

## Overview of the Joint committee Report on AML

The joint committee hereby acknowledged with gratitude the task bestowed upon it to review the AML concession and informed the Honorable House of Representatives for subsequent passage. The committee welcomes the Proposed Amendment and is extremely glad for the amount of 800 million to come to Liberia through foreign direct investment. The joint committee having reviewed the proposed AML MDA, raised series of concerns on many terms and agreements, such as The impact on the Treaty signed between the Republic of Liberia and the Republic of Guinea signed by both countries February 18, 2020 and May 6, 2021 respectively, the counties social contributions, conflict with concession area, ***but most importantly is the issue of Exclusive Rights to Liberia's Railroads and Port of Buchanan captured in Article 3 of the Proposed Amendment.*** We will begin with the Railroad of Article 3 of the Proposed Amendment.

**In relevant parts, Article 3 of the proposed Amendment is calling for the Exclusive Rights over Liberia's Railroads and a near Absolute control over Liberia's Port of Buchanan.** As in its current state the proposed Amendment of AML calls for what seems to be a complete monopoly of the Railroad and the port of Buchanan. The proposed Amendment states clearly in Article 3 that:

The text of paragraphs d., e. and f. of Section 3 (Assets and Facilities) of Article IX of the Consolidated MDA is hereby deleted in its entirety and replaced with the following:

### **d. Operation and Maintenance of Railroad and Port Infrastructure—Generally**

- 1. During the Term or any Extended Term of the Agreement, the GOVERNMENT hereby grants the CONCESSIONAIRE the right (i) to have access to, expand, use, operate and maintain the Railroad on the terms and subject to the conditions set forth in this Agreement (including the Railroad System Operating Principles that are a part hereof) and in the MUA, once it becomes effective and (ii) to have access to, expand, use, operate and maintain the Buchanan Iron Ore Port on the terms and subject to the conditions set forth in this Agreement.*
- 2. The GOVERNMENT shall ensure that the Concession Area, as well as the assets and facilities transferred or otherwise made available to the CONCESSIONAIRE hereunder (including the Railroad and the Buchanan Iron Ore Port, which have not been transferred but have been made available for use in the Operations on the terms and conditions set forth in this Agreement), are free from any occupation and encumbrance, and available for the purpose of the Operations contemplated hereby, subject only to the provisions of paragraph e. below (User Access and Future Expansion of the Railroad), paragraph g. below (Access to the*

*Buchanan Iron Ore Port; Port Capacity Expansion), and the Railroad System Operating Principles and the MUA (once it becomes effective).*

3. *From the Third Amendment Effective Date, and until the setting-up of the Joint Management Committee, there shall be constituted a review committee (the “**Railroad Review Committee**”) composed of GOVERNMENT members and CONCESSIONAIRE members. The Railroad Operator, shall, on a quarterly basis, provide the Railroad Review Committee with a report on the Railroad operational performance.*

***Additionally according to Article 3(e) entitled “User Access and Future Expansion of the Railroad”***

- e. Subject to the rights of the CONCESSIONAIRE and as provided in this Agreement, the GOVERNMENT may, at any time during the Term and any Extended Term of this Agreement, authorize the CONCESSIONAIRE and one or more other Users to further expand the Railroad capacity for their own respective needs, subject to the subparagraphs below and in accordance with the Railroad System Operating Principles; it being understood that all Users, including the CONCESSIONAIRE in its capacity as User, will be responsible for providing and driving their respective trains for haulage of products, which trains will transit on the Railroad under the control and supervision of the Railroad Operator, in accordance with the Railroad System Operating Principles and the relevant provisions of the MUA (when it becomes effective):

1. ***The CONCESSIONAIRE shall have the exclusive right to complete the ongoing expansion of Railroad capacity as part of its expansion of the mine, the concentrator and the Buchanan Iron Ore Port to reach 15 MWMTPA of finished products (the “Ongoing Railroad Capacity Expansion”). The CONCESSIONAIRE shall complete the Ongoing Railroad Expansion by the later of (x) 31 December 2024 or (y) the date falling three 3 years after the Third Amendment Effective Date, as any of the aforementioned dates may be extended in accordance with Article XXXIII (Force majeure) (the “On-going Railroad Capacity Expansion Completion Date”). The CONCESSIONAIRE shall attain a volume of product shipped on the Railroad at an annualized rate of at least 10 MWMTPA, calculated on a rolling 6-months basis no later than December 31, 2027.***
2. *The GOVERNMENT hereby confirms that the CONCESSIONAIRE shall have the exclusive right to complete an additional expansion of Railroad capacity of 15 MWMTPA beyond the Ongoing Railroad Capacity Expansion to enable the CONCESSIONAIRE to ship up to a total of 30 MWMTPA of finished products as part of the CONCESSIONAIRE’s plans to expand the mine, the concentrator and the Buchanan Iron Ore Port (the “**Additional Railroad Capacity Expansion**”). In connection with the foregoing, the Parties agree as follows:*

3. *The scope of such Additional Railroad Capacity Expansion will be determined based on the following specific assumptions: (i) construction and operation as a single track and single user Railroad up to a maximum of 30 MWMTA as if it was built sequentially after the On-going Railroad Capacity Expansion, (ii) extension and completion of Mokra and Sanniquellie passing loops (in addition to the 7 loops refurbished by the CONCESSIONAIRE in the context of the On-going Railroad Capacity Expansion), the construction of which is reserved for the CONCESSIONAIRE and (iii) leveraging of (a) the signal system installed for the On-going Railroad Capacity Expansion, (b) existing formation and geometry, (c) rail and track refurbishment work including passing loop extensions related to the On-going Railroad Capacity Expansion and (d) initial rail rehabilitation work performed by the CONCESSIONAIRE to reopen the Railroad operations.*
4. *In consideration of the confirmed exclusive right of the CONCESSIONAIRE to complete the Additional Railroad Capacity Expansion pursuant to this subparagraph 2 above, the CONCESSIONAIRE shall pay to the GOVERNMENT a non-refundable amount of Fifty-Five Million Dollars (US\$55,000,000.00). The payments shall be made in three installments, the first payment of Twenty Million Dollars (\$20,000,000) being made no later than 30 days after the Third Amendment Effective Date, the second payment of [Twenty-Five Million Dollars (\$25,000,000) being no later than Nine (9) months after the date of the first payment and the third payment of 10 Million Dollars (\$10,000,000) being no later than Nine (9) months after the date of the second payment.*
5. *The CONCESSIONAIRE shall deliver to the GOVERNMENT, no later than September 30, 2023, a feasibility study relating to the Additional Railroad Capacity Expansion and to the mine, concentrator and Buchanan Iron Ore Port expansion; it being understood that the CONCESSIONAIRE may start works on its Additional Railroad Capacity Expansion during the construction of its Ongoing Railroad Capacity Expansion.*
6. *Subject to subparagraph 8 below, Eligible Applicants that have been duly authorized by the GOVERNMENT to further expand the Railroad capacity pursuant to this Agreement, including the Railroad System Operating Principles, may construct their approved expansion:*
  - (i) *once, and only after, the date on which the CONCESSIONAIRE has completed its Ongoing Railroad Capacity Expansion but, in any case, no later than the Ongoing Railroad Expansion Completion Date, In any event, such construction by an Eligible Applicant shall not unreasonably interfere with the construction, completion, ramp up and/or haulage of the CONCESSIONAIRE's capacity of 15 MWMTA related to the Ongoing Railroad Capacity Expansion;*
  - (ii) *Which construction shall: take into full account the CONCESSIONAIRE's Additional Railroad Capacity Expansion, as referred to in subparagraph A. above, so as to*

*ensure that such approved Railroad capacity expansion is fully incremental to the Ongoing Railroad Capacity Expansion and the Additional Railroad Capacity Expansion. Consequently, in the event that any Eligible Applicant(s) start(s) construction of said incremental Railroad capacity expansion before the CONCESSIONAIRE has completed the Additional Railroad Capacity Expansion, the scope of such construction by the Eligible Applicant shall be*

*determined as if the Additional Railroad Capacity Expansion had been completed by the CONCESSIONAIRE and the Eligible Applicant were building its Railroad capacity expansion over and above the Ongoing Railroad Capacity Expansion and Additional Railroad Capacity Expansion; and*

*incorporating the relevant works, including, as the case may be, construction of new loops (excepting Mokra and Sanniquellie passing loops which are reserved for the CONCESSIONAIRE) and associated Railroad and track refurbishment program including debottlenecking work necessary to achieve required additional capacity expansion for a safe and sustainable multi-user heavy haul Railroad system over and above the Ongoing Railroad Capacity Expansion and Additional Railroad Capacity Expansion.*

7. *The CONCESSIONAIRE shall diligently carry out the Ongoing Railroad Capacity Expansion in accordance with Schedule A hereto.*

*A tentative schedule relating to the Additional Railroad Capacity Expansion is set forth in Schedule B hereto.*

8. *The GOVERNMENT will not, at any time, grant any right to develop a Railroad expansion capacity to an Eligible Applicant in excess of the Railroad Surplus Capacity at such time. In considering the first application by an Eligible Applicant to develop a Railroad expansion capacity, excluding the CONCESSIONAIRE's Ongoing Railroad Capacity Expansion the CONCESSIONAIRE and the GOVERNMENT shall, jointly and within 60 (sixty) days of the Third Amendment Effective Date, initiate the process of appointing an independent and globally reputed rail engineering company to conduct the Agreed Initial Capacity Study. For the avoidance of doubt, the express and specific purpose of such Agreed Initial Capacity Study shall be to determine (i) the aggregate potential operating capacity of the Railroad as per the definitions of Agreed Initial Capacity Study and Railroad Surplus Capacity under the Railroad System Operating Principles and (ii) the surplus Railroad capacity expansion, if any, that the relevant first Eligible Applicant (and subsequent Eligible Applicants) may be authorized to develop on the Railroad in accordance with this Agreement and the Railroad*
9. *System Operating Principles.*

***In view of the above, the committee has observed that if this section is not amended before ratification, it would mean the following:***

That AML has exclusive rights to the railroad, although AML is just an operator. Article 3, Section 3(f) entitled **“The concessionaire’s capacity as Railroad Operator provides that:**

10. ***The GOVERNMENT confirms that the CONCESSIONAIRE has the exclusive right to continue to serve as the operator of the Railroad during the Term and any Extended Term of this Agreement, subject to the provisions of subparagraph 4 below. And the Railroad System Operating Principles and the MUA (when it becomes effective).***
11. ***The GOVERNMENT and the CONCESSIONAIRE agree that the CONCESSIONAIRE, acting in its capacity as Railroad Operator and subject to subparagraph 3 below, will continue to operate the existing and expanded Railroad and will be in charge of daily operations for the benefit of each and all Users in accordance with the Railroad System Operating Principles and the MUA (when it becomes effective). A joint management committee shall be established pursuant to the Railroad System Operating Principles (the “Joint Management Committee”). The management of the Railroad by the Railroad Operator will be overseen by the Joint Management Committee on the basis of the Railroad System Operating Principles and the relevant provisions of the MUA (when it becomes effective).***

***The committee request that that Article 9 “Entitled Land And Facilities”, section 3 (d)(4) “Entitled Operation And Maintenance Of Railroad And Port Infrastructure” be amended in the proposed Amendment as stated below:***

1. The GOVERNMENT maintains ownership of the Railroad, Buchanan Iron Ore Port and related Infrastructure (the **“Liberian Infrastructure”**). Accordingly, the CONCESSIONAIRE acknowledges that the rights of the CONCESSIONAIRE shall remain subject to the sovereign rights of the GOVERNMENT and the Republic of Liberia.
2. The Liberian Infrastructure will be structured, regulated, expanded and managed on a non-discriminatory multi-user basis for the benefit of all Eligible Applicants and the Republic of Liberia. Each Eligible Applicant will have (i) a right of access to Liberia’s Infrastructure to enable it to construct and carry out its own transportation activities, and (ii) a right to be involved in the operation of the Liberian Infrastructure on and from its designation as Eligible Applicant, in each case so as to ensure that all Eligible Applicants (including the CONCESSIONAIRE) have equal priority in respect of the construction and operation of their transportation activities (both as to timing and volumes) on the Liberian Infrastructure;

- A. the CONCESSIONNAIRE shall work with the GOVERNMENT to establish passenger and general freight traffic on the Railroad for the benefit of surrounding communities, provided that such non-mining traffic does not unreasonably interfere with the operations of any Eligible Applicant;
  - B. following the GOVERNMENT's granting to another Eligible Applicant of a capacity expansion authorization (with respect to the Railroad) or a Berth Expansion (with respect to the Port), the Railroad System Operating Principles, the MUA and any other operating principles in relation to the Liberian Infrastructure agreed between the Parties from time to time (the "**Infrastructure Operating Agreements**") shall be amended in such manner as the GOVERNMENT considers fair and reasonable in order to maximise the economic development of the Republic of Liberia and to implement the principles of this Section 3(d)(4); and
  - C. the CONCESSIONNAIRE shall negotiate any amendments required pursuant to subparagraph C above and any further agreements between an Eligible Applicant and the Parties as may be reasonably required by the GOVERNMENT in connection with such Eligible Applicant's capacity expansion authorization and/or Berth Expansion in good faith and within a timeframe that is compatible with such Eligible Applicant's implementation calendar as envisaged by Article 6.1 (*Execution of the Right of Access to Railway Infrastructure*) of the treaty between The Republic of Liberia and The Republic of Guinea dated 11 October 2019 and given full legal effect by the Republic of Liberia on 6 May 2021 and the Republic of Guinea on 18 February 2020 (the "**Implementation Agreement**").
1. The committee recommends that Paragraph (1) in Article 9 (*Land and Facilities*) Section 3(f) (**The CONCESSIONNAIRE's capacity as Railroad Operator**) of Amended MDA shall be restated with the following:
    1. The GOVERNMENT confirms that the CONCESSIONNAIRE has the right to continue to serve as the operator of the Railroad during the Term and any Extended Term of this Agreement, subject to the provisions of subparagraph 4 below and the Railroad System Operating Principles and the MUA (when it becomes effective) and provided that the Railroad Operator shall at all times be operated as a public-private partnership between the GOVERNMENT and the CONCESSIONNAIRE.
  2. The committee also recommends that it be inserted at Article 9 (*Land and Facilities*) Section 3(i) (*Railroad System Operating Principles and MUA*) of Amended MDA the language be written as :
  3. That the Parties acknowledge that any Eligible Users shall participate in the negotiation and implementation of the Infrastructure Operating Agreements with the GOVERNMENT pursuant to Article 9 (*Land and Facilities*) Section 3(d) above. Any Railroad operator shall, acting in good faith, negotiate the Infrastructure Operating Agreements with the GOVERNMENT. The GOVERNMENT shall appoint an independent facilitator (approved by the Parties and the Eligible Users) to advice on how best to reach consensus on the

Infrastructure Operating Agreements. If the Parties and the Eligible Users are unable to reach an agreement in respect of the Infrastructure Operating Agreements, the matter shall be referred to expert determination and administered in accordance with the Rules for the Administration of Expert Proceedings of the International Chamber of Commerce. Such dispute shall be resolved by a panel of three experts, which shall render a joint decision. Such joint decision shall be contractually binding upon all Parties.

4. The committee also recommends that the term **“Eligible Users”** and **“Railroad Operator”** shall be inserted as a new definition to mean:

**“Eligible User”** shall mean each Eligible Applicant who has been granted a Right of Access (as defined in the Implementation Agreement) by the GOVERNMENT pursuant to article 5 of the Implementation Agreement following the successful outcome of such Eligible Applicant’s Request for Access (as defined in the Implementation Agreement), as notified by the GOVERNMENT to the CONCESSIONAIRE.

**“Railroad Operator”** shall mean all eligible users to the railroad

With said agreement between AML and the government of Liberia, if passed with these modifications means the following:

#### **1. AML Granted Monopolistic Control over Liberia’s infrastructure assets**

AML has been granted monopolistic control over Liberia’s port and rail infrastructure with the ability to use its exclusive rights to block other users’ access to these sovereign assets:

- Access to and expansion of port infrastructure is under AML’s complete control and for its exclusive benefit. Other users’ port expansion limited to a very specific location, it appears no technical studies were carried out to demonstrate the viability of the area assigned for multi-user port operations.
- Other users can only carry out rail expansions subject to very tight controls and exclusivity granted to AML. AML has the ability to block expansions which “unreasonably interfere” with its operations, and it is AML who determines if this “interference” has occurred.
- In practice expansion of the port or railroad by another user is impossible until 2034 and very difficult to envisage thereafter.
- AML will also develop the railroad system operating principles and will develop the multi-user rail agreement without any input from other users or potential users, which mean any other user, will be forced to comply with AML’s rules. There is no effective timely remedy if AML decides to favour its own operations and discriminates against other users.

- The Government of Liberia will lose the right to undertake expansion of the port or rail infrastructure at its option if AML refuses to do so (a right it has under the current version of the MDA).

This equates to a complete loss of Liberian sovereignty over Liberia's own infrastructure assets, to the significant detriment of Liberia, the Liberian people and other users'. The benefits of any third party access to these Liberian assets should be enjoyed by Liberia and the Liberian people, rather than AML.

***The Proposed Amendment should be amended to allow for transparent non-discriminatory access to Liberian infrastructure assets, with appropriate oversight by the Government, consistent with other successful multi-user models and best international practice. This is so that Liberia receives the maximum benefit to be derived from its infrastructure assets and natural capital.***

## **2. It also means that Liberia is prevented from realising a given economic potential of its infrastructure assets**

As mentioned above, AML's monopolistic control of the Liberian infrastructure assets makes it extremely difficult or impossible in practice for other users to access and expand these assets. As a result, the economic benefit of other users' involvement, including the expansion of other users' projects in Liberia, will likely be lost. This includes the loss of Liberian tax revenue, given that each user would otherwise be paying transit fees to the Government of Liberia, which would generate significant revenue. It also means a loss of Liberian job opportunities, particularly in the construction and operations sectors, together with lost opportunities for local companies to contract with these users.

***The proposed amendment as written by AML is highly disadvantageous to a poor struggling country like Liberia. The committee recommends that The Proposed Amendment should ensure that other users' access to the Liberian infrastructure assets is protected, to allow Liberia to fully realise the economic potential of these assets and provide the Liberian people with greater job opportunities.***

## **3. Operation of the Railroad**

If AML serves as the rail operator with exclusive rights to operate the railroad during the term of the MDA (to end 2046 at the earliest). There is no mechanism for effective regulatory oversight by the Government of Liberia.

If AML is allowed to operate rail day-to-day subject to supervision of a Joint Management Committee (which AML controls). The Government of Liberia is allowed two observers on this committee but they have no voting rights.

It is also difficult for the Government of Liberia to replace AML as operator, even if AML is not operating the railroad in compliance its obligations under the AML MDA. The process envisaged to replace AML as operator could take many years, during which AML could continue to control the infrastructure as a delinquent operator.



***To ensure true non-discriminatory access for all users, the Proposed Amendment should ensure that the railroad is operated by an independent concessionaire, to be regulated by the concessionaire and Government of Liberia, consistent with best practice Excess Capacity***

. Although AML agrees to rent up to 3 MWMTPA of its unused capacity to other eligible users, AML may also sub-lease additional unused capacity as it wishes (paying the Government only 25% of the proceeds from any such sub-lease).

AML's rights in respect of the port are even stronger than the rail. For instance, AML can assume for its own benefit other users' excess port capacity if required for its own operations.

***The Proposed Amendment should ensure that any excess capacity can be used for the benefit of other users and the Government of Liberia on a fair, multi-user basis.***

#### **4. Passenger and General Freight Rail Service**

A passenger and general freight rail service will benefit the local community and broader economic development of Liberia, but AML has no commitment to provide this service and can in fact block the ability of the Government or other users who may wish to provide the same under the Proposed Amendment.

The Government of Liberia has the right to "propose a review" of the Proposed Amendment's "Rail Service Operating Principles" to provide for non-mining traffic on the railroad, but non-mining traffic must not "unreasonably interfere" with AML's operations and any amendments to facilitate such non-mining traffic are subject to AML's prior agreement.

***The Proposed Amendment should impose on a robust commitment on AML to provide a passenger and general freight services to ensure Liberian infrastructure is used for the benefit of the people of Liberia.***

#### **5. Environmental, Social, Operational and Governance Concerns**

There is no obligation for AML to comply with best international practice from a transparency, environmental, sustainability, health and safety, operational and governance perspective under the current MDA; given the focus on such matters from the perspective of any major mining company's social licence to operate, the Proposed Amendment is a completely missed opportunity to update the MDA on these points.

***It is extremely important that the Proposed Amendment guarantees that these key infrastructure assets are rehabilitated and expanded to proper modern international standards and managed in accordance with best international practice including environmental and social principles which will safeguard the interests of Liberia and its people. If acting in good faith than there is no reason for AML to object to these recommendations to be inserted for the good of all parties, given the last amended was many years ago.***

## Concession Area

The committee noticed a growing concern with regards to the issue of concession area as address in Article 3, section (d) (2) of the proposed Amendment. The proposed amendment provides that:

*The government shall ensure that the Concession Area, as well as the assets and facilities transferred or otherwise made available to the CONCESSIONAIRE hereunder (including the Railroad and the Buchanan Iron Ore Port, which have not been transferred but have been made available for use in the Operations on the terms and conditions set forth in this Agreement), are free from any occupation and encumbrance, and available for the purpose of the Operations contemplated hereby, subject only to the provisions of paragraph e. below (User Access and Future Expansion of the Railroad), paragraph g. below (Access to the Buchanan Iron Ore Port; Port Capacity Expansion), and the Railroad System Operating Principles and the MUA (once it becomes effective).*

*However, the committee acknowledged that Article 6, sections 6.1 to 6.3 of the Minerals and Mining laws of Liberia , 2000 and section 5.3 of same law mandates the concessionaire to declare production areas within these areas a class A mining license would be awarded. In line with section 5.3 g (3) the Minerals and mining laws of 2000, the concessionaire declared production areas of old LAMCO concession areas. The Minerals and Mining law referenced here states in relevant parts that “***in the event where the holder of an exploration license declares only a portion of the exploration areas a production areas, the remaining portion not declared must be surrendered to the government and exploration license shall cease to exist***”.*

Currently AML is relying on an agreement that contravene the most recent mining law of 2000. The previous MDA according to Article 1 (1.7); Article IV (2) defines AML’s concession area as former LAMCO concession area instead of the production areas declared by the concessionaire. Therefore, The committee recommends that to resolved this confusion, the definition of the **Concession Area** be restated as contained in the 2000 Minerals and Mining Laws of Liberia to be stated as follow:

**Concession Area** shall mean the production areas declared by the concessionaire. Pursuant to the 2000 Minerals and Mining laws, the undeclared portion of the LAMCO concession area should be deemed as reverted to the government of the Republic of Liberia.

The committee further suggests that Buchanan Iron Ore Port, which have not been transferred but have been made available for use in the Operations of the concessionaire on the terms and conditions set forth remains the property of the Government of Liberia and shall be free for transfer to any potential investors.

## **Potential Conflicts with existing Treaty**

The proposed amendment is against the Treaty between the Republic of Liberia and the Republic of Guinea.

The specific relevant terms of the Treaty in contention are as follow:

1. Article 3.1 of the Treaty agreement provides for the Liberian government to ensure adherence to its terms by all “public and private entities” that are subject to its control as regards to “ mining, transport, fiscal customs and or trade matters.”
2. Article 3.3 of the treaty provides that “Each party represents and warrants that doing the term of this agreement; it will adopt any regulations, make any decision or enter into contract, except on public policy grounds that has the effect.
3. Additional Article 4.1 of the Implementation agreement requires equivalence in the treatment of Guinean Mining operators with the “ Liberians economic operators and that such Guinean operators will be treated without discrimination on the basis of their nationality

The committee warns that:

- a. Arcelor Mittal Liberia is a private institution which is subject to the sovereign control of the Liberian government by and through its law and regulations as to this regards , all activities undertaken in Liberia by AML is subject to the Liberian jurisdiction
- b. As a matter of law or legally, an endorsement of the proposed amendments with have a rippled down effect to the economic equilibrium of any approved infrastructure project
- c. If Acelor Mittal, a Liberian economic operator is granted rights or Exclusive rights to the Railroad and the Port of Buchanan as discussed herein for its iron ore operations, that are not provided of in the Treaty, that preferential treatment will appear to violate the implementation agreement signed in the Treaty between the Republic of Liberia and the Republic of Guinea.
- d. If other operators have been altered due to the proposed amendment by AML, that alteration would violate the terms of several articles such as Article 3.3 and 3.4 of the Treaty agreement signed
- e. The committee believes that Liberia stands to benefit more from its Railroad if it is not monopolized by any operator and that the entire Article 3, section (e) “ User Access and Future expansion of the railroad is an attempt to deny other operators and deprive the country of its economic benefits
- f. Article 3, section (e) (2)(b) which provides that:

In consideration of the confirmed exclusive right of the CONCESSIONAIRE to complete the Additional Railroad Capacity Expansion pursuant to this subparagraph 2 above, the CONCESSIONAIRE shall pay to the GOVERNMENT a non-refundable amount of Fifty-Five Million Dollars (US\$55,000,000.00). The payments shall be made in three installments, the first payment of Twenty Million Dollars (\$20,000,000) being made no later than 30 days after the Third Amendment Effective Date, the second payment of [Twenty-Five Million Dollars (\$25,000,000) being no later than Nine (9) months after the date of the first payment and the third payment of 10 Million Dollars (\$10,000,000) being no later than Nine (9) months after the date of the second payment.

The stated figures although is needed for our economy, it is nothing compare to the economic gains to be made if the railroad is own by the state and access are given to other operators for economic gains.

### **Social Contributions to Affected Counties**

Firstly the committee request that it be written in the agreement that county social development fund is increase from 3million to 5 million.

Secondly that Yekepa be brought to prewar status. Mittal had previously committed to the construction and or renovation of 1800 houses received in its current 2005 MDA. AML has renovaded or constructed less than 300 houses of the total 1800 houses.

That the National Housing Authority be authorized to draw up a housing unit plan to be used by AML for the construction of 1800 housing Units.

The concessionaire shall provide support such as instructional and learning materials to schools within the affected communities separate from the contributions to the community college. AML must recruit at least ten persons from each affected communities and train them as the company is planning to expand its operations so that youths and other citizens from these affected communities and counties are qualified for the jobs.

An allocation of 50 percent of all unskilled and semi-skilled jobs in the concession area to people from the affected communities, while giving opportunities to qualified persons for skilled jobs. And that recruitment by AML and all contractor companies that work for AML must be done in Yekepa and Buchanan if operations are located in Bassa, Bong, and Nimba.

AML must recruit from affected communities, mostly youths; train them to serve them and serve in the AML administrative and managerial positions and also provide job opportunities for affected communities where its operations are.

**AML should rehabilitate the service road (KM 91- KM 158). Recondition some community roads around GHQ and AML Rail Line in Bong County.** This should not be predicated upon the proposed MDA for the additional 25 years, rather it must do now in its current MDA

AML should assist with repairs of 2.5 km Bridge that connects Buchanan City Center to the Loop as part of its social contributions to Grand Bassa County

AML Pave the road from Concession to Buchanan City (via Robert Street) and not motor grading to be pliable seasonally. A pavement is the best solution. That AML construct the St. John River Bridge that connects Bong and Gran Bassa Counties as part of its social contributions to the affected counties.

AML should provide streetlights in the communities, safe drinking water and avoid fetching water from open wells and construct pit latrines in and around the communities. This should not be predicated on the proposed amendments rather it must be now within its current MDA of 2005. The absence of these essential things proves otherwise that AML is not impactful to the affected communities.

AML must rehabilitate all feeder roads within the twelve mine affected communities of Nimba County before the next raining seasons which starts in May 2022. This clearly points to non-compliance in the MOU and it will make up for the neglects the people who are the upholders of the wealth endured.

That AML set up a VTC at the GBCC to model it like AML-VTC in Yekepa. This will elevate the county in its human resource capacity.

## **Recommendations:**

The GOVERNMENT retains ownership of the Railroad, Buchanan Iron Ore Port and related Infrastructure (the “**Liberian Infrastructure**”). That as of the effective date to this amendment, the government shall begin the process of granting concessions for the Railroads and Iron Ore Port of Buchanan.

**That Concession Area** shall mean the production areas declared by the concessionaire. Pursuant to the 2000 Minerals and Mining laws, the undeclared portion of the LAMCO concession area should be deemed as reverted to the government of the Republic of Liberia.

The committee further recommends that Buchanan Iron Ore Port, which have not been transferred but have been made available for use in the Operations of the concessionaire on the terms and conditions set forth remains the property of the Government of Liberia and shall

be free for transfer to any potential investors. That AML operation shall be subject to all port user fees and charges.

Accordingly, The Liberian Infrastructure will be structured, regulated, expanded and managed on a non-discriminatory multi-user basis for the benefit of all Eligible Applicants and the Republic of Liberia. Each Eligible Applicant will have (i) a right of access to Liberia's Infrastructure to enable it to construct and carry out its own transportation activities, and (ii) a right to be involved in the operation of the Liberian Infrastructure on and from its designation as Eligible Applicant, in each case so as to ensure that all Eligible Applicants (including the CONCESSIONAIRE) have equal priority in respect of the construction and operation of their transportation activities (both as to timing and volumes) on the Liberian Infrastructure;

- a. the CONCESSIONAIRE shall work with the GOVERNMENT to establish passenger and general freight traffic on the Railroad for the benefit of surrounding communities, provided that such non-mining traffic does not unreasonably interfere with the operations of any Eligible Applicant;
- b. following the GOVERNMENT's granting to another Eligible Applicant of a capacity expansion authorization (with respect to the Railroad) or a Berth Expansion (with respect to the Port), the Railroad System Operating Principles, the MUA and any other operating principles in relation to the Liberian Infrastructure agreed between the Parties from time to time (the "**Infrastructure Operating Agreements**") shall be amended in such manner as the GOVERNMENT considers fair and reasonable in order to maximise the economic development of the Republic of Liberia and to implement the principles of this Section 3(d)(4); and

The GOVERNMENT shall appoint an independent facilitator (approved by the Parties and the Eligible Users) to advise on how best to reach consensus on the Infrastructure Operating Agreements. If the Parties and the Eligible Users are unable to reach an agreement in respect of the Infrastructure Operating Agreements, the matter shall be referred to expert determination and administered in accordance with the Rules for the Administration of Expert Proceedings of the International Chamber of Commerce. Such dispute shall be resolved by a panel of three experts, which shall render a joint decision. Such joint decision shall be contractually binding upon all Parties.

4. The committee recommends that the meanings of Eligible User and Railroad operator be inserted as a new definition:

"**Eligible User**" shall mean each Eligible Applicant who has been granted a Right of Access (as defined in the Implementation Agreement) by the GOVERNMENT pursuant to article 5 of the Implementation Agreement following the successful outcome of such Eligible

Applicant's Request for Access (as defined in the Implementation Agreement), as notified by the GOVERNMENT to the CONCESSIONAIRE.

**"Railroad Operator"** shall mean all eligible users to the railroad

5. ***Railroad system operating principles*** referred to Appendix J in the proposed amendment could not be seen in the agreement. With such ambiguity the committee is unable to state further on the establishment to the Railroad system Operating Principles

The committee recommends that the activities of the concessionaire shall be subject to the applications of the new land rights law and the laws on commercial use of water for the operations of the concession.

That Mittal Operations be subjected to payment of fees and other levies including port user's fees. It is critical that the Proposed Amendment ensures that the key infrastructure assets are rehabilitated and expanded to proper modern international standards and managed in accordance with best international practice including environmental and social principles which will safeguard the interests of Liberia and its people.