



# Australia's Export Credit Arrangements

## Public inquiry

Submission to the Productivity Commission  
Jubilee Australia, 18 November 2011

Jubilee Australia  
ABN 77 049 639 322  
Locked Bag 199  
QVB NSW 1230  
Australia

[www.jubileeaustralia.org](http://www.jubileeaustralia.org)

Carmelan Polce  
Deputy Director, Jubilee Australia  
Level 7, 379 Kent Street, Sydney  
Locked Bag 199, QVB NSW 1230

T: (02) 8259 0817  
F: (02) 9262 4514  
E: [carmelan@jubileeaustralia.org](mailto:carmelan@jubileeaustralia.org)

### **About Jubilee Australia:**

Jubilee Australia is an independent non-profit research and advocacy organisation established in 2001, in response to the success of the international Jubilee 2000 campaign for debt cancellation and the need for continued work in this area. Today Jubilee's work seeks to draw attention to the policies of government and practices of business that impede the alleviation of long term poverty, particularly in the Asia Pacific.

Our purpose is ultimately to see the establishment of national and international governance structures that work in the interests of the majority of the world's people and our environment, rather than working to preference the interests of a few. We are driven by our support for civil society groups in the Global South who are working towards economic justice, democracy and freedom from poverty, in particular the Jubilee South Asia Pacific Movement on Debt and Development.

This submission draws on our experience over eight years with Australian export credit policy, which includes: advocacy for cancellation of export credit debts to highly indebted countries; research into the impact of EFIC supported extractive industry projects in the region; and promotion of measures to improve the responsibility of lending practices and increase public accountability.

We attach as an appendix to this submission Jubilee Australia's report published December 2009, *Risky Business: Shining a Spotlight on Australia's Export Credit Agency*.<sup>1</sup> As was the intention, the report has stirred greater debate in Australia regarding EFIC's transparency, environmental policy and its responsibility to Australians and citizens of less-developed nations.

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<sup>1</sup> Available for download at: <http://www.jubileeaustralia.org/page/work/export-credit-mining>

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## Summary of Recommendations

**Recommendation 1:** The rationale for EFIC involvement in projects characterised by excessive risk, where the private sector is reluctant to provide finance, should be reviewed with consideration to the balance between filling the market gap and providing irresponsible finance.

**Recommendation 2:** The Cabinet process for considering National Interest Account proposals and assessing the associated risks, should be reviewed with consideration for the implementation of a process for parliamentary and public scrutiny in line with the National Interest Assessment under section 8 of the International Monetary Agreement Act 1947.

**Recommendation 3:** The issuance of Political Risk Insurance by EFIC to facilitate extractive industry projects with excessive risk should be reviewed.

**Recommendation 4:** Section 7(1)(c) should be amended to reflect the Government's commitment to untying Australian overseas development assistance.

**Recommendation 5:** One permanent position on the EFIC Governing Board should be reserved for a member with specialist knowledge and experience in Corporate Social Responsibility.

**Recommendation 6:** EFIC's statutory exclusion from *Freedom of Information* should be removed on the basis that adequate provisions for non-disclosure are available to EFIC through public interest exemptions.

**Recommendation 7:** EFIC should adopt a Disclosure Policy with a presumption *in favour* of disclosure, providing limits to commercial-in-confidence by requiring companies to demonstrate commercial confidentiality before a document is withheld from public release.

**Recommendation 8:** Section 8(2)(b)(iii) of the EFIC Act should be amended to require compliance with, rather than procedural consideration of, Australia's international obligations under international agreements.

**Recommendation 9:** When undertaking a review of applications for export finance, EFIC should benchmark projects against international human rights law and standards, as referred to in the revised OECD Guidelines for Multinational Enterprises.

**Recommendation 10:** The Government should amend the EFIC Act to establish formal statutory recognition for the EFIC *Policy for environmental and social review of transactions*.

**Recommendation 11:** The ability to influence a project's impact should not be a criterion for deciding what level of environmental/social review is appropriate. That decision should be solely based on potential risk.

**Recommendation 12:** For Category A projects, there should be an explicit requirement for Action Plans to be submitted at the time of the review process. A finalised action plan should then be agreed between EFIC and the client before final support is granted, and, where appropriate, in consultation with affected communities. Compliance with such Action Plan should also be made a contractual obligation with clients.

**Recommendation 13:** For EFIC clients, EFIC should ensure that all applicants put in place due diligence processes to prevent or, where prevention is not possible, to minimise and remediate the violation of human rights of individuals and communities, and environmental impacts as a result of their operations.

**Recommendation 14:** Support for extractive industries exports should be limited to transactions in EITI Candidate or EITI Compliant countries.

**Recommendation 15:** EFIC should publicly release:

- project assessments undertaken during due diligence;
- modifications and mitigation measures required by EFIC; and
- project monitoring and evaluation documents generated by EFIC project proponents and consultants throughout project implementation.

**Recommendation 16:** AusAID and the Department of Sustainability, Environment, Water, Population and Communities should undertake a desktop review of Category A and B transactions before approval, and a summary should be published on the EFIC website.

**Recommendation 17:** EFIC and the Australian Government should establish an independent grievance mechanism for project affected communities of EFIC clients.

# 1. Introductory comments

Non-Government Organisations began campaigning for ECA reform after discovering that the agencies were financing projects whose environmental, social and human rights impacts were unacceptable to affected communities in developing countries.

Through official export credit support, export credit agencies (ECAs) have facilitated (knowingly or unknowingly) corporate activity that has been associated with the forced displacement of local populations, paramilitary and police repression, workplace injuries, state sponsored intimidation and censorship, exposure to environmental contaminants and biological pathogens and the destruction of sacred cultural sites, among other adverse environmental, social and human rights impacts.

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

Furthermore, because the approach of ECAs has been to support domestic business at any costs in the fierce world of export competition, export credit agencies have 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 with impunity by the domestic companies they support.<sup>2</sup>

As the lender/insurer of last resort, EFIC retains a strong capacity to shape the conditions under which Australian exporters engage in commercial activities overseas. EFIC operates in a political, moral and legal context different from private sector financiers and insurers.

EFIC, either directly or indirectly, uses public funds to operate its business. The agency operates on a statutory basis, fulfilling a public policy function. EFIC should not be using public funds nor public authority to contribute to social unrest, environmental damage or human rights abuses in other countries.

EFIC may be considered merely a financing body overcoming market imperfections, externalities or other 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.

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 portfolio. 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.

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<sup>2</sup>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>

## 2. Rationale for Government involvement in Export Finance

### 2.1 Market Gap

**Recommendation 1:** The rationale for EFIC involvement in projects characterised by excessive risk, where the private sector is reluctant to provide finance, should be reviewed with consideration to the balance between filling the market gap and providing irresponsible

EFIC publications suggest that a market gap may arise in circumstances where the risk for private providers is excessive.<sup>3</sup>

Jubilee Australia contends, however, that the fact that private credit is not available to an exporter for particular project or transaction is not sufficient evidence of market failure; rather, in certain circumstances the 'market gap' is an important signal of the risks of providing finance to that borrower or for that project. Rather than being understood as 'market failure', the reluctance of private financiers to invest in a project due to excessive risk could be taken as evidence of an efficient market.

For example, if an Australian exporter approaches EFIC for a project loan or political risk insurance, in the absence of adequate private sector finance, in order that the exporter may invest in a 'high risk' project, characterised as such due to incidences of civil conflict, a fragile political regime and weak regulatory frameworks in the host country, is this a genuine 'market gap', or rather an acknowledgement by the market that the current environment in the host country is too hostile for stable investment?

Jubilee Australia contends that just because a project or transaction is beyond the risk appetite of private financiers, this does not alone signal the need for government intervention in the form of official export credit, whether on the Commercial Account or the National Interest Account.

In this case, rather than facilitating and encouraging Australian exports to the benefit of the wider Australian community, EFIC is being used to shift the risk for global trade and investment from private banks and companies to the public-sector, taxpayer backed export credit accounts. EFIC is, in this case, the 'lender of last resort' for Australia's riskiest export activities.

An analysis of EFIC's sectoral profile shows that it has a history of supporting large-scale extractive industry projects with loans and insurance policies. Over the last decade, EFIC has supported medium to long-term transactions of higher risk, increasingly in non-traditional areas like Africa where exporters are unable to establish support in the commercial market. This has increased the likelihood of EFIC clients conducting business in fragile environments characterised by weakly-democratic governance institutions, poorly enforced regulations for foreign investment, incidences of civil conflict, and low human development indicators.

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<sup>3</sup> Productivity Commission Issues Paper, page 19  
[http://www.pc.gov.au/\\_data/assets/pdf\\_file/0018/113094/export-credit-issues-paper.pdf](http://www.pc.gov.au/_data/assets/pdf_file/0018/113094/export-credit-issues-paper.pdf)

## 2.2 National Interest Account

**Recommendation 2:** The Cabinet process for considering National Interest Account proposals and assessing the associated risks, should be reviewed with consideration for the implementation of a process for parliamentary and public scrutiny in line with the National Interest Assessment under section 8 of the International Monetary Agreement Act 1947.

The EFIC Act 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' (EFIC Act S29).

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 PNG LNG project discussed below is the most recent and the most significant example of this.

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.

Jubilee Australia contends that the rationale for a National Interest Account is flawed: Australian taxpayers are told that, in their interest, Commonwealth funds are to be appropriated from the budget and used to assist a small number of Australian private corporations to win export contracts - in many cases to assist Australian companies to participate in projects considered excessively risky by private financiers. Any substantive information used to justify this decision, however, is protected by 'cabinet-in-confidence' and the validity of the decision is not open for debate even by elected members of the Federal Parliament. There are no checks and balances in this system and in an environment of minimal transparency, intended or unintended abuses of the policy can occur and go undetected.

### Example: PNG LNG Project

The Exxon-Mobile led liquefied natural gas project in the Southern Highlands of Papua New Guinea represents the world's largest project finance transactions.

In December 2009 the Trade Minister confirmed that Australia would become a financier of the PNG LNG project via an EFIC loan of up to US\$500 million, US\$400 million of which was to be written on the National Interest Account.

The 2010 EFIC Annual Report states<sup>4</sup>:

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<sup>4</sup> 2010 EFIC Annual Report, page 10: accessed at <http://www.efic.gov.au/about/governance/AnnualReports/Documents/EFIC-Annual-Report-2010.pdf>



“EFIC’s motivation for participating was to support Australian exporters pursuing contracts for the construction phase of the project. Australian companies have been awarded or are preferred tenderers for more than US\$1 billion worth of work, with substantial sub-contracting opportunities also available.

Australian Securities Exchange (ASX)-listed companies Oil Search Limited and Santos Limited are major investors in the project (at 29 per cent and 13.5 per cent respectively).

The project has the potential to add considerably to PNG’s economic growth, with substantial royalties and dividends to flow to the Independent State of PNG and landholder groups.”

However, due the absence of a parliamentary process to test and review this decision, it is not possible to determine the answer to important questions:

1. Is the significant risk - of human rights abuse through the provocation of conflict, rapid increase in HIV infection, exacerbation of social problems through monetary benefits etc., of a worsening governance through the massive increase in revenue, and of other negative environmental, social and economic impacts associated with the project - justified? And why should the outcome be any different to the problematic history of EFIC-supported natural resource projects in PNG since 1980? (See Table Appendix 1)
2. How does this project benefit the Australian community?
3. What was the quality of risk assessment associated with the National Interest Account proposal?

Research<sup>5</sup> this year undertaken in the Southern Highlands of Papua New Guinea where the PNG LNG project will extract the gas before it is sent via pipeline to the processing plant near Port Moresby, has found that:

- benefit sharing negotiations are widely considered to have been unfair and non-transparent;
- PNG LNG business development grants have been associated with misappropriation, disputes over claims and a lack of monitoring;
- the pursuit of monetary benefits from the PNG LNG project has, to a degree, distorted some traditional family values and structures;
- the greater availability of cash has generated social problems including increases in alcohol consumption, gambling and prostitution; and
- the PNG LNG project has contributed to a higher cost of living.

The research concludes that a majority of people feel that the benefits of the PNG LNG project are not fairly shared and that if this is not addressed, human development is likely to stagnate for many people while the risk of instability and violence is likely to increase.

The following instances of project-related conflict and unrest have been reported since the signing of the project agreement in late 2009:

- Five people killed in conflict near the plant site between Boera and Porebada villages resulting from land ownership disputes and the implication of land ownership for project benefits (January 2010)
- Eleven people were killed by villagers from the neighbouring Erave district in relation to a dispute about project benefits, and 270 properties were destroyed (January 2010).

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<sup>5</sup> Dr James McIlraith, Preliminary review – The PNG LNG Project in the Hela region of Papua New Guinea, unpublished

- 1000 people protest shut down Hides PDL 7 (Conditioning Plant) area after a young boy died from chemical poisoning (January 2011)
- Department of Petroleum and Energy staff were taken hostage during a protest in Port Moresby over Business Development Grant Payments (February 2011)
- Repeated attacks on workers and worker strikes (July - September 2011)

## 2.3 Political Risk Insurance

**Recommendation 3:** The issuance of Political Risk Insurance by EFIC to facilitate extractive industry projects with excessive risk should be reviewed.

Political Risk Insurance (PRI) provided by EFIC may be critical to facilitating a large-scale project by an Australian company in a developing country, where the private sector is unwilling to provide such a risky facility.

PRI may enable a project to proceed notwithstanding a host country lacking the institutional or governance capacity to regulate the project/operation. In many situations deficiencies in project design relating to environmental and social management plans are being 'theoretically' offset or mitigated by the provision of political risk insurance. Instead of implementing a project design framework that addresses risks associated with extractive industry projects in developing countries and deploying effective actions plans as required by IFC Performance Standards, some companies prefer to rely upon the financial safety net of political risk insurance if the project becomes politically untenable.

In maintaining Australia's international reputation and support for human rights it is important that PRI is not used as a substitute for strong project host nation institutional, regulatory and governance capacities and best practice project management of social and environmental risks. In this regard, Jubilee Australia is concerned at recent public comments made by EFIC Senior Economist Ben Ford regarding the risky climate for business that still persists in West Africa. In relation to the risky operating environments that exist in West Africa, Ford told journalists:

“And how you deal with this I’m not entirely sure – it’s almost a ‘roll the dice’ situation”.<sup>6</sup>

By issuing PRI, EFIC is essentially encouraging companies to proceed with excessively risky projects. In addition, local communities are not insured against the fallout of these projects and often end up suffering these negative consequences.

<sup>6</sup> Nick Evans, “EFIC Sounds Warning on West Africa”, Africa Down Under Conference Media Coverage, 24 August 2010, [http://www.africadownunderconference.com/aurora/assets/user\\_content/File/Media\\_Coverage.pdf](http://www.africadownunderconference.com/aurora/assets/user_content/File/Media_Coverage.pdf) accessed 23 November 2010

## 2.4 Untied Aid

**Recommendation 4:** Section 7(1)(c) should be amended to reflect the Government's commitment to untying Australian overseas development assistance.

Mixing commercial interests with development assistance has long been criticised as an undermining factor for ensuring aid effectiveness. The most overt of these practices, known as “tied aid”, involves tying development funding to the procurement or purchase of goods or contracts from the donor country. For at least 40 years the practice has been condemned by the international community, beginning with the Pearson Commission on International Development which questioned the practice as early as 1969.<sup>7</sup> More recently, the Paris Declaration on Aid Effectiveness of 2005 committed participating donor countries and institutions to work towards fully untying their aid. According to the Declaration:

“Untying aid generally increases aid effectiveness by reducing transaction costs for partner countries and improving country ownership and alignment.”<sup>8</sup>

Given that Australia is a signatory of the Paris Declaration and participates in the accompanying Accra Agenda for Action, it is concerning to see that the EFIC Chief Economist, Mr Roger Donnelly, is supporting the proposal of:

“Supplying bilateral aid to targeted SSA [Sub-Saharan Africa] countries to win goodwill that would support Australian commercial interests”.<sup>9</sup>

Australia's Development Import Finance Facility (DIFF) scheme, a policy of the Australian Department of Foreign Affairs and Trade, was intended to open up new foreign markets for Australian exporters while at the same time assisting the ‘development needs’ of importing countries. Recipient governments were offered concessional loans (EFIC) partially supported by aid grants to fund the import of goods and services from Australian companies.

DIFF was contentious and heavily criticised for misusing the overseas development assistance program to promote Australian exports. In 1996 the policy was discontinued following a change of government and a subsequent Senate Inquiry into the scheme's effectiveness.<sup>10</sup> At the time, the new Treasurer, Peter Costello, described DIFF as a ‘subsidy paid to domestic business’.

As such there has been a continuing policy reluctance to merge bilateral aid and commercial development programs in the way the DIFF program co-opted aid and commercial objectives.

## 3. Governance

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<sup>7</sup> Pearson Commission for International Development, *Partners in Development*, 1969

<sup>8</sup> Paris Declaration on Aid Effectiveness, Clause 31, available at <http://www.oecd.org/dataoecd/30/63/43911948.pdf>

<sup>9</sup> Roger Donnelly and Benjamin Ford, *Into Africa*, op cit. 18 Pearson Commission for International Development, *Partners in Development*, 1969 19 Paris Declaration on Aid Effectiveness, Clause 31, available at <http://www.oecd.org/dataoecd/30/63/43911948.pdf>

<sup>10</sup> AusAid ‘A Review of the Effectiveness of the Development Import Finance Facility (DIFF)’ (1996). Accessed at [www.aisaid.gov.au/publications/pdf/diffrevw.pdf](http://www.aisaid.gov.au/publications/pdf/diffrevw.pdf)

### 3.1 EFIC Board

**Recommendation 5:** One permanent position on the EFIC Governing Board should be reserved for a member with specialist knowledge and experience in Corporate Social Responsibility.

The commitment of EFIC to operate in compliance with international standards of corporate social responsibility and the responsibility to manage the risks of environmental, social and human rights impacts on behalf of the Government and Australian taxpayers, should be formalised in the governance framework.

### 3.2 Transparency and Disclosure

**Recommendation 6:** EFIC's statutory exclusion from *Freedom of Information* should be removed on the basis that adequate provisions for non-disclosure are available to EFIC through public interest exemptions.

**Recommendation 7:** EFIC should adopt a Disclosure Policy with a presumption *in favour* of disclosure, providing limits to commercial-in-confidence by requiring companies to demonstrate commercial confidentiality before a document is withheld from public release.

EFIC's business is risk, financial risk as well as risk of environmental, social and human rights impacts. EFIC has a responsibility to inform the public adequately of these risks and to manage them on behalf of the Government and taxpayers.

Yet 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.

In a public statement to the Parliamentary Inquiry into Australia's relationships with the Countries of Africa, 7 December 2010, EFIC made the following comment:

“Our concern around commercial-in-confidence is very much around the commercial end. We have firms who give us their financial statements, and if they are small firms that means I can tell how much their chief executive is paid. These firms are small, privately held companies through to big companies. They give us a whole raft of documents, and our commercial-in-confidence exemption is based on the fact that they do not want that material in the public arena. What we are willing to put in the public arena...are matters concerning the environment, but not issues of their cash flows, their internal reports et cetera.”<sup>11</sup>

Jubilee Australia is in full agreement with EFIC that documents such as financial statements and cash flows of client companies should be kept confidential. We are also in agreement with the comment above, which identifies that there is a distinction between commercial information and information pertaining to social and environmental issues.

Yet neither in the policies nor the practices of EFIC is this distinction clear. ‘Commercial-in-confidence’ is not defined and no Disclosure Policy exists. Moreover, in the absence of any limitations to commercial-in-confidence provided by EFIC itself, Freedom of Information legislation could provide the necessary balance, yet it fails to do so due to EFIC’s statutory exclusion.

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<sup>11</sup> Joint Standing Committee on Foreign Affairs and Trade, *Hansard Proof Transcript, Export Finance and Insurance Corporation*, 7 December 2010, <http://www.aph.gov.au/house/committee/jfadt/africa%2009/hearings/Proof%20Transcript%207%20December.pdf>, p FADT 44”

## 4. International Obligations of the Australian Government

**Recommendation 8:** Section 8(2)(b)(iii) of the EFIC Act should be amended to require compliance with, rather than procedural consideration of, Australia's international obligations under international agreements.

**Recommendation 9:** When undertaking a review of applications for export finance, EFIC should benchmark projects against international human rights law and standards, as referred to in the revised OECD Guidelines for Multinational Enterprises.

Australia should fulfill the letter and spirit of Australia's undertakings under those international agreements and conventions it has ratified.

In line with the UN Guiding Principles on Business and Human Rights, the Australian Government must ensure that export finance support is not provided for activities that cause or contribute to human rights abuses. This should be reflected by a requirement that EFIC integrate human rights due diligence and risk assessment processes into its operation.

Such due diligence processes would have two levels: first, there are the steps that EFIC ought to take; and second, there are the steps that EFIC should ensure its clients are taking to become aware, prevent and address adverse human rights impacts.

For EFIC, when undertaking a review, EFIC should benchmark projects against international human rights law and standards<sup>12</sup>, as referred to in the revised OECD Guidelines for Multinational Enterprises.

These instruments outline the human rights that all corporate actors have a responsibility to respect. As such, it is essential that the impact of the activities of companies is benchmarked against human rights instruments. EFIC cannot rely on the IFC Performance Standards, which has just gone under review. The revised Performance Standards still fall below international human rights standards in many respects.<sup>13</sup>

For EFIC's clients, it is reasonable to require them to include in funding submissions project risk assessment reports prepared with reference to the UN Guiding Principles and provide comment on the project sponsors' compliance with the OECD Guidelines (refer to Recommendation 12)

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<sup>12</sup> "International Human Rights Standards" as referred to in the revised OECD Guidelines on Multinational Enterprises should include at a minimum the Universal Declaration of Human Rights and the United Nations core human rights conventions, as well as UN Declarations such as the UN Declaration on the Right of Indigenous People and Core International Labour Organization (ILO) Conventions.

<sup>13</sup> The Revised Sustainability Framework of the International Finance Corporation: a missed opportunity to better protect the rights of those affected by business related human rights abuses Corporation (IOR 80/004/2010). Amnesty International.

## 5. Environmental, Social and Human Rights Due Diligence

### 5.1 Statutory recognition

**Recommendation 10:** The Government should amend the EFIC Act to establish formal statutory recognition for the EFIC *Policy for environmental and social review of transactions*.

Export Development Canada (EDC) has an Environmental Review Directive that has legislative recognition under Section 10.1 of the Export Development Act 1985 (E-20). The aim of legislative recognition of EDC's Environmental Review Directive is to secure consistent procedural compliance with the project assessment process. Jubilee Australia advocates that EFIC adopts the same approach.

### 5.2 Classification

**Recommendation 11:** The ability to influence a project's impact should not be a criterion for deciding what level of environmental/social review is appropriate. That decision should be solely based on potential risk.

For example, in April 2010 EFIC signed an agreement to loan \$US15 million to a Ghanaian joint venture owned by two Australian companies. The purpose of the loan was to allow the joint venture to purchase mining machinery manufactured in Australia for use in contract mining services provided to its clients in West Africa. Those clients included Newmont Ghana Gold Limited which operates and owns Ahafo Gold Mine.

Since its commencement in 2006, the Ahafo gold mine in Ghana has been a known source of controversy, including:

- allegations of human rights abuses by security forces protecting the mine;
- displacement of 10 000 people (95 per cent of whom were subsistence farmers);
- inadequate compensation;
- irresponsible practices; and
- a serious cyanide spill in October 2009.

Further, a recommendation was made by a ministerial panel of the Government of Ghana that the Newmont Mining Corporation be fined US\$4.9 million for failing to prevent the October 2009 cyanide spill, and for failing to properly report on and investigate the spill.

EFIC did not disclose the signing of this agreement until the release of a media statement in August 2010 (4 months after signing). Despite the fact that EFIC's clients would be participating in a project about which there existed documentation of serious environmental, social and human rights impacts, EFIC classified the transaction as 'Category B', on the basis that the issues are the responsibility of the operator and owner of the Ahafo Gold Mine, Newmont Ghana Gold Limited, and EFIC has no relationship with that company.<sup>14</sup>

### 5.3 Action Plans

**Recommendation 12:** For Category A projects, there should be an explicit requirement for Action Plans to be submitted at the time of the review process. A finalised action plan should then be agreed between EFIC and the client before final support is granted, and, where appropriate, in consultation with affected communities. Compliance with such Action Plan should also be made a contractual obligation with clients.

A process of due diligence is made up of several steps and the assessment of potential environmental, social and/or human rights impacts is only the first step. EFIC should ensure its clients have plans in order to discharge their responsibility to respect the human rights of individuals and communities after they receive EFIC support.

### 5.4 Human Rights due diligence

**Recommendation 13:** For EFIC clients, EFIC should ensure that all applicants put in place due diligence processes to prevent or, where prevention is not possible, to minimise and remediate the violation of human rights of individuals and communities, and environmental impacts as a result of their operations.

EFIC should require applicants to have in place due diligence measures which would include, but not be limited to, the following:

- A human rights policy on their responsibility to respect human rights, in line with UN standards on Business and Human Rights, and systems to ensure policy is integrated into management systems, implemented and monitored with adequate resources throughout corporate operations.
- The identification of grievance processes available to affected communities that would enable them to raise concerns about the environmental and human rights impacts of a project. Such grievance mechanisms may be established by the project overall or, where appropriate, established by the client.

<sup>14</sup> Transcript of Senate Estimates 15 April 2011: accessed at <http://scott-ludlam.greensmps.org.au/content/question/export-finance-and-insurance-corporation-loans-west-african-mines>



- A clear process for ensuring that affected communities will have access to information, including action plans, and be consulted on decisions and activities that are likely to affect their human rights throughout the project's life-cycle.

## 5.5 Extractive Industry due diligence

**Recommendation 14:** Support for extractive industries exports should be limited to transactions in EITI Candidate or EITI Compliant countries.

## 5.6 Information Disclosure and Accountability

**Recommendation 15:** EFIC should publicly release:

- a. project assessments undertaken during due diligence;
- b. modifications and mitigation measures required by EFIC; and
- c. project monitoring and evaluation documents generated by EFIC project proponents and consultants throughout project implementation.

**Recommendation 16:** AusAID and the Department of Sustainability, Environment, Water, Population and Communities should undertake a desktop review of Category A and B transactions before approval, and a summary should be published on the EFIC website.

**Recommendation 17:** EFIC and the Australian Government should establish an independent grievance mechanism for project affected communities of EFIC clients.

Releasing information about environmental, social and human rights impacts of investments, only after approved, or after authorisation by the client, puts EFIC and the Australian Government at risk of complicity and involvement in dodgy projects and unaccountable regimes.

While considerations of commercial confidentiality might preclude the release of some documents such as resource exploration maps, there is no reasonable justification for environmental impact assessments, minutes of meetings with local communities and risk assessments of all types to be hidden under a blanket clause of 'commercial-in-confidence'. The rationale of risk assessment is undermined if the assessments themselves are kept secret.

## Example: Gold Ridge Mine, Solomon Islands

Gold Ridge Mine is located upstream from the Tinuhulu River on the main island of Guadalcanal, 30 kilometres from Honiara in the Solomon Islands. Gold Ridge was the first large scale mine to be developed in the country and remains the only mine to have reached production phase. Less than twelve months after the Gold Ridge mine commenced operation in 1997, armed conflict occurred near the site between the 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 at the Gold Ridge Mine. The mine was forced to close prematurely and all staff were evacuated in June 2000. In 2004, a newly incorporated company Australian Solomon Gold (ASG) bought the Gold Ridge mine and its assets. One year later, it took control of Gold Ridge Mining Ltd and announced its intention to reopen the mine.

In May 2005 EFIC provided ASG with a Political Risk Insurance (PRI) policy to undertake a Bankable Feasibility Study of the project. In 2007 the company lodged a second PRI application with EFIC for activities relating to the reopening and operation of the mine itself.

In November 2009, the Minister for Trade, Simon Crean acknowledged EFIC had evidence that raised concerns about the probity of landholder agreements (Senate Hansard Monday, 30 November 2009 Page: 9634). The Minister confirmed concerns about Gold Ridge were considered by EFIC and Cabinet before ASG was provided provisional political risk insurance. Three months later the Senate forced the Federal Government to release Gold Ridge project evaluations that included an evaluation of the Gold Ridge Social Action Plan by the Research School of Pacific and Asian Studies from the Australian National University.

The evaluation sought to benchmark compliance of ASG with the Equator Principles and IFC Performance Standards. The ANU paper uncovered numerous issues of non-compliance including inadequate grievance mechanisms, unsatisfactory cultural heritage protection and insufficient land acquisition and involuntary resettlement processes.

Of most concern was the consultation process utilised by GRML/ASG to secure the consent of landowners to compensation and relocation packages. Report found that the Landholder Agreement negotiations and signings did not occur in the affected communities, but in a Honiara hotel with a former Solomon Islands Minister, George Kuper<sup>15</sup> as the independent Chairperson overseeing the negotiation. During these negotiations ASG/GRML offered and provided 'completion bonuses' to the Members of the landowner association and Mr Kuper. The 'completion bonuses', also known as 'facilitation payments', were outlined in the GRML Landowner Discussion Completion Strategy 2006. The strategy adopted by ASG provided cash bonuses starting at \$2,500SB and dropping to zero if an agreement wasn't achieved by a certain date.

In relation to the provision of cash bonuses to facilitate signing of compensation and land relocation agreements, the ANU authors stated;

*"We must advise that (a) it is our view that the [project proponent] has crossed the line in respect of 'external manipulation, interference, or coercion' and (b) while it is most definitely culturally inappropriate to make cash offers to signatories anywhere, it is even more inappropriate to do this in the context of a mining agreement with a small-scale society in Melanesia and still more*

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<sup>15</sup> <http://www.mzi.com/pages/news.php?id=21032&op=read>

*inappropriate (if possible) in a post-conflict situation where donors have pledged unity to defeat corruption and reform governance.”*

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.’* 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.’* 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.’*<sup>16</sup>

The payment of a facilitation bonus to George Kuper, who was alleged to be a public official at the time of the negotiation, was referred to the Australian Federal Police to investigate whether ASG had committed an offence of bribing a foreign public official. The AFP found there was insufficient evidence to charge ASG with this offence.

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<sup>16</sup> Jubilee Australia (2009) Risky Business: Shining a Spotlight onto Australia’s Export Credit Agency: p 27

## Appendix: EFIC-financed 'Problem' Projects in the Extractive Industries, 1980 - 2010

Project name	Year	Nature	EFIC support	Nature of problem
Panguna Copper Mine	1980	Copper mine in Bougainville Papua New Guinea	\$4.2m loan to support mining equipment purchase from Vickers Australia Ltd in 1980.	Environmental damage (to the rivers and land) caused by the mine contributed to a decade long civil war on the island beginning in 1990.
OK Tedi Mine	1982	Open-pit copper and gold mine in Papua New Guinea	\$212 million loan to multiple exporters to facilitate Australian participation in the project in 1982. An added \$12m was offered as a loan to further facilitate Australian participation.	Environmental and social destruction; approx. 30mn tonnes of tailings have been swept down OK Tedi and Fly River systems every year since the 1990s. Ecological life in the region has all but disappeared. Riverbeds have risen, outlying areas have been flooded, thousands of trees have been destroyed and 50,000 people have been affected.
Porgera Gold Mine	1990	Gold mine in Papua New Guinea	In 1990 a \$52.7mn loan was offered to MRDC Pty Ltd to support its share of construction costs for the mine. EFIC loaned an extra \$159.9m to multiple exporters - including Highland Gold Properties Pty Ltd - for the mine's development (53.5% of total EFIC financing for financial year 1990-1).	Allegations of torture and rape by private security squads.
Lake Kutubu oil and gas projects (Kutubu Joint Oil Venture)	1992	Oil and gas in Papua New Guinea	EFIC provided \$326.5m of Political Risk Insurance to multiple exporters in 1992.	Toxic pollution leaked into waterways in 2007. 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.
Lihir Gold Mine	1996	Gold mine in Papua New Guinea	Political risk insurance worth \$336.9m was provided for the international banks providing loan finance for the Rio-Tinto managed mine in 1996.	Environmental and ecological damage. Violation of the London Convention relating to ocean dumping (of which Australia is a signatory). During the mine lifetime, approx 89m tonnes of cyanide contaminated tailings and 330mn tonnes of waste rock will be dumped into the ocean in an area described as one of the richest areas of marine biodiversity on earth.

Project name	Year	Nature	EFIC support	Nature of problem
Sepon Gold And Copper Mine	2001-2003	Gold mine in Sepon, Southeast Lao PDR	Political risk insurance worth \$73m provided. Since 2004, various bonds have been provided to Australian exporter McConnell Dowell Constructors Pty Ltd relating to the contract to supply and install piping at the mine.	Human rights and environmental issues: EFIC's political risk insurance was provided on the back of incomplete environmental impact assessments. Issues include: destruction of sacred indigenous forest sites, violation of IFC safeguard policies on Involuntary Resettlement and Indigenous Peoples, threats to three endangered species.
Gold Ridge Mine	2006	Gold mine in Solomon Islands	Political risk insurance worth \$53.2mn was provided to Australian Solomons Gold (ASG) to undertake bank feasibility study to determine viability of recommencing operations at the formerly operating mine.	Transparency issues: No disclosure of evidence over how the company acquired agreement from landowners despite allegations of improper conduct. Lack of rigor 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 measures were taken regarding social and environmental management.
PNG LNG Project	2010	Liquefied natural gas in Papua New Guinea	In 2010, EFIC provided a \$547m (80% national interest account) loan to Santos and Oil Search.	Benefits sharing agreement (between landholders, project sponsors and the PNG government) was hastily pushed through, resulting in increased tension between stakeholders. There have been allegations that security forces in the Southern Highlands may be committing human rights violations in the project areas. There are doubts that the PNG LNG revenues will be managed in a way as to sustain long-term economic development. Environmental impacts (on the water systems, forests and sea beds) and the impact of the spread of HIV/AIDS appear not to have been properly assessed.