New Democrat (Monrovia)

Liberia: A Flower Grows in West Africa

By **Ken Stier**
Date: June 21, 2010

Are Liberia's new steel and rubber concessions a sign of reform -- or the exception that proves corruption still rules in resource-rich countries?

It is a persuasive measure of humanity's boneheaded venality that natural resources endowment often leads to a country's impoverishment. A relatively benign form of the "resource curse" can be found in developed countries, as Holland found when, in 1959, a large natural gas discovery stoked an overvalued currency and eviscerated the country's manufacturing sector, a phenomenon that came to be known as "Dutch disease."

But in developing countries, the scourge is evinced more rapaciously. Natural resource earnings that should be earmarked for productive investments are siphoned off wholesale by those in power, who then need repressive capabilities to remain there. Nigeria is a classic case. After half a century of pumping out more than $500 billion worth of oil, the country has more poverty than ever and is wracked by corruption and violence. And the barbed blessing of natural resources endowment is at the core of what ails much of the Middle East.

Recently, a number of loosely coordinated international groups have begun to encourage transparency and accountability in the extractive industries sector. The World Bank, the International Monetary Fund, the United Nations Development Programme, regional development banks and a number of governments, including, in a still-limited way, the U.S., are supporting these efforts. There is also the fledgling Extractive Industry Transparency Initiative, a voluntary international scheme to set global standards that call on companies to publish what they pay for extractive concessions and for governments to disclose what they receive. The effort is supported by Britain and Norway (both governments are relatively new custodians of large energy reservoirs in the North Sea), as well as by nongovernmental organizations and some of the more enlightened mining and energy companies around the world.

Extractive transparency is a critical issue for the 3.5 billion people who live in countries rich in oil, gas and minerals, where good governance can make the difference between growth on the one hand, or poverty, corruption and conflict on the other. The transparency efforts have come just in time for hapless little Liberia, a West African country of 3.5 million that is still struggling to rebound from the latest spasm of

an on-again, off-again civil war that ended in 2003. Liberia has been lauded for taking important strides to abide by the EITI standards and in turn has won vital Western support, resulting in better contracts with multinational firms, which, in turn, will hopefully lead to well-spent government revenues.

Liberia's example is attracting interest from other countries, but whether it proves a sustaining inspiration or a singular accomplishment due to exceptional leadership remains to be seen. At the very least, Liberia's case illustrates the challenges confronting resource-dependent countries trying to ensure that their natural endowments are a source of wealth rather than immiseration.

Liberia is special in a number of ways, not least for having been founded in 1847 by freed slaves who were returning to the continent from the United States and who quickly established themselves as an elite, lording over a multitude of ethnic groups. Rebellion against this order did not come until about 130 years later, in the form of bloody coup engineered by Samuel Doe, a U.S. Special Forces-trained sergeant from the majority Krahn ethnic group, long suppressed by the Americo-Liberian elite. He dispatched his predecessor by disemboweling him in his presidential mansion bed.

Less than a decade later, Doe would meet a similarly grisly end, as the country fragmented into ethnic conflict and civil war fueled by the pillaging of natural resources, including gold, diamonds and tropical timber. Peace was achieved under a large United Nations peacekeeping force in 2003. This international stewardship set the stage for what were probably the country's freest elections ever at the end of 2005, resulting in the presidency of Ellen Johnson-Sirleaf, a Harvard-educated banker and the continent's first female head of state.

Upon taking office, Johnson-Sirleaf commenced a review of many of the key business deals awarded during the notoriously corrupt transitional government (2003-2005), a decision backed by international donors even though there was also considerable pressure to do whatever necessary to revive the broken economy, in which unemployment ran some 85 percent. At the top of the list of contracts reviewed were the two most important concessions in the country -- Firestone's 6 million-tree rubber plantation, established in the 1920s, and a new $900 million investment by the U.K.-Indian steel giant, ArcelorMittal, to mine iron ore.

It didn't require a cynic to question these deals. ArcelorMittal's was concluded three months before democratic elections, and Firestone's extended its franchise -- which still had 20 more years to run -- until 2091, on very favorable terms. Expert review of the concessions quickly determined that contracts were woefully disadvantageous to Liberia, and Johnson-Sirleaf publicly vowed to renegotiate.

How to do that was not immediately clear. The country's Cambodia-like devastation -- the civil war killed 200,000 and created hundreds of thousands of refugees -- did not leave much legal talent to set against these formidable multinational firms, nor the money to hire them. "When we explained to them (Liberian officials) some of the implications of the clauses they had agreed to, they were horrified," recalled Natalie Ashworth of the U.K.-based nongovernmenal organization Global Witness, which has been active in Liberia since 2000. "These were people who were genuinely trying to make a good contract for their country, but they were simply outgunned when it came to negotiations with such a big company like (Arcelor) Mittal."

Johnson-Sirleaf had plenty of good will to draw on (her inauguration was attended by Condoleezza Rice and Laura Bush), and when she asked, she received help from a number of quarters, including from the U.S.-based International Senior Lawyers Project, which engages experienced lawyers, typically winding down successful careers at major firms, to do international pro bono work.

Together with international industry experts, who also worked for free, these lawyers served as key advisers to the government's negotiating team. In fact, as documented in a report funded by the Revenue Watch Institute, a nonprofit policy group, they did just about everything but actually negotiate with the behemoth companies, which are exactly the kind of clients their firms typically covet.

Because Firestone was already operating its concession (or reviving it from the destruction of the civil war), the government's first efforts were focused on the ArcelorMittal contract, which was to provide the country's first significant foreign investment in 20 years. After three rounds of negotiations in as many months, a new contract was ready for President Johnson-Sirleaf's final intervention to seal the deal.

In the following negotiations with Firestone, which took place in six rounds over nine months, Liberia emerged with significantly better deals; the Revenue Watch Institute report lists 30 specific improvements in the ArcelorMittal contract and 40 in Firestone's concession contract. At the core of those improvements was more money for Liberia, achieved through tougher tax provisions that closed loopholes related to intra-company "transfer pricing," which allows companies to shift revenue among subsidiaries so as to manipulate taxable earnings in any given country.

Although both companies declare themselves pleased with the new contracts, they clearly resisted, sometimes disingenuously, according to those closely involved in the deals. Firestone insisted it had a perfectly valid contract, but Liberia used international rubber industry experts to buttress its case that the doubling of world rubber prices since 2005 was sufficient to trigger a "profound change in circumstances" clause in the contract, allowing the deal to be revisited.

ArcelorMittal, too, balked at the idea of pegging the steel prices on which it would be taxed to world prices. "They insisted there was no such thing as a world price, that there was no way they could compare the iron ore from Liberia to any other iron ore --they gave us every excuse they could think of," recalls steel industry expert Michael Locker of Locker Associates Inc., who worked for the Liberians. He estimates the new contract will earn the Liberians hundreds of millions of dollars more over the life of the 25-year concession.

Firestone declined to offer an estimate of how much its renegotiated contract would cost, but clearly it was more than the company had been paying. Its rent on 200 square miles of land quadrupled to $2 per acre, its corporate income tax was raised slightly, duties on materials the company imports were reinstated, and export sales prices on which taxes are based now will be linked to international prices over the course of the contract, the length of which was slashed 50 years, to end in 2041. The company also agreed to build 2,300 new homes for its rubber-tree tappers, to refurbish other homes, adding either bathrooms or sanitary latrines, and to build a high school in the concession area.

Other key fiscal changes in ArcelorMittal's contract included a $15 million upfront payment to the government and a fourfold increase in overseas training scholarships. For a company with global revenues of $125 billion last year, these increases constitute pocket change. But they are substantial to Liberia, which also retained sovereignty over a railroad and port that would have gone over to ArcelorMittal ownership under the original agreement.

Both agreements were made public (although they are still not easily accessible), and they were readily adopted by the legislature after just one day of review by each of the two houses. Still at question, though, is the government's ability to monitor and enforce compliance. "The agreement is only as good as its implementation, and the government is very weak; it has a real lack of capacity to be able to actually hold some of these companies to account," says Global Witness' Ashworth. "It's all well and good having a requirement in the law for the contract for environment impact assessment to be carried out, but if the

EPA does not have any computers, and hardly any training has been carried out for the last 20 years -- well, it's extremely worrying."

Enforcing compliance with concession contracts by strengthening civil society is a key premise of the Extractive Industries Transparency Initiative. If companies are transparent about what they are paying governments, and governments openly acknowledge the income, then those revenues are that much more likely to be well spent. And this time around, the Liberian authorities did announce signatory payments that in the past very well might have been kept secret and then siphoned into leaders' Swiss bank accounts. "The bigger impact is actually on the government and on individuals in the government because if companies are publishing what they are paying, there is a lot of domestic pressure to keep officials from siphoning the money to something else -- that's where the real benefit is," argues Louis T. Wells, a Harvard Business School professor who first consulted for Liberia in the 1960s and who helped with the ArcelorMittal negotiations.

Still, both the ArcelorMittal and Firestone contracts contain "confidentiality clauses" that could obscure just how much revenue the government is really taking in. "Obviously, there is some commercially sensitive information, but in many cases what a company deems to be commercially sensitive becomes incredibly broad," Ashworth says. According to the EITI's regional director overseeing Liberia, Eddie Rich, such confidentiality clauses will soon be outlawed in the country; some are already being phased out voluntarily.

The successful renegotiation of the Liberian rubber and steel deals is an important, if still fragile, achievement. It seems to have already raised the bar on other contracts being negotiated in Liberia. And the improved negotiating climate came in time to help Liberia in structuring its largest deal to date, a $2.6 billion iron ore concession with China Union, a mining concern based in Hong Kong. Not only is there a large upfront payment of $40 million; there appears to be no confidentiality clause in the contract, although details of the fiscal regime are still emerging.

Johnson-Sirleaf is a darling of the West, in good measure because she is widely regarded as someone of considerable integrity. "She is strong, and very honest," explains Joseph C. Bell, a partner with Hogan & Hartson who participated in the Firestone and China Union deals, "a good person to work with, just the kind of client you like to have, particularly in Africa, where there are a lot governance issues."

Earlier efforts toward concessions transparency, promoted by the Carter Center, failed in the Democratic Republic of the Congo. In Angola, Western auditing firms are hired to keep major oil firms honest. But the government is largely unaccountable to its citizens for how the money is spent. "They get a first-class Western audit, but I would say they do it more in order to maximize the amount they have available to steal," says one international expert.

A recent Senate Foreign Relations Committee Report titled "The Petroleum and Poverty Paradox" contends that political instability leads to higher commodity prices, pointing to the Niger Delta as an example. The conflict there -- stirred by the grievances of locals who say they are not benefiting from the oil taken from the area by the central government -- has the effect of leaving almost as much oil shut in the country as there is spare world oil capacity. That spare capacity, much of it now controlled by Saudi Arabia, is critical for moderating world prices in times of tight supply. "Actions to support accountability, transparency and anti-corruption efforts in developing countries with extractive industries such as oil and gas could have significant impact on the energy market," argues the report, while noting that presently "the link between energy security, energy prices, and transparency appears underappreciated within U.S. policy."

Ultimately, of course, the success of transparency efforts in regard to extractive industry will be measured by whether lives in the host nation are improved, and on that score, it is too early to tell in Liberia. As highly regarded as Johnson-Sirleaf is in the West, it is hard to gauge the actual level of political support she enjoys in a country where there is no real opinion polling. She is clearly popular, but it is unclear, say residents, that she'd win elections if they were held tomorrow.

The lives of the 7,500 Firestone workers and their families should be improving soon, although this is largely due not to the renegotiated concession agreement but to the unrelated appearance of a newly elected union that won a 24 percent pay increase, retroactive to January 2007. The new labor pact, achieved with help from the United Steelworkers and the AFL-CIO's Solidarity Center, also calls for a 20 percent work reduction and for more mechanized transport of 150-pound buckets that previously were shoulder-borne.

The increased revenue that ArcelorMittal's project promises to provide the government may not show up for years because of the need to rebuild the railroad and port that serve the concession. Also, that revenue is directly connected to world iron ore prices, which have fallen significantly in the current worldwide recession.

Perhaps for these reasons, the government has begun efforts to revive its timber industry, which played a large role in funding and fueling the country's civil wars, which raged from 1989 until 2003. But there is growing concern that the government is not exercising adequate due diligence to weed out suspect companies that will try to evade or corrupt the bureaucrats charged with monitoring the forestry sector. The civil service is still replete with those regarded as supporters of the patronage-driven regime of Charles Taylor, the country's colorful and ruthless former president.

Facing an international indictment for crimes against humanity, Taylor agreed to relinquish power in 2003 when Nigeria offered exile. This safe haven was withdrawn two and half years later after the newly elected Liberian president, Johnson-Sirleaf, requested he be extradited. He was eventually transferred to the The Hague, where a special U.N. court has been set up to try him. Taylor is there today -- but the court recently warned it might have to release him if it could not find an additional $3.5 million needed to proceed with trial.

It is hard to imagine the international community undermining its multibillion-dollar investment in Liberia by refusing to come up with the small sum needed to try Taylor, but stranger things have happened. And even if Taylor is successfully prosecuted, the hangover of corrupt habits honed during the Taylor era poses a threat to a revived timber industry. "They are not all singing from the same page," Ashworth says. "The donor community is extremely concerned about the way in which the forestry sector is going."

As one American with considerable working experience in Africa explains: "I tell anybody who works for us on any project in Africa (that) you have to be prepared for the fact that five years from now this whole thing could go down the drain. You are working at the margin, and you are doing the best you can to improve their chances ... but that is only a possibility. In fact, there is no security and stability; there is just a possibility.

Copyright © 2010 New Democrat. All rights reserved.

Distributed by *AllAfrica Global Media* (allAfrica.com).

AllAfrica - All the Time