Jubilee Australia Submission
29 November 2010

Inquiry into Australia's Relationship with the Countries of Africa

(Joint Standing Committee on Foreign Affairs, Defence & Trade)

CONTENTS

Executive Summary

Australia's reengagement with the countries of Africa in recent years has seen a resurgence in Australian companies investing in the continent. In a Lowy Institute Paper titled ''Into Africa: How the resource boom is making Sub-Saharan Africa more important to Australia'[1], EFIC economists described the "New Great Game" of rivalry for resources that in recent years has turned its attention to Sub-Saharan Africa due to strong demand, rising commodity prices, a perceived improvement in the investment climate and availability of savings. Foreign Direct Investment has been spurred on by favourable IMF economic forecasts for Africa's growth [2] as well as World Bank Country Performance Ratings for domestic structural policies that moved Sub-Saharan Africa up to only slightly lower than the global average.[3]

Jubilee Australia believes that this "New Great Game" for resources needs to be examined considering the enormous security, governance and development challenges still facing the citizens and governments of Africa. Australian investment also needs to take account of the fact that many African nations are not yet free from the debt trap and that any new indebtedness driven by private investment risks plunging them back into a situation of severe vulnerability.

As the third largest investor in extractive industry projects in Africa and host to some of the largest mining corporations in the world, Australia would do well to consider more robust debate on the role of both public and private investment in extractive industry projects in the countries of Africa. Jubilee Australia hopes that this submission may assist in generating such a debate.

It is the opinion of Jubilee Australia that the ability of citizens and governments in the countries of Africa to overcome the development, governance and security challenges they continue to face is intimately related to the activity of the oil, gas and mineral extraction in Africa and the management of wealth from this natural resource exploitation.

Further, it is the opinion of Jubilee Australia that if Australia is to positively contribute to improved governance, economic growth and advanced development outcomes in the countries of Africa, the government must take active steps to support the potential for

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[1] Roger Donnelly & Benjamin Ford, Into Africa: How the Resource Boom is Making Sub-Saharan Africa more important to Australia, Lowy Institute, 2008.

[2] In its 2008 World Economic Outlook The IMF predicted 7.0% growth for Africa, up from 6.0% in 2007. This was higher than the growth predictions for other regions.

[3] World Bank Global performance ranking, 2006

governments in Africa to generate public revenue through transparent and equitable mining tax laws, and to develop participatory and transparent budget processes.

Jubilee Australia is also believes that Australian government agencies (EFIC, AusTrade and AusAID) should be fulfilling their public policy function in such a way that, to the best of their knowledge, they are not using public funds or public authority to contribute to investments that are unfavourable to the social and economic development and environmental protection of the countries of Africa.

Finally, Jubilee Australia suggests for consideration a multi-stakeholder dialogue regarding the benefits of regulation of Australian extractive industry investment overseas.

Recommendations

Australia's contribution to improving extractive industry sector governance:

Recommendation 1:	Australia should promote best practice by becoming an EITI implementing country.
Recommendation 2:	The Committee should recommend that Australian securities regulation be harmonised with the U.S. Dodd-Frank Act to improve transparency of Australian Securities Exchange listed companies operating in Africa and other less-developed countries.

The function of the Export Finance and Insurance Corporation (EFIC):

Recommendation 3:	The Environmental Policy of EFIC should be formally recognised in the Export Finance and Insurance Corporation Act 1991, to ensure procedural compliance and diligent Ministerial oversight of EFIC's Social and Environmental policies.
Recommendation 4:	The Government should direct the Auditor General to conduct a review every 5 years of EFIC compliance with the Environment Policy.
Recommendation 5:	The Government should direct the Export Finance and Insurance Corporation to publish summaries of minutes of the Board of Directors.
Recommendation 6:	The Government should direct the Export Finance and Insurance Corporation to publish a summary of its risk assessment for each Category A project.
Recommendation 7:	Australia's export credit agency should not provide export finance and insurance products to extractive sector investments in non-EITI implementing countries.
Recommendation 8:	Place a moratorium on the approval of political risk insurance policies by the Export Finance and Insurance Corporation until the EFIC Environment Policy and its process of due diligence has been reviewed by the federal parliament.

The function of the Australian Trade Commission (AusTrade):

Recommendation 9: The government should regulate the access to AusTrade services by Australian companies to link the provision of trade and investment advice to investment proposals which are favourable to social and economic development and environmental protection of the countries of Africa.

The function of Australia's Overseas Aid Program (AusAID):

Recommendation 10: The Independent Review of Aid Effectiveness announced November 16, 2010 by Foreign Minister Kevin Rudd should examine the implications of untying aid from Australian commercial interests and measures to improve aid effectiveness, including enhancing the ownership and alignment of Australia's development assistance with partner countries' development strategies.

Regulatory framework for Australian extractive industry investment in less-developed countries:

Recommendation 11: The Committee should consider the establishment of a multi-stakeholder dialogue concerning the issue of Australian corporations' involvement in extractive industry projects overseas, with a view to putting this issue on the agenda for legislative debate.

Introduction and framework of submission

Jubilee Australia thanks Senator Forshaw and members of the Joint Standing Committee on Foreign Affairs, Defence and Trade for the opportunity to comment on Australia's relationship with the countries of Africa.

Jubilee Australia is a research and advocacy NGO established in 2001. Our goal is to see the establishment of economic policies and structures that promote international stability, equitable and sustainable use of resources, and which enable ordinary citizens in less-developed countries to live lives of dignity and well-being, free from extreme poverty.

Many organisations in Australia work to alleviate global poverty. What makes Jubilee Australia different is our commitment to exposing the underlying causes and challenging the policies and structures that keep people, communities and countries in long term poverty. We see a central part of our mission as helping Australian citizens, civil society and decision-makers in government to think more deeply about these issues.

Jubilee Australia is well-placed to make a submission to this inquiry since our response draws on our three areas of expertise:

- Debt and Development: Investigating and explaining the problems of what may be called the 'debt-dependent development model', looking for solutions to the debt-cycle of less-developed countries and alternative paths to well-being and poverty reduction.

- Export Credit and Mining: Investigating the connection between extractive industries[4] and the achievement of sustainable development in less-developed countries. In particular focusing on the financing of such projects and the key enabling role played by Australia's export credit agency, EFIC.

- Global Governance: Investigating and promoting reforms at a global level to move toward an open, rule-based and predictable global economy and financial system that does not discriminate against less-developed countries.

This submission will focus on the following terms of reference set out by the Committee:

- Economic Issues, including trade and investment

[4] Extractive Industries is taken to include oil, gas and mining projects.

• Development assistance cooperation and capacity building

We reference as a starting point for our comments and recommendations the sentiments expressed in March this year by the Australian Minister for Foreign Affairs regarding Australia's engagement with the countries of Africa:

> "Australia's reengagement with Africa is driven by a clear-eyed and pragmatic view of our long-term strategic and economic interests in the future. It also reflects Australia's commitment to be a good international citizen, and to support Africa, which remains the continent with the highest percentage of people living in absolute poverty, in making progress towards the Millennium Development Goals". [5]

[5] Australia and Africa: Looking to the Future - Speech - The Hon. Stephen Smith MP, Australian Minister for Foreign Affairs, 19 March 2010, http://www.foreignminister.gov.au/speeches/2010/100319_australia_and_africa.html accessed 23 November 2010

1. Summary of Extractive Industries and Development in Africa

Together, the countries of Africa hold 40% of the world's gold reserves, 80-90% of the chromium and platinum metals group and supply 65% of the world's diamonds.

Australian mineral resource companies play a major role in extracting these reserves, with more projects in Africa than in any other region. The Australian industry is the third largest investor in oil, gas and mineral exploration on the African continent, after the industries of Canada and South Africa.

The Australian government has been fostering this strong engagement already forged by the Australian private sector. In 2009, the Governor-General visited an unprecedented 10 African nations, while Foreign Ministers from five African nations visited our shores (more than in the previous ten years). In addition, the annual "Africa Down Under" conference, encouraging further investment by Australian mining companies in Africa, has been operating since 2003.

In May, the Minister reiterated the Government's intention:

> "To support Africa's efforts to promote economic growth and prosperity through investment and trade".[6]

While Jubilee Australia recognises trade and investment as important elements of economic growth, we wish to bring the Committee's attention to the need for Australia's activities in Africa to avoid perpetuating social, economic and environmental problems for what remains a fragile continent.

- The Committee would be aware that while many countries in Africa have seen strengthened macroeconomic performance during the last decade, Africa remains the continent with the highest number of people living in absolute poverty and African nations overwhelmingly are ranked amongst the most unequal in the world.

- The Committee would further be aware that whilst there are encouraging signs of stronger institutional frameworks and of elections being democratically contested, much ground still needs to be covered before strong and effective bureaucratic processes are established. In the recently published Revenue Watch Index [7] (by Revenue Watch and Transparency International) which scores 41 of the world's top producers of minerals, oil and gas according to the transparency of information that

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6 Africa Day – Speech – The Hon. Stephen Smith MP, Australian Minister for Foreign Affairs and Trade, 25 May 2009, http://www.foreignminister.gov.au/speeches/2009/090525_africa_day.html accessed 23 November 2010

7 http://www.revenuewatch.org/rwindex2010/index.html?q=rwindex

they make available to their citizens, only 2 of the African countries represented in the index achieved a score of above 50 out of 100. Many factors also need to be overcome before local citizens and independent observers alike can describe national elections in African nations as overwhelmingly free and fair.

- Finally, while the Committee would be aware that a number of significant conflicts in Central and Western Africa have been formally declared ended, significant wars continue to be waged in at least five African countries and three countries have experienced new conflicts in recent years.

Jubilee Australia would like to emphasise to the Committee our strong opinion that the ability of citizens and governments in the countries of Africa to overcome the development, governance and security challenges they continue to face is intimately linked to the activity of mineral resource extraction in Africa.

Since the 1960s and 1970s, citizens of newly independent mineral-rich African countries held expectations that the wealth generated from minerals could help them to develop, including diversifying and industrialising their economies.

1.1 Resource Curse

The trend of mineral-rich developing countries being unable to reap the promised benefits from their ample wealth has been so widely documented in academic studies and literature that it is now known as the 'resource curse' phenomenon.

The theory associates the activity of mineral-resource extraction in less-developed countries with the exacerbation of poverty, corruption and conflict. It is uncontested that Africa, a mineral-rich continent, has been, and still is, battling all three of these problems. Research over the last decade confirms that it is not a coincidence that the mineral-rich countries of Africa are some of the poorest and worst governed in the world.

- Leading development economist Jeffrey Sachs and his colleagues have published a number of quantitative studies linking high resource intensity with slow economic growth.[8]

- Other studies have provided evidence to suggest that resource abundance encourages authoritarian regimes and weaken democracy. The easy access to

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[8] See Jeffrey Sachs and Andrew M. Warner, "Natural Resources and Economic Development: The curse of natural resources", European Economic Review, 45, 2001, 827-838.

influence from resource wealth has been studied by political scientists to show that it contributes to clientalism, corruption and a breakdown in democratic accountability[9].

- Finally, more recent statistical analyses have suggested a link between the resource curse and conflict. Not only have conflicts been blamed on the fight for revenues and power arising from resources, but recent wars in Sierra Leone, Angola and the Democratic Republic of Congo have said to be financed from resource revenues[10].

1.2 Limitations of mining-led growth path

It is far from simple for the countries of Africa to translate investment in extraction of their mineral resources into national growth and development.

- Industrial mining companies create little forward or backward linkages into the local or national economy that would stimulate more private sector development and job creation.

- Furthermore, given the capital intensive nature of industrial mining, these companies create very few jobs relative to the abundant supply of labour in mineral-rich African countries.

- A resource intensive economy has been shown as more vulnerable to the perpetual cycles of boom and bust of commodity markets as well as suffering the so-called "Dutch Disease" whereby the resource sector crowds out other tradable sectors of the economy, provoking an overall weakness for the resource-rich nation.

1.3 Discrete company investments in 'community development' are not sufficient

In a speech addressing the Mining Indaba Conference in Cape Town, February 2010, former Australian Minister for Trade expressed that 'Australian companies take seriously their corporate social responsibility when it comes to doing business in Africa.'[11] The Minister cited examples such as Rio Tinto's HIV/AIDS Community Program in South

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[9] Matthias Basedau, "Context Matters – Rethinking the Resource Curse in Sub-Saharan Africa", Working Papers Global and Area Studies, German Overseas Institute, May 2005, www.duei.de/workingpapers 5-10Paul Collier, The Bottom Billion: Why the Poorest Countries Are Failing and What Can Be Done About It, Oxford University Press, New York, 2007, Chapter 3.

[10] Paul Collier, The Bottom Billion: Why the Poorest Countries Are Failing and What Can Be Done About It.

[11] "The Australia-Africa partnership" - Address to the Mining Indaba Conference - The Hon. Simon Crean MP, Australian Minister for Trade, 2 February 2010, http://www.trademinister.gov.au/speeches/2010/100202_indaba.html accessed 23 November 2010.

Africa's Limpopo Province and BHP-Billiton's anti-malarial campaign at its aluminum smelter in Mozambique.

We do not contest that the communities living near these mining activities have been provided some basic services by the mining companies. In reality, because mines are often located in remote and economically depressed areas neglected by governments, local communities may look up to mining companies as the ones able to provide them with the basic services they need.

However, the 'community development' provided by companies is negligible compared with the massive economic transformation required to kickstart sustainable development in most African countries. Company contributions are entirely voluntary, vary from year to year, are not distributed equitably, and comprise a very small percentage of company profits (less than 1%). Jubilee Australia stresses that it is the primary responsibility of governments to ensure that citizens receive education, healthcare, water, sanitation and other basic social services. For this reason, the tax payments companies make to the government budget are of more importance than the direct services that may be provided to communities.

Furthermore, despite improved safeguards, mining activities still pose serious risks to environments and livelihoods of local communities. Impacts from projects often result in mining activity hindering social development, rather than improving it.

For the reasons outlined above, it is the opinion of Jubilee Australia that if Australian investments in extractive industry projects are to translate into future development for the countries of Africa, the potential for governments to generate public revenue through transparent and equitable mining tax laws, and to distribute this revenue through a participatory and transparent budget process, is of paramount importance.[12]

[12] Jubilee Australia is drawing on the research published March 2009, 'Breaking the Curse: How Transparent Taxation and Fair Taxes can Turn Africa's Mineral Wealth into Development' by: Open Society Institute of Southern Africa (Johannesburg), Third World Network (Accra), Tax Justice Network Africa (Nairobi), Action Aid International (Johannesburg), Christian Aid (London).

2. Australia's contribution to improving governance and advancing development outcomes of extractive industry investment in Africa

2.1 Ensuring transparent company reporting

Current international financial reporting standards make it impossible to monitor government revenue collected from mining companies in a comprehensive way.

The Extractive Industries Transparency Initiative (EITI) goes some way to resolving this by making governments who become candidates of EITI report publicly and accessibly each budget year on all revenues they receive from EI companies. In turn under EITI all EI companies have to volunteer to submit reports to governments for public dissemination, including profits and expenditure each financial year, as well as all financial remittances to government and related institutions. An aggregator then compares the respective figures and identifies and explains differences.

Recommendation 1: Australia should promote best practice by becoming an EITI implementing country.

However EITI has limitations. Most mining investment in Africa is undertaken by the subsidiaries of multinational corporations incorporated in countries such as Australia, Canada, US or South Africa. They may also be listed on one or several international stock exchanges. Under the EITI, multinational companies are not required to report on their profits, expenditure and taxes on a country-by-country basis. Instead, their reports reflect their aggregate financial position across all their operations. Therefore it is very difficult, if not impossible, for citizens, parliamentarians and governments to detect tax avoidance strategies.

Companies cannot be forced to publish national reports using the EITI template unless national laws regulating financial reporting require them to do so.

The U.S. set a new global standard for extractive industry transparency when in July this year, President Obama signed into law the Dodd-Frank Wall Street Reform and Consumer Protection Act, which in addition to financial regulatory reform, requires all U.S and foreign companies registered with the U.S. Securities and Exchange Commission to disclose, on a disaggregated basis, how much they pay governments for access to their oil, gas and minerals.[13]

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[13] This new law is a major success for Publish What You Pay (PWYP), a global coalition of 600 development, environment, faith-based and human rights organisations in over 50 countries. In Australia, Oxfam Australia, Transparency International and Jubilee Australia are members of the Publish What You Pay network.

This new accounting standard will allow financial flows between parent companies and subsidiaries to be monitored, and tax avoidance to be detected.

In May 2010, preceding the new U.S. law, BHP-Billiton had indicated its intention to disclose all payments to governments on a country-by-country basis in support of the EITI. Since a U.S. listed company, BHP-Billiton will need to proceed with implementing this new reporting system to comply with American regulations. Given the company is also listed on the Australian Securities Exchange, it may benefit from similar amendments to Australian regulations.

Recommendation 2: **The Committee should recommend that Australian securities regulation be harmonised with the U.S. Dodd-Frank Act to improve transparency of Australian Securities Exchange listed companies operating in Africa and other less-developed countries.**

2.2 Australia's government agencies and their engagement in Africa

Although Australia traditionally only maintained diplomatic relations with Africa's commonwealth countries, today Australia has diplomatic ties with 51 of the 53 countries in Africa. Australian government agencies are mandated, on behalf of the parliament and citizens, to manage Australia's engagement with the countries of Africa. In this respect, it is important to consider the operation of some key government agencies.

2.2.1 Export Finance and Insurance Corporation (EFIC)

Jubilee has in recent years been focusing much of its work on increasing the transparency and accountability of EFIC. This work has included making submissions on Category A projects disclosed by EFIC, initiating freedom of information applications, and publishing an investigative report, Risky Business, detailing two case studies of EFIC support provided to Category A projects in the Pacific region.

It is in the national interest for the Australian Government to promote business abroad, and EFIC is a key enabler of this. EFIC is mandated, under the function outlined in Part 7 of the Export Finance and Insurance Corporation Act 1991 to facilitate and encourage Australian export trade by providing insurance and financial services and products to persons involved directly or indirectly in such trade, and to encourage banks, and other financial institutions carrying on business in Australia to finance, or assist in financing, export contracts or eligible export transactions.

Along with multilateral development banks, export credit agencies are a major source of public international finance for extractive industry projects in less-developed countries. Australia' s export credit agency is no exception. Over the last decade, one-quarter of EFIC finance and insurance has been to support Australian companies investing in extractive industry projects overseas - including investments in Mozambique, Zambia, Kenya and Ghana.[14]

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 developing countries.

- Strengthening EFIC due diligence and improving institutional transparency:

Jubilee Australia is of the opinion that while EFIC may take great care to assess and manage its financial risks, it does not take the same level of care, nor does the agency as a whole attribute the same importance, to the social and environmental risks associated with the transactions it facilitates. EFIC's recent draft update on its Social and Environmental Policy published on its website on 6 August, 2010, does little to address these shortcomings.

To this end, the Environmental Policy of EFIC should be more formally recognised within the Export Finance and Insurance Corporation Act 1991. 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 to its draft Environmental Policy and its Anti-Bribery Policy. EFIC should request the Federal Government amend the Export Finance and Insurance Corporation Act to establish formal statutory recognition of EFIC's Environmental Policy. The Minister retains an ability to create Regulations under Section 91 of the Act and it would be appropriate for the Minister pursuant to Section 8(2)(b)(iii) to publish a Regulation to acknowledges EFIC's Environmental and Anti-Bribery Policies.

Furthermore, the Environmental Review Directive and its application to EDC's work is reviewed by the Canadian Office of the Auditor General at least every 5 years and the

[14] EFIC Annual Reports

Auditor General's findings are tabled in Parliament under Section 21 (2) of the Export Development Act. The recent 2009 Audit Report of EDC provided the organisation with important recommendations. Jubilee Australia believes that statutory recognition of EFIC's Environmental Policy and an Auditor General review of EFIC compliance with the policy every 5 years would create greater confidence in EFIC's due diligence processes and provide greater reassurance that EFIC is acting consistently with its Environmental Policy.

Recommendation 3: The Environmental Policy of EFIC should be formally recognised in the Export Finance and Insurance Corporation Act 1991, in order to ensure procedural compliance and ensure diligent Ministerial oversight of EFIC's Social and Environmental policies.

Recommendation 4: The Government should direct the Auditor General to conduct a review every 5 years of EFIC compliance with the Environment Policy.

The Export Import Bank of the United States (EXIM US) provides summaries of minutes of meetings of the Board of Directors going back to 1998. These summaries in no way infringe upon the client confidentiality obligations of the ECA and increase institutional transparency. EFIC has not yet agreed to do this.

EFIC should also publish a summary of its risk assessment (benchmarking) for each Category A project (those projects with significant environmental and/or social impacts). A 'trust me' approach when it comes to the EFIC due diligence process is gravely inadequate, and inconsistent with the practices of other ECAs. Moreover, this is the only way for the process to be accountable to EFIC stakeholders, in particular, the Australia government, the Australia public, and project-affected communities.

Recommendation 5: The Government should direct the Export Finance and Insurance Corporation to publish summaries of minutes of the Board of Directors.

Recommendation 6: The Government should direct the Export Finance and Insurance Corporation to publish a summary of its risk assessment for each Category A project.

Recommendation 7: Australia's export credit agency should not provide export finance and insurance products to extractive sector investments in non-EITI implementing countries.

- Political Risk Insurance

In some circumstances EFIC (under their commercial account) or the Australian Government (under the EFIC National Interest Account) may provide Australian companies with Political Risk Insurance (PRI). This insures Australian companies working in offshore jurisdictions against loss arising from political violence, expropriation, forced abandonment, currency inconvertibility and selective discrimination.

PRI provided by EFIC may be critical to facilitating a large-scale project by an Australian company in a less-developed country, where shareholder investment is unlikely without appropriate insurance and the private sector is unwilling to provide such a risky facility.

While export insurance is an important component of international trade, political risk insurance, in some circumstances, may enable a project to proceed notwithstanding a host country not having the institutional or governance capacity to regulate a 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”.[15]

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[15] 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 accessed 23 November 2010

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.

Recommendation 8: Place a moratorium on the approval of political risk insurance policies by the Export Finance and Insurance Corporation until the EFIC Environment Policy and its process of due diligence has been reviewed by the federal parliament.

2.2.2 Australia Trade Commission (AusTrade)

AusTrade is often the first point of call for Australian companies looking to invest in Africa. The function of AusTrade is to increase the opportunities for Australian businesses and investors overseas, charging a fee for the services it provides to clients. While increased trade and investment can bring benefits to Australia, Jubilee Australia is concerned that AusTrade may support Australian investment in Africa indiscriminately of Australia's aspiration to act as a 'good international citizen', and obligations under international treaties such as human rights and environment protection agreements.

In AusTrade's 2009-2010 Annual Report, no mention was made of the human rights implications of investments in partner countries, nor of any social or environmental criteria applied when considering investment possibilities.

Given AusTrade's overall mission is to increase Australian trade and investment and thereby increase overall earnings for Australian companies, the possibility exists that AusTrade supported trade missions may be involved in persuading governments in Africa to provide a 'favourable investment climate' in the form of secretive or non-secretive tax concessions for Australian companies.

To reiterate the opinion expressed earlier in this submission, the potential for governments to generate public revenue through transparent and equitable mining tax laws is of paramount importance. It is important that AusTrade also considers the due regard given to these issues, especially given the role the agency plays in advising Australian investors regarding African government tax regimes.

Recommendation 9: The government should regulate the access to AusTrade services by Australian companies to link the provision of trade and investment advice to investment proposals which are favourable to social and economic development and environmental protection of the countries of Africa.

2.2.3 The Australian Government's Overseas Aid Program (AusAID)

- Mixing aid with commercial interests

Jubilee Australia draws the Committee's attention to our strong concern about the submission to this Inquiry by the Australia-Africa Mining Industry group, proposing the creation of:

> "Private-public partnerships in delivering social development assistance, with the Australian Government providing supplementary funding for approved programmes" that would be "branded as AusAID" and co-funded by the Australian mining industry.[16]

In addition, we have strong concern 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".[17]

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.[18] 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."[19]

Given that Australia is a signatory of the Paris Declaration and participates in the accompanying Accra Agenda for Action, it is concerning to see the proposals being

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[16] Australia-Africa Mining Industry Group Submission to the Joint Standing Committee on Foreign Affairs Defence and Trade's Inquiry into Australia's Relations with Africa, May 2010

[17] 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

considered before this Committee as well as from leading Australian economists regarding possibilities of mixing aid and commercial interests in Africa.

Jubilee Australia reminds the Committee of Australia's Development Import Finance Facility (DIFF) scheme. A policy of the Australian Department of Foreign Affairs and Trade, DIFF 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.[20] 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.

While Australia may have moved away from formally untying aid, there are many ways that Australia continues to place its "National Interest" before the goal of effective and transformational aid to developing countries. In 2009 the Australian National Audit Office published a report that showed that Australian companies were directly responsible for delivering 70 per cent of Australia's bilateral aid programme budget. [21]The Center for Global Development, a think-tank based in Washington DC, maintains an international ranking of OECD countries according to their Quality of Development Assistance. Australia currently ranks below the global average in terms of its aid efficiency, which includes factors such as ensuring low operating costs, aligning aid with partner countries' priorities, as well as untying aid.[22]

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[20] AusAid 'A Review of the Effectiveness of the Development Import Finance Facility (DIFF)' (1996). Accessed at www.ausaid.gov.au/publications/pdf/diffrevw.pdf

[21] Australian National Audit Office (2009) AusAID's Management of the Expanding Australian Aid Program, ANAO Audit Report No. 15 2009-10, p.87.

[22] Center for Global Development, "Quality of Official Development Assistance", http://www.cgdev.org/section/topics/aid_effectiveness/quoda accessed 23 November 2010

Recommendation 10: The Independent Review of Aid Effectiveness announced November 16, 2010 by Foreign Minister Kevin Rudd[23] should examine the implications of untying aid from Australian commercial interests and measures to improve aid effectiveness, including enhancing the ownership and alignment of Australia's development assistance with partner countries' development strategies.

[23] The Hon. Kevin Rudd MP, Australian Minister for Foreign Affairs, "Independent Review of Aid Effectiveness" Media release 16 November 2010 http://www.foreignminister.gov.au/releases/2010/kr_mr_101116.html accessed 23 November 2010

3. Regulatory framework for Australian extractive industry investment in less-developed countries

Finally, Jubilee Australia takes this occasion to call for greater debate on the issue of the Australian extractive industry and its operations overseas, especially in relation to the expansion of Australian operations in Africa.

We bring this Committee's attention to the recent bill presented towards the Canadian Parliament, known as the C-300 bill, the purpose of which was to ensure that Canadian mining, oil and gas corporations operating in developing countries that received support from the Canadian Government, were held accountable to international environmental and human rights standards. After a wide-ranging stakeholder engagement process with civil society and a long period of debate, the bill was recently put to vote in Canadian parliament and was dismissed by an extremely close margin of votes.

As the third largest investor in extractive industry projects in Africa and host of some of the largest mining corporations in the world, Australia would do well to consider more robust debate on this issue.

Recommendation 11: **The Committee should consider the establishment of a multi-stakeholder dialogue concerning the issue of Australian corporations' involvement in extractive industry projects overseas, with a view to putting this issue on the agenda for legislative debate.**

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