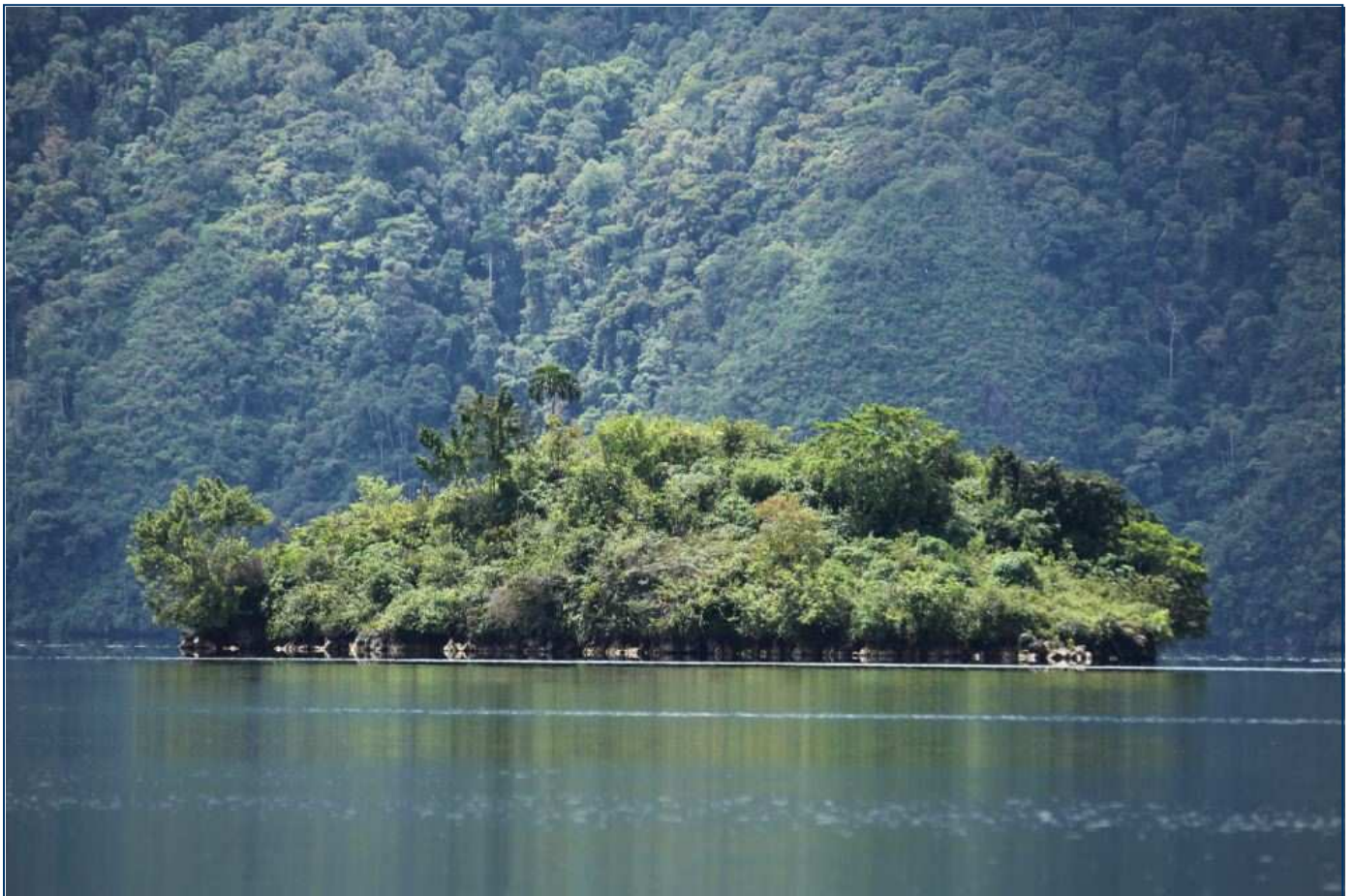
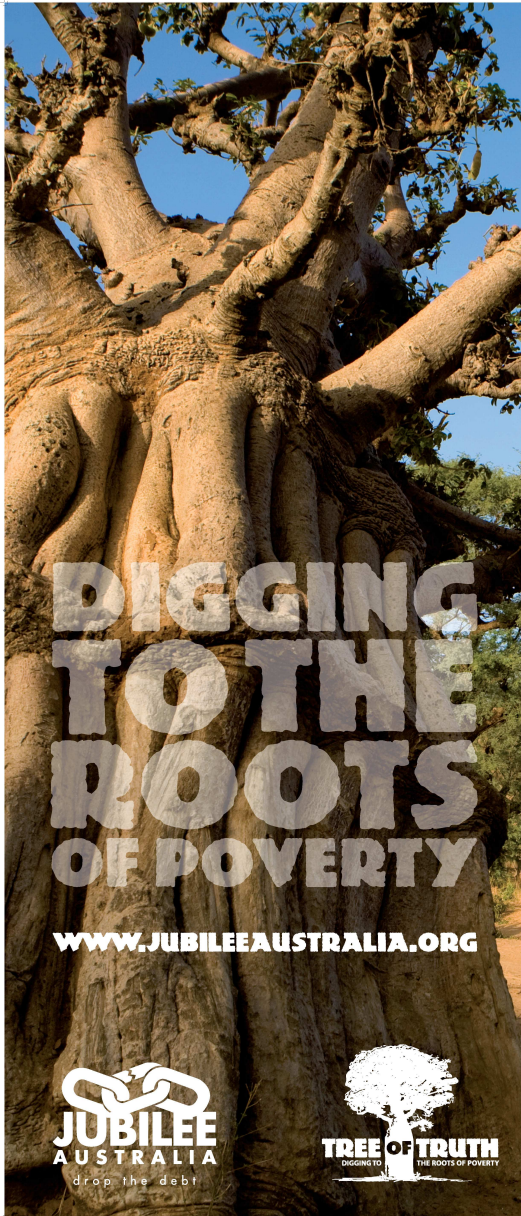

Risky Business

Shining a Spotlight on Australia's
Export Credit Agency



A report by Jubilee Australia
Digging to the Roots of Poverty

December 2009



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Written by Luke Fletcher with Scott Hickie and Adele Webb.

Jubilee Australia is a Sydney based anti-poverty NGO researching the root causes of poverty, and lobbying to challenge the economic policies and structures that perpetuate poverty in the Asia Pacific.

Jubilee emerged out of the successful Jubilee 2000 Drop the Debt Coalition.

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**Top Photo: Limestone island
on Lake Kutubu, Papua New
Guinea.**

Credit: Damian Baker

**Bottom Photo: Communities
at Gold Ridge mine, Solomon
Islands.**

**Credit: Steph Lusby/JUBILEE
AUSTRALIA**

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EXECUTIVE SUMMARY



Two ladies fishing under an umbrella, Lake Kutubu, PNG

Credit: Damian Baker

Shining a spotlight on export credit

This report shines a spotlight on Australia's official 'government owned' export credit agency— the Export Finance and Insurance Corporation (EFIC). It aims to generate much needed debate about the policies of EFIC and its role in supporting extractive projects in developing countries.

The report raises an array of questions about EFIC's transparency, Environment Policy and its responsibility to Australians and citizens of developing nations. It also probes EFIC's use of political risk insurance (PRI) and considers the processes by which government is involved in EFIC financing decisions.

Export credit agencies (ECAs) exist to stimulate trade, making it cheaper and less risky for domestic companies to export or invest overseas, most often to markets in developing countries.

Compared with official development institutions such as the World Bank, ECAs have poor transparency and weak obligations, and they have often been used to support risky and unsustainable projects. As a result, the people and environment of developing nations have often paid a heavy price for ECA-backed projects.

EFIC

EFIC operates as a 'last stop' for Australian exporters or businesses attempting to penetrate overseas markets. It offers: (1) medium to long-term loans and guarantees to the buyers of Australian exports; and (2) insurance and guarantee facilities directly to Australian exporters.

EFIC has two accounts: a Commercial Account and a National Interest Account. The different accounts represent respectively, EFIC operations with minimal government involvement and EFIC operations with substantial government involvement.

Analysis of its structure and function demonstrates that EFIC is an organ of the state. It should therefore find an appropriate balance between client confidentiality and public interest.

Like other ECAs, EFIC operates in an environment of very limited transparency. Legislative and policy provisions governing the release of information by EFIC include a presumption against public disclosure.

An analysis of EFIC's sectoral profile shows that it has a history of supporting big extractive industry projects with large loans and insurance policies.

EFIC adopted and implemented an Environment Policy in 2000, which requires that:

- Projects, transactions and investments be subject to an environmental screening process.
- High-risk projects be benchmarked against international environmental and social standards.

EFIC's Environment Policy has a number of outstanding deficiencies:

- (1) EFIC's due diligence process lacks accountability;
- (2) limitations exist in the international standards to which it is a signatory;
- (3) EFIC is exempt in practice from principles of ecologically sustainable development; and
- (4) a specific set of human rights policies are missing from its framework.

Gold Ridge mine, Solomon Islands

Gold Ridge is the Solomon Islands' first large-scale mine and it remains the country's only mine to have reached production phase. The gold mine was forced to close prematurely in June 2000 — two years after commencing production — because of civil conflict.

Australian Solomons Gold (ASG), which bought the Gold Ridge mine and its assets in 2004, has twice applied to EFIC for political risk insurance in support of the mine: once to carry out a feasibility study in 2005/6, and then again in 2007 for insurance to reopen the mine from 2011.

Communities living near the mine believe that environmental problems associated with the first life of the mine are continuing to pollute their local river systems.

Jubilee Australia's investigation into ASG's conduct in the reopening of the mine raises a number of questions about the effectiveness of EFIC's due diligence, and the process by which it evaluates support for difficult and risky projects. EFIC's conduct in this case study demonstrated:

- No disclosure of evidence about how the company acquired agreement from landowners, despite allegations of improper conduct.
- Lack of rigour in assessing the company's reporting on the social and environmental impacts of the mine, and failure to require the client to publicly release plans for management and mitigation of these impacts.
- Culture of disregard for the process of social and environmental reporting, in having extended 'conditional approval' of PRI to ASG before adequate steps were taken regarding social and environmental management.

The PNG LNG project

Papua New Guinea is rich in natural resources, but GDP growth over the past few decades from mineral and oil exports have had little impact on social development, partly because of the poor governance that continues to blight the country.

Almost all of the large-scale oil, gas and mining projects in PNG— which were generally run with EFIC backing— have had serious negative environmental and social impacts.

The PNG LNG project, aiming to exploit gas resources of the Southern Highlands, is the largest industrial/development project in PNG's history and is projected to completely transform the economy. The US\$15 billion project has four major sponsors: ExxonMobil, Australian companies Oil Search and Santos and the PNG state corporation Petromin.

The project came into agreement in early December. Australia has signed onto the project via an EFIC loan of US\$500 million, 80 per cent of which will come from its taxpayer-funded National Interest Account.

This report has uncovered the following about the PNG LNG project:

- Of the three justifications given for the project (economic benefits to Australia, economic benefits to PNG, and LNG as a source of 'clean' energy), only one — the economic benefits to Australia— stands up to scrutiny.
- Given the lack of checks and balances there is doubt PNG LNG revenues will be managed in a way that will lead to long-term economic development.
- The impact of the project on the spread of HIV/AIDS in PNG has not been properly assessed and mitigation plans are not in place.
- By hastily pushing through the benefit sharing agreements with landholders, the project sponsors and the PNG government have greatly increased the chances of violence unfolding in the Southern Highlands.
- There are preliminary reports that security forces in the Southern Highlands may be committing human rights abuses in the project areas.
- The environmental impacts— in particular on the water system, forests and seabed— do not appear to have been properly assessed.
- The questionable environmental record of Oil Search, one of the main project sponsors in the region, plus the history of environmental disasters of large mining projects in the region, compound fears of gross environmental damage.

Conclusion and recommendations

The prima facie case for reforming EFIC is strong: it is secretive, with no disclosure policy, and it does not adequately incorporate environmental, social and human rights considerations into its funding decisions.

The comprehensive analysis undertaken in the two case studies in this report demonstrate that EFIC has not shown adequate due diligence in requiring:

- respectful consultation with landowners;
- accurate analysis of social and environmental impacts;
- drawing up of detailed management plans;
- commitment to strong and transparent governance systems.

Jubilee Australia sets out four key principles for EFIC reform, under each of which it makes a number of recommendations.

Increased transparency and disclosure

1. EFIC should adopt a disclosure policy which directs the public release of relevant internal documentation developed during project assessment, decision making and monitoring phases, including:
 - a. all project Action Plans and Impact Assessments created by the client in compliance with the International Finance Corporation (IFC) Performance Standards;
 - b. IFC Performance Standard benchmarking completed by EFIC staff in compliance with the EFIC Environment Policy;
 - c. all documents received by EFIC from clients relating to ongoing compliance with measures agreed in the environmental assessment to mitigate environmental and social harm, and the results of ongoing monitoring programs.
2. EFIC should publish on its website the minutes of board meetings.
3. The government should require that the EFIC board include at least one civil society representative.

Stronger environmental and social safeguards.

4. The EFIC Environment Policy should be contained within the EFIC Act 1991. The exemption of EFIC from the Environmental Protection and Biodiversity Conservation Act should be removed. And EFIC should report to parliament on its integration of ecologically sustainable development principles.
5. The EFIC Environment Policy should require that environmental assessment be carried out by independent experts not associated with the project.
6. Section 8(2)(b)(iii) of the EFIC Act should be amended to require compliance to, rather than procedural consideration of, Australia's international obligations including its human rights obligations, and under a human rights framework EFIC should perform adequate due diligence on potential human rights impacts of its financing decisions.
7. The EFIC Environment Policy should contain an objective 'handbrake' mechanism to provide a legitimate foundation for refusal to support a particular project.
8. EFIC should implement a complaints mechanism similar to the Compliance Advisor/Ombudsman at the World Bank.

Increased scrutiny of the government's National Interest Account

9. The government should order a review of the due process followed by both EFIC in its due diligence assessment, and the subsequent review and decision by the Minister for Trade, to borrow funds for the purpose of supporting Australian companies through the National Interest Account.
10. In such a review, Jubilee Australia would recommend that the EFIC Act be amended to implement a process for parliamentary and public scrutiny in line with the National Interest Assessment under section 8 of the International Monetary Agreement Act 1947.

More care in distributing political risk insurance

11. EFIC and the government should put a moratorium on the issue of political risk insurance until the EFIC Environment Policy and its process of due diligence has been reviewed by the government.

INTRODUCTION: EFIC and the EXTRACTIVE INDUSTRIES



**Abandoned
equipment at
Gold Ridge mine,
Solomon Islands**

**Credit: Steph
Lusby/JUBILEE
AUSTRALIA**

This report shines a spotlight on Australia's official 'government owned' export credit agency— the Export Finance and Insurance Corporation (EFIC).

In recent decades, civil society groups have succeeded in generating public debate about the role of development institutions such as the World Bank, International Monetary Fund and World Trade Organisation in the global economy. A missing piece, not yet properly assessed, has been the role of export credit agencies (ECAs).

Though agents of governments, ECAs operate under the political radar and out of public view. ECAs exist to stimulate trade, making it cheaper and less risky for domestic companies to export or invest overseas, most often to markets in developing countries. Although export credit trade stimulation can boost economies, the people and environment of developing nations can often pay a heavy price.

In the midst of the global financial crisis ECAs have found renewed relevance— with the collapse of international private

finance and the pledge by the G20 and OECD countries to provide extra support for export credits to help boost international trade flows.¹

A significant portion of ECA financial support goes to large resource extraction projects, which can pose a range of threats to environments and communities in developing countries. These risks are compounded when extraction occurs in conflict or post-conflict areas, or in states where political and legal structures are not in place to mitigate environmental and social damage.

This report raises an array of questions about EFIC's transparency, environmental policy and its responsibility to Australians and citizens of developing nations. The report probes EFIC's use of political risk insurance (PRI) to back Australian companies that invest in risky projects in the developing world. It also considers the processes by which the Ministry for Trade is involved in EFIC financing decisions.

1. The 2009 G20 statement regarding the Global Plan for Recovery and Reform states: 'We will ensure availability of at least \$250 billion over the next two years to support trade finance through our export credit and investment agencies and through the MDBs', see Leaders of the Group of Twenty, *The Global Plan for Recovery and Reform*, 2 April 2009, available online: <http://www.g20.org/Documents/final-communique.pdf>. Also, the 30 OECD countries, together with the governments of Brazil, China, Estonia, Indonesia, Israel, Romania and Slovenia, see OECD, *Statement: The Global Financial Crisis and Export Credit*, 22 April 2009, available online: <http://www.oecd.org/dataoecd/51/22/42624233.pdf>.

Finally, the report asks a number of tough questions surrounding EFIC's social policies and its responsibilities to the Australian taxpayer.

Are EFIC's human rights, environmental and social standards adequate?

Are systems of accountability in place?

How do they function?

How transparent are EFIC's operations?

Does the Australian public even have enough information to answer these basic questions?

In 2000 EFIC developed and implemented social and environmental policies that addressed some of these issues. However, problems still exist with EFIC's continued support of large-scale, invasive projects.

The financing decisions of EFIC can have great social, environmental and developmental consequences in nations hosting its clients. For example, EFIC's legacy of extractive industry support in Papua New Guinea is troubling. The Ok Tedi mine, the Bougainville copper mine, the Kutubu oil and gas projects, the Lihir gold mine and the Porgera gold mine were all projects supported with EFIC financing. None were without serious social or environmental consequences.

It is vital that export credit agencies ensure their finance activities are in line with international norms on sustainable development and human rights. ECAs across the globe— including in Australia— need urgent reform to get this balance right.

The report is organised as follows:

Part 1—Export Credit and EFIC examines export credit agencies and their role in international development and trade finance. It provides a history of EFIC, examines its structure and facilities, and traces its support of various extractive industry projects. The section concludes with a discussion of EFIC's social and environmental safeguards and policies.

Part 2—Gold Ridge mine, Solomon Islands Case Study examines EFIC's support for Australian Solomons Gold Limited (ASG) to redevelop the Gold Ridge mine via political risk insurance (PRI). Gold Ridge is a useful case study because it highlights the close links between extractive projects and failed governance, social conflict and environmental problems.

Part 3—PNG LNG project Case Study examines EFIC's support for the largest development project in the history of the Pacific region. EFIC has committed US\$500 million in loans to the natural gas project— the largest amount of financing it has ever released. The sheer size of the project and the problematic history of oil, gas and mining ventures in PNG make it a pivotal project to analyse.

ECAs, including EFIC, will not change unless and until their impacts and their role in the global economic system are exposed and publicised.

By shining a spotlight on its support for extractive industries, the report aims to make EFIC more accountable to Australians. It criticises the policies—not the people— within EFIC and associated government agencies. It does not seek to halt all oil, gas and mining projects in developing countries, only to improve the outcomes of extractive projects for people, countries and the environment.

Jubilee Australia aims to stimulate a much needed debate about the policies of EFIC and its methods to ensure extractive projects are not supported until appropriate structures are in place. We invite comments on the report, and look forward to engaging with all interested stakeholders in the dialogue to follow.

EXPORT CREDIT and EFIC

What are export credit agencies?

Almost every industrialised country has at least one export credit agency (ECA). Despite playing a critically important role, they are largely unknown. Few textbooks on international trade and finance give them more than a passing mention. Yet ECA activity exceeds all multilateral development bank (MDB) and overseas development agency activity, impacts on almost every international trade decision, and *directly* finances one in every eight dollars of world trade,² supporting US\$1.5 trillion in global export business in 2008.³

ECAs are agents of governments, usually overseen by the finance, trade or economics ministry. They use taxpayers' money, either directly or through guarantee, to help their country's companies win investment and export business overseas. The IMF defines ECAs as public agencies intended to promote home country exports by providing financial products and assistance to exporters who cannot secure private commercial finance or insurance market support.⁴

Collectively, ECAs are the largest source of official financing for developing countries. Called the 'unsung giants' of the international finance market,⁵ ECA-backed exports and investments account for as much as 80 per cent of foreign direct investment (FDI) from industrialised countries to developing countries annually,⁶ far greater than the combination of all World Bank and Official Development Assistance (ODA) commitments.

An industrialised country, through its ECA, may offer a loan or credit to a developing country, so that the developing country can buy that particular country's exports — the result is

increased sales and foreign investment opportunities for the multinational companies based in the industrialised country. Or, when commercial banks or exporters provide the loans or credit, the ECA may provide insurance or guarantees — essentially promising to reimburse the banks or exporters and cover most losses if things go awry.

Within the world's international trading system, ECAs occupy a unique place. The first ECAs were established as far back as the 1920s, but most in operation today have been established since the 1970s.⁷ Traditionally constituted as nationalised corporations mandated to promote their domestic economies in overseas markets, ECAs have adapted in more recent years to the changing market conditions in which they operate, most notably the expansion of private sector providers of export finance and insurance. Despite these shifts, ECAs remain an important instrument in the economic and foreign policy branches of home country governments.

There is no such thing as a typical export credit agency, but three broad structural models can be identified: first, ECAs that are established as state agencies or departments; second, ECAs which are government-owned state corporations, managed independently with government oversight, as is the case of Australia's Export Finance and Insurance Corporation (EFIC); and third, those which are controlled by the state in various ways, including authorisation, funding and regulation of operations, but which are consortia of private/public companies.⁸

2. Delio E. Gianturco, *Export Credit Agencies: The Unsung Giants of International Trade and Finance*, 2001, Quorum Books, Westport, p. 1.
3. Scott Hickie, 'The Export Credit Renaissance: Challenges for Ecologically Sustainable Development in the Global Economic Crisis', *UNSW Law Journal*, Vol 32(2), 2009, p. 588.
4. The IMF defines an export credit agency as 'an agency in a creditor country that provides insurance, guarantees, or loans for the export of goods and services'. See IMF, *External Debt Statistics: Guide for Compilers and Users – Appendix III*, 25 June 2003, Available online: <http://www.imf.org/external/pubs/ft/eds/eng/guide/file6.pdf>.
5. Delio E. Gianturco, *Export Credit Agencies: The Unsung Giants of International Trade and Finance*, 2001, Quorum Books, Westport, p. 1. According to Gianturco, ECAs supported over \$800 billion a year in international exports in 2001.
6. New South Wales Environmental Defender's Office and AIDWatch, *EFIC Environment Policy Review Submission*, 23 October 2003. Because ECAs globally disclose so little aggregate data or information on their transactions, this is necessarily an approximate estimation.
7. Malcolm Stephens, *The Changing Role of Export Credit Agencies*, International Monetary Fund, Washington DC, 1999, p. xi.
8. Karyn Keenan, 'Export Credit Agencies and the International Law of Human Rights', *Halifax Initiative*, January 2008, p. 2.

ECA-backed projects in developing countries: the problems

At least in theory, financing by the World Bank, Asian Development Bank, and other official development bodies is supposed to contribute to local economic growth, development and poverty alleviation. Most ECAs, on the other hand, have no development mandate at all. In fact, ECAs have traditionally avoided stringent guidelines applied to development institutions because they are merely public finance bodies acting in the interests of private financiers. Their sole mission is to promote the exports and investments of home companies and businesses abroad. But many ECA-backed projects are carried out in developing countries—where the prime areas of public interest include poverty alleviation and ecologically sustainable development.

Not only are ECAs the largest source of official finance for developing countries, ECA-backing has become increasingly crucial for risky projects. Over US\$120 billion of ECA support goes annually from OECD countries in the form of longer term loans and guarantees, most often to facilitate large projects in developing countries or economies in transition.⁹

One of the fastest growing segments of ECA activity is the financing of large resource extraction and infrastructure projects in developing countries, including dams, mines, oil development and nuclear power plants.¹⁰ Driven by what some have termed the 'New Great Game', ECAs have entered a new domain of strategic support for extractive resource projects to secure petroleum, minerals and natural resources.¹¹

ECAs are also, along with MDBs, the major source of public international finance for fossil fuel projects in developing countries. A 2000 study examining OECD ECA financing of CO₂ emission intensive investments and exports in developing countries between 1994 and 1999 found that the leverage effect of ECA involvement attracted US\$103 billion, or just under half of all trade and project finance going to energy-intensive sectors in developing countries.¹²

Analysis of ECA support for projects in developing countries raises a number of problematic practices and policy contradictions:

1) Lack of accountability in financing decisions

While MDBs have been forced (mainly through public pressure) to be more open about decision-making behind financing projects, ECAs have not been the target of such pressure and remain arguably the least transparent and least accountable agents in the global economic system. Non-government organisations (NGOs) have forced governments to discuss reforms to ECA policy at G8 and OECD level,¹³ including making the agencies more transparent; but action by governments has been slow. There have been exceptions: for example, the official US Government ECA, Export-Import Bank (Ex-Im) is now obliged to publish a summary of its board minutes.

There is greater cause for concern about this lack of transparency when it is revealed that ECA-backed transactions have often been implicated in corruption.¹⁴ A 1999 report by Transparency International suggested that export credit agency behaviour was 'close to complicity with a criminal offence.'¹⁵ In a subsequent report on ECAs, bribery and corruption, British-based NGO The Corner House found:

Because their approach has been to support domestic business at any cost in the fierce world of export competition – the mantra is “if we don’t, they will” – export credit agencies have furthermore closed their eyes to large-scale bribery and corruption on the part of the companies they support in their race against other companies to win contracts. In so doing, they have, in effect, been underwriting the bribery carried out by their domestic companies with impunity.¹⁶

9. Environmental Defense Fund, *Foreclosing the Future: Coal, Climate and International Public Finance*, 22 April 2009, p. 5, available online: http://www.edf.org/documents/9593_coal-plants-report.pdf.
10. This claim was made by Aaron Goldzimer, drawing on World Bank sources, in *Globalization's most perverse secret: the role of export credit and investment insurance agencies*, a briefing paper for Environmental Defense which, published in May 2002, is available online at <http://www.newrules.org/docs/afterneolib/goldzimer.pdf>.
11. Roger Donnelly & Benjamin Ford, *Into Africa: How the Resource Boom is Making Sub-Saharan Africa more important to Australia*, Lowy Institute, 2008, p. 22, available online: <http://www.lowyinstitute.org/Publication.asp?pid=870>.
12. Environmental Defense Fund, *Foreclosing the Future: Coal, Climate and International Public Finance*, 22 April 2009, p. 10, available online: http://www.edf.org/documents/9593_coal-plants-report.pdf.
13. Aaron Goldzimer, *ECA – Worse than the World Bank*, Food First, Winter 2003, p. 6, available online: <http://www.scribd.com/doc/20599990/ECA-Worse-Than-the-World-Bank>.
14. See A Gelpert, 'Odious Debts and State Corruption', *Law and Contemporary Problems*, 70 2007, p. 81.
15. Dieter Frisch, 'Export Credit Insurance and the Fight Against International Corruption', *Transparency International Working Paper*, 26 February 1999, available online: <http://www.odiousdebts.org/odiousdebts/index.cfm?DSP=content&ContentID=2366>.
16. Dr Susan Hawley, *Turning a Blind Eye: Corruption and the UK Export Credits Guarantee Department*, The Corner House, June 2003, p. 12, available online: <http://www.thecornerhouse.org.uk/pdf/document/correcgd.pdf>.

ECA-backed projects have often financed in an atmosphere of corruption and therefore have contributed to the build-up of unpayable developing-country debt.¹⁷

Thus many argue that ECAs contracting with dictatorial regimes have been responsible for much of the world's *odious* or *illegitimate* debt.¹⁸

ECAs justify their secrecy by claiming their business must be treated as 'commercial-in-confidence', claiming that the competitive advantage of the private companies they support would be negatively affected if they broadened their disclosure policy. Yet this argument remains unconvincing. One can concede that a firm may lose some competitiveness in a regime requiring more disclosure (though of course this is an empirical question which is difficult to answer without access to all the data). Nevertheless, public interest necessities should dictate that some loss of competitiveness is an acceptable trade off to minimise maladministration and corruption. An appropriate balance should and must be found.

2) Environmental and Social Impacts

NGOs began campaigning for ECA reform after discovering that the agencies were financing projects whose environmental and social impacts were unacceptable to affected communities in developing countries.¹⁹

ECAs have been behind some of the world's biggest and most controversial projects including China's Three Gorges Dam,²⁰ Russia's Sakhalin II Oil and Gas project, the Chad-Cameroon oil development and West Seno I - II Oil and Gas Fields Projects in Indonesia, to name just a few.

Prior to 2000, ECAs were not required to follow any formal environmental or social standards. Furthermore, few agencies had transparent environmental and social safeguard policies independent of the international community of export credit providers. In response, civil society campaigners pushed for a set of international baseline standards with agreed environmental assessment provisions to make ECAs more accountable. In 2000, the Jakarta Declaration— endorsed by NGOs in 45 countries— called on OECD governments to undertake serious reform measures in their export credit agencies.²¹

As a result, modest ECA compliance with standard social and environmental safeguards has occurred. For example, EFIC adopted an Environment Policy in 2000 which is discussed below.

3) Risk and Development: A Bad Mix

As well as providing direct loans, ECAs can also take on the risk involved in large projects in developing countries. In effect, ECAs can be used to shift risk for global trade and investment from private banks and companies to public-sector, taxpayer-backed ECA accounts.

Political risk insurance (PRI) sees insurance policies granted to private companies in order for them to attract the debt financing necessary to undertake projects in risky environments. EFIC describes PRI as follows:

...because of the unique nature of political risks, and their potential to expose an investment or project to significant losses, many investors, contractors, lenders and hedge providers take out political risk insurance (PRI) from EFIC to cover them against financial losses resulting from specified political events.²²

PRI is crucial for risky projects in developing countries— in practice, this almost always means extractive industry projects. However, PRI is characterised by a number of serious contradictions: first, when an ECA will carry the risk, there is incentive for companies to move ahead with excessively risky projects, but less incentive for them to undertake thorough due diligence and risk assessment; second, uninsured local communities, who bear the brunt of the risks of projects, are not themselves insured and thus remain exposed to the consequences of project failure; and finally, the premiums paid rarely reflect the magnitude of the possible risk.²³

17. One of the traditional criticisms of ECAs is the major role they have had in the historical proliferation of unsustainable sovereign debt accrued by developing nations in Sub-Saharan Africa, South East Asia and Latin America. In this decade, ECAs have been the largest contributor to official debt, far more than generated by traditional debt creators including the World Bank, IMF and other MDBs. Export credit and insurance can become sovereign debt: ECAs may insure or lend to both the domestic exporter and foreign importer in a transaction, or reinsure the private institution that provided these services in the first instance. As a precondition, ECAs often insist that the importer government provide a counter guarantee. If and when either party defaults, the ECA pays out the claim or loses the value of the loan repayments, and this amount becomes debt owed by the importing country's government. In this way, a transaction between two private entities is transformed into bilateral public debt.
18. See Beme Declaration et al, *A Race to the Bottom: Creating Risk, Generating Debt and Guaranteeing Environmental Destruction: A Compilation of Export Credit & Investment Insurance Agency Case Studies*, March 1999, available online: www.ecawatch.org/eca/race_bottom.pdf.
19. Aaron Goldzimer, *ECA – Worse than the World Bank*, Food First, Winter 2003, p. 7, available online: <http://www.scribd.com/doc/20599990/ECA-Worse-Than-the-World-Bank>.
20. ECAWatch, *Case Study: Three Gorges Dam*, 2003, Available online: http://www.eca-watch.org/problems/asia_pacific/china/racetothetbottom_chinacase_1999.html.
21. The Jakarta Declaration called upon OECD governments, ministers and national legislatures to undertake the following reform measures for their ECAs: 1. Transparency, public access to information and consultation with civil society and affected people; 2. Binding common environmental and social guidelines; 3. The adoption of explicit human rights criteria guiding operations of ECAs; 4. The adoption of binding criteria and guidelines to end ECAs' abetting of corruption; 5. Cease financing non-productive investments; and 6. Cancellation of ECA debt. See *Jakarta Declaration for Reform of Official Export Credit and Investment Insurance Agencies*, May 2000, available online: www.eca-watch.org/goals/jakartaec.html.
22. Export Finance and Insurance Corporation ('EFIC'), *Political Risk Insurance*, available online: <http://www.efic.gov.au/insurance/politicalriskinsurance/Pages/politicalriskinsurance.aspx>.
23. Roger Moody, *The Risks We Run: Mining, Communities and Political Risk Insurance*, 2005, International Books, Utrecht, p. 7.

Export Finance and Insurance Corporation (EFIC)

Established in 1957, EFIC operates as a 'last stop' for Australian exporters or businesses attempting to penetrate overseas markets. Its sole mandate under the *Export Finance and Insurance Corporation Act 1991* (Cth) is to expand Australia's international export trading capacity and facilitate export opportunities for Australian businesses.²⁴ Unlike some other ECAs, EFIC does not claim to have any mandate to assist developing countries in growing their economies or financing their imports.

EFIC structure and governance

EFIC has operated under a number of different statutory frameworks through its lifespan.²⁵ As a Commonwealth statutory corporation, EFIC has reporting obligations under section 9 of the *Commonwealth Authorities and Companies Act 1997*. In terms of ministerial responsibility, EFIC falls under the Department of Foreign Affairs and Trade (DFAT).²⁶

EFIC has two accounts: a Commercial Account and a National Interest Account. The different accounts represent respectively, EFIC operations with minimal government involvement and EFIC operations with substantial government involvement.

Most transactions by EFIC are written on the Commercial Account. This account is operated on commercial principles and is self-funding. Profit is used both to pay a dividend to the government and to build up financial reserves. The EFIC board and management take sole responsibility for assessing risk and making financing decisions regarding the Commercial Account. Financing decisions are to be taken on commercial grounds alone, with the proviso that the companies are producing goods and services for export that have substantial Australian content.

The EFIC Act also provides for a national interest function. The Minister for Trade can direct EFIC to enter into a contract if such a contract is considered to be 'in the national interest', 'whether or not EFIC would enter into the transaction in the ordinary course of business'.²⁷ While EFIC manages the day-to-day operations of any business on this account, the financial

EFIC makes available specialised financial services to support Australian exporters:

- By providing medium to long-term financial services to the buyers of Australian exports, or to their financiers. Finance is usually provided as a loan to an overseas buyer or a borrower on its behalf, or as a guarantee to a bank lending to an overseas buyer;
- Through insurance and guarantee facilities including bonds to secure export contracts, medium to long-term PRI, and export working capital guarantees.

consequences (profit or loss) of the National Interest Account are borne by the Commonwealth.

Use of the EFIC National Interest Account is driven by strategic objectives of the Government. For example, EFIC played an important role in Australia's overseas development agenda under the Development Import Finance Facility (DIFF) scheme of AusAID (the Australian Government's overseas aid agency). DIFF was a mixed aid-credit program that provided on average a 35:65 mix of grants and EFIC financing to developing countries, enabling the recipient to afford the cost of Australian exports for consumption or use in their development projects.²⁸ The National Interest Account has been used less since the DIFF scheme was discontinued in 1996. In fact, pre-1996 activity accounts for at least 90 per cent of the National Interest Account's current \$1.1 billion exposure.²⁹

More recently, use of the government's account has occurred where the size or risk of a deal is beyond the commercial parameters of EFIC. EFIC refers the deal to the Minister for Trade for consideration on the National Interest Account. The Minister considers whether providing support for the transaction is in the 'national interest'.

The EFIC Act does not stipulate a process by which the Minister must justify the national interest decision, only requiring that such a direction from the Minister to EFIC be in writing, and that the basic particulars of the transaction (including nature and extent) be published in the Gazette.³⁰

24. *Export Finance and Insurance Corporation Act 1991* (Cth) ('EFIC Act'), section 7(1)(a). See also EFIC, *EFIC Annual Report 2008*, 2008, p. 13, Available online: <http://www.efic.gov.au/corp-responsibility/Documents/Ful%20Annual%20Report%202008.pdf>.

25. *Export Finance and Insurance Corporation Act 1974* (Cth). In 1986 this Act was repealed and EFIC was integrated into the institutional structure of Austrade between 1986 and 1991. See *Export Finance and Insurance Corporation (Transitional Provisions And Consequential Amendments) Bill 1991* for details of transfer of EFIC responsibilities.

26. Previously EFIC had fallen under the Department of Industry, Technology and Commerce (DITAC).

27. *EFIC Act*, section 29.

28. DIFF was controversial because it blurred the line between development assistance and trade subsidies.

29. EFIC, *EFIC Annual Report 2009*, 2009, p. 31, available online: <http://www.efic.gov.au/about/governance/Documents/AR09%20final%20full.pdf>. Note: The National Interest Account exposures of \$1.1 billion are majority loans to sovereign governments under the DIFF scheme. The largest exposure, 78 per cent of total exposures on NIA, is to the Indonesian Government, \$825.5 million. Jubilee Australia is concerned about the nature of this debt, given it was accrued through contracts with the notoriously corrupt Suharto Government. In 2008, Jubilee launched a series of applications under the *Freedom of Information Act 1982* (Cth) ('FOI Act'), seeking documents concerning loans they suspected were illegitimate or odious. At the time of publishing this report, Jubilee was an applicant in proceedings against EFIC at the Administrative Appeals Tribunal to dispute the non-disclosure of information regarding National Interest Account exposures.

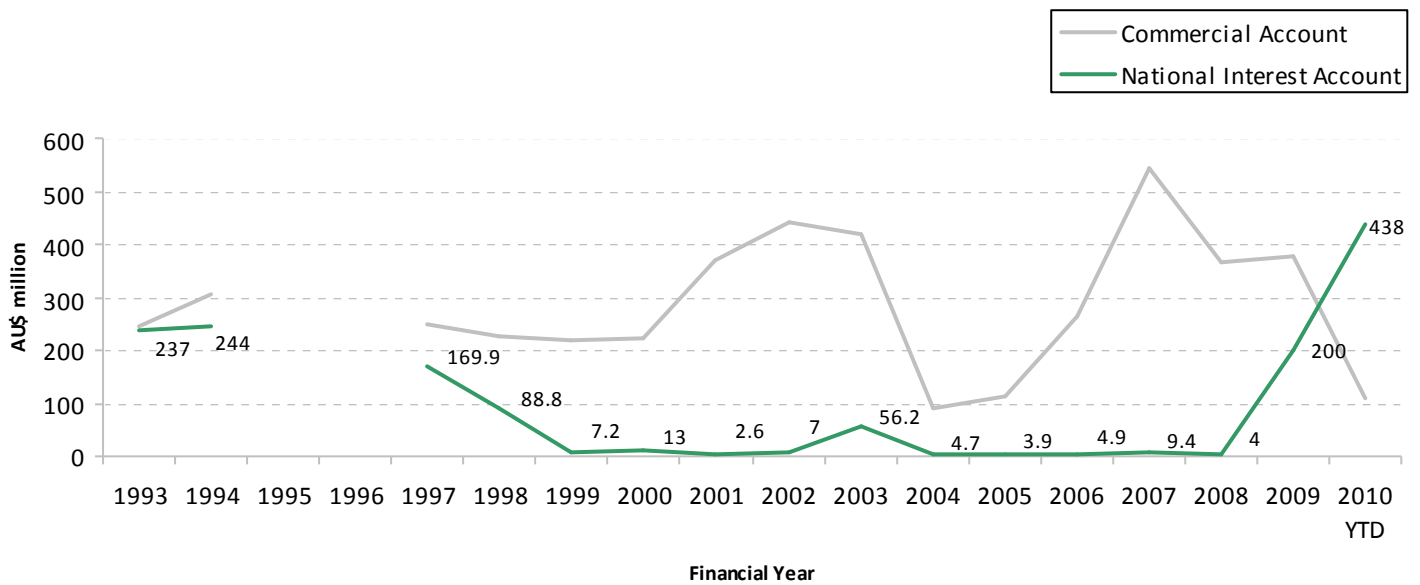
30. *EFIC Act*, sections 29(7) and 30.

The Minister is not required to disclose how the 'national interest' has been assessed, nor the reasons for the approval. This means a ministerial direction to apply taxpayer funds for finance or insurance of risky business overseas could be as simple as a minute from a confidential Cabinet meeting. Not only are such decisions beyond public scrutiny, since information pertaining to the ministerial directions is exempt from disclosure under the FOI Act, but neither are the decisions open to the scrutiny of the Australian Senate.

Is EFIC an organ of government?

The question of how to best characterise ECAs given their somewhat ambiguous nature has vexed analysts for some time. When EFIC draws upon its National Interest Account it is clearly acting as a state functionary, under direction from the Minister for Trade.³¹ But how do we characterise EFIC with respect to transactions on the Commercial Account— transactions which should not involve direct government intervention? EFIC is a statutory authority with its own board and nominal independence over policy decisions in transactions not involving 'national interest'. But in practice, EFIC is far from an independent organisation.

Figure 1.1: Commercial Account and National Interest Account Activity, 1993-2009



(Source: EFIC Annual Reports)

Figure 1.1: National Interest Account Activity

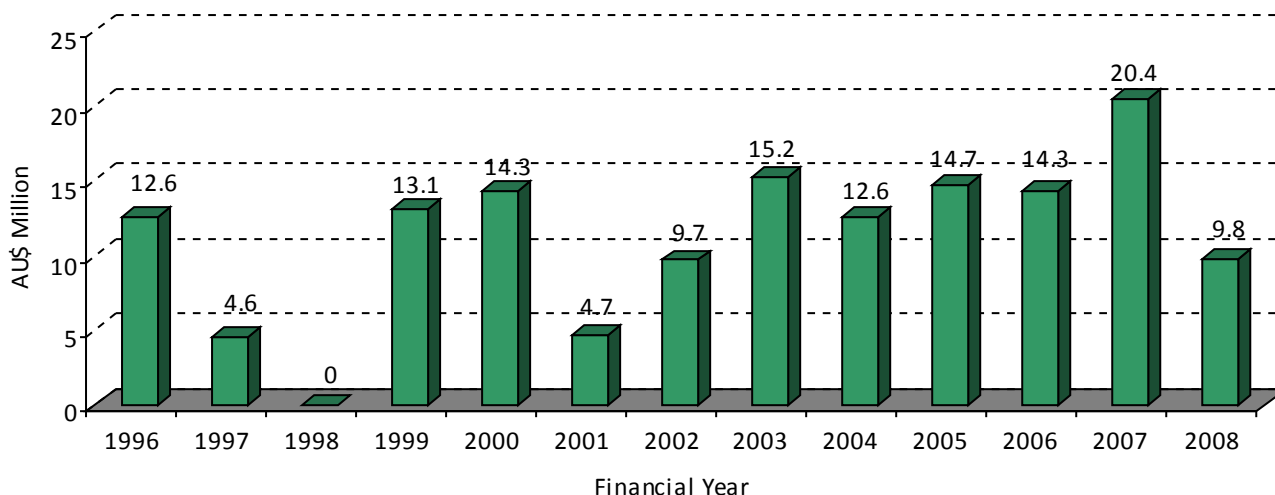
Since the end of the DIFF scheme, the National Interest Account has been far less active. A swell in activity in 2002-2003 related to a single transaction – political risk insurance for Lao's Sepon gold mine.

The National Interest Account has again surged over the past year, exceeding pre-1996 levels. In 2008-2009, a \$200 million line of credit was signed on the Account in support of GM Holden. In the current financial year to date, the PNG LNG deal alone has seen the largest National Interest Account transaction on record, with a \$438 million loan (80% of the total EFIC loan amount) being written on the government's account.

Note: For 2010 the graph only plots the amount on both accounts relating to the PNG LNG deal. A full list of transactions signed by EFIC during the financial year 2009/2010 will be available from the Annual Report published in 2010. Figures for 1995 and 1996 were also unavailable.

31. Section 9(5) of the *EFIC Act* states: 'Subsection (2) is not intended to authorise a direction: (a) requiring the Minister's approval of the entry by EFIC into a particular contract or the giving by EFIC of a particular guarantee or the making of a particular loan; or (b) giving the Minister power to determine that EFIC is or is not to enter into a particular contract, give a particular guarantee or make a particular loan.'

Figure 1.2: Annual Dividend Payments, EFIC to Commonwealth



(Source: EFIC Annual Reports)

Information for financial year 1997/98 could not be obtained

EFIC is cited as a 'Commonwealth company'³² in various pieces of Commonwealth legislation. For example, this term is used in the *Commonwealth Authorities and Companies Act 1997* (Cth) and in section 516A of the *Environment Protection and Biodiversity Conservation Act 1999* (Cth) ('EPBC Act').³³ Such an acknowledgement indicates that Commonwealth ownership and control of EFIC is undisputed by the Australian Government itself.

Furthermore, other than the Managing Director, the EFIC Act states that members of the EFIC board are by appointment of the Minister, and that the board must consist of one government member.³⁴

Finally, the federal government has ultimate fiscal responsibility for the operation of EFIC. Not only is the government the financial guarantor of EFIC, providing a guarantee of \$200 million in callable credit, the government is also the sole shareholder and beneficiary of EFIC, with the Commonwealth receiving an annual dividend payment.³⁵

Considering the above, one cannot but conclude that EFIC is an organ of government. As such, it should be subject to the same transparency and accountability mechanisms as other state bodies. It cannot consistently put client confidentiality above public interest concerns. In doing so, EFIC leaves itself open to strong criticism.

Transparency requirements

Like other ECAs, EFIC operates in an environment of very limited transparency. Legislative and policy provisions governing the release of information by EFIC include a presumption against public disclosure.

Under the *Freedom of Information Act 1982* (Cth) all documents relating to anything done by EFIC under Part 4 (Insurance and Financial Service Products) or Part 5 (National Interest Transactions) of the EFIC Act are exempt from disclosure. These provisions make an in-depth understanding of EFIC operations out of reach of the taxpayers who financially support EFIC. Further, one would expect that the Minister's 'national interest' decisions under Section 29 of the Act would be reviewable, but information pertaining to the ministerial directions and the nature of the decisions is also exempt from disclosure.³⁶

Statutory exclusions like Section 7 of the FOI Act, dual accounts (each with a distinct statutory regime), and a low public profile combine to make EFIC one of the most unscrutinised and least accessible statutory corporations in Australia.

The absence of transparency requirements raises serious questions about EFIC's accountability to Australians and to citizens in developing countries, in particular with regard to the protection of human rights, and environmental and social safeguards as will be discussed below.

32. See section 34 of the *Commonwealth Authorities and Companies Act 1997* (Cth) ('CAC Act'). EFIC acknowledges that the Board is obligated to submit annual reports under Section 9 of the CAC Act and Section 9 only requires annual reports from Directors of 'Commonwealth companies' so EFIC is, by implication, a Commonwealth company. See EFIC, EFIC Annual Report 2007, 2007, p. 14, available online: <http://www.efic.gov.au/corp-responsibility/Documents/Ful%20Annual%20Report%202007.pdf>.

33. The *Environment Protection and Biodiversity Conservation Act 1999* (Cth) ('EPBC Act') is the Australian Government's central piece of environmental legislation. It provides a legal framework to protect and manage nationally and internationally important flora, fauna, ecological communities and heritage places. See Australian Government Department of Environment, Water, Heritage and the Arts, About the EPBC Act, available online: <http://www.environment.gov.au/epbc/about/index.html>.

34. EFIC Act, section 34.

35. EFIC Act, section 55.

36. Section 7(2) of the FOI Act exempts certain departments and bodies from the operation of the FOI Act in relation to documents identified in Division 1, Part 2, Schedule 2 of the FOI Act. Division 1, Part 2, Schedule 2 of the FOI Act states that the exemption applies to the 'Export Finance and Insurance Corporation, in relation to documents concerning anything done by it under Part 4 or 5 of the *Export Finance and Insurance Corporation Act 1991*'.

EFIC project record and extractives history

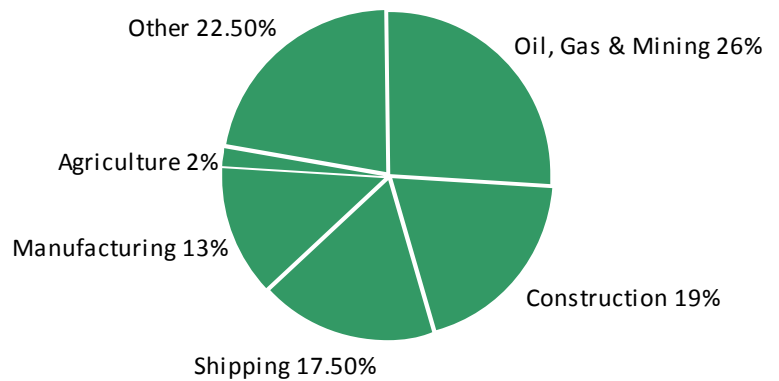
Extractives history

EFIC has a history of supporting big extractive industry projects with large loans and insurance policies. Part 3 of this report, for example, catalogues EFIC involvement in almost all of PNG's large mining projects since the 1980s.

This trend has continued in recent times: in 2006-07, 85 per cent of EFIC financing and insurance went to support extractive projects in Africa. Since 2001, EFIC has helped finance extractive mineral industry projects in Laos, Mozambique, Brazil, Kenya, the Solomon Islands, and PNG.

Table 1.1 (p. 16) lists three decades of EFIC involvement in oil, gas and mining projects around the world.

Figure 1.3: EFIC financing by Sector, 2001-2009

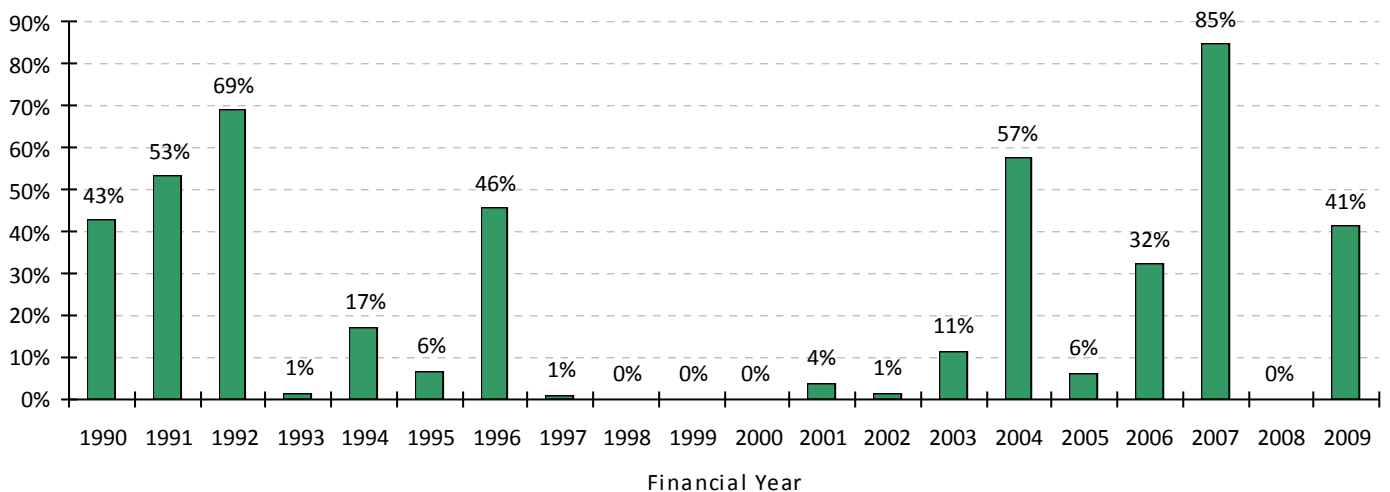


(Source: EFIC Annual Reports)

Figure 1.3: EFIC Project record

EFIC's financial support extends across a wide range of industries; however, a few sectors tend to dominate. Across the years 2001-09, the oil, gas and mining sector makes up one quarter of EFIC's sectoral profile. The construction sector is the next largest, at just under one fifth of projects supported by value in the same period. The manufacturing sector is also significant in terms of projects financed. Interestingly, the proportion of financing to agricultural businesses is comparatively small, given the strength of the sector in the national economy.

Figure 1.4: Oil, Gas & Mining sector as a percentage of total EFIC financing



(Source: EFIC Annual Reports)

Figure 1.4: EFIC support of extractive industry projects

Figure 1.4 depicts the many years when a high proportion of EFIC financing went to support extractive industry projects. For example:

1990 - EFIC loaned \$206.6 million for a coal mine development in India for client White Industries Australia (33 per cent total EFIC financing for financial year 1989-90).

1991 - EFIC loaned \$159.9 million to multiple exporters for the development of the Porgera gold mine in PNG (53.5 per cent total EFIC financing for financial year 1990-91).

2009 - EFIC loaned \$227 million to Leightons to lease mining equipment to the Indonesian coal mining sector (41 per cent total EFIC financing for financial year 2008-09).

Many of the other peaks relate to large PRI policies which are discussed below.

TABLE 1.1: EFIC support of extractive industry projects - 1980 to 1990

Year	Project	Country	Facility	Value AU\$ m	Australian exporter	Category
1980	PT Int. Nickel Indonesia: Loans to support Australian participation in Indonesian mining sector.	Indonesia	Loans	45	Multiple exporters (Lines of Credit)	-
	Panguna (Bougainville) Copper Mine: Loan to support mining equipment purchase from Australian exporter.	PNG	Loan	4.2	Vickers Australia Ltd	-
	Romanian Bank for Foreign Trade: Loan to support import of mining equipment.	Romania	Loan	1	Mineral Deposits Ltd	-
1982	Ok Tedi gold and copper mine: Loan to facilitate Australian participation in project.	PNG	Loan ⁽ⁱ⁾	212	Multiple exporters (Line of Credit)	-
1983	Ok Tedi gold and copper mine: Additional loan to facilitate Australian participation.	PNG	Loan ⁽ⁱⁱ⁾	12	Multiple exporters (Line of Credit)	-
	Marinduque Mining and Industrial Corp: Loan to support sale by Qld company.	Philippines	Loan	5.1	Prior Industries Pty Ltd	-
	Ceylon Mineral Sands Corporation: Loan to support purchase of sand mining equipment.	Sri Lanka	Loan	1.5	Mineral Deposits Ltd	-
	New Zealand government: Loan to support purchase of coal mining equipment from Australian company / New Zealand Gas company: Loan to support purchase of steel pipes from Australian company.	New Zealand	Loan	3.4	Joy Manufacturers Pty Ltd / Tubemakers of Australia Ltd	-
1985	Mineral Exploration Corporation Limited: Loan supporting purchase of diamond drilling rigs from Australian company.	India	Loan	0.3	Vickers Keogh Pty Ltd	-
	Rib-Rutilo e Ilmenita do Brazil: Loan supporting purchase of wet gravity mining equipment.	Brazil	Loan	1.2	Mineral Deposits Ltd	-
1986	Mining in Sierra Leone: Loan supporting purchase of mining equipment by Sierra Rutile Ltd.	Sierra Leone	Loan	6	Mineral Deposits Ltd	-
1987	Mining in Sierra Leone: Second loan supporting purchase of mining equipment by Sierra Rutile Ltd.	Sierra Leone	Loan	7.2	Neumann Equipment and Mineral Deposits Ltd	-
	Ministry of Finance, Government of Indonesia: Loan supporting design, supervision and commissioning of coal preparation plant by Australian company.	Indonesia	Loan	2.5	Bulk Materials (Coal Handling) Services Pty Ltd	-
1990	Porgera Gold Mine: Loan to MRDC Pty Ltd supporting its share of construction costs for the mine.	PNG	Loan	52.7	Multiple exporters (Line of Credit)	-
	Hindustan Zinc Ltd: Loan supporting purchase of mineral analysis equipment from Australian exporter Amdel Ltd.	India	Loan	0.4	Amdel Ltd	-
	Coal India Ltd: Supporting coal mining development by Australian company.	India	Loan	206.6	White Industries Australia Ltd	-

(i) By far the largest commitment by EFIC to date. Owners of the Ok Tedi project included the PNG Government, the Broken Hill Proprietary Company Limited (now BHP Billiton) through its subsidiary Dampier Mining Co Ltd and Standard Oil Company (US company). The project involved the construction, establishment and operation of facilities for the mining, concentrating and transporting of copper and gold ore deposits at Mount Fubilan in a remote and inaccessible part of the Western Province of PNG. The Mine has been widely criticised for its devastating environmental impact.

(ii) In this case the borrower was the PNG Government, and the loan was covering part of the commitment of the Government in constructing a road between the river port of Kiunga and the mine township of Tabubil. EFIC reported in 1982/1983 annual report that 150 Australian companies had won contracts to supply capital goods and services for the Ok Tedi project under the \$212 million line of credit, with \$103 million of disbursements made during the financial year.

Table 1.1: EFIC support of extractive industry projects *continued* - 1991 to 2004

Year	Project	Country	Facility	Value AU\$ m	Australian exporter	Category
1991	Porgera Gold Mine: Loan to Highland Gold Properties Pty Ltd supporting purchase of Australian equipment and services for mine construction.	PNG	Loan	159.9	Multiple exporters (Line of Credit)	-
1992	Kutubu Joint Oil Venture: Political risk insurance provided for Venture, PNG's first petroleum development project.	PNG	PRI ⁽ⁱⁱⁱ⁾	326.5	Multiple exporters	-
	China National Technical Import and Export Corporation (CNTIEC): Loan supporting coal gasification project by Australian exporter.	China	Loan	7.3	Warren Engineering	-
	Hongai Coal Company: Loan supporting development of Coal Processing Plant.	Vietnam	Loan	15.2	Bulk Materials (Coal Handling) Pty Ltd	-
1993	Luoyong Mining Machinery: Loan supporting purchase of Dorbyl gasifier unit.	China	Loan	7.1	CMPS & F Pty Ltd	-
1994	CNTIEC: Loan supporting development of Coal Gasification Plant.	China	Loan	9.1	PWT Asia/Pacific Pty Ltd (Warren Engineering Division)	-
	CNTIEC: Loan supporting additional Coal Gasification Plant in Yima City.	China	Loan	85	CMPS & F Pty Ltd	-
1995	CNTIEC: Loan supporting participation by Australian company in Huangshi Coal Gasification.	China	Loan	38.5	Minproc Engineers Ltd	-
1996	Lihir Gold Mine: Political risk insurance provided for the international banks providing loan finance for the Rio Tinto-managed mine.	PNG	PRI	336.9 ^(iv)		-
1997	CNTIEC: Loan supporting purchase of equipment and services for natural gas project.	China	Loan	3.6	Premium Controls Pty Ltd	-
	Bajo de la Alumbra copper and gold project : Political Risk Insurance provided.	Argentina	PRI	253 ^(v)	MIM Holdings Ltd and North Ltd	-
2001	Gold Mine: Political Risk Insurance provided to enable Australian investor, Oxiana, to undertake feasibility study for proposed gold mine.	Laos	PRI	13.9	Oxiana Resources NL	B
2002	Gold Mine: Oxiana offered increase in the insured amount for feasibility study for proposed gold mine.	Laos	PRI	6.1	Oxiana Resources NL	B
2003	Gold Mine: Political Risk Insurance provided for gold component of the mine.	Laos	PRI ^(vi)	53.3	Oxiana Limited	A
2004	Natural Gas Project: Political Risk Insurance provided to Australian investor for natural gas project involving Mozambique and South Africa.	Mozambique	PRI	29	McConnell Dowell Constructors (Aust) Pty Ltd	A

(iii) According to EFIC, this 'political risk insurance operates in favour of 17 Australian and international banks which are providing Eurodollar financing for participation in the project by the Australian companies, Ampolex (PNG Petroleum), Inc. and Oil Search (Kutubu) Pty Ltd.' As EFIC elaborates, 'the US\$260 million EFIC facility is tied to Australian procurement of the project, and was crucial to the Australian partners being able to raise their share of finance thereby assuring the 'go ahead' on Kutubu.' 'EFIC's role in Kutubuexemplifies how a significant partnership with other financial market participants to finance major resource projects can work to the benefit of Australian exporters and the recipient country.' EFIC Annual Report 1992, p.16.

(iv) Based on exchange rate January 1996: 1 USD to 1.3477 AUD

(v) Based on exchange rate February 1997: 1 USD to 1.26662 AUD.

(vi) 'We took the decision to enter into a political risk insurance policy with Oxiana Limited for the gold component of a project in the Lao PDR after assessing the environmental and social issues which were raised in the EIA, and the submission received following publication of the EIA.' 'We prepared and published on our website a formal response to the issues which were raised in the submission received as a result of the publication of the EIA.' EFIC Annual Report 2003, p.4.

Table 1.1: EFIC support of extractive industry projects *continued* - 2004 to 2009

Year	Project	Country	Facility	Value AU\$ m	Australian exporter	Category
2004 <i>Cont'd</i>	Moma Minerals Sands Project: Bond supporting provision of engineering, procurement and construction services.	Mozambique	Bond	23.9	Multiplex Engineering Pty Ltd	A
	Sepon Mine: Bond provided for supply of copper ore processing plant at the Mine.	Laos	Bond	2	McConnell Dowell Constructors (Aust) Pty Ltd	B
2005	Sepon Mine: Bond provided relating to contract to supply and install piping at the Mine.	Laos	Bond	0.8	McConnell Dowell Constructors (Aust) Pty Ltd	B
	Zinc mining: Political Risk Insurance provided to Union Resources Limited to undertake mining feasibility study.	Iran	PRI	6.5	Union Resources Limited	B
	Sepon Mine: Bond provided relating to contract to supply and install piping at the Mine.	Laos	Bond	0.8	McConnell Dowell Constructors (Aust) Pty Ltd	B
	Zinc mining: Political Risk Insurance provided to Union Resources Limited to undertake mining feasibility study.	Iran	PRI	6.5	Union Resources Limited	B
2006	Bond facilities provided for supplying engineering, procurement, construction and project management services to development of a new nickel/cobalt/copper mine.	Brazil	Bond	16.7	GRD Minproc	A
	Gold Ridge mine: Political Risk Insurance provided to Australian Solomons Gold (ASG) to undertake bank feasibility study to determine viability of re-commencing operations at the formerly operating Mine.	Solomon Islands	PRI	53.2	Australian Solomons Gold (ASG)	B
	Mastercroft Limited: Export Finance Guarantee provided to support sale of coal mining equipment.	Russia	Guarantee	17.3	DBT Australia Ltd	
2007	Kwale Titanium Mineral Sands Project: Political Risk Insurance provided to Australian investor.	Kenya	PRI	112	Ausenco Ltd	A
	Lumwana copper mine project: Loan supporting development and operation (\$54.5 million). Political risk insurance was also provided (\$282.7 million).	Zambia	Loan and PRI (vii)	337.2	Equinox Minerals Ltd	A
	Sepon Gold and Copper Mine: Bond issued to support Australian construction company's contract. Bond was issued under bonding line established 2005–06.	Laos	Bond	21.9	McConnell Dowell Constructors (Aust) Pty Ltd	B
2009	Leighton Holdings Ltd: Loan provided to Leighton (Australia's leading contract mining operators), providing finance for earthmoving equipment to perform new contracts.	Indonesia	Loan	227	Leighton Holdings Ltd	B
	Lumwana Mine: Loan granted to support the mine.	Zambia	Loan	11.4	Equinox Minerals Ltd	A
2010	PNG LNG Project: Loan (80% national interest account) contributing to estimated US\$15bn required to proceed with project.	PNG	Loan	547	Santos / Oil Search	A

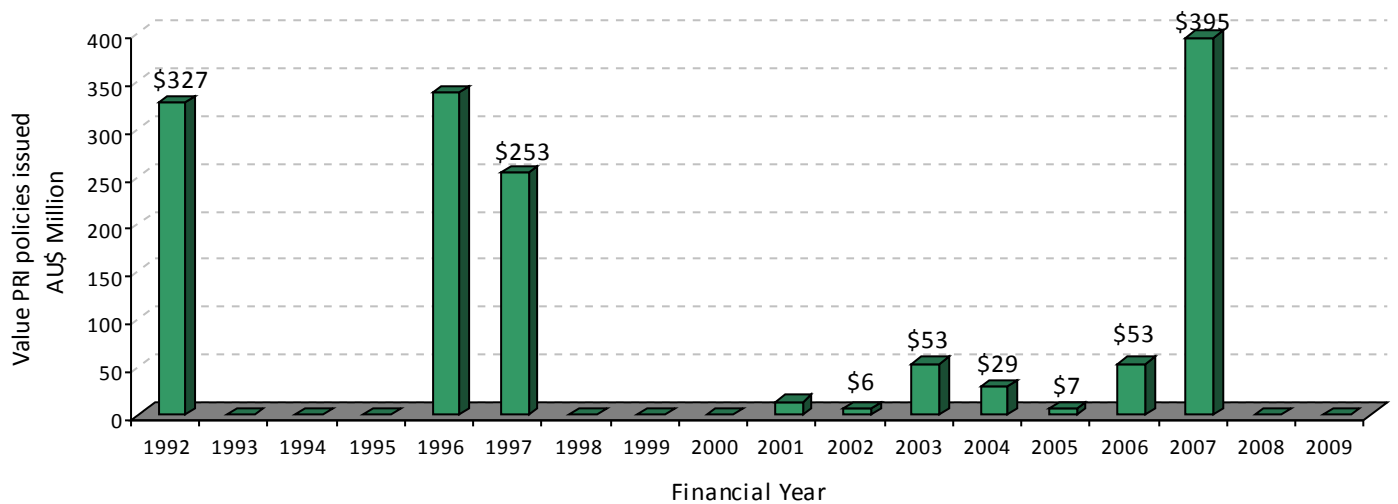
(vii) The insurance policies provide cover to a syndicate of commercial lenders backing the Lumwana project, as well as to a bank providing hedge facilities to protect the project revenue against any adverse movements in the copper price. This is the first time an export credit agency has provided political risk insurance cover that includes commodity hedging.' EFIC Annual Report 2007, p.9.

Recent trends

This decade has seen a change in the nature of the 'market gap' in which EFIC operates. This is due largely to the growth of private sector provision of export finance and insurance services and the 2003 sale of EFIC's short-term business to a private sector operator, Atradius. The change in market conditions has added pressure for EFIC to take on riskier medium to long-term transactions, often in non-traditional areas like Africa where exporters are unable to gain coverage in the commercial market.³⁷ This has increased the likelihood of EFIC clients conducting business in weak governance zones.

Like many ECAs, EFIC has enthusiastically moved into the business of political risk insurance.

Figure 1.5: Political Risk Insurance policies issued



(Source: EFIC Annual Reports)

Figure 1.5: Political Risk Insurance—EFIC

- 1992: Kutubu Joint Oil Venture, PNG - \$327 million
- 1996: Lihir gold mine, PNG - \$337 million
- 1997: Alumbra Copper and Gold Project - \$253 million
- 2001-03: Sepon gold mine, Laos - \$73 million
- 2004: Mozambique - South Africa gas project - \$29 million
- 2005: Zinc mining in Iran - \$6.5 million
- 2006: Gold Ridge mine, Solomon Islands - \$53 million
- 2007: Kenya Titanium mine / Zambia Copper mine - \$395 million

37. Australian Chamber of Commerce and Industry, *Export Finance and Insurance Corporation – An Important Export Partner*, June 2006, p. 2, Available online: http://www.acci.asn.au/text_files/issues_papers/Trade/June%202006%20-20EFIC%20Export%20Partner.pdf.

EFIC Environment Policy

In the year 2000, ECAs from OECD countries adopted the *Recommendation on Common Approaches on Environment and Officially Supported Export Credits*.³⁸ The OECD Common Approaches established recommendations in the following areas:

- project categorisation;
- assessment of social, environmental and human rights risks associated with projects;
- methods of on-going project compliance;
- post-approval monitoring activities;
- sanctions for non-compliance.

The Common Approaches are non-binding on members. Instead, member ECAs are required to develop their own policy to be consistent with the OECD recommendations.

EFIC adopted and implemented an Environment Policy in 2000.³⁹ EFIC's Environment Policy requires that projects, transactions and investments seeking EFIC support be subject to an environmental screening process consistent with the OECD Common Approaches.⁴⁰

Projects that have the potential for significant adverse environmental impacts extending beyond the boundaries of the project are assigned a Category A rating.⁴¹ For these risky projects, the OECD advises member ECAs to undertake an environmental impact assessment, and the EFIC Environment Policy provides that decisions regarding Category A projects are to be taken by the board, not by management. Projects deemed Category B have environmental impacts considered site specific and reversible while Category C projects pose minimal environmental impact.⁴²

Table 1.1 lists all extractive projects supported by EFIC, with those after 2000 including a category rating. See Appendix I for more information about these three categories.

Current EFIC policy requires that Category A projects be benchmarked against the environmental and social standards of the International Finance Corporation (IFC)— the private sector lending arm of the World Bank Group.⁴³ In addition to its Performance Standards, IFC provides guidance notes on the IFC Environmental, Health and Safety guidelines that outline general and industry specific technical standards and project requirements.⁴⁴ In June 2007, EFIC stated that it would benchmark against all eight IFC Performance Standards.

The EFIC Environment Policy also requires reporting on how its activities accord with principles of ecologically sustainable development (ESD)— the cornerstone of Australia's domestic environmental legislation.⁴⁵ The goal of the ESD principles, adopted by the Australian Commonwealth and state governments in May 1992, is to ensure that all development is ecologically sustainable in terms of environmental, social and economic values.⁴⁶ Annual reporting by all Commonwealth departments, parliamentary departments, Commonwealth authorities, Commonwealth companies and other Commonwealth agencies (including EFIC) on implementation of ESD principles is required under section 516A of the *Environment Protection and Biodiversity Conservation Act 1999* (Cth).

While EFIC claims to be committed to integrating environmental and social considerations, EFIC has supported a number of projects with significant environmental impacts both within and beyond the projects' boundaries.

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38. Organisation for Economic Cooperation and Development ('OECD'), *Recommendation on Common Approaches on Environment and Officially Supported Export Credits*, 2007, available online: <http://www.oecd.org/dataoecd/26/33/21684464.pdf>.
39. According to EFIC, the Environment Policy 'establishes the framework that guides EFIC in balancing the support of client commercial outcomes, and thus fulfilling EFIC's mandate under the EFIC Act, with the mitigation of environmental and social impacts'. See EFIC, *Environment Policy*, clause 2.3, available online: <http://www.efic.gov.au/corp-responsibility/envr-responsibility/environmentpolicy/Pages/environmentpolicy.aspx#content>.
40. OECD, *Recommendations on Common Approaches on Environment and Officially Supported Export Credits*, Part 2, articles 4-7, available online: <http://www.oecd.org/dataoecd/26/33/21684464.pdf> For the procedural processes involved in EFIC's screening process see PriceWaterhouseCoopers "EFIC's Environment Policy Review: Assessment of Compliance Matters", April 2004, p. 17.
41. OECD, *Recommendations on Common Approaches on Environment and Officially Supported Export Credits*, article 6, available online: <http://www.oecd.org/dataoecd/26/33/21684464.pdf>.
42. OECD, *Recommendations on Common Approaches on Environment and Officially Supported Export Credits*, articles 10 and 11, available online: <http://www.oecd.org/dataoecd/26/33/21684464.pdf>.
43. The eight IFC Performance Standards are: Performance Standard 1: Social and Environmental Assessment and Management System; Performance Standard 2: Labour and working conditions; Performance Standard 3: Pollution prevention and abatement; Performance Standard 4: Community health, safety and security; Performance Standard 5: Land acquisition and Involuntary Resettlement; Performance Standard 6: Biodiversity Conservation and Sustainable Natural Resource Management; Performance Standard 7: Indigenous Peoples; Performance Standard 8: Cultural Heritage. See IFC, *Performance Standards*, available online: <http://www.ifc.org/ifcext/sustainability.nsf/Content/PerformanceStandards>.
44. The key difference between the Performance Standards and Guidance Notes is that the latter do not mandate singular normative standards. The Notes outline alternative compliance pathways and are established as a guide, not a mandate.
45. EFIC, *Environment Policy*, clause 2.2, available online: <http://www.efic.gov.au/corp-responsibility/envr-responsibility/environmentpolicy/Pages/environmentpolicy.aspx#content>.
46. The principles are: the precautionary principle; inter-generational equity; conservation of biodiversity and ecological integrity; and improved valuation, pricing and incentive mechanisms.

1) EFIC due diligence lacks accountability

The EFIC Environment Policy states that the agency considers effective consultation processes and appropriate public disclosure of relevant information to be ‘important mechanisms to obtain feedback on the concerns of both directly and indirectly affected stakeholders’ during environmental screening decisions for Category A projects (applied to facilities over \$20 million).⁴⁷ This is implemented through a 30 day period for public comment, during which time the client’s environmental assessment is published on its website. EFIC encourages, but does not require, that the assessment be carried out by independent experts not associated with the project.⁴⁸

However, under EFIC Environment Policy, any internal documentation developed during project assessment and approval process is treated as confidential. Also confidential is any documentation relating to monitoring and reporting on environmental and social issues during the life of the project, given that these documents contain information from clients.⁴⁹ The binding contractual terms under which finance has been provided are considered confidential, along with any information relating to the client’s compliance with measures agreed in the environmental assessment, the status of measures to mitigate environmental and social harm, and the results of monitoring programs.⁵⁰

As a result, it is impossible for the Australian public and parliamentarians to know how EFIC makes decisions about project categorisation, how EFIC assesses the social, environmental and human rights risks associated with projects, what modifications or mitigation measures EFIC requires of post-approval monitoring activities and any sanctions that EFIC applies for non-compliance. In short, the considerable discretion that EFIC wields is not balanced with effective transparency and public scrutiny. The ‘trust me’ approach when it comes to EFIC due diligence is clearly inadequate, particularly in the case of Category A projects.

2) OECD Common Approaches and IFC Performance Standards provide a limited framework

Limitations of the OECD Common Approaches:

There is an important loophole relating to the OECD Common Approaches. Under the framework, in order for an ECA to support a project all benchmarks must be satisfied. However, in the 2007 Revised Recommendations, ECAs may— in ‘exceptional cases’— support a project that does not meet the international standards against which it has been bench-

marked, provided that after the decision has been made they ‘report and justify the standards applied’ to the OECD Export Credit Working Group (ECG). This is a serious loophole, considering that this is a group which has itself been criticised for being secretive and lacking accountability.⁵¹

There is also a lack of transparency and consistency in the assignment of projects into Category A or Category B. The only forum for evaluating project characterisation is a peer review mechanism recently introduced. Articles 18 through 21 of the Common Approaches collectively require member ECAs to report to the ECG on an annual basis with information pertaining to Categories A and B. The members of the ECG recently agreed to increase ECA survey reporting of Category A and B facilities for the purpose of peer review.⁵² However it is unclear whether the new agreement on peer review will lead to greater transparency as the ECG accords a level of deference to members to determine issues of confidentiality.

Another weakness of the OECD Common Approaches involves the monitoring-phase of projects. Article 14 of the OECD Common Approaches requires member ECAs to monitor compliance with the conditions of official support and the terms of the contract. Yet due to disclosure restrictions, it is not possible to know how ECAs manage contractual terms and covenants, how they monitor compliance with covenants, or whether they even have the organisational capacity to track and review performance.

Limitations of the IFC Performance Standards:

There is a considerable volume of literature critical of the IFC Performance Standards. Some argue that weaknesses in the standards stem from a shift within the World Bank towards a more flexible system that heavily relies on the discretion of clients and individual decision makers at the IFC.⁵³ Like the ECAs themselves, the IFC argues that its standards should be ancillary to project host environmental planning and assessment legislation.⁵⁴ However this approach simply allows for exploitation of weak governance structures and planning regulation often present in developing countries.

Critics also allege the IFC Performance Standards lack transparency and synchronicity with international human rights law, and that they fail to possess a ‘handbrake mechanism’ to put a stop to unsustainable and poorly devised projects. An in-depth discussion of these criticisms can be found in Appendix III. A comprehensive review of the Performance Standards by the World Bank itself is currently underway.

47. EFIC, *Environment Policy*, clause 5, Available online: <http://www.efic.gov.au/corp-responsibility/envr-responsibility/environmentpolicy/Pages/environmentpolicy.aspx#content>.

48. EFIC, *Environment Policy*, clause 4.3.3.

49. Clause 7 of EFIC’s *Environment Policy* treats as confidential regular monitoring and reporting by its clients on environmental and social issues during the life of the facility. See EFIC, *Environment Policy*, clause 2.2.

50. See EFIC, *Environment Policy*, clause 7.2.

51. ‘Revised OECD export credit standards are an empty basket for environment and development NGOs’, *ECA-watch Media Release*, April 2007, available online: http://www.eca-watch.org/problems/fora/oecd/CommonApproaches/ECAW_Common_Approaches_26apr07.htm.

52. OECD, *Document TAD/ECG(2008)23*, 2008, available online: [http://webdomino1.oecd.org/olis/2008doc.nsf/Linkto/tad-ecg\(2008\)23](http://webdomino1.oecd.org/olis/2008doc.nsf/Linkto/tad-ecg(2008)23).

53. N. Affoder, ‘Cachet not Cash: Another Sort of World Bank Group Borrowing’, 2006, 14 *Michigan State Journal of International Law*, pp. 143, 158-9.

54. Project hosts, in the eyes of these public financiers, have the front line in development approval; the Performance Standards are a secondary regime to supplement domestic project evaluation.

3) In practice EFIC is exempt from the principles of ecologically sustainable development

EFIC's commitment to the principles of ecologically sustainable development is skin deep. Since 2005 no Annual Report has contained a reference to ESD. Although EFIC is required to report on compliance with principles—specifically concerning section 3A of the EPBC Act—its financing decisions are based upon operating protocols and benchmarks of the IFC.⁵⁵ Ministerial and institutional interpretations of EFIC and its mandate support the interpretation that there is no expectation upon EFIC to justify its important decisions under the EPBC Act framework.⁵⁶

Adopting ESD principles would mean more rigorous social and environmental checks for EFIC. For example, the principle of inter-generational equity as enunciated in section 3A(c) of the EPBC Act states 'the present generation should ensure that the health, diversity and productivity of the environment is maintained or enhanced for the benefit of future generations'. In order for a project to accord with this principle, EFIC needs to maintain or enhance the health, diversity and productivity of the environment. In comparison, IFC's third Performance Standard requires a cost effective minimisation of adverse impacts on human health and the environment. The divergence in standards of environmental management is significant.

EFIC claims, by implication, that reporting on the utilisation of the screening processes established under OECD Common Approaches equates with full and satisfactory ESD reporting. This is a spurious claim. EFIC does not report on greenhouse gas emissions for projects, resettlement programs, project water usage, air emissions, maintenance of cultural or heritage sites or biodiversity impacts—to name just a few potential ESD indicators. The improper incorporation of ESD principles creates an Environment Policy with no mechanism to maintain or improve biodiversity values, no consistent and systematic instrument of evaluation to define a proposed development as unsustainable and inappropriate, and no real means to apply precautionary principles. The true cost/benefit analysis for EFIC supported projects cannot be evaluated without proper reporting on ESD indicators that allow for the attribution of value to environmental externalities.

4) A specific set of human rights policies are missing from the framework

EFIC's Environment Policy does not incorporate the impacts of its project financing decisions on human rights.⁵⁷ Under international law, states have legal responsibility for the operations of their export credit agencies. As a recent policy paper by the Halifax Initiative argued, there is sufficient legal precedent to suggest that countries like Australia could be held responsible for any breaches of its legal obligations committed by the national ECA.⁵⁸ The Draft Articles on Responsibility of States for Internationally Wrongful Acts adopted by the International Law Commission in 2001 also allows a similar interpretation.⁵⁹

In addition to protecting environments and populations at risk, EFIC should adopt a stronger set of human rights policies into its financing decisions to protect itself and the Australian government from prosecution in domestic or international courts for violations committed by companies which it supported or financed.

John Ruggie, in his 2008 Report as Special Representative of the UN Secretary-General on the issue of human rights and transnational corporations and other business enterprises, said:

*On policy grounds alone, a strong case can be made that ECAs, representing not only commercial interests but also the broader public interest, should require clients to perform adequate due diligence on their potential human rights impacts. This would enable ECAs to flag up where serious human rights concerns would require greater oversight - and possibly indicate where State support should not proceed or continue.*⁶⁰

Conclusion

In summary, EFIC has a number of outstanding deficiencies with its social and environmental reporting guidelines and processes. The following two cases studies demonstrate how these deficiencies can lead to a lack of due diligence when applied to risky and difficult projects in developing countries.

55. EPBC Act, Section 524(3)(c).

56. As Dr David Kemp MP, former Minister for the Environment and Heritage, has noted 'decisions by EFIC are not subject to the Environment Protection and Biodiversity Conservation Act 1999'. See Dr David Kemp, *Senate Hansard*, 25 November 2003, Available online: http://parlinfo.aaph.gov.au/parlInfo/genpdf/chamber/hansardr/2003-11-25/0134/hansard_frag.pdf;fileType%3Dapplication%2Fpdf.

57. Pursuant to section 8(2)(b)(iii) of the EFIC Act, EFIC Environment Policy requires EFIC to 'have regard to' as opposed to 'comply with' international agreements and laws.

58. See Karyn Keenan, *Export Credit Agencies and the International Law of Human Rights*, Halifax Initiative, January 2008, available online: <http://198.170.85.29/Halifax-Initiative-Export-Credit-Agencies-Jan-2008.pdf>.

59. See, in particular paras 39-41, John Ruggie, *Protect, Respect and Remedy—A Framework for Business and Human Rights: Report of the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises*, Human Rights Council, 7 April 2008, Available online: <http://www.reports-and-materials.org/Ruggie-report-7-Apr-2008.pdf> See also Daniel Bodansky & John R. Crook, 'Symposium: The ILC's State Responsibility Articles: Introduction and Overview', 2002, 96 *American Journal of International Law* 773, p. 790 cited in Özgür Can & Sara L. Seck, *The Legal Obligations with Respect to Human Rights and Export Credit Agencies*, July 2006, available online: <http://halifaxinitiative.info/updir/ECAHRlegalFINAL.pdf>.

60. John Ruggie, *Protect, Respect and Remedy*.

GOLD RIDGE MINE, SOLOMON ISLANDS

Case Study



Markets on
Guadalcanal,
Solomon
Islands

Credit: Steph
Lusby/JUBILEE
AUSTRALIA

Political economy of the Solomon Islands

The Solomon Islands is an archipelagic state in the South West Pacific comprised of natural resource based communities and fragile ecosystems such as rainforests, coral reefs and mangroves.⁶¹

The developing island-nation is a country in transition from recent civil conflict. The situation was thought serious enough to require an international intervention to be deployed to restore law and order to the country.⁶² Despite the conflict having officially ended over six years ago, tensions continue to simmer below the surface, with socio-cultural relationships on the main island, Guadalcanal remaining complex and fragile.⁶³

Since the deployment of the Regional Assistance Mission to the Solomon Islands (RAMSI), economic growth has averaged seven per cent and macroeconomic stability has been maintained.⁶⁴ Much of this growth, however, relies on unsustainable logging.⁶⁵ The Solomon Islands face large external public debt and high levels of inflation.⁶⁶ At least 75 per cent of the population is engaged in subsistence agriculture.⁶⁷ Most manufactured goods and petroleum products are imported. The population is one of the fastest-growing in the world and per capita income is the lowest in the region.⁶⁸ Furthermore, the global financial crisis has lessened demand for the few commodities exported by the Solomon Islands.⁶⁹

61. See World Bank, *Solomon Islands at a glance*, 24 September 2008.

62. Since 2003 police officers, armed forces personnel and technical advisors from around the region, including Australia, have been deployed to the Solomon Islands as part of RAMSI (Regional Assistance Mission to the Solomon Islands). RAMSI has since evolved into a broader project focusing on concerns like governance reform although its remaining presence in the country is not universally welcomed.

63. Eddie Osifelo, 'Situation here still fragile says Boyers', *Solomon Star*, 8 December 2009, available online: http://solomonstamews.com/index.php?option=com_content&task=view&id=13921&change=71&changeown=78&Itemid=26.

64. Asian Development Bank (ADB), *Asian Development Bank and Solomon Islands Fact Sheet*, April 2009, p. 1, available online: www.adb.org/Documents/Fact_Sheets/SOL.pdf.

65. ADB, *Asian Development Bank and Solomon Islands Fact Sheet*, April 2009, available online: www.adb.org/Documents/Fact_Sheets/SOL.pdf.

66. World Bank, *Solomon Islands at a glance*, 24 September 2008, Available online: http://devdata.worldbank.org/AAG/slb_aag.pdf.

67. New Agriculturist, *Country Profile – Solomon Islands*, November 2008, Available online: <http://www.new-ag.info/country/profile.php?a=585>.

68. Asian Development Bank, *Asian Development Bank and Solomon Islands Fact Sheet*, April 2009, p. 1, Available online: www.adb.org/Documents/Fact_Sheets/SOL.pdf.

69. Australian Government – Department of Foreign Affairs and Trade, *Solomon Islands Country Brief*, September 2009, Available online: http://www.dfat.gov.au/geo/solomon_islands/solomon_islands_brief.html.

The Solomon Islands' economy is dominated by primary products, especially timber. In 2007, forestry provided about 50 per cent of the country's foreign exchange and 30 per cent of Gross Domestic Product (GDP), but its contribution to GDP is expected to diminish given unsustainable rates of extraction.⁷⁰



Marley Tanito is 24, and lives in Kuara Village. She has three children, including Mary, 2. She is concerned about how her community—and her children—will be affected by mining waste held in a dam and the reopening of a gold mine upstream from her village.

"For us women, we are worried. If the dam overflows, we have problems, for our gardens and the water we drink. We are worried about the children's water."

Credit: Lara McKinley/ Oxfam Australia

The civil unrest in 2000 negatively affected plantation agriculture— since then exports of palm oil and copra have not met pre-2000 levels. Seafood exports— especially tuna— were significant before 2000, but income from this industry also decreased since 2000 and is yet to recover.⁷¹

The Solomon Islands holds reserves of gold, nickel, bauxite and manganese. There is debate surrounding the size and value of these reserves. Industrial-scale mining in the Solomon Islands has not yet resumed since the closure of the Gold Ridge mine. A number of significant developments are in progress in addition to Gold Ridge. Japanese company Sumitomo Metal Mining is carrying out exploratory drilling for nickel on Choiseul and Santa Isabel islands;⁷² on Guadalcanal, Australian-based Solomon Gold PLC and large US gold producer Newmont Mining are exploring copper and gold⁷³ and New Zealand-based Phoenix Mining plans to develop a major alluvial gold mining operation on the island;⁷⁴ offshore, Nautilus Minerals, listed on the London Stock Exchange but operating out of Queensland, began exploration for deep-sea gold, copper and zinc deposits in October 2009.

Income from mining is touted by the Solomon Islands Government and bilateral and multilateral partners as the economic panacea for the Solomon Islands' economy. They claim that mining has the capacity to contribute up to 30 per cent of the country's GDP.⁷⁵ But these figures may downplay the reality of resource exhaustion through over-exploitation.

The full impact of the global financial crisis is expected to be severe on the Solomon Islands. Poor social infrastructure limits the level of protection offered to women and children during times of vulnerability and exacerbates existing problems. The decrease in export demand and the reduction in commodity prices make the export-reliant country economically vulnerable. These declines will impact levels of spending and investment options for the government.⁷⁶

Predicted growth for the Solomon Islands in 2009 has fallen from 2.5 to zero per cent. The forecasted reduction in exports will be the biggest contributor to this stagnation in GDP. Government expenditure has been reduced by 35 per cent in response to poor earnings, with the country's development budget experiencing the biggest adjustment.⁷⁷

70. Australian Government – Department of Foreign Affairs and Trade, *Solomon Islands Country Brief*, September 2009, Available online: http://www.dfat.gov.au/geo/solomon_islands/solomon_islands_brief.html.
71. C. Moore, D. Brereton, & K. Clements, *Building a Framework for Sustainable Minerals Development in Solomon Islands*, 2008, Available online: http://www.aph.gov.au/Senate/committee/FADT_CTTE/swpacific/submissions/sub06.pdf.
72. Asian Development Bank, *Solomon Islands*, 2009, Available online: http://www.adb.org/documents/books/business_reference_guides/big/sol.pdf.
73. Moffat Mamu, 'The search for nickel continues', *Solomon Star*, 26 November 2009, Available online: http://solomonstarnews.com/index.php?option=com_content&task=view&id=13560&Itemid=26&change=1&changeown=78/.
74. Solomon Gold PLC, *Announcement to London Stock Exchange: Solomon Gold executes definitive Venture Agreement with Newmont on Guadalcanal Projects*, 5 March 2009, Available online: <http://www.solomongold.com/documents/2009.03.05JVNewmont.pdf>.
75. Alfred Sasako, 'Phoenix begins pre-mining activities', *Solomon Star*, 7 December 2009, Available online: http://solomonstarnews.com/index.php?option=com_content&task=view&id=13857&Itemid=26&change=71&changeown=78.
76. Alfred Sasako, 'Phoenix begins pre-mining activities'.
77. W. Parks with D. Abbott, and A. Wilkinson, *Protecting Pacific Island Children and Women During Economic and Food Crises: A Working Document for Advocacy, Debate and Guidance*, July 2009, Available online: http://www.undppc.org/fj/resources/article/files/Pacific_GEC_children_and_women_final_edition_one.pdf and Simon Feeny, 'The Impact of the Global Economic Crisis on the Pacific', *Oxfam Australia*, November 2009, p 17.
78. Asian Development Bank, *Pacific Economic Monitor: November 2009*, Available online: <http://www.adb.org/Documents/Reports/PacMonitor/pem-issue01.asp> and Simon Feeny, 'The Impact of the Global Economic Crisis on the Pacific', *Oxfam Australia*, November 2009 p. 17.

The Gold Ridge mine, Solomon Islands

Gold Ridge's troubled first life

Gold Ridge is located upstream from the Tinuhulu River on the main island of Guadalcanal, 30 km from Honiara. In 1997 an original mining lease covering 30km² and a surrounding Special Prospecting License covering 130km² were issued to Ross Mining under the Mines and Minerals Act. Contained within the boundary of the licences were four separate gold deposits called Valehaichichi, Namachamata, Kupers and Dawsons.

Gold Ridge was the first large scale mine to be developed in the country and remains the only mine to have reached production phase. The project was operated by Ross Mining subsidiary Gold Ridge Mining Limited (GRML), and the first gold was poured in August 1998.

For the communities and families represented by the Gold Ridge Landholders Council Association (GRLCA), the start of industrial scale mining meant an end to panning alluvial gold as a major source of income, plus immediate relocation to Lungga, Tataona and Obu Obu settlements.⁷⁸ GRLCA represented 16 landowner groups which held rights to land in or around the mine pit and/or the processing plant. In 1996, they struck an agreement with Ross Mining for monetary compensation and resettlement assistance. In contrast, the Kolobisi Tailings Dam Association (KTDA)— formed in 1998 as a representative body for communities living around and affected by

the mine's dam— was not able to reach an agreement on compensation, consultation or resettlement with the respective companies despite continued lobbying.⁷⁹

Less than 12 months after the Gold Ridge mine commenced operation, an armed clash occurred near the site between the Solomon Islands Government and the Guadalcanal Revolutionary Army. The conflict had its roots in land pressures that resulted from the expansion of Honiara and from the migration of people from the adjoining island of Malaita, who had been attracted by the prospect of jobs in the palm oil plantations and at the Gold Ridge mine.⁸⁰ The mine was not a direct target in the conflict and operations at that time were not affected.

Ross Mining tried to reassure financial markets that production would not be affected by the conflict, but the company nevertheless experienced high absenteeism among the Malaitan workforce. The mine was forced to close prematurely and all staff evacuated in June 2000— less than two years after commencing production. Only weeks before the closure, Ross Mining was involved in a takeover by Sydney-based Delta Gold, who took ownership of the mine in May 2000. The original landowners resettled in the mining area after the closure.

ASG and Gold Ridge's second life

In 2004, newly incorporated company Australian Solomons Gold (ASG) bought the Gold Ridge mine and its assets. One year later, it took control of GRML and announced its intention to reopen the mine. Although the mine had been abandoned, analysts concluded that it had seven years of production remaining— or 1.15 million ounces of probable reserves across the four deposit sites.⁸¹

A Bankable Feasibility Study (BFS) was needed by ASG to attract financing for the project. The BFS would include a comprehensive analysis of the project's economic potential as well as a discussion of the relevant geological and environmental issues. ASG applied to EFIC in early 2005 for political risk insurance (PRI) coverage in order to finance the study.

Having categorised completion of the Gold Ridge BFS as a Category B project,⁸² in May 2005 EFIC approved PRI to the value of \$52.3 million, enabling the company to finance the study.⁸³

Sometime in 2007, ASG lodged a second PRI application with EFIC for activities relating to the operation of the mine itself.⁸⁴ The second application was publicly disclosed by EFIC in August 2008. ASG told the market in April 2008 it expected the PRI by September that year.⁸⁵ ASG's confidence that the PRI would be secured was clear from this statement in August the same year:

78. AMC Consultants Pty Ltd, *Gold Ridge BFS Review*, Commonwealth Secretariat Economic and Legal Section, November 2007, p114.

79. Jubilee Australia interview with Primo Amusaea, Chairman of the KTDA, 6 March 2008.

80. Bob Burton, 'Solomons gold mine becomes bone of contention', *Asia Times*, 21 July 1999, Available online: <http://www.atimes.com/oceania/AG21Ah01.html>

81. Bob Burton, 'Solomons gold mine becomes bone of contention'.

82. Some local communities raised concerns to Jubilee Australia regarding whether this rating was appropriate given that, among other activities, the drilling at the four gold deposit sites did have a range of environmental impacts. Given that research conducted for this report was undertaken some 18 months after the expiry of the insurance provided for the BFS, there was limited capacity and scope to make comparative investigations as to the extent of actual impact from ASG feasibility research (including some drilling and other operations which may have further disrupted sediment at the mine). Anecdotal evidence from communities suggests however that since 2005, when activity in various forms has restarted at the mine, villages at various points on the Tinuhulu and Matepono rivers have been impacted.

83. *EFIC Environment Policy*, clause 4.4.4.

84. ASG has recently said that this second claim is expected to cover 'mining equipment, power generation equipment, and certain put option hedging facilities'. See Australian Solomons Gold Limited, *Annual Report for the Year Ended 30 June 2009*, Available online: <http://www.solomongold.com.au/assets/File/Annual%20Report%202009.pdf>, p.3.

85. See Australian Solomons Gold Limited, *Update on Gold Ridge Project Finance Facilities*, 8 April 2008, Available online: http://www.solomongold.com.au/files/08-03-07_Update_on_Gold_Ridge_Project_Finance.pdf.

The process of obtaining PRI for the proposed project debt and equipment leasing facilities will involve further due diligence by EFIC of environmental and social issues affecting the Gold Ridge Project. The policy is expected to be issued under an approval of the Australian Federal Cabinet, given Australia's commitment and support of the Solomon Islands through aid and its leading role and support of the ongoing role of the Regional Assistance Mission to the Solomon Islands ('RAMSI').⁸⁶

The above quote shows that support for ASG and the Gold Ridge mine's reopening has always been linked to Australia's national interest considerations.

ASG estimates the total cost of the mine redevelopment to be US\$134 million. US\$30 million will come from the International Finance Corporation (IFC), the World Bank's private lending arm, and US\$25 million from the European Investment

Bank.⁸⁷ The remaining balance of project funding is expected to come from shareholder equity. The recent proposed takeover of ASG by Australian consortium Allied Gold is not expected to change the original plans to restart onsite production by 2011.⁸⁸

In a volatile political environment like the Solomon Islands, raising capital for the mine would be essentially impossible without EFIC (or a similar institution— like another export credit agency) providing security to investors via PRI. The importance of PRI is evidenced by the fact that this mine has failed once already; only the political risk insurance policy, paid out in 2004, saved investors from big losses. It is not an exaggeration to say that the chance of the Gold Ridge mine reopening now rests on EFIC's decision about whether to provide ASG with a PRI policy.⁸⁹

EFIC due diligence: problems

In 2007, Jubilee Australia began an investigation into ASG's plans to redevelop the mine, in order to gather case study material on EFIC's social and environmental assessment processes. The investigation consisted of a site visit to Guadalcanal in March 2008 and subsequent desk-based research. In the course of this investigation of ASG's conduct surrounding the Gold Ridge mine, two particular areas of concern emerged: the process of assessment of environmental and social impacts of the mine; and the process of approving political risk insurance. A third area of concern relating to the company's conduct around the PRI decision itself came to light more recently.

1) The probity of landowner agreements

In 2006, ASG signed an agreement with the Kolobisi Tailings Dam Association (KTDA) and the Matepono Downstream Association, an equivalent council representing downstream communities. A subsidiary agreement was also signed with the landowners at Gold Ridge containing clauses to protect and compensate communities for forest loss at Kolovisi (a village at the top of the mine site) and for destruction of sacred sites.⁹⁰

The mining lease is subject to a gross royalty of 1.5 per cent, of which 1.2 per cent is held by Gold Ridge landowners and with 0.3 per cent going to Guadalcanal provincial government. An additional 1.5 per cent of the gross value of production is payable to the Solomon Islands Government as an export duty.

It has come to light recently that there may have been improper behaviour in the way the company acquired the assent of landowners for these latest agreements. Jubilee Australia has been informed by confidential sources that company representatives may have acquired the landowner signatures in a manner which seriously violates clause 9 of the IFC Performance Standard 7 on Indigenous Peoples. Clause 9 of the IFC Performance Standard on Indigenous people includes the following sections:

"The process of community engagement will be culturally appropriate and commensurate with the risks and potential impacts to the Indigenous Peoples. In particular, the process will include the following steps:

- Involve Indigenous Peoples' representative bodies (for example, councils of elders or village councils, among others).
- Be inclusive of both women and men and of various age groups in a culturally appropriate manner. Provide sufficient time for Indigenous Peoples' collective decision-making processes.
- Facilitate the Indigenous Peoples' expression of their views, concerns, and proposals in the language of their choice, without external manipulation, interference, or coercion, and without intimidation."⁹¹

86. Australian Solomons Gold Limited *Australian Solomons Gold Ltd Preliminary Short form Prospectus* (published on www.sedar.com) August 23, 2007, p. 12.

87. Australian Solomons Gold Limited, *International Finance Corporation Approves Financing Facility*, 8 September 2009, available online: http://www.solomonsgold.com.au/files/080909__IFC_Press_Release.pdf. The European Investment Bank recently approved US\$25 million in November 2009. See Australian Solomons Gold Limited, *European Investment Bank Board Financing Approval*, 19 November 2009, available online: http://www.solomonsgold.com.au/files/191109__EIB_Board_approval_Press_Release.pdf.

88. Australian Solomons Gold Limited, *Annual Report for the Year Ended 30 June 2009*, available online: <http://www.solomonsgold.com.au/assets/File/Annual%20Report%202009.pdf>.

89. EFIC staff have confirmed to Jubilee Australia the crucial nature of attaining PRI for the project.

90. The compensation payment for the destruction of the sacred sites was said to be \$50,000. Jubilee Australia interview with Primo Amusaea, Chairman of the KTDA, 6 March 2008.

91. *International Finance Corporation's Performance Standards on Social and Environmental Sustainability*, pp 29-30.

During the course of its investigation, Jubilee Australia was also told that EFIC has been made aware of these violations. Via a Question on Notice in the Australian Senate, Jubilee Australia asked EFIC whether it possessed any 'documentation that highlights concerns about the probity of landholder agreements?' EFIC, through Minister for Innovation, Industry, Science and Research, Kim Carr, responded that it did indeed possess such documentation.⁹² Officials from Department of Foreign Affairs and Trade have also confirmed knowledge of documentation on this matter.⁹³

There could hardly be a more important aspect to the process of conducting operations in a developing country than the manner in which legal title for the project is acquired from the local landowners. In such cases, even the suggestion of improper conduct is a serious allegation which must be explored properly. Given the seriousness of the matter, Jubilee Australia wrote to EFIC on the 15 December 2009 requesting that the aforementioned documentation regarding this matter be released. On the following day EFIC responded that it was 'restricted from disclosing documentation concerning the affairs of other persons by the terms of section 87 of the *Export Finance and Insurance Corporation Act 1991*'.⁹⁴



Salome Taliau has four children and lives in Be Muta Village. She is pictured getting drinking water at the river. She says that when the mine opened, the mining officials only spoke with the men, promising clean water and electricity, which was never provided.

"They just spoke to the important men and they signed an agreement. After that they came to the village and spoke with the people, but they'd already signed the document. So even though the communities complained, it was over, because [the men] had already signed it."

Credit: Lara McKinley/Oxfam Australia



Nester Endey lives in Pitukole Village with her 10 children.

"Negotiations have only been done by the men. The women are not involved. The women really want to be in the negotiations, but the men dominate. The women want help from Oxfam so they can be part of the negotiations."

"Men are more interested in money. When they get money from the negotiations they get into alcohol. Very little [gets back] to the women and children."

Credit: Lara McKinley/Oxfam Australia

When women of communities downstream from the mine were interviewed by Oxfam Australia earlier this year, their responses confirmed that ASG did not follow IFC guidelines during the process of community engagement. One woman testified that: 'They just spoke to the important men and they signed an agreement. After that they came to the village and spoke with the people, but they'd already signed the document. So even though the communities complained, it was over, because [the men] had already signed it.'⁹⁵

Another commented: 'It would be better if the government and mine worked with the community, if they came and spoke to us when they wanted to do things.'⁹⁶

Still another said: 'Negotiations have only been done by the men. The women are not involved. The women really want to be in the negotiations, but the men dominate.'⁹⁷

92. 'Gold Ridge Mine, Question no 2366', *Australian Senate, Question on Notice*, 30 November 2009.

93. This was verbally confirmed at a meeting between Jubilee Australia and Department of Foreign Affairs and Trade in Canberra on 15 December 2009.

94. 'Email communication between Chief Credit Officer of EFIC John Pacey and Jubilee Australia, 16 December, 2009.

95. Interview with Salome Taliau from Be Muta Village by Lara McKinley on 27 February 2009, Oxfam Australia Mining Ombudsman website.

96. Interview with Jemimah John from Pitukole Village by Lara McKinley on 27 February 2009, Oxfam Australia Mining Ombudsman website.

97. Interview with Nester Endey from Pitukole Village by Lara McKinley on 27 February 2009, Oxfam Australia Mining Ombudsman website.

2) The assessment of environmental and social impacts

Given the risk of significant adverse environmental impacts, EFIC categorised ASG's second PRI request as Category A. So on after taking over the mine, ASG commissioned Golder Associates, a Canadian-based engineering and environmental service company, to do an environmental audit. The audit required more comprehensive research to be undertaken, including further drilling at the four gold deposit sites to determine mineralisation characterisation. The findings of the Golder environmental audit were incorporated into the aforementioned Bankable Feasibility Study (BFS). The BFS, published in May 2006, also included sections outlining the company's community relations strategy prepared again by Golder.

During its 2008 site visit Jubilee Australia found that unresolved environmental problems from the mine's first life were still troubling many of the local communities. It was widely believed that leakage of mine waste from the Tailing Storage Facility (TSF)—a giant dam created to store waste from the mine's ore processing operation— had led to contamination of the river system.⁹⁸ The dam, situated some 10 km downhill of the mine in close proximity to both the Matepono and Tinuhulu rivers, was left untended when the Gold Ridge mine was abandoned in 2000.

Many of the community members interviewed believed that seepage of mineral, chemical and acid waste from the mine's TSF into the Tinuhulu River had occurred because of a lack of filtering and incremental processing of chemical and heavy metal run-off. Anecdotal reports suggest that unsealed pit beds and improper disposal of chemicals caused chemical and acid mine drainage and contamination of water sources.⁹⁹ People at Be Muta, a relocated downstream village on the Matepono River, reported that for the previous two months, people had been experiencing rashes and skin problems after prolonged exposure to the water. The community was also concerned about the disappearance of the plant life (moss, algae etc) which used to cover the river's rocks.¹⁰⁰

Jubilee Australia found serious concern in the downstream communities that these problems would worsen once the mine re-opened. This fear was heightened by the fact that management plans to ensure water quality and marine ecosystem resilience had not been prepared or released.

The Commonwealth Secretariat Review

The concerns expressed to Jubilee Australia found confirmation in a report prepared for the Solomon Islands Government. Worried about the veracity and independence of the BFS, but lacking the institutional capacity to carry out its own review, the government requested that the Commonwealth Secretariat assist by providing a comprehensive review of the BFS.¹⁰¹

The Commonwealth Secretariat Review, published in November 2007, concluded that the potential release of soluble metals (especially arsenic) from the TSF, waste rock dump and pit walls into the surrounding environment were the key environmental management challenges for the mine owners and operators. It concluded that:

*More thought would need to be given to mine closure, including a release of mine closure plans earlier than had been at that time proposed, in order to remedy this potential leakage.*¹⁰²

*A likely excess of water on the site of the tailings dam could lead to the risk of leakage into the water system, and the review recommended a number of remedies be implemented to deal with this problem.*¹⁰³

Second, the review found that insufficient environmental monitoring and data collection had taken place, and that new systems needed to be put in place before the mine could be reopened:

*Baseline groundwater monitoring appeared not to have been undertaken by Golder, meaning that there was little documentation of the conceptual hydrogeology of the area and of the baseline groundwater quality.*¹⁰⁴

*This groundwater monitoring needed to be improved due to the risk of contamination of the groundwater from arsenic.*¹⁰⁵

*Baseline climate and rainfall data, upon which assumptions about tailings dam management relied, was not site specific nor based upon credible long term measurements. It recommended that there needed to be 'significant emphasis' placed on collection of this data before the mine re-opened.*¹⁰⁶

98. Seven years of tropical rainfall had filled the dam to near capacity by 2007.

99. Confidential interview with resident from a downstream community, 7 March 2008 (interviewee asked that identity be kept anonymous).

100. Concerns raised with Jubilee Australia researcher at the village of Be Muta, 2 March 2008.

101. For the most part, data was taken from information provided by previous owners Ross Mining in their Environmental Management Plan and Environmental Impact Assessment. Interview Joe Horokou, Director Environment Ministry, Solomon Islands Government, 6 March 2008.

102. AMC Consultants Pty Ltd, *Gold Ridge BFS Review*, p.90.

103. Water would need to be removed from the dam prior to restart and that an 'evaporation farm' would need to be established within the dam catchment area. See AMC Consultants, *Gold Ridge BFS Review*, p.76.

104. AMC Consultants, *Gold Ridge BFS Review*, p.93.

105. AMC Consultants, *Gold Ridge BFS Review*, p.v.

106. AMC Consultants, *Gold Ridge BFS Review*, p.91

Third, the Commonwealth Secretariat Review found no resettlement plan in place, no eligibility criterion for resettlement and compensation, no real data on existing land tenure of displaced persons and no plans for public consultation or disclosure.¹⁰⁷ These issues were also at the forefront of community concerns when Jubilee Australia visited in 2008.¹⁰⁸

Recent developments

In March 2008, ASG released a Relocation Action Plan. Following this, in May 2009, ASG released a series of Action Plans on resettlement, environmental management, community relations and economic benefits.¹⁰⁹ ASG made clear that the release of these recent Action Plans was a requirement imposed upon it by the IFC in order to receive financing.¹¹⁰

Jubilee Australia raised its concerns about ASG's social and environmental management in discussions with EFIC staff during 2008 and 2009. EFIC's position was that it would not require ASG to release further environmental management plans before making its final decision on the second PRI application, confirming Jubilee Australia's conclusion that the release of the Action Plans were the result of pressure from the IFC rather than EFIC.

In the meantime, concerns continue to be raised about the pollution of the water from the alleged tailings dam leakage. Interviews conducted earlier this year by Oxfam Australia revealed that villagers downstream are continuing to experience the same problems with pollution of their river system as were reported in 2008. Ella Lydie, for example, told Oxfam: 'We don't think it's safe. Sometimes we see particles coming down, like dirty oil and sometimes things irritate our skin.'¹¹¹

In June 2009, three mine employees suffered cyanide poisoning as a result of leakage from one of the mine's tanks. Allegations of labour unrest and racial abuse also surfaced at this time.¹¹²

3) The process of approving political risk insurance

In recent months, ASG has made a number of announcements suggesting that its application for a PRI policy from EFIC has been effectively approved. On 4 September 2009, EFIC released a press statement saying that ASG would receive PRI 'subject to a number of conditions'. Furthermore, ASG's 2009 Annual Report stated: 'Another significant development was the *approval* of Political risk insurance (PRI) ... to be issued through the Export Finance & Investment Corporation [sic], a division of the Australian Commonwealth Government' (emphasis added).

Jubilee Australia sought further clarification from EFIC on the ASG announcement with a Question on Notice through the Australian Senate. In response to the question, EFIC stated through the Minister for Innovation, Industry, Science and Research that: 'In 2009, the provision of PRI was conditionally approved for the proposed redevelopment of the mine. A policy has not yet been issued.'¹¹³ Jubilee Australia subsequently wrote directly to EFIC, this time seeking clarification on the meaning of 'conditional approval'. EFIC replied that it was 'a condition of the Government's approval of the PRI that EFIC be satisfied with the environmental and social management aspects of the Gold Ridge mine project'.¹¹⁴ This answer suggests that EFIC will be requiring more answers or actions from ASG relating to its environmental and social management of the mine.

The facts appear to support the conclusion that ASG announced it would soon receive PRI without acknowledging the requirements that are still to be met. Jubilee Australia directly asked EFIC whether it believed that the timing of the announcement was improper. EFIC gave no response.¹¹⁵

107. AMC Consultants Pty Ltd, *Gold Ridge BFS Review* Appendix B and p.107.

108. Some downstream communities worried that they would receive their fair share of benefits, including community development programs. Director of Mines – Peter Auga (2005) Case Notes on discussions held with Be Muta, Pitukoli, Keamami, Tutume, Komuvaolu.

109. Jubilee Australia welcomed the release of these action plans as it was in the process of calling for EFIC to do just this.

110. Australian Solomons Gold Limited, 'Public Disclosure Period with IFC', 19 May 2009, Available online: http://www.solomonsgold.com.au/files/190509_-_IFC_Public_Disclosure_Release.pdf.

111. Interviews by Lara McKinley on 27 February 2009, Oxfam Australia Mining Ombudsman website.

112. Nick O'Malley, 'A Legal Minefield', *The Sydney Morning Herald*, 10 June 2009, Available online: <http://www.smh.com.au/world/a-legal-minefield-20090609-c29c.html>.

113. 'Australian Solomons Gold Limited (ASG), Question no 2364', *Question on Notice: Australian Senate*, 30 November 2009.

114. Email communication between Chief Credit Officer of EFIC John Pacey and Jubilee Australia, 16 December 2009.

115. Email communication between Chief Credit Officer of EFIC John Pacey and Jubilee Australia, 16 December 2009.



Ella Lydia has five children and lives in Be Muta Village, downstream of the Gold Ridge mine.

"The people from the gold mining company told us there was nothing dangerous coming down the river, [that] it's safe. They said, 'You guys don't have to worry because even though there's chemicals coming down or oil, it won't harm you.'

"We don't think it's safe. Sometimes we see particles coming down, like dirty oil and sometimes things irritate our skin. There is a lot of disease and sickness here, but we are not sure if [it's] from the water or from something else."

Credit: Lara McKinley/Oxfam Australia

Conclusion

Jubilee Australia's investigation into ASG's conduct in the reopening of the Gold Ridge mine raises a number of questions about the effectiveness of EFIC's due diligence in evaluating support for difficult and risky projects, and about the wisdom and transparency of the actual decisions made.

First, evidence of improper conduct on behalf of ASG in the acquisition of landowner agreements is a serious cause for concern. Without the release of documentation relating to these allegations, Jubilee Australia is unable to confirm that the landowner agreements obtained by the company are bona fide. Jubilee Australia recommends that EFIC suspend any consideration of granting PRI to ASG/Allied Gold until this matter has been fully explored. If it eventuates that the behaviour of ASG was improper, Jubilee Australia would argue that any consideration of a second PRI policy be immediately dropped.

Second, Gold Ridge is a mine with an extremely chequered past. The mine is directly linked to the extremely destructive period of violence that unfolded during the early 2000s. This unrest set back Solomon Islands development and created deep rifts along community and ethnic group lines. Furthermore, the mine has a legacy of environmental problems, with many of the local people convinced that the pollution from the first Gold Ridge mine is still damaging their waterways and affecting their way of life.

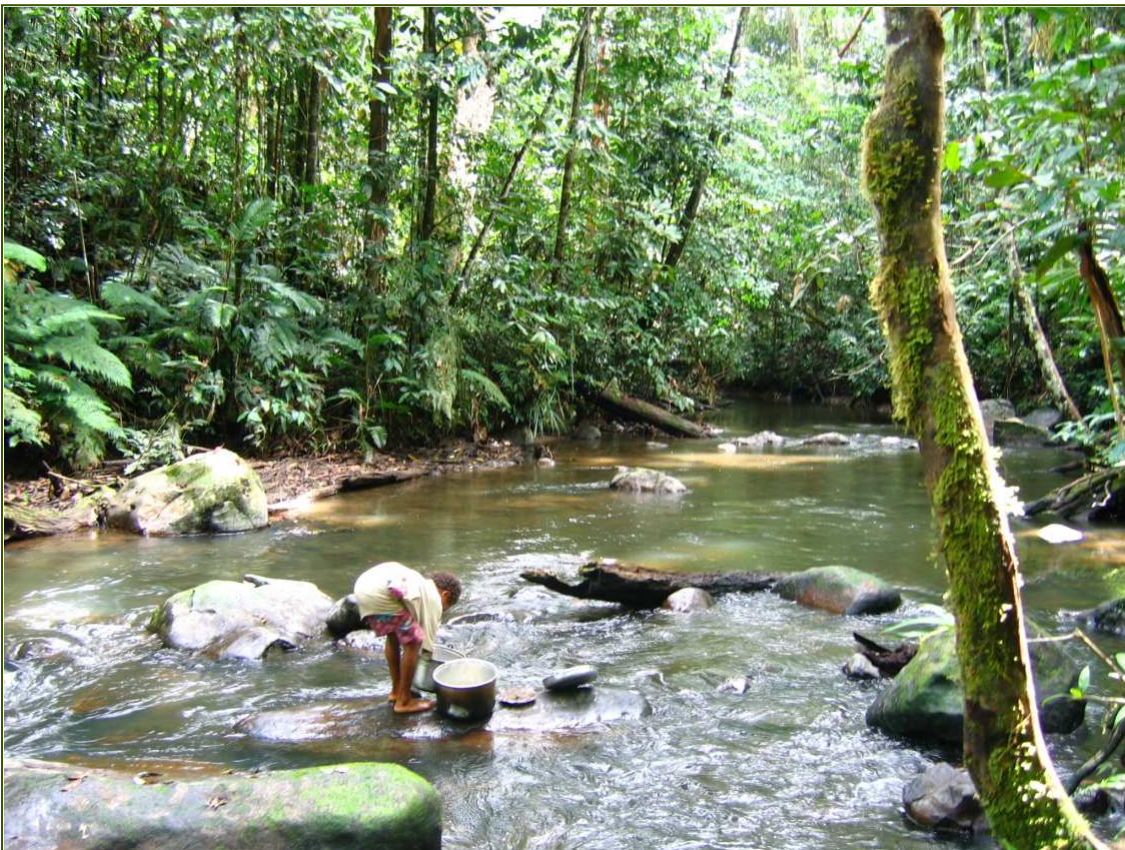
One would expect, in such a context, that EFIC would have taken great steps to verify allegations about poor social and environmental data collection, consultation and assessment. Instead, our investigation raises doubts about the due diligence EFIC was willing and able to undertake in regard to the social and environmental impacts of the mine, and about the quality of assessments and management plans prepared of the company. In summary:

Jubilee Australia has uncovered evidence of incomplete data and analysis in the company's environmental audit. These concerns were noted by the Solomon Islands Government, who felt it necessary to ask for an independent analysis via the Commonwealth Secretariat. It is hard to escape the conclusion that if the Commonwealth Secretariat had not commissioned an independent audit, these environmental concerns would not have come to light.

Had it not been necessary for ASG to turn to the IFC for funding, there is no evidence that the recommendations of the Commonwealth Secretariat Review would have been implemented, in particular the swift release of Action Plans.

Finally, questions should be asked about whether it was appropriate for ASG to announce that it was to receive PRI from EFIC before a policy has been issued, and without referring to the type of conditions attached to the issuance of that policy. More importantly in this case, questions should be asked about whether it is appropriate for EFIC to extend 'conditional approval' of PRI when the conditions relate to social and environmental aspects of the project. Jubilee Australia concludes that EFIC should not be allowed to provide any interim approval of financing or insurance to clients until all environmental and social requirements are met.

PNG LNG PROJECT: Case Study



Forest River
PNG

Credit: Karen Iles/
AIDWATCH

Political economy of Papua New Guinea

The majority of Papua New Guinea's 6.4 million population — over 80 per cent— live in rural, semi-agricultural communities. Spread over 600 islands, there is deep poverty and underdevelopment across the country.

PNG is rich in natural resources — it was once called a 'golden country on a bed of oil'.¹¹⁶ It has an extensive mining history focusing primarily on large scale mining and extractive projects including copper, nickel, gold and natural gas. In 2002 extractive activities contributed to over 20 per cent of PNG's GDP and approximately 75 per cent of exports.¹¹⁷

Its abundance of natural resources has led to boom periods of economic growth, but this growth has been uneven due to fluctuations in international resource prices. There have been approximately eight large scale PNG mine projects in recent years, including Ok Tedi, Lihir, Misima, and the Panguna mine in Bougainville.

Although the extractive sector is the largest of the PNG economy, approximately one quarter of its exports come from the agricultural sector, particularly coffee, palm oil and cocoa.

116. Matilda Koma, 'Benefits of Greater Transparency (Speech)', *EITI Conference*, 2006, available online: <http://www.eitioslo.no/Speeches/speech+koma.htm>.

117. Satish Chand, *PNG Economic Survey: Some Weak Signs of Recovery*, December 2003, p.7, available online: <http://dSPACE.anu.edu.au:8080/bitstream/1885/40141/3/chand2003.pdf>.

Papua New Guinea's social development

GDP growth over the past few decades from mineral and oil exports have had little impact on social development in PNG. The United Nations Human Development Index (HDI) attests that although GDP has significantly grown over the past two decades, human development has not matched this growth.¹¹⁸ Over 50 per cent of the population lives in poverty with over one million people living in areas without access to education, health or transportation. Additionally, PNG was ranked among the bottom 20 per cent of all countries on the UN HDI.¹¹⁹

Despite the rise in GDP, PNG's HDI rank has dropped from 126th out of 172 in 1995 to 146th out of 177 in 2008. Furthermore, PNG's HDI score has declined since 2000 to levels lower than those achieved in 1995. National poverty levels have also risen. The proportion of the population in poverty increased from 37.5 per cent in 1996 to almost 54 per cent in 2003.¹²⁰

Economic disparity within PNG is pronounced. In 1996, it was reported that the poorest 10 per cent of the population had access to only 1.7 per cent of national GDP, whereas the richest 10 per cent had access to 56.5 per cent of state revenues.¹²¹ The GINI coefficient— measuring a country's levels of inequality— ranks PNG as one of the worst in the South Pacific region with a score of 51.¹²²

In spite of the growth in GDP and government revenue, basic service delivery has declined.¹²³ Problems of transportation, infrastructure, and education delivery have been acknowledged as areas of concern by the government, yet few changes have taken place and infrastructure continues to erode.¹²⁴

Interestingly, as mining sector revenues, and consequently GDP, declined by almost 50 per cent in the mid 1990s, poverty increased only 14 per cent. As the World Bank Poverty Assessment affirmed:

*'The decline in the mining sector has had only a small effect on household welfare because the sector employs few workers, and because its enclave structure limits its impact on other economic activities.'*¹²⁵



PNG kids

Credit: Karen Iles/AIDWATCH

PNG mining sector and the resource curse

It is debatable whether PNG's social development has benefited from the lucrative oil and mineral riches in the country. This fact will not surprise anyone familiar with the plight of resource-rich developing countries, which all too often are unable to reap promised benefits from their ample wealth. This phenomenon has become known in the literature as the 'resource curse'.¹²⁶ Unfortunately, PNG— like the Congo and Nigeria— is a typical resource curse country. It has remained mired in endemic poverty, corruption, conflict, and environmental destruction despite, or perhaps because of, its mineral wealth.

PNG exhibits characteristics typical of a country suffering the so-called resource curse in a number of ways:

Crowding out other productive sectors

A chief problem of resource-dependent economies is that more productive elements of the economy tend to suffer when a resource boom occurs. Non-mining sectors of the economy are far more important in improving the general standards of living and reducing poverty than the extractive sectors, which employ fewer people and have self-limiting life spans.

118. United Nations Development Programme (UNDP), *Human Development Index 1990-2008*, 2009, available online: <http://hdr.undp.org/en/statistics/>.
119. UNDP, *Human Development Report 2009 – HDI rankings*, 2009, available online: <http://hdr.undp.org/en/statistics/>.
120. World Bank, *Papua New Guinea: Poverty Assessment*, 30 June 2004, p.vii, available online: <http://siteresources.worldbank.org/INTPAPUANUEWGUINEA/Resources/PA-Report.pdf>.
121. UNDP, *Human Development Report 2007/2008 – Fighting Climate Change: Human Solidarity in a Divided World*, 2008, p.298, available online: <http://hdr.undp.org/en/reports/global/hdr2007-2008/>.
122. AusAID, *Impacts of HIV/AIDS 2005-2025, Papua New Guinea, Indonesia and East Timor: Final Report of HIV Epidemiological Modelling and Impact Study*, February 2006, available online: www.ausa.gov.au/publications/pdf/impacts_hiv.pdf.
123. Jenny Hayward-Jones, 'PNG budget goes for growth despite financial crisis,' *Lowy Institute for International Policy – The Interpreter*, 19 November 2008. Available online: <http://www.lowyinterpreter.org/post/2008/11/19/PNG-budget-strives-for-development-despite-financial-crisis.aspx>.
124. Asian Development Bank, *Priorities of the poor in Papua New Guinea: What is Poverty?*, 2009, available online: http://www.adb.org/Documents/Reports/Priorities_Poor/PNG/png0300.asp.
125. World Bank, *Papua New Guinea: Poverty Assessment*, 30 June 2004, p.19, available online: <http://web.worldbank.org/WBSITE/EXTERNAL/COUNTRIES/EASTASIAPACIFICEXT/PAPUANUEWGUINEAEXTN/0,contentMDK:21009246~pagePK:141137~piPK:141127~theSitePK:333767,00.html>.
126. For an overview of the 'Resource Curse' thesis see Matthias Basedau, 'Context Matters – Rethinking the Resource Curse in Sub-Saharan Africa', *Working Papers Global and Area Studies*, German Overseas Institute, May 2005, pp. 5-10, www.duei.de/workingpapers, Christopher Cramer, *Violence in Developing Countries: War, Memory, Progress*, Indiana University Press, Indiana, 2006, Chapter 3 and Ian Gary and Terry Lynn Karl, *Bottom of the Barrel*, Catholic Relief Services, June 2003.

Furthermore, most natural resource exploitation is performed by multinational companies which send revenues offshore and use expatriate skilled labour. To make matters worse, revenues that do flow into the economy from extractive industries can distort the exchange rate and spur high inflation, making it even harder for other infant industries to compete with a booming extractives sector— a condition known in economic literature as ‘Dutch disease’. Thus the abilities of states to invest in and develop more productive elements of the economy are compromised when natural resources are present.¹²⁷

The PNG economy has become dependent on extractive industries to increase GDP growth and encourage further investment.¹²⁸ This dependency has come at the expense of other industries within PNG, as acknowledged by the PNG government in the Medium Term Development Strategy 2005-2010 Report. However, as more than 80 per cent of the population lives in rural areas— with the majority of those living below the poverty line drawing their livelihoods from the agricultural sector—the growth of the mining sector does not assist poverty reduction and development.¹²⁹

Pockets of wealth, zones of conflict

When resource-heavy economies yield financial benefits they are often limited to small areas associated with particular projects. The number of local people financially dependent on the sector tends to be low compared to other sectors because the projects rely on highly skilled and trained expatriates for the majority of the project cycle. As a result, the economic contribution of the projects on development and poverty alleviation are limited, which itself can lead to social problems in the regions where the resources are located. Furthermore, the creation of pockets of wealth in and around certain locations can lead to competition for control of the resources, local-level corruption and even conflict.

This problem is evident in the case of PNG. Research has shown that the provinces that include the Pongera, Misima Island, and Lihir mines have developed at a lower rate than the national average. During the period between 1980 and 1996, these three regions ranked lower than average in school enrolment and life expectancy and suffered higher rates of infant mortality despite significant mining revenues and company payouts to local government.¹³⁰ This suggests that the wealth generated from mining benefits only those living closest to the mine and does not promote greater regional development. As published July 2009 in *The Australian* with respect to the Pongera mine:

Former prime minister Paias Wingti called the Pongera mine his ‘engine for growth’. But nothing much grew beyond the Pongera area. Instead, these super-projects have tended, especially during their construction phase, to inflate costs, boost the kina and diminish the opportunities for more sustainable businesses to emerge.¹³¹

Conflict resulting from mining revenue is common in many parts of the developing world. Conflict often occurs between local groups and the central government if groups feel they are receiving the costs— but not the benefits—of resource exploitation in their land. This problem has a deep history in the Melanesian region where mining has contributed to the emergence of conflict with economic roots concerning resource control and social roots involving complex domestic rivalries.¹³² The 10 year long conflict on the island of Bougainville, for instance, was largely due to discontent over the spoils from the Panguna copper mine (see Box 1).

Box 1: Extractive Industries Transparency Initiative (EITI)

The Extractive Industries Transparency Initiative aims to strengthen governance by improving transparency and accountability in the extractives sector.

The EITI is a coalition of governments, companies, civil society groups, investors and international organisations, which have committed to international standards that require signatory governments to publicly report on revenues from oil, mining and gas ventures so as to decrease the opportunity for corruption and waste by state officials.

Australia has committed to promote the EITI on an international level and to encourage resource rich states to implement the EITI. Australia is not itself an EITI implementing country.

Papua New Guinea is currently not a supporter of the EITI and appears to have no intention to implement these principles of transparency and accountability.

127. See J Sachs and A Warner, ‘The curse of natural resources’, *European Economic Review* 45, 2001, p. 827.
128. World Bank, *Papua New Guinea: Poverty Assessment*, 30 June 2004, p.ix, available online: <http://web.worldbank.org/WBSITE/EXTERNAL/COUNTRIES/EASTASIAPACIFICEXT/PAPUANEUGUINEAEXTN/0,contentMDK:21009246~pagePK:141137~piPK:141127~theSitePK:333767,00.html>.
129. Satish Chand, *PNG Economic Survey: Some Weak Signs of Recovery*, December 2003, p.3, available online: <http://dspace.anu.edu.au:8080/bitstream/1885/40141/3/chand2003.pdf>.
130. World Resources Institutes, *Mining and Critical Ecosystems: Mapping the Risks*, November 2003, p.24, available online: <http://www.wri.org/publication/mining-and-critical-ecosystems-mapping-risks>.
131. Rowan Callick, ‘Bereft of their own resources,’ *The Australian*, 4 July 2009, available online: <http://www.theaustralian.news.com.au/story/0,25197,25727815-2703,00.html>.
132. Glenn Banks, *Beyond Greed and Curses: Understanding the links between natural resources and conflict in Melanesia*, 9 April 2004, pp.8-9. Available Online: <http://www.epsusa.org/publications/policybriefs/banks.pdf>.

Management of revenues

Resource sectors tend to foster an array of governance problems. As the World Bank and others have pointed out, poor developing countries with weak governance often do not have the systems in place to manage resource revenues well or capably.¹³³ As a result, much of the revenues may be lost to corruption. As resource revenues rise, so too do the levels of corruption. In turn, weak governance and corruption have been identified as detrimental to resource allocation and the utilisation of export revenues.¹³⁴

The 2008 World Bank governance indicator identified PNG amongst the weakest 25 per cent of states in terms of regulatory quality, rule of law and control of corruption.¹³⁵ Furthermore, PNG's measure of corruption, as measured by Transparency International, ranked 154 out of 180 states in 2009¹³⁶ – a marked decline from 102 out of 145 states in 2004.¹³⁷

Although widely accepted that PNG's decline in GDP during the 1990s was due to mismanagement of resources and their revenues, Prime Minister Michael Somare attributed the country's social problems to migration concerns.¹³⁸ That the Prime Minister would make such a statement suggests a lack of seriousness in acknowledging the problem of corruption at the highest levels of government.¹³⁹ There is no clearer demonstration of this reluctance than PNG's continued refusal to become a candidate country for the Extractive Industries Transparency Initiative (see Box 1). Powerful forces remain which retard the move to good governance in PNG as is further evidenced by the attempted assassination on 11 December 2009 of PNG's Chief Ombudsman, Chronox Manek. The Ombudsman Commission, which investigates complaints and allegations of corruption against politicians and public servants, is currently investigating Prime Minister Somare, the Treasurer Patrick Pruaitch and other government figures.¹⁴⁰

Environmental destruction

As outlined in Part 2 with respect to the Gold Ridge mine in the Solomon Islands, environmental destruction often goes hand-in-hand with extractive industry projects in developing countries. Communities in developing countries are particularly vulnerable to the negative impacts of projects because these states often have weaker systems for environmental regulation and enforcement. Unfortunately, there is no shortage of such examples in the history of the PNG mining sector.

Box 2: PNG recent mining history

There have been numerous mining projects in PNG – many with Australian Government/EFIC financing – which have had long-term, destructive consequences for PNG communities and environments.

The **Ok Tedi mine**, previously owned by **BHP Billiton**, is well known for its environmental and social destruction. The impact of the tailings from the Ok Tedi mine have been enormous. Approximately 30 million tonnes of tailings have been swept down the Ok Tedi and Fly River systems every year since the 1990s. Ecological life in the region has all but disappeared and the surrounding environment has changed dramatically, with the river bed rising, outlying areas flooding and thousands of trees dying – affecting 50,000 people. The mine is slated for closure in 2013.

The **Lihir gold mine** is located in one of PNG's key biodiversity regions. Production started at the mine in 1997 and is likely to continue until 2023. The mine's use of submarine tailings yield tremendous environmental and ecological damage and violates the London Convention – a treaty relating to ocean dumping of which Australia is signatory. During the life of the mine it will dump approximately 89 million tonnes of cyanide contaminated tailings and 330 million tonnes of waste rock into the ocean, in an area described by ecological studies as one of the richest areas of marine biodiversity on earth.

EFIC's support for the project was widely criticised on environmental grounds. Indeed, the deficiency of the waste disposal plans was enough for US ECA Overseas Private Investment Corporation (OPIC) to back away from insuring the project because the plans contravened US law.

The **gold mine** on the island of **Misima** has reportedly caused serious levels of environmental destruction and contamination through improper closure plans. The dumping of wastes into the headways of creeks contaminated waterways throughout the island. Cyanide spills in August 2004 into waterways resulted in the death of fish and even reports of the death of a whale. Operators – Placer Dome and Oil Search – did not provide sufficient compensation for the losses incurred by the affected communities.

133. International Finance Corporation – The World Bank Group, *The Final Report of the Extractive Industries Review*, 3 August 2004, available online: [http://www.ifc.org/ifcext/eir.nsf/AttachmentsByTitle/FinalResponse/\\$FILE/EIRFinalResponse.pdf](http://www.ifc.org/ifcext/eir.nsf/AttachmentsByTitle/FinalResponse/$FILE/EIRFinalResponse.pdf)
134. World Resources Institutes, *Mining and Critical Ecosystems: Mapping the Risks*, November 2003, p.34, available online: <http://www.wri.org/publication/mining-and-critical-ecosystems-mapping-risks>
135. Cited in Asian Development Bank, *Asian Development Outlook 2008: Papua New Guinea*, 2008, available online: <http://www.adb.org/documents/books/ADO/2008/PNG.asp>
136. Transparency International, *Corruption Perception Index*, 2009, available online: http://www.transparency.org/policy_research/surveys_indices/cpi/2009
137. Transparency International, *Corruption Perception Index*, 2004, available online: http://www.transparency.org/policy_research/surveys_indices/cpi/2004 See also Asian Development Bank, *Asian Development Outlook 2008: Papua New Guinea*, 2008, available online: <http://www.adb.org/documents/books/ADO/2008/PNG.asp>
138. World Bank, *Papua New Guinea: Poverty Assessment*, June 2004, p. ix, available online: <http://go.worldbank.org/DQBENNBT0>
139. In April 2009, when questioned about the rate of poverty and starvation in PNG, Prime Minister Somare strongly disagreed with the presumption of poverty stating that 'our people have plenty in their villages.' See Commonwealth Government of Australia, *Joint Press Conference with the Right Honourable Grand Chief Sir Michael Somare*, 28 April 2009, available online: <http://www.pm.gov.au/node/5207>
140. See Liam Fox, 'PNG ombudsman survives suspected assassination', *ABC Radio Australia News*, 14 December 2009, available online: <http://www.radioaustralianews.net.au/stories/200912/2770886.htm?desktop>; 'PNG's anti-corruption boss left for dead', *The Sydney Morning Herald*, 14 December 2009, available online: <http://news.smh.com.au/breaking-news-world/pngs-anticorruption-boss-left-for-dead-20091214-kqx8.html>

(Box 2 continued)

Those seeking evidence of resource-based conflict in the country need look no further than **Bougainville**, where disputes over the spoils of the **Panguna copper mine** and the environmental destruction it caused led to a decade long civil war on the island. The Panguna mine was a vital aspect of the PNG economy, but the people of Bougainville felt they were not receiving the benefits from the PNG Government – Bougainville Copper Ltd venture. The high degree of environmental destruction to rivers and land exacerbated these tensions and conflict erupted. Civil war broke out in 1990 and after years of violence Bougainville eventually won its own autonomy from PNG.

Oil Search has also been involved in extraction of oil in the **Lake Kutubu** region, where toxic pollution leaked into waterways in 2007. Although Oil Search and the PNG Government have denied any involvement, after conducting a private and confidential investigation, locals insist that water contamination occurred after the commencement of drilling and ceased once drilling operations finished. It is alleged that the contamination of water and fish reserves caused various skin irritations, blistering, illnesses and resulted in the death of one child by poisoning. Oil Search and the PNG Government, however, have conflicting stories as to the reportage of the incidences. Oil Search claimed they reported the concerns to the Department of Environment and Conservation (DEC) immediately in May 2007, however, the DEC denied this and claimed they were not notified until October 2007.

EFIC was involved in many of the disastrous projects above, including the Kutubu project and the Ok Tedi, Lihir, Porgera and Panguna mines.

PNG mining sector

Mining legislation and policies are regulated by the government within PNG, primarily through the Department of Mining. The most significant policies stem from the *Mining Act 1992* (PNG). Underlying the Act is the notion that the government owns all minerals six feet below the surface of the ground, while landowners own the rights to ground surfaces.¹⁴¹ The Act dictates that compensation is payable to landholders 'for all loss or damage suffered or for seen to be suffered by them from the exploration or mining or ancillary operations.'¹⁴²

The PNG Government attempts to obtain a percentage of ownership of every extractive project in the country, most often through the state owned corporation Petromin. This company reports to the Public Enterprises Minister, a post currently held by Arthur Somare. Through Petromin's subsidiaries – the Mineral Resources Development Company and Eda Oil – the PNG Government maintains a vested interest over all mining projects and ensures some local ownership over projects.¹⁴³

Securing permissions from the local landowners

Under PNG law, no mining leases can be released by the PNG Government without the consultation and approval of the traditional PNG landowner groups affected. Given almost all of PNG is customary land, this effectively means that the relevant landowners must be party to any PNG mining or resources contract. A legally-mandated Development Forum, instituted through the Mining Act, must be held between the four actors involved: the local landowners, officials from both the national and provincial government, and the project sponsors. Development Forums finalise benefit sharing agreements – mandatory components of any mining or petroleum lease issued by the Federal Government.

Development Forums are also instituted under the Oil and Gas Act, which ensures the government conducts meetings with all affected landholders, developers and local government representatives to establish development agreements regarding the distribution of benefits. Government ministers are responsible for identifying which groups should be represented at these meetings and who should be the likely recipients of any revenues. In the past, provincial ministers have misappropriated funding by favouring specific groups, or even themselves as landholders. However, amendments have recently been introduced to ostensibly reduce these risks.¹⁴⁴

PHOTO LEFT: Part of an existing Oil Search Petroleum Development near Lake Kutubu. Credit: Damian Baker



141. Nellie James, 'An Overview of PNG's Mineral Policy', June 1997, 23 *Resources Policy* 97, p. 97.

142. *Mining Act 1992* (PNG), Part VII, Article 154(1).

143. Petromin PNG Holdings Ltd, *About Petromin*, 2008, available online: <http://www.petrominpng.com.pg/about.html>.

144. For a detailed discussion of the history of the Development Forum see Colin Filer, 'Development Forum in Papua New Guinea: Upsides and Downsides,' *Journal of Energy & Natural Resources Law*, 26, 2008, p 120.

The PNG LNG project

The PNG LNG project aims to exploit gas resources of the PNG Southern Highlands and sell the resulting LNG (Liquefied Natural Gas) on the open market, particularly to Asia. This will be the largest industrial/development project in PNG's history—it is projected to completely transform the PNG economy. It is one of the largest, if not the largest, development project in the Pacific region, excluding Australia. The official economic impact survey commissioned by the project sponsors claims that it will double the size of PNG's Gross Domestic Product.¹⁴⁵

The project will draw on the gas resources of the Hides, Angore, Juha, Gobe, Moran and Utubu fields. It is expected to have a life-cycle of 30 years with production beginning in 2013. The US\$15 billion project involves construction of:

- A gas pipeline running onshore from Juha to Hides, then to the coast near Kopi, then offshore to the LNG plant site.
- New onshore production facilities in the highlands, including a production facility at Juha and a conditioning plant at Hides where the condensate from the gas will be collected and transported by pipeline to Kutubu.
- A LNG processing and liquefaction plant near Port Moresby, plus a nearby export jetty and numerous marine offloading facilities.¹⁴⁶

Who is involved?

The project has four major sponsors: ExxonMobil through its subsidiary Esso Highlands (33.2 per cent); the Australian companies Oil Search (29 per cent) and Santos (13.5 per cent); and, the combined stake of PNG state corporation Petromin Holdings Ltd (0.2 per cent) and the Minerals Resources Development Corporation (2.8 per cent).¹⁴⁷ The final deal between the project sponsors and the PNG government was signed on 8 December 2009, the day of the Final Investment Deadline (FID).

So far, a number of Asian buyers have announced purchasing agreements for the gas, including the Tokyo Electric Power Company¹⁴⁸ and the China Petroleum Chemical Corporation (Sinopec),¹⁴⁹ plus other Japanese, Chinese, Indian and Korean interests.¹⁵⁰

Financing will come from both government and private sources, with approximately US\$14 billion in funding commitments having already been secured.¹⁵¹ Discussions between project sponsors and ECAs have been occurring for many months.¹⁵² As of December 2009, ECAs had collectively pledged about US\$8.3 billion in financing towards the PNG LNG project.¹⁵³ US ECA, Ex-Im, announced its support for US\$3 billion, making it Ex-Im's largest financing subsidy in its 75 year history.¹⁵⁴ Japan's JBIC signed on for US\$1.8 billion,¹⁵⁵ and Australian ECA, EFIC, signed on for US\$500 million.

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145. The Impact Assessment was carried out by ACIL Tasman for Exxon Mobil. See ACIL Tasman, *PNG LNG Economic Impact Study: An assessment of the direct and indirect impacts of the proposed PNG LNG Project on the economy of Papua New Guinea*, 6 February 2008, p.vi, available online: http://www.pnglng.com/media/pdfs/publications/acil_tasman_impact_study_revision_01.pdf.
146. Santos Limited, *ASX/Media Release – PNG – LNG Update*, 19 October 2009, available online: www.santos.com/library/191009_PNG_LNG_update.pdf.
147. See the following sources: PNG LNG, *A Joint Venture*, 2008, available online: <http://www.pnglng.com/project/coventures.htm>; PNG LNG, *Environmental Impact Statement*, 23 January 2009, available online: http://www.pnglng.com/commitment/environmental_impact_statement.htm; Matthew Murphy, 'Canberra backs PNG liquefied gas project with \$547m loan', *The Sydney Morning Herald*, 9 December 2009, available online: <http://www.businessday.com.au/business/canberra-backs-png-liquefied-gas-project-with-547m-loan-20091208-khp7.html>; Bamabas Pondros, 'It's a goer', *The National*, 9 December 2009, available online: <http://www.thenational.com.pg/?q=node/3798>; 'IPBC Gov'ts nominee for LNG project', *The National*, 9 December 2009, available online: <http://www.thenational.com.pg/?q=node/3775>.
148. Matthew Murphy, 'Tokyo the Latest to Sign for PNG Gas', *The Sydney Morning Herald*, 8 December 2009, available online: <http://www.smh.com.au/business/tokyo-latest-to-sign-for-png-gas-20091207-kfgf.html>.
149. Barnabas Pondros, 'Deal Hits Snag', *The National*, 7 December 2009, Available online: <http://www.thenational.com.pg/?q=node/3696>
150. See Barry Fitzgerald, 'PNG gas project partners net \$26.1bn sales deal', *The Age*, 23 June 2009, available online: <http://business.theage.com.au/business/png-gas-project-partners-net-261bn-sales-deal-20090622-cu1o.html>.
151. Matthew Murphy, 'PNG gas project go-ahead', *The Age*, 17 December 2009, available online: <http://www.theage.com.au/business/png-gas-project-go-ahead-20091216-kxm-q.html>.
152. Energy Intelligence Group, 'Mixed Picture For Energy Financing In Asia-Pacific', *El Finance*, August 2009, available online: http://www.energyintel.com/print_me.asp?document_id=630507.
153. Matthew Murphy, 'PNG gas project go-ahead', *The Age*, 17 December 2009, available online: <http://www.theage.com.au/business/png-gas-project-go-ahead-20091216-kxm-q.html>.
154. Petrobras, the Brazilian state oil company, received a US\$2 billion non-binding preliminary commitment from Ex-Im Bank for goods and service in May 2009. Ex-Im Bank's US\$3 billion in financing for PNG LNG is twice the \$1.5 billion in Ex-Im Bank's total financing for all oil, gas and LNG projects supported in Financial Year 2008. Ex-Im Bank's last LNG project, Peru LNG, received \$458,655,697 in 2008, less than one sixth the amount of financing for PNG LNG. Ex-Im Bank's largest financing package for an LNG plant was US\$930 million in 2005 for the Qatargas II LNG project in Qatar, less than one third of the financing for PNG LNG. Ex-Im Bank provided US\$30.4 million for renewable energy export in Financial Year 2008, a record amount, yet less than 2 per cent of Ex-Im Bank financing for fossil fuel projects that year. This figure becomes less than 1 per cent if goods and services to the petrochemical sector is added, such as the US\$2 billion to Petrobras in 2009. This information is derived from various Ex-Im media releases which are available online at www.exim.gov.
155. 'Project Finance for LNG Project in Papua New Guinea', *JBIC Media Release*, 16 December 2009, Available online: <http://www.jbic.go.jp/en/about/press/2009/1216-01/index.html>.

Considerable funding is also coming from private banks. In December 2008, ExxonMobil met with up to 70 representatives from credit agencies and banks.¹⁵⁶ So far, it has been reported that up to \$2 billion in financing will come from 17 interested banks, including four Australian banks (CBA, NAB, Westpac and ANZ).¹⁵⁷ ExxonMobil, possessing the ability to finance funding gaps through shareholder loans, is expected to provide US\$3.78 billion in co-lending itself.¹⁵⁸

Approximately 60,000 landowners are estimated to be directly affected by the project.¹⁵⁹ PNG law mandates that all investment deals include benefit sharing agreements between land-

owners, the government and the company. One week before the FID, hardly any landowner groups had signed benefit sharing agreements. The largest block of landowners, those from the Hides region, signed the day before the FID signing, leaving 40 per cent of the landowner groups unsigned.¹⁶⁰ At this point, the Petroleum and Energy Minister revealed that he intended to invoke a ministerial loophole to sign the deal on behalf of the those groups who had not yet done so. Some of the reluctant landowner groups who signed on the day of the FID claimed to do so because they feared a worse outcome if they did not sign.¹⁶¹

EFIC involvement

At the beginning of June 2009, the Export Finance and Insurance Corporation (EFIC) announced it was considering financing the PNG LNG project. The following month Jubilee Australia, with its partner Pacific Environment, lodged a submission to EFIC raising concerns about the social, environmental and governance impacts of the project.

On 8 December 2009—the day that the deal was signed between the PNG government and the project sponsors—the Australian Minister for Trade, Simon Crean, announced that Australia would be supporting the PNG LNG project via an EFIC loan of US\$500 million.¹⁶² Eighty per cent (US\$400 million) of this amount will come from EFIC's National Interest Account.¹⁶³ Associated with the announcement was the release of a Joint Understanding between Papua New Guinea and Australia on further cooperation on the PNG LNG Project ('the Joint Understanding').¹⁶⁴ The Joint Understanding contains language on accountability and governance frameworks, the finer points of which are discussed at length below. The Joint Understanding also details potential areas of 'technical assistance' which Australia will offer PNG on matters related to resource tax administration, financial risk management and environmental and safety regulation.¹⁶⁵

The Australian Government's decision to use the National Interest Account for this project has a number of relevant impli-

cations. First, because this money will not be covered by EFIC's own financial resources (nor is there any money in the budget that the Australian Government can draw on for this purpose), the government will need to borrow money on the open market for EFIC's contribution to the project. Second, a detailed National Interest Assessment would have been needed to justify why the government would take on such a liability. The federal cabinet could not have approved such a large level of financing unless the National Interest Assessment provided compelling reasons to do so.

Expected benefits

Australian support for the project was justified on a number of grounds. Some argued the project was 'vital' to PNG's economic wellbeing and would ensure a 'balanced growth path', that economic benefits would flow from the project into Australia and that it should be supported because LNG is a clean fuel. We will consider these in turn.

1] The economic benefits to PNG

The official Economic Impact Study from ACIL Tasman estimated significant benefits to the PNG economy in terms of revenue and GDP increases. For instance, it was predicted that GDP would more than double over the 30 year life of the project, rising from K8.65 billion in 2006 to K18.2 billion per year (K=Kina, the PNG unit of currency).¹⁶⁶ These figures were based on the assumption that LNG production commences in

156. Elisabeth Behrmann, 'ExxonMobil: PNG LNG Project Protected from Credit Crunch', *Rigzone*, 1 December 2008, available online: http://www.rigzone.com/news/article.asp?a_id=70, According to Behrmann, the French Investment Bank Société Générale was acting as financial advisor.
157. Matthew Murphy, 'PNG gas project go-ahead', *The Age*, 17 December 2009, available online: <http://www.theage.com.au/business/png-gas-project-go-ahead-20091216-kxm-q.html>.
158. Pacific Funding International, *Deadline Looms for Funding*, 4 November 2009; Matthew Murphy, 'PNG gas project go-ahead', *The Age*, 17 December 2009, available online: <http://www.theage.com.au/business/png-gas-project-go-ahead-20091216-kxm-q.html>.
159. Meaning they would be potentially eligible to receive royalties: See Rowan Callick, 'Bereft of their own resources', *The Australian*, 4 July 2009, available online: <http://www.theaustralian.news.com.au/story/0,25197,25727815-2703,00.html>. Author Unknown, 'FID Set for Tomorrow'.
160. Author Unknown, 'FID Set for Tomorrow', *The National*, 7 December 2009, available online: <http://www.thenational.com.pg/?q=node/3695>.
161. For the media reporting on the flurry of activity surrounding the benefits sharing agreements, see the series of reports from *The National*: Bamabas Pondros, 'Landowners scramble to sign after FID', *The National*, 9 December 2009, available online: <http://www.thenational.com.pg/?q=node/3793>; Author Unknown, 'FID Set for Tomorrow', *The National*, 7 December 2009, available online: <http://www.thenational.com.pg/?q=node/3695>; Barnabas Pondros, 'Deal Hits Snag', *The National*, 7 December 2009, available online: <http://www.thenational.com.pg/?q=node/3696>.
162. Simon Crean, 'Australian Government Support for Gas Project in PNG', *Media Release*, 8 December 2009, available online: http://www.trademinister.gov.au/releases/2009/sc_091208.html.
163. Jubilee Australia had known for some time that the PNG LNG loan would be a National Interest Account transaction, this having first been confirmed in a conversation with EFIC staff member Jan Parsons on 10 July 2009.
164. Australian Government – Department of Foreign Affairs and Trade, *Joint Understanding between Papua New Guinea and Australia on further cooperation on the PNG LNG Project*, 9 December 2009, available online: http://www.dfat.gov.au/geo/png/png_ing_091208.html.
165. The technical assistance between Australia and PNG was first mentioned by Arthur Somare in the PNG media a number of weeks earlier. See, for example, Author Unknown, 'LNG cash fund', *The National*, 11 November 2009, available online <http://www.thenational.com.pg/?q=node/2770>.
166. ACIL Tasman, *PNG LNG Economic Impact Study: An assessment of the direct and indirect impacts of the proposed PNG LNG Project on the economy of Papua New Guinea*, April 2009, p.vi, available online: http://www.aciltasman.com.au/images/pdf/27182_Impact_Study_VFFF_revision_1.pdf.

mid-2013 with an average annual production rate of 5.4 million tonnes per annum.¹⁶⁷

Although the revenues that will be raised are estimated to be large, other benefits are not so clear. Of the 7,500 jobs which the Economic Impact Statement estimates will be created, only one fifth will be provided to local PNG workers.¹⁶⁸ Thus the skills and training benefits will be small — a common problem with such projects in developing economies. Recent announcements have indicated a higher number of jobs may be created, but whether this predicted increase will be transferred to the local workforce is unknown.¹⁶⁹

Any benefits to the wider economy in terms of opportunities for local business may be offset by inflation caused by the influx of foreign workers during the construction phase. Changes in the exchange rate are also likely due to the influx of foreign currency during the production phase. As noted earlier, large mineral and oil and gas projects rarely bring the expected economic benefits to developing nations.¹⁷⁰ Although a large increase in GDP will occur, at this stage it is impossible to predict how this windfall of capital will be distributed amongst the PNG people, or if the people of PNG will benefit from the project at all.

Finally, there is a genuine threat that the revenues will most likely be reduced by the costly political, environmental and social impacts of the project. These hidden costs — examined below — have not been factored into any formal assessment of the positives and negatives of the project.

2) The economic benefits to Australia

The Trade Minister's press release announcing the PNG LNG financing deal says the following about the economic benefits to Australia:

*Australian exporters have already been identified as the preferred tenderers for USD 1.2 billion (AUD 1.3 billion) of contracts. With the announcement of the project going ahead there is up to USD 3 billion (AUD 3.3 billion) of project-related contracts potentially available for Australian exporters.*¹⁷¹

The project's benefits to Australia are hard to quantify without access to more of the data. However, it is clear from various media reports that Australian companies have started to win some major contracts. For example:

- Perth-based WorleyParsons formed a joint venture with US giant Kellogg Brown and Root, to win construction contracts on the upstream component of the project and provide engineering, training, in-country support services and integrated project team services for construction and project management.¹⁷²
- Perth-based Clough Engineering and Queensland-based Curtin Brothers were awarded \$500 million worth of contracts for the gas project.

In conclusion, it does seem likely that significant economic benefits will flow to Australia, although it is difficult to comment further on the extent of these without the release of data by relevant federal agencies.

3) The global demand for 'clean energy'

Natural gas produces relatively low emissions as compared to coal, for example, thus LNG is often referred to as a relatively 'green' fossil fuel alternative. Whether this is accurate is a matter of some debate. US researchers have shown that although domestically produced natural gas has relatively low emissions over its entire life cycle, when emissions are factored in from the liquefaction, deliquefaction and transport processes involved in purchasing LNG from overseas, the energy source loses much of its 'clean' advantage over coal. If carbon sequestration technologies for coal become viable, the difference between the two fuel sources in terms of emissions is negligible.¹⁷³

Pipelines of an existing oil facility around Lake Kutubu
Credit: Damian Baker



167. ACIL Tasman, *PNG LNG Economic Impact Study: an assessment of the direct and indirect impacts of the proposed PNG LNG Project on the economy of Papua New Guinea*, April 2009, pp.5-6, available online: http://www.aciltasman.com.au/images/pdf/27182_Impact_Study_VFFF_revision_1.pdf.
168. ACIL Tasman, *PNG LNG Economic Impact Study: an assessment of the direct and indirect impacts of the proposed PNG LNG Project on the economy of Papua New Guinea*, April 2009, p.vi, available online: http://www.aciltasman.com.au/images/pdf/27182_Impact_Study_VFFF_revision_1.pdf.
169. Minister Crean's announcement puts the number at 12,000. See Simon Crean, 'Australian Government Support for Gas Project in PNG,' *Media Release*, 8 December 2009, available online: http://www.trademinister.gov.au/releases/2009/sc_091208.html.
170. See section on the 'Resource Curse' page 32.
171. Cited in EFIC, *Minister for Trade Media Release: Australian Government support for gas project in PNG*, 8 December 2009, available online: <http://www.efic.gov.au/news/2009mediareleases/Pages/MediaRelease8December2009.aspx>.
172. Heather Brown, 'KBR Joint Venture Awarded PNG LNG Upstream Projects Services Contract by ExxonMobil,' *Reuters*, 2009, available online: <http://www.reuters.com/article/pressRelease/idUS10009+04-Jun-2009+BW20090604>. The Japanese company Chiyoda Corp will be involved in the downstream processes of the project. In particular, it will be involved in the engineering, procurement and construction of the LNG plant.
173. Paulina Jaramillo, W. Michael Griffin, H. Scott Matthews 'Comparative Life Cycle Carbon Emissions of LNG Versus Coal and Gas for Electricity Generation', Green Design Reading Group, Carnegie-Mellon University, 2005, available online: http://www.ce.cmu.edu/~gdrgr/readings/2005/10/12/Jaramillo_LifeCycleCarbonEmissionsFromLNG.pdf.

Expected negative impacts

Jubilee Australia's concerns about the negative impacts of the PNG LNG project can be grouped into four main areas: governance, social impacts, environmental impacts and human rights violations.

Governance

As discussed earlier in this part, Transparency International found that levels of corruption have in fact worsened in 2009 compared to previous years.¹⁷⁴ There are also fears about the level of corruption in the particular regions where the PNG LNG project is taking place. Paul Barker, director of PNG think tank, the Institute of National Affairs, explained:

*The resource-rich provinces of Western and Southern Highlands provinces provide stark warnings, having some of the worst services in the country and high levels of financial abuse. Landoowner groups in the logging areas demonstrate how readily some leaders can hijack the benefit stream from royalties and consume the proceeds, often in beer and other services in the urban centres of PNG and overseas.*¹⁷⁵

Recent developments in PNG do not inspire optimism that revenues from the project will flow smoothly into the sovereign wealth fund. In theory, the PNG Government's 19 per cent stake in the deal is controlled by the state-controlled oil and gas corporation Pertamina. However, control of the PNG LNG project has been handed over to the Independent Public Business Corporation (IPBC), which is in the hands of the Prime Minister's son, PNG State Enterprises Minister Arthur Somare.¹⁷⁶ The allegation was made last year on ABC Radio by PNG opposition leader Sir Mekere Morauta that, through control of IPBC, Arthur Somare will be able to personally direct the dispersal of revenues. Sir Mekere also questioned whether Arthur Somare should have been involved in the deal at all.¹⁷⁷ Somare recently tried to use the PNG Government's stake in Oil Search to secure one billion-dollar loan from the Abu Dhabi Government which ended up falling through.¹⁷⁸

To head off criticisms about corruption, the Trade Minister's announcement of Australia's US\$500 million loan to the project referenced the Joint Understanding document detailed above.¹⁷⁹ The Joint Understanding provides a list of 'Generally Accepted Principles and Practices' (the Santiago Principles) for the operation of such funds. See Appendix IV of this report for a list of the relevant principles quoted in the Joint Understanding.

Unfortunately, research has shown that the use of sovereign wealth funds do not guarantee that windfalls retained will in fact be managed responsibly or that these reserves will be reinvested back into PNG. An analysis of sovereign wealth funds emphasises that they are only effective if three criteria are met: (1) they operate in an environment of full transparency; (2) they possess a strong sense of public ownership and an engaged citizenry; and (3) strong checks and balances exist to make abuse or manipulation of the funds difficult.¹⁸⁰ The likelihood of this occurring in PNG with its weak regulatory environment is limited.

While the principles outlined in the Joint Understanding would help (if implemented) to make the PNG LNG fund transparent, they do not address the other two criteria mentioned above. In order to implement strong checks and balances, multiple lines of accountability would need to be established to make corruption difficult. For example, the parliament, the treasury department, the central bank, and the department responsible for economic development could all have some role in overseeing the fund. Also, a super-parliamentary majority would need to be attained before changing the conditions for the fund to operate. While strong separation of powers is necessary for such measures to be effective, it is doubtful this exists in PNG.

There are ways to encourage an active and engaged citizenry to oversee the sovereign wealth fund. Independent non-government representatives could sit on the oversight board, giving a targeted population a stake in the fund. For example, the Norway pension fund has an Ethics Council to screen investments. But it is unlikely a state that refuses to sign up to the EITI would engage their citizenry in such a way.

174. Transparency International, *Corruption Perceptions Index - 2009*, 2009, available online: http://www.transparency.org/policy_research/surveys_indices/cpi/2009/cpi_2009_table.

175. Cited in Rowan Callick, 'Bereft of their own resources,' *The Australian*, 4 July 2009, available online: <http://www.theaustralian.news.com.au/story/0,25197,25727815-2703,00.html>.

176. Independent Public Business Corporation, *PNG Liquefied Natural Gas Project*, 3 June 2009, available online: <http://www.ipbc.com.pg/pnglng.html>

177. Steve Marshall, 'PNG criticised over massive LNG project loan,' *ABC News*, 7 November 2008, available online: <http://www.abc.net.au/news/stories/2008/11/07/2413846.htm?site=news>.

178. Ross Kelly, 'Oil Search shocks market with withdrawal of PNG LNG investment deal by partner IPIC,' *The Australian Business*, 19 October 2009, available online: <http://www.theaustralian.com.au/business/mining-energy/oil-search-shocks-market-with-withdrawal-of-png-lng-investment-deal-by-partner-ipic/story-e6frg9ef-1225788244300>. See also Michael Perry, 'Abu Dhabi set for \$1.1bn Papua New Guinea Deal,' *Arabian Business*, 7 November 2008, available online: <http://www.arabianbusiness.com/537415-abu-dhabi-set-for-11bn-papua-new-guinea-deal>.

179. It was reported some weeks ago in the PNG media that Arthur Somare met with Australian officials to discuss the use of a sovereign wealth fund to assist in the responsible and accountable management of the revenues retained from the PNG LNG project. 'LNG Cash Fund,' *The National*, 11 November 2009, available online: <http://www.thenational.com.pg/?q=node/2770>.

180. Svetlana Tsalik, *Caspian Oil Windfalls: Who will benefit?*, The Open Society Institute and Caspian Revenue Watch, 2003, pp.49-50. Tsalik talks of 'Natural Resource Funds' as opposed to 'Sovereign Wealth Funds', but these amount to the same thing in practice. The discussion below draws heavily on this research.

In sum, even if the sovereign wealth funds were perfectly designed, PNG does not possess the political environment necessary for their successful operation. Concerns reported last year in PNG that the government's Trust Funds— totalling eight per cent of GDP— could be drained within one year support this conclusion.¹⁸¹ Moreover, studies have shown that most misappropriation happens long before oil revenues reach a sovereign wealth fund.¹⁸² It is here that the principles of EITI become important, in particular because they require companies to disclose what they pay to governments. PNG's refusal to adopt EITI principles means that there will be no way to track the revenues before they reach the fund. Implementing the requirements of the EITI is the most effective way to ensure revenues will not be misplaced.

Unfortunately, the Australian Government now has no genuine leverage to encourage the PNG Government to adopt EITI since it already signed onto the PNG LNG deal. The Joint Understanding merely says that PNG will 'undertake early consideration of the alignment between EITI principles and the objectives of the PNG Government and Project sponsors' and 'assess the potential benefits'. But the benefits of signing the EITI are clear— no assessment is needed. PNG should adopt EITI in full. Some sections of the PNG Government would

Social impacts

The large influx of funds and foreign workers during the construction phase, as well as revenues in the production phase, are likely to have a major impact on PNG's social fabric. The presence of large numbers of male workers with disposable incomes in the highlands as well as around Port Moresby (up to 5000 are needed to build the liquefaction plant at Caution Bay) will have distorting effects on the local economy and are likely to upset social relations. The Social Impact Assessment (SIA) recognises the social risks which greater wealth and foreign workers pose, noting that:

*Greater wealth will...result in greater male absenteeism, and provide a disincentive to youth to continue education. One can...expect increased alcohol and drug use, and more generally higher levels of gambling and social disharmony in the PIA [Project Impact Area] communities as opportunists move through the benefit-rich villages in search of employment, loans and gifts.*¹⁸⁵

welcome this—for example the Ministry of Finance— but broad political support is lacking.

Many questions remain concerning the fiscal responsibility of the companies involved—despite the fact that some of the project sponsors are 'EITI supporting companies'. Board minutes from US ECA Ex-Im indicate that PNG LNG Ltd, the corporation set up to manage the revenues for the project sponsors, is registered in the Bahamas, a known tax haven.¹⁸³ If this information is accurate, it is a serious indictment of the commitment to revenue transparency by Exxon and its project partners. Registering a subsidiary in a tax haven such as the Bahamas is a well-known way that multinational corporations avoid paying taxes on their profits to host governments.

Questions linger about some of the contracting companies as well. In late 2008, American firm Kellogg, Brown and Root (KBR) pled guilty to corruption charges and received the second largest criminal penalty in the history of the US *Foreign Corrupt Practices Act*. The fine was levied after KBR arranged \$182 million in bribes to secure engineering, procurement and construction contracts on an Ex-Im Bank-financed Nigeria LNG project.¹⁸⁴ KBR joined with Australian-based WorleyParsons to win a bid for the engineering of upstream projects under the joint venture name of Eos.

The SIA, however, does not outline detailed mitigation measures. There are two areas of social impact which are of even more serious concern.

1) Impacts on HIV/AIDS

PNG already has a crippling HIV/AIDS problem. An influx of workers can lead to a new two-way catastrophe: with increased exposure from expatriate workers to local people and from local people to expatriate workers who then move on to infect people in other countries.¹⁸⁶ The SIA notes that the threat of HIV is potentially 'catastrophic', acknowledging that the increased facilities for communication associated with the project may increase the incidence of HIV/AIDS.

*In the context of a PNG LNG Project, which will deliver new and improved road infrastructure, HIV/AIDS presents as a broad socio-economic challenge as well as a major health issue in the PIA. The impact of HIV/AIDS on households can be catastrophic.*¹⁸⁷

181. Isaac Nicholas, Bamabas Pondros, Sheila Lasibori & Frank Sange Kolma, 'K1.74b from trust accounts drained,' *The National*, 18 November 2009, available online: <http://www.thenational.com.pg/?q=node/3018>.

182. Svetlana Tsalik, *Caspian Oil Windfalls: Who will benefit?*, The Open Society Institute and Caspian Revenue Watch, 2003, p.49.

183. The September 29 2009 Ex-Im Board Minutes state that the borrower for the PNG loan as 'Papua New Guinea LNG Global Company LDC, Nassau, New Providence Bahamas, available online: <http://www.exim.gov/artide.cfm/55AE4F4B-0FE6-95A0-920D25E8CCAA44A/>.

184. In May 2009 the US Department of Justice imposed a \$579 million fine on KBR and also sentenced former CEO Albert Stanley to seven years in gaol in relation to the arrangement and payment of bribes over a 10 year period. KBR's corruption involved a transaction financed by Ex-Im Bank, a potential financier of the PNG LNG project. Further financing of KBR projects will benefit KBR thus rewarding, as opposed to combating, corruption.

185. Laurence Goldman, 'Papua New Guinea Liquefied Natural Gas Project: Social Impact Assessment,' *PNG LNG Project: Environmental Impact Statement*, 2008, Chapter Three, p. 90.

186. Information has been provided to Jubilee Australia by our partner NGO Pacific Environment to this effect that this problem was observed on the Sahkalin II LNG project.

187. Laurence Goldman, 'Papua New Guinea Liquefied Natural Gas Project: Social Impact Assessment,' *PNG LNG Project: Environmental Impact Statement*, 2008, Chapter Three, p.156. The SIA goes on to note that: 'The increased facilities for communication resulting from the oil projects may have exacerbated the spread of communicable diseases as an indirect impact of development. One can point to the increased levels of sexually transmitted diseases as certainly significant. This is an almost inevitable bi-product of communications development with resource projects. Roads increase direct contact and attract prostitution.' It further notes: 'The project will inevitably pose risks in respect to increased levels of STDs, TB and associated health problems. The planned road systems, enlarged camps and personnel, greater disposable wealth of many project landowners are catalysts which cumulatively suggest the area presents a high risk of HIV/AIDS.' See pp. 175 and 176.

However, the SIA did not do any of the following: analytically assess the scope of how the project will increase the spread of HIV/AIDS create any sexual health facilities or programs aimed at the communities around the liquefaction plant at Caution Bay or adequately explain how the growing HIV/AIDS problem in the Southern highlands will be mitigated.¹⁸⁸

Clause 10 of the IFC Performance Standard 4 on Community Health, Safety and Security is clear that preventing or minimising the spread of communicable diseases related to project assessment fall under the responsibility of the project sponsor. In fact, sponsors are *encouraged* to improve environmental conditions that could reduce the incidence of diseases.¹⁸⁹ The SIA infers that over the life of the project the proponents will provide an unspecified amount of support for health facilities and programs for PNG citizens. But recommendations by the SIA authors are not the same as Action Plans released by the project sponsors; they are merely recommendations to the PNG government and in no sense binding. As explained in Part 1, the IFC Performance Standards require project sponsors to supply Action Plans with demonstrable and measurable mitigation measures for all social and environmental impacts. However, no public disclosure and consultation on an Action Plan on HIV impacts has been released.

2) Exacerbation of social conflict

There are also concerns that the influx of revenue into the region will exacerbate existing social problems and conflict, particularly in the Southern Highlands. Corruption at the local level in PNG is rife— especially when it comes to the disbursement of funds. An analysis of the PNG mineral and petroleum industry observed that ‘community members are generally unable to hold their community leaders to account for the management of any cash benefits bestowed upon them by governments.’¹⁹⁰

The project is to be based largely within the Tari Basin, home to the Huli people. The Huli people have seen resource projects in neighbouring provinces (the nearby Porgera gold mine, Ok Tedi gold and copper mine and the Kutubu oil and gas fields) and

have a history of using force to try and press benefit claims on land that is not traditionally theirs.¹⁹¹

The SIA itself acknowledged some of these problems, noting that the history of Huli ‘expansionism in the region’ is likely to worsen given increased access roads and revenues from the project.¹⁹² The SIA also acknowledged that the extra money in the region is likely to lead to increasing pressure for compensation claims that may, in turn, lead to new violence.¹⁹³ However, the assessment was written over a year ago. Since then much actual violence has occurred.

Unrest and disputes have plagued the lead-up to the official Development Forum meeting. There have been a number of reported differences within some of the landowner groups, particularly from the Tari basin.¹⁹⁴ In August 2009, protests at Hides disrupted petroleum production as dissatisfied landowners occupied the facility to influence the negotiations surrounding the benefits sharing agreement. In late October/early November 2009, protests and violence erupted in the Hides region between locals angered by the exclusion of the Tari-Pori areas from the benefits sharing scheme and members of the government and the project sponsors.¹⁹⁵ Violence and protests also occurred in early December, with Hides landowners disrupting the operation of the Porgera gold mine in the days leading up to the Final Investment Deadline.¹⁹⁶

Reports suggest that project royalties and other payments are not being shared at the local level thus far. Concerns have been expressed that local ‘big men’ are receiving the money on behalf of communities but not sharing it with community members.¹⁹⁷ Since the benefits sharing agreements have been signed, there have been reports in the PNG media of a sharp increase in the purchasing of liquor and use of hire cars, as well as an increase in car accidents. PNG newspaper *The National* directly linked such occurrences to the large cash payments which have just been disbursed.¹⁹⁸ Such reports do not give confidence to those who hope that the compensation agreements will go to assist development in the Southern Highlands.

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188. Oil Search and CDI (an NGO) have HIV prevention programs, currently limited to the Kutubu area (they may in the future may be extended to the Hides, Gobe and Kikori catchments).
189. Clause 10 of the IFC Performance Standard 4 on Community Health, Safety and Security states that: ‘The client will prevent or minimize the potential for community exposure to water-borne, water-based, water-related, vector-borne disease, and other communicable diseases that could result from project activities. Where specific diseases are endemic in communities in the project area of influence, the client is encouraged to explore opportunities during the project life cycle to improve environmental conditions that could help reduce their incidence.’ See IFC, *International Finance Corporation’s Performance Standards on Social & Environmental Sustainability*, 30 April 2006, available online: [http://www.ifc.org/ifcext/sustainability.nsf/AttachmentsByTitle/pol_PerformanceStandards2006_full/\\$FILE/IFC+Performance+Standards.pdf](http://www.ifc.org/ifcext/sustainability.nsf/AttachmentsByTitle/pol_PerformanceStandards2006_full/$FILE/IFC+Performance+Standards.pdf).
190. Colin Filer, ‘Development Forum in Papua New Guinea: Upsides and Downsides,’ *Journal of Energy & Natural Resources Law*, 26, 2008, p.120.
191. Glenn Banks, *Beyond Greed and Curses: Understanding the links between natural resources and conflict in Melanesia*, *Economists for Peace and Security Policy Briefs*, 9 April 2004, available online: <http://www.epsusa.org/publications/policybriefs/banks.pdf>.
192. The SIA states: ‘The Huli are regarded by many of their ethnic neighbours, most of whom have lower populations, as territorially colonial. Whilst then the influx of Huli can be attractive to would-be business owners, it also brings fear of permanent settlement and associated law and order problems. Most particularly, in the Kikori region, landowners fear that Huli and other highlanders will marry their women and become landowners in their own rights, sparking not simply the dissolution of their ethnic-based settlements, but protracted and violent conflict. For many people in the Project Impact Area, road access comes then at the price of stability, a view shared equally by both women and men (Simpson *et al* 1998) ... Whilst then the Tari-Kikori highway is no longer directly linked to the PNG LNG Project, the perceptions of the populace have changed little.’ See Laurence Goldman, ‘Papua New Guinea Liquefied Natural Gas Project: Social Impact Assessment,’ *PNG LNG Project: Environmental Impact Statement*, 2008, Chapter Three, p. 304.
193. Goldman ‘Social Impact Assessment’, chapter Five, p. 48.
194. Reporting suggests that various landowner factions within the Hides PDL1 landowner group had differing views from May 2009 onwards. See, for example Mohammad Bashir, ‘Hides Vow to Works as a Team in Last Forum’, Post Courier Online, 1 October 2009, Accessed Online: <http://www.postcourier.com.pg/20091001/thhome.htm>.
195. Mohammad Bashir, ‘Landowners shut down ExxonMobile camp’, Post Courier, 21 October 2009.
196. Author Unknown, ‘Pre-LNG Signing Jitters in PNG,’ *The Age*, 7 December 2009, available online: <http://news.theage.com.au/breaking-news-world/prelng-signing-jitters-in-png-20091207kf5w.html>.
197. This information is a distillation from discussions with our partners and other civil society groups in PNG.
198. Andrew Alphonse, ‘Landowners Go on a Spending Spree,’ *The National*, 10 December, Available online: <http://www.thenational.com.pg/?q=node/3837>.

The escalation of conflict into Bougainville-type violence is a very serious possibility. Jubilee Australia has received confidential reports that weapon stockpiles exist in the region of the PNG LNG project, which have been supported elsewhere (one PNG observer estimated that 65 per cent of males over 24 possess a firearm).¹⁹⁹ A strong culture of violence exists in the Southern Highlands— a condition exhibited during the 1997 and 2002 general elections and one often aggravated by the influx of wealth and its inequitable distribution. Conflict over land ownership and compensation have already begun in the Highlands. It is alleged that people living far from project areas are making ownership claims over project land in attempt to receive compensation. Whether or not such claims are bona fide, they will likely lead to increased social conflict.²⁰⁰

In light of all these very worrying developments, the actions of the project sponsors, the PNG Government and the financiers in pushing ahead with the deal need to be examined in more detail.

Although the IFC performance standards are not comprehensive enough to assist companies and governments operating in potential conflict zones, useful guides on these issues do exist. Internationally respected NGO, International Alert, produced an extensive report on these issues called *Conflict-Sensitive Business Practice: Guidance for Extractive Industries*.²⁰¹ The recommendations on the issue of compensation— the heart of the bulk of the conflict and what benefit sharing agreements seek to address— are found in Section Four of the report. In particular, two recommendations stand out:

'Be transparent about all aspects of the compensation policy. Compensation policies should be developed in consultation with a wide range of stakeholders and a copy of background work should be made available to the affected communities.'

Environmental impacts

A project this size will have a range of environmental impacts. The PNG LNG project thus represents another serious test of EFIC's Environment Policy. As Part I explained, EFIC's Environment Policy requires it to assess environmental and social concerns with respect to the IFC performance standards. At present, this is an internal EFIC process.

The current Environmental Impact Statement (EIS) underplays the environmental risks associated with the project and fails to provide adequate provisions for their true analysis and management. This is especially true in three particular areas: (1) the large scale deforestation associated with onshore pipeline; (2) risks associated with the dredging of the seabed in the production of the offshore pipeline; and (3) pollution emissions associated with the

'Respect the process as much as the result. The tone of negotiations is as important for longer term outcomes as the result. *Companies often rush this phase of a project, when allowing communities to develop a sense of ownership over outcomes is a critical conflict-avoidance factor.* When discussing compensation policies, companies benefit from sitting down with communities to focus first on the relational aspects, before addressing the legal detail (emphasis added).²⁰²

It is clear that transparency of the compensation process in the PNG LNG project has not been respected. A lack of transparency was evident at a key moment of the negotiations process, with the revocation of Transparency International's involvement from the Umbrella Benefits Sharing Agreement meeting in May 2009.²⁰³ Furthermore, it is clear that the pressure to meet the Final Investment Deadline drove the consultation process with landowners, not the other way around. Some landowners felt pressured into signing a deal due to a threat by the Petroleum and Energy Minister to invoke his ministerial powers to sign on their behalf. The actions of the Petroleum and Energy Minister demonstrate that the PNG Government and the project sponsors were more interested in closing the deal than preventing future unrest and violence in the project areas. It is also a breach of International Alert's second recommendation listed above.

Given the fact that International Alert's two recommendations have not been followed and noting the extent of the violence that has already occurred, Jubilee Australia concludes that the PNG Government acted prematurely in signing the deal on 8 December 2009 and that in doing so has greatly increased the chances of further violence in the Southern Highlands, with Australia's support.

liquefaction plant near Port Moresby. These three issues will be assessed in turn.

1) Environmental effects relating to the onshore pipeline

The EIS establishes that the onshore section of the LNG project gas pipeline will be installed from the Hides gas conditioning plant to the Omati River landfall south of Kopi. The onshore pipeline will be approximately 284 km long. A total of approximately 2,809 hectares will be cleared— half the area has not previously been disturbed by oil and gas developments. A right of way (ROW) of 30m to 60m will be required and the pipeline will cross 26 major water crossings, 138 minor water crossings and the Kutubu Wildlife Management Area.

199. Goldman 'Social Impact Assessment', chapter Five, p. 45.

200. This information is a distillation from discussions with our partners and other civil society groups in PNG.

201. International Alert, *Conflict Sensitive Business Practice: Guidance for Extractive Businesses*, March 2005, available online: http://www.international-alert.org/pdfs/conflict_sensitive_business_practice_all.pdf.

202. International Alert, 'Flashpoint Issue 3 – Compensation', *Conflict Sensitive Business Practice: Guidance for Extractive Businesses*, p. 7.

203. Transparency International (PNG), who had been invited to the meeting as independent observers, had their invitations withdrawn. *Transparency International Media Release*, 21 May 2009, Available online http://www.transparencypng.org.pg/press_releases/PR%2021.05.09.pdf.

A 10m ROW will be retained for an access road to the pipeline after its completion. Finally, 1,055 hectares of primary tropical forest will be cleared. An estimated 86 per cent of primary tropical forest losses and 82 per cent of losses in Classes A1 and A2 (1,220 ha) are concentrated in five broad vegetation groups. Erosion will be an issue in areas of step grades (20 to 50 per cent) and may result in increased sediment in waterways.

From this alone, it can be concluded that pipeline construction will have significant and irreversible environmental impacts on the existing environment. Environmental impacts from construction of the pipeline ROW will lead to the stripping of native primary forest and other vegetation of varying conservation value, exposure of top soil causing erosion and potential soil contamination from the construction process.

Despite all these impacts, the EIS fails to discuss— much less demonstrate compliance— with the provisions of the International Finance Corporation's eight environmental performance standards. In particular, the EIS:

- Does not include discussion of the sixth IFC Performance Standard's requirements for critical habitat, natural habitat, nor even modified habitat.
- Does not indicate whether or how natural resources will be managed in a manner which 'enables people and communities, including Indigenous Peoples, to provide for their present social, economic and cultural well-being while also sustaining the potential of those resources to meet the reasonably foreseeable needs of future generations and safeguarding the life-supporting capacity of air, water and soil ecosystems', as also prescribed in the sixth performance standard.
- Proposes— in Chapter 18— simple biodiversity mitigation measures not designed to achieve a 'no net loss of biodiversity'. This is unacceptable considering high floristic diversity (between 6,000 and 12,000 species of plants) and a high degree of endemism in fauna species in the project area.
- Fails to sufficiently outline and demonstrate management of natural resources per the third IFC Performance Standard clauses 14 and 15 in relation to filtration processes through karst landforms and general erosion and river system filtration processes. Soil movement and vegetation clearing on steep slopes will have substantial impact on groundwater hydrology and recharge.
- Does not adequately outline how fugitive sediment from construction activities will be prevented from pollution surrounding water systems as required in IFC Performance Standard 3 on Pollution Prevention and Abatement. Surrounding rivers will suffer from increased turbidity and possible eutrophication without appropriate management plans for erosion control.

- Does not address seismic threats within Chapter 18's discussion of general environmental impacts and mitigation measures.

2) Risks associated with the dredging of the seabed in the production of the offshore pipeline

There are many problems relating to the 407 km offshore pipeline from the Omati River landfall to Caution Bay and the new LNG facility in Port Moresby, traversing the Gulf of Papua. The laying, testing, trenching and operation of the pipeline will increase sedimentation rates, which in turn, will reduce light penetration and stunt growth of marine biota. Other environmental management issues include the discharge of 220,000 cubic metres of hydrotesting water into the Omati River. Despite these very serious impacts, the EIS deals with these problems in a superficial manner. For example:

- The EIS authors suggest the toxicity threat of discharging the hydrotesting water to International Union for Conservation of Nature (IUCN) listed threatened species including dugongs, turtles and some species of whales and dolphins is minimal or low. Considering the requirements of Performance Standard 6 and the potential impact of IUCN listed marine species, further studies should be required.
- While the EIS characterises the increased sedimentation loads from trenching and dredging the seabed as having low environmental impact, they ignore sea-floor habitat destruction from pipelaying. Anchor disturbance along the offshore route from pipelaying is expected to be approximately 33 hectares. The pipeline will physically cover approximately 43 hectares of seafloor. The only real high-level threats identified in the EIS relate to accidental spillages of hazardous material. More modeling and investigation is required as the information presented is a premature assessment not comprehensive enough to satisfy benchmarking requirements.
- Chapter 12 of the EIS makes no mention of offshore seismic hazards and Chapter 19, Environmental Impacts and Mitigation Measures for the Offshore Pipeline, includes no section on design and construction for possible seismic hazards.

3) Pollution emissions associated with the liquefaction plant near Port Moresby

The emission of noxious gases from gas-fired LNG plant and carriers in the harbour are acknowledged by the EIS (Chapter 20) to cause serious air pollution to the nearby metropolitan areas. Although the EIS briefly mentions that emissions impacts will be 'mitigated through engineering solutions', these solutions are not described in the necessary detail. Instead, reference is made to an 'environmental management plan' which has not been published.²⁰⁴ The lack of specificity in the EIS and the absence of publicly disclosed Action Plans again reveal incomplete and inadequate compliance with the IFC performance standards.

204. Similarly, the Environmental Impact Statement states that thus-far undisclosed '[m]anagement plans for the operations stage of the project are envisaged to include...[an] Air emissions/greenhouse gas emissions management plan...' See Coffey Natural Systems, 'Chapter 30 – Environmental Management, Monitoring and Reporting,' *PNG LNG Project: Environmental Impact Statement*, p.7.

Concerns about the environmental impacts of the project are also heightened by a number of factors. First is Oil Search's poor record in the affected region, with allegations that its previous petroleum operations caused environmental damage in Lake Kutubu, a 'Wetland of International Significance' protected under the Ramsar Convention.²⁰⁵ According to locals, run-off from Oil Search's drill site contaminated water and fish reserves in an incident in 2007, causing various skin irritations, blistering, illnesses and the death of one child.²⁰⁶

These allegations regarding pollution are supported by the findings of a report conducted by Wetlands International for the World Wildlife Fund Australia, 'Rapid Ecological Health Assessment of the Lake Kutubu Ramsar Site.' Commissioned to investigate the locals' complaints, the report found that samples of the lake's fish contained toxic levels of barium and lead, showing an average barium concentration 3.9 times the US standard for safe food and water levels and lead at 6.8 times the European Union standard.²⁰⁷ The extent of environmental pollution is attested to by the author of the report, Aaron Jenkins, who, describing the environmental pollution as 'acute' and noting the 'associated human health problems', urges further investigation.²⁰⁸

Human rights violations

A matter equally concerning as any of those raised above is information regarding potential human rights abuses in the affected region. There are reports that a 200-strong mobile police force is now stationed around Tari—the main centre in the Southern Highlands—and camped on the edge of town. The security forces stationed in Tari are there ostensibly to protect PNG LNG project assets (eg roads), but locals allege they have been rampaging villages and physically abusing citizens.

It is not clear if the forces are employed directly by the PNG LNG companies or the PNG Government. The seven member local police force—charged with protecting community members from tribal fighting and other

Oil Search flatly denies any wrongdoing, insisting that an internal investigation showed that the chemicals used were not in sufficient concentrations to be toxic.²⁰⁹ Nevertheless, that one of the major project sponsors has such a poor environmental history in the very area where the LNG project will be based is a serious concern.

A final concern relates to a Fiscal Stabilisation Agreement proposed between the project co-venturers and the host government.²¹⁰ Stabilisation clauses typically either freeze the existing legal regime over the lifetime of the project or require the host government to compensate the project sponsor in the event that new policies affect the profitability of the project, thus preventing or discouraging the enactment of stronger environmental and social policies in the host country. The presence of the stabilization clause is therefore likely to have two effects: (1) undercut the PNG Government's right and ability to strengthen future environmental and social protections; and, (2) push the costs of any protections onto the PNG Government, thus reducing the expected revenues of the project to the people of PNG.

violence—is completely outnumbered by the mobile force.²¹¹ These reports are deeply concerning and, when combined with the potential for conflict among native highlanders, make for a very worrying development.

The IFC Performance Standards do not mention the question of human rights violations committed by security forces connected with the project. However, in recent years, a number of companies have been taken to court when their activities have been connected with human rights violations of security forces, often in the US using the Alien Tort Claims Act.²¹² A recent paper has argued that nations might be liable for human rights abuses committed in association with projects financed by their export credit agencies.²¹³

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205. Cited in Calliste Weitenberg, 'WWF buries wetlands pollution report', *Reportage Enviro*, 18 December 2009, available online: <http://www.reportage-enviro.com/2009/12/wwf-buries-wetlands-pollution-report/>.
206. Ben Cubby, 'Who killed our lake?', *The Sydney Morning Herald*, 20 September 2009, available online: <http://www.smh.com.au/environment/who-killed-our-lake-20090919fw3y.html>.
207. Cited in Calliste Weitenberg, 'WWF buries wetlands pollution report', *Reportage Enviro*, 18 December 2009, available online: <http://www.reportage-enviro.com/2009/12/wwf-buries-wetlands-pollution-report/>.
208. Jenkins wrote that: 'Evidence of acute environmental pollution and associated human health problems at Lake Kutubu give very strong support to recommending further investigations on both the extent of these phenomenon, and to ensuring that actions are taken to fully address these problems.' Cited in Calliste Weitenberg, 'WWF buries wetlands pollution report'.
209. Ben Cubby, 'Who killed our lake?', *The Sydney Morning Herald*, 20 September 2009, available online: <http://www.smh.com.au/environment/who-killed-our-lake-20090919fw3y.html>.
210. According to a Media Update from ExxonMobil, the agreement includes a provision in which '[t]he State also agrees to indemnify the project co-venturers for additional material amounts paid which result from changes to the law in place in PNG as of the date the Fiscal Stability Agreement.' See ExxonMobil, *Media Update: PNG LNG Project, Fiscal Stability Agreement Signed*, 22 April, 2009, available online: http://www.pngng.com/media/pdfs/media_releases/media_release_090422_fiscal_stability_agreement_signed.pdf.
211. This information is a distillation from discussions with our partners and other civil society groups in PNG.
212. A recent case from 2008 was the Bowoto people from the Niger Delta vs Chevron, which was taken to the District Court of San Francisco in the United States. On the Alien Tort Statute see Jaykumar A Menon, 'The Alien Tort Statute: Blackstone and Criminal/Tort Law Hybridities' *J Int Criminal Justice*, 4, 2006, 372-386. For a general discussion of this issue, see Craig Forcese 'Deterring "Militalized Commerce": The Prospect of Liability for "Privatized" Human Rights Abuses', *Ottawa Law Review*, 31, 1999-2000.
213. Karyn Keenan, 'Export Credit Agencies and the International Law of Human Rights', *Halifax Initiative*, January 2008.

Conclusion

This Part has uncovered the following about the PNG LNG project:

- Of the three justifications given for the project (economic benefits to Australia, economic benefits to PNG, and LNG as a source of ‘clean’ energy), only one— the economic benefits to Australia— stands up to scrutiny.
- Given the lack of checks and balances there is doubt PNG LNG revenues will be managed in a way that will lead to long-term economic development.
- The impact of the project on the spread of HIV/AIDS in PNG has not been properly assessed and mitigation plans are not in place.
- By hastily pushing through the Benefit Sharing Agreements with landholders on 8 December 2009, the project sponsors and the PNG government have greatly increased the chances of violence unfolding in the Southern Highlands.
- There are preliminary reports that security forces in the Southern Highlands may be committing human rights abuses in the project areas.
- The environmental impacts— in particular on the water table, forests and sea bed— have not been properly assessed (at least not publicly).
- The questionable environmental record of Oil Search, one of the main project sponsors in the region, plus the history of environmental disasters of large mining projects in the region, compound fears of gross environmental damage.
- A serious discord now exists between the adverse impacts expected of the project and the priorities and efforts of Australia’s aid programs in PNG. AusAID’s two main areas of focus in PNG are improving governance and fighting HIV. Both these aims are likely to be severely undermined by the LNG project.

Most of the leverage financiers have on governments and project sponsors is signed away once a financing deal is struck. Jubilee Australia believes Australia should have refrained from offering finance until more due diligence was undertaken, reforms were made in the governance of revenues, and more time was taken to negotiate with landholders. EFIC and the Australian Government’s decision to approve financing for the project before the above had been satisfied was negligent, in the opinion of Jubilee Australia.²¹⁴

It will be argued that the project would have gone ahead anyway, without EFIC support, and that Australia’s involvement may mitigate the worst of the impacts. However, Jubilee Australia believes that, as has been demonstrated in this study, the adverse consequences resulting from this project will be impossible to stop.

214. Jubilee Australia expressed similar concerns in a letter to the Minister for Trade on 27 October 2009, over one month before the government’s financing decision was announced.

CONCLUSION and RECOMMENDATIONS



Aerial photo of one of the river systems impacted by the PNG LNG project

Credit: Damian Baker

What is going wrong?

EFIC may be considered merely a financing body overcoming barriers for Australian exporters, but decisions EFIC makes can have serious impacts on the development and well-being of countries and communities hosting the projects it helps to finance.

As Part 1 has shown, EFIC has a significant presence in the extractives sector. There are many years in which financial support for extractives projects make up more than half of EFIC's total financial profile. Moreover, since the vast majority of these projects occur in developing countries, EFIC cannot ignore questions of sustainable development. Unfortunately, EFIC has a record of facilitating damaging extractive projects in the Asia-Pacific region, especially in Papua New Guinea.

The central problem is that EFIC is not as accountable for its activities as one would expect of an agency guaranteed by Australian taxpayers; nor is it regulated to the same level of stringency as would be expected of an organ of the state. The prima facie case for reforming EFIC is strong: it is secretive, with no disclosure policy, and it does not adequately incorporate environmental, social and human rights considerations into its funding decisions.

The consequences

The outcomes of these inadequate policies are examined in Parts 2 and 3 of this report. The two projects examined have the potential to be extremely influential on their nations' economy, people and environment.

The benefits of large scale extractive industry projects can often be undermined by adverse social, political and environmental impacts. Large natural resource projects can lead to community conflict, can enforce and entrench poor governance and corruption, and can cause serious environmental destruction. Respectful consultation with the landowners, the accurate analysis of social and environmental impacts, the drawing up of detailed management plans and the commitment of the authorities to build strong and transparent governance systems are all minimum necessities if natural resource extraction is to become a blessing and not a curse.

Unfortunately, the analyses from the case studies of the Gold Ridge mine in Solomon Islands and the PNG LNG project demonstrate that EFIC due diligence has not required evaluation of the social and environmental consequences as a priority above all else. Rather, it appears that EFIC has allowed its clients to dodge critical due diligence requirements in order to meet other priorities and timelines. Jubilee Australia proposes a series of recommendations in order to help EFIC move to a more appropriate set of policies and procedures.

Recommendations

Four key principles have been raised by this report; under each we propose specific actions for the implementation of these principles:

EFIC must change its culture of non-disclosure and become more transparent and accountable to both Australian taxpayers and project-affected communities. This includes finding an appropriate balance between commercial-in-confidence and public interest.

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| <p>1. EFIC should adopt a disclosure policy which directs the public release of relevant internal documentation developed during project assessment, decision making and monitoring phases, including:</p> <p>a. All project Action Plans and Impact Assessments created by the client in compliance with the IFC Performance Standards.</p> <p>b. IFC Performance Standard benchmarking completed by EFIC staff in compliance with the EFIC Environment Policy.</p> | <p>c. All documents received by EFIC from clients relating to ongoing compliance with measures agreed in the environmental assessment to mitigate environmental and social harm, and the results of ongoing monitoring programs.</p> <p>2. EFIC should publish on its website the minutes of board meetings.</p> <p>3. The government should require that the EFIC board include at least one civil society representative.</p> |
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EFIC must improve the effectiveness of its due diligence and implement stronger environmental and social safeguards.

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| <p>4. The EFIC Environment Policy should be contained within the <i>Export Finance and Insurance Corporation Act</i>. The exemption of EFIC from the <i>Environmental Protection and Biodiversity Conservation Act</i> should be removed and EFIC should report to Parliament on its integration of Ecologically Sustainable Development principles.</p> <p>5. The EFIC Environment Policy should require that environmental assessment be carried out by independent experts not associated with the project.</p> <p>6. Section 8(2)(b)(iii) of the EFIC Act should be amended to require compliance, rather than</p> | <p>procedural consideration of, Australia's international obligations including its human rights obligations, and under a human rights framework EFIC should perform adequate due diligence on potential human rights impacts of its financing decisions.</p> <p>7. The EFIC Environment Policy should contain an objective 'handbrake' mechanism to provide a legitimate foundation for refusal to support a particular project.</p> <p>8. EFIC should implement a complaints mechanism similar to the Compliance Advisor/Ombudsman at the World Bank.</p> |
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The power of the Minister for Trade to borrow funds for the purpose of supporting Australian companies through the National Interest Account, without scrutiny by the public or the Senate, must be reviewed. A 'trust me' approach is inadequate when Australia's national interest and the livelihoods of local communities overseas are at stake.

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| <p>9. The government should order a review of the due process followed by both EFIC in its due diligence assessment, and the subsequent review and decision by the Minister for Trade to borrow funds for the purpose of supporting Australian companies through the National Interest Account.</p> | <p>10. In such a review Jubilee Australia would recommend that the EFIC Act be amended to implement a process for parliamentary and public scrutiny in line with the National Interest Assessment under Section 8 of the International Monetary Agreement Act 1947.</p> |
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Closer examination needs to be made of EFIC's use of political risk insurance which is heavily biased towards enabling extractive industry projects in unstable developing countries.

11. EFIC and the government should put a moratorium on the issue of political risk insurance until the EFIC Environment Policy and its process of due diligence has been reviewed by parliament.

Appendix I: OECD Environmental Screening Categories

The Common Approaches provide three categories of environmental and social risk.

Category A: The highest risk category, encompassing projects likely to have “significant adverse environmental impact.”^I Examples of Category A projects are provided, including extractive industry, large-scale infrastructure projects and chemical or industrial processing plants. However the only distinction provided in the definition between Category A and Category B is that ‘these impacts may affect an area broader than the sites or facilities subject to physical works. Category A, in principle, includes projects in sensitive sectors or located in or near sensitive areas.’ Projects deemed Category A are required to provide a full environmental impact assessment and to abide by the IFC Performance Standards. Category A projects are also subject to more extensive consultation and disclosure provisions than Category B projects, specifically 30 days of public review prior to project approval.

Category B: Essentially, Category B is applied to projects less risky than Category A, and more risky than Category C. That is, it represents a spectrum of projects from those that pose only slight potential for environmental damage or social upheaval up to projects that pose risk of adverse environmental impact but for whatever reason, these impacts are not deemed as significant as Category A. As such, there are much fewer requirements with regard to reporting, monitoring and information disclosure.

Category C: Projects placed in this category are deemed to have minimal or no risk for surrounding environments and communities and as such are not required to provide additional documentation with regard to environmental and social impact mitigation or monitoring.

^I Categorisation only needs to be completed where an ECA’s share/support in a project is above SDR 10 million (SDR is the IMF unit of currency).

Appendix II: Criticisms of the IFC Performance Standards

The IFC Performance Standards have been criticised for their lack of the following attributes:^{II}

(1) Transparency

Across all 8 Performance Standards, the IFC calls on client organisations to conduct social and environmental audits and assessment and to engage in full consultation and disclosure of this information with affected communities. While in principle this is both commendable and necessary, there is little stipulation for independent monitoring or assistance in information generating and disclosure processes. As such, the IFC does not provide systemic safeguards for client data verification or process supervision.

(2) Clarity

The NGO Bretton Woods Project has highlighted that where there are specific stipulations regarding process and requirements for auditing and information disclosure, the stipulations are often framed in broadly phrased, opaque language, with no clarifying definitions. For example, under Clause 22 of IFC Performance Standard 1 it is stipulated that, ‘For projects with significant adverse impacts on affected communities, the consultation process will ensure their free, prior and informed consultation and facilitate their informed participation.’ There is no definition or example provided as to when a project might be considered ‘significantly’ adverse; nor is the phrase ‘free, prior and informed consultation’ properly defined. Leaving definitional gaps allows for subjective interpretation of standards and allows for too much discretion and flexibility in client interpretation.

^{II} For more detailed criticism about the IFC Performance Standards, see the Recommendations to International Finance Corporation (IFC) on Policy and Performance standards on Social & Environmental Sustainability, and Policy on Disclosure of Information on the IFC website <http://www.bicusa.org/en/Article.11640.aspx>.

(3) Synchronicity with International Human Rights Standards

This criticism has been levelled with particular regard to the Performance Standards' lack of direct referral to and integration with human rights safeguards. In a submission to the United Nations Special Representative to the Secretary General on Human Rights and Transnational Corporations and other Business Enterprises by a collective of non-government organisations, evidence was presented to demonstrate that while there are implicit references to 'human rights needs' within the Standards, there is no explicit protection offered, nor synchronicity or acknowledgement of international rights protection conventions.¹¹¹ The only international convention referenced through the standards is in Performance Standard 2, Labour and Working Conditions, where the IFC makes mention of their standards having been guided by the International Labour Organisation (ILO) and the United Nations Covenant on the Rights of the Child. There is scope, and indeed a need, to synergise the IFC Standards with broader international covenants and instruments in order to legitimise and strengthen the Performance Standards.

(4) No 'Handbrake Mechanism'

No 'handbrake' mechanism exists in the Performance Standards for stopping inappropriate, unsustainable development—only a requirement for cost-effective mitigation of human health and environment impacts to an unspecified threshold. Implicit is the concept that all environmental degradation can be offset either within or outside the boundary of a project. Instead, a general presumption exists in the performance standards that project development will proceed, as long as the worst elements of the development are mitigated. For example the general requirements state: 'During the design, construction, operation and decommissioning of the project (the project lifecycle) the client will consider ambient conditions and apply pollution prevention and control technologies and practices (techniques) that are best suited to avoid or, where avoidance is not feasible, minimize or reduce adverse impacts on human health and the environment while remaining technically and financially feasible and cost-effective.' The Performance Standards should contain an objective mechanism to provide a legitimate foundation for refusal of support.

¹¹¹ Steven Herz, Kristen Genovese, Kirk Herbertson, and Anne Perrault, *The IFC's Performance Standards and the Equator Principles: Respecting Human Rights and Remedying Violations?*, Centre for International and Environmental Law, Oxfam International, Bank Track, Bank Information Centre & World Resources Institute, August 2008, http://www.ciel.org/Publications/IFC_Aug08/Ruggie_Submission.pdf.

Appendix III: IFC Performance Standards relevant to Gold Ridge mine

Water Management

The IFC Performance Standards require pollution prevention and control techniques to minimise health and environmental impacts of water pollution; they also make stipulations on the reuse, removal and disposal of waste. Management of mining waste and protection of water sources is covered under IFC Performance Standard 3: 'Pollution Prevention and Abatement'. Clause 3 states that 'during the design, construction, operation and decommissioning of the project (the project lifecycle) the client will consider ambient conditions and apply pollution prevention and control technologies and practices (techniques) that are best suited to avoid or, where avoidance is not feasible, minimise or reduce adverse impacts on human health and the environment while remaining technically and financially feasible and cost-effective'. Clause 5 of Performance Standard 3 states, 'the client will avoid or minimize the generation of hazardous and non-hazardous waste materials as far as practicable. Where waste generation cannot be avoided but has been minimized, the client will recover and reuse waste; where waste can not be recovered or reused, the client will treat, destroy, and dispose of it in an environmentally sound manner.'

The IFC guidelines here are somewhat general; however, the IFC EHS Mining Requirements make the following more specific suggestions to protect water quality:

- The development of a Sustainable Water Supply Management Plan to monitor and evaluate groundwater aquifers and surface water;

- To exercise care in designing pit and waste rock dump structures (e.g. proper placement of soil and rock piles) so as to reduce exposure of sediment-generating materials to wind or water;

- The establishment of a water balance (including probable climatic events) for the mine and related process plant circuit and use this to inform infrastructure design.

Consultation

Driving the need for full and effective consultation protocols is the principle that project proponents should seek to secure free, prior and informed consent from project-impacted communities. IFC Performance Standards (Clause 19, 20 and 21 in Standard 1) are clear about the importance of established, open and consultative community engagement that is free of external manipulation, interference, coercion and intimidation.

IFC Performance Standard 1 Clause 21 states: 'If affected communities may be subject to risks or adverse impacts from a project, the client will undertake a process of consultation in a manner that provides the affected communities with opportunities to express their views on project risks, impacts, and mitigation measures, and allows the client to consider and respond to them.'

Performance Standard 1 Clause 22 states 'For projects with significant adverse impacts on affected communities, the consultation process will ensure their free, prior and informed consultation and facilitate their informed participation.' Consultation is of particular importance in relation to the potential consequences of tailings dams and potential river system contamination and pollution.

Appendix IV: Australia-PNG Joint Understanding and Sovereign Wealth Funds

Extracts from the Joint Understanding. For the full documents see: http://www.dfat.gov.au/geo/png/png_lng_091208.html

4. Both parties acknowledge that the Generally Accepted Principles and Practices (GAPP) – the Santiago Principles – which provide a framework to properly reflect appropriate governance and accountability arrangements, as well as the conduct of investment practices on a prudent and sound basis, will be utilised in the establishment and operation of the PNG Fund (or Funds).

5. Early cooperation will focus on aligning the structure of the PNG Fund (or Funds) with Santiago Principles 1, 2, 4, 6, 7, 8, 10, 11 and 12:

- a. Principle 1 – The legal framework for the Fund should be sound and support its effective operation and the achievement of its stated objective.
- b. Principle 2 - The policy purpose of the Fund will be clearly defined and publicly disclosed.
- c. Principle 4 – There should be clear and publicly disclosed policies, rules, procedures, or arrangements in relation to the Fund's general approach to funding, withdrawal, and spending operations.
- d. Principle 6 – The governance framework for the Fund should be sound and establish a clear and effective division of roles and responsibilities in order to facilitate accountability and operational independence in the management of the Fund to pursue its objective.
- e. Principle 7 – The owner (ie the Government) should set the objectives of the Fund, appoint the members of its governing body(ies) in accordance with clearly defined procedures, and exercise oversight over the Fund's operation.
- f. Principle 8 – The governing body(ies) should act in the best interest of the Fund, and have a clear mandate and adequate authority and competency to carry out its functions.
- g. Principle 10 – The accountability framework for the Fund's operations should be clearly defined in the relevant legislation, charter, other constitutive documents, or management agreement.
- h. Principle 11 – An annual report and accompanying financial statements on the Fund's operations and performance should be prepared in a timely fashion and in accordance with recognised international or national accounting standards in a consistent manner.
- i. Principle 12 – The Fund's operations and financial statements should be audited annually in accordance with recognised international or national accounting standards in a consistent manner.

6. As a part of the process, Australia will assist with Papua New Guinea's engagement with the International Forum of Sovereign Wealth Funds. Participation by Papua New Guinea will assist it in developing an understanding of, and implementing, the Santiago Principles, and will facilitate the exchange of views on issues of common interests with other Sovereign Wealth Funds.

GLOSSARY

ASG	Australian Solomons Gold Limited
AusAID	Australian Government Overseas Aid Program
BFS	Bankable Feasibility Study
DFAT	Department of Foreign Affairs and Trade
DIFF	Development Import Finance Facility
ECA	Export Credit Agency
ECG	Export Credit Working Group
EFIC	Export Finance and Insurance Corporation
EHS	Environmental, Health and Safety Guidelines
EIA	Environmental Impact Assessment
EIS	Environmental Impact Statement
EITI	Extractive Industries Transparency Initiative
EPBC	Environmental Protection and Biodiversity Conservation Act
ESD	Ecologically Sustainable Development
FDI	Foreign Direct Investment
FID	Final Investment Deadline
GDP	Gross Domestic Product
GRLCA	Gold Ridge Landholders Council Association
GRML	Gold Ridge Mining Limited
HDI	Human Development Index
IFC	International Finance Corporation
IMF	International Monetary Fund
IPBC	Independent Public Business Corporation
IUCN	International Union for Conservation of Nature
JBIC	Japan Bank for International Cooperation
KBR	Kellogg, Brown and Root
KTDA	Kolobisi Tailings Dam Association
NGO	Non-Government Organisation
LNG	Liquefied Natural Gas
MDB	Multilateral Development Bank
NIA	National Interest Assessment
ODA	Official Development Assistance
OECD	Organization for Economic Co-Operation and Development
OPIC	Overseas Private Investment Corporation
PIA	Project Impact Area
PNG	Papua New Guinea
PNG LNG	Papua New Guinea Liquefied Natural Gas Project
PRI	Political Risk Insurance
RAMSI	Regional Assistance Mission to the Solomon Islands
ROW	Right of Way
SIA	Social Impact Assessment
TSF	Tailing Storage Facility