CORPORATE SOCIAL RESPONSIBILITY IN SUB-SAHARAN AFRICA: A DRIVING FORCE IN SUSTAINABLE DEVELOPMENT AND SELF-SUFFICIENCY

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As old and new corporate players compete to gain ground in the various markets of Sub-Saharan Africa, Corporate Social Responsibility (CSR) is becoming an integral part of doing business on the continent. Multinational corporations should have an interest in leveraging their skills and impact to promote stability in the regions or developing nations where they operate, not only because it is the right thing to do, but also because it makes good business sense.

Through its core business activities, social investment programs and engagement in policy dialogue and civic institution building, large corporations can help create the conditions for stimulating trade, increasing domestic and foreign investment, and restoring appropriate legal and regulatory frameworks. International companies operating in Sub-Saharan Africa should develop their own corporate social responsibility concepts as an integral part of corporate and country strategy because it goes a long way toward engendering goodwill.

There are many definitions of CSR that focus on a variety of areas, but the most contemporary and most applicable in this globalization era is that of the World Bank Group, which has a comprehensive program to steadfastly support corporate social responsibility. It states, "Corporate social responsibility is the commitment of businesses to contribute to sustainable economic development by working with employees, their families, the local community and society at large to improve their lives in ways that are good for business and for development."[1]

[1] CSR as defined by the International Finance Corporation – World Bank Group.

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Despite this definition, CSR does not have a standard form and is often exhibited in a variety of ways, depending on the company involved and the region where its business is conducted. This article addresses some key challenges and insights with respect to the relationship between CSR and development in Sub-Saharan Africa. Although each nation in the region has its own socio-political challenges and economical differences, this article focuses on Liberia to better illustrate and provide examples of the CSR agenda and policies in a developing Sub-Saharan African country.

Like most of its neighbors, Liberia is classified as a low-income country with a gross national per capita income of approximately US $158.32. Liberia's population of about 3.5 million is predominantly rural with about 28 percent of inhabitants living in and around Monrovia (capital). The country has a significant natural resource base, offering considerable potential for agriculture and natural resource-based tourism and development. [2]

Liberia is also a nation currently recovering from an extended period of armed conflict (1989-2003), which caused a great deal of damage to the country's infrastructure and economy as a whole. Yet, the country over the past five years has made huge strides toward national recovery and re-building. In June 2010, the World Bank's International Development Association (IDA), the part of the Bank that provides interest-free credits and grants to the poorest countries, and the International Monetary Fund (IMF) decided that Liberia reached the completion point under the Heavily Indebted Poor Countries (HIPC) Initiative, allowing the country a total debt relief of approximately US$4.6 billion. Additionally, in September of 2010, the Paris Club agreed to cancel the Republic of Liberia's remaining debts, allowing the country to currently be debt free.[3]

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[2] *See* World Development Indicators database, World Bank, 15 Dec. 2010 & Government of Liberia 2008 National Population and Housing Census.
[3] *See* World Bank - Liberia Qualifies for Complete Debt Relief under HIPC Initiative at http://go.worldbank.org/Z85YI48820

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Liberia's development and economic future did not look bright at all the first few years after the end of the country's civil war. Between 2003 and 2005, when Liberia was governed by an interim administration, many international businesses were reluctant to invest in Liberia given the country's past insecurities and deplorable infrastructure. Also, because of allegations of rampant corruption that plagued the Liberian interim government, various international donors threatened to cut off millions of dollars in aid that the country desperately needed to sustain itself. [4]

Recognizing the legitimate hurdles it would have to overcome to be successful in Liberia, Mittal Steel Co. signed a Mineral Development Agreement with the interim government of Liberia in August of 2005. The agreement proposed a $900 million investment in Liberia's iron ore industry over the period of 25 years. In 2006, Mittal Steel successfully merged with Luxembourg-based Arcelor S.A. to create the world's largest steel maker ArcelorMittal.[5]

The year 2006 was also a monumental year for Liberia. In a 2005 presidential election the people of Liberia elected Pres. Ellen Johnson-Shirleaf as the nation's 24th president. Pres. Johnson-Shirleaf took office in January of 2006 and she is the first and currently the only elected female head of state in Africa. [6]

[4] World Bank Fragile States: The LICUS Initiative. Liberia's Government and Economic Management Assistance Program, May 2006, by Renata Dwan & Laura Bailey.
[5] Africa- Confidential, Testing Mittal Steel, December 15, 2006, Vol 47 No 25.
[6] The Huffington Post, Ellen Johnson Sirleaf, Africa's First Elected Female President, Lifting Up Liberia, April 1, 2009.

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Pres. Johnson-Shirleaf, shortly after her inauguration, announced that her administration would be reviewing all concessions and contracts awarded by the previous interim government. Included amongst the concessions and contracts slated for review were the Mineral Development Agreement (MDA) entered into with Mittal Steel and a contract with the multinational rubber conglomerate, Firestone. In an interview with the United Nations humanitarian news agency shortly after the review process began, the Liberian president stated, "We've undertaken to review all concessions and contracts that were signed during the interim government, as many of them were not signed in the interest of our country…" She further stated, " This time, we want to be very careful in giving out a concession and making sure it benefits the local community. It must also bring adequate resources to the country."[7] After a four-month review process, the government's Public Procurement & Concessions Commission concluded that the Mittal Steel 2005 MDA should be renegotiated.[8]

Among the key points that concerned the Liberian government were: ownership and control of project infrastructure, principally the railway and port facilities; how the iron ore that was extracted would be priced; and how to guarantee a stable fiscal regime throughout the duration of the project.[9]

The government of Liberia argued that the 2005 MDA transferred ownership of the railway linking the mine to the Port of Buchanan, as well as the Port of Buchanan itself, to ArcelorMittal. The MDA was also unclear about under what conditions third parties could use those facilities. Liberia, on the other hand, wanted the contract revised to clearly state that the government would retain ownership of the infrastructure as a public asset, which would be made accessible to all operators, allowing the government to derive revenue from third-party usage of the facilities.[10]

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[7] Integrated Regional Information Network, Liberia: Interview with President Ellen Johnson-Sirleaf, June 29, 2006.

[8] Benoit Faucon, Liberia Draft Review Calls For Mittal Deal Renegotiation, Dow Jones Newswire, October 3, 2006.

[9] Global Witness, Mittal Steel US $900 Million Deal in Liberia is inequitable, October 2, 2006.

[10] Global Witness, Heavy Mittal? October 2, 2007.

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Notwithstanding the Liberian government's position, ArcelorMittal was concerned that it would not be able to carry out the project if it did not maintain operational control over the facilities and they also wanted to ensure that government usage would not interfere with its mining activities. Additionally, the company was also very aware of the huge financial responsibility it took on to rehabilitate the dilapidated railway and port facilities. The government of Liberia further raised questions as to who would finance future upgrades and maintenance of those facilities during the 25-year duration of the estimated mining project concession.

A second point of contention centered on how the iron ore from the Liberian mines would be priced. ArcelorMittal intended to sell the ore to its affiliates within the company. The government feared that such a transaction would allow the company to sell the ore at below market prices, which in turn affected the amount of royalty payments and taxes the government would receive.

A third sticking point between the company and the Government of Liberia was a dispute over a stabilization clause in the MDA, which was intended to guarantee a stable regulatory environment throughout the duration of the 25-year investment, principally to protect ArcelorMittal from future changes in tax rates during the duration of the project. The government of Liberia opined that the stabilization clause in question was too broad. The government understood that their legal and judicial systems need to be revamped, given years of neglect, and feared that the clause could hamper its ability to enforce new environmental, human rights, labor, and other regulations on the project as they were developed.

Reaching a solution to the re-negotiation of the MDA between the Government of Liberia and ArcelorMittal would test the will and resolve of both the government and the multinational corporation. The government understood the importance of such an investment in its country. In an interview with the Associated Press in 2006, Pres. Johnson-Shirleaf noted, “This agreement is important to us. It has job implications. It has implications for the economy. It has implications for the benefit for the country …Our overall objective is to make it a better agreement, not to kill

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it."[11] ArcelorMittal on the other hand, already had a contract with the Government of Liberia that was legally negotiated. Re-negotiating said contract provided very little economic benefit to the company's financial bottom line.

The mining industry and other global groups paid very close attention to the 2006 Liberia/ ArcelorMittal business dealings. In a 2007 report by the Integrated Framework for Trade-Related Technical Assistance regarding the Liberia/ ArcelorMittal deal, the group stated, "The measure must however be considered highly arbitrary and not respecting international practice, and implies a high degree of uncertainty for the future holders of mining rights and the two other mines under tender as far as security of tenure is concerned."[12] ArcelorMittal received its own criticism from the press regarding the 2005 MDA. In October of 2006, Global Witness, a UK-based transparency watchdog, published a report that was highly critical of the 2005 MDA.[13]

On December 28, 2006, after a long re-negotiation process, the government of Liberia and ArcelorMittal entered into an amended contract that was passed into law by the Liberian Parliament in May of 2007. The re-negotiated agreement increased ArcelorMittal's total investment in Liberia to approximately US$1.5 billion. Other improved provisions of the new agreement, as noted by Global Witness in August of 2007, addressed the following issues.

1. The single biggest problem with the original contract was that it gave Mittal complete freedom to set the price of iron ore. It is this price that forms the basis not only of the royalty rate but also ultimately of the project's taxable income. Furthermore, because all the ore will be sold to Mittal's affiliates, the contract encouraged transfer pricing, thus potentially depriving Liberia of substantial revenue. Under the amended agreement, the price is set under the arms length rule, which means that it will be based on the international market price of the ore.

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[11] Jonathan Paye-Layleh, Liberia: Contract Renegotiations with Mittal steel Meant to Amend, Not End Deal, Associated Press, October 5, 2006.
[12] Philip English, Annex B From an Aid-Memoire by the Integrated Framework for Trade-Related Technical Assistance on its Diagnostic Trade Integration Study Main Mission, November 1-16, 2007.
[13] Global Witness, Heavy Mittal? October 2, 2007.

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2. The original contract gave the company a generous five-year tax holiday, which was extendable for an unlimited period. This had the direct consequence of depriving Liberia of potentially valuable tax revenues. The tax holiday has been abolished.

3. The capital structure remains the same, but the obligations of the Concessionaire are now guaranteed by the parent company. The debt equity ratio of the company cannot now exceed 3 to 1 and despite that Liberia's share cannot fall below 15% ownership.

4. The original contract transferred two of Liberia's major public assets – the port and the railway infrastructure between Yekepa and Buchanan – to the Concessionaire. These assets have been transferred back to the Liberian Government and Mittal does not now have the exclusive right to use the infrastructure.

5. The stabilization clause had the potential to undermine Liberia's right to regulate on important public policy areas such as human rights, the environment and taxation. In the amended agreement, the stabilization clause has been substantially restricted. The stabilization clause, however, still supersedes Liberian law on income tax, royalties and other payments due to government. This still falls short of appreciable international best practices.

6. The provisions regarding equitable treatment were deleted. These provisions had the potential to restrict the government's ability to promote economic policies by, for example, favoring local enterprise or providing favorable conditions to other foreign companies. According to the amended contract, Mittal will still benefit from the same favorable conditions that the Government may grant to any other person with respect to the exploration or production of the same minerals occurring in substantially similar economic conditions. This equitable treatment cannot however be backdated and applies only in relation to other iron ore producers.

7. The agreement now relates only to iron ore and no other unspecified minerals. The right to additional minerals is now reserved to the government, not the company.

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8. Provisions in the original agreement that allowed the company to operate a private security force failed to establish the limits of Mittal Steel's authority, or to set operating parameters for the security force. The new contract states that the private security forces will conduct themselves within the provision of the law and in accordance with the Voluntary Principles on Security and Human Rights. While this is a positive development, a commitment to a purely voluntary code of conduct does not allay the concerns about the selection process for the security forces, which have not been addressed. The amended agreement respects the rights of third parties, for example people arrested by security forces or those who need to use the infrastructure within the concession area. While protecting existing rights of access to water for those who live and work in the area, there is still no clarity about the scope of these obligations.

9. The governing law of the contract has been changed from United Kingdom to Liberian Law.

10. Social obligations have increased and bring better and more detailed benefits, such as free health care for all Mittal employees, more jobs for Liberians and a requirement that ensures that within five years all senior managers will be Liberians.

11. The Concessionaire no longer has the right to possess any public land outside the concession area at no additional cost. According to the amended contract acquisition of public land by the Concessionaire, outside the concession area is now subject to negotiation between parties in good faith, as and when the Concessionaire requests. Additional public land outside the concession area is not considered to be part of concession area. Provisions that raise constitutional and international human rights issues concerning property rights of private landowners have been deleted. However, the definition of private and public land ownership could still create challenges to traditional or customary rights of persons and communities over land.[14]

[14] Global Witness, Update on Renegotiation of Mineral Developmental Agreement Between Mittal Steel and Government of Liberia, August 2007.

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The August 2007 Global Witness report also concluded, " By renegotiating the contract Mittal Steel has shown that it is possible for a multinational company to act responsibly and negotiate a deal that remains profitable and safeguards the interests of the host country and its people. However, the real benefits of this contract to Liberia can only be truly assessed as the company starts its operations. President Sirleaf has stated that the renegotiation of the Mittal agreement may serve as a model for future contract arrangements in Liberia such as Firestone, LAC and other agreements, which will go through the same process of international review."

Since the Mittal Steel deal, the Government of Liberia has re-negotiated deals with Firestone (February 2008) and Liberian International Ship & Corporate Registry (2009), among others. The Liberian Government has also attracted other international players into its national economy, negotiating and entering into agreements with multinational companies, including APM Terminals, for the management of the port of Monrovia; Lockheed Martin, for the management of the nation's airport; and Chevron Corp, for exploration of offshore oil and gas.

The commitment from the Liberian Government and the cooperation from multinational companies, being more socially aware and responsible regarding their business dealings, have accelerated Liberia's ability to re-build itself and to become more self sufficient. Equally, socially conscious agreements have contributed greatly in helping Liberia reach its HIPC goals and poverty reduction strategies. This type of socially responsible corporate behavior goes a long way toward erasing the perception that multinational corporations only engage in predatory, self-serving adventures in Sub-Saharan Africa and other third world or developing countries.

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In conclusion, multinational corporations operating in Sub-Saharan Africa must learn to embrace corporate social responsibility. Good "bedside manner" and community perceptions as to whether a company is "good" to and for the community can heavily influence the ill-will and number of lawsuits directed at a company as well as the outcomes. Moving forward, corporations doing business in Sub-Saharan Africa could learn much from the examples of CSR displayed through the Mittal Steel and Liberian Government business dealings.

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