

## **Jubilee Australia Research Centre**

### **Submission to the 2017 Foreign Policy White Paper**

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#### **Introduction**

Jubilee Australia (formal name: the Jubilee Australia Research Centre) engages in research and advocacy to prevent human rights abuses, environmental destruction and economic injustice for impoverished individuals and groups adversely affected by the actions of Australian corporations, financial institutions and government agencies.

Our modus operandi is the following:

1. Working with individuals and groups, usually in the Asia-Pacific region, to identify and document human rights abuses, environmental destruction or economic injustice in their communities;
2. Identifying and documenting how Australian companies, financial institutions and Australian government actions cause or contribute to those adverse impacts;
3. Identifying and documenting how policy change at the national and international level might prevent current and future environmental and human rights abuses and economic injustice.

Jubilee Australia emerged as the Australian arm of the world-wide Jubilee movement working for debt cancellation to help end extreme poverty in the late 1990s and was established as an independent organisation in 2001. Although we continue to work with the global debt movement on the problem of illegitimate and unjust debt, since 2006 our mandate has included environmental and human rights abuses as well as economic injustice.

Since 2009, Jubilee formally merged to become part of The Australia Institute, the influential Canberra-based think tank.

## *Themes Addressed in this Submission*

This submission covers the following four themes:

- Business and Human Rights
- Australian Aid Policy
- Global Economic Governance
- Australia's Trade Agreements

## *Summary of Recommendations*

In respect of business and human rights issues in its foreign policy, the Australian government should:

Recommendation 1: Ensure that its contracting, procurement, and aid delivery decisions are informed by the transnational business and human rights framework, which should be formally incorporated into Commonwealth procurement guidelines and aid and development programs which involve the private sector.

Recommendation 2: Submit to the OECD's NCP peer review process, in order to improve the Australian NCP's capability and functioning.

Recommendation 3: Adopt legislation requiring Australian businesses to undertake mandatory human rights due diligence in relation to impacts linked to their operations, products and services (including, but not limited to legislation similar to the UK's Modern Slavery Act).

Recommendation 4: Adopt a National Action Plan on business and human rights.

Recommendation 5: Review the legal avenues through which human rights violations by Australian companies (at home or abroad) can be remedied through Australian legal systems.

Recommendation 6: End the offshore processing and detention of asylum seekers and refugees.

Recommendation 7: Participate in formal international discussions on a global treaty on business and human rights.

### **Aid and Development:**

Recommendation 8: The primary aim of the aid program should return to poverty reduction and rather than meeting Australia's national interests.

Recommendation 9: The aid program's increasing commitment to PPPs and to aid-for-trade should be reversed.

Recommendation 10: The corporate partnerships of the aid program should be cut or, if not, should be refocused on smallholder producers and entrepreneurs and made more transparent.

Recommendation 11: The aid program should reduce its current focus on natural resource extraction and an extractives-centred development model.

Recommendation 12: Aid priorities should give greater emphasis to strengthening civil society, and independent media, public education, as well as the ‘nuts and bolts’ priorities such as food security, health, sanitation and livelihoods.

Recommendation 13: The aid program should redress the lack of transparency about specific aid projects.

Recommendation 14: There should be an immediate moratorium on all Efic National Interest transactions in the extractives sector, pending a review of this process.

Global Economic Governance:

Recommendation 14: Australia should adopt as policy the support of a new independent international sovereign debt workout mechanism.

Recommendation 15: Australia should advocate for such a mechanism at the various international fora in which it takes part, including the IMF, the UN and the Paris club.

Trade Agreements:

Recommendation 17: We endorse the recommendations made in the submission to the Foreign Policy White Paper by AFTINET—The Australian Fair Trade and Investment Network.

## **1. Business and Human Rights**

*Key Issue(s) Addressed:*

*04: Grasping Economic Opportunities*

*05: Strategic Security and Transnational Challenges*

Recognising the role that Australian businesses play in the global economy, and that business activities can have an impact (both positive and negative) on virtually the entire spectrum of human rights, Australia should take a leading role in the promotion and implementation of the transnational business and human rights framework. This is primarily set out in the UN Guiding Principles on Business and Human Rights and the OECD Guidelines for Multinational Enterprises.

An increased level of commitment to the transnational business and human rights framework should underpin Australia’s foreign policy as it relates to the private sector: Australia should ensure that it fulfils the state responsibility to protect human rights when they are affected by business activities, and should create a regulatory, policy and business environment conducive to the fulfilment by companies of the corporate responsibility to respect human rights. The responsibility to ensure a remedy for human rights violations, held jointly by business and the state, should also be a focus of Australia’s foreign policy in respect of companies.

Australia has been slow in adopting the recommendations of the UN Working Group on Business and Human Rights under the UN Guiding Principles, in implementing the UN Guiding Principles, and in reacting to developments under the OECD Guidelines for Multinational Enterprises. In particular, Australia has stalled on a National Action Plan on Business and Human Rights, and has both ignored criticism

of and resisted proposals for reform to its National Contact Point under the OECD Guidelines. Australia has also refused to participate in global discussions around a treaty on business and human rights.

Australia should adopt enhanced human rights due diligence, transparency and accountability measures for Australian companies with business relationships that extend beyond Australia's borders. This would include, but is not limited to, the adoption of a Modern Slavery Act, similar to that adopted in the United Kingdom. Doing so would not only benefit the communities impacted by the operations of Australian companies, but would also benefit Australian companies themselves. Investors and financiers in the global market are increasingly turning their attention to the question of if and how local legal systems pertinent to the companies in which they invest promote a business culture that effectively avoids exposure to human rights risks; Australian companies are being ranked alongside their global peers on sustainability indices that assess performance on human rights indicators. The Australian government's sluggish response to increasing and urgent concerns about human rights in supply chains fails communities and companies in this regard.

It should be emphasised that Australia's offshore detention system, which it operates with the assistance of companies (both Australian- and foreign-headquartered), is a human rights catastrophe. Its negative impacts are well-documented and extensive. These impacts are felt primarily and most acutely by the people seeking safety who are subjected to the offshore detention system. However they are also felt by the communities located close to the detention centres on Manus Island and Nauru, who have experienced the erosion of local rule of law and legal systems, as well as civil unrest, instability and significant social impacts, as a result of Australia's activities.

### *Summary of Recommendations with respect to Business and Human Rights*

*In respect of business and human rights issues in its foreign policy, the Australian government should:*

*Recommendation 1: Ensure that its contracting, procurement, and aid delivery decisions are informed by the transnational business and human rights framework, which should be formally incorporated into Commonwealth procurement guidelines and aid and development programs which involve the private sector.*

*Recommendation 2: Submit to the OECD's NCP peer review process, in order to improve the Australian NCP's capability and functioning.*

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*Recommendation 5: Review the legal avenues through which human rights violations by Australian companies (at home or abroad) can be remedied through Australian legal systems.*

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*Recommendation 7: Participate in formal international discussions on a global treaty on business and human rights.*

## **2. Aid and Development Policy**

*Key Issue(s) Addressed:*

*04: Grasping Economic Opportunities*

*05: Strategic Security and Transnational Challenges*

The Australian aid program is evolving in concerning directions. The aims of the aid program, the emphasis of the use of the private sector to deliver aid, a push towards an extractives-led development model, and a reduction in the transparency of the program are all highly problematic developments, as discussed further below.

Along with the winding up of AusAID in 2013, the Australian Government changed the rhetorical emphasis of the aid program from poverty reduction to meeting Australia's national interest. This rhetorical change has had real-world impacts. As the aid budget has been cut, the cuts to the budget have been visited more heavily upon certain countries than others. The few countries that have avoided cuts are those such as Papua New Guinea, Nauru and Cambodia which participate in Australia's offshore detention program. This is against the implicit guidelines of the OECD as to what constitutes Overseas Development Assistance (ODA).<sup>1</sup>

Along with this change has been a new emphasis on using the private sector for aid delivery. This emphasis is based upon a number of faulty claims or premises. One premise is that economic growth the best way to address poverty, even though there is a mass of evidence now that GDP growth does not necessarily equate to a reduction in poverty. It is also based on the premise that private sector financial flows massively swamp global development assistance, a claim that is demonstrably false when one considers the poorest countries.<sup>2</sup> Finally, and perhaps most importantly, the private sector in many of the neediest countries is directly associated with grand corruption, human rights abuses, the black economy, and the expropriation of public goods for private profits, processes which all undermine development outcomes. This has been most clearly demonstrated in the case of Papua New Guinea, which has traditionally been Australia's largest aid recipient. Nevertheless, a recent review of the PNG aid program is also pushing a greater role for the private sector there.<sup>3</sup>

The new emphasis on teaming up with the private sector has manifested in a number of more specific ways. DFAT has now struck up a number of direct corporate partnerships with banks such as Westpac and the ANZ and even with the cruise liner company Carnival. The philosophical justification for these partnerships—the concept of 'shareholder value—is suspect and details of these partnerships are opaque. While it is possible to see potentially effective ways in which aid money could help

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<sup>1</sup> Goodman & Hilton (2016) 'Australia's New Aid Program: Beyond ODA?'

<http://www.aidwatch.org.au/wp-content/uploads/2017/01/AidWatch-RoAchapter.pdf>

<sup>2</sup> Goodman & Hilton (2016) 'Australia's New Aid Program: Beyond ODA?'

<sup>3</sup> International State Crime Initiative (2015) 'Addressing Development by Challenging Impunity: The social impact of State and Corporate Crime on Papua New Guinea'

small-holder agriculture and small entrepreneurs in developing countries, this does not seem to be a direction in which the aid program's corporate partnerships program is going.

The aid program has introduced a push for public-private partnerships in the aid program, which has also been questioned. Given that public-private partnerships have been shown to be a failure even in wealthy countries like the UK, it is hard to see that they would be an effective solution for developing countries.<sup>4</sup> The emphasis on the private sector has been tied to an increase in the proportion of the aid budget given to aid-for-trade program to around 20 per cent of the aid budget.

A related development in the aid program has been the push towards an extractives-led development model. This has manifested in a number of ways. First, for many years the aid budget funded a Mining for Development program out of the University of Queensland whose explicit purpose was to advocate for this model. Second, aid money has gone to consultants who are paid to work with aid partners (such as Bougainville) to build legal and regulatory regimes that favour large scale resource extraction while at the same time reducing the rights and the capacities of local communities to challenge such developments.<sup>5</sup> Finally, DFAT has in the past directed Efic to lend on its National Interest Account to push mega-projects such as the Exxon-led PNG LNG project.<sup>6</sup> This is despite the fact that, especially in the countries concerned, large-scale resource extraction does not address poverty or lead to positive development outcomes.<sup>7</sup>

Finally, there is a disturbing trend in the aid program towards a reduction of transparency with the public about the aid projects it supports.<sup>8</sup>

*Summary of Recommendations with respect to Aid and Development:*

*Recommendation 8: The primary aim of the aid program should return to poverty reduction and rather than meeting Australia's national interests.*

*Recommendation 9: The aid program's increasing commitment to PPPs and to aid-for-trade should be reversed.*

*Recommendation 10: The corporate partnerships of the aid program should be cut or, if not, should be refocused on smallholder producers and entrepreneurs and made more transparent.*

*Recommendation 11: The aid program should reduce its current focus on natural resource extraction and an extractives-centred development model.*

*Recommendation 12: Aid priorities should give greater emphasis to strengthening civil society, and independent media, public education, as well as the 'nuts and bolts' priorities such as food security, health, sanitation and livelihoods.*

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<sup>4</sup> Jubilee Debt Campaign (2017) 'The UK's PPP Disaster: Lessons on Private Finance for the Rest of the World' <http://jubileedebt.org.uk/reports-briefings/briefing/uks-ppps-disaster-lessons-private-finance-rest-world>

<sup>5</sup> Jubilee Australia (2015) 'Devil in the Detail: An Analysis of the Autonomous Bougainville Government's New Mining Law' <http://www.jubileeaustralia.org/page/reports>

<sup>6</sup> Jubilee Australia (2012) 'Pipe Dreams: The PNG LNG Project and the Hopes of a Nation' <http://www.jubileeaustralia.org/page/reports>

<sup>7</sup> International State Crime Initiative (2015) 'Addressing Development by Challenging Impunity: The Social Impact of State and Corporate Crime on Papua New Guinea'

<sup>8</sup> Goodman & Hilton (2016) 'Australia's New Aid Program: Beyond ODA?'

*Recommendation 13: The aid program should redress the lack of transparency about specific aid projects.*

*Recommendation 14: There should be an immediate moratorium on all Efic National Interest transactions in the extractives sector, pending a review of this process.*

### **3. Global Economic Governance**

*Key Issue(s) Addressed:*

*03: Regional and International Organisations*

*04: Grasping Economic Opportunities*

The international financial system continues to favour the financial sector over the needs of the poorest and most vulnerable in society. As we have seen demonstrated most startlingly in the recent Eurozone crisis, European banks from the wealthiest nations made unwise investments in countries of the European periphery that were premised upon unrealistic and risky assumptions about future economic growth. When real estate and other bubbles burst in these markets, large European banks found themselves overexposed and at risk of collapse, threatening to bring down the entire European economy. Rather than face a political and economic crisis, the banks were bailed out by European governments, and the European Union, with the (at times reluctant) support of the IMF imposed harsh austerity, most notably on Greece, which has since descended into a spiral of poverty.<sup>9</sup>

What happened in Greece was in many ways a replay of the Asian financial crisis in the late 1990s and the first Latin American debt crisis of the early 1980s. In all cases, the common ingredients were the availability of large amounts of credit in rich country banks and high interest rates and therefore profit-making opportunities in the peripheral countries. In such cases, it is unrealistic to expect banks and investors not to seek to make easy profits if they perceive there to be no risk in doing so i.e. if there is implicit understanding that if the bubble bursts, they will be bailed out.<sup>10</sup>

The only way to prevent this is the institution of a system wherein banks and investors will know that bailouts will not be made in the future when such unwise speculation becomes rife. Jubilee Australia and its allies in other countries have long maintained that the best way to send this signal to the markets is through a truly impartial and independent international sovereign debt workout mechanism. The current system we now have is neither independent nor impartial. The system which governs bilateral debt, the Paris Club, is heavily weighted in favour of the creditor countries. Likewise, the IMF, the effective umpire on multilateral debt, is also weighted in favour of creditors on account of its shareholder and voting structures. When it comes to bondholders, the situation is that there is no effective international

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<sup>9</sup> Blythe (2013) *Austerity: The History of a Dangerous Idea* (Oxford: Oxford University Press, 2013); Lapavistas et. al. (2010) 'Beggars Thyself and Thy Neighbour', *Research on Money and Finance Occasional Report*

<sup>10</sup> Jubilee Australia (2011) 'Alternatives to Debtor's Prisons: Developing a Framework for International Insolvency' <http://www.jubileeaustralia.org/page/reports>

mechanism at all, just a series of ad hoc negotiations and court rulings from various jurisdictions.

Introducing an independent international sovereign debt workout mechanism would be an important step toward an international financial system that is more predictable, fair and conducive to development. The procedure for resolving debt payment difficulties would be fundamentally different from existing mechanisms in that it would: 1) give priority to a governments' obligations to meet the essential needs of its citizens; 2) discipline imprudence on behalf of both lenders and borrowers; and 3) elevate debt restructuring decisions to a neutral and legitimate forum; 4) further stop the ability of vulture funds to prey on debtor countries by sweeping up secondary debt.<sup>11</sup>

In 2014, the UN General Assembly called for an official UN investigation into establishment of a new independent sovereign debt process. The ad hoc process was approved in December 2014, and three sessions took place throughout 2015 to consider the issues and to vote on a resolution in the General Assembly in September. This process did not imply that the UN itself will create a new agency to deal with sovereign debt, although was one possible outcome.

The process was led by developing countries at the UN, the so-called 'G77 plus China' bloc. Leading the resistance was the US with the support of the JCANZ group (Canada, Australia, New Zealand and Japan). This type of action on behalf of the Australian Government is ill-advised, as it means that Australia is responsible for helping prevent mechanisms that will allow for the functioning of a more stable and fairer global economy.

*Summary of recommendations with respect to global economic governance:*

*Recommendation 14: Australia should adopt as policy the support of a new independent international sovereign debt workout mechanism.*

*Recommendation 15: Australia should advocate for such a mechanism at the various international fora in which it takes part, including the IMF, the UN and the Paris club.*

#### **4. Australia's Trade Agreements**

*Key Issue(s) Addressed:*

*04: Grasping Economic Opportunities*

*05: Strategic Security and Transnational Challenges*

Recommendation 17: We endorse the 13 recommendations made in the submission to the Foreign Policy White Paper by AFTINET—The Australian Fair Trade and Investment Network.

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<sup>11</sup> Jubilee Australia (2011) 'Alternatives to Debtor's Prisons