors was clear. They were advisors to the Government's negotiating teams; they were not on the Government's negotiating teams nor were they negotiators for the Government. The advisors limited themselves to providing advice and support to the Government's negotiating teams. The Government's teams were responsible for all of the negotiations with ArcelorMittal and Firestone.

Support to the Government's negotiating teams provided by their technical advisors included: 1) drafting and preparing all documents, researching and framing issues to represent the Government's position, consulting with other experts to bolster the Government's positions, and modeling financial projections of the impact to changes in the Government's positions; 2) helping the Government find viable compromises to difficult issues and apparent 'deadlock'

situations by using knowledge and experience gained over long careers of negotiating similar transactions; 3) providing the Government an objective measure to balance views from both members of the Government's negotiating team and the companies; and, 4) facilitating discussion among the Government's team members to clarify the implications of proposed positions.

Recommendations: To ensure similar gains in ongoing and future concession negotiations, the Government should institutionalize the benefits of leadership, teamwork and technical assistance. It can do this by growing and scaling its own capacity to lead, manage and negotiate complex investment agreements.

While Liberia has experienced significant gains through the Government's successful re-negotiations of the ArcelorMittal and Firestone contracts, the leadership and teamwork in the negotiating process occurred at the highest levels of Government. Additionally, external technical assistance was required to close and fill existing gaps in the Government's capacity to negotiate complex agreements. A negotiating process supported by the highest levels of Government and international technical assistance is not scalable. As Liberia seeks to attract greater international investment to spur the country's economic development, it will need to grow its ability to negotiate complex investment agreements beyond its top officials and external technical advisors.

The Government can grow its capacity for the negotiation of complex investment agreements through: 1) mentoring, professional development and training programs for current Government employees involved in contract negotiations; 2) recruitment of Liberians both locally and from the Diaspora who have the experience to support the Government's concession activity; and, 3) providing scholarships and practical training abroad for Liberians who are pursuing careers that can support the infrastructure the Government will need to manage its concession agreements.

To accomplish these steps, the full Report recommends a three-fold, concurrent approach that addresses both the Government's short-term needs and the longer-term capacity needs. The recommended three-fold approach includes: 1) Short-term: mentoring, professional development and training programs; 2) Medium-term: Recruitment of Liberians both locally and from the Diaspora to support the Government's concession activity; and 3) Long-term: Providing scholarships and extended practical training abroad for Liberians pursuing careers that will support the Government's concession activity.

6. Increasing the Transparency of Concession Negotiations

Non-governmental Consultations: The Mittal and Firestone fast track negotiation process had no formal mechanisms for consultation with non-government stakeholders.

Interviews with Government officials highlight the absence of a framework for incorporating non-government stakeholders' input into the IMCC contract review process. A majority of government officials—including the President—are favorable to consultations with non-governmental stakeholders as long as they are time-bound, focused and organized at the outset of the contract

review phase. Under such an approach consultations with non-government stakeholders should take place early in the concession award process as part of the bid tender, evaluation, or award process. If there have been no consultations with non-governmental stakeholders as part of the process to select the concessionaire, then a time-bound and focused consultation at the outset of the concession contract review phase is advisable.

The development of a non-governmental stakeholder consultation mechanism for the contract review process should be done as part of the Government's harmonization of the PPCA with the negotiation practice used in ArcelorMittal and Firestone. Prior to finalizing such a mechanism, input and comments should be sought from non-governmental stakeholders (e.g., traditional community representatives, civil society, labor unions, etc.).

Making Concession Agreements Accessible to the Public: Contracts negotiated by the Government often have tremendous impact on the political, social and economic life of communities affected by the operation of these agreements. Recognizing the impact of these concession agreements, the Government committed to transparency and freedom of information by making the ArcelorMittal and Firestone agreements public documents. There seems, however, to be some confusion within the Government about its obligation to make admittedly public documents accessible.

Most of the Government officials interviewed felt that contracts signed by the Government *but* not subject to ratification (e.g., qualifying investment incentive contracts or mining exploration agreements) are not public documents and should not be made available to the public.

The Government will need to address two issues to further promote transparency: 1) to make ratified concession agreements accessible, the Government must find a cost-effective means of providing public access. This can be done by posting contracts like the ArcelorMittal and Firestone contracts on appropriate Government websites; and, 2) the Government should, as a policy matter, clarify its position on making contracts public that are not subject to Legislative ratification. The Report recommends that the Government make such contracts accessible to the public as part of future freedom of information legislation that the Government may enact.

7. Contrasting the Fast Track Negotiations to the Negotiating Practice under the Public Procurement Concessions Act

The negotiating practice the Government successfully used in the ArcelorMittal and Firestone negotiations differs from the concession negotiation process in the PPCA in a number of significant ways. This section of the full Report contrasts these differences. Section 7 also compares the negotiating practices of the Ministry of Agriculture and the Ministry of Lands, Mines and Energy to the practices employed in the ArcelorMittal and Firestone negotiations. Finally it highlights the differences between the negotiating process in the 2000 Mining Law and the negotiating practice used in ArcelorMittal and Firestone and set out in the PPCA.

The Section concludes by recommending the Government resolve the differences between the various negotiation processes by amending the PPCA to incorporate best practices from the negotiations with ArcelorMittal and Firestone. The Government has followed a similar route by amending the Liberian tax code (e.g., the 2000 Revenue Code of Liberia) to capture the substantive fiscal benefits of the ArcelorMittal and Firestone negotiations.

For comparisons between the concession negotiation process in the PPCA and the practices used by the MOA and MLME in the ArcelorMittal and Firestone negotiations, please see Table 3 (Chapter 7, p. 72).

Recommendations: To institutionalize the factors that produced success in its recent negotiations, the Government will need to apply those best practices to the various negotiation processes that currently exist. In order to bring the PPCA, the 2000 Mining Law, and the practices used by the MOA and the MLME into line, best practices from the ArcelorMittal and Firestone negotiations should be applied in the areas of: 1) process for constituting the negotiating team; 2) composition of the negotiating team; 3) composition, operation and function of the IMCC; and, 4) process for consultation with non-governmental stakeholders.

The Government should have one negotiating practice that all Ministries follow when conducting concession negotiations. This practice should represent best practices from the 2000 Mining Law, the PPCA and the practice used in the ArcelorMittal and Firestone negotiations.

To create a single negotiation process, the Report Team recommends that the Government amend Section VI of the PPCA, *Specific Procedures for Processing Concession Agreements*, using the following steps: 1) convene an IMCC to discuss, study and draft amendments to Section VI of the PPCA; 2) solicit technical assistance from the Government's international advisors; and 3) seek formal input to the draft amendment from non-governmental stakeholders before submitting it to the Cabinet.

8. Concession Agreement Monitoring and Compliance

In this section, the Report Team observes that, in order to achieve full benefit from the concession contracts it negotiates, the Government will have to monitor and ensure compliance with the terms of its concession agreements.

Exactly how the Government should accomplish its monitoring and compliance efforts is a topic for a separate study. However, the full Report offers a number of recommendations on how the Government might enhance its ability to monitor and ensure compliance with its concession agreements: 1) centralize concession resources in a single secretariat or bureau; 2) expand the mandate, authority, staff, resources and funding of the current Bureau of Concessions; 3) elevate the Bureau's stature, position, and reporting structure; and 4) develop a concession contract process and legal framework that includes and supports the work of the Bureau.

The Report Team suggests that the Government combine its study on strengthening its ability to monitor and ensure compliance with the provisions of its concession agreements, with its work on bringing all its negotiation processes into line with best practices. This will ensure that a comprehensive look is taken at Liberia's entire concession contract process. Through such a study, the roles and functions of the Bureau of Concessions and the various ministerial committees and bid panels involved in the concession process would be examined in the context of amending the PPCA. If formally requested, the Government's international advisors, (e.g., RWI, UNDP and ISLP) are likely to provide expert technical support for such an effort.

9. Conclusion

The full Report documents the negotiating practice the Government employed so successfully in the ArcelorMittal and Firestone negotiations. Further, it provides analyses and recommendations for strengthening, institutionalizing and harmonizing the process the Government uses in concession negotiations. Finally, the Report offers steps to strengthen the Government's ability to monitor and seek compliance with the terms of its concession contracts.

The Report finds that the significant gains achieved in Liberia's recent re-negotiations of the ArcelorMittal and Firestone can be attributed to several factors: 1) Presidential leadership; 2) teamwork and the development of consensus on the Government's negotiating teams aided by successful negotiating strategies; and 3) world-class technical assistance from the Government's advisors.

For the Government to ensure similar gains in ongoing and future concession negotiations, it will need to: 1) grow and scale its own capacity to manage and negotiate complex investment agreements; 2) have consultations with and input from non-government stakeholders affected by concession activity; and 3) promote transparency by making concession agreements more easily accessible to the public.

To take advantage of its recent successes with the ArcelorMittal and Firestone negotiations, the Government should incorporate its best practices into policy by amending the PPCA. Such changes will not only institutionalize those practices but also ensure that a single concession negotiating process is followed by all Government Ministries and agencies.

Finally, the Report Team suggests that the Government consider strengthening its ability to monitor and seek compliance with the terms of its concession agreements by examining the over-all role the Bureau of Concessions should play in Liberia's concession contract process.

Endnotes

1 See full Report for the List of Acronyms.

2 This Report refers to the Ministerial level committee created by the President to review the contracts in the ArcelorMittal and Firestone negotiations as the Inter-Ministerial Concession Committee ("IMCC").

3 This document is available at: http://www.emansion.gov.lr/doc/MittalAgreementFinalMitrix.pdf.

4 This document is available at: http://www.emansion.gov.lr/doc/FirestoneAgreementComparison20052008.pdf.

1. Introduction

The Government of President Ellen Johnson Sirleaf faced extraordinary expectations, and enormous security and economic challenges when it came into office on January 16, 2006. The challenges the Government faced were a result of Liberia's fourteen-year conflict which ended in 2003.

The conflict, in a country of just over 3 million, resulted in the death of more than 300,000 people and injury to tens of thousands more. Hundreds of thousands became refugees. Institutions of governance and justice were destroyed. Warlords used Liberia as a base from which to smuggle diamonds, trade arms, launder money for global terrorist groups, and support criminal activities that destabilized the country, the region, and beyond.

In addition, Liberia's commercial and productive activities ceased as warlords and their partners looted and vandalized the country. This led to a precipitous decline in incomes and a sharp increase in poverty. Average income (in 2005 prices) declined from $1,269 in 1980 to $163 in 2005, a fall of 87 percent. Unemployment became the norm, further fueling insecurity. Government finances collapsed so far that total revenues amounted to just $80 million in 2005, translating into total public spending per capita of about US$25—one of the lowest levels in the world. Years of mismanagement had left Liberia with debts totaling US$3.7 billion, equivalent to an astonishing 3,000 percent of exports.

As a result of the conflict, when the Government came to power many roads were impassable, further undermining the country's security and chances for economic revival. There had been no electricity, piped water or telephone landlines in the country for more than 15 years. Of the 325 health facilities operating before the war, about 95 percent were partially or wholly destroyed. There were only 50 Liberian physicians to cover the nation's public health needs, about one per 70,000 people. In 2006, about 70 percent of school buildings were partially or wholly destroyed by the war, and the majority of Liberian children and youth remained out of school (Government of Liberia).

It is against this backdrop that President Sirleaf and her Government began their efforts to revitalize Liberia's economy, secure the country's peace, provide much-needed jobs, rebuild the country's infrastructure and restore basic services. As part of these efforts, President Sirleaf announced soon after taking office that her Government would review all of the country's concession agreements.

Her announcement was supported by an agreement the National Transitional Government of Liberia ("NTGL") signed in September 2005 with Liberia's international partners and donors to, among other things, review all contracts signed by the NTGL between 2003 and 2006. This agreement, the Governance and Economic Management Assistance Program for Liberia ("GEMAP"), originated among Liberia's international donors as a response to international concern at the mismanagement of public finances under the NTGL and the threat such mismanagement posed to the implementation of Liberia's peace process. Under GEMAP, the Mittal Steel Holdings N.V. ("ArcelorMittal") and Firestone Natural Rubber Company LLC ("Firestone") concession agreements, signed in 2005 by the NTGL, were both subject to review by Liberia's Public Procurement and Concessions Commission ("PPCC").

By mid-2006, given the slow start to the PPCC's contract review and driven by a desire to respond quickly to the high expectations and immense needs of a post-conflict Liberia, the Government began a separate and independent fast track review of the ArcelorMittal and Firestone contracts, the country's two largest concession agreements. The fast track review and negotiating practice adopted by the Government resulted in amended agreements with both ArcelorMittal and Firestone that provided significant gains for Liberia over the original concession agreements signed by the NTGL.

The ArcelorMittal amended agreement had some 30 improvements over the original contract; the Firestone amendment had nearly 40 improvements. These improvements covered gains in transfer pricing, taxes, duties, the agreement term, corporate governance, infrastructure ownership, value-added manufacturing, sovereignty issues, environmental matters and, most important, gains in social benefits (e.g., housing, water and sanitation, education, requirements for Liberian employment and training, and community obligations beyond the concession area). Both amended agreements resulted in increased investment in Liberia and created additional jobs for the country.

The ArcelorMittal and Firestone amendments were accepted by the Liberian public, ratified by the National Legislature and have received the support of donor nations, the WorldBank/IMF and international civil society. ArcelorMittal and Firestone have both expressed satisfaction with the outcome of the negotiation process and, following the signing of its amended agreement, the Chairman of ArcelorMittal increased the company's investment in Liberia to $1.5 billion from $1.0 billion citing a renewed partnership with the Liberian Government. The Government has widely cited the renegotiations of the ArcelorMittal and Firestone contracts as proof of investor confidence that Liberia is "re-opened for business."

Liberia's successful negotiations with ArcelorMittal and Firestone have also caught the attention of other African governments seeking to ensure that their nations maximize value from concession agreements covering their natural resources. Many of these nations, evaluating the best approach to capture additional value from their concession agreements, are deciding whether to: 1) enact new legislation and/or implement new regulatory schemes; or, 2) re-negotiate their concession agreements on a case-by-case basis. Although shaped by unique facts and its development objectives, Liberia's success in renegotiating its two largest concession agreements offers useful insights to African Governments and a number of African countries (e.g., Guinea, Sierra Leone, and Tanzania) have expressed interest in learning more about Liberia's concession negotiation process.

The negotiating practice used in the ArcelorMittal and Firestone negotiations is generally understood within the Government, but it has not been studied, and there is ambiguity among some in the Government of all of its requirements. In order to develop a more consistently followed negotiating process driven by best practices, the Office of the President, through the Liberian Reconstruction and Development Committee ("LRDC"), asked the Report Team headed by the Senior Legal Advisor, Office of the President and funded by Revenue Watch Institute ("RWI"), to prepare a Report documenting and analyzing the practice the Government used to re-negotiate the ArcelorMittal and Firestone agreements.

The Report provides recommendations for institutionalizing, harmonizing and strengthening the negotiating practice the Government employed in the ArcelorMittal and Firestone negotiations. Further, it offers recommendations to further the Government's post-signature contract monitoring and compliance efforts.

The Report Team gathered in Monrovia and, starting on May 17, 2008, began its meetings, both in and outside of Government, to further its understanding of these questions. Interviews were held with a wide range of officials involved in the concession negotiation process including the President, the heads of all Ministries involved in concession agreements, the CEOs and other representatives of the companies involved in negotiations, technical advisors, and PPCC officials. A complete list of all the persons the Report Team met is attached as Appendix I. Attached as Appendix II is the Questionnaire the Team used in its interviews.

The Report Team sought to answer a number of questions in its work including:

1. What historical factors influenced the negotiating practice the Government used in the ArcelorMittal and Firestone negotiations?
2. How did the negotiating practice in ArcelorMittal and Firestone work?
3. What made the negotiating practice used in ArcelorMittal and Firestone successful, and why? How can it be improved in future concession negotiations?
4. How is the practice used in the ArcelorMittal and Firestone negotiations different from the concession negotiation process under the PPCA? How is it different from the practice currently used by the Ministries of Land, Mines and Energy and Agriculture? What should the Government do to harmonize existing differences?

5. What steps should the Government take to strengthen its ability to monitor and ensure compliance with the terms of its concession agreements?

The Report attempts to answer these questions in the following manner: Section 2 provides the historical background for the negotiating practice the Government used in the ArcelorMittal and Firestone negotiations. Sections 3 and 4 describe the negotiations with ArcelorMittal and Firestone respectively, and their outcomes. Section 5 analyzes the factors that made the negotiating practice used in the ArcelorMittal and Firestone negotiations successful and makes a number of recommendations for capturing and institutionalizing those factors. Section 6 examines the transparency and consultative nature of the ArcelorMittal and Firestone negotiations and makes recommendations for improvements. In Section 7, the practice used in the ArcelorMittal and Firestone negotiations is compared to the concession negotiation process under the PPCA. In this Section, the current concession negotiating practice at the Ministry of Lands, Mines and Energy and the Ministry of Agriculture are reviewed and recommendations are made to harmonize the negotiating practice used in the ArcelorMittal and Firestone negotiations with the PPCA. Section 8 suggests steps the Government might take to strengthen its ability to monitor and ensure compliance with the terms of its concession agreements. Section 9 concludes the Report.

2. Background

2.1 Introduction

International support for the GEMAP review of contracts signed by the interim government helped secure ArcelorMittal and Firestone's cooperation. The GEMAP review occurred in parallel with the Government's separate fast track review of the ArcelorMittal and Firestone agreements, and influenced the negotiating strategy the Government adopted. This Section discusses the historical context for GEMAP and the contract review process it mandated. Section 2 also explores how the Government's negotiating practice and success in the negotiations with ArcelorMittal and Firestone were assisted by GEMAP.

2.2 Liberia's Review of Contracts Signed by the National Transitional Government of Liberia under GEMAP

GEMAP has its roots in the Comprehensive Peace Agreement ("CPA") that Liberia's warring factions signed in Accra on August 18, 2003, with the urging and support of Liberia's international partners. Among its provisions, the Peace Agreement created the Contract and Monopolies Commission ("CMC") to *"...ensure that all public financial and budgetary commitments entered into by the National Transitional Government of Liberia ("NTGL") [were] transparent, non-monopolistic and in accordance with the laws of Liberia and internationally accepted norms of commercial practice."* Liberia's international partners and Liberian civil society called for the creation of the Commission to stem the endemic corruption and lack of financial control that existed in Liberia's public procurement and contracting pre-NTGL.

The effectiveness of the Contract and Monopolies Commission was limited however by delays in adopting a regulatory framework for its operations. Concerned that the CMC had failed and that corruption and mismanagement of public finance continued unabated under the NTGL, Liberia's international partners began discussions with the NTGL on GEMAP[1]. In September 2005, the NTGL and the United Nations; World Bank; European Union; International Monetary Fund;

Governments of Ghana, Nigeria, and the United States; Economic Community of West African States; and the African Union ("Liberia's International Partners") signed GEMAP. Among other things, GEMAP mandated the review of all contracts and concessions entered into by the NTGL (i.e., contracts and concessions entered into between October 14, 2003 and January 16, 2006). Concurrent with the signing of GEMAP, Liberia's National Transitional Legislative Assembly enacted the Public Procurement and Concessions Act ("PPCA") on September 8, 2005. Under its provisions, the CMC ceased to exist on the inauguration of Liberia's democratically elected government.

When President Sirleaf assumed office on January 16, 2006 she pledged that her Government would support the international community's call for a review of NTGL contracts and concessions under GEMAP. In May 2006, the Government and its international partners finalized a Guiding Framework for the Review of NTGL Contracts and Concessions ("Framework") under the auspices of GEMAP. The Framework (see Appendix III) called for the Government to convene a Contracts and Concessions Review Committee ("CCRC") with the mandate to review all NTGL contracts and concessions.

The Contracts and Concessions Review Committee was to report findings to the GEMAP Technical Committee ("GEMAP–TS") and finally to the Economic Governance Steering Committee ("EGSC") headed by President Sirleaf. The EGSC and the GEMAP–TS were made up of representatives from the Government, Liberia's International Partners and civil society. To support the contract review process and conduct its procurement reform work, the Public Procurement and Concessions Commission ("PPCC"), the successor to the now defunct Contract and Monopolies Commission, received a $1.5 million grant from the World Bank.

The President appointed the Chairman of the PPCC as Chair of the CCRC. Other members of the CCRC were representatives from the Ministry of Justice, Liberia National Bar Association, Liberia Chamber of Commerce and an internationally recruited contracts and concessions expert who also served as the team lead for the CCRC Technical Secretariat ("CCRC–TS").

The CCRC–TS was responsible for the actual review of NTGL contracts and concessions and at various times included four international lawyers funded by the World Bank, USAID and the United Nations, and for four months a Liberian lawyer funded by USAID. The CCRC–TS also received pro-bono legal support from the International Senior Lawyers Project ("ISLP") and six law students from Columbia Law School in New York. It had a number of industry experts at various times and, in addition to the team lead, had a full-time staff of three. The CCRC–TS staff was paid competitive salaries in order to attract quality candidates.

The CCRC–TS began its work on June 25, 2006. The public was notified of the CCRC's mandate to review contracts signed by the NTGL, and efforts were made through the local media and Internet to solicit contractors and concession holders to bring forward their contracts for review. In the end, 105 NTGL contracts and concessions were identified, and of those the CCRC–TS reviewed 95 agreements. Seven agreements had no written contracts and 3 telecommunications licenses[2] were set aside for later review because no industry expert was available.

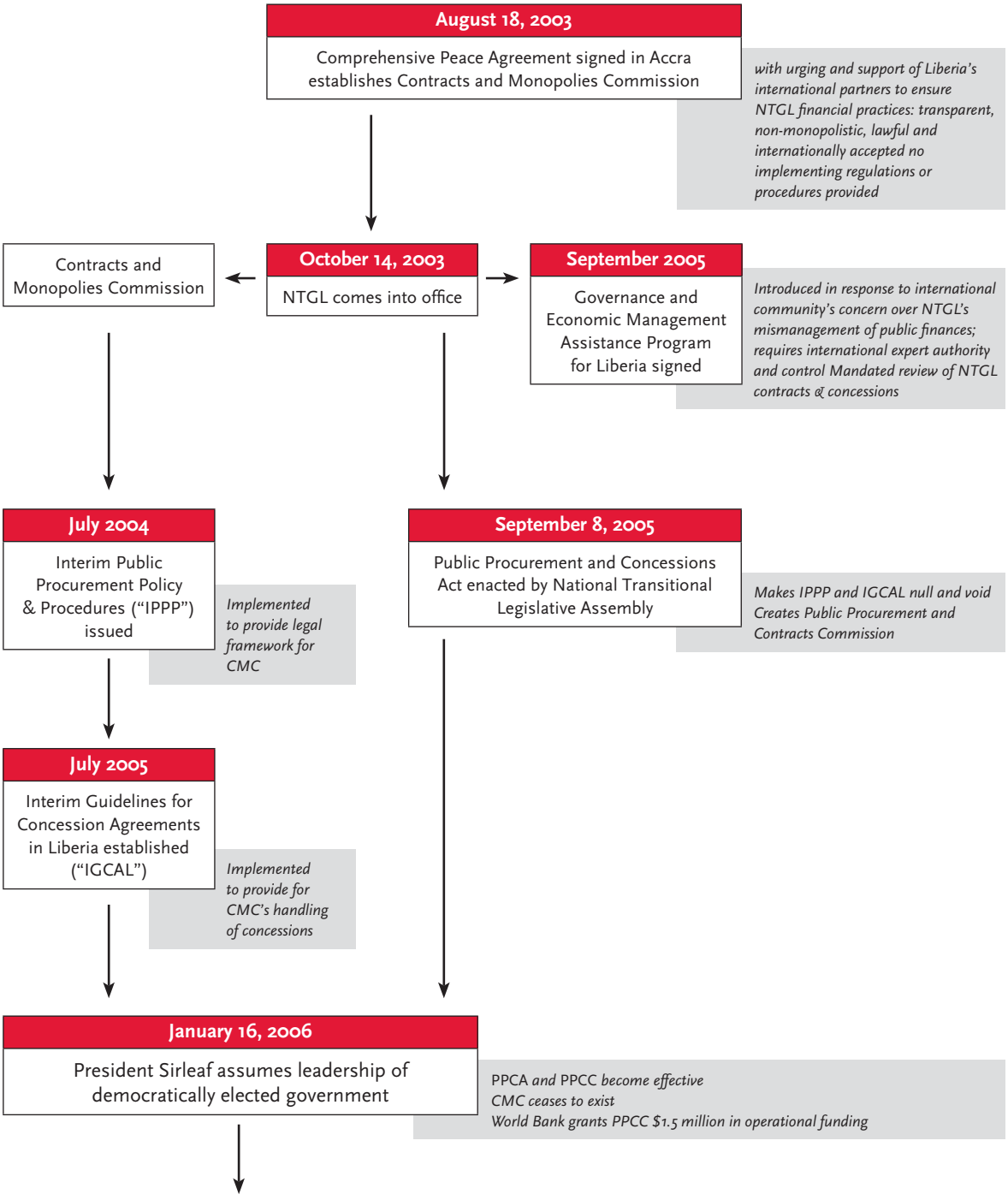
The CCRC used the following criteria to determine the validity of contracts: 1) contract award (e.g. Is the contracting company a bona fide legal entity? Was there an open, advertised tender?); 2) contract technical consideration (e.g., Is the contract clear in the terms and obligations of the parties? Are there penalty and performance clauses?); 3) contract performance (e.g., Did both parties perform their obligations under the contract?); and, 4) contract economic evaluation (e.g., Did Liberia get a fair value on the contract? Is the contract term appropriate, considering local circumstances?).[3]

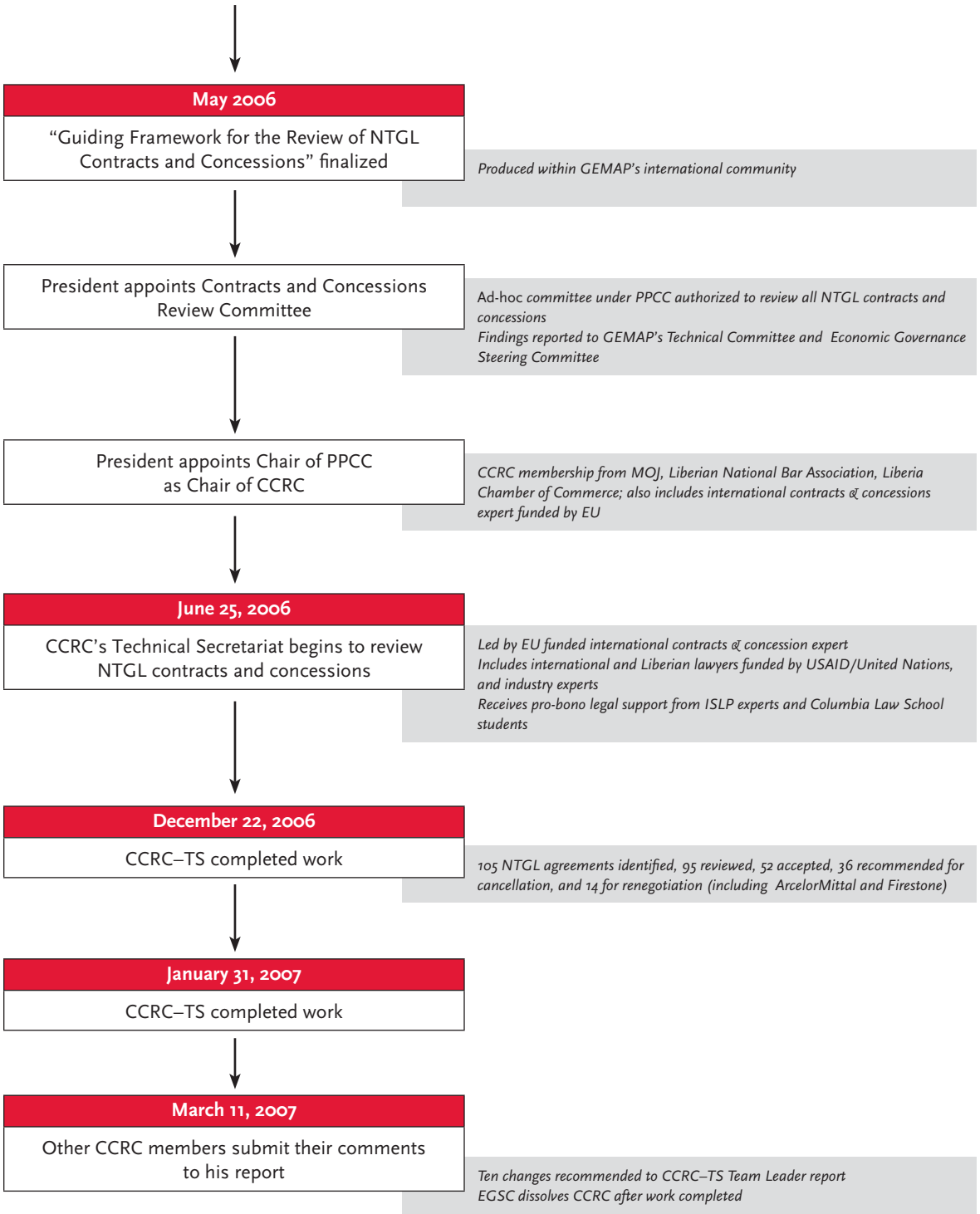
Of the 95 contracts the CCRC–TS reviewed, 52 agreements were accepted, 36 were recommended for cancellation[4] and 14 were recommended for renegotiation. The 14 contracts recommended for renegotiation included 5 oil contracts and the ArcelorMittal and Firestone agreements[5]. Renegotiations of the ArcelorMittal and Firestone agreements have been completed and the 5 oil contracts have either been renegotiated or are being renegotiated by the National Oil Company of Liberia. The status of the other 8 contracts sent to the Ministry of Justice for renegotiation could not be ascertained at the time of the writing of this Report.

The CCRC–TS completed its work on December 22, 2006, and with the submission of a final report to the EGSC, the Contracts and Concessions Review Committee was dissolved.

Chart 1

Timeline of the Agreements and Committees that Led to the Review of Contracts Signed by the NTGL




May 2006
"Guiding Framework for the Review of NTGL Contracts and Concessions" finalized
Produced within GEMAP's international community
President appoints Contracts and Concessions Review Committee
Ad-hoc committee under PPCC authorized to review all NTGL contracts and concessions
Findings reported to GEMAP's Technical Committee and Economic Governance Steering Committee
President appoints Chair of PPCC as Chair of CCRC
CCRC membership from MOJ, Liberian National Bar Association, Liberia Chamber of Commerce; also includes international contracts & concessions expert funded by EU
June 25, 2006
CCRC's Technical Secretariat begins to review NTGL contracts and concessions
Led by EU funded international contracts & concession expert
Includes international and Liberian lawyers funded by USAID/United Nations, and industry experts
Receives pro-bono legal support from ISLP experts and Columbia Law School students
December 22, 2006
CCRC–TS completed work
105 NTGL agreements identified, 95 reviewed, 52 accepted, 36 recommended for cancellation, and 14 for renegotiation (including ArcelorMittal and Firestone)
January 31, 2007
CCRC–TS completed work
March 11, 2007
Other CCRC members submit their comments to his report
Ten changes recommended to CCRC–TS Team Leader report
EGSC dissolves CCRC after work completed

2.3 The GEMAP Contract Review Process and the Government's Negotiations with ArcelorMittal and Firestone

In June 2006, with the GEMAP-mandated contract review process still in its early stages, the President decided to speed up the review and renegotiation of the ArcelorMittal and Firestone contracts in order to meet critical timelines of her Government's poverty reduction and economic recovery program. The Government launched a separate and independent "fast track" contract review and negotiating process concurrent with the CCRC review. Unlike the CCRC review process under GEMAP, the fast track process involved only Government officials and their technical advisors. It did not officially include Liberia's international partners or members of civil society. The fast track process was led by Government Ministers and took place in parallel with the separate GEMAP-mandated CCRC review of the ArcelorMittal and Firestone agreements and other contracts. The fast track process was spearheaded by an Inter-Ministerial Concession Committee ("IMCC")[6] and negotiating team reporting directly to the President and her Cabinet.

The CCRC process was slowed by several factors. It was subject to political pressures brought on by the differing agendas of each of Liberia's International Partners, civil society and the Government. The many layers of review (i.e., CCRC–TS, CCRC, PPCC, GEMAP–TC and EGSC) and wide range of players involved (i.e., Liberia's International Partners, civil society and the Government) slowed the process. Funding, teamwork and consensus-building for the GEMAP-mandated CCRC process proved challenging and contributed to the slower pace. Although the CCRC process was initiated in September 2005 with the mandate to review NTGL contracts, actual review of contracts began in earnest only in June of 2006 due to funding and coordination constraints. Once the CCRC review process began it took 9 months to complete; there were 6 months of fieldwork consisting of interim reports to the GEMAP–TC and EGSC, and 3 months to produce all final reports. The last report from the CCRC was delivered in March 2007—months after the Government had already finalized an amended concession agreement with ArcelorMittal.

The CCRC process did, however, yield consensus among its participants on the need for the Government to renegotiate the ArcelorMittal and Firestone contracts. This consensus was important because it lent international credibility to the Government's decision to move forward with its fast track review and renegotiation of the ArcelorMittal and Firestone agreements, and made the process more palatable to investors. The larger community's role in the CCRC process lent an air of transparency and freedom from bias to the Government's decision to conduct an independent fast track review and renegotiation of the ArcelorMittal and Firestone contracts.

In conclusion, it is important to note that the Government's review of contracts signed by the NTGL was not primarily driven by an attempt to benefit from windfall profits received by investors from record high global prices for natural commodities derived from Liberia. Instead the CCRC's review of NTGL contracts was largely driven by Government and international concern at the mismanagement of public finances under the NTGL. The Government's fast track review

of the ArcelorMittal and Firestone contracts sought to address concerns over the mismanagement of public finances under the NTGL, but was primarily driven by the urgency to address the pressing social and economic needs of Liberia's post-conflict society.

3. The ArcelorMittal Negotiations

3.1 Background

The Government's decision in early 2006 to review and renegotiate the ArcelorMittal concession was risky. The company operating then as Mittal Steel Holdings NV had less than a year earlier—on August 17, 2005—signed a Mineral Development Agreement ("MDA") with the NTGL for the exclusive right and license to explore, develop, produce and market iron ore and associated minerals in the concession area formerly granted to the Liberia American-Swedish Minerals Company ("LAMCO") in a concessions agreement dating back to 1960. Under the MDA, ArcelorMittal took ownership of and committed to rehabilitating Liberia's largest railroad and iron ore port, neither of which were functional following significant damage suffered during Liberia's civil conflict.

The ArcelorMittal MDA was the first significant foreign investment in Liberia in more than 20 years. In a post-conflict country with more than 80% unemployment, few basic services and infrastructure that was almost all destroyed or damaged by war, ArcelorMittal's promise of almost $900 million in new investment signified hope for a better future and was badly needed. Given the looming needs of a restless war-torn and overwhelmingly young population, there was significant pressure on the newly elected Government headed by Liberia's first truly democratically elected President, who also happened to be a woman, not to stand in the way or delay the start of the project with the review of the MDA. Nevertheless, the Government decided to move forward with review of the MDA. The Government believed that given the 25-year term of the MDA and the economic importance of the ArcelorMittal contract to Liberia's future, it was important to review the contract.

In March 2006, the Government of President Sirleaf requested that ArcelorMittal cease its operations in Liberia to provide the newly elected Government time to prepare for the review and renegotiation of the MDA. The Government team began its work with a strong sense that they had to get these negotiations right because so much for Liberia was riding on their performance. Adding to their sense of urgency was the domestic and international media coverage that surrounded the Government's decision to review the ArcelorMittal MDA. The international

donor and civil society communities largely supported the Government's decision to review the ArcelorMittal MDA, but there were significant questions about whether the newly elected and untested Government would be up to the task.

Included below, as Table 1, is a timeline of events in the Government's review of the ArcelorMittal MDA.

Table 1

Timeline of Events in the ArcelorMittal Negotiation Process

Date	Event	Context and Critical Outcomes
August 17, 2005	Mineral Development Agreement signed with NTGL	Earned exclusive right and license to explore, develop, produce, and market iron ore from former LAMCO concession area
March 2006	GOL requests cessation of operations	
June 2006	CCRC begins to staff up to conduct GEMAP sponsored review of NTGL signed contracts President convenes IMCC committee to fast track review process	IMCC composition and MLME chairmanship ISLP technical input and support
August 2006	IMCC submits report to President who selects a negotiation team	Negotiating team composition, MLME chairmanship ISLP technical input and support Negotiation strategy further developed and refined
August 22, 2006	Initial meeting held in Monrovia between GOL and ArcelorMittal	Based on discussion points developed by Government negotiating team Stage set for the first round of negotiations in NYC Input from ISLP advisors and legal team including Cravath
August 28, 2006	Final CCRC report submitted	Recommended that instead of canceling, GOL re-negotiate the agreement CCRC points were all covered in some form in the Draft Term Sheet developed by the negotiating team and its technical advisors
Early-September	President provides the negotiating team with 4 guiding principles for negotiation Negotiating team and its technical advisors meet in NYC to prepare for ArcelorMittal meetings	Term Sheet finalized and sent to ArcelorMittal in advance of the parties' meeting

Date	Event	Context and Critical Outcomes
September 12–15, 2006	1st round negotiation meetings held in NYC between GOL & ArcelorMittal	Initial discussion between the parties focus on the validity of the 2005 ArcelorMittal MDA Government's Draft Term Sheet used to guide negotiations ISLP technical advice and input provided to Government negotiating team 1st Confidential Non-Binding Protocol of Discussions signed
October 12–15, 2006	2nd round negotiation meetings held in NYC	Infrastructure issues resolved Ownership of port/railroad transferred back to GOL Fiscal, corporate governance and sovereignty matters discussed MDA mark-up produced from Draft Term Sheet 2nd Confidential Non-Binding Protocol of Discussions signed
November 2006	Comments exchanged on draft amendment to MDA	
December 2–8, 2006	Final round of negotiation meetings held in NYC	Both parties motivated to conclude discussions Final agreement reached on all issues raised in connection with Government's review of the 2005 ArcelorMittal MDA 3rd Confidential Non-Binding Protocol of Discussions signed
December 18–23, 2006	Parties meet in Monrovia President & ArcelorMittal Chairman intervene to close gap on issue of withholding tax provisions	Finalized Amended MDA appendices ArcelorMittal raises issue of withholding tax provisions; input sought from Government's technical advisors Withholding tax issue settled
December 28, 2006	Amended ArcelorMittal MDA signed by both parties	Signed the amended MDA
April 27, 2007	Agreement ratified by both the House and Senate and subsequently signed by the President.	

3.2 Contract Review

With the CCRC review process in its early stages, the President decided that it was in Liberia's national interest to fast track the review and renegotiation of the ArcelorMittal and Firestone contracts in order to meet critical deadlines of her Government's economic recovery program. The Government's preparation for review of the ArcelorMittal MDA began in earnest in June 2006 when the President convened an IMCC to review the agreement separately from the ongoing but slower-moving CCRC review process. The President appointed the Minister of

Lands Mines and Energy as chair of the IMCC. In addition to the Ministry of Lands Mines and Energy ("MLME"), the IMCC had representatives from the Ministry of Finance ("MOF"), Ministry of Justice ("MOJ"), Ministry of State, Financial, Legal and Economic Affairs ("MOS"), Ministry of Planning & Economic Affairs ("MPEA"), Ministry of Commerce, LRDC, and the National Investment Commission ("NIC").

The IMCC was tasked with conducting the review of the ArcelorMittal MDA and preparing a report for the President recommending changes they viewed as necessary to the contract. The IMCC was assisted in its work by reports prepared by Professor Bob Hillman, Professor Lou Wells and Joe Bell of the International Senior Lawyers Project at the request of the President. In addition to the ISLP report that outlined the Government's options if it chose to renegotiate the ArcelorMittal MDA, the IMCC also had access to an earlier report on the MDA prepared by the Columbia Law School.

During its review the IMCC received technical assistance from a number of advisors both inside and outside the Government. Unlike the CCRC review process, there was no formal mechanism for including the views of non-governmental stakeholders. Largely due to the accessibility of the President, the Government, however, did engage in informal consultations with non-government actors during the IMCC contract review process.

By the first week of August 2006, the IMCC had delivered its report on the MDA to the President. While the report was not specifically marked confidential, it was not viewed as a public document but as a negotiation tool setting out the Government's concerns with the MDA. As such, circulation of the IMCC report was primarily limited to the IMCC and its advisors on a need-to-know basis to preserve the Government's negotiating leverage and Liberia's national interest.

On August 28, 2006 the CCRC delivered its report on the MDA. The CCRC report supported the Government's decision to renegotiate the ArcelorMittal MDA and concluded, among other things, that the contract ArcelorMittal signed with the NTGL did not conform to prevailing Liberian law at the time of its execution and was not in the best interest of Liberia. The report recommended that the Government consider renegotiating the agreement instead of canceling it—as cancellation would likely lead to lengthy and costly arbitration.

3.3 Selecting the Negotiating Team

With the CCRC report in hand and the IMCC contract review completed, the President named the Government's team for negotiations with ArcelorMittal.[7] The negotiating team and its technical advisors used the month of August to build consensus, and develop and refine the Government's negotiating strategy. The team's work was guided by priorities set by the President based on the IMCC report. These priorities were:

1. the rail and port are part of Liberia's national strategic interest and Government must retain ownership of these assets;

2. to the extent possible, the new contract must reflect the principle of general applicability of Liberian law, especially in fiscal and environmental matters;
3. the revised contract should not encroach on the sovereignty of Liberia (e.g., with respect to stabilization, etc.); and
4. where possible, the team should seek to maximize near term revenue to the Government.

3.4 Negotiating Strategy

As the Government team prepared for its initial negotiation session with ArcelorMittal, there was significant discussion within the team and among its advisors on how to respond to ArcelorMittal's claim that the company's agreement with the NTGL was valid. Members of the team and its advisors differed on how aggressive the Government should be in seeking changes to the ArcelorMittal MDA. They feared that if the Government pushed too hard or appeared unreasonable in its demands, ArcelorMittal would choose to arbitrate instead of negotiate. One issue of considerable debate between members of the team was the Government's desire, using ArcelorMittal's own data, to argue that the company's valuation of the project was too low and to seek an upfront payment from ArcelorMittal in order to maintain the 70/30 equity split between the company and the Government. In the end, the President asked the negotiating team and its advisors to find a way to challenge the project's valuation or some other way to maximize the Government's near term revenue. She added a caveat that any upfront payment to the Government from ArcelorMittal could not be structured as a loan or pre-payment of taxes.

An initial draft Term Sheet[8] was prepared by Cravath on August 4, 2006, and formed the basis for Talking Points[9] for the initial meeting between the Government and ArcelorMittal in Monrovia on August 22, 2006. This meeting was an introductory meeting that set the stage for the first round of negotiations. During the meeting in Monrovia, the Government presented its positions on its need to retain ownership of the railroad and port infrastructure, the general applicability of Liberian law to the MDA, and Liberian sovereignty to be restored by limiting the stabilization of Liberian laws under the MDA.

The parties agreed to meet in New York in September to begin substantive negotiations. The Government promised to provide ArcelorMittal a draft Term Sheet to guide the parties' discussion in New York. Two factors drove the Government's choice of New York as the venue for the ArcelorMittal negotiations: 1) they felt that the negotiating team would contend with fewer interruptions in New York and so negotiations would be more efficient; and, 2) the Government's advisors, primarily the legal team from Cravath, was only available in New York.

Having the discussions in New York also increased the Government's chances of maintaining confidentiality around the negotiations. The Government and its technical advisors felt that strict confidentiality at this stage of the process was absolutely necessary if Liberia was to succeed in its bid to renegotiate the MDA. Everyone acknowledged that negotiations conducted through

the press would make it harder if not impossible for the Government to reach agreement with ArcelorMittal.

In the first week of September, the Government's negotiating team and its advisors met in New York to finalize the draft Term Sheet and the Government's negotiating strategy. A decision was reached on the approach to seeking an upfront payment from ArcelorMittal to maximize much-needed short-term revenue to the Government; this approach was included in the draft Term Sheet.

The Government and its advisors also decided to force the conversation on all Term Sheet issues to be between the Government's lead negotiator and ArcelorMittal's business representatives. Even when ArcelorMittal's lawyers asked a question, the Government's response was to be directed to the company's business people. This was done to allow the parties to reach broad understanding necessary to complete an amended contract, and not get bogged down in technical legal issues. This strategy worked very well because ArcelorMittal had a strong and experienced business team that did not simply defer to the company's lawyers. Using this strategy allowed the Government representatives and the ArcelorMittal business people to develop a rapport that led to breakthroughs on a number of difficult issues.

At the end of its internal meetings in New York between the negotiating team and its advisors, a final Draft Term Sheet was sent to ArcelorMittal and the initial round of substantive negotiations was set for September 12 to 15, 2006.

The draft Term Sheet deliberately did not prioritize certain issues over others. Instead the Government and its advisors chose to present all of the Government's issues on fiscal, infrastructure, social and environmental matters in the sequence that they appeared in the MDA. Negotiating dynamics determined the order in which to tackle issues raised by the Term Sheet. This order was not fixed and was revised by mutual agreement of the parties as dictated by the progress of the negotiations. For example, the first significant Term Sheet issue the parties tried to resolve was the issue of ownership of the port and railroad even though it was not the first issue listed in the Term Sheet.

Consensus-building within the negotiating team was an important negotiation strategy used by the Government's team. To accomplish this, the negotiating team agreed that none of its members would speak during the negotiation sessions without first obtaining permission from the person serving as Chairman of the team for that session. When it became clear during a negotiation session that there might be differing views on the appropriate Government response, the Chairman of the negotiating team requested a break and the Government team retreated to a separate room to sort out its position.

As the team worked to build consensus, there were frequent and sometimes heated discussions about the right approach to reaching compromise with ArcelorMittal on key issues like transfer pricing and the appropriate debt to equity ratio for ArcelorMittal's Liberia entity. The negotiating

team's discussions were aided by input from its technical advisors. For example, with the assistance of Prof. Lou Wells and the ISLP, a technical expert on iron-ore pricing, Michael Locker, of Locker Associates, was added to the Government's team to assist in evaluating and countering ArcelorMittal's transfer pricing proposals. Eventually a decision was reached that all members of the team felt they could support. At that point, the team returned to the negotiations with ArcelorMittal.

Escalation was also used effectively by the Government's negotiating team to break through deadlock. The discussion between the parties on the appropriate debt-equity ratio for the company's Liberian subsidiary was an issue that both parties had to escalate to their final decision-makers to reach agreement. The Government team also escalated issues related to the ownership of the railroad and port infrastructure and transfer pricing to the President for her advice. For example, after a conference call with the President, the parties were able to reach agreement on language that ensured transfer pricing between the company's affiliates would be on an arms-length fair market value basis under international standards with due consideration given to product cost. The parties agreed to meet at a later date, but prior to the company's first shipment of product from Liberia, to work out the precise formula for calculating transfer pricing. Under the 2005 MDA signed by the NTGL, transfer pricing used to calculate royalty payments to the Government was based only on ArcelorMittal's invoice price to its affiliates.

3.5 Negotiation Rounds

There were three negotiation rounds between the Government's team and ArcelorMittal in New York. A final round of negotiations was held in Monrovia at the end of December.

The first two days of the initial round of negotiations in September were spent on discussions related to the validity of the 2005 ArcelorMittal MDA. The company wanted the Government to agree that it had a valid contract. The Government insisted that the parties did not have to address the question of contract validity to review the MDA and discuss the Term Sheet. In the end the company agreed to begin discussions on the Term Sheet after the Government acknowledged that such discussions would not be construed as a concession by ArcelorMittal on its position regarding the validity of the 2005 MDA.

After this breakthrough, some progress was made with the issues raised by the Government in the Term Sheet. The meeting ended on September 15 with the signing of a confidential Non-Binding Protocol of Discussions[10] and an agreement to meet the following month of October.

The next round of negotiations was held in New York October 12 to 15, 2006. The negotiations resolved the parties' issues over infrastructure and agreement was reached to transfer ownership of the port and railroad back to the Government under a revised MDA. During the October meetings, there was also significant discussion between the parties on fiscal (e.g., taxation, duties, royalty and transfer pricing), corporate governance and sovereignty matters. The meeting ended with

agreement between the parties that the discussions had progressed far enough to turn the Term Sheet into a mark-up of the MDA. A second confidential Non-Binding Protocol of Discussions was signed that called for the Government to respond to a draft Amended MDA prepared by ArcelorMittal. The next and proposed final round of negotiations was set for December 2006. Throughout November the parties exchanged comments on the draft amendments to the MDA. The final meeting in New York was held December 2 to 8, 2006, with both parties highly motivated to conclude the discussions.

On December 8, 2006, the parties signed a final confidential Non-Binding Protocol, which provided that the draft amendment to the MDA attached to the Protocol reflected the final agreement between the parties on all issues in the Government's review of the MDA. The two sides agreed to meet in Monrovia on December 18, 2006 to finalize the applicable tables for rates associated with ArcelorMittal's custom and duty obligations and to sign the amended MDA.

The parties met in Monrovia to finalize appendices to the Agreement. That was quickly done but then ArcelorMittal raised a concern about "double taxation" under the draft amendment to the MDA. After the Government proposed a solution, the ArcelorMittal team clarified that its real concern was the withholding tax provisions on contractors and consultants in the proposed draft MDA amendment. The Liberian team was taken aback. They saw this as an attempt by the company to re-open what had already been agreed to in New York and expand its tax carve-outs and exemptions. ArcelorMittal saw this as a necessary clarification of a point that was not fully addressed in New York. Under the 2005 MDA, all payments otherwise due the Government under Liberia's Revenue Code (Act of 2000) for withholding taxes on contractors/consultants and interest were clearly waived in Article XXV Section 5 of the agreement. In the draft amendment this provision was deleted and replaced by a provision that made ArcelorMittal subject to Liberia's Revenue Code (Act of 2000) unless otherwise set forth in the Agreement. The Revenue Code (Act of 2000) imposes on payments to non-resident contractors and consultants a 20 percent withholding tax and a 15 percent withholding tax on payments on interest.

On December 23, 2006, ArcelorMittal's Chairman, Lakshmi Mittal, sent the President an e-mail to try and close a growing gap on the withholding tax provisions between the company and the Government. After direct discussion between the President and Mittal's Chairman and advice from the Government's technical advisors, the parties finally settled the withholding tax matter by agreeing that for a period of 10 years from the amended MDA's effective date, payments by ArcelorMittal to non-residents and residents (affiliated or unaffiliated) would be subject to a 6 percent withholding tax for payments to contractors/consultants and a 9 percent withholding tax for payments on interest.

The Amended ArcelorMittal MDA was signed by both parties on December 28, 2006. The Government subsequently submitted the Agreement to the Legislature. It was ratified by both the House and Senate on April 27, 2007 and subsequently signed by the President.

3.6 Ratification Process

As part of the ratification process, the Amended MDA was printed into handbills and made a public document. The amended contract was presented to the National Legislature by the negotiating team in a public hearing that was broadcast on live radio. At the hearing, the Legislature heard from a wide range of stakeholders including company representatives and civil society. The Amended MDA was also the subject of significant domestic and international media coverage. After several months of debate, the National Legislature ratified the Amended MDA.

While the Agreement is public, it is not easily accessible. However a *Summary of the Main Changes Brought About by the Review of the Mittal Mineral Development Agreement* is posted on the Executive Mansion's website and highlights the gains the Government made in the Amended MDA over the 2005 MDA[11].

3.7 The Gains

In addition to the gains in infrastructure ownership, transfer pricing, the debt to equity ratio and withholding taxes, the Mittal Summary of Changes document highlights the Government's gains in:

- **the royalty calculation:** FOB Buchanan (port) instead of FOB Yekepa (minehead);
- **income taxation:** removal of the tax holiday under the 2005 MDA;
- import duties: imposition of a seven year limit on the 50% reduction in import taxes on gasoline and diesel and the removal of the exemption of ECOWAS Fees;
- **corporate governance:** the Amended MDA gives the government representation on the Liberian concession company's board equivalent to the Government's equity ownership, requires ArcelorMittal to conduct all activities with its affiliates on an arm's-length basis, and provides a guarantee from ArcelorMittal's parent company on the adequacy of its Liberian company's start-up capitalization and its ability to meet its payment and environmental obligations;
- **upfront payment to the Government** of $15 million;
- **sovereignty:** under the Amended MDA Liberian law instead of UK law applies to the Agreement and stabilization is limited to laws related to taxes and duties;
- **social benefits:** under the Amended MDA there are specific targets for the Liberianization of the work force, an increase in scholarship funds from $50,000 to $200,000 per year to provide overseas training for Liberians, and a commitment from the company that its security forces will comply with law and the Voluntary Principles on Security and Human Rights; and,
- **environmental protections:** ArcelorMittal now required to conduct annual environmental audit and assessment.

The complete Mittal Summary of Changes document is attached as Appendix IV.

4. The Firestone (Firestone Liberia, Inc.) Negotiations

4.1 Background

On April 12, 2005 the NTGL signed a new Concession Agreement with the Firestone Natural Rubber Company, LLC, an affiliate of Bridgestone Firestone North American Tire, LLC. The Sirleaf Government's decision to review this 2005 Concession Agreement presented different challenges from its decision to review the ArcelorMittal contract.

Unlike ArcelorMittal, Firestone was an ongoing and fully operational concern with nearly 80 years of doing business in Liberia. It was not a new investor, like ArcelorMittal, motivated to reach agreement to lock-up a much sought- after natural resource in light of rising commodity prices on the world market. The Government recognized that, even with international support for its decision to review the 2005 Concession Agreement, Firestone had little incentive to agree to significant changes to the contract, especially changes that would cost the company money and eat into its profits.

Many observers believed that the 2005 Concession Agreement signed between the NTGL and Firestone was far more favorable to the company than its previous contract, signed on August 28, 1976. The 2005 Concession Agreement further limited the applicability of Liberian law to Firestone. It granted Firestone a reduction of the export sales tax to 1 percent; a reduction of the turnover tax from 2 to 1 percent; an exemption from goods and services tax; a reduction in non-resident dividend withholding tax from 15 to 10 percent; eliminated the ECOWAS tax; provided custom duty exemptions for select items and reduced the corporate income tax rate to 25 percent from the 35 percent required by law. The 2005 Concession Agreement had a broad stabilization provision exempting Firestone from most changes to Liberian law during the term of the contract and provided for a potential term of 86 years. Firestone and the NTGL defended these changes as necessary to justify the significant additional investment the company would need to make to repair or replace assets lost, damaged or destroyed during Liberia's civil conflict, and to restore the concession's productive capacity to pre-1990 levels.

Adding to the challenges the Government faced in its decision to review the 2005 Concession Agreement was the fact that, next to the Government, Firestone is Liberia's largest employer providing nearly 4000 jobs—employment critical to maintaining peace and stability in the post-conflict country. In addition, Firestone was also a significant source of tax revenue for the cash-strapped Government.

The Government also faced the challenge of managing public expectations that Firestone should, at this point in Liberia's history, be prepared to do more than it had committed to doing under the 2005 Concession Agreement, especially after 80 years of very profitable operations in Liberia.

Firestone, on the other hand, seemed to come to the negotiations with low expectations for achieving agreement based on their experience in dealing with Liberian governments over the last 20 years. Early on the Firestone team expressed concern that these negotiations were another attempt by a Liberian government to demand Firestone "do more" when similar demands would not be made of the company's competitors. There was also a sense on the Firestone team that the company was a visible and convenient scapegoat for Liberian politicians and activists to explain the suffering of Liberian workers, which the company felt had largely been caused by the country's civil war. The company's team referred to the lawsuits filed in the U.S. accusing the company of maintaining "slave-like" living and working conditions for its employees as examples of unfair attacks on Firestone. These were the views that set the stage for the Government's review of the 2005 Concession Agreement with Firestone.

Included below, as Table 2, is a timeline of events in the Government's review of the Firestone 2005 Concession Agreement.

Table 2

Timeline of Events in the Firestone Negotiation Process

Date	Event	Context and Critical Outcomes
April 12, 2005	NTGL signs Concession Agreement with Firestone Natural Rubber Company	Revised 1976 Agreement Further reversed the general applicability of Liberian law to Firestone
Mid-2006	President convened an IMCC to review the 2005 Concession Agreement and IMCC submits report to President	
DATE	CCRC submits report on Firestone Contract	Recommended that the Government re-negotiate the 2005 Concession Agreement
January 2007	President names the Firestone negotiating team and provides 4 guiding principles Negotiating team and its advisors begin preparation for negotiation meetings with Firestone	Negotiating team composition, MOA chairmanship ISLP technical input and support

Date	Event	Context and Critical Outcomes
January 5, 2007	ISLP prepares draft Summary of Principal Terms for negotiating team's review	
February 9-10, 2007	Negotiating team meets with technical advisors in Washington, D.C.	Summary of Principal Terms finalized and sent to Firestone Government's positions for proposed changes to contract laid out with supporting data
February 12 & 18-20, 2007	1st round of negotiations held in Washington, D.C.	Initially, very little agreement between respective positions Input from Government's rubber financial expert Information exchanged regarding financial model with Non-Disclosure Agreement in place Confidential Non-Binding Protocol of Discussions signed
March 19-23, 2007	2nd round of negotiations held in Washington, D.C.	Firestone walks out after GOL challenges validity of 2005 Agreement Chairman of GOL negotiating team takes leadership role in resolving matters; negotiations continue next day Discussions focus on positions regarding GOL's proposed changes outlined in Summary of Principal Terms Confidential Non-Binding Protocol of Discussions drafted Agreement to meet again at undetermined date
April 27-30, 2007	3rd round of negotiations held in Monrovia	IMCC core team joined by MOF, MOJ, MOL Ministers and Firestone's team adds another lawyer; time needed to orient new members Cautious progress, agreements reached on non-fiscal issues Labor strike slows discussions Confidential Non-Binding Protocol of Discussions drafted Agreement to meet again at undetermined date
June 19, 2007	President meets with negotiating team	Discussion on negotiation progress
June 25, 2007	President's Memorandum	Outlines 3 key points for ongoing negotiations Smaller team formed: MOA, MOF, MOS, LRDC legal consultant

Table 2 *(continued)*

Date	Event	Context and Critical Outcomes
July 1-3, 2007	4th round of negotiations held in Washington, D.C.	Agreement reached on nearly all non-fiscal issues Fiscal issues discussed in detail Confidential Non-Binding Protocol of Discussions drafted to include GOL's formal fiscal settlement offer Issues from Principal Summary of Terms used to mark-up 2005 Agreement Agreement to meet again at undetermined date
August 3-8, 2007	5th round of negotiations held in Monrovia	Discussions focused on reaching final contract language for fiscal provisions Both sides consulted with their principals to break deadlock Agreement reached on final contract language for all fiscal issues and parties sign-off on document with new fiscal terms Legal teams to work together to finalize remaining language through conference calls
November 6-9 and 13-14, 2007	Washington, D.C.	Negotiation teams reached final agreement on outstanding issues Agreement submitted to Cabinet and Firestone's board for review and approval Additional changes from the respective reviews were later incorporated into document
February 22, 2008	GOL and Firestone sign 2008 Amended and Restated Concession Agreement in Monrovia	Ratification process by National Legislature starts
March 31, 2008	Agreement signed into law by President	National Legislature ratifies 2008 Concession Agreement Agreement published into handbills

4.2 Contract Review

In mid-2006 the President convened an Inter-Ministerial Concessions Committee to review the 2005 Concession Agreement and report back to her with their recommendations. The President appointed the Minister of Agriculture as chair of the Firestone IMCC and included representatives from the MOF, MOJ, Ministry of Labor ("MOL"), MOS, NIC and the LRDC. The IMCC was supported in its work by its technical advisors: Mr. Michael Jordan, a rubber industry financial expert familiar with Liberia's rubber industry, Mr. Jim Belcher, a rubber industry consultant to the Government and later by Mr. Joe Bell of the ISLP.

The review by the Firestone IMCC, like the one conducted by the ArcelorMittal IMCC, was done in parallel with the CCRC review of the 2005 Concession Agreement. As in the case with ArcelorMittal, the goal was to fast track the review in order to jump start the Government's economic recovery program. The IMCC completed its review of the 2005 Concession Agreement and submitted its report to the President.

The Firestone IMCC relied on input from its technical advisors and on previously prepared reports, such as the May 2006 report of the Rubber Task Force. The Task Force had been set up by the President in February 2006 to report on the state of Liberia's rubber industry. Its report provided the IMCC with technical background and helped to identify stakeholders in Liberia's rubber industry. Although the IMCC did not formally include non-governmental stakeholders in its review, the Task Force provided the IMCC with a mechanism to solicit input from and consult with non-governmental stakeholders. The IMCC's report reflected its informal discussions with these stakeholders, as well as with the Rubber Planters Association of Liberia and with labor unions representing the workers in Liberia's rubber industry.

Like the report delivered by the ArcelorMittal IMCC, the Firestone IMCC report was viewed as a negotiation tool setting out the Government's concerns with the 2005 Concession Agreement. It was not considered a public document and as such circulation of the Firestone IMCC report was limited to the IMCC and its advisors on a need-to-know basis to preserve the Government's negotiating leverage and Liberia's national interest.

When the CCRC submitted its report on the 2005 Concession Agreement, it validated the Government's decision to fast track the review of the contract and recommended that the Government renegotiate the contract with Firestone.

4.3 Selecting the Negotiating Team

In January 2007, with the ArcelorMittal negotiations completed, the Government turned its attention to re-negotiating the 2005 Firestone Concession Agreement and the President named the Government's negotiating team. The team named by the President was a sub-set of the members on the Firestone IMCC.[12]

Prior to the meetings with Firestone, the President provided the IMCC negotiating team with 4 principles to guide their negotiations:

1. to the extent possible, the new contract must reflect the principle of general applicability of Liberian law, especially in fiscal and environmental matters;
2. transfer pricing must be based on arms-length transactions linked to international market mechanisms;
3. the revised contract must have a commitment from Firestone for value-added manufacturing (e.g., a rubberwood factory); and

4. the automatic 50-year Extended Term must be eliminated and the term of the Agreement limited to 36 years: the period for Rehabilitation and Regular Terms.

4.4 Negotiating Strategy

A draft Summary of Principal Terms[13] was prepared by the negotiating team's technical advisors, the ISLP, on January 5, 2007. This document was circulated to the negotiating team and its advisors for their review and comments. The document underwent numerous revisions following conference calls and input from the entire team. On February 9 and 10, 2007 the negotiating team met with its advisors in Washington, D.C. to finalize the draft Summary of Principal Terms.

The final Summary of Principal Terms laid out the Government's positions for proposed changes to the Firestone contract on financial matters (e.g., taxation and fees, social obligations, rubber wood processing, term limit) and contract issues (e.g., making the concession holder a Liberian entity, making the agreement generally subject to Liberian law, addressing transfer pricing and ensuring transparency).

At this stage the Government and its advisors felt that strict confidentiality was necessary if they were to succeed in their bid to re-negotiate the 2005 Concession Agreement. Given the complex relationship with Firestone, the negotiating team recognized that it was especially important to demonstrate to Firestone that the Government was committed to protecting all confidential the company provided. The negotiating team understood this information was key to obtaining the concessions sought from Firestone. Everyone acknowledged that negotiations conducted through the press would make it harder, if not impossible, for the Government to reach agreement with Firestone.

The team realized that while Firestone had agreed to participate in the meetings, the company's position was that its 2005 Concession Agreement was valid and not subject to review outside the terms of the contract. Firestone contended that the company's 2005 Concession Agreement, unlike other contracts being reviewed, was untainted by corruption or the violation of Liberian procurement law. Firestone had said publicly that, while the company was always willing to talk to the Government, it saw no legal or contractual basis to re-open its contract.

During its pre-negotiation meetings with its technical advisors in Washington, D.C., the negotiating team decided to counter Firestone's positions by arguing that the Government had the right, beyond its mandate under GEMAP, to seek changes to the 2005 Concession Agreement under the terms of the contract itself. With the help of its rubber experts, the Government prepared a financial model to support its position that the sudden and dramatic rise in world rubber prices was a "Profound Change in Circumstances" under Section 31.1 of the 2005 Concession Agreement and, as such, the contract required the parties to consult to make the necessary changes and adjustments.[14] Using information provided by Firestone, the Government's data sought to show that with the doubling of world rubber prices since the signing of the 2005 Concession

Agreement, Firestone was experiencing a windfall profit and would re-coup its investments more quickly than the company originally projected and so, the Government argued, Firestone did not need the aggressive tax concessions the NTGL granted in 2005. The negotiating team believed this was especially true at a time when the Government sorely needed revenue to rebuild the country following years of war-caused devastation.

The Government team also thought its position under Section 31.1 was compelling because past Liberian governments had reviewed and made changes to Firestone's contract due to global economic changes. In 1982 the Liberian government granted Firestone's request for an exemption from all taxes except corporate income tax on a self-renewal yearly basis for as long as the rubber industry remained depressed because of a drop in world rubber prices from the effective date of the 1976 Concession Agreement.[15] The Government believed the 1982 drop in world rubber prices that led to exemption from taxes for Firestone under the 1976 Concession Agreement was a less dramatic "Profound Change in Circumstances" than the rise in prices between Firestone's projections during its 2005 negotiation with the NTGL and the global price of rubber in early 2007.[16]

Much like the Government's negotiations with ArcelorMittal, during the Firestone negotiations the parties did not establish a rigid structure for dealing with issues raised in the Summary of Principal Terms. Instead the Summary of Principal Terms guided the parties' discussions in their initial meetings. Negotiation dynamics and the desire of the Government team to make quick progress determined which issues were tackled in later meetings. This order was not fixed and was adjusted or revised by mutual agreement as it became necessary to maintain the momentum of negotiations. For example, after five rounds of negotiations, it became clear to both sides that progress towards achieving final agreement could only be made if the parties were able to resolve the fiscal issues raised by the Government team. The parties agreed that the sixth round of negotiations would focus only on fiscal matters and the parties would stay at the table until they agreed to contract language on fiscal terms.

The Government's team used the same strategy employed in the ArcelorMittal negotiations to build consensus. The team agreed that when it became clear during a negotiation session that there might be differing views on the appropriate response to a position adopted by Firestone, the Chairman of the negotiating team would request a break and the Government would retreat to sort out its position. The team also used escalation as negotiating strategy much like with ArcelorMittal. For example, the negotiating team sought the President's advice on their discussions with Firestone on fiscal and value-added manufacturing matters.

The Summary of Principal Terms, and data supporting the Government's position that escalating world rubber prices had resulted in a "Profound Change in Circumstances" under the 2005 Concession Agreement, were sent to Firestone.

The first round of negotiations between the Government and Firestone was set for February in Washington, D.C.

4.5 The Negotiation Rounds

During initial meetings between the Government and Firestone in February 2007, both sides set out their opening positions. In these first meetings there was very little agreement on anything. Firestone was adamant that its 2005 Concession Agreement was valid and that there was no basis for a renegotiation. The company refused to be subject to generally applicable Liberian law, as it required predictability for its long-term investments. Rejecting the fiscal provisions in the Government's Summary of Principal Terms, Firestone insisted that all taxes should be computed as set out in the 2005 Concession Agreement. The company also challenged the Government's economic model (showing Firestone would make windfall profits under current world rubber prices) and promised to provide data refuting the Government's predictions.

After substantial discussions with significant input from the Government's rubber industry financial expert, the parties agreed to exchange information to reconcile the differences in their financial models. Firestone agreed to provide the Government team with the needed information once the Government agreed to a strict Non-Disclosure Agreement. The parties signed a confidential Non-Binding Protocol of Discussions[17] and agreed to meet again in Washington, D.C. from March 19 to 23, 2007.

After the first round of negotiations, the Government team realized that negotiations with Firestone could be protracted and very difficult. The company's negotiation team was dominated by lawyers. Its chief negotiator was its outside counsel who had represented Firestone before the Liberian government for over thirty years. He had also largely been responsible for drafting the 2005 Concession Agreement. The negotiating strategy that the Government employed in ArcelorMittal, of directing all conversation to the investor's business representatives to build rapport between the parties and avoid a purely legal discussion, did not seem to work with Firestone.

When the parties met again in Washington, D.C. from March 19 to 23, 2007 to resume their discussions, strong feelings on both sides came to a head when the Firestone delegation walked out of the talks over a discussion on the Government's basis for challenging the validity of the 2005 Concession Agreement. What could have been a real setback to the negotiations was quickly resolved through the leadership of Minister Toe in his position as chair of the Government's negotiating team. The Firestone delegation returned to the negotiating table the following day.

With Firestone back at the negotiating table, the parties agreed to set aside discussions on the validity of the 2005 Concession Agreement and focus on obtaining a better understanding of each other's views on the proposed changes to the 2005 Concession Agreement. While there was no significant movement during the talks by either side, substantive discussions led to a better understanding by each side of the other's positions. The second round of negotiations ended with the drafting of a confidential Non-Binding Protocol of Discussions and an agreement to meet again at an undetermined date.

The next round of negotiations was held in Monrovia April 27 to 30, 2007. Other members of the IMCC joined the negotiating team. These included Minister Antoinette Sayeh, MOF; Solicitor General Taiwan Gongloe, MOJ; and Assistant Minister Rosetta Nagbe-Jackollie, MOL. A prominent Liberian lawyer joined Firestone's negotiating team.

During these talks the parties made cautious progress and reached agreement on a number of non-fiscal issues. The discussions bogged down on more complicated fiscal issues as both sides became distracted by their attempts to manage a workers' strike at the company plantation in Harbel. In addition, the inclusion of new people on both sides of the negotiating table introduced new personal dynamics and slowed progress as everyone worked to understand what had been discussed and agreed in earlier meetings. The meeting ended with the drafting of a confidential Non-Binding Protocol of Discussions and an agreement to meet at a later undetermined date.

On June 19, 2007, the President met with the Firestone negotiating team to discuss the progress of negotiations. In a Memorandum dated June 25, 2007, the President captured the key points agreed to in her discussions with the negotiating team:

1. insist as much as possible on tax laws of general application while identifying anticipated major changes to be included in the new Revenue Code;
2. be aggressive and inflexible on transfer pricing; pricing must be linked to international market mechanism; and
3. remain firm on application of ECOWAS Levy and Rubber Development Fee, the latter subject to mechanisms of accountability to be agreed upon.

In her Memorandum, the President urged the team to push Firestone for value added manufacturing beyond rubberwood processing and to indicate the Government's commitment to a strong partnership in enhancing plantation security.

Her Memorandum also suggested that the Government's interest was best served by a smaller negotiating team and reconstituted the team to include the Minister of Agriculture, Minister of Finance, Minister of State, and the LRDC legal consultant. She asked all other members of the original negotiating team to remain on call to consult or participate as determined by the new prime negotiators.

The next round of negotiations with Firestone occurred in Washington, D.C. from July 1 to 3, 2007. The parties made real progress during these meetings and reached agreement on nearly all remaining non-fiscal issues, including social matters, support for small farmers, the development plan, Firestone's reporting obligation to the Government and the establishment of a rubberwood factory. The Government presented Firestone a formal settlement on fiscal issues as part of the Non-Binding Protocol of Discussions drafted at the conclusion of the meeting. The parties agreed to begin turning the issues raised in the Summary of Principal Terms into a mark-up of the 2005 Concession Agreement. They also agreed to meet again at an undetermined date.

The fifth round of negotiations with Firestone was held in Monrovia, August 3 to 8, at the Ministry of Agriculture. The parties agreed that the meeting would focus solely on fiscal matters and that both sides would remain in Monrovia until they reached agreement on final contract language for the fiscal provisions. Discussions during this round were intense but productive with both sides consulting with their principals to break deadlocks and find compromise.

In the end, the parties reached agreement on final contract language for all fiscal provisions, including stabilization. The Government had achieved the general applicability of both current and future Liberian tax laws during the term of the amended agreement, and Firestone had preserved its right to stabilize its income tax liability. A stabilization clause limited the company's tax burden if current or future tax laws exceeded 110 percent of the tax liability the company was obligated to pay under the Revenue Code in effect on July 1, 2007 (Liberia's Revenue Code of 2000). The meeting ended with both sides signing-off on the document that captured the newly agreed contract terms. They agreed to use conference calls to finalize outstanding non-fiscal issues which had been discussed earlier.

The parties did not meet face-to-face again until November 2007 when they reached final agreement on all substantive issues. The agreement and its appendices were submitted to the Cabinet and to Firestone's Board for final review and approval. Those reviews produced a number of changes that were later incorporated.

The Government and Firestone signed the Amended & Restated Concession Agreement on February 22, 2008 ("2008 Concession Agreement") at a ceremony in Monrovia at the Ministry of Agriculture.

4.6 The Ratification Process

Like the Amended ArcelorMittal MDA, the 2008 Concession Agreement with Firestone was presented to the National Legislature by the negotiating team in a public hearing that was broadcast on live radio. At the hearing, the Legislature heard from a wide range of stakeholders including company representatives and civil society. The amended contract was also the subject of significant domestic and international media coverage. As part of the ratification process, the 2008 Concession Agreement was printed into handbills and made a public document. After several months of public and closed-door debate, the amended agreement was ratified by the National Legislature and signed by the President into law on March 31, 2008.

While the 2008 Concession Agreement is public, it is not easily accessible. However, a *Summary of the Main Changes Brought About by the Government of Liberia's Review of the 2005 Concession Agreement with Firestone Liberia, Inc.* ("Firestone Summary of Changes") is posted on the Executive Mansion's website and highlights the gains the Government made in the 2008 Concession Agreement[18].

4.7 The Gains

In addition to the gains made in the general applicability of Liberian tax laws to Firestone under the 2008 Concession Agreement (e.g., corporate income tax rate raised to 30% retroactively through 2007 and net taxable income to be computed in accordance with applicable Liberian law), the Firestone Summary of Changes document also highlights the Government's gains in:

- **other taxes and duties** (e.g., exemption on the ECOWAS trade levy removed, 10 percent withholding tax on interest, dividends and payments to contractors/consultants imposed, company subject to General Sales Tax (GST), real property taxes imposed, land rental raised from US$0.50 to US$2.00 and adjusted for inflation every 5 years, and full import duties established by law imposed except during the Rehabilitation Term ending 2015 where certain reductions apply;
- **transfer pricing:** export sales prices for any affiliate transaction determined by reference to available international prices or indices. Currently the export price for dry rubber based on the TSR 20 Singapore Commodity Exchange price and for latex, the Malaysian Rubber Board price for bulk concentrate latex;
- **value-added manufacturing:** committed to building a $10 million rubberwood factory and employing 500 new workers by 2008;
- **social benefits:** each employee entitled to housing, committed to build 2300 new houses and refurbish existing houses to new standards, committed to providing bathroom or sanitary latrine for each house, committed to complete construction of a high school within concession area, committed to meet targets for employment of Liberians in management and committed to security forces adhering to law and Voluntary Principles on Security and Human Rights; and,
- **length of the contract term:** 50-year Extended Term through 2091 eliminated; term now 36 years through 2041.

The complete Firestone Summary of Changes document is attached as Appendix V.

5. The ArcelorMittal and Firestone Negotiations: Analysis and Recommendations

5.1 Introduction

The government's success in renegotiating the ArcelorMittal and Firestone contracts can be attributed to several factors:

1. engaged leadership and a clear and direct reporting line from the negotiating teams to the ultimate decision-maker;
2. strategies that supported consensus-building among the negotiating teams; and,
3. the availability of technical support from world-class advisors at every significant stage of the negotiation process.

To ensure that the Government can repeat these gains in future concession negotiations, it should should institutionalize these factors by: 1) maintaining a clear and direct reporting line to the ultimate decision-maker from all negotiating teams; and, 2) grow its capacity to lead, manage and negotiate complex investment agreements through:

- professional development and training;
- recruitment; and,
- education.

The Government can also improve upon the ArcelorMittal and Firestone negotiations by increasing the transparency of the process by:

- adopting mechanisms that require the negotiating team to engage non-government stakeholders affected by concession activity; and,
- implementing policies assuring the public's right to access concession agreements.

5.2 Analysis

5.2.1 Leadership

President Sirleaf's leadership in the ArcelorMittal and Firestone negotiations was key to Liberia's success. From the beginning, the President established a direct reporting line from the Chairman of the negotiating team. She exhibited a number of leadership traits that helped make the negotiations with ArcelorMittal and Firestone successful. Among other things, President Sirleaf:

A) Communicated a vision of national priorities

From the start the President made it clear to the nation and its investors that her Government would support the GEMAP mandate for review of concession contracts signed by the NTGL. She went further and announced a 'national' policy on concessions review as part of her Government's strategy for poverty reduction and economic recovery. The President's policy of concession review was clearly articulated to investors and is being consistently applied across all sectors of the economy.

B) Prioritized concession review by demonstrating an understanding of how a given concession fits into Liberia's national framework

The President's decision to fast track the review and negotiations of the ArcelorMittal and Firestone contracts showed her understanding of the importance of these two concessions to Liberia's economic recovery. With soaring public expectations for economic improvements following the election, it was important for the Government to move quickly and produce some wins to help secure the country's peace. Choosing to fast track the ArcelorMittal and Firestone review demonstrated the President's understanding that she needed to rapidly restore the public's and international investment community's confidence in Liberia's private sector. Consistent with these priorities, deciding to review ArcelorMittal first provided the Government greater incremental returns than starting with Firestone would have, since Firestone was already operating. The ArcelorMittal contract amendment allowed the company to begin its operations under an agreement that brought new and greater investment dollars to Liberia than Firestone, created new jobs and increased short term revenue for the Government. In the words of the President, a leader has to understand "the nature of the operation and its importance for the national architecture."

C) Selected a negotiating team composed of individuals with diverse skills and knowledge

The teams that the President selected for the ArcelorMittal and Firestone negotiations comprised individuals with different backgrounds, skills and experience. For example, the ArcelorMittal negotiation team headed by the MLME Minister had individuals with significant mining, environmental, investment banking, finance, legal, and management experience. This diverse team brought distinct perspectives to issues raised in the ArcelorMittal negotiations. Their differing views forced intense exchanges, consensus building and collaboration to finalize the Government's position.

D) Established a direct reporting line between the President and the negotiating team

Throughout the negotiations, the President maintained a clear and direct reporting relationship with the negotiating team through the chairman. By making herself available and allowing the team to directly report to her, the President empowered the team to speak with authority and decisiveness during negotiations with ArcelorMittal and Firestone. She freed the negotiating team to seek compromise or hold the line as they deemed appropriate during the negotiations with the caveat that they check with her if there was uncertainty about her position on an issue, or disagreement among team members about the correct course of action. Thus by maintaining a direct reporting relationship with the negotiating team, the President was able to both empower the team to make decisions and to hold the team accountable for its decision-making.

E) Adjusted the size of the core negotiating team to maintain the integrity and pace of negotiations

At various points in the negotiation when it became necessary, the President changed the size and composition of the team. For example in Firestone, when the Government's negotiating team had grown to more than 11 people and the negotiations were bogged down by the 5th round of meetings, the President stepped in and re-sized the team stating that, "at this stage, negotiation is best served by a small team including the Sector Head Minister, Minister of Finance, Minister of State and the (LRDC) legal consultant." She asked the rest of the Government team to remain on stand-by to support the negotiations as needed. After reducing the size of the government team, the negotiations with Firestone made greater progress.

F) Provided the negotiating team technical assistance from world-class experts with a personal commitment

The President was able to assemble as advisors to the negotiating team some of the best legal and technical minds in the world. These advisors came with the backing and resources of some of the largest U.S. law firms. For example, in the ArcelorMittal negotiations, in addition to making three lawyers (a partner and two associates) available to support the Government's negotiating team, the New York law firm Cravath, Swaine and Moore hosted the negotiations at its offices in New York. One negotiating team member stated that the Government's advisors played a significant role since one of "the key elements of success were the preparation of the team through the commitment of the technical assistance team." It is also important to note that through the leadership of the President all of Liberia's technical assistance was provided on a pro-bono basis or through donor funding.

The President's leadership in the ArcelorMittal and Firestone negotiation process also displayed the following characteristics; she

- was consistent, had integrity; the negotiation team knew they could count on her backing if needed;
- stayed involved and looked for updates;

- listened to the negotiating team and its advisors, and was accessible;
- was a consensus builder;
- held people accountable;
- had substantive knowledge and could speak to the issues being negotiated; and
- was decisive.

These leadership characteristics allowed the President to successfully manage the politically charged atmosphere surrounding the ArcelorMittal and Firestone negotiations.

5.2.2 Teamwork

Teamwork was an essential element in the Government's success in the ArcelorMittal and Firestone negotiations. The negotiating teams comprised a broad cross-section of professional viewpoints and consensus-building required intense discussions. In both the ArcelorMittal and Firestone negotiations, the team members felt a personal need to "get it right," driven by an understanding that they were going to be held accountable by the President, and were ultimately responsible to the Legislature and the people of Liberia. This need, coupled with the recognition that the negotiations were of historic importance for post-conflict Liberia, heightened the urgency for consensus building and collaboration among team members.

Teamwork was also important for members of the ArcelorMittal and Firestone negotiating teams because, as part of a new Government of "national unity," a number of the team members came from differing political backgrounds and had never worked closely together before. Being part of the negotiating team gave them an opportunity to bring their diverse backgrounds together to forge unified Government positions.

The negotiating team's consensus-building and collaborative efforts operated in the manner outlined below:

1. initial intense discourse, at times difficult, but essential to building communication and trust;
2. recognition by members of the team that they had been hand-picked by the President to bring particular expertise to the table;
3. development of a clear understanding of each other's positions, strengths, and value to accomplishing the Government's negotiating objectives; and,
4. understanding that issues on which no consensus could be reached or certain key compromises were to be raised to the President with the team's recommendations for final decision.

This process of consensus-building and collaboration by the ArcelorMittal and Firestone negotiating teams was aided by the negotiating strategies the teams employed. For example, none of the members of the team would speak during the negotiations without first obtaining permission from the Chairman of the negotiating team for that session. When it became clear during

negotiations that there might be differences among members of the team on the appropriate Government response, the Chairman of the negotiating team requested a break to sort out its position. This focus on consensus-building resulted in shared ownership of the final contract terms by team members, enabling the team to defend the positions they had adopted before all stakeholders.

5.2.3 Technical Assistance

The Government's use of world-class technical advisors in the ArcelorMittal and Firestone negotiations was essential to its success. During the negotiations, these advisors prepared and empowered the IMCC negotiating team. Based on their areas of expertise Liberia's advisors educated the Government's negotiating team on the issues, provided recommendations on negotiation strategy, and suggested options and drafted language for resolving conflicts.

Using 21st century tools and technologies, and with the resources of some of America's best law firms (Cravath in ArcelorMittal and Hogan & Hartson in Firestone), the Government's advisors were able to provide the negotiating team a 24 by 7 support infrastructure. Technical advisors often worked as a team themselves where differences needed to be worked out before presenting a recommendation to the Government.

Throughout the process in both the ArcelorMittal and Firestone negotiations, the role of the Government's advisors was clear. They were advisors to the Government's negotiating teams; they were not on the Government's negotiating teams nor were they negotiators for the Government. The technical advisors limited themselves to providing advice, support and input to the Government's negotiating teams. The Government's teams were responsible for all of the negotiations with ArcelorMittal and Firestone. With support from its advisors, the negotiating teams made all of the decisions on substantive issues, compromises and strategy.

Support to the Government's negotiating teams provided by their advisors included:

- drafting and preparing all documents, researching and framing issues to represent the Government's position, consulting with other experts as necessary to bolster the Government's positions, and modeling financial projections of the impact to changes in the Government's positions (e.g., impact on government revenues from changes to applicable tax law);
- helping the Government find viable compromises to difficult issues and apparent 'deadlock' situations with ArcelorMittal and Firestone. In Firestone, for example, Liberia's advisors helped the Government's negotiating team find a compromise between the Government's position that Firestone should be subject to Liberian laws of general applicability and Firestone's demand for protection against changes to Liberian law that could undermine the economics justifying their investment. Liberia's advisors helped draft language to which Firestone agreed that applied the principle of general applicability to Firestone while allowing the company relief if a new tax law increased the company's tax liability over 10 percent from its tax liability in the previous tax year;

- providing the Government an objective measure to balance views from both members of the Government's negotiating team and the companies; and,
- facilitating discussion among the Government's team members to clarify the implications and ramifications of proposed positions.

5.3 Recommendations

The factors discussed above were key in the Government's success in the ArcelorMittal and Firestone negotiations, delivering significant gains for Liberia (see Appendices IV and V for a listing of contract gains negotiated by the Government). To ensure similar gains in ongoing and future concession negotiations, the Government should institutionalize the benefits of leadership, teamwork and world-class technical assistance. It can do so by strengthening its capacity to lead, manage and negotiate complex investment agreements.

While Liberia has made significant gains through successful renegotiations of the ArcelorMittal and Firestone contracts, it needs to be noted that the leadership and teamwork in the negotiating process occurred at the highest levels of Government. Additionally, external technical assistance was required to fill gaps in the Government's capacity to negotiate these agreements.

A negotiating process supported by the highest levels of Government and international technical assistance is not scalable. As Liberia seeks to attract greater international investment to spur the country's economic development, it will need to grow its ability to negotiate complex investment agreements beyond its top officials and external technical advisors.

Largely due to the effects of Liberia's fourteen-year civil conflict, the Government's capacity to manage complex investment agreements beyond its top-most officials (e.g., Ministers) is weak. Over the next few years, as Liberia competes for investment dollars on the world market, it will need to expand and institutionalize its ability to negotiate investment agreements. Specifically, the Government should develop a program to grow its capacity to conduct complex investment agreements through:

- *mentoring, professional development and training programs for current Government employees involved in contract negotiations;*
- *recruitment of Liberians both locally and from the Diaspora who have the experience to support the Government's concession activity; and,*
- *providing scholarships and internships abroad for Liberians pursuing careers that support the Government's concession activity.*

To accomplish these steps, a three-fold, concurrent approach is recommended that addresses the Government's short-term needs and longer-term capacity needs.

A) Short-Term: Mentoring, Professional Development and Training Programs

Beginning immediately, mentoring, professional development, and training programs should be conducted with the support of the Government's technical advisors in parallel with concession negotiations that are underway. These programs should involve a variety of intensive learning experiences designed to enhance the expertise of Government staff responsible for supporting the Government's concession activity.

In addition to mentoring and training programs that deliver the substantive knowledge required to negotiate complex investment agreements (e.g., royalty, tax, stabilization, and debt to equity ratio matters), the Government's training program should also enhance the business process skills of Government staff.

Based on the factors which contributed to the Government's success in the ArcelorMittal and Firestone negotiations, business process topics for training programs should include:

- leadership and teamwork
- concession negotiation management and strategy
- negotiator training for complex concession negotiations
- contract management to ensure monitoring and subject-matter compliance.

There are several proven models for professional development that the Government may want to consider. Among these are:

- one-on-one mentoring exercises that involve a trainee shadowing a Government technical advisor involved in concession negotiations (e.g., the trainee would be assigned to a specific Government technical advisor, attend all meetings and negotiation sessions with the advisor, and meet regularly in person or through email with the advisor to discuss his/her experiences); and,
- specific training courses comprising short intensive workshops and seminars (e.g., week-long exercises) with curricula designed to provide a target Government audience specific substantive knowledge or business process skills.

There are several partners available to the Government that could provide the capacity and technical assistance for such mentoring exercises as well as professional development and training courses. These include the International Senior Lawyers Project and the UNDP's Regional Project for Capacity Development for Negotiating Contracts and Regulation of Investment Contracts. Identifying employees within relevant Government Ministries beyond the Ministers or Deputy Ministers who can benefit from such mentoring and training will be a necessary first step.

B) Medium-Term: Recruitment of Liberians both Locally and From the Diaspora

Recruitment is another tool the Government can use to grow its capacity to negotiate and manage its concession agreements. There are many talented, well-trained and experienced Liberian professionals in the Diaspora, as well as locally, who might be persuaded to join the Government for specified periods to support its concession activity.

Currently the government runs various programs, such as the TOKTEN and SES programs, to rebuild its civil service through foreign recruitment. The Government should tap into these programs to bring in professionals who can support its concession work and provide training to future generations. The funding and mechanisms for such recruitment already exist under the TOKTEN and SES programs. What remains is for someone in the Government to be tasked, in coordination with the relevant Ministries, with identifying: 1) the skills the Government needs to successfully conduct and support its concession activities; and, 2) where these recruits should be placed to provide maximum value to the Government's concession negotiation activity.

Additionally, the Government should look for talented and experienced Liberian professionals locally through programs like the Scott Family Program. For example, local lawyers engaged in commercial practice might be persuaded to join the Government for a specified period under funding available through programs like the Scott Family Program.

C) Long-Term: Scholarships and Internships Abroad

Given the significant revenue and other benefits Liberia derives from its concession activity, the Government should undertake some long-range planning to ensure that a steady stream of Liberians will be available to support the Government's concession activity. Since most concession agreements have contract terms of between 25 and 50 years, there will be career paths within the Government related to its concession activities for the foreseeable future.

In developing its long range plans, the Government should consider providing scholarships to top students in local graduate and undergraduate programs who are pursuing careers that support Liberia's concession activity. The Government should also consider funding scholarships for advanced training abroad for students who are committed to returning to work for the Government. One or two year degree programs abroad like the LLM or MBA can provide the Government quick returns on its investments.

The Government might also consider a practical training program that places Government employees and select university graduates recruited to Government service with organizations (e.g., law firms, investment banking firms, foreign government concession secretariats, etc.) for 18 to 24 month internships. The Washington, D.C. headquartered non-profit organization, Africare, Inc., developed and ran a similar program in the early 1990's to provide practical training to black South Africans to prepare them for positions in post-apartheid South Africa. The program, the Career Development Internship Program,

provided its interns a stipend and placed them with U.S. organizations for 1 to 2 years. The program, funded by USAID and major U.S. corporations interested in doing business in South Africa, lasted three years and was considered by many, including South Africa's African National Congress, to be a success. The Liberian Government may want to explore developing a similar program for Liberia working with USAID and Africare, both of whom are actively involved in development initiatives in Liberia.

6. Improving the Transparency of Concession Negotiations

6.1 Consultations with Non-Governmental Stakeholders

The Mittal and Firestone fast track negotiation process had no formal mechanisms for consultation with non-governmental stakeholders. Any consultations that took place were due largely to the accessibility of the President.

Interviews with Government officials highlight the absence of a framework for including non-governmental stakeholders' inputs into the IMCC contract review process. A majority of government officials—including the President—are favorable to consultations with non-governmental stakeholders as long as they are time-bound and focused. Consultations with non-governmental stakeholders should take place early in the concession award process as part of the bid tender, evaluation, or award process. If there have been no consultations as part of the process to select the concessionaire, then a time-bound and focused consultation at the outset of the contract review phase is advisable. Consultations during the contract review process are sometimes necessary for negotiations of agriculture concessions where the concession area is occasionally identified after the concessionaire has been selected and before there has been an opportunity for consultations with the affected communities.

Some in the Government have pointed out that soliciting third-parties' input during the concession negotiation phase runs the risk of breaching the confidentiality required during negotiations. They point to Liberia's forestry regulations as an example of a consultation process gone too far. Under the forestry regulations Government cannot proceed with a proposed forestry contract unless it has written consent from communities affected by the contract to enter into "social agreements" with the winning company.[19] Nearly all Government representatives viewed the requirements for consultations with non-governmental stakeholders as too burdensome. They also considered the forestry regulations impractical to implement in complex commercial ventures involving international investors. These officials argued the forestry regulations did not respect the confidentiality required between negotiating parties.

The development of a non-governmental stakeholder consultation mechanism should be done as part of the Government's efforts to harmonize the PPCA with the negotiation practices used in ArcelorMittal and Firestone. Prior to finalizing such a mechanism, input should be sought from non-governmental groups such as community representatives and labor unions.

Consultations with stakeholders should occur as part of the concession bid tender, evaluation and award process. If this is not possible, then consultation with non-governmental stakeholders should occur as part of the contract review process.

In adopting rules for consultations with stakeholders, the Government should require that such consultations occur:

- early in the negotiation process (i.e., during the contract review process *and* prior to the development of a draft term sheet);
- as part of a formal public process; and
- in a time-bound and focused manner.

6.2 Accessibility of Public Documents

Contracts negotiated by the Government often have tremendous impact on the life of communities affected by the operation of these agreements. In many developing countries, concession agreements also have nation-wide economic and social implications and can even affect state security. Today the ArcelorMittal and Firestone concessions play a critical role in Liberia's economic development strategy.

Recognizing the impact of these concession agreements on Liberia, the Government committed to transparency by making the ArcelorMittal and Firestone agreements public documents. Contract transparency is in the best interest of the government, private investors and citizens. The disclosure of contracts expresses the public ownership of the exploited natural resources. Transparency also ensures that expectations from communities affected by the contracts are managed and realistic. Public disclosure of the terms of concession agreements provides a safeguard for private investors to ensure contract stability and avoid abuse in contract implementation. Dissemination of contractual terms has the further effect of increasing buy-in from affected communities and of facilitating monitoring and compliance of the agreement in the post-signature phase.

However, there seems to be confusion within the Government about its obligation to make public documents accessible. Most Government officials recognize that the ArcelorMittal and Firestone contracts are public documents as a result of being published into handbills during the Legislative ratification process. Yet a majority of Government representatives argued that the Government has no obligation to ensure subsequent public access to contracts.

Most Government officials interviewed also believed that contracts not subject to ratification, such as qualifying investment incentive contracts or mining exploration agreements, are not public documents and should not be made available to the public. Some officials justified keeping such contracts from the public by arguing that under the terms of these agreements the Government had an obligation to protect the confidential information of investors. Others indicated that without a clear policy on which documents are required to be made public, it was difficult for them to know how to respond to public requests for information about contracts. The Report Team pointed out that many countries had policies allowing the Government to make commercial contracts available to the public while protecting confidential investor information. To further promote transparency and make its contracts more readily available to the Liberian public, the Government should:

A) find a cost-effective means of providing public access to ratified concession agreements. This can be done by posting contracts on Government websites accessible by the public;

B) clarify its position on making contracts that are not subject to Legislative ratification public. The Report Team recommends the Government make such contracts accessible to the public as part of future freedom of information legislation that the Government may enact.

7. Contrasting the Fast Track Negotiations to Other Government Negotiating Practices

7.1 Introduction

The negotiating practice the Government successfully used in the ArcelorMittal and Firestone negotiations differs from the process of the Public Procurement and Concessions Act in significant ways. In subsequent concession negotiations, the Government has largely followed the negotiating practice used in the ArcelorMittal and Firestone negotiations. The Report Team found only one instance, a recent negotiation for a gold mining concession, where the Government used a different negotiating process. In that case, the Ministry of Lands, Mines, and Energy ("MLME") followed the negotiating process in the Minerals and Mining Law of 2000 ("2000 Mining Law").

This Section of the Report contrasts the negotiating practice the Government used in ArcelorMittal and Firestone and the practice under the PPCA. It also describes the practice used by the Ministry of Agriculture ("MOA") and MLME for recent negotiations following the ones with ArcelorMittal and Firestone. Finally it highlights the most significant differences between the negotiating process in the 2000 Mining Law, the practice used in ArcelorMittal and Firestone, and the process set out in the PPCA.

The Section concludes by recommending the Government resolve the differences by amending the PPCA to incorporate best practices from the ArcelorMittal and Firestone negotiations. The Government has followed a similar route by amending the Liberian tax code (e.g., the 2000 Revenue Code of Liberia) to capture the substantive fiscal benefits of the ArcelorMittal and Firestone negotiations. The process of codifying the gains achieved in negotiation institutionalizes the benefits of these negotiations and reduces the transaction costs of having to argue for the same points in future negotiations.

7.2 Analysis

7.2.1 Constituting the Negotiating Team

Under Part VI of the PPCA (see Appendix VI), only the IMCC has the authority to constitute a team to negotiate concession agreements.[20] The PPCA provides further that the act of constituting a negotiating team by any person or entity other than the IMCC established by the PPCA is void.[21] In the ArcelorMittal and Firestone negotiations, the President either appointed the negotiating team directly or approved the members of the team based on the recommendation of the Sector Head Minister in his capacity as Chair of the IMCC. Appointment of the negotiating team was not left to a committee, as is the case under the PPCA where only the IMCC has the authority to constitute the negotiating team. During the ArcelorMittal and Firestone negotiations, the President assumed responsibility for the make-up of the Government's negotiating team. Her leadership style as discussed in Section 4.1 was a significant factor in the success of the negotiations and resulting gains to Liberia.

7.2.2 Composition of the Negotiating Team

Under the PPCA the negotiating team must comprise relevant experts in a team of not less than three but not more than seven persons appointed by the IMCC.[22] The intent of the PPCA language seems to be to exclude political appointees--the Government employees who are the ultimate decision makers within the Government. The process for selecting the negotiating teams in the ArcelorMittal and Firestone negotiations did not exclude the final decision makers within Government. While the President was free to appoint anyone she wanted to the ArcelorMittal and Firestone negotiating teams, she chose teams comprised almost exclusively of Government Ministers or Agency Heads who sat on the IMCC.

In the ArcelorMittal and Firestone negotiations the President exercised the power to adjust the size and membership of the team during negotiations as she deemed necessary to further the Government's objectives. There was no pre-set minimum or limit to the size of the team, as is the case under the PPCA. In practice, however, experience in the ArcelorMittal and Firestone negotiations bore out that the ideal size of the negotiating team was between 3 and 7 members. In the ArcelorMittal and Firestone negotiations, the members of the negotiating team were the final decision makers. They were not technocrats who had to get final approval for their decisions from Ministers or other political appointees on the IMCC. The Ministers on the negotiating teams in the ArcelorMittal and Firestone negotiations, while assisted by technical advisors, were responsible for their own decisions. Under the process used in the ArcelorMittal and Firestone negotiations, members of the negotiating team were personally accountable to the President and answerable to the National Legislature and Liberian public before whom they had to go during the Ratification process to defend the final product. In the PPCA negotiation process, members of the negotiating team are technocrats and accountable only to the IMCC; they are also presumably free of political influence and any conflicts of interest.

The PPCA specifically prohibits the Sector Head Minister from being a member of the Government's negotiating team for a concession agreement.[23] The Government's negotiating

teams in the ArcelorMittal and Firestone negotiations were, however, chaired by the Sector Head Minister. This leadership role ensured that the Ministry responsible for implementing the concession agreement was prepared to take ownership of it. Having the Sector Minister lead the negotiations also ensured that the Government Ministry with presumably the largest subject matter expertise was actively involved in the negotiations. Under the concession negotiation process in the PPCA, the final decision makers of the Sector Ministry responsible for implementing the concession agreement (e.g., the Minister and other political appointees) could not be a part of the negotiating team.

Liberia's current professional capacity may, in part, explain the different approaches to selecting the negotiating team under the practice the Government followed in the ArcelorMittal and Firestone negotiations and the negotiation process in the PPCA. In the end, the practice for determining the composition of the Government's negotiating teams in the ArcelorMittal and Firestone negotiations produced significant gains for Liberia and seems best suited for Liberia's current realties.

7.2.3 The Composition, Operation and Function of the IMCC

Under PPCA rules, a new IMCC is convened for each concession agreement the Government negotiates. This was also done in the ArcelorMittal and Firestone negotiations. Similar to the fast track negotiations, under the PPCA when a concession contract is concluded, that particular IMCC is to be dissolved.[24] The IMCC under the PPCA is always headed by the National Investment Commission ("NIC") Chairperson and has as its members the Minister of Justice, Minister of Finance, Minister of Economic Affairs[25], the Sector Head Minister and two other Ministers appointed by the President.[26] The two other Ministers appointed by the President are to represent the sectors of the economy affected by the concession.

In the ArcelorMittal and Firestone negotiations, the IMCC was chaired by the Sector Head Minister and over time developed a core team that included the Minister of Justice, Minister of Finance, Minister of State, Finance, Legal & Economic Affairs, the NIC Chairman and National Coordinator of the LRDC. The President added other Ministers to the IMCC as necessary (e.g., Minister of Labor in the Firestone negotiations). The PPCA on the other hand provides that apart from the NIC Chairperson and the Ministers of Justice, Finance and Economic Affairs, no person shall have permanent representation on the IMCC.[27] The main differences between the make-up of the IMCC's core team under the PPCA and that used in the ArcelorMittal and Firestone negotiations are that under the PPCA: 1) the NIC Chairman chairs the IMCC instead of the Sector Head Minister; and, 2) the Minister of Economic Affairs instead of Minister of State (i.e., the Office of the President) is part of the core IMCC team.

The PPCA states that the IMCC is to be convened by the Sector Head Minister through a written request to the President and the NIC Chairperson.[28] The President, on receipt of the request is to nominate two additional Ministers. The NIC Chairperson, on receipt of notice of the President's nominees, is to convene the IMCC for the purpose of the specific concession.[29] A similar process was followed for convening the IMCC in the ArcelorMittal and Firestone negotiations. In the

ArcelorMittal and Firestone negotiations, the IMCC was convened directly by the President or upon written request of the Sector Head Minister; the Chairman of the NIC was not part of the process.

Under the PPCA no member of the IMCC can delegate his/her role as a member of the IMCC and only where absolutely necessary a Minister may send a Deputy Minister as a proxy to a meeting of the IMCC.[30] Delegating under the ArcelorMittal and Firestone negotiating process was left to each Minister's discretion although Ministers remained ultimately responsible for the positions taken by their proxies.

Under the PPCA, the IMCC does not have a quorum without the presence of the Ministers responsible for Finance, Economic Affairs, Justice, and the Sector Head Minister or their duly authorized Deputy Minister.[31] There was no similar quorum rule in the ArcelorMittal and Firestone negotiations. Meetings however were generally rescheduled if the Sector Head Minister was not available or if the Minister of State and Minister of Finance (or their proxies) could not attend.

Both the PPCA[32] and the practice used in the ArcelorMittal and Firestone negotiations allow the IMCC to use experts and technical advisors during its meetings.

Finally, under the PPCA, in addition to selecting the negotiating team, the IMCC is also responsible for the review and approval of the concession report[33] from the Bid Evaluation Panel, and for the preparation of an annual concessions plan for submission and approval by the Cabinet.[34] The IMCC's role in the practice used for the ArcelorMittal and Firestone negotiations was more limited to the contract review and negotiation preparation.

7.2.4 Consultations with Non-Governmental Stakeholders

The PPCA requires consultations with non-government stakeholders. The PPCA provides that the responsible Sector Ministry should undertake public stakeholder consultations as part of the concession process.[35] The Sector Ministry must provide, at a minimum, the following information at a public stakeholder forum[36]:

- the strategic importance of the project;
- the extent of investment or private resources (i.e. financial, human, etc.) to provide the needs of the community;
- the measures taken to address any environmental challenges and adverse externalities for the affected population; and,
- any other reason for choosing the concession option for the Project.

As currently drafted, the provisions of the PPCA requiring a stakeholder forum could be interpreted to mean that stakeholder consultations need only be held as part of the concession bid and award process, and not as part of the concession negotiation process. The negotiating practice used in the ArcelorMittal and Firestone negotiations did not have formal mechanisms for gathering input to the contract review process from non-governmental stakeholders. In Section

6.1 above, the Report Team recommended that a mechanism for consultations with non-governmental stakeholders be developed as part of harmonizing the PPCA with the concession negotiating practice used in ArcelorMittal and Firestone.

7.2.5 Concession Negotiations Following ArcelorMittal and Firestone

Following the ArcelorMittal and Firestone negotiations, the Government has negotiated, or is in the process of negotiating, a number of smaller concession agreements. The Government has begun negotiations with the agent for Liberia's Shipping and Corporate Registries[37] and, through the NIC, has also negotiated a number of hotel lease[38] and other investment agreements.[39] This Report does not cover the Government's negotiations related to Liberia's Shipping and Corporate Registries nor does it cover contracts negotiated by the NIC. The Report Team can confirm that in negotiations related to Liberia's Shipping and Corporate Registries the Government has largely followed the negotiating practice it used in the ArcelorMittal and Firestone negotiations. On the other hand, in a meeting with the NIC, the Report team confirmed that the NIC largely follows the concession negotiating process set out in the PPCA.

The negotiations discussed below have been for concessions in the agriculture and mining sectors. While the ArcelorMittal and Firestone contracts have become the models used by both the Ministry of Lands, Mines and Energy ("MLME") and the Ministry of Agriculture ("MOA") in contract negotiations, as outlined below, the negotiating practice for recent concession agreements negotiated by the MOA and MLME are different.

7.2.6 Concession Negotiations by the MOA

The concession negotiating practice at the MOA closely follows the practice used in the ArcelorMittal and Firestone negotiations. The MOA has, between October 2008 and April 2008, been involved in the negotiation or renegotiation of more concession agreements than any other Government ministry. In addition to Firestone, the MOA has negotiated or is preparing to negotiate at least six concession agreements. It has re-negotiated and signed two oil palm concession agreements with LIBNC and EBF. The LIBNC and EBF negotiations were done in parallel with the Firestone negotiations using essentially the same negotiating team. The agreements for LIBNC and EBF were modeled on drafts of the Firestone agreement. At the time of writing, the MOA has teams actively negotiating two large oil palm concession agreements with Sime Darby and Sithe Global. The MOA and its technical advisors are also preparing for negotiations with the Liberian Agricultural Company and LIBCO (i.e., Cocopa).

As in ArcelorMittal and Firestone, the President has appointed or approved the negotiating team with the Minister of Agriculture as Chairman in his role as Sector Head. The negotiating teams in MOA concession negotiations have been largely made up of members (e.g. Ministers or their proxies) of the IMCC convened for review of that specific concession agreement. In recent negotiations conducted by the MOA, the Agriculture Minister convenes and chairs the IMCC's contract review and negotiating strategy meetings. The core IMCC team for negotiations led by the MOA has come to include representatives from the MOF, MOJ, MOS and NIC. Because the Minister chairs MOA IMCC meetings, representatives of other ministries or agencies attending

MOA IMCC meetings are usually Ministers, Deputy Ministers or heads of agencies (e.g., NIC Chairman).

In negotiations led by the MOA, because all members of the IMCC also make up the negotiating team, there has been no marked distinction between the make-up of the IMCC and the negotiating team as was the case in the ArcelorMittal and Firestone negotiations. The technical contract work of the MOA IMCCs and negotiating teams is driven by the MOA Minister and done largely by the MOA's Chief Counsel and representatives from LRDC, ISLP or other donor organizations (e.g., IFC, IMF, etc.). Like in the ArcelorMittal and Firestone negotiations—since there is no formal procedure for consulting affected communities, labor unions or others in civil society—the MOA has through informal meetings sought input from those who might be impacted by the concession agreements being negotiated. As in the ArcelorMittal and Firestone process, the MOA Minister in consultation with other members of the IMCC or negotiating team will, as necessary, raise contract issues or negotiation priorities for the President's input. Similar to the practice used in the ArcelorMittal and Firestone negotiations, once the MOA negotiating team reached final agreement with the investor, the MOA has presented the concession contract to the President and Cabinet for final review and approval before submitting it to the Legislature.

7.2.7 Concession Negotiations by the MLME

In its most recent concession negotiation the MLME seems to be following the negotiating process in the 2000 Mining Law.

Under the 2000 Mining Law, concession negotiations are conducted by a Ministerial Technical Committee ("MTC"). Section 3.5 of the 2000 Mining Law provides that the MTC shall be empowered to negotiate concession agreements under the chairmanship of the MLME Minister. Section 3.4 of the 2000 Mining Law states that the MTC shall, in addition to the MLME, be made up of representatives from the MOJ, MOF, MPEA, MOL, NIC, Council of Economic Advisors to the President of Liberia and the Central Bank of Liberia. The 2000 Mining Law provides that the President can appoint up to 3 additional persons who are not Government officials to serve as members of the MTC. Section 3.3 of the 2000 Mining Law further provides that the MLME Minister may delegate any power conferred upon him under the 2000 Mining Law to Deputy Ministers, Assistant Ministers, Directors and other officials.

The most significant differences between the concession negotiating process of the 2000 Mining Law and that used in ArcelorMittal and Firestone are the composition of the ministerial review committee, the make-up of the negotiating teams and the levels of delegation permitted.

In the 2000 Mining Law, the MOS (e.g. the Office of the President) is not part of the core ministerial review committee as was the case in ArcelorMittal and Firestone. The 2000 Mining Law also has the MPEA, MOL, Council of Economic Advisors to the President and the Central Bank as members of the core ministerial review team; none of these entities were part of the core ministerial review team in the ArcelorMittal and Firestone negotiations.

Under the 2000 Mining Law, the ministerial review committee and the negotiating team are one and the same group. In the negotiating practice used in ArcelorMittal and Firestone, the ministerial review committee and the negotiating team were two groups with distinct functions; the IMCC reviewed the contract and made recommendations for negotiating priorities, and the negotiating team negotiated the contract. In contrast to the 2000 Mining Law, in the ArcelorMittal and Firestone negotiations the President had the flexibility to appoint anyone to the negotiating team.

The 2000 Mining Law allows the MLME Minister to delegate his chairmanship of the MTC's contract review and negotiations. Under the practice used in the ArcelorMittal and Firestone negotiations, the chairmanship of the IMCC and negotiating team was rarely, if ever, delegated and any delegation was for a single meeting and not the entire process.

It is important to note that the PPCA under Sections 141 (2) (c) (i) and Sections 141 (2) (c) (iv)[40] has amended or otherwise repealed the sections of the 2000 Mining Law governing the negotiating practice for mining concessions (i.e., 2000 Mining Law Sections 3.3, 3.4 and 3.5).

In the AmLib negotiations, the MTC was chaired primarily by the Assistant Minister of MLME, who kept the MLME Minister informed of the MTC's progress. In addition to the MLME Assistant Minister, the AmLib MTC is made up of representatives from the MOJ, MOF, MPEA, MOL, NIC, and the Central Bank of Liberia. Government representation on the MTC is primarily at the Deputy Minister, Assistant Minister and Director levels. Unlike the ArcelorMittal and Firestone negotiations, in the AmLib negotiations technical assistance from the Government's outside advisors has been limited.[41] The MTC did use the Amended ArcelorMittal MDA as a model for developing a draft contract for AmLib. Consultations with affected communities or other civil society groups have not occurred under the AmLib MTC process. The AmLib negotiations are ongoing. The MLME has indicated once the MLME Minister has approved the contract negotiated by the MTC, it will be submitted to the President and Cabinet for review before submission to the national Legislature for ratification.

Table 3 below contrasts the concession negotiation process in the PPCA with the negotiation practices used in the ArcelorMittal and Firestone negotiations, by the MOA and MLME.

Table 3

Contrasting the PPCA Concession Negotiation Process with the Negotiating Practices used in the ArcelorMittal and Firestone negotiations, and by the MOA and MLME

	PPCA (Part VI)	ArcelorMittal and Firestone	MOA	MLME and 2000 Mining Law
Negotiation Team Constitution	IMCC has sole authority to constitute team; constitution by any other person or entity is void Political appointees excluded Sector Head Minister/ final decision makers not team members	Appointment not left to committee President either appoints members directly, or approves recommendation of Sector Head Minister Sector Head Minister chairs selected team Almost exclusively includes Ministers or Agency Heads on IMCC; final decision makers not excluded	President appointed or approved team Chaired by Sector Head (Minister of Agriculture) Made up largely of IMCC members convened for specific concession review (Ministers or proxies)	MLME Minister chairs team, and MTC is empowered to conduct negotiations Core ministerial review committee includes MPEA, MOL, Council of Economic Advisors to President, and Central Bank MOS/Office of the President excluded
Negotiation Team Composition Operation and Function	Must be comprised of technocrats and relevant experts; accountable only to the IMCC Size = 3–7 persons	Team responsible for defending decisions and final agreement; accountable to President, National Legislature, and Liberian public Ministers used assistance of technical advisors as needed President adjusts size/ membership when needed to further GOL's objectives; 3–7 persons found to be optimal size	Practice appears similar to ArcelorMittal and Firestone negotiations	MLME appears to follow 2000 Mining Law process Ministerial review committee and negotiating team are the same team (groups were distinct in ArcelorMittal/ Firestone) 2000 Mining Law sections governing negotiating practice for mining have been amended/repealed under PPCA

	PPCA (Part VI)	ArcelorMittal and Firestone	MOA	MLME and 2000 Mining Law
IMCC Composition	Sector Head Minister, President, and NIC Chairperson convened new IMCCs for each Government concession negotiation (dissolved upon contract agreement) Always headed by NIC Chair Permanent ministerial membership assigned to MOJ, MOF, and MPEA Also Sector Head Minister and two Presidential appointed Ministers representing sectors relevant to the concession	President (or Sector Head Minister) convenes new IMCC for each Government concession negotiation (dissolves upon contract agreement); Chair of NIC not involved in convening of IMCC Always headed by Sector Head Minister Core team include MOJ, MOF, MOS, NIC and LRDC President adds other Ministers as necessary (e.g., MOL in Firestone negotiations)	MOA Minister convenes and chairs IMCC meetings Core team includes representatives from MOF, MOJ, MOS and NIC No marked distinction between make-up of IMCC and negotiating team (unlike ArcelorMittal and Firestone) MOA Minister drives Technical contract work of MOA IMCCs and teams; done largely by MOA's Chief Counsel and representatives from LRDC, ISLP or other donor organizations (e.g., IFC, IMF, etc.)	President can appoint up to 3 additional non-governmental officials to the MTC MLME Minister may delegate any power conferred upon him, to Deputy Ministers, Assistant Ministers, Directors and other officials Chaired by MLME Minister, the MTC also includes representatives from MOJ, MOF, MPEA, MOL, NIC, Council of Economic Advisors to the President of Liberia, and the Central Bank of Liberia
IMCC Operation & Function	Members cannot delegate membership unless absolutely necessary; Deputy Minister serve as proxy representative at meetings Quorum for work = Ministers of Finance, Economic Affairs, Justice, and Sector Head Minister (or authorized Deputy Minister) Experts and technical advisors used during meetings for particular concessions Also responsible for review/approval of concession report from Bid Evaluation Panel, and for preparation/ submission of annual concessions plan for Cabinet approval	Geared more to contract review and recommendations for negotiation priorities Delegating left to Minister's discretion; Minister remains responsible for positions taken by proxies No formal quorum rule; in general meetings rescheduled if Sector Head or Ministers of State, and Finance (or their proxies) not available Experts and technical advisors used during meetings for particular concessions	Practice appears similar to ArcelorMittal and Firestone negotiations	MLME Minister delegates chairmanship of MTC's contract review and negotiations

Table 3 *(continued)*

	PPCA (Part VI)	ArcelorMittal and Firestone	MOA	MLME and 2000 Mining Law
Non-Governmental Stakeholder Consultations	Must be part of concession process; undertaken by responsible Sector Ministry Sector Ministry required to provide public information regarding: • project's strategic importance • extent of investment/private resources to provide community needs • project's technical/financial measures addressing any environmentally challenging externalities for affected population • other reasons that may justify choosing project's concession Interpretation of requirements unclear (only part of concession bid/award process, not part of the negotiation process)	No formal mechanisms for gathering input to review process but input sought through informal meetings and discussions	No formal mechanisms for gathering input MOA held informal meetings to seek input from communities, labor unions or others in civil society who might be impacted by concessions	No mechanism used

7.3 Recommendations for Harmonizing Government Negotiating Practices

To institutionalize the factors that produced success in its recent negotiations, the Government will need to harmonize the practice it used in the ArcelorMittal and Firestone negotiations with the requirements of the PPCA and 2000 Mining Law. In the analysis above the Report Team identified areas that require harmonization of current PPCA law with the practice the Government successfully used in the ArcelorMittal and Firestone negotiations. Those factors include the:

- process for constituting the negotiating team;
- composition of the negotiating team;
- composition, operation and function of the IMCC; and,
- process for consultation with non-governmental stakeholders.

The analyses above also point out the need to eliminate inconsistencies between the PPCA and 2000 Mining Law negotiating processes. The Government should have one negotiating practice that all Ministries follow when conducting concession negotiations. This procedure should unify best practices from the 2000 Mining Law, the PPCA and the ArcelorMittal and Firestone negotiations.

To harmonize the negotiating practices, the Report Team recommends the Government amend Section VI of the PPCA, *Specific Procedures for Processing Concession Agreements*, in the following manner:

A) Convene an IMCC to draft amendments to Section VI of the PPCA

The IMCC discussions should focus, among other things, on producing an amendment to the PPCA that will incorporate the best features of the current PPCA, 2000 Mining Law and the negotiating practice used in the ArcelorMittal and Firestone negotiations. The IMCC for 'Harmonization of Concession Processes' could be chaired by the Minister of State, Financial, Legal and Economic Affairs and comprise Ministers from the MOA, MLME, MOF, MOJ, the Head of the LRDC, and the Chairmen of the NIC and the PPCC.

The members of the IMCC should be assisted by a team of Government experts and technical advisors (e.g., ISLP, USAID, UNDP, etc.) who should be responsible for preparing an initial report and draft amendment to Section VI of the PPCA for discussion by the Ministers. The report prepared by the technical advisors should be similar to the reports prepared by the Government's technical advisors (e.g., the IMF) regarding amendments to Liberia's tax code to reflect the gains made in the renegotiations of the ArcelorMittal and Firestone contracts.

B) Consult non-governmental stakeholders

Once the IMCC has agreed on a draft amendment to Section VI of the PPCA, it should formally consult with non-governmental stakeholders before presenting the final document to the Cabinet and President for approval and submission to the Legislature.

8. Concession Agreement Monitoring and Compliance

8.1 Introduction

This Report has focused on the contract review and negotiation processes Liberia uses for concession agreements. In this section, the Report Team takes a look into Liberia's future and observes that, in order to achieve full benefit from the concession contracts it negotiates, the Government will have to effectively monitor, and ensure compliance with, the terms of its negotiated agreements.

8.2 Analysis

Exactly how the Government should accomplish its monitoring and compliance efforts is a topic for a separate study. However, the Report Team has provided a number of recommendations below that merit further investigation:

1. centralize concession resources in a single secretariat or bureau;
2. expand the mandate, authority, staff, resources and funding of the current Bureau of Concessions;
3. elevate the Bureau's stature, position, and reporting structure; and
4. develop a concession contract process and legal framework that includes and supports the work of the Bureau.

8.3 Recommendations

8.3.1 Centralization

The Report Team recommends that the Government centralize all technical resources to support and monitor its concession activity into a single institution (i.e., a technical secretariat or bureau within a ministry). Centralizing its concession resources is the most effective and efficient way for the Government to quickly strengthen its institutional capacity to monitor and review concession contracts.

Centralization would speed the effectiveness of the Government's monitoring and compliance programs, and bring about coherent and consistent concession practices. A centralized concession unit would also create a repository for Government knowledge, expertise and documents on Liberia's concession sector. A centralized concession unit would lower the Government's over-all costs for monitoring and compliance programs. With a clear chain of command to the responsible Minister and President, it could be useful in growing a culture of transparency and accountability in Liberia's concession sector. It should be noted that a centralized concession monitoring unit is not new to Liberia. In the mid-seventies, monitoring and compliance programs for Liberia's concession sector were centralized in a very capable Concessions Secretariat that was housed in the MOF.

8.3.2 Empowerment of Bureau of Concessions

The Report Team believes that by expanding the mandate, authority, staff, resources and funding of the current Bureau of Concessions the Government will be able to:

- better retain the knowledge and experience gained through its concession review and negotiation process;
- scale its contract review and negotiation activities without being as limited by the availability of Government Ministers to participate in the process; and,
- target the knowledge transfer and training from its international technical advisors.

If one accepts that a centralized concession unit is the best vehicle for managing the Government's role in Liberia's concession sector, then one must conclude that the institutional capacity of the current Bureau of Concessions within the MOF will need to be strengthened significantly. By mandate, the Bureau of Concessions is limited to monitoring the fiscal provisions of Liberia's concession agreements.

At the very minimum, the Bureau's monitoring of concession agreements to ensure compliance with contract terms and conditions should be expanded beyond fiscal provisions to include social and environmental provisions. Additionally, the scope of the Bureau's monitoring should be increased to include both the investor's and the Government's compliance with the terms of the agreement. This is important since often the investor's obligations under the agreement are triggered by Government's performance of its obligations

By contrast, the Concessions Secretariat in the mid-1970's had the responsibility to:

- evaluate and assess investment proposals;
- develop fiscal policy for Liberia's concession sector;
- negotiate all concession agreements;
- monitor Liberia's concession sector and concession agreements; and,
- seek compliance with the terms of the country's concession agreements.

The head of Secretariat reported to the Chairman of the Concessions and Investments Committee, who was the Minister of Finance, as well as to the MOF Deputy Minister for Administration (the principal MOF deputy at the time). The Secretariat was staffed with very well trained Liberian professionals and had available to it the expertise of international advisors.

If the current Government accepts that the responsibility to evaluate and assess investment proposals must remain with the NIC, and that the development of fiscal policy for the concession sector is better-handled by others in the MOF or by the MPEA (admittedly open questions that the Government may want to further study), the Report Team suggests that the Government consider expanding the mandate of the Bureau to include the following tasks:

1. review of contracts and provision of technical assistance to the IMCC;
2. provision of legal and negotiation support to the concession negotiating teams appointed by the President;
3. monitoring of Liberia's concession sector and concession agreements (including the monitoring of non-fiscal terms, e.g., social, environmental, etc.) to ensure compliance by both the investor and the Government.

Expanding the mandate of the Bureau in these ways would create opportunities for its staff to develop the subject-matter expertise necessary to do the technical review work. Currently, this work is largely done by Deputy and Assistant Ministers and other political appointees who make-up the "technical" committees (i.e., what is often called the IMTC) convened to provide the IMCCs with technical and subject-matter input during the negotiation of a particular concession. If the Bureau were allowed to play an expanded role in supporting the IMCC's negotiation of concession agreements, a similar growth in its legal and negotiating capacity would occur.

This expanded role in both the review and negotiation of concession agreements would allow the Government's political appointees to attend to their other demanding duties, while at the same time allowing the Government to scale its concession review and negotiating activities without depending upon the availability of Ministers and/or Deputy and Assistant Ministers to attend IMCC or IMTC meetings. Having the Bureau's technical experts perform the work of the IMTC would also allow the Government to retain the know-how to conduct concession review after political appointees leave Government. It would make the Government's concession review process more transparent by freeing it from the perception of being constrained by potential conflicts of interest. Similarly, enabling the Bureau's experts to play a larger role in negotiating concession agreements would grow within the Government a team of world-class concession

negotiators and allow the Government to retain the invaluable negotiation knowledge and experience long after the IMCC's Ministers leave Government.

For such a structure to work, the Bureau's experts must be compensated at close-to-market rates for carrying out expanded responsibilities. Salaries for the Bureau's staff must be designed to attract and keep Liberia's best and brightest (from in the country and the Diaspora); and not be limited by the Government's civil-service pay scale. This would free the staff from the pressure of improper influence and can be justified given the billions of dollars in concession revenue the Bureau's experts would be responsible for helping the Government generate and protect.

8.3.3 Elevation of Status

The Report Team proposes that the Government consider changing the Bureau of Concessions' name to the Concessions Secretariat; thereby, growing the Bureau's stature and providing an elevated reporting structure that will be necessary for the Bureau to accomplish the expanded responsibilities suggested above.

The name-change would mark a return of the Bureau to a more central role in the Government's concession activity, and better capture the increased responsibility the Bureau's staff would have in the concession process.

Elevating the reporting status of the Bureau of Concessions could be accomplished by having the head of the Concessions Secretariat report to the Chair of the IMCC and to the Minister where the Secretariat would be housed. Currently, the Director of the Bureau reports to the MOF Deputy Minister for Revenue. He has a staff of 3 (including an advisor from the World Bank) to oversee 45 contracts. Clearly, the Government would need to grow the staffing and funding of the Bureau if it is to become the driver of, and central unit for, the Government's concession review, negotiation, monitoring and compliance processes.

It should be noted that elevating and expanding the Bureau's role within the concession review and negotiating process would also allow the Government to maximize the value it receives from its world-class international advisors (e.g., ISLP, RWI, UNDP, Columbia Law School, etc.) by having a constant group of Bureau staff within Government with whom these advisors can work, develop relationships, and train.

If the Government commissions a study on how to strengthen its concession monitoring and compliance ability, it should ask the study team to examine the pros and cons of continuing to house the Concessions Secretariat within the MOF. Such a report should also weigh the pros and cons of housing the Concessions Secretariat at the MOJ, MPEA or the NIC.

8.3.4 Development of a Regulatory Framework

Finally, the Report Team recommends that, for the longer-term, the Government develop a legal framework to support the work of the Bureau—one that would allow the Government to optimize its results from Liberia's Concession Sector.

With the support of a World Bank advisor, the Bureau of Concessions has begun looking at what is needed for the Government to revive an effective concessions monitoring and compliance program. With limited resources, the Bureau has made significant headway in developing draft policies for a concession monitoring and compliance program. A study on strengthening the Government's ability to monitor and ensure compliance with concession agreements should be informed by the Bureau's work to date.

The Report Team suggests that the Government combine its study on strengthening its ability to monitor and ensure compliance with the provisions of its concession agreements, with its study of Inter-Ministerial efforts to harmonize its various concession negotiating practices. This will ensure that a comprehensive look is taken at Liberia's entire concession contract process. Through such a study, the roles and functions of the Bureau of Concessions, and the various ministerial committees involved in the concession process would be examined in the context of amending the PPCA. If formally requested, the Government's international advisors (e.g., RWI, UNDP and ISLP) are likely to provide expert technical support for such an effort.

9. Conclusion

This Report has documented what the Report Team learned about the negotiating practice the Government employed to achieve the gains Liberia experienced in the ArcelorMittal and Firestone negotiations. It has also laid out the Report Team's analyses and recommendations for strengthening, institutionalizing and harmonizing the Government's contract review and negotiating process. Lastly, it has outlined suggestions that would help the Liberian Government strengthen its ability to monitor and seek compliance with the terms of its concession contracts, post-signature.

Specifically, the Report documented how and why the significant gains the Government achieved in Liberia's recent renegotiations of the ArcelorMittal and Firestone can be attributed to several important factors: 1) Presidential leadership; 2) teamwork and the development of consensus on the Government's negotiating teams aided by successful negotiating strategies; and 3) world-class technical assistance from the Government's advisors.

The Report Team's analyses and recommendations of possible strategies for the Government to ensure similar gains in ongoing and future concession negotiations were presented. Several key factors were discussed, including strengthening and institutionalizing the Government's efforts to: 1) grow and scale its own capacity to manage and negotiate complex investment agreements; 2) have consultations with and input from non-governmental stakeholders affected by concession activity; and 3) promote transparency by making concession agreements more easily accessible to the public.

In addition, this Report discussed the Government's need to harmonize the negotiating practice it used in the ArcelorMittal and Firestone negotiations with the concession negotiation requirements of the PPCA. The Report made the point that amendment of the PPCA will be necessary to: 1) achieve effective institutionalization of the factors that produced success in the Government's recent negotiations with ArcelorMittal and Firestone; and, 2) ensure that a single concession negotiating process is followed by all Government Ministries and agencies.

Finally, as part of its efforts to harmonize the ArcelorMittal and Firestone negotiating practice with the PPCA, the Report Team suggests that the Government consider strengthening its ability to monitor and seek compliance with the terms of its concession agreements by examining the over-all role the Bureau of Concessions should play in Liberia's concession contract process.

Appendices

Appendix I
List of Persons Interviewed

Office of the President

Ellen Johnson Sirleaf	President
Morris Saytumah	Minister of State, Financial Legal and Economic Affairs
Natty B. Davis	Head of Secretariat, LRDC

Ministry Lands Mines & Energy

Eugene Shannon	Minister
Gesler Murray	Assistant Minister

Ministry of Agriculture

J. Chris Toe	Minister

Ministry of Finance

Elfrieda Tamba	Deputy Minister
Drayton Hinneh	Director

Ministry of Justice

Tiawan Gongloe	Solicitor General
Joseph Jallah	Deputy Minister
Eva Mappy Morgan	Special Assistant to the Minister

National Investment Commission

Richard Tolbert	Chairman
Pete Norman	Executive Director
James Zayzay	Director

Bureau of Maritime Affairs

Angelique Weeks	Principal Deputy Commissioner

Public Procurement and Concessions Commission

Keith Juba	Chairman
Joseph Neufville	Executive Director

Liberia Extractive Industries Transparency Initiative

Negbalee Warner	Executive Director

Others

J. Carney Johnson	AmLib Minerals Ltd.
Joseph Mathews	CEO, ArcelorMittal Liberia
Alfred Brownell	Green Advocates
Ricardo Acosta	UNDP/World Bank—MOF Advisor
Joe Bell	Senior Partner, Hogan & Hartson (ISLP)
Prof. Bob Hillman	U.C. Davis School of Law (ISLP)
Prof. Lou Wells	Harvard Business School (ISLP)

Appendix II
Questionnaire Documenting Liberia's Current Negotiating and Contract Review Practice

A Questionnaire to Gather Information
Necessary to Document Liberia's Current Negotiating and Contract Review Practice

1. **Describe Liberia's current contract and concession agreement negotiation process from your perspective? How different is this process from the contract review process?**
   - A. How did you get involved? How were you selected? Who contacted you?
   - B. Were you the only person from your Ministry involved in the contract review and negotiation team? Who were the others? How were they selected?
   - C. Who were the other members of the contract review and negotiation team? What were the other Ministries / Agencies represented on the team?
   - D. Who made the final decision on the make-up of the negotiation team? Was the final make-up of the negotiation team made public?
   - E. Did the negotiation team have a formal name (e.g., Inter-Ministerial Technical Team?)
   - F. How did the team decide when and where negotiation meetings would take place? Was the timing and location of each negotiation session made public?
   - G. Where did the team derive its mandate/authority to negotiate on behalf of the Government (e.g., in law, regulation, executive order)?
   - H. How did the team decide which contract to negotiate? On what basis did the team select to negotiate one contract over others requiring negotiation? Who was involved in making this decision?
   - I. Did the negotiation team receive technical input from experts during the negotiation process? Were they Government employees or outside experts supporting the Government?
   - J. How were outside experts selected and assigned to the negotiation team? Who made that decision?
   - K. What was the role of these experts in the negotiation process?
   - L. How did the negotiation team establish its negotiation strategy and positions? Did the team start by considering input from its technical experts? Did the team rely on or consider reports or recommendations from other groups within the government (e.g., the Contracts and Concessions Review Secretariat, the Inter-Ministerial Contract Review Committee)? Did the team receive or seek input from non-governmental actors (e.g., civil society, investors, Liberian business or labor associations,

etc.)? How were these non-governmental input provided the Government's technical experts for consideration in their analysis?

M. How were issues raised, prioritized, discussed and resolved among members of the negotiation team? How did the negotiation team reach consensus on issues or compromise positions offered to the other side? What role did technical experts assisting the Government play in the arriving at a consensus or a compromise position?

N. Were there ever issues that the team deadlocked on and felt they needed the President's input to resolve? How was the decision made to escalate a particular issue to the President? How were escalated issues presented to the President? Who participated in these escalation meetings with the President?

O. Did the President generally participate in the group's meetings? What was the process for involving her in a meeting?

P. What was the process for updating the President on the progress of the negotiation?

Q. Did the negotiation team keep their deliberations confidential during the negotiation process?

R. How did the negotiation keep the documents it was required or wanted to keep confidential from being made public?

S. How did the negotiation team handle requests from civil society or the press for updates on the negotiation process?

T. How did the negotiation team gain public support for the final contract negotiated with the investor?

U. How did the negotiation team support the Government in the contract ratification process before the National Legislature? Who from the negotiation team participates in this process? How were they selected?

V. What is the process for making the contract a public document following ratification by the National Legislature?

W. From your perspective, what do you think are the major gains from the (re)-negotiation process for the Government and people of Liberia?

X. What mechanisms does the Government have in place to ensure contract monitoring and compliance following the ratification process? What can be done to strengthen those mechanisms and processes?

2. Describe the contract review process from your perspective?

A. How did you get involved? Who contacted you?

B. What documents were you given? Who provided the documents?

C. What was your role in the review process?

D. What was your objective in the review process?

E. What was your deliverable?

F. Did you review the documents personally?

G. Did you receive technical input from experts? Were they Government employees or outside experts supporting the Government?

H. Did you receive input from others (e.g., civil society? investors? Liberian business or labor associations, etc.?

I. Were you the only person from your Ministry involved in the review process? Who were the others?

J. Who were the other members of the contract review process? What other Ministries/ Agencies were represented in the process?

K. How often did everyone involved in the contract review process meet?

L. What was the formal name given to the team meeting to review the contract in question?

M. Who called the meetings? Who chaired the meetings? Was there a quorum required?

N. Where did the team derive its mandate/authority for review (e.g., in law, regulation, executive order)?

O. How did the team prioritize its contract review? On what basis did the team select a contract for review over other contracts needing review?

P. What was the legal or contractual basis for reviewing the contract in question?

Q. What was your understanding of the scope and objective of the team's review?

R. What was the team's deliverable?

S. How were the meetings conducted? How were issues raised, prioritized, and discussed?

T. Did the President ever participate in the group's meetings? What was the process for involving her in a meeting?

U. Did the contract review team include governmental actors outside of the Executive branch?

V. Were third party views (non-governmental) views heard at the meeting? Did the group solicit input from civil society, investors, and other non-governmental actors in the discussion of issues at the meeting? How was this input solicited? Were such non-governmental actors invited to participate or present at the meetings?

W. Was the resolution of issues guided by certain broad policies (e.g., the general applicability of law)?

X. How were issues decided? How did the group reach consensus? What role did technical experts assisting the Government play in the decision making process?

Y. Who recorded the minutes, action items and follow-up requirements from the meeting?

Z. Was there a timeline for completing the review? Who set the timeline? What was the process for handling delays?

AA. Who prepared the final report? What did it recommend? Were there broad policy and negotiation strategies adopted in the report? Did the final report include desired wording on specific provisions in the contract being reviewed?

BB. What happened to the report? Who was the report sent to?

CC. Were you involved in the actual negotiation process? Were others from the contract review group involved in the negotiation process? How were people selected to participate in the negotiation process?

DD. Did the negotiation team seek formal input or ask questions of the contract review team during the negotiation process?

Appendix III
Guiding Framework: Review of NTGL Contracts and Concessions

Introduction

The GOL will convene a Contract and Concession Review Committee (The Committee or CCRC,) under the auspices of the Governance and Economic Management Assistance Program, with the mandate to review all contracts and concessions entered into by the National Transitional Government of Liberia. The Committee will review all contracts entered into by the NTGL as allowed by the following mandates:

a. Mandate of the Public Procurement and Concessions Committee under the terms of the Governance Economic Management Assistance Program (GEMAP).

b. By the appointment of a Contracts and Concessions Review Committee by the President of Liberia

c. Section 5(e) of the Public Procurement and Concessions Committee Act.

This review may be conducted in several stages, by various review Committees involving Ministries, International Partners, International Legal Experts and State Owned Enterprises. Additionally, the government reserves the right to expand the review at a later date to cover contracts engaged in prior to the term of the NTGL but this is outside the scope of the GEMAP. This document provides the guiding framework under which the review under GEMAP can provide a fair and consistent basis for providing recommendations to the President of Liberia, and Cabinet.

The overall consideration when conducting the review will be: **Is this contract/concession (and its implications) in the national interest of Liberia?**

Public outreach program

There is a need for public outreach on the contract and concession review to achieve four goals:

1. Solicitation of all documentation pertaining to contracts and concessions signed by the NTGL so the review Committee has a comprehensive list

2. Informing the public of the purpose and scope of the review process so as to provide stability in the business community

3. Solicitation of input from members of the public who may have relevant information regarding the contracts to be reviewed

4. Gain public support to strengthen the existing mandates for the review

Appendix 1: Public outreach Program outlines the activities and timing of the public awareness events designed to inform and solicit participation from the public in the contract and concession review. Primary actions will include:

1. PPCC to publish a list of all known NTGL contracts and concessions and conduct a public solicitation for all other contracts entered into during the life of the NTGL.
2. Communication to the public about the need for and purpose of the review, with an emphasis on providing reassurance to the business community.
3. Solicitation for public comment on contracts under review, via letter or email address

1. Creation of a Formal Contract and Concession Review Committee

The formal CCRC will review contracts and present their findings to the GEMAP Technical Team and the Economic Governance Steering Committee. The CCRC, through it's technical secretariat, will create and work to fill Company Data Sheets like the samples in Appendix 2: and present this data to the GEMAP TT and EGSC, along with recommendations to the President. These recommendations and proposals may include: maintaining the contract; negotiating amendments to the contract; canceling the contract or declaring it null and void. The President of Liberia may elect to further review the CCRC recommendation with the Cabinet and other relevant officials of the Government and share their comments, observations and recommendations for action with the EGSC.

CCRC Composition:

1. Committee lead: Representative from PPCC
2. Member from Ministry of Justice
3. Member from the Chamber of Commerce
4. Member from Liberian Bar Association
5. International representative (to be filled by IRCCE upon arrival)

A Technical Secretariat comprised of the following persons will support the work of the CCRC:

1. *Lead:* Internationally Recruited Contracts and Concession Expert
2. *International attorney(s):* Expert in international and procurement law
3. *Local Attorney:* Local legal expert in contract/concession and Liberian constitutional law
4. *Administrative assistant:* Local administrative support staff
5. There is also a need for *short-term, subject matter experts* (SME) in the areas of: minerals energy, telecommunications, general services and construction, equipment, manufacturing, real estate, scrap, and transportation.

Status of Recruiting:

- The EC will recruit the IRCCE.
- The USG has recruited a minerals concession expert who will be able to serve as the SME for minerals contracts. This expert should be in place by the end of April.
- The USG will fund the local attorney and administrative assistant who could be recruited quickly.
- The World Bank will provide SME's for other industry sectors. The World Bank will also provide the international attorney.

CCRC terms of reference:

1. Compile information for review.
2. Contact contract and concession holders, and current/former government officials for additional necessary documents.
3. Refine the review methodology and criteria of the CCRT, including data sheets, according to member expertise and applicable law at the time of contract execution.
4. Review each contract and concession, complete company data sheets and document findings and recommendations (supported through the work and recommendations of the TS.)
5. Present clearly all evidence and make evidence available to GEMAP TT and EGSC.
6. Maintain minutes for meetings and all other secretarial duties.
7. Facilitate field visits and appointments if necessary.
8. Co-opt any necessary technical expertise.
9. Provide information and make contract specific recommendations through the GEMAP TT to the EGSC as well as recommendations on possible procurement reforms.
10. Write status reports for presentation to the GEMAP Technical Team and report to the TT and EGSC on periodic or on needed basis.
11. After the review, the CCRC will prepare a lessons learned document recommending improvements to contracting and public procurement procedures

2. Contract and Concession Review Criteria

Composition

There are three possible levels of review possible:

1. Formal GEMAP Review Committee- convened by the President
2. Pro Bono legal assistance- provided by international actors
3. Ministerial or Parastatal level review efforts

Ground Rules

Ground rules are established for the following reasons:

1. To define a framework for evaluating all contracts and concessions on a fair and equal basis (level playing field)
2. To establish the legal grounds for consideration of a legal review of the various contracts and concessions; and
3. To determine the basis to make recommendations to the President after completion of reviewers work.

The following criteria will be examined to determine the validity of any contract. (Note: in all circumstances, the applicable law at the time of contract execution will shape the applicability or non-applicability of these guidelines.)

1. ***Contract Award:***
   - Is the contracting company a bona fide legal entity?
   - Was there an open, advertised tender?
   - Applicable if contracts were entered into after the Interim Public Procurement Procedures came into effect on November 15, 2004
     i. Did the tender comply with the IPPP?
     ii. Was it single sourced, and if so, was this justified?
     iii. Was the contract approved by the CMC?
     iv. Did the CMC act within the law?
   - Was the process transparent (i.e. was the contract properly tendered, well documented, bidding committee, were there allegations of corruption, etc.)
   - Was the contract properly executed, (e.g. all necessary signatures, ratification by the legislature (if necessary,))?
   - Does the winning company have the capacity to perform on the contract?

2. **Contract Technical Considerations:**
   - Is the contract clear in the terms and obligations of the parties?
   - Are there penalty and performance clauses?
   - Is the timeframe reasonable?
   - If there was a tender issued, are the contract terms consistent with the tender documents?
   - Does the contract comply with the rule of law (I.e. are provisions of the contract consistent with similar contracts of this nature)?
   - Was the contract properly executed, (e.g. all necessary signatures, ratification by the legislature (if necessary,))?

3. **Contract Performance** (Analyzed only if the contract is ongoing or complete):
   - Did both parties perform their obligations under the contract?

4. **Contract Economic Evaluation**:
   - Did Liberia get a reasonable exchange on the contract?
   - Is the contract term appropriate, considering local circumstances?
   - Is the contract in the national financial interest?
   - Do the terms (accounting for local factors like risk) reflect comparable deals elsewhere?

Multiple Reviews

The responsible Ministry or Parastatal may wish to engage in a review of a contract prior to examination by the CCRC. This is acceptable, provided that the entity follows the above guidelines and provides the EGSC the documentation pertaining to its review. **No entity should use this review as a pretext or justification for contract modification, cancellation or endorsement without consultation with the CCRC and EGSC.** Contracts modified, endorsed or cancelled without such consultation are still subject to the review of the CCRC.

A Note on Precedent

This document in no way provides a legal justification for reviewing, modifying or canceling contracts outside of the process established above. Nor does it establish precedent in Liberian law for arbitrary review of contracts and concessions. Contract law in Liberia must be respected at all times. This contract and concession review is necessitated by the exceptional circumstances, as outlined in GEMAP, surrounding the long-term civil conflict and the general breakdown of the rule of law, especially as it relates to public procurement and concessions.

The Government of Liberia may conduct future reviews to cover contracts engaged in prior to the term of the NTGL, so as to insure compliance with the rule of law. However, going forward, contracts that meet the requirements of the public procurement code and rule of law shall not be subject to review, absent similar extraordinary circumstances. This notation is necessary to insure future compliance with the rule of law and to insure respect for the sanctity of legally engaged contracts.

3. Present Recommendations

The CCRC will conduct their review and present their findings in segments, rather than completing the entire review and presenting a report. Dividing the review into segments will allow the Committee to show results quickly, refine the review process, and also allows for the staging of the highest priority industry groups toward the beginning of the review. In their reports, the Review Committee will present recommendations to the GOL on whether contracts

should be maintained as is, renegotiated, cancelled or declared null and void. The national interest will have to be balanced in these recommendations, as cancellation may expose the GOL to litigation.

Upon completion of the Review, the Committee will submit its report and recommendations to the GEMAP Technical Team for comment. The CCRC will then present the report to the EGSC. The President of the Government of Liberia may distribute the report and act upon the recommendations at her discretion.

4. Scheduled Work Plan

Present to May	Recruit Committee members
Present to May	MoF to solicit list of NTGL contracts and concessions
Present to August	Columbia University team to conduct initial assessment
May–June	Committee formation and organization
June–September	Committee review of contracts and concessions
July	First committee report to GEMAP TT/EGSC
September	Second committee report to GEMAP TT/EGSC
October	Wrap up reports and Committee conclusion of work

Appendix 1: Public Communication

There is a need for public outreach on the contract and concession review to achieve four goals:

1. Solicitation of all documentation pertaining to contracts and concessions signed by the NTGL so the review Committee has a comprehensive list
2. Informing the public of the purpose and scope of the review process so as to provide stability in the business community
3. Solicitation of input from members of the public who may have relevant information regarding the contracts to be reviewed
4. Gain public support to strengthen the existing mandates for the review

Primary actions will include:

1. PPCC to publish a list of all known NTGL contracts and concessions and conduct a public solicitation for all other contracts entered into during the life of the NTGL.

a. Status: Published

REPUBLIC OF LIBERIA
PUBLIC PROCUREMENT AND CONCESSIONS COMMISSION
GEMAP CONTRACTS AND CONCESSIONS REVIEW

Official Solicitation for All Contract and Concession Agreements signed between the 14th October 2003 and the 16th January 2006 with the National Transitional Government of Liberia

The Government of Liberia has committed itself in the interests of accountability and transparency with the Liberian People and the International Community, to undertake a complete review of all contract and concession agreements signed by the NTGL from the period 14th October 2003 to 16th January 2006. This review is to ensure that the contractual arrangements and agreements entered into on behalf of the People of Liberia by the NTGL, were undertaken in an appropriate, transparent and economically justifiable manner. The Contracts and Concession Review Committee (CCRC) will conduct this review under the auspices of the Governance and Economic Management Assistance Program (GEMAP) in collaboration with the Public Procurement and Concessions Commission. The CCRC will work with a secretariat, which will comprise of national and international specialists between May and October 2006.

Therefore it is hereby announced that **ALL PERSONS OR ENTITIES IN LIBERIA OR OUTSIDE OF LIBERIA** who entered into a contract agreement with any Government Official, Agency, Ministry, Institution or Public Corporation of the NTGL **between October 14th, 2003 and January 16th, 2006** must register this full contract and all accompanying documentation with the Public Procurement and Concessions Commission by 1st June 2006. This registration is mandatory for all contracts where the value is above US10,000.

The updated list of registered contracts can be picked up at the PPCC Office.

Authority for this solicitation and penalties for failure to respond or misrepresentation are found in Part II, paragraph 11 of the Public Procurement and Concessions Act (2006.)

Attn:
The Executive Director
Public Procurement and Concessions Commission
Capitol Hill, Monrovia, Liberia
West Africa

All respondents are requested to include contact information (contact name, physical address, telephone and fax number and email) so the PPCC and/or the review team can follow up if further information is needed.

All persons or entities whose contracts are not registered with the PPCC by 1st June 2006 and that are subsequently discovered by the Review Team to be in existence, will automatically be recommended to be declared null and void under the laws of the Republic of Liberia and subject to penalties as mandated in the Public Procurement and Concession Act.

Appendix 2: Sample Review Worksheets

Example individual company data sheet

Date: _____

Company name: _____

Terms of Reference Point	Issue to Be Verified	Means of Verification	Yes/No
Contract Formation A. Verify if concession holder is a bona fide legal business entity authorized to operate in Liberia	1. Bona fide company		
B. Tendering process: Was there an open, advertised tender? Did the tender comply with the IPPP? Was it single sourced, and if so, how was this justified? Was the contract approved by the CMC? If so, on what basis?	1. Authenticity of contract		
C. Was the contract properly executed, e.g. all necessary signatures, ratification by the legislature (if necessary,)?	1. Compliance with legal requirements for execution		
D. Does the contract comply with the rule of law (i.e., does it break any Liberian laws (tax, customs, criminal, etc.,) violate Security Council resolutions, etc)	1. Compliance with Liberian and international laws.		
E. Does the winning company have the capacity to perform on the contract?	1. Industry experience		
Contract Technical considerations: A. Is the contract clear in the terms and obligations of the parties?	1. Clarity of contract terms and obligations		
B. Are there penalty and performance clauses?	1. Penalty and performance clauses exist and are reasonable		
C. Is the timeframe reasonable?	1. Timeframe is reasonable and in accordance with tender documents		
D. Are the contract terms consistent with the tender documents?	1. Contract terms agreement with tender		
Contract Performance (Analyzed only if the contract is ongoing or complete): A. Did both parties perform their obligations under the contract?	1. Payments made; actions undertaken		

Terms of Reference Point	Issue to Be Verified	Means of Verification	Yes/No
Contract Economic Evaluation: A. Did Liberia get a reasonable exchange on the contract?	1. Fees paid to government. Resources or concession exchanged.		
B. Is the contract term appropriate?	1. Term is appropriate for contract and entity		
C. Do the terms (accounting for local factors like risk) reflect comparable deals elsewhere?	1. Is the value Liberia receives appropriate considering risk and circumstances?		
D. Is the contract in the national financial interest?	1. Subjective evaluation of all factors. 2. Evaluation of cost/benefit of possible contract cancellation/ modification and possible litigation vs. performance on the contract.		

Example summary of results—Overall company data sheet

Company Name	Terms of Reference Responses to Points 1–9 from Individual Company Worksheets														Committee Recommendation
	1	2	3	4a	4b	5a	5a	6a	6b	7	8a	8b	9	10	
Co #1	Y	N	N	N	Y	Y	Y	Y	Y	Y	N	N	Y	N	
Co #2	Y	Y	Y	Y	Y	Y	Y	N	Y	Y	Y	Y	Y	Y	
C															
D															

Appendix IV

Summary of the Main Changes Brought About by the Review of the Mittal Mineral Development Agreement

IMPORTANT: This summary is for information purposes only and must be read in light of the full Mineral Development Agreement as amended.

Original MDA (2005)	Amended MDA (2006)
Infrastructure	
• Buchanan to Yekepa railroad and Buchanan mineral port (excluding commercial port facilities) to be transferred to Concessionaire. • Right of third parties to access excess capacity of the railroad and mineral port, subject to negotiations in good faith among Concessionaire, Government and such third party. • Concessionaire entitled to reasonable compensation for third party use.	• Government to retain ownership of the Buchanan to Yekepa railroad and Buchanan port, but to grant right to develop, use, operate and maintain same to Concessionaire. • Government to authorize third party access to excess capacity of the railroad and port, in consultation with Concessionaire. • Revenue for third party use to be shared between Government and Concessionaire. • Concessionaire to undertake the expansion and modernization of the railroad and port at the request of Government. Failure to do so gives Government the right to proceed on its own or through a third party, subject to consensus on excess capacity and revenue sharing formula. • New joint committee to review decisions regarding third party access to and modernization of the railroad and port.
Royalties	
• Rate of 4.5%. Pricing based on invoiced sales of iron ore. • Calculated FOB Yekepa. • Lower rate of royalty for processed iron ore.	• Rate of 4.5%. Pricing based on fair market value under international standards for similar quality iron ore, with due consideration given to product cost, and subject to applicable adjustments. • Calculated FOB Buchanan. • Negotiated index price for processed iron ore. Rate to remain at 4.5%
Income Taxation	
• Application of Liberian tax law as at the date of the agreement, and as contractually modified or limited through the agreement • Ceiling tax rate of 30%. • 0.5% turnover tax rate (credited against income tax liability). • Renewable tax holiday.	• General application of Liberian tax law as at the date of the amendment, subject to certain agreed exceptions and to an agreed exhaustive list of applicable taxes. • Ceiling tax rate of 30%. • 1% turnover tax rate (credited against income tax liability). • No tax holiday.

Original MDA (2005)	Amended MDA (2006)
Withholding Taxes on Payments to Nonresidents and Residents	
• Total exemption from withholding taxes on contractor and interest payments. • No tax on the distribution of dividends by Concessionaire or any of its associates.	• Withholding tax is payable on contractor payments and interest payments at a reduced rate of 6% and 9%, respectively, for 10 years. • Tax exemption on dividends limited to Concessionaire.
Duties	
• Application of Liberian taxes and duties as contractually modified or limited in the agreement. • 50% reduction on import duty on gasoline for the term of the agreement. • $400,000 to be paid in 2 installments in lieu of duties on a wide range of imports for the term of the agreement. • Tax and duties on other items to be no higher than for any other producer of iron ore. • Application of ordinary taxes, fees and revenue charges. • Exemption from BIVAC fee. • Exemption from ECOWAS fee.	• General application of Liberian law with specific exemptions and subject to an agreed exhaustive list of applicable duties. • 50% reduction on import duty and sales tax on gasoline and diesel for 7 years. • $400,000 to be paid in 2 installments in lieu of duties on items listed in an appendix (mainly capital goods such as construction equipment) for the first 5 years. • 40% of import duties on appendix items for years 6 to 10. • Goods and Service Tax exemption for appendix items for term of agreement. • Concessionaire to bear inspection fees. • No exemption from ECOWAS fee.
One-time Payment	
• No one-time payment.	• $15 million to be paid to Government in 3 equal installments.
Sovereignty	
• Provisions of the agreement prevail over Liberian laws and regulations • Complete stabilization of Liberian laws and regulations. • Agreement governed by UK law, with due regard to the laws of Liberia.	• General applicability of Liberian laws, subject to the provisions of the agreement • Stabilization of laws relating to taxes and duties. • Agreement governed by Liberian law, subject to generally accepted legal principles.

Original MDA (2005)	Amended MDA (2006)
Social Benefits	
• Preference to the employment of Liberian citizens in skilled positions, subject to equality of qualifications. • Complete freedom to choose senior management. • $50,000 per year to fund overseas scholarships. • $50,000 per year to the Department of Mining and Geology at the University of Liberia.	• Schedule to govern the number of qualified Liberians employed in skilled positions. • 25% of senior management positions to be held by Liberians within 5 years, subject to availability. • 50% of senior management positions to be held by Liberians within 10 years, subject to availability. • 1 of the top 3 senior managers to be a Liberian within 1 year. • $200,000 per year to fund overseas scholarships. • $50,000 per year towards the creation and operation of a Mining and Geology Institute of the University of Liberia in the Yekepa area. • Health and safety facilities, health care procedures and practices, and health and safety training to be in accordance with accepted international standards.
Environmental Protections	
• Government may, at the expense of Concessionaire, conduct a periodic environmental audit and assessment, subject to prior agreement on scope and budget.	• Concessionaire to conduct an annual environmental audit and assessment and Government to conduct periodic inspections of the concession area at its own expense.
Development of Concession Area	
• Activities to commence within 45 days of the agreement and then to follow a tentative development program. • Right of first refusal to incorporate contiguous unencumbered areas with potentially exploitable iron ore resources into the concession area • Government to grant an exploration license for any area within the concession area on notice from the Concessionaire. • Government to grant the right for Concessionaire to utilize and possess public land without cost. • Where necessary, Government to intervene and acquire private land at concessionaire's expense, for Concessionaire to utilize and possess. Land then deemed part of the concession area. • Surface rental payable at $200,000 for the first 2 years and $300,000 for the remainder of the term.	• Tentative development program and: (i) 3-year deadline for full rehabilitation of the railroad and port; (ii) 4-year deadline for the commencement of continuous production; and (iii) a schedule to ensure consistent annual iron ore production. • Right to submit a bid for the right to undertake exploration of potentially exploitable iron ore in unencumbered contiguous areas. • Right to undertake exploration and development of other minerals within the concession area in accordance with Liberian mining law. • Government and Concessionaire to negotiate in good faith for the right to use public land located outside concession area. Such land not to be part of the concession area. • No Government involvement in negotiations between Concessionaire and private landowners. • Surface rental payable at $200,000 for the first 2 years and $300,000 for the remainder of the term subject to inflationary adjustments.

Appendix V
Summary of the Main Changes Brought About by the Government of Liberia's Review of the 2005 Concession Agreement with Firestone Liberia, Inc.

FINAL

Original Concession Agreement (2005)	Amended Concession Agreement (2007)
Parties	
• The Republic of Liberia; Firestone Natural Rubber Company, LLC; and Firestone Plantations Company	• The Republic of Liberia; and Firestone Liberia, Inc.
Term	
• Rehabilitation Term, Regular Term and Extended Term total up to 86 years until 2091	• Rehabilitation Term and Regular Term total 36 years until 2041
Grant of Rights	
• No Firestone warranty of Ownership	• Firestone Liberia acknowledges Government ownership of all rubber trees and other non-movable assets in Production Area at termination of the Agreement and provides Government a covenant of non-encumbrance during the Term of the Agreement • Firestone Liberia commitment to provide sufficient rubber trees capable of being tapped at all times, including at termination, to permit continuation of commercial production of rubber on the farm on a going concern basis • Contemporaneous with the signing of the Amended Agreement, Firestone Liberia will have its parent company Bridgestone Firestone Diversified Products, LLC ("BFDP") enter into a Supplemental Agreement with the Government which provides, among other things, that BFDP will not pledge, or use as collateral the fixed assets, including rubber trees, of Firestone Liberia, and that Firestone Liberia will remain a wholly-owned subsidiary of BFS unless the Government grants its written consent
• Firestone free to engage in the production and utilization of agriculture products in Liberia	• Firestone Liberia limited to the production and utilization of rubber and rubber products in the production area • Firestone and the Government will prepare a map, that will be binding upon the parties and confirm the total concession area is 118,990 acres and no more.

Original Concession Agreement (2005)	Amended Concession Agreement (2007)
Communication Systems and Utilities and Construction and Use of Support Systems	
• Government agrees to make available, free of charge, for use by Firestone Liberia or its Affiliates an adequate number of broadcast and communication frequencies	• Government agrees to make available, at generally prevailing rates, for use by Firestone Liberia or its Affiliates an adequate number of broadcast and communication frequencies
• Firestone and its Affiliates may use airports, harbor, port or similar facility owned or operated by the Government on best terms applicable to any other person using the same facility	• Firestone and its Affiliates may use airports, harbor, port or similar facility owned or operated by the Government on terms generally applicable to similarly situated person using the same facility
Conduct of Operations	
• Export sales price on transactions with Affiliates based on contract negotiated between Firestone Liberia and its Affiliate, subject to a 90 day Government review period	• Export sales prices for any transaction between Firestone Liberia and an Affiliate shall be determined by reference to available international reference prices or indices • For dry rubber, the export sales price shall be based on the daily closing price on the Singapore Commodity Exchange ("SICOM") of TSR20 • For latex concentrate, the export sales price shall be based on the daily noon day price on the Malaysian Rubber Board ("MRB") for latex in bulk concentrate
• Commitment to replant at least 5000 acres per year from 2009 to 2015	• Commitment to replant at least 50,000 acres from 2005 to 2017 • After January 2018, commitment to maintain 65,000 planted acres of rubber during the Term
• Purchase price of rubber from Liberian rubber farmers derived by taking the average of prices received by Firestone Liberia for the same type of rubber less the cost of conversion, processing, transportation, taxes and duties, administrative and production overhead and reasonable profit	• Purchase price to Liberian Rubber Farmer based on international index (SICOM for dry rubber or MRB for latex) export sales price less cost of sale incurred by Firestone Liberia and a reasonable mark-up • Allocations used in computing deductible costs and Firestone Liberia's markup subject to Government review

Original Concession Agreement (2005)	Amended Concession Agreement (2007)
Public Health and Safety	
• Firestone permitted to establish Plant Protection Department to maintain order and security on the concession subject to Law with the power to apprehend and detain persons to be turned over to the appropriate Government authority as provided by Law	• Firestone Liberia permitted to establish Plant Protection Department to maintain order and security on the concession subject to Law and international human right principles with the power to apprehend and detain persons provided such persons are turned over to the Liberian National Police no later than 24 hours from the time of detention
• No security plan	• Security plan to be agreed upon and implemented by Firestone Liberia and the Government
• Commitment to provide access to clean and safe drinking water to all residential communities within the production area prior to the end of 2015	• Commitment that all wells provide potable water that meet or exceed standards established by Law and, in residential communities served by wells, a commitment to provide at least one well per every 30 houses • Commitment that each household in the Production Area will by Dec. 31, 2011 have a bathroom or safe and sanitary latrine
• Commitment to complete program to reconstruct, rehabilitate and renovate damaged employee housing in the Production Area by 2015	• Commitment to construct 2,300 new houses meeting Firestone Liberia's improved housing standard by Dec. 31, 2010 • Commitment to provide one house for each Firestone Liberia employee entitled to housing by 2015 • Commitment to renovate all damaged and older housing intended for habitation to conform to basic features of Firestone's improved housing standard by Dec. 31, 2017
Education	
• Commitment to undertake a study in coordination with the Government on the need for an additional high school in the Production Area	• In addition to completing construction on its own schools through the high school level, Firestone Liberia shall provide financial assistance to the Harbel Multilateral High School of a $165,000 over a three year period from 2008 to 2011 • Commitment to contribute $35,000 annually through 2015 to a Government administered and operated adult education program in the Production Area, with priority for Dependent spouses

Original Concession Agreement (2005)	Amended Concession Agreement (2007)
Employment, Training and Use of Liberian Products and Services	
• Unskilled positions not limited to Liberian citizens	• Liberian citizens to be hired for all unskilled positions
• Firestone to provide preference for employment to qualified Liberian citizens at all skilled job levels within the company when such positions become available	• Firestone to provide preference for employment to qualified Liberian citizens at all skilled and management job levels within the company with at least 30% of ten most senior management positions to be held by Liberian citizens within 5 years, and at least 50% of such positions within 10 years of the Effective Date
• Firestone to provide training for Liberians as required by its operations and to qualify them for employment positions with the company	• Firestone Liberia to provide on-the-job and vocational training for Liberian citizens as required by its operations and to qualify them for employment positions with the company utilizing • Additionally, Firestone Liberia to provide $115,000 through 2015, and thereafter $150,000 annually in scholarships for Liberian citizens, with a quarter of such amount to be reserved for Margibi County students • Firestone Liberia to provide $50,000 annually to the University of Liberia's College of Agriculture
• When purchasing goods and services required for Production, Firestone will give preference to Liberian goods and services	• When purchasing goods and services related to all of its activities, Firestone Liberia will give preference to goods produced in Liberia by Liberia citizens and services provided by Liberian citizens who are resident in Liberia and will require its Affiliates and major sub-contractors to also give preference to such goods and services
Maufacturing	
• No commitment to building a rubber wood facility	• Commitment to invest $10 million in a rubber wood facility to produce sawn timber, kiln dried lumber and veneer with an expected start date for the main plant mid 2008. 500 persons expected to be employed initially and potentially increasing to 1,000

Original Concession Agreement (2005)	Amended Concession Agreement (2007)
Community Resources and Support for Liberian Farmers	
• During the Rehabilitation Term, Firestone to provide "up to" 600,000 rubber stumps per year to qualified Liberian rubber farmers free of charge	• During the Rehabilitation Term, Firestone Liberia to provide 700,000 rubber stumps per year of the same quality it uses for its own replanting to qualified Liberian rubber farmers free of charge • Firestone Liberia to sell at its own cost farm supplies to qualified Liberian rubber farmers • Firestone Liberia to contribute $50,000 to independent study to be commissioned by the Ministry of Agriculture on ways to support and enhance the rehabilitation of the natural rubber industry in Liberia and to assist small holder • Firestone Liberia will support the Government's efforts to amend the law governing the Rubber Development Fund to be independently and transparently managed for the solely to support the rehabilitation and development of the rubber sector in Liberia through a national extension program and services for Liberian rubber farmers. The Fund, under the amended law, will be financed on fees imposed on the export of rubber and Government appropriations • Prior to the activation of the Rubber Development Fund, Firestone Liberia shall assist the Ministry of Agriculture extension service in providing training for Persons engaged in extension services, among such trainees may be Central Agricultural Research Institute researchers
Environmental Measures	
• No specific reference to Liberian environmental legislation regulating the concessionaire's obligations	• Firestone Liberia environmental obligations prescribed by Liberian law, including the Environmental Protection Management Law. • Firestone Liberia shall report annually the status of its Environmental Management Plan as required under the Environmental Protection Management Law
Adequate Capital	
• Firestone to ensure that Firestone Liberia maintain a reasonable and prudent capital structure of a ratio of loans to the greater of equity capital or shareholder equity of 4:1	• Firestone Liberia to maintain a ratio of indebtedness to equity capital no greater than 2:1. The ratio is to be determined annual from the most recent audited financial statement

Original Concession Agreement (2005)	Amended Concession Agreement (2007)
Income Taxation	
• Firestone to be taxed on its net taxable income at an income tax rate not to exceed 25% provided concessionaire not in breach of certain obligations	• Firestone Liberia to be taxed on its net taxable income pursuant to Liberian law, at a rate not to exceed 30%. • The 30% income tax rate to be retroactively applied to Firestone Liberia's 2007 net taxable income provided the Amended Agreement is ratified by the National Legislature and signed into law by the President on or before March 30, 2008
• Firestone's net taxable income to be computed in accordance with the terms of the 2005 Agreement	• Firestone Liberia's net taxable income to be computed in accordance with Liberian law • After Rehabilitation Term, computation of net taxable income shall be in accordance with law provided that Firestone Liberia's income tax liability shall be limited to 110 percent of the amount which would be payable if Firestone Liberia's income tax liability were computed in accordance with Law as in effect on July 1, 2007 utilizing a 30 percent tax rate. Any claim of adjustment shall be subject to Government audit.
Surface Rental	
• Annual rental fee for government land in the concession of 50 cents per acre. • Adjustment of the rental rate allowed once every 10 years.	• Annual rental fee for government land in concession area of $2.00 per acre for a total of $237,980 • Rental rate to be adjusted for inflation once every 5 years using U.S. Implicit Price Deflator
Other Payments to the Government	
• Turnover Tax: Firestone to pay quarterly a 1% turnover tax on its gross income (as defined by the Agreement)	• Turnover Tax: Pursuant to law, Firestone Liberia to pay quarterly a 2% turnover tax on its gross income (as define by law) provided that in years where Firestone Liberia has negative or no income tax liability, the rate shall be 1%. Sums paid as turnover tax are treated as a pre-payment of income tax as provided by law.
• Import Duties: Firestone during the term of the Agreement not subject to payment of import duties on all goods used in its operations	• Import Duties: Firestone Liberia to pay import duties established by law on fuel, rice and other goods, provided that during the Rehabilitation Term duty on fuel shall not exceed 50% of duty at law, duty on rice shall be limited to $1.10 per 100 lbs bag of rice, and there will be no duty on goods listed in the agreement and used directly in Production. The reduced duty on rice applies to only a limited volume which is phased out over the Rehabilitation Term.
• ECOWAS Trade Levy: Firestone not subject to payment of ECOWAS trade levy	• ECOWAS Trade Levy: Pursuant to law, Firestone Liberia to pay ECOWAS trade levy of 1% on goods imported from non-ECOWAS states

Original Concession Agreement (2005)	Amended Concession Agreement (2007)
Other Payments to the Government *(continued)*	
• Withholding Tax on Interest: Firestone not subject to payment and withholding of tax on interest paid to non-residents	• Withholding Tax on Interest: Pursuant to law, Firestone Liberia to withhold and pay from interest paid to non-resident persons the amount required by law but not to exceed 10% of such payments
• Withholding Tax on Dividend: Firestone not subject to payment and withholding of tax on dividends paid to shareholders during the Rehabilitation Term	• Withholding Tax on Dividends: Pursuant to law, Firestone Liberia to withhold and pay from dividends paid to its shareholders the amount required by law but not to exceed 10% of such payments
• Withholding Tax on Certain Other Payments: Firestone not subject to payment and withholding tax on certain other payments required under the tax code	• Withholding Tax on Certain Other Payments: Pursuant to law, Firestone Liberia to withhold and pay from certain payments required under the tax code the amount required by law but not to exceed 8% during the Rehabilitation Term or 10% during the Regular Term
• Goods and Services Tax: Firestone not subject to payment of the Goods and Services Tax required by law	• Goods and Services Tax: Pursuant to law, Firestone Liberia to pay goods and services tax provided that the tax rate shall not exceed 3.5% during the Rehabilitation term and no goods and services tax shall be payable on capital goods used in Production or used to meet Firestone Liberia's social obligations in the agreement
• Real Property Tax: Firestone not subject to payment of real property taxes	• Real Property Tax: Firestone shall pay real property tax during the Regular Term of $170,000, adjusted every 5 years for inflation
• Inspection Fees: Firestone not subject to payment of any inspection fees to the Government or third parties on any imports or exports	• Inspection Fees: Firestone subject to inspection on all imports and exports and shall pay fees to an inspection entity approved by Government at rates to be negotiated between Firestone Liberia and such entity
• Stabilization:	• Stabilization and Adjustment of Liability: After the Rehabilitation Term, if any new tax or change in tax not otherwise stabilized that was not in effect on July 1, 2007 and results in Firestone Liberia paying more than 110% of the total amount of taxes that would have been payable if only the taxes in effect as of July 1, 2007 were paid, then Firestone Liberia may at its election receive the excess amount over the 110% limit as a credit against taxes or as a refund from the Government. Any claim of credit or refund shall be subject to audit
Governing Law	
	• Unless explicitly provided in the Agreement (i.e., with respect to certain fiscal provisions regarding rates and stabilization), Liberian law applicable to Firestone Liberia and its affiliates, shareholders, contractors and financiers, including directors, officers, agents and employees of the foregoing

Appendix VI
Part VI of the Public Procurement and Concessions Act of Liberia (2005)

PART VI
SPECIFIC PROCEDURES FOR PROCESSING CONCESSION AGREEMENTS

Sub-Part 1—Definition and Objectives of Concession Agreements

Definition

73. (1) Concession means the grant of an interest in a public asset by Government or its agency to a private sector entity for a specified period during which the asset may be operated, managed, utilized or improved by the private sector entity who pays fees or royalties under the condition that the Government retains its overall interest in the asset and that the asset will revert to the Government or agency at a determined time. Under this Act, the term concession shall comprise of all its variants including but not limited to the following:

(a) **"Build/Refurbish/Modernize-Operate-Transfer (BOT)"**: Where a private entity finances the development of infrastructure/facility/utility and operates it for a specified period after which the project is handed over to the Government/public entity free of lien or at a cost to the public entity.

(b) **"Build/Refurbish/Modernize-Transfer-Operate (BTO)":** Where the Government/public entity contracts a private entity to build or complete a facility the ownership of which is transferred to the Government/public entity on completion after which the facility is leased back to the private entity for a fixed or renewable term.

(c) **"Build/Refurbish/Modernize-Own-Operate-Transfer (BOOT)":** Where the private entity obtains a franchise for a fixed period, whether exclusive or not, to develop, operate, maintain, manage and collect user fees for a public facility over a fixed period at the end of which title to the facility reverts to the public entity/Government.

(d) **"Build/Refurbish/Modernize-Own-Operate (BOO)":** Where the Government/public entity either transfers ownership and responsibility for a public facility or contracts with a private entity to build, own and operate a new facility is subject to terms and conditions laid down by the Government/public entity for the operation of the facility.

(e) **"Joint Ventures":** Where the Government/public entity shares investment, profits, losses and/or control of the operations of a facility with the private entity.

(f) **"Management Contract/Service Contract"**: Where a private entity is engaged as an agent of the Government/public entity, to perform a public function on behalf of the Government/public entity for a fee in whatever form, with or without performance incentives regardless of whether the public entity retains responsibility for the acts of the private entity agent or not.

(g) **"Outsourcing":** Where the Government/public entity contracts a private entity for the continuous provision of an otherwise public service paid for by the public entity.

(h) **"Partial Privatization":** The partial disposal of Government interest to a private entity other than through the Stock Exchange.

(i) The Commission may identify other business arrangements that shall be defined as concessions.

Objectives of Concessions

74. The objectives of every concession shall be to promote one or more of the following:

(a) Increased Government revenue from concessions.

(b) Harnessing of private sector financial, human and technical resources for economic development

(c) Competition in the provision of services, supplies, goods or infrastructure and reduce monopolies.

(d) Accelerate the development of infrastructure, human capacity and the provision of services

(e) The growth of the Liberian private sector

(f) Partnerships between the public and private sectors

Sub-Part 2—Scope, Application and Disqualified Private Sector Entities

Scope and Application

75. (1) This part shall apply to all activities relating to concessions and shall in particular apply to the following:

(a) The implementation of concessions including, but not limited to the:

i. Identification and certification for Concessions
ii. Planning of the process for concession agreements
iii. Preparation of concession bid documents
iv. Invitation and evaluation of bids, negotiations and signing of concession agreements
v. Implementation, supervision and monitoring of concession agreements

(b) The grant of concessions of whatever form in all sectors including but not limited to:
   i. Mineral exploration and mining
   ii. Fishing
   iii. Timber
   iv. Telecommunications
   v. Electricity, water and other utilities
   vi. Forestry
   vii. Agricultural concessions including plantations
   viii. Oil exploration and extraction
   ix. Development of public infrastructure including but not limited to airports, terminals, toll roads/bridges, shopping malls, etc.
   x. The grant of special licenses including licenses for imports, exports, services, works or for the performance of functions on behalf of the public sector
   xi. Other sectors as determined by the Minister responsible for Economic Affairs.

(c) All Concession Entities or Government institutions and agencies legally mandated to undertake concessions

(d) All private sector entities that participate in concessions.

Concession Entities

76. (1) Any entity that is issued with a Certificate for Concessions in accordance with Sections 88 and 89 of this Act shall be a Concession Entity for the purposes of this Act and shall be responsible for the concession process.

(2) The head of the Concession Entity shall be held accountable and responsible for any action taken in pursuit of his or her responsibilities under this Part and shall not be absolved from accountability because he or she delegated the function.

The Role of the Procurement Unit in Processing Concession Agreements

77. (1) The Procurement Unit set up under Section 29 of this Act shall be responsible for the performance of the following concessions functions under the oversight of the Procurement Committee.

(2) In respect of concessions the Procurement Unit shall perform the following functions:

(a) Prepare the Concession Procurement Plan

(b) Plan and administer concession up to but excluding evaluation and award of concession contracts

(c) Prepare concession bid documents in collaboration with technical experts

(d) Receive and safeguard bids received

(e) Conduct bid opening procedures in accordance with Section 110 of this Act

(f) Perform secretarial services for the Concession Entity

(g) Such other functions as may be conferred by the head of the entity in accordance with this Act

Engagement of Advisors

78. (1) A Concession Entity and/or the Inter-Ministerial Committee may where it is conducive to the national interest, engage private sector entities or experts to advise on any of the processes of concessions other than approvals and such experts shall work with the Procurement Unit for the purposes of the specific concession.

(2) The selection of a private sector entity or individual for the purposes of subsection (1) of this section shall be made in accordance with the procedure for the selection of consultants set out under Sections 70 and 71 of this Act.

Preparation of Concession Procurement Plan

79. (1) The Concession Procurement Plan shall include the following details:

(a) The allocation of responsibilities and deadlines for all pre-implementation activities necessary for the concession procurement process including the engagement of consultants to advise at any stage of the concession process;

(b) Arrangements to ensure co-ordination with other institutions where necessary;

(c) The method to be employed in the procurement of the concession indicating whether it is a National Competitive Bidding or an International Competitive Bidding and the reasons for same;

(d) The proposed dates for the General Notice of Investment Opportunity, Expression of Interest, Invitation to Bid, evaluation, negotiation and all processes leading to the concession agreement.

(4) The Commission shall, where necessary to ensure compliance with this Act, request for changes in the Concessions Procurement Plan within the twenty-one (21) days of receipt of the Concessions Implementation Plan.

Concession Structures

80. There is hereby established under this Act the Inter-Ministerial Concessions Committee and the Concession Bid Evaluation Panel.

Composition of the Inter-Ministerial Concessions Committee

81. (1) The Inter-Ministerial Concessions Committee shall consist of seven (7) persons constituted on ad hoc basis as required in accordance with subsection (2) of this section.

(2) The Inter-Ministerial Concessions Committee shall be responsible for the review of a concession and approval of the report of the Concessions Bid Evaluation Panel and the preparation of the annual concessions plan for submission and approval by Cabinet.

(3) The Inter-Ministerial Concessions Committee shall comprise the following:

(a) The chairperson of the National Investment Commission who shall be the chairperson of the committee

(b) The Minister of Justice

(c) The Minister responsible for Finance

(d) The Minister responsible for Economic Affairs

(e) Two other Ministers appointed by the President representing the collective interest of various sectors of the economy connected with the concession other than the minister responsible for the sector

(f) The head of the Concession Entity

(4) The Head of the Procurement Unit of the specific Concession Entity shall serve as the non-member secretary to the Inter-Ministerial Concessions Committee for the purposes of its work for the Concession Entity.

(5) The Inter-Ministerial Concessions Committee may co-opt experts to its meetings for a particular concession under review for advisory purposes.

Functions of the Inter-Ministerial Concessions Committee

82. (1) The Inter-Ministerial Concessions Committee shall perform the following functions:

(a) Review and approve concession bid documents prior to the invitation of bids.

(b) Review the evaluation reports to ensure that procedures were in strict conformity with the criteria, the Act and relevant regulations, approve or otherwise, the evaluation reports to enable the Concession Entity to continue with the next step of the process.

(c) Approve the minimum benchmarks for the negotiations with the concessionaire as proposed by the Concession Entity.

(d) If negotiations breakdown, and if acceptable, authorize the Concession Entity to negotiate with the next highest ranking bidder.

(e) Constitute the Concession Bid Evaluation Panel and the Negotiations Team.

(f) Make recommendations to the head of the Concession Entity and the Commission as and when necessary.

(2) No entity other than the Inter-Ministerial Concessions Committee set up under Sections 80 and 81 of this Act shall perform the functions of the Inter-Ministerial Concessions Committee and the purported performance of the functions of the Inter-Ministerial Concessions Committee by any other person or entity shall be void.

Meetings of the Inter-Ministerial Concessions Committee

83. (1) The Inter-Ministerial Concessions Committee shall be convened at the instance of the Head of the Concession Entity through a written request submitted to the President and the Chairperson of the National Investment Commission.

(2) The President, on receipt of the request from the Head of the Entity, shall nominate two (2) persons under subsection (3) (e) of Section 81 for the specific purpose and the chairperson of the National Investment Commission, shall on receipt of the notice of the President's nominees convene a meeting of the committee for the purposes of the specific concession.

(3) Apart from the Chairperson and the Ministers responsible for Finance, Justice and Economic Affairs, no person shall have permanent representation on the Inter-Ministerial Concessions Committee.

(4) When the concession contract is entered into, the Inter-Ministerial Concessions Committee shall be deemed to be dissolved for the purposes of the particular concession.

(5) No member of the Committee shall delegate his role as a member. Where absolutely necessary any of the persons mentioned under subsection (3) of Section 81 may send a Deputy Minister as a proxy to represent the member at a meeting of the Committee. The member shall be responsible for any decisions made by the proxy.

Disclosure of Interest

84. (1) A member of the Inter-Ministerial Concessions Committee or a person appointed/co-opted by the committee who has any interest, direct or indirect, in any matter to be considered by or on behalf of the Commission shall disclose the nature of his or her interest to the Commission and such disclosure shall be recorded in the minutes of the committee.

(2) A member of the Inter-Ministerial Concessions Committee with any interest shall not take part in any deliberation or decision of the committee relating to that matter, and a member who contravenes this section shall be guilty of misconduct and liable to be removed from the committee and/or suffer any penalty that may be applicable under this Act.

Quorum

85. The Inter-Ministerial Commission Committee shall not be properly constituted for its work without the presence of the ministers responsible for Finance, Economic Affairs, Justice, the head of the Concession Entity or in the absence of any of them the duly authorized deputy.

Disqualified Private Sector Persons/Entities

86. The following private sector entities, whether local or foreign, are disqualified from participating in any concession process.

(a) Partnerships

(b) Sole Proprietorships

(c) Natural Persons

(d) Not-for-profit entities or Non-Governmental Organizations

(e) Unincorporated Associations

Sub-Part 3—The Concession Procurement Process Planning

Inclusion In Economic Development Plan

87. (1) The Minister responsible for Economic Affairs shall develop an annual concessions plan for sectors of the economy in which concessions may be promoted for approval by Cabinet.

(2) The role assigned the Minister responsible for Economic Affairs under subsection (1) of this section shall only be exercised in consultation with all Ministers and head of Entities that may be affected by the annual concessions plan.

(3) The head of a Concession Entity shall, prior to commencing any activity for the purpose of implementing a concession, request the Minister responsible for Economic Affairs to issue a Certificate for Concession for the specific concession.

No Concession without Certificate

88. (1) Every concession implementation process shall commence with the issue of a Certificate for Concession and no concession shall be implemented unless the proposed project has been issued with a Certificate for Concession.

(2) The Ministry responsible for Economic Affairs shall have the sole responsibility to issue the Certificate for Concession.

Criteria for the Issue of the Certificate for Concession

89. (1) Prior to issuing the Certificate for Concession under Section 88 of this Act, the Ministry responsible for Economic Affairs shall ensure that:

(a) The concession falls within the area of the economy in which concession arrangements may be carried out in furtherance of national economic objectives.

(b) The proposed concession has not already been allocated with public funds for the same purpose envisaged under the proposed project.

(c) The barriers or bottlenecks that need to be addressed prior to or in the course of the concession procurement process have been clearly identified by the Concession Entity or by the Ministry responsible for Economic Affairs and brought to the knowledge of the Entity.

(2) The functions of the Ministry responsible for Economic Affairs under subsection (1) of this section shall be performed with prior consultation with the head of Concessions Entities affected by specific concession.

Presentation of Concession Option to the Public

90. A Concession Entity shall pursuant to the receipt of the Certificate for Concession undertake public stakeholder consultations as part of the concession implementation process.

Information at the Stakeholder Forum

91. At the stakeholder forum, the Concession Entity shall at least provide information on the following:

(a) The strategic importance of the Project

(b) The extent of investment or private resources i.e. financial, human, etc. to provide the needs of the community

(c) The technical and financial feasibility of the Project

(d) Measures instituted and/or may be instituted to address any environmental challenges and adverse externalities for the population

(e) Any other reason that may justify choosing the concession option

Records of the Concession Bidding Process

92. In furtherance of transparency and accountability every entity involved in any concession process shall maintain a written record of all proceedings in accordance with Section 43 of this Act.

Inspection of the Records

93. The records shall be made available for inspection by the Commission and the Auditor-General or any person(s) duly authorized by the Commission or relevant Government authority.

Specific Records to Be In Writing

94. Without limiting the generality of this part or any subsection of this part the following shall at all times be in writing:

(a) General Notice of Investment Opportunity

(b) Request for Expression Of Interest

(c) Instructions to Bidders

(d) The Request For Proposals

(e) The Evaluation Report together with attachments

(f) All documents related to the award of contracts

(g) Concession Information Memoranda

Competitive Bidding

95. Concessions bidding proceedings shall be on the basis of open competitive bidding unless otherwise stipulated under this Act.

National Competitive Bidding

96. (1) An Entity shall use National Competitive Bidding where it is concluded that:

(a) There is the availability of adequate technology in Liberia for the object of the concession.

(b) The expected capital outlay is capable of being raised by local businesses

(c) The concession project is not likely to be of interest to foreign investors

(d) The concession falls within the area of the economy which is by law restricted to Liberians

(2) Where National Competitive Bidding is used only domestic firms shall be invited to participate in the particular bid.

International Competitive Bidding

97. (1) International Competitive Bidding shall be used where one or more of the following conditions may prevail:

(a) The project requires international expertise

(b) The project requires technology not available in Liberia

(c) The project requires capital outlay not ordinarily available in Liberia

(2) Bidders shall be allowed not less than six (6) weeks to prepare and submit bids.

Domestic Firms to Participate In the International Competitive Bidding

98. In all instances of International Competitive Bidding, domestic businesses which meet the minimum criteria for participation shall, without restrictions, be qualified to participate either solely or in association with foreign entities.

Criteria for the Application of Margin of Preference In Concessions

99. (1) Where a concession is awarded on the basis of International Competitive Bidding, a Concession Entity may allow for Margin of Preference for Domestic and Liberian

Businesses as defined under this Act and the Commission shall establish a criteria for the Margin of Preference to be applicable to concessions in that respect.

(2) Notwithstanding the generality of sub-section (1) of this section, the Commission shall ensure that the criteria for the Margin of Preference applicable to concessions shall, as much as possible, be consistent with the provisions of Section 45 of this Act.

Restricted Competitive Bidding

100. Subject to the approval of the Commission, Restricted Competitive Bidding shall be employed where the Concessions Entity has pre-qualified bidders in accordance with the provisions of this Part of this Act.

Sole-Source

101. Subject to the approval of the Commission a concessionaire may be sole sourced if one or more of the following conditions prevail:

(a) The Concession requires specialized expertise that is available only to one specific bidder.

(b) The Concession involves an innovation the patent for which is held by one particular bidder.

(c) The Concession requires specialized research, or experiment that only one person is prepared to undertake

(d) The Concession is in respect of strategic national interest or national defense and security and it is not in the national interest to have more than one bidder

Prior Approval of Commission

102. In all instances other than National Competitive Bidding and International Competitive Bidding, the method to be used shall receive the express prior approval of the Commission.

Sub-Part 4—Concession Documents Preparation

Performance of Preliminary/Feasibility Studies

103. (1) A Concession Entity shall undertake preliminary or prefeasibility studies to determine the feasibility of a proposed project and the prefeasibility studies may be carried out in consultation with the Minister responsible for Economic Affairs and other experts whether from the private or public sector as appropriate.

(2) The selection of any private sector entity or individual as a consultant to assist the Concession Entity shall be in compliance with Section 70 and 71 of this Act.

Concession Bid Documents

104. (1) Prior to issuing a Request for Expression of Interest or Invitation to Bid, the Procurement Unit shall prepare the full set of the concession bid documents and shall submit same to the head of the Concession Entity for review and approval by the Inter-Ministerial Concessions Committee.

(2) The Inter-Ministerial Concessions Committee shall establish the appropriate technical team to review the concession bid documents and based on their recommendations approves or otherwise the concession bid documents.

Scope of Concession Documents

105. The concession bid documents shall, at a minimum include the following:

(a) Project information memoranda which shall cover, but not limited to the following:
   i. the background of the Project
   ii. objectives of the proposed concession
   iii. expected improvements or deliverables
   iv. outline of expected project outcome and benchmarks for measuring the attainment of Project objectives

(b) The invitation to bid as applicable

(c) Instructions to bidders which shall include the following:
   i. An indication of whether or not there will be a pre-bid meeting and if so the date, time and venue.
   ii. Criteria for examination or evaluation of bids
   iii. Criteria for award of concessions
   iv. Form of Agreement
   v. Form of Bid
   vi. Form of Bid Security and Performance Security
   vii. Time and Venue for submission and opening of bids
   viii. Form of Financial Proposal to be submitted separately
   ix. All relevant forms necessary for preparation of bids

(d) General and specific conditions of contract/agreement.

Notification of General Notice of Investment Opportunity, Expression of Interest or Request for Proposals

106. Upon approval of the concession bid documents, the Procurement Unit shall publish as required, a General Notice of Investment Opportunity, Expression of Interest, Request for Proposals or all of them in successive order as the context may require in accordance with the provisions of this Act.

Mode of Publication

107. The Commission may issue guidelines regarding publications of the General Notice of Investment Opportunity, Expression of Interest or Request for Proposal.

Sub-Part 5—Pre-Bid Meeting, Bid Submission and Opening

Pre-Bid Meeting

108. Where necessary, a pre-bid conference may be organized to give prospective bidders the opportunity to seek clarification and to obtain additional information on the requirements of the concession or clarify issues set out in the Concession Bid document.

Particulars of the Pre-Bid Meeting

109. The date, time and venue of the pre-bid meeting shall be specified in the Concession bid documents and shall in any case not be less than fourteen (14) days after publication of the invitation to bid.

Submission and Opening of Bids

110. (1) All responses to the Expression of Interest and/or Invitation to Bid whether submitted by a bidder earlier or on the same day slated for the Bid Opening shall be opened at the same time and place and in the presence of the bidders, their representatives or agents in attendance.

(2) The bid submission and opening shall observe the rules of bid submission and opening under Sections 61, 62 and 63 of this Act.

(3) In the case of two envelope bidding, the Concession document shall specify the procedure for opening of the technical and financial envelopes.

Sub-Part 6—Evaluation

Evaluation

111. (1) Evaluation of concession bids shall be undertaken by a Concessions Bid Evaluation Panel that shall be constituted by the Inter-Ministerial Concession Committee.

(2) The Procurement Unit may make recommendations to the head of the Entity regarding the composition of the Concessions Bid Evaluation Panel and the head of the Entity may direct that specific persons with expert knowledge on the subject be co-opted for the effective evaluation of bids.

(3) For the avoidance of doubt the Bid Evaluation Panel to be constituted under Section 30 of this Act for procurement shall not be construed to be the same as the Concessions Bid Evaluation Panel referred to in this section.

(4) Notwithstanding subsection (3) of this section, nothing in this Act shall prevent a person who is a member of the Bid Evaluation Panel under Section 30 of this Act, from being appointed a member of the Concessions Bid Evaluation Panel provided the person possesses the requisite qualification to serve in that capacity.

(5) The Concessions Bid Evaluation Panel shall be an ad hoc body and shall be deemed to be dissolved once its report is approved by the Inter-Ministerial Concessions Committee.

Certainty of Evaluation Criteria

112. No criteria shall be used for evaluation that was not set out in the Concession bid documents made available to bidders and a Concession Entity shall not change the evaluation criteria after the bids have been received.

Minimum Contents of the Evaluation Criteria

113. The evaluation shall:

(a) In respect of an Expression of Interest take into consideration the particular requirements of the Project and the nature of the expertise required for the proper implementation of the Project which must have been set out in the request for Expression of Interest.

(b) In respect of a Request for Proposals take into account the criteria set out in the Request for Proposals which shall in any event be designed to attain the objects of the concession and shall include at least the following:

i. technical feasibility of the proposal
ii. effectiveness of the methods and resources to be deployed
iii. planned improvement over the concession period
iv. the effect of the proposal on the overall strategic objectives and national development plan spelt out by the Ministry responsible for Economic Affairs
v. technology transfer
vi. expected effect of the concession on national income, employment of Liberians, the environment, related industries and other sectors of the economy
vii. application of Margin of Preference, where applicable in accordance with Section 99 of this Act.

Prohibited Criteria in Evaluation

114. The criteria for the selection of responsive bidders shall not at any stage, include any of the following:

(a) Criteria that cannot be reasonably interpreted as a condition meant to elicit the attainment of any of the principles provided for under this Act.

(b) Criteria that is non-commercial in character and which will not lead to the attainment of the objectives of the concession arrangement.

(c) Ambiguous criteria the interpretation of which can be subjective.

(d) A criteria or condition that leads to the grant of the concession to particular persons or group of persons.

(e) A criteria or condition designed to facilitate the selection of a known bidder in contravention of the competitive process.

(f) A condition that will promote the corruption of the entire or part of the concession procurement process.

Sub-Part 7—Post Evaluation

Evaluation Report

115. (1) The Concessions Bid Evaluation Panel shall conclude the evaluation within sixty (60) days of the opening of the bids and shall submit an evaluation report to the Inter-Ministerial Concessions Committee.

(2) The Evaluation Report shall at least comprise the following:

(a) A report on the responsiveness of the bids on the basis of the requirements set out in the proposals

(b) Results of the technical evaluation

(c) Results of the financial evaluation

(d) Recommendations which shall include a statement that the bidder with the highest overall score be invited for negotiations and if negotiations fail with that bidder, negotiations should be held with the next bidder in that order till a successful bidder is selected.

(3) Due diligence of all recommended bidders undertaken as provided in Section 116 of this Act.

(4) The head of the Entity shall not have the power to alter the report of the Concession Bid Evaluation Panel or to request for changes in the recommendations.

Due Diligence

116. (1) Prior to the submission of the evaluation report to the Inter- Ministerial Concession Committee a Concession Entity shall undertake due diligence on all responsive bidders.

(2) The extent of the due diligence shall be determined by the Entity but shall at a minimum include a verification of the following:

(a) The capacity of the private sector entity to enter into the concession agreement.

(b) The authenticity of the certificate of incorporation and other statutory documents. If the private sector partner is of a foreign origin company, the validity of the document must be verified from the country of origin.

(c) Authenticity of the persons purporting to represent the bidder for which purpose the public entity shall demand a board resolution of the prospective bidder authorizing the persons to negotiate or enter into an agreement on its behalf.

(d) The fulfilment by the private sector entity whether wholly foreign owned or in partnership with a local counterpart of the requirements of the laws regulating business operations in Liberia.

(e) Where the bidder is a consortium, proof that:
   i. None of the members is disqualified under this Act;
   ii. Members of the consortium have bound themselves to assume joint and several liabilities for the private sector party's obligations under the concession agreement or in the alternative that a member(s) of the consortium has consented to bear the risk of the other(s) and that a copy of the document evidencing same has been deposited with the entity.

(f) Authenticity of the claims of technical and financial capability made by the bidder

(3) The Concession Entity may, if appropriate engage independent experts to carry out the due diligence.

(4) In all cases the due diligence must be concluded before the concession's contract comes into force.

Form of Contract

117. The form of contract for each Concession Agreement shall be developed by the Concession Entity in collaboration with the Ministry of Justice and endorsed by the Inter-Ministerial Concessions Committee prior to negotiations.

Negotiations

118. (1) Within fourteen (14) days after the approval of the evaluation report by the Inter-Ministerial Concessions Committee, the Inter-Ministerial Concessions Committee shall constitute a Negotiations Team comprising of technocrats and relevant experts co-opted as necessary for the conduct of the negotiation with the highest ranked bidder.

(2) The Negotiations Team shall comprise of a team of not less than three (3) but not more than seven (7) persons appointed by the Inter-Ministerial Concessions Committee.

(3) The Negotiations Team shall consist of technocrats and the head of the Concession Entity shall not be a member of the Negotiations Team.

(4) The Negotiations Team shall be responsible for ensuring that the negotiations are concluded before the expiry of the original or extended date of the Bid Security submitted by the Bidder.

(5) Negotiations shall be entered into with the highest ranked bidder indicated in the evaluation report and approved by the Inter-Ministerial Committee. In the event of the break down of the negotiations, the Negotiation Team shall report to the Inter-Ministerial Concessions Committee. The Inter-Ministerial Concessions Committee shall give approval if appropriate for the commencement of negotiations with the next highest bidder in that order of ranked bidders until negotiations are concluded and all applicable conditions are fulfilled.

Issues to Be Considered At the Negotiations

119. (1) The Negotiations Team shall take the following into account, within the context of existing laws, in its negotiations with the prospective concessionaire:

(a) Responsibilities of parties under the concession

(b) Standards of performance including service, deadlines, safety, compliance and operating/maintenance requirements

(c) Contingency arrangements for identified risks

(d) Tax obligations

(e) Mechanisms for monitoring performance, quality of service and other Project objectives

(f) Dispute resolution mechanisms

(g) Performance Bonds

(h) Monitoring/Reporting

(i) Reporting Requirements

(j) Social Responsibility Requirements

(k) Use Of Local Labour

(l) Capacity Building

(m) Technology Transfer

(n) The financial components including payment provisions, the time of payment and currency of payment

(o) Responsibilities for insurance, security, operation and maintenance where applicable

(p) Contract revision arising from material change in the conditions of the contract

(q) Environmental Issues

(r) Termination provisions

(s) Project failure and remedies, if any

(t) Breach of contract/Events of default

(u) Provision for re-entry, buy-back transfer, reversion, assignment and related issues

(v) Tariffs, charges, rates, fees, etc. that may be charged to third parties, where applicable and responsibility for fixing same

(w) Non-circumvention, confidentiality and scope of these provisions

(x) Ownership of intellectual property, facilities or new technologies developed

(y) Provisions which may survive termination of the contract e.g. arbitration, confidentiality

(z) Contract amendment process

(2) The Inter-Ministerial Concessions Committee may expand on these issues for negotiations for any particular concession, but the issues must have been included in the concessions bid documents.

Confidentiality Agreement

120. (1) The Negotiations Team shall not commence with the negotiations unless they have received a copy of the Confidentiality Agreement entered into between the bidder invited for the negotiations and the entity which restricts each of the parties from disclosing information in accordance with internationally accepted standards of confidentiality in such cases.

Post-Contract Management

121. The Negotiation Team shall conclude post-contract management arrangements during the negotiations and this shall at least include:

(a) Mechanisms for monitoring performance of the terms and conditions of the agreements

(b) Reports to be submitted on periodic basis and the methods for authentication of the reports

(c) Asset maintenance and improvement requirements if any

(d) Arrangement for handling public complaints

Regulations Pertaining to Mining and Petroleum Concessions

122. (1) Without limiting the application of this Part the Commission shall not later than one hundred and eighty (180) days after the coming into force of this Act ensure that regulations are issued so as to bring the procedure for the issue of prospecting, reconnaissance and exploration licenses for petroleum and mining concessions under any existing law in conformity with this Part of this Act.

(2) In the performance of its functions under subsection (1) of this section the Commission shall ensure that the issue of any license for prospecting, reconnaissance and exploration shall be done in a competitive manner and without the grant of a monopoly to any party.

Appendix VII
Web Reference for Full Text of Amended Agreements

To read, download or print the full text of the Amended Mineral Development Agreement among the Government of the Republic of Liberia, Mittal Steel (Liberia) Holdings Limited, and Mittal Steel Holdings A.G. (December 28, 2006), and the Amended and Restated Agreement between the Republic of Liberia and Firestone Liberia, Inc. (March 31, 2008), please go to:

www.revenuewatch.org/liberiacontracts

Endnotes

1. GEMAP is a program of wide scope that targets revenue collection, expenditure controls, and government procurement and concession practices. Its key features are the provision of international experts with co-signature authority and management contracts in selected ministries and state-owned enterprises; authoritative oversight mechanisms; and linkages to the peace implementation process and to UN Security Council sanctions. *(Source "GEMAP, a Joint UN/WB Review, May 2006)*
2. The telecommunications license agreements set aside were the Cellcom, Comium, and Intrady-Comad contracts.
3. For additional details on the contract review criteria see the Contract and Concession Review Criteria section of the Framework attached here as Appendix III.
4. The 36 contracts recommended for cancellation included the 7 agreements with no contracts.
5. The 14 contracts recommended for renegotiation by the CCRC were Comium, Enisul Group, Metallum Liberia Ltd., Western Mineral Resource, Mittal, Resol (2 oil contracts), Regal (2 oil contracts), Woodside (oil contract), BIVAC, Nick Scan, Firestone and Agro Resource Corp.
6. This report refers to the Ministerial level committee created by the President to review the contracts in the ArcelorMittal and Firestone negotiations as the Inter-Ministerial Concession Committee ("IMCC"). This committee often sought technical advice from subject-matter experts within the Government. This group of Government subject-matter experts has over time come to be called the Inter-Ministerial Technical Committee ("IMTC"). The IMTC is comprised of Deputy and Assistant Ministers who are responsible for technical assistance to the IMCC. To distinguish the IMTC from the group responsible for negotiating contracts, some in Government refer to the "negotiating" group, which is largely made up of Ministers, as the Inter-Ministerial Committee ("IMC"). The IMTC and IMC are *not* committees described in the PPCA or the Mineral and Mining Law of Liberia (2000). The PPCA refers to the IMCC and the Bid Review Panel; the Minerals and Mining Law of Liberia (2000) refers to Ministerial Technical Committee ("MTC"). As part of its efforts

to harmonize the negotiating practice used in the ArcelorMittal and Firestone negotiations with the PPCA and the Minerals and Mining Law of Liberia (2000), the Government will have to decide the name and functions of various committees and panels used in the concession contract review and negotiating process. See Section 7 of the Report for a discussion and recommendations on harmonization. To avoid confusion, this Report uses IMCC to refer to the Ministerial-level committee responsible for contract review and evaluation (with the assistance of subject-matter experts and technical advisors inside and outside of the Government). This is consistent with the functions of the IMCC under the PPCA. The group responsible for negotiating concession agreements for the Government is simply referred to as the "negotiating team" in this Report.

7. The negotiating team, comprising a sub-set of the IMCC members, was headed by Minister Eugene Shannon, MLME. Its other members were Minister Morris Saytumah, MOS; Chairman Richard Tolbert, NIC; Minister O. Natty B. Davis, MOS-LRDC; Solicitor General Tiawan Gongloe, MOJ; Director Drayton Hinneh, MOF and Assistant Minister Gesler Murray, MLME. Minister Saytumah was designated lead negotiator. Supporting the IMCC negotiating team in the capacity of technical advisors were Prof. Bob Hillman, ISLP; Prof. Lou Wells, ISLP; Mr. Raja Kaul, LRDC; Mr. Stephen Seymour, Columbia Law School and through the ISLP also, a team from the New York law firm of Cravath Swaine and Moore that included Mr. Joel Harold, Mr. Alex Vermeychuk and Ms. Kyla French.

8. A Term Sheet is a document that sets out in non-contract language the important deal terms that the parties must reach agreement on to establish a meeting of the minds for the proposed transaction

9. A Talking Point document usually sets out one party's position on a set of particular issues.

10. A "Non-Binding Protocol of Discussions" is intended to capture the discussions of the parties during a specific round of negotiations. It sets out the parties positions on issues discussed during the negotiations and captures any agreements reached on those issues. The document signed by both sides is non-binding and also records a list of each side's representatives participating in the meeting.

11. This document is available at: http://www.emansion.gov.lr/doc/MittalAgreementFinalMitrix.pdf.

12. The President appointed the Minister of Agriculture, Chris Toe, as chair of the negotiating team and included as its members, Minister Frances Johnson-Morris, MOJ; Minister Kofi Woods, MOL; Morris Saytumah, MOS; Minister O. Natty B. Davis, MOS-LRDC; Chairman Richard Tolbert, NIC; Deputy Minister Elfrieda Tamba, MOF and Director Drayton Hinneh, MOF. Supporting the negotiating team as technical advisors were Mr. Joe Bell from the Washington, D.C. law firm of Hogan & Hartson, through the ISLP; Mr. Michael Jordan, the Government's rubber industry financial expert; Mr. Jim Belcher, another rubber industry consultant to the Government; and Mr. Raja Kaul with the LRDC. The team also received support from members of Mr. Bell's firm and from Prof. Bob Hillman and Prof. Lou Wells through the ISLP

13. Like a Term Sheet, a Summary of Principal Terms is a document that sets out in non-contract language the important terms that the parties must reach understanding on to establish agreement on a proposed transaction.

14. 2005 Concession Agreement: Section 31.1 *Profound Changes in Circumstances* provides—For the purpose of considering Profound Changes in Circumstances from those existing on the Effective Date or on the date of the most recent review of this Agreement pursuant to this Section 31, Government on the one hand and Firestone Liberia jointly on the other hand, shall at the request of the other consult together. The Parties shall meet to review the matter raised as soon after such request as is reasonably convenient for them both. In case Profound Changes in Circumstances are established to have occurred, the Parties shall effect such change in or clarification of this Agreement that they agree is necessary.

15. World rubber prices dropped from a high in 1976 of approximately US$0.40 per kilogram to a low of US$0.30 per kilogram in 1982.

16. Firestone projected approximately US$0.40 per kilogram as world rubber prices in its April 2005 negotiations with the NTGL. When the parties met to review the 2005 Concession Agreement in February 2007 world rubber prices were approximately US$0.93.

17. See footnote 10.

18. This document is available at: http://www.emansion.gov.lr/doc/FirestoneAgreementComparison20052008.pdf.

19. See Forest Development Authority Regulation No. 104-07 ("Tender, Award and Administration") Section 22 (j) ("Identification of Affected Communities; Pre-Implementation Community Consultations—Social Agreements") which provides:

    (1) The Authority shall not proceed with offering a proposed FMC or TSC unless the Authority has obtained free prior informed consent, in writing, from Community Forestry Development Committees representing all Affected Communities identified under this Section, to negotiate in good faith a social agreement with the winning bidder and subject themselves to independent arbitration should those negotiations not reach a satisfactory conclusion; and

    (2) If the Authority fails to obtain agreement under Paragraph (1) of this Subsection from Community Forestry Development Committees representing all Affected Communities, the Authority may reconsider the terms of the proposed FMC or TSC.

20. See Appendix VI: PPCA Part VI Section 82 (1) (e).

21. See Appendix VI: PPCA Part VI Section 82 (2).

22. See Appendix VI: PPCA Part VI Sections 118 (1) and (2).

23. See Appendix VI: PPCA Part VI Section 118 (3).

24. See Appendix VI: PPCA Part VI Section 83 (4).

25 . Note: It is believed the PPCA reference to a Minister of Economic Affairs is to the Minister of Planning and Economic Affairs.

26. See Appendix VI: PPCA Part VI Section 81 (3).
27. See Appendix VI: PPCA Part VI Section 83 (3).
28. See Appendix VI: PPCA Part VI Section 83 (1).
29. See Appendix VI: PPCA Part VI Section 83 (2).
30. See Appendix VI: PPCA Part VI Section 83 (5).
31. See Appendix VI: PPCA Part VI Section 85.
32. See Appendix VI: PPCA Part VI Section 83 (1).
33. The nature and composition of a concession report is not defined in the PPCA. In practice a concession report is produced by the Bid Review Panel to present its deliberation related to a specific concession for the IMCC's review.
34. See Appendix VI: PPCA Part VI Section 81 (2).
35. See Appendix VI: PPCA Part VI Section 90.
36. See Appendix VI: PPCA Part VI Section 91.
37. In February 2007, the Government began renegotiations of its agency contract with LISCR, LLC for the operation of Liberia's Shipping and Corporate Registries. Those negotiations were put on hold while the Government undertook due diligence of LISCR's operations. Negotiations with LISCR have recently resumed and the negotiating process being followed mirrors the process in ArcelorMittal and Firestone.
38. For example the Kendeja Hotel and Nubian Hotel projects.
39. For example Buchanan Renewable Energies.
40. PPCA Sections 141 (2) (c) (i) and (iv) state: (i) notwithstanding any provisions under the 2000 Mining Law, its interpretation, operation and application in respect of concessions shall be subject to the Part VI of the PPCA; and (iv) any power granted any person, body or entity in respect of mining, exploration or the extraction of any natural resource shall be exercised in accordance with Part VI of the PPCA. These provisions appear to require the MLME to follow the PPCA to the extent provisions of the 2000 Mining Law conflict with the PPCA.
41. ISLP review of the AmLib contract draft of late May, 2008, shows that very few ISLP comments have made it into the draft.

“In the contracts covered by this report we were able, through our negotiation efforts, to secure stronger fiscal terms, increased revenues to the government, and additional employment opportunities for our people. … We aggressively pursued a better deal for Liberia, but we were also careful to make certain that the renegotiations did not threaten the viability of the companies’ investments and represented an opportunity for a better long-term working relationship between the companies and government.”

Ellen Johnson Sirleaf
President, Republic of Liberia