

## **Amet Consultancy Services Ltd**

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### **Community Mine Continuation Agreement Review 2006 - 2007**

#### **Endorsement by Chief Sir Arnold Amet**

I was originally invited and engaged in February 2006 as lead Independent Observer to this the Ok Tedi Community Mine Continuation Agreement Review (CMCA Review).

In the course of the review, in response to the need and request from the working group community delegates, the Working Group agreed for my role to change from Observer to Special Legal Advisor to provide advice to the delegates generally, on government and political perspectives, and in particular to give legal advice and perspectives to the community delegates.

I am impressed by the structure and processes established for this review and congratulate the Ok Tedi management and consultants who were involved in this for their vision and foresight. I believe it is a good model that should be emulated in other major developmental projects and organizations and I commend it highly.

The duration of the whole process, over more than 12 months, allowing for many weeks of village, regional, core group and working group meetings, provided for as complete a process of dialogue and communication of information as possible, necessary for a greater sense of contribution to and ultimately acceptance of the agreed outcomes. This is also commendable.

The decision to engage reputable independent international and national counterpart facilitators, independent legal adviser and environmental scientist and fund managers gave the process transparent objectivity and credibility and I commend the management for this bold but vital initiative. Again I would commend this to other developmental projects and organizations.

The engagement of independent observers who then reported their observations publicly against established standards and principles of integrity was also a commendable initiative that lent further credibility to the whole process.

I commend a number of key outcomes, amongst many other improvements, in the operational review. Firstly is the recognition of specific interests of women and children, and the dedication of special pool of funds for women and children interests. Secondly, separate contributions towards the development fund by the other shareholders, the State and PNG Sustainable Development Program Company. And thirdly, agreement to establish a separate Development Foundation to manage the CMCA development funds.

Whilst on the whole the process has been resilient and commendable, I express the following concerns.

At the very beginning of this process, many village communities and community leaders expressed concerns and unhappiness about the processes and the terms of the current CMCA. Common expressions were that people did not know what they were agreeing to and that they misunderstood or did not understand the legal issues and implications of the provisions they were agreeing to.

I have concerns about issues of 'justice and fairness' therefore, in relation to some of the provisions of the current CMCA which have taken away some of the 'rights of citizens'. The CMCA has been made into law and so any revision or amendment of any provision including Environmental Predictions is that much more difficult.

Secondly, the Environmental Predictions stated in the CMCA have been considerably exceeded in many respects, as reported by company and independent studies. The state of current impacts have been reported on by Dr. Alan Tingay, the Independent Scientist; a summary of which is included in his letter of endorsement as Attachment 1. Whilst the CMCA may be difficult to amend, sufficient summary of the change impacts, as contained in Dr. Alan Tingay's summary can and should be incorporated in the review document.

This is the important basis for the revision of compensation and benefits, because provisions of the CMCA state that "the amount of revised payments offered is to be for increase environmental predictions and should be commensurate with Environmental Predictions."

**Clause 19 of the CMCA states that:**

'the payments to be made by the Company pursuant to this Agreement are and shall be in full compensation for all the loss and damage contemplated by the Environmental Predictions suffered or to be suffered by the Communities in respect of disturbances to the environment in' their 'area or their use or enjoyment of the environment, including, where applicable:

- (a) being deprived of the possession or use of the natural surface of the land area;
- (b) damage to or contamination of the natural surface of the land;
- (c) severance of the land or any part of it from the other land owned or occupied by the Communities;
- (d) any loss or restriction of a right of way, easement or other rights;
- (e) any loss or damage to improvements;
- (f) in the case of land under cultivation, loss of earning;
- (g) disruption of agriculture activities;
- (h) social disruption;
- (i) garden damage and loss of economic trees;
- (j) loss or damage to any flora or fauna, on the land or in the water; and
- (k) Loss or use or contamination of water.'

**Clause 25 also particularly provides for the Relationship of Payments to Environmental Predictions in these terms:**

To the extent that environmental effects of the continuing operation of the Mine exceed the Environmental Predictions, the parties shall meet to discuss revision of

the payments under Clauses 17 and 18, taking into account the environmental effects in excess of those contemplated in the environmental predictions.

A summary of the current Environmental Impacts should be incorporated in the Memorandum of Agreement and sufficient reference be made that the revised payments is compensation for those environmental impacts.

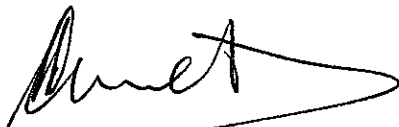
A third issue of concern is the **Social Impacts** of the continued operation of the mine. Dr. Alan Tingay has reported on this; a summary of his report is included in his letter of Endorsement as Attachment 2. I consider that these are very serious impacts, the consequences of the environmental impacts, and so should also be acknowledged by incorporating them the Memorandum of Agreement.

### **Conclusion**

Firstly I thank the Company for inviting me to participate in this very important process. It has indeed enriched my life in many ways and I have met new people whose lives and experiences and contributions have expanded my own experience and knowledge.

I congratulate all the leaders representing all the interested stake-holders and parties for their untiring work over a long and exhaustive period. Congratulations to all the different groups who made this whole exercise such an excellent model that I commend be emulated throughout the country in other developmental projects and organizations.

I congratulate our principal Facilitators Keystone Centre and their national partners Tanorama for their excellent leadership in facilitating this process. Thank you. I think a special appreciation is due to all the hard working staff of Community Relations Department who attended to all the logistical arrangements of travels and resources necessary to ensure these meetings took place as smoothly as possible.



**Chief Sir Arnold Amet, GCL, Kt, CBE, OStJ, LLD (Hon)**  
**Independent Legal Advisor**