

# LIBERIA EXTRACTIVE INDUSTRIES TRANSPARENCY INITIATIVE (LEITI)

## MULTI-STAKEHOLDERS STEERING GROUP

### COMMENTS / RESPONSE TO EITI VALIDATION REPORT ON LIBERIA

FEBRUARY 28, 2017

The Multi-Stakeholders Steering Group of the Liberia Extractive Industries Transparency Initiative (LEITI) has reviewed the Validation report on Liberia prepared by Sustainable Development Strategies Group (SDSG), Independent Validator, and forwarded by the International Secretariat on February 15, 2017 for our response / comments.

Our review considered all aspects of the Report - ranging from Background to Recommendations.

However, we have restricted our comments only to aspects of the Validation Report we deemed deserve additional clarifications or evidence to the contrary, where applicable. We believe that this will afford the Validation Committee the singular opportunity of having balanced perspectives on issues contained in the validation report, including, specifically, the assessments / ratings by the Independent Validator, some of which we disagree with.

Before delving into the substantives of our comments / response we wish to note the following:

A two-man Secretariat team - in persons of Pablo M. Valverde and Alex L. Gordy - were fielded on the validation fact-finding mission to Liberia from August 21 – 26, 2016 instead of a ‘five-person team’ as averred by the Independent Validator on page 2 of the Validation Report (“*Comments on the International Secretariat’s Initial Assessment*”)

- In their assessment, the Independent Validator wrongly attributed the MSG’s comments on the Initial Secretariat Assessment Report to the LEITI Secretariat. We want to categorically state that the comments were ours, and not the LEITI Secretariat’s. Therefore, the attributions should be corrected in subsequent reports.

- This statement: “The MSG will also need to agree Liberia’s three-year BO roadmap by 1 January 2017.” as contained in validation recommendation 4.19, should be corrected to reflect the reality of January 1, 2017 by which time the LEITI published its BO Roadmap and forwarded same to the EITI Secretariat; predating the current Validation Report.

We present in the below matrix our comments/response which specifically address the below Assessments / Requirements:

## **2. Licenses and Contracts**

- State participation (#2.6)

## **3. Monitoring Production**

- Exploration data (#3.1)

## **4. Revenue collection**

- Transportation revenues (#4.4)
- SOE transactions (#4.5)
- Data quality (#4.9)

## **5. Revenue allocation**

- Revenue management and expenditures (#5.1)

## **6. Socio-economic contribution**

- Mandatory social expenditures (#6.1)
- SOE quasi-fiscal expenditures (#6.2)

<b>The Standard/ Requirement</b>	<b>Validator’s Assessments</b>	<b>LEITI’s Response to Validator’s Assessments</b>	<b>LEITI’s Conclusion</b>
<p><b>#2.6 State Participation</b></p>	<p>We agree that Liberia’s progress under this requirement is INADEQUATE. Information is lacking on whether there are state-owned entities (SOEs) in the forestry and agricultural sectors. Whether and to what extent SOEs exist and operate in the mining sector is vague, with no discussion of applicable rules and practices. There is some discussion of SOE related rules pertaining to the oil sector, but there is no clarification on state ownership in neither NOCAL nor documentation of whether transactions involving NOCAL were material.</p>	<p>Since the validator’s assessment and conclusion is based squarely on the findings of the EITI initial assessment report, which rates Liberia “inadequate”, we like to speak to the same facts used by the validator from the initial assessment report, according to the same order:</p> <p><b>Materiality:</b> The LEITI report considers the materiality of payments that come from companies to the government revenues. NOCAL as a public entity, then, was a regulator and commercial operator receiving revenue from companies in the sector. Given its statutory role of regulating and at the same time receiving revenues, this is why it was approved by the MSG that NOCAL submit separate templates as a regulator and commercial entity/SOE. See pages 4 &amp; 7 of the</p>	<p>To conclude, NOCAL Act explicitly clarifies that it is 100% owned by the state, which is already public information that the act is published; and its material threshold implicitly provided in Annexes 1 &amp;2. Also, the EITI report provided reasonable detailed information in tabular form with other information to explain for the level of stake NOCAL has in its contractual relationship with every company in the sector. However, both the EITI and the Validator need to provide evidence of state ownership in official mining project like</p>

		<p>final inception report and page 32 of the 13/14 LEITI Report. Annexes 1 &amp; 2 of the 7<sup>th</sup> Report list NOCAL as one of the material companies and show the materiality of its payment (see pages 67 &amp; 68). With this information, we are convinced materiality of the SOE payment was explicit, and the SOE engaged in the sector named.</p> <p><b>Financial relationship with the government:</b> Section 3.6 (pg. 31-32) <sup>1</sup>documents the financial relationship between NOCAL and government. The narrative is an explicit “explanation” and “disclosure” of the prevailing rule and practice that govern NOCAL’s and GOL’s financial relationship. Let us be reminded that the EITI rule requires an “explanation” of the rules.</p> <p><b>Government Ownership and ownership changes:</b> NOCAL Act of 2000 including its latest amendment occurring in 2016<sup>2</sup>, clearly stipulates that NOCAL is a wholly-owned state corporation</p>	<p>Arcelor Mittal. To the best of our effort in Liberia, the LEITI report captured what is noteworthy as is required of Liberia to disclose under Requirement 2.6 of the Standard, which in our view was unfairly judged to have resulted in “inadequate” progress for the country.</p>
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<sup>1</sup> [http://www.leiti.org.lr/uploads/2/1/5/6/21569928/leiti\\_2013-2014\\_eiti\\_final\\_report\\_18-08-2016-signed.pdf](http://www.leiti.org.lr/uploads/2/1/5/6/21569928/leiti_2013-2014_eiti_final_report_18-08-2016-signed.pdf)

<sup>2</sup> <http://www.nocal.com.lr/operations/New%20Petroleum%20Law/NOCAL%20Law%202016%20Final.pdf>

		<p>(See Section 4 of NOCAL Act of 2016 or section 2 of the Act of 2000). NOCAL act is a public document; that is why the report only discussed NOCAL role and not about ownership, which is already public information. It is elementary knowledge that a change in statutory ownership will require legislative review and passage, which the report could not repeat. Regarding NOCAL's equity stakes, Annex 5 of the EITI report provided a table detailing the contractual split NOCAL has with all of the operating companies. In our view, this is reasonable detailed information presented in tabular form with other information to explain for the level of stake NOCAL has in its contractual relationship with every company in the sector. Both the EITI Team and validator failed to see such accomplishment of the report.</p> <p>The Initial assessment report stated that the EITI report did not refer to any loans or loan guarantees, and truly so because there was non existing to discuss. Regarding stakeholder views, both the EITI and the validator need to</p>	
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		provide evidence of government 15% equity in Arcelor Mittal. By using this information to judge Liberia's performance will require further evidence from the EITI and the validator beyond opinion of stakeholders. Meanwhile, NIC is statutorily responsible to administer and manage government stake in companies and corporations. See NIC Act of 2010, 5.2 (e) <sup>3</sup> .	
<b># 3.1 Exploration Activities</b>	We disagree that Liberia has made satisfactory progress and find instead that its progress has been MEANINGFUL. Information is insufficient with respect artisanal and small-scale mining, forestry, and agriculture.	We refer back to the initial assessment report of the Secretariat since it is the basis of the scoring, which the validator used: the LEITI report for 13/14 justly provided a clear overview of the extractive sector of Liberia to the requirement of the EITI standard. The standard requires implementing countries to "disclose an overview" of the Extractive Industries (EI) including significant exploration activities. The Standard is silent on the elements of that overview. The artisanal and small-scale mining sector falls below materiality for the period. According to the Merriam Webster dictionary, the	The reduction in LEITI's rating under Requirement 3.1 reflects the scale of the validator's challenge expressed in her limitation of work. Our work under Requirement 3.1, we believe, was no less than satisfactorily implemented to the dictates of language of the standard, albeit, we note the concern of the initial assessment report.

<sup>3</sup> <http://www.liberlii.org/cgi-bin/download.cgi/cgi-bin/download.cgi/download/lr/legis/acts/nica349.pdf>

		<p>word “overview” is defined as “a general explanation or short description of something”. This highlights a sense of subjectivity in what constitutes overview. The LEITI Report discussed the significant issues of the sectors to the best of the knowledge of the report’s author. For the validator to base her conclusion on reducing LEITI’s rating to meaningful on a concern expressed about artisanal and small scale mining activities is unfair to the level of work done in the report, most especially where it is absent from the EITI Validation Guide . Additionally, there is no such thing as “artisanal and small-scale forestry and agriculture”.</p>	
<p><b># 4.4 Transportation Revenues</b></p>	<p>We disagree that this provision is not applicable to Liberia and find that progress is INADEQUATE. There is some discussion of transportation revenues related to the forestry sector, but no documented discussion by the MSG on whether these are material. Neither was there discussion by the MSG on this issue with respect to the agricultural sector. There would typically be fees associated with ore transport permits in the mining sector, but there is no discussion of</p>	<p>The LEITI was informed by the Validation assessment team fielded to Liberia in August 2016 that Liberia’s expansion of the EITI scope to the forestry and agriculture sectors is laudable but progress made therein would not positively affect the nation’s rating during these validation processes mainly because those sectors are outside the EITI traditional scope, which we believe informed their assessment that 4.4 was not applicable to Liberia. This is further buttressed by the</p>	<p>We concur with the previous rating by the International Secretariat and further confirm that Requirement 4.4 of the EITI Standard is not applicable to Liberia.</p>

	<p>regulatory or permitting fees collected for transporting ore in the same manner as this was discussed for forestry.</p>	<p>introductory of Requirement 4.4 of the EITI Standard, which states: “Where revenues from the transportation of <b>oil, gas and minerals</b> are material...”. Hence the LEITI does not expect judgment to be made by the validator (SDSG) in reducing an already favorable rating made by the International Secretariat based on developments from the forestry and agriculture sectors. Additionally, the validator’s assertion that “There would typically be fees associated with ore transport permits in the mining sector” suggests a mere guess, something that lacks direct evidence. The judgment made based on this premise is unfair in the absence of evidence. There is no mention of material transport revenue in the report of the fact-finding-team that carried out the initial assessment in Liberia. It is also important to note that the LEITI 7<sup>th</sup> Report (3.1 p.21) describes material taxes paid by mining companies, void of transport revenue. It is then clear that transport revenue was not applicable in the management of the Liberian extractive sectors during FY2013/14.</p>	
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		<p>The West African Exploration (Sable Mining) transport arrangement with Arcelor Mittal, the basis for the International Secretariat’s decision, was signed but not operationalized and such details were provided in LEITI 2015 Annual Activity Report (see page 21), <sup>4</sup>which was submitted to the International Secretariat and uploaded on LEITI website. That underpins our concurrence with the International Secretariat’s rating relative to the Non-Applicability of transport revenue during the reviewed period. According to both the EITI Standard and validation guide, Requirement 4.4 is not mandatory. An excerpt from the Validation guide regarding EITI Requirement 4.4 states: “Disclosure of material transportation revenues is expected, but not required for compliance with the EITI provisions.” We concur with the previous rating by the International Secretariat and further confirm that Requirement 4.4 of the EITI Standard is not applicable to Liberia.</p>	
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<sup>4</sup> [http://www.leiti.org.lr/uploads/2/1/5/6/21569928/approved\\_leiti\\_annual\\_activity\\_report\\_2015.pdf](http://www.leiti.org.lr/uploads/2/1/5/6/21569928/approved_leiti_annual_activity_report_2015.pdf)

<p><b># 4.5 Transactions Related to SOEs</b></p>	<p>We disagree that Liberia has made satisfactory progress and find instead that its progress has been MEANINGFUL. The required disclosures are incomplete, for example, there is insufficient information about ad hoc transfers from NOCAL. Moreover, there is no consideration of this issue as it may pertain to the forestry and agricultural sectors.</p>	<p>We contend that the information disclosed about ad hoc transfers from NOCAL is fully captured beyond the LEITI 2013/14 report with links provided in the NOCAL website, which contain additional details of NOCAL expenditures include ad hoc transfer as SOEs. Additionally, the 2014/15 national budget<sup>5</sup> contains expenditure information on all SOEs including NOCAL<sup>6</sup>. The LEITI would again like the validator, International Secretariat and the Board’s responsible committee to imagine the Ebola era where human contact was strictly prohibited and also documentation, which would have involved human contact. Documentation of Ad-hoc transfer made during such time was almost impossible. We concur with the EITI Secretariat’s initial rating of satisfactory owing to specific and unique country context at the time.</p>	
<p><b># 4.9 Data Quality and Assurance</b></p>	<p>We agree that Liberia’s progress in implementing this provision has been INADEQUATE. The MSG did not undertake the required discussion and decision-making process regarding materiality</p>	<p>The LEITI strongly believes that both International Secretariat and Validator were deeply concerned about the theoretical aspect of the TOR that was used to hire the IA for Liberia’s 7<sup>th</sup> and 8<sup>th</sup> (2013/14</p>	<p>The LEITI strongly believes it deserves “Satisfactory” rating here given the additional justification and/or evidence provided, which</p>

<sup>5</sup> file:///C:/Users/LEITI/Downloads/NationalBudget\_1\_17\_2015.pdf

<sup>6</sup> <https://www.mfdp.gov.lr/index.php/soe-unit#>

	<p>thresholds and the scoping of material companies and revenue streams, thus deviating significantly from the standard Terms of Reference (TOR) and without prior Board approval. It effectively excused government entities and companies from confirming that their financial statements had been audited, and did not assess actual auditing practices and company assurances.</p>	<p>and 2014/15) EITI reports than the actual legitimate and required processes that the LEITI followed in preparing the referenced reports. We would like to confirm that the TOR approved by the MSG for recruitment of the IA to prepare LEITI 7<sup>th</sup> and 8<sup>th</sup> reports clearly allowed for the MSG working with the IA to set materiality and define revenue streams, and this was achieved (see Section 1.3, p.29 of the approved TOR). The IA therefore conducted the scoping for both reports and the MSG worked with the IA in establishing payments and revenues that were material to have formed part of the 7<sup>th</sup> and 8<sup>th</sup> LEITI reports. Appropriate materiality definitions and thresholds were set. Kindly refer to Sections 2.1, 2.4, p.16-17 of the 2013/2014 LEITI report and p.4 of the 2013/14 Inception report. We refer to the MSG meeting minutes of May 2016, given to the International Secretariat and uploaded on the LEITI website, which documents revenue streams and materiality setting and approval by the MSG, especially in the presence of the IA.</p> <p>We would like to reference</p>	<p>include the MSG May 2016 meeting minutes evidencing approval of the inception report which defined materiality and revenue streams, the signed contract containing ToR for the 2013/14 and 2014/15 LEITI Reports and the 2013/14 LEITI Report (see pp. 16-17).</p>
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		<p>Section 2.4, P. 17 of the 7<sup>th</sup> LEITI Report which indicates the financial statements from government and companies must be audited before revenue data were accepted by the IA for reconciliation. The section required that the external auditors of the companies and government entities must have certified their financial records by signing and stamping the reporting templates before submission to the IA.</p>	
<p><b>#5.1 Distribution of Revenues</b></p>	<p>The LEITI National Secretariat sought to clarify that the EITI Report sufficiently described the distribution of extractive sector revenues. We nevertheless agree with the International Secretariat that Liberia’s progress in implementing this provision has been INADEQUATE. The EITI Report does not comprehensively and explicitly disclose which extractives revenues are and are not recorded in the budget. There are clearly “off-budget” extractive revenues and links to applicable financial or other reports are not provided</p> <p>The 6th &amp; 7th EITI Reports indicated that all extractives revenues were statutorily required to be recorded in the national</p>	<p>Section 3.5 (Collection of and Distribution of the Extractive Revenues) of the 2013/14 LEITI Report provided a description of the budget formulation process, noting the extractive revenues that are paid to the consolidated fund, which go to the national budget. A diagram was provided on pg. 31, which directly outlined the list of taxes and payments from the sector that empties into the Consolidated Fund. In addition to this, 4.3.3 of the 2013/14 LEITI Report gave an explanation of individual tax items and to where each is directed in terms of payment with the supporting fiscal regime provided.</p>	<p>The 2013/14 LEITI Report provided a description of the distribution of extractive sector revenues including those that are paid to the Consolidated Fund, which are recorded in the national budget. The EITI Standard requires an explanation when revenues are not paid to the budget, which 4.3.3 of the 2013/14 LEITI report provided. Pg. 42 – 48 clarified why some payments, not recorded in the national budget, were made directly to other entities other than the</p>

	<p>budget, through the Consolidated Fund; but fell short to provide explanation for the allocation of extractive revenues not recorded in the budget. The 7th EITI Report showed that revenues collected by the National Port Authority (fees and charges), the University of Liberia (Scientific Research Fund) and NOCAL (social welfare contribution, surface rental, annual training and Hydrocarbon Development Fund) were not transferred to the Consolidated Fund. Meanwhile, there was no reference included in the 2012-13 EITI Report to any domestic or international revenue classification system</p>		<p>consolidated fund. Additionally, Appendix 3 SOE Sector Performance Report of the FY 2014/15 National Budget provides further information on budgeted and actual inflows and expenditure of all SOEs including NPA and NOCAL, though the necessary links were not provided in the LEITI report. The FY 2014/15 national budget<sup>7</sup> document is public in Liberia. Therefore, the conclusion of the Secretariat is not fully supported as their score of inadequate progress is not justified. The LEITI in the 7<sup>th</sup> Report did more under Requirement 5.1.</p> <p>However, since the issue about referencing national revenue classification systems is only encouraged, we reserve comment as it should not be used as a</p>
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<sup>7</sup> <https://www.mfdp.gov.lr/index.php/the-budget#>

			basis to derive our compliance with the Standard. Therefore, we conclude that the assessment of Inadequate Progress is <b>harsh</b> .
<b>6.1 Mandatory Social Expenditures</b>	We agree with the International Secretariat’s factual findings in its Initial Assessment, but disagree with its conclusion that Liberia’s progress has been meaningful. We find that Liberia’s progress in implementing this provision has been <b>INADEQUATE</b> given that most of the requirements under this provision are unmet. The MSG neither discussed nor documented the issue of materiality with respect to this requirement.	<ul style="list-style-type: none"> <li>- Materiality definition<sup>8</sup> set at the scoping phase, which was extensively discussed<sup>9</sup> by the MSG, covered ALL payments, including mandatory and voluntary social contributions. Templates approved by the MSG during the Scoping phase which were used for data collection contained provisions for both mandatory and voluntary social contributions reporting(see Page 88 of the LEITI 2013/14 Report);</li> <li>- Additionally, Page 84 Payment REF #S 2 &amp; 3 specifically list the Major Social Payments.</li> <li>- In further strengthening LEITI’s efforts to publicize companies’ Social Obligations, a contract Matrix Project was undertaken</li> </ul>	Based on the analysis in the immediate left column which recounts genuine and concerted efforts that we have made to cover mandatory social obligations (cash and In-kind) we contend that no less than meaningful Progress has been made in meeting this requirement.

<sup>8</sup> P 36; Section 4.1.2(Social Payments / In-kind Contributions LEITI 7<sup>th</sup> Reconciliation Report

<sup>9</sup> Minutes of MSG discussion of 7<sup>th</sup> LEITI Report Scoping Study

		<p>by the LEITI Secretariat which simplified 28 agreements across the oil, mining, agriculture and forestry sectors for the period up to June 30, 2015. Report<sup>10</sup> was published on the LEITI Website and disseminated in a nationwide exercise by the LEITI Secretariat in 2015(evidence attached).</p> <ul style="list-style-type: none"> <li>- We also attach evidence of additional efforts made by the LEITI to document and disclose Social payments by companies as you will see in the LEITI 5<sup>th</sup> Reconciliation Report<sup>11</sup></li> </ul>	
<b>6.2 Quasi-fiscal expenditures</b>	<p>We disagree that Liberia’s progress is inadequate and find instead that it has made <b>NO PROGRESS</b>. The MSG did not discuss or document the issue of materiality with respect to this requirement, nor did it develop a reporting process that took such expenditures into account. The MSG should clarify whether payments made by NOCAL to the University of Liberia constitute</p>	<p>While we concede that the MSG did not exclusively discuss materiality relating to Quasi-fiscal Expenditures, we wish to respectfully disagree that that we did not at all discuss nor document these expenditures. The Quasi-fiscal disclosures were required by the MSG, based on which NOCAL’S budget was contained in the LEITI 2013/14 Reconciliation Report (Ref:</p>	<p>We contend that while the LEITI may not have achieved 100% regarding meeting this Requirement, we do believe that genuine and considerable efforts have been made toward meeting this Requirement, evidenced by the additional information we have</p>

<sup>10</sup> [http://www.leiti.org.lr/uploads/2/1/5/6/21569928/contract\\_matrix\\_final\\_version.pdf](http://www.leiti.org.lr/uploads/2/1/5/6/21569928/contract_matrix_final_version.pdf)

<sup>11</sup> <http://www.leiti.org.lr/leiti-reports.html>

	<p>quasi-fiscal or mandatory social expenditures.</p>	<p>ANNEX 8; page 77) and a link to NOCAL’s webpage provided. The webpage contains reports on NOCAL’s expenditures-both on and off-budget.</p> <p>Additionally, following the first validation in 2010, the LEITI has made genuine efforts aimed at disclosing / documenting Quasi-fiscal expenditures for SOEs, Eg, LEITI’s 5<sup>th</sup> Reconciliation Report<sup>12</sup>.</p> <p>Other national efforts have also been exerted to promote disclosures by State Owned Enterprises of Quasi-fiscal Expenditures, including NOCAL, by including annual budget performance reports in the National Budget<sup>13</sup>, which provide both on and off-budget receipts and expenditures by SOEs.</p>	<p>provided. We also clarify that NOCAL’s payment to the University of Liberia for the period of the LEITI 2013/14 report was a social payment instead of Quasi-fiscal expenditure. To conclude, we think that the Validator’s assessment of ‘ NO Progress’ is unrealistic and also ignores the many strides the LEITI has done under difficult circumstances to meet this Requirement. We therefore believe that no less than a Meaningful Progress has been made.</p>
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<sup>12</sup> <http://www.leiti.org.lr/leiti-reports.html>

<sup>13</sup> <https://www.mfdp.gov.lr/index.php/soe-unit#>