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### Совет по правам человека

#### Семнадцатая сессия

#### Пункт 3 повестки дня

**Поощрение и защита всех прав человека,  
гражданских, политических, экономических,  
социальных и культурных прав, включая  
право на развитие**

### **Доклад независимого эксперта по вопросу о последствиях внешней задолженности и других соответствующих международных финансовых обязательств государств для полного осуществления всех прав человека, в частности экономических, социальных и культурных прав, Сефаса Люмины**

#### Добавление

**Миссия в Австралию (7–11 февраля 2011 года) и на  
Соломоновы Острова (14–18 февраля 2011 года)\* \*\***

#### *Резюме*

В настоящем докладе независимый эксперт по вопросу о последствиях внешней задолженности и других соответствующих международных финансовых обязательств государств для полного осуществления всех прав человека, в частности экономических, социальных и культурных прав, представляет основные выводы по итогам своих поездок в Австралию (7–11 февраля 2011 года) и на Соломоновы Острова (14–18 февраля 2011 года).

\* Резюме настоящего документа распространяется на всех официальных языках. Сам доклад, содержащийся в приложении к резюме, распространяется только на английском языке.

\*\* Документ представлен с опозданием.

В Австралии независимый эксперт в первую очередь сосредоточил внимание на вопросах, касающихся страновой программы помощи в целях развития и ее последствий для осуществления экономических, социальных и культурных прав и права на развитие, а также достижения целей в области развития, сформулированных в Декларации тысячелетия (ЦРДТ), в тихоокеанских островных государствах, получающих австралийскую помощь в целях развития. На Соломоновых Островах он провел оценку эффективности двусторонней и многосторонней помощи в плане содействия осуществлению прав человека и достижению ЦРДТ. Эти поездки были взаимосвязаны, с тем чтобы рассмотреть вопросы под углом зрения поставщика и получателя помощи в целях развития.

Независимый эксперт с удовлетворением отметил приверженность правительства Австралии наращиванию масштабов зарубежной помощи в целях развития до 0,5% валового национального дохода к 2015–2016 годам, однако отметил, что это по-прежнему ниже международно согласованного целевого показателя в размере 0,7% валового национального дохода. Он также с обеспокоенностью отметил отсутствие построенного на правах человека подхода к австралийской программе развития и упор на техническую помощь и частных контрагентов в деле реализации программы помощи.

Внешняя помощь (включая помощь, оказываемую Австралией как стороной, вносящей наибольший вклад в бюджет помощи в целях развития страны) помогла Соломоновым Островам добиться значительного прогресса на пути достижения целей в области развития, сформулированных в Декларации тысячелетия, в частности целей, касающихся здравоохранения и образования, и содействовала восстановлению законности и правопорядка, а также фискальной и экономической стабильности после окончания периода "напряженности" в 2003 году. Однако все еще остается ряд сложных задач, включая обеспечение устойчивого укрепления потенциала, приведение приоритетов доноров в соответствие с правительственной программой развития, обеспечение транспарентности и подотчетности при использовании и управлении освоением государственных ресурсов, обеспечение справедливого распределения страновых ресурсов, в частности для большинства населения, которое проживает в сельских районах, и уменьшение зависимости от помощи. Независимый эксперт отметил отсутствие правозащитных рамок, которые служили бы путеводной нитью для стратегий развития правительства и доноров и позволяли бы гражданам обеспечивать подотчетность правительства и доноров за их политику и меры.

В заключение в докладе высказываются некоторые рекомендации, адресованные правительствам Австралии и Соломоновых Островов и другим партнерам по развитию Соломоновых Островов.

## Annex

### **Report of the Independent Expert on the effects of foreign debt and other related international financial obligations of States on the full enjoyment of all human rights, particularly economic, social and cultural rights, on his mission to Australia (7–11 February) and Solomon Islands (14–18 February 2011)**

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## I. Introduction

1. In this report, the Independent Expert presents the findings of his official visits to Australia, from 7 to 11 February 2011, and to Solomon Islands, from 14 to 18 February 2011. The key purpose of his visit to Australia was to assess the impact of Australian development assistance on the realization of human rights and the right to development, as well as on the achievement of the Millennium Development Goals, in recipient countries in the Pacific region. He also examined the role of human rights within Australia's foreign aid policy and explored the human rights implications of Australia's trade negotiations and development partnerships with the Pacific Island countries. In Solomon Islands, the Independent Expert assessed the effectiveness of foreign aid in supporting the realization of human rights in the country. He also explored the impact of foreign debt, terms of trade and the global recession on the enjoyment of human rights and the achievement of the Goals. The visits were connected in order to allow for consideration of the issues from the perspective of provider and recipient of development assistance.

2. In Australia, the Independent Expert met with senior officials from the Department of Foreign Affairs and Trade, the Australian Agency for International Development (AusAID), the Australian Human Rights Commission, the Reserve Bank of Australia, the Development Effectiveness Steering Committee (comprising representatives of the Department of the Prime Minister and Cabinet, the Treasury, the Department of Finance and Deregulation, the Department of Foreign Affairs and Trade, the Office of Development Effectiveness and AusAID) and the Export Finance and Insurance Corporation (EFIC). He also met with the Parliamentary Secretary for Pacific Island Affairs, the Solomon Islands High Commissioner to Australia, World Bank officials, civil society organizations, academics and private contractors involved in the management of Australian aid projects. The Independent Expert also delivered a public lecture on "vulture funds" at Monash University.

3. In Solomon Islands, the Independent Expert met with senior officials from the Office of the Prime Minister and Cabinet, the Ministry of Foreign Affairs and External Trade, the Ministry of Development Planning and Aid Coordination, the Ministry of Finance and Treasury, the Ministry of Justice and Legal Affairs, the Ministry of Health and Medical Services, the Ministry of Education and Human Resources, the Ministry of Rural Development, and the Central Bank of Solomon Islands, as well as members of the Parliamentary Foreign Relations Committee, the Public Accounts Committee and the Bills and Legislation Committee. He also had consultations with representatives of the Australian High Commission, the Regional Assistance Mission to Solomon Islands (RAMSI), United Nations agencies, the World Bank and civil society organizations.

4. The Independent Expert is grateful to the Governments of Australia and Solomon Islands for their invitations and cooperation during his missions. He also takes this opportunity to express his gratitude to the United Nations Information Centre in Australia, the United Nations Development Programme (UNDP) Country Office in Solomon Islands and the Regional Representative of the Office of the United Nations High Commissioner for Human Rights for their support.

5. He regrets that one of the key stakeholders, the Asian Development Bank (ADB), was uncooperative during his visits to both countries.

## II. Australia's international development assistance programme

### A. Policy and institutional framework

6. The objective of the Australian aid programme is to “assist developing countries reduce poverty and achieve sustainable development, in line with Australia’s national interest”.<sup>1</sup> Australia’s aid policy aims to speed up progress towards the Millennium Development Goals and focuses on the Asia-Pacific region, which accounts for over 60 per cent of official development assistance (ODA), although the geographical reach of the aid programme has more recently been extended to include Asia and the Middle East, Africa, and Latin America and the Caribbean. Priority areas include education, health and HIV, environmental sustainability, economic growth, governance, equitable development (including gender equality and people with disabilities), human security and stability, and strengthening the effectiveness of the aid programme.<sup>2</sup>

7. In 2009-2010, total ODA was A\$ 3.8 billion. For the period 2010-2011 it is estimated at A\$ 4.3 billion, representing 0.33 per cent of gross national income (GNI). The Government has committed to scaling up its ODA to 0.5 per cent of GNI by 2015-2016. The Independent Expert welcomes this commitment but notes that it falls short of the internationally agreed ODA target of 0.7 per cent of GNI.

8. AusAID is the main Government agency responsible for managing Australia’s aid programme, although other Government agencies provide smaller amounts of aid in areas such as defence, policing and trade. In 2010-2011, AusAID will be responsible for managing A\$ 3.8 billion of the total ODA budget.

9. The AusAID programme is ordered around four interlinked themes: accelerating economic growth; fostering functioning and effective States; investing in people; and promoting regional stability and cooperation.<sup>3</sup>

10. Australia is signatory to the 2005 Paris Declaration on Aid Effectiveness: Ownership, Harmonisation, Alignment, Results and Mutual Accountability, and the 2008 Accra Agenda for Action, under which it has committed to use partner country systems to deliver aid, base its support on partner countries’ national development strategies, reduce aid fragmentation, increase transparency, share responsibility and accountability with country partners for development results, and increase predictability of aid flows by supporting budget planning of partner governments.<sup>4</sup>

#### 1. Human rights and the aid programme

11. The Independent Expert notes that some AusAID programme sectors directly or indirectly address human rights. A number of the Agency’s activities aim at increasing gender equality,<sup>5</sup> supporting disadvantaged or vulnerable groups (particularly people with

<sup>1</sup> Australia, “Australia’s international development assistance: a good international citizen”, statement by Stephen Smith, Minister for Foreign Affairs and Bob McMullan, Parliamentary Secretary for International Development Assistance, 11 May 2010, p. 1. Available at [www.budget.gov.au/2010-11/content/ministerial\\_statements/ausaid/html/index\\_ausaid.htm](http://www.budget.gov.au/2010-11/content/ministerial_statements/ausaid/html/index_ausaid.htm).

<sup>2</sup> Ibid., pp. 7-35.

<sup>3</sup> See [www.ausaid.gov.au/keyaid/default.cfm](http://www.ausaid.gov.au/keyaid/default.cfm).

<sup>4</sup> Australian National Audit Office (ANAO), *AusAID’s Management of the Expanding Australian Aid Program*, Audit Report No. 15 of 2009-2010 (Canberra, 2009), p. 14. Available at [http://anao.gov.au/~media/Uploads/Documents/2009%2010\\_audit\\_report\\_15.pdf](http://anao.gov.au/~media/Uploads/Documents/2009%2010_audit_report_15.pdf).

<sup>5</sup> See AusAID, *Gender Equality in Australia’s Aid Program – Why and How* (Canberra, 2007). Available at [www.ausaid.gov.au/publications/pdf/gender\\_policy.pdf](http://www.ausaid.gov.au/publications/pdf/gender_policy.pdf).

disabilities<sup>6</sup>) and promoting good governance in local institutions. In 1996, AusAID established a human rights grants scheme to support small organizations based or operating in developing countries in activities aimed at promoting and protecting human rights. In 2010-2011 this scheme had a budget allocation of A\$ 3.5 million but it remains a very small component of Australia's ODA. AusAID has also provided significant funding to the Asia Pacific Forum of National Human Rights Institutions since its establishment in 1996.<sup>7</sup> Australia has committed A\$ 2.6 million for the period 2010-2014. It is also notable that AusAID has acknowledged the interdependence and mutually reinforcing nature of development and human rights.<sup>8</sup> Nevertheless, AusAID does not have an overarching human rights-based approach guiding its policies and programmes. Rather, certain human rights issues are addressed in an ad hoc manner.

12. An independent review of aid effectiveness is currently being undertaken to assess whether the current systems, policies and procedures for the aid programme maximize effectiveness and efficiency. Numerous public submissions to the review have underlined that the review proffers an invaluable important opportunity for the Government to ensure that human rights become an overarching objective of Australian development work, and that this work is underpinned by a rights-based approach. The Independent Expert fully supports the calls for the development assistance programme to be anchored in a human rights-based framework. As noted by the Australian Human Rights Commission in its submission to the review, a rights-based approach would enhance the sustainability and effectiveness of the aid programme principally because it focuses on addressing the underlying causes of poverty and disadvantage and it contributes to better accountability.<sup>9</sup>

## 2. The role of technical assistance in the aid programme

13. Technical assistance represents a major component of Australia's aid programme.<sup>10</sup> In general, this entails the recruitment of large numbers of advisers to work in partner government institutions.<sup>11</sup> According to the Organization for Economic Cooperation and Development (OECD), the use of technical assistance increased from 37 per cent of Australian ODA in 1999 to 46 per cent in 2003. A 2008 AusAID survey on technical assistance expenditure indicates that the use of technical assistance remained at a similar level.<sup>12</sup>

14. Information provided by the Government indicates that efforts to decrease the reliance on advisers as a primary mechanism for providing technical assistance have

<sup>6</sup> See AusAID, *Development for All – Towards a Disability-inclusive Australian Aid Program 2009-2014* (Canberra, 2008). Available at [www.ausaid.gov.au/publications/developmentforall.cfm](http://www.ausaid.gov.au/publications/developmentforall.cfm).

<sup>7</sup> The Government of Australia also provides an annual core contribution to support the work of the Office of the United Nations High Commissioner for Human Rights.

<sup>8</sup> AusAID, "Human rights and Australia's aid program". Available at [www.ausaid.gov.au/keyaid/humanrights.cfm](http://www.ausaid.gov.au/keyaid/humanrights.cfm).

<sup>9</sup> Australian Human Rights Commission, "Independent review of aid effectiveness: Australian Human Rights Commission submission to the independent panel", 2 February 2011, pp. 2-4.

<sup>10</sup> ANAO Audit Report No. 15 2009-10, p. 83. "Technical assistance" refers to the provision of experts and training to build the capacity of partner government staff and institutions and to deliver technical services in areas such as engineering, health or financial management. See Tony Land, Volker Hauck, Heather Baser, "Aid effectiveness and the provision of TA personnel: improving practice", *Policy Management Brief*, No. 20 (European Centre for Development Policy Management, November 2007).

<sup>11</sup> See AusAID, *Annual Review of Development Effectiveness 2009: Improving Basic Services for the Poor* (Canberra, 2010), pp. 48-49. This is attributed to the fact that the Australian aid programme focuses on fragile States and conflict-affected countries where Government systems and capacity are weak and relevant expertise is unavailable. See also [www.ausaid.gov.au/makediff/adviser-review.cfm](http://www.ausaid.gov.au/makediff/adviser-review.cfm).

<sup>12</sup> AusAID, *Annual Review of Development Effectiveness 2008* (Canberra, 2009), p. 36.

recently resulted in a reduction in Australia's expenditure on technical assistance from an average of 42 per cent of annual Australian ODA for the period 1996 to 2007, to an average of 35 per cent since 2008.

15. In 2007, AusAID committed to reduce its dependence on "stand-alone" aid projects that are implemented by private contractors and through the use of technical assistance, and to increase the use of "sector programs of support that work through recipient country development strategies and financial systems, together with other donors".<sup>13</sup> However, it has been reported that, while increasing, AusAID's use of partner government systems to deliver aid remains "well-short of internationally agreed targets and behind progress of other donors".<sup>14</sup> According to OECD, only 41 per cent of Australia's aid is delivered through partner countries' financial management systems and 24 per cent is subject to partner countries' procurement systems; falling short of the OECD Development Assistance Committee's average of 47 and 44 per cent, respectively. In addition, only 30 per cent of Australia's aid flows are aligned to national priorities.<sup>15</sup> Overall, Australian technical assistance spending does not yet fully comply with the recommendations contained in the international aid effectiveness agenda, which requires greater use of partner government systems to deliver aid.

16. The focus on technical assistance appears to be based on the view that poor governance underpinned by the lack of institutional capacity; inefficient administrative systems; lack of qualified personnel; and weak implementation are key obstacles to economic growth and reduction of poverty. Nevertheless, the use of technical assistance has been subject to criticism for failing to transfer skills and build local capacity, obstructing a sense of ownership by recipient countries and relying excessively on foreign rather than local advisers. In its *2009 Annual Review of Development Effectiveness*, the Office of Development Effectiveness observed that continued use of high levels of technical assistance in Australia's aid programme was "likely to inhibit capacity development".<sup>16</sup>

17. In the light of criticisms concerning the effectiveness of technical assistance, AusAID has recently undertaken a number of reforms, such as a joint AusAID/partner governments review of all adviser positions funded by AusAID; the development of a standardized remuneration framework for all advisers that includes performance assessments to ensure advisers are cost-effective; and the development of an operational policy on the use of advisers in the aid programme, which defines minimum standards for adviser planning, selection and performance management.<sup>17</sup>

18. The heavy AusAID reliance on for-profit contractors poses an additional challenge to aid effectiveness, inasmuch as it may create perverse incentives for consultancy firms to foster aid dependency instead of medium- to long-term sustainability and re-appropriation (of the development process) strategies by partner countries. The Independent Expert notes that AusAID has recently indicated its intention to move away from its reliance on

<sup>13</sup> ANAO, *AusAID's Management*, p. 18.

<sup>14</sup> *Ibid.*, p. 19.

<sup>15</sup> OECD, *Better Aid: 2008 Survey on Monitoring the Paris Declaration - Making Aid More Effective by 2010* (2008), p. 107.

<sup>16</sup> AusAID, *Annual Review 2009*, p. 49.

<sup>17</sup> In February 2011, it was reported that the Government would, within two years, reduce by 27 per cent the number of advisers employed by AusAID in 20 countries and that the tax-free salaries of the highest paid technical advisers (A\$ 500,000) would be reduced by 25 per cent to ensure that AusAID did not pay above-market value for technical advisers. See Rowan Callick, "Rudd derails the aid gravy train," *The Australian*, 15 February 2011.



contractors as its dominant model of aid delivery, and to focus on increasingly on working through programme-based approaches.<sup>18</sup>

19. Further, there is a tendency to focus aid efforts on government, rather than civil society.<sup>19</sup> This undermines the role of local civil society organizations in delivering basic services and ensuring transparency and accountability, thus weakening the sustainability of the development effort as a whole.

20. The AusAID *Annual Review of Development Effectiveness 2009* has underlined the absence of a strong policy dialogue between Australia and its development partners and Australia's struggle to agree with partner countries on how best to support their strategic priorities and use the available resources as a key limitation to the effectiveness of its aid programme.<sup>20</sup> The review also noted the lack of a whole-of-government strategy and performance assessment framework for Australia's engagement at the country level, which hinders Australia's agreement with partner countries on development objectives and the best ways to achieve them.<sup>21</sup> In addition, the support for monitoring and evaluation procedures of partner countries has been insignificant. In this regard, AusAID reported that the 2010 Country Strategy Development policy places a stronger emphasis on the role of policy dialogue in achieving shared development outcomes with partner countries.

## B. Debt relief

21. Australia has provided debt relief within the Paris Club framework and contributed to multilateral debt relief under the Heavily Indebted Poor Countries (HIPC) Initiative. For the period 2010-2011, its contribution to the HIPC Initiative is estimated at A\$ 22.6 million.<sup>22</sup>

22. In recent years, Australia has provided debt relief through a debt-for-development scheme in terms of which a portion of the debt owed to it is cancelled in exchange for investments by the debtor country in development programmes.<sup>23</sup> Provided they are not overshadowed by new loans and they are executed in a manner that reveals the nature of the loans to be cancelled, these debt swaps may be an effective way to address the negative effects of debt in poor countries.

23. The Independent Expert commends Australia for its contribution to multilateral debt relief initiatives and urges the Government to use its influence to ensure that the provision of debt relief is not conditional on the implementation of harmful reforms. Despite their limitations, these schemes have afforded some heavily indebted poor countries fiscal space to increase spending on basic social services such as health and education. However, as the Independent Expert underlined in his 2009 report to the Human Rights Council (A/HRC/11/10, para. 31), the voluntary nature of these schemes has enabled some unscrupulous commercial creditors (termed "vulture funds") to purchase defaulted sovereign debt at significant discounts, hold out and then litigate to obtain the full value of the debt plus exorbitant interest and legal costs. While vulture fund litigation has largely been confined to the courts in "creditor-friendly" jurisdictions such as the United States of America, the United Kingdom of Great Britain and Northern Ireland and various tax havens, recent events suggest that vulture funds will sue in other jurisdictions where the

<sup>18</sup> AusAID, "Australia update for the evaluation of the implementation of the Paris Declaration, phase II" (December 2010), p. 8.

<sup>19</sup> AusAID, *Annual Review 2009*, p. 58.

<sup>20</sup> Ibid., pp. 40 and 57.

<sup>21</sup> Ibid., pp. 57-58.

<sup>22</sup> Australia, "Australia's international development assistance", p. 60.

<sup>23</sup> Julia Roy, "Case for a debt audit", Jubilee Australia Working paper, September 2009, p. 7.

target debtor countries have assets. In November 2010, for example, the New South Wales Supreme Court gave judgement against the Democratic Republic of the Congo for a total of US\$ 30.2 million plus 9 per cent interest and the costs of arbitration at the suit of a United States-based vulture fund, FG Hemisphere Associates, LLC seeking to recover a loan extended to the Mobutu regime in the 1980s.<sup>24</sup> Based on the International Arbitration Act 1974 (Cth), the judgment enforced two arbitral awards by the International Chamber of Commerce in 2003 in favour of Energoinvest, the interests in which the company later sold to FG Hemisphere Associates. The judgement effectively paves the way for the sale of shares held by the Democratic Republic of the Congo in an Australian mining company.

24. To safeguard the gains from multilateral debt initiatives to which countries such as Australia contribute and to prevent inequitable burden sharing among creditors, it is important that all States enact legislation to curb the predatory activities of vulture funds. Consequently, the Independent Expert urges the Government of Australia to enact legislation that would limit the ability of vulture funds to use Australian courts to recover extortionate amounts from poor countries, a process which erodes the gains from international debt relief efforts to which Australian taxpayers and others have contributed.

### III. Australia's foreign trade policy

25. The objective of Australia's trade policy, as stated by the Department of Foreign Affairs and Trade, is to "open new markets, reduce barriers to trade and improve access for Australian goods and services". This policy is implemented through bilateral agreements and multilateral engagement, including through membership of the World Trade Organization and regional trade arrangements.

#### A. Regional and free trade agreements

26. Australia has concluded a number of free trade agreements with other countries aimed at liberalizing trade in goods and services, as well as investments. In 2001, Australia and other member States of the Pacific Islands Forum<sup>25</sup> signed the Pacific Agreement on Closer Economic Relations (PACER). Negotiations are currently under way to extend the agreement into a reciprocal free trade agreement known as PACER Plus.

27. During the Independent Expert's consultations with Australian civil society organizations, concerns were raised about the potential impact of PACER Plus on a range of human rights such as the rights to health, education, work, food, development and an adequate standard of living. The Independent Expert underlines that States are obliged to ensure that international agreements that they enter into do not adversely affect the realization of human rights – either for people under their jurisdiction or for people in other countries that are party to the agreement.<sup>26</sup> Consequently, he urges the negotiating parties to consider undertaking ex ante and ex post human rights impact assessments of PACER Plus, including an analysis of its impact on gender equality.<sup>27</sup> As Oxfam Australia has argued,

<sup>24</sup> *FG Hemisphere Associates LLC v Democratic Republic of [the] Congo* [2010] NSWSC 1394.

<sup>25</sup> The member States of the Pacific Islands Forum include Australia, the Cook Islands, the Federated States of Micronesia, Fiji, Kiribati, the Marshall Islands, Nauru, New Zealand, Niue, Palau, Papua New Guinea, Samoa, Solomon Islands, Tonga, Tuvalu and Vanuatu.

<sup>26</sup> This obligation is underscored in Article 103 of the Charter of the United Nations.

<sup>27</sup> A human rights impact assessment would aim to evaluate how provisions of a new trade agreement are likely to impact on the realisation of defined human rights. In August 2010, a number of Pacific Island civil society organizations called for the PACER-Plus negotiations to be put on hold, partly because there had been no assessment of the risks posed by the agreement to human rights such as the

such assessments would, inter alia, also provide the negotiating States with policy recommendations from which to develop effective and coherent trade policies that are consistent with their human rights and development commitments and priorities.

28. During his visit, the Independent Expert was informed that Australia has committed more than A\$ 5.8 million to assist Pacific Island countries, through training, assistance and advice, to prepare for trade negotiations (including for PACER Plus). It has also provided A\$ 65,000 for each Pacific Island country to undertake a study on, inter alia, the social impacts of PACER Plus. The Independent Expert is concerned, however, that procurement of services appears to be restricted to consultants selected by the Government of Australia. This raises issues about potential conflict of interest given that Australia is an interested party. It is important that any human rights impact assessment is undertaken by an independent and credible institution with the full and informed participation of communities in all negotiating countries.

29. A number of organizations also expressed concern that Australian development assistance might be used to induce Pacific Island countries to enter into potentially harmful free trade agreements and to implement detrimental macroeconomic and public sector reforms, thereby advancing Australia's own economic interests rather than the development needs of its weaker regional neighbours.

30. Further, the Independent Expert was informed by representatives of AusAID that during the period 2008–2010, Australia funded training courses on trade negotiations at the Institute for International Trade at the University of Adelaide that were aimed at enhancing the trade policy knowledge and negotiation capacity of officials from Forum Island Countries.

31. The Independent Expert considers that perceptions of self-interested capacity-building or consultancy services linked to PACER Plus may undermine the legitimacy of any regional agreement that may be concluded.

## B. Export credit

32. Export credit has played an important role in Australia's development assistance agenda. Like most developed countries, Australia has an export credit agency<sup>28</sup> – the Export Finance and Insurance Corporation (EFIC), a Commonwealth statutory corporation – the mandate of which is to expand Australia's international export trading capacity and facilitate export opportunities for Australian businesses.<sup>29</sup> EFIC provides “finance and

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right to health and the right to food. See the 2010 Civil Society Statement to Pacific Island Forum Leaders regarding PACER-Plus negotiations, available at [www.pang.org.fj/doc/Pacific\\_CSOPACER\\_Plus\\_Moratorium\\_Statement.pdf](http://www.pang.org.fj/doc/Pacific_CSOPACER_Plus_Moratorium_Statement.pdf).

<sup>28</sup> An export credit agency is a public agency that aims to promote creditor country exports by providing insurance, guarantees or loans for the export of goods and services. See International Monetary Fund, *External Debt Statistics: Guide for Compilers and Users* (2003), appendix III, p. 256, available at [www.imf.org/external/pubs/ft/eds/eng/guide/file6.pdf](http://www.imf.org/external/pubs/ft/eds/eng/guide/file6.pdf). A significant portion of financial support from export credit agencies targets large extractive industries which can pose a range of threats to environments and populations in developing countries (see Jubilee Australia, *Risky Business: Shining a Spotlight on Australia's Export Credit Agency* (Sydney, 2009), pp. 15-18). Further, export credit and insurance often becomes sovereign debt in that importer Governments are frequently required to provide counter-guarantees, and in the event of default by either domestic exporter or foreign importer, export credit agencies settle the claim or lose the value of loan repayments and the subject amount becomes debt owed by the importing country Government.

<sup>29</sup> Export Finance and Insurance Corporation Act 1991 (Cth), sect. 7, art. 1 (a).

insurance solutions to assist Australian exporters overcome financial barriers when growing their business overseas”.<sup>30</sup>

33. EFIC operates two accounts: (a) a Commercial Account, with minimal Government involvement, that underwrites risk and operates at a profit; and (b) a National Interest Account, which covers transactions which are considered to be in the “national interest” and are undertaken under the direction of the Minister for Trade.

34. Australian non-governmental organizations (NGOs) working on aid and development issues have expressed disquiet over the lack of transparency and accountability demonstrated by EFIC. Particular concerns relating to lack of due diligence, negative environmental and social impacts, human rights, and lack of consultation with affected communities have been raised over two EFIC-supported projects: the Gold Ridge Mine in Solomon Islands and the liquefied natural gas project in Papua New Guinea.<sup>31</sup> Civil society organizations have also expressed their concern that some of the debt emanating from EFIC transactions with neighbouring developing countries (particularly those incurred under the Development Import Finance Facility, which was a mixed credit-aid programme operating until 1996) may be odious or illegitimate and should therefore be cancelled.

35. Despite all these concerns, EFIC continues to resist calls to disclose details of its transactions, including those conducted under the National Interest Account. During his consultations with EFIC and advisers to the Minister for Trade, the Independent Expert was informed that EFIC was exempt from disclosing certain information because of commercial and international sensitivity.<sup>32</sup> Nonetheless, the Independent Expert fully supports the view that the absence of transparency requirements raises serious questions about the agency’s accountability to Australian taxpayers and to citizens of the developing countries where it supports projects. Loans underwritten by the Government of Australia or guaranteed by the Governments of the countries where EFIC-supported projects are being implemented are matters of public concern. Consequently, he is of the view that EFIC should be required to publicly disclose information concerning its activities, including project assessment, decision-making and implementation and to undertake assessments of the human rights impact of its financing decisions (in addition to its environmental and social impact assessments). In particular, the Government of Australia should ensure that the activities of EFIC are fully compliant with Australia’s international human rights obligations.

## IV. Solomon Islands: political and economic context

### A. Overview

36. Solomon Islands is an archipelagic country consisting of over 900 islands and covering a land area of about 28,400 square kilometres. About 85 per cent of its estimated population of 530,000 live in rural areas. Subsistence agriculture is the main source of livelihoods while the formal economy remains small.

37. In 1998, ethnic tensions erupted over the distribution of resources and led to the breakdown of law and order. The situation continued to be precarious until the Regional

<sup>30</sup> See <http://australia.gov.au/directories/australia/efic>. According to Jubilee Australia, EFIC offers medium- to long-term loans and guarantees to buyers of Australian exports and insurance and guarantee facilities directly to Australian exporters. See Jubilee Australia, *Risky Business*, p. 12.

<sup>31</sup> See, for example, Jubilee Australia, *Risky Business*, chaps. 2 and 3.

<sup>32</sup> This includes anything done under parts 4 or 5 of the Export Finance and Insurance Corporation Act. See Freedom of Information Act (Cth), sect. 7.

Assistance Mission to Solomon Islands (RAMSI) intervened in July 2003 to restore stability and begin the reconstruction of the country's institutions and infrastructure. Since then, peace has been restored and considerable progress has been made in reconstruction and reform. Nevertheless, Solomon Islands remains vulnerable to conflict because many of the issues underlying the conflict remain unresolved.

38. During the period of civil unrest, income per capita decreased by 31.9 per cent and the economy was reduced to 31.6 per cent of its previous size. Only in 2009 did the per capita income equal its previous peak level of 1997.<sup>33</sup> However, social indicators in the country remain among the worst in the region, with high poverty rates, high levels of urban unemployment and gender imbalances.

39. Natural conditions, such as the remoteness and geographic fragmentation of the country and vulnerability to climate change, pose a major obstacle to the country's economic development. The country relies heavily on natural forest log exports for Government revenue, exports and employment. Manufacturing and other services are limited. Most of the food, energy, capital goods and consumer goods are imported, largely affecting the country's balance of payments. In this context, foreign assistance provides much of the budget revenue and funds for capital spending, sustaining a large portion of the country's economy.

40. The country was highly exposed to the impacts of the global recession due to its deteriorating growth prospects and high levels of poverty. Reduced demand for export commodities had an impact on logging output, resulting in a sharp drop in Government revenues.

41. The National Coalition for Reform and Advancement Government, which came into power in August 2010 and consists of members of several political parties, has committed to a comprehensive constitutional, social and economic reform programme over a four-year period.<sup>34</sup> Given the fragility of Solomon Islands Governments, however, it is unclear whether the Government will be able to implement this programme. During the Independent Expert's visit to the country the Government appeared to be on the brink of collapse with the resignation of some members.

## **B. External debt and debt sustainability**

42. In the years following the end of the tensions, the country's external debt represented almost half of its gross domestic product (GDP). In October 2005, the Government met with representatives of Australia, the European Commission, the European Investment Bank and the International Fund for Agricultural Development in Honiara to discuss a debt relief proposal. The outcome of the discussions – the Honiara Club Agreement – sets out a debt payment moratorium and a reduction of debt stock subject to a number of conditions, including restructuring of domestic debt and adoption of a comprehensive debt management plan; a freeze on further borrowing or sovereign guarantees until the country reaches the “green light” status under the International Development Association's debt distress rating system; and settlement of debts in accordance with debt restructuring agreements. Other conditions committed the Government to ensure macroeconomic stability, improve the performance of State-owned

<sup>33</sup> See [www.estandardsforum.org/system/briefs/316/original/brief-Solomon%20Islands.pdf?1270156313](http://www.estandardsforum.org/system/briefs/316/original/brief-Solomon%20Islands.pdf?1270156313).

<sup>34</sup> Office of the Prime Minister, “The National Coalition for Reform and Advancement (NCRA) Government policy statement”, Honiara, October 2010.

enterprises (including through privatization), improve infrastructure and streamline business regulation (including a new foreign investment law and tax reforms).<sup>35</sup>

43. The total external debt of the country (including arrears) as at 31 December 2010 was SI\$ 1 billion, representing 24 per cent of its GDP. This amount excluded other debt obligations (contingent liabilities) which were estimated at SI\$ 65 million. The World Bank estimates that by 2011, the country's debt will have decreased to 18 per cent of its GDP. The International Monetary Fund and the World Bank recently assigned the country "yellow light" status, indicating a reduction in the risk of debt distress. Thus, Solomon Islands is expected to resume limited concessional borrowing from multilateral donors over the coming years.<sup>36</sup>

44. Despite the halt in borrowing in place since 2003, the reduction of its debt in terms of GDP and improvements in debt management, Solomon Islands remains vulnerable to debt distress. Although inflation has remained below 2 per cent throughout 2010, and foreign reserves have continued to increase due to donor and investment inflows and currency revaluation, it is expected that the exhaustion of natural forest logging resources will greatly affect Government revenue, the current account and foreign reserves in the medium term.<sup>37</sup>

45. Solomon Islands faces numerous difficulties in its attempts to achieve economic growth, self-sustaining development and freedom from the burden of unsustainable debt. The limitations imposed by unfavourable terms of trade, a challenging geography, a small economy that is heavily dependent on imports and exports from unsustainable natural forest logging, insufficient Government revenue and an underdeveloped productive sector make the country highly susceptible to external shocks as well as profoundly dependent on foreign aid to foster development and the achievement of the Millennium Development Goals. Despite these challenges and its poor records in poverty reduction and realization of economic, social and cultural rights, the country is not eligible for debt relief under the HIPC Initiative because its debt burden is below the applicable threshold.

### C. Debt situation and impact on human rights

46. The debt burden does not appear to have a negative impact on the realization of human rights in the country. Indeed, the reduced debt burden (as a result of implementation of commitments under the Honiara Club Agreement) and significant aid flows have provided the Government with some fiscal space for increased spending on human rights-related basic social services. Rather, the weak institutional capacity of the Government (including the lack of appropriate national human rights and accountability mechanisms) continues to undermine the realization of human rights.

47. Structural reform remains a priority for creditors and the donor community, as stressed in the Honiara Club Agreement. The Government has adopted a number of economic reform measures to respond to macroeconomic stability and fiscal management requirements. In June 2010, the Government and IMF reached agreement on a US\$ 18 million arrangement under the Standby Credit Facility, in support of the economic

<sup>35</sup> Minute on Restructuring the External Debt of Solomon Islands, October 2005. Available at [test.mof.gov.sb/Libraries/Debt.../Honiara\\_Club\\_Agreed\\_Minute.sflb.ashx](http://test.mof.gov.sb/Libraries/Debt.../Honiara_Club_Agreed_Minute.sflb.ashx).

<sup>36</sup> World Bank, *East Asia and Pacific Economic Update 2010, Volume 2: Robust Recovery, Rising Risks* (Washington D.C., 2010), p. 77. Available at [http://siteresources.worldbank.org/INT/EAPHALFYEARLYUPDATE/Resources/550192-1287417391641/EAP\\_Update\\_Oct2010\\_fullreport.pdf](http://siteresources.worldbank.org/INT/EAPHALFYEARLYUPDATE/Resources/550192-1287417391641/EAP_Update_Oct2010_fullreport.pdf). See also IMF Country Report No. 10/359 (December 2010), p. 2, available at [www.imf.org/external/pubs/cat/longres.aspx?sk=24499.0](http://www.imf.org/external/pubs/cat/longres.aspx?sk=24499.0).

<sup>37</sup> World Bank, *East Asia*, p. 77.

reform programme. However, there is widespread concern that a recent freeze on public sector spending (including a halt in recruitments and wage spending) may be linked to fiscal requirements of this programme and that such policy may undermine the efforts of development partners to build the human resources capacity of the Government. The implications of a freeze on recruitment and wage spending in a country where the public service represents an important source of employment can be pervasive, affecting not only development but also access to basic social services and the enjoyment of economic social and cultural rights.

48. In November 2009, Taiwan Province of China approved a project that provides funds to enable the Government pay a loan provided by Exim Bank. Although this funding aims to alleviate the Government's debt burden, it redirects aid from the achievement of immediate development goals (including the Millennium Development Goals) to objectives of macroeconomic stability and debt servicing.

## **V. Legal and accountability framework of Solomon Islands**

### **A. Human rights obligations**

49. Chapter II of the Constitution of Solomon Islands sets out the fundamental rights and freedoms of the individual. These are complemented by international standards in the core human rights treaties that the country has ratified.<sup>38</sup>

50. The Penal Code does not criminalize international offences such as torture and enforced disappearances. Other rights enshrined in the international human rights treaties to which the country is party have not yet been codified in national legislation. However, the Government is currently considering draft legislation on the rights of people with disabilities, on child protection and on discrimination against women. The Independent Expert welcomes these initiatives and urges the Government to expedite the enactment of this legislation.

### **B. Institutional framework**

51. Government institutions are fragile and insufficiently developed. There is an insufficient number of skilled personnel, while practices, norms and procedures lack formalization, transparency and harmonization. Much of the aid provided to the country since the end of the tensions has been directed to address these challenges and to enhance governance.

52. The Independent Expert is concerned about the insufficient monitoring of public affairs in Solomon Islands. There is no effective independent and autonomous mechanism to monitor the use and management of public funds and the performance of Government agencies, privatized companies and aid programmes. Although there is an Auditor General, this office is not financially independent and it depends on the Ministry of Public Service for its human resources requirements. In addition, it has many foreign technical advisers among its staff, including in senior positions. In these circumstances, the office cannot

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<sup>38</sup> It is a party to the International Covenant on Economic, Social and Cultural Rights; the International Convention on the Elimination of All Forms of Racial Discrimination, the Convention on the Rights of the Child and the Convention on the Elimination of All Forms of Discrimination against Women. It has signed the Convention on the Rights of Persons with Disabilities. It has not ratified the main International Labour Organization conventions.

adequately and independently audit public expenditure and performance of donor programmes.<sup>39</sup>

53. The Independent Expert is also concerned about the lack of an independent national mechanism to monitor the implementation of human rights obligations and the lack of a national human rights action plan to inform Government policies and programmes.

## **VI. Solomon Islands' national development policy**

### **A. Priority areas**

54. The Government's Medium Term Development Strategy 2008-2010 identifies six priority areas: reconciliation and rehabilitation, national security and foreign relations, infrastructure development, social services sector, economic/productive sector, and civic affairs. The Government aims to strengthen development through a bottom-up and holistic approach that encompasses: the empowerment of the people through rural advancement strategies, the pursuit of the Millennium Development Goals, the revitalization of the economy, improvement in law and order, provision of effective service delivery, and improvement of the devolution of powers and decision-making authority to people.<sup>40</sup>

### **B. Trade**

55. Solomon Islands is a party to the Pacific Islands Country Trade Agreement, the Melanesian Spearhead Group Free Trade Area and PACER. It is also involved in the negotiations concerning PACER Plus and an economic partnership agreement with the European Union, as part of the Pacific Island States.

56. As a small developing country, Solomon Islands trade negotiations sometimes include non-reciprocal preferential access to industrialized economies, such as Australia and New Zealand, under the South Pacific Regional Trade and Economic Cooperation Agreement, and to the European Union, under the Everything but Arms initiative for least developed countries.

57. Despite these initiatives, Solomon Islands still faces enormous challenges in the trade sector that will require a profound commitment on the part of the Government and its development partners to ensure that new trade arrangements do not worsen the nation's fragile economic and social situation.

## **VII. International assistance and cooperation**

58. Solomon Islands receives a substantial amount of international aid per capita. ODA to the country has increased significantly following the end of the tensions in 2003, rising from US\$ 21 million in 2000 to US\$ 200 million in 2009. According to OECD, aid represented the equivalent of 67.3 per cent of GNI in 2007.

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<sup>39</sup> Solomon Islands, Office of the Auditor-General, "Annual report of the Auditor-General 2009", p. 3.

<sup>40</sup> Solomon Islands, Ministry of Development Planning and Aid Coordination, Medium Term Development Strategy 2008-2010, July 2008, pp. iii and iv.



## A. Australian development assistance

59. Australia is the largest donor in the Solomon Islands, accounting for nearly 60 per cent of the Government's development budget.<sup>41</sup> Its assistance is provided within the framework of the Australia-Solomon Islands Partnership for Development signed in 2009 which sets out four priority areas for funding: (a) improved service delivery; (b) improved economic livelihoods; (c) improved economic infrastructure; and (d) addressing economic and fiscal challenges. Total ODA committed for the period 2010-2011 is A\$ 227.7 million. Australia also funds 96 per cent of the costs of RAMSI.<sup>42</sup> About 80 per cent of Australian ODA is delivered in the form of technical assistance, while operational costs and equipment account for 14 per cent and 6 per cent, respectively.

60. Australian aid mostly funds long-term projects addressing institutional and legislative reform, but it also provides some project funding. AusAID plays a vital role in the health sector, providing capacity-building and direct budget support to the Ministry of Health and Medical Services, including through a sector-wide approach.

61. As stated earlier in the present report, Australian technical assistance typically involves deploying large numbers of advisers to work in partner government institutions. In Solomon Islands, the majority of technical advisers are Australian (see below). Most of the AusAID assistance focusing on the restoration of law and order has been implemented through the work of officials of the Australian Federal Police, the Department of Finance and Deregulation, and the Treasury. These officials have taken up line positions in the relevant Solomon Islands Government departments.<sup>43</sup> Australian advisers have also been deployed in the ministries of health, infrastructure, agriculture and livestock, and rural development.<sup>44</sup>

## B. Regional Assistance Mission to Solomon Islands

62. The mandate of RAMSI, which consists of police, military and civilian personnel and the Participating Police Force, is contained in the RAMSI Treaty,<sup>45</sup> the Government of Australia's 2003 Framework for Strengthened Assistance for Solomon Islands: Proposed Scope and Requirements, and the Solomon Islands' Facilitation of International Assistance Act 2003.<sup>46</sup>

63. In 2009, the Solomon Islands Government and RAMSI agreed a Partnership Framework that has three pillars: law and justice, economic governance and machinery of government.<sup>47</sup> It is however debatable whether, as a weak, heavily aid-dependent State,

<sup>41</sup> Ibid., p. 6.

<sup>42</sup> World Bank, "Interim strategy note for Solomon Islands for the period FY10-FY11", Report No. 53496-SB, March 2010, p. 7.

<sup>43</sup> ANAO, *AusAID's Management*, p. 85.

<sup>44</sup> "Solomon Islands report - Bilateral Program: Joint Review of Adviser Positions Funded by the Australian Aid Program", annex. 3.

<sup>45</sup> Agreement between Solomon Islands, Australia, New Zealand, Fiji, Papua New Guinea, Samoa and Tonga concerning the operations and status of the police and armed forces and other personnel deployed to Solomon Islands to assist in the restoration of law and order and security. Article 2 of the Treaty provides that the visiting contingent is to assist in the maintenance of law and order in the Solomon Islands.

<sup>46</sup> The long title of the Act states that it is an Act "to make provisions for the requesting of international assistance for the restoration of law and order in Solomon Islands, and for matters connected therewith or incidental thereto".

<sup>47</sup> Partnership Framework between Solomon Islands Government and Regional Assistance Mission to Solomon Islands, April 2009.

Solomon Islands has the capacity to engage on an equal basis with RAMSI to reflect a genuine partnership arrangement.

64. It is evident that RAMSI has successfully achieved its key initial objective of restoring law and order and preserving security in the country and that many Solomon Islanders value this role.<sup>48</sup> However, there is a perception among some that RAMSI is running a parallel government in the country and effectively undermining the country's sovereignty.<sup>49</sup> To compound matters, there is no set time frame for the withdrawal of RAMSI.<sup>50</sup> In its 2009 report, the National Parliament's Foreign Relations Committee observed that although sovereignty issues have been justifiably raised, these have largely been addressed by the development of new mechanisms for enhancing dialogue between the Government, RAMSI and the Pacific Islands Forum and notably through the Partnership Framework.<sup>51</sup>

65. Following the achievement of its priority objectives upon arrival in Solomon Islands, RAMSI has turned its attention to longer term aspects of its mandate, including economic growth and machinery of government. This has entailed the deployment of large numbers of personnel and advisers, the majority of whom are Australians and New Zealanders (despite the fact that RAMSI is supposed to be a regional mission) in key Government institutions. According to information available to the Independent Expert, as of November 2010, there were 150 civilian personnel working for RAMSI, including those in the Office of the Special Coordinator, civilian programme support and management staff and advisers in ministries of the Government of Solomon Islands.<sup>52</sup> This number comprised 118 Australians, 10 New Zealanders, 9 Fijians, 5 Papua New Guineans, 2 Canadians, 2 British, 1 Indian, 1 Nigerian, 1 Tongan and 1 Spaniard. In January 2011, this number had reduced slightly to 131, made up of 100 Australians, 10 New Zealanders, 10 Fijians, 3 Papua New Guineans, 2 Canadians, 2 British, 1 Indian, 1 Tongan, 1 Nigerian and 1 Spaniard.<sup>53</sup>

66. There is a concern that this approach to capacity-building may hamper, rather than promote, the empowerment of local professionals, both in Government and civil society. A better balance therefore needs to be struck between the need for effective and efficient administration in the short term and the strengthening of local capacity in the longer term. Failure to appropriately and satisfactorily build capacity will exacerbate dependency, especially in view of the fact that more than seven years after the RAMSI intervention, Government structures remain largely aid-dependent, with insufficiently developed local human resources and no self-sustaining local institutions. Although the Partnership Framework establishes condition-based timelines to reduce the RAMSI engagement in specific programme areas as the Government's capacity grows, it does not set any specific time frame for RAMSI to exit the country. The Independent Expert calls upon the

<sup>48</sup> See, for example, Collaborative Learning Projects (CDA), "Field visit report: Solomon Islands", 2009. See also RAMSI, *SIG-RAMSI Annual Peoples' Survey 2010 Report*, which found that 84 per cent of those surveyed supported the RAMSI presence, p. 5.

<sup>49</sup> Solomon Islands, National Parliament of Solomon Islands Foreign Relations Committee, *Report on the Inquiry into the Facilitation of International Assistance Notice 2003 and RAMSI Intervention* (2009), pp. 90-92.

<sup>50</sup> World Bank, "Interim strategy note", p. 7.

<sup>51</sup> *Report on the Inquiry*, p. xv.

<sup>52</sup> This excludes subcontractors.

<sup>53</sup> An AusAID survey on the use of technical assistance in selected Pacific countries found that Solomon Islands had the highest technical assistance expenditure. AusAID, "Mapping technical assistance inputs and costs across Australia's overseas aid program," 2008 (draft), cited in ANAO, *AusAID's Management*, p. 87.

Government and its development partners to develop a clear strategy for the exit of RAMSI.

67. Some Government officials expressed the concern that some of the foreign technical advisers were not sufficiently qualified for the positions to which they were recruited and for which they received higher remuneration packages compared to their local counterparts.<sup>54</sup>

68. There are also concerns about violations of human rights and international labour standards by private companies contracted to provide services to RAMSI as well as allegations of heavy-handedness by some members of the PPF. One of the most widely publicised cases is that of Patrick Defence Logistics (PDL), an Australian private company contracted to provide catering and logistical support to RAMSI in 2003. PDL engaged a number of local workers. In 2005, the workers made allegations against the company concerning ill-treatment including racial and physical abuse, unilateral changes of terms of employment, and poor working conditions. These allegations remain unresolved.<sup>55</sup> According to information received by the Independent Expert, PDL has made the dubious claim that it is immune from legal proceedings in terms of the Facilitation of International Assistance Act which provides RAMSI with immunity from legal proceedings in Solomon Islands.<sup>56</sup> The Independent Expert is seriously concerned about reports of threats of physical harm allegedly made by representatives of RAMSI and PDL against an individual who has actively supported the local workers in their quest for justice. Such incidents may undermine the positive contributions made by RAMSI. It is therefore important that these incidents are addressed in a transparent manner by both RAMSI and the Government of Solomon Islands. In addition, the Independent Expert considers that the countries of nationality of the visiting contingent and private contractors have a responsibility to ensure that the activities of their nationals do not violate the human rights of Solomon Islanders.

### C. Role of other development partners

69. Other development partners are involved in a broad range of programmes across different sectors in Solomon Islands. The New Zealand Agency for International Development (NZAID) provides direct budget support to the education sector and has programmes in a number of other areas. It also provides funding to RAMSI. Japan provides significant tied grant aid and has a long-standing volunteer programme. Taiwan Province of China funds a number of different sectors but focuses on the Rural Constituency Development Fund, which provides grants directly to Members of Parliament to support their constituencies. It also supports short-term projects responding to different Government needs, such as construction and infrastructure development, education and training, rural activities and tourism.

70. Multilateral donors include the European Union, ADB, the World Bank and UNDP. About 59 per cent of European Union funds are devoted to the education sector while the rest are directed towards areas such as rural advancement, energy, forestry, fisheries, water facilities and transport, support for non-State actors, human rights and community development. Of all development aid from the European Union, 61 per cent is delivered in

<sup>54</sup> Others have expressed similar sentiments, arguing that RAMSI is an opportunity for young Australian bureaucrats to gain experience working in Pacific island States. See Oxfam Australia and Oxfam New Zealand, *Bridging the Gap between State and Society: New directions for the Solomon Islands* (2006), p. 21. See also CDA, *Field Visit Report*, pp. 13-15.

<sup>55</sup> See *Daughters of Mary Immaculate & Others v Holyman Shipping Services Pty Ltd t/a Patrick Defence Logistics*, Civil Case No. 392 of 2007.

<sup>56</sup> The Act does not provide immunity to private contractors.

the form of operating expenses, 26 per cent as technical assistance and 13 per cent for equipment. ADB provides grant aid focusing on two areas: (a) transport infrastructure and (b) economic restructuring through “technical assistance on state-owned-enterprise reform and private sector promotion through reform of corporate and business laws and regulations”.<sup>57</sup> The World Bank provides assistance under an Interim Strategy Note which identifies three priority areas: (a) addressing surmountable barriers to growth (including promoting greater macroeconomic and fiscal stability); (b) enhancing the benefits of regional and global engagement (including attracting investment); and (c) supporting improved public administration and management (including promoting an effective public administration and improving management of public resources).<sup>58</sup>

71. The Country Programme Action Plan (2008-2012) agreed between the Government and UNDP outlines the areas of support for United Nations agencies in the country. These are equitable economic growth and the Millennium Development Goals, good governance and human rights, crisis prevention and recovery, and sustainable environmental management.

#### **D. Role of civil society**

72. There are a number of local and international NGOs operating in the country. Many of the international NGOs are Australian while some of the local NGOs have Australian or New Zealand partner organizations. The main donors to the NGO sector are Australia and New Zealand. However, some local NGOs with which the Independent Expert had discussions indicated that they received no support from the donor community. For this reason, they are not as robust as their international counterparts. This is regrettable since local NGOs can play a critical accountability and aid-delivery role in a cultural environment that may not be fully appreciated by their international counterparts. Development partners in Solomon Islands need to recognize local civil society as an important driver of sustainable human development and accordingly enhance their support to local organizations.

#### **E. Key challenges**

73. Solomon Islands relies heavily on foreign assistance to sustain its economy and for budgetary revenue, and has one of the highest levels of aid per capita in the world and as a percentage of GDP. There are two main challenges arising from this. First, due to its weak absorptive capacity, the Government of Solomon Islands is overwhelmed by the massive inflows of aid resources. Second, its aid dependency may render the Government more accountable to donors for its actions, rather than to its population.

74. There appears to be a lack of clear alignment of donor strategies with the Government’s development priorities, which undermines the Government development agenda. An example in this regard is the Rural Development Program. While the Government implements its Rural Advancement Policy through the Ministry of Rural Development, which it maintains is the appropriate ministry, donors are funding a separate rural development programme through the Ministry of Development Planning and Aid Coordination and the Ministry of Agriculture and Livestock.

75. The Government has also expressed its disquiet about the fact that most donor funds are off-budget and do not use the country system, and that local capacity-building, where

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<sup>57</sup> Medium Term Development Strategy 2008-2010, p. 9.

<sup>58</sup> World Bank, “Interim strategy note”.

skills and knowledge are effectively transferred to locals through foreign technical assistance, remains largely unachieved. A related problem is the lack of knowledge by Government officials of the standards concerning the aid effectiveness agenda, which renders them easily amenable to donor preferences as to how aid is to be delivered in line ministries.

76. There are widespread concerns, particularly among civil society organizations in Solomon Islands and Australia, that donors may be advocating reforms, such as reduction of public sector spending, privatization, trade liberalization and financial liberalization.<sup>59</sup> In 2010, for example, the Government received donor budget support linked to the implementation of a number of reforms to improve management of public expenditure. There is evidence that these reforms often have an adverse impact on the enjoyment of human rights, especially by the poorest and most vulnerable. It is therefore important that the effect that these reforms may have on poverty, inequality and the potential for conflict in the country is carefully considered before they are implemented.

77. Similar concerns were expressed regarding the reforms that are designed to attract foreign investment, especially in the extractive industries sector. The Independent Expert underscores that the benefits of investments must accrue to the people, especially the poorest, rather than one-sidedly enrich foreign investors, and that the country's resources must be used in a sustainable and environmentally friendly manner.

78. Solomon Islands remains vulnerable to conflict, as many of the underlying causes of the tensions remain. Notable among these are land tenure, poor access to basic services and public resources, a narrow economic base and inequitable distribution of economic resources.

## **F. Coordination and monitoring of development assistance**

79. It was evident during the Independent Expert's visit that there is inadequate oversight of the aid projects being implemented in the country. The Government does not have a mechanism to monitor and evaluate the impact of foreign assistance – it relies on donor mechanisms.

80. Although the Ministry of Development Planning and Aid Coordination is mandated to coordinate all donor programmes in the country, it has yet to develop a strategy for executing this mandate.<sup>60</sup> Among bilateral donors, Australia, New Zealand, Japan and the Republic of Korea liaise with the Ministry in deciding on what and how to disburse their aid, while Taiwan Province of China works with the Office of the Prime Minister and Cabinet. Similarly, the European Union and United Nations agencies coordinate with the Ministry, while the World Bank and ADB use the Ministry of Finance and Treasury as their focal point.

81. Such lack of harmonization may undermine the ability of the Government to adequately oversee the disbursement of funds, monitor the implementation of development programmes, and assess their impact on the ground. Moreover, it may impede the clear

<sup>59</sup> For example, the Government of Australia has proposed changes in the country's economic policy, involving privatization, public sector reform, fiscal and budgetary reform and provision of more efficient infrastructure. See Oxfam, *Bridging the Gap*, p. 19. ADB is also actively promoting reform of State-owned enterprises and investment reform. See ADB, "Solomon Islands: Interim Country Partnership Strategy 2009-2011", August 2009, pp. 9-10.

<sup>60</sup> According to the World Bank, in 2009, there were a total of 126 programmes across 26 Government agencies. This presents a challenge for coordination. See World Bank, "Interim strategy note", p. 7.

alignment of national and donor development strategies and, thus, the effectiveness of aid and the achievement of sustainable results. The large amount of aid being disbursed in Solomon Islands imposes a number of responsibilities on the part of the Government and its development partners. Both must coordinate their actions and put in place effective monitoring mechanisms to allow the most transparent, accountable, efficient and effective use of development assistance funds.

82. In March 2009, the Government and six development partners (ADB, AusAID, the European Union, NZAID, RAMSI and the World Bank) established a forum for policy dialogue, known as the Core Economic Working Group. However, this forum excludes other key development partners in the country, including the United Nations Country Team. The exclusion of the United Nations Country Team, in particular, is inopportune since it is in the best position to pool resources from many donors, which offers advantages of scale and lower transaction costs for the aid-recipient country, and to bring donors together to better coordinate aid and maximize its impact.

## **VIII. Impact of foreign aid on human rights and the Millennium Development Goals**

### **A. The Millennium Development Goals**

83. The Government of Solomon Islands has included the achievement of the Millennium Development Goals as a priority in its National Development Plan. In addition, much of the aid delivered by development partners has focused on the achievement of these goals, and the Government and its development partners have tried to align their strategies in support of the realization of these goals.

84. The country has made important progress with respect to the achievement of the Millennium Development Goals on health and education, as these sectors have received greater support from development partners such as Australia and New Zealand.<sup>61</sup> The country is likely to achieve universal primary education by 2015. It has made important progress in reducing child and maternal mortality, and is on track to meeting these goals by 2015.<sup>62</sup> However, progress has been inconsistent with respect to Goal 6 on combating HIV/AIDS, malaria and other diseases. The incidence of malaria has considerably decreased and the rate for curing tuberculosis has risen. Progress is not as clear with respect to the combating of HIV/AIDS, as it is estimated that the number of people with the disease is likely to be underrepresented, due to lack of reporting and testing.

85. There has been mixed progress concerning the eradication of extreme poverty and hunger, without large proportions of people living in extreme poverty, but with many “cash poor” or people living just above the poverty line. Mixed progress has also been seen with regards to gender equality and empowerment of women, with improvements in female representation in primary education and less advancement in secondary education and employment in the informal sector.

86. Environmental sustainability has shown insufficient progress, with deforestation and logging not being adequately addressed. In addition, the goal of a global partnership for

<sup>61</sup> In 2009, 24 per cent of all education expenditure was funded by development partners, while 35 per cent of all health spending was funded by development partners. See World Bank, “Interim strategy note”, p. 7.

<sup>62</sup> According to the World Bank, however, Solomon Islands is unlikely to achieve several of the Goals, including those relating to child mortality, prevalence of disease and school enrolment. See World Bank, “Interim strategy note”, p. 10.

development is not likely to be achieved by 2015.<sup>63</sup> Finally, much donor and Government attention has been devoted to improving accountability and representation in public affairs and better governance. Nevertheless, much remains to be done to attain international standards in this regard.

## **B. Human rights-based approach to development assistance**

87. The need for a human rights framework to guide the design, implementation and monitoring of development strategies has not been addressed by any of the relevant actors in the country. Human rights are an essential part of any sustainable development strategy; they enhance the effectiveness of aid programmes and contribute to achieving sustainable results, while ensuring that development challenges are adequately and equitably addressed and that the fundamental rights of the people are fully respected in the process.

## **IX. Conclusions and recommendations**

88. Development partners have made a significant contribution to rebuilding Solomon Islands after years of conflict between 1998 and 2003. The substantial aid (including development assistance from Australia) provided within the framework of international assistance and cooperation has helped Solomon Islands make important progress towards achieving the Millennium Development Goals on health and education. It is also widely accepted that RAMSI has helped restore law and order as well as basic fiscal and economic management in the Solomon Islands. Nevertheless, a number of challenges remain.

89. The Independent Expert acknowledges the numerous challenges faced by Solomon Islands in its attempts to achieve economic growth, self-sustaining development and freedom from the burden of unsustainable debt. The limitations imposed by unfavourable terms of trade, a difficult geography, a small economy heavily reliant on imports and unsustainable logging, insufficient Government revenues, an underdeveloped productive sector, and high dependency on foreign aid make the country highly vulnerable to external shocks. He also acknowledges the efforts made by the Government to address these challenges, and the support provided by development partners in this regard.

90. Based on his findings as outlined in this report, the Independent Expert makes the following recommendations, addressed to the Governments of Australia and Solomon Islands as well as to other development partners of Solomon Islands.

### **A. Government of Australia**

91. The Independent Expert commends the Government of Australia for its commitment to increase its ODA to 0.5 per cent of Australian GNI by 2015-2016. Nevertheless, he urges the Government to adopt a clear road map for the achievement of the internationally agreed ODA target of 0.7 per cent of GNI.

92. He also commends Australia's policy decision to use, for the most part, grants, rather than loans as development assistance. He calls upon the Government to ensure that Australian development assistance and trade programmes do not advocate public

<sup>63</sup> Solomon Islands Millennium Development Goals Report 2010, prepared by Strategic Asia and commissioned by UNDP (Jakarta), pp. 17-19 (unpublished).

sector and policy reforms which might have adverse impacts on the enjoyment of human rights, especially by the poorest and most vulnerable.

93. The Independent Expert is concerned about the lack of a human rights-based focus in Australia's aid programme. In order to adequately and fairly respond to the development challenges in recipient countries while promoting the fundamental rights of the citizens of these countries, human rights should inform the design and delivery of Australian aid. Adopting a human rights-based approach would enhance the effectiveness and sustainability of Australia's development aid programme. Further, such an approach would be critical for achieving the Millennium Development Goals because it provides a framework for addressing the root causes of poverty: inequality, discrimination, exclusion and disempowerment. The Independent Expert endorses the recommendation by the Australian Human Rights Commission concerning the establishment of a strategic partnership with AusAID to assist AusAID with incorporating human rights in its development assistance programme.

94. The current review of aid effectiveness is an invaluable opportunity for the Government to ensure that human rights become an overarching objective of Australian development work, and that the processes and practices of Australian agencies engaged in development assistance, particularly AusAID, are anchored in a human rights framework based on the international human rights instruments to which Australia is party. In addition, Australia's development assistance should underpin people's entitlement to basic standards of living, freedom from discrimination and participation, as well as transparency and accountability in public affairs.

95. To ensure that development strategies do not negatively affect the realization of economic, social and cultural rights and progress towards the Millennium Development Goals in recipient countries, AusAID should undertake human rights impact assessments to inform the design, implementation, monitoring and evaluation of its development programmes.

96. Australia's over-reliance on technical assistance is a matter for concern. Without a clear strategy to move away from support through technical assistance to partner government's institutions, local capacity development will be inhibited and never become self-sustainable, thus hindering the effectiveness and sustainability of aid programmes. Consideration should also be given to reducing the management of aid projects by private contractors.

97. Besides supporting capacity-building for government in recipient countries, Australian aid programmes should dedicate more efforts to sustain the work of local civil society organizations, as they can play a vital role in ensuring public participation and accountability, as well as the sustainability of aid programmes.

98. With regard to regional trade negotiations, development assistance should not be used as a means of inducing Pacific island countries to enter into trade agreements. Further, Australia should support the undertaking of independent and credible assessments of the potential human rights impacts – positive and negative – of its trade agreements with regional partners, such as PACER Plus.

99. The Independent Expert is concerned about the lack of transparency in the activities undertaken by the Export Finance and Insurance Corporation (EFIC), particularly in view of the fact that some of the projects it supports may have adverse environmental and social impacts in the countries where they are implemented. The Government should implement measures to ensure accountability and transparency in EFIC operations, particularly those undertaken under its National Interest Account.



100. While welcoming Australia's contributions to multilateral debt relief initiatives, the Independent Expert is concerned that the lack of domestic legislation to curb the predatory activities of vulture funds is providing opportunities for these funds to use Australia's courts to recover exorbitant amounts on debts they purchased at deep discounts. Ultimately, this undermines Australia's contributions to multilateral debt relief schemes. Consequently, the Independent Expert calls upon the Government of Australia to bolster its commitment to debt relief by urgently enacting legislation to limit the ability of vulture funds to use Australian courts at the expense of both Australian taxpayers and the citizens of the poor countries for whose benefit it contributes to multilateral debt relief.

## **B. Government of Solomon Islands**

101. Solomon Islands lacks an adequate human rights framework underpinning its development strategy and ensuring public accountability. The Independent Expert urges the Government to adopt a rights-based approach to the design and implementation of its national development strategy. In addition, the Government should adopt a national human rights action plan as recommended in the Vienna Declaration and Programme of Action, and establish a national human rights institution in full compliance with the principles relating to the status of national institutions for the promotion and protection of human rights (Paris Principles). It is also very important that the country ratifies the core international human rights and International Labour Organization treaties to which it is not yet party, and ensures that the Constitution and domestic legislation fully recognize the rights elaborated in these instruments. While he urges the Government to avail itself of the technical assistance offered in this regard by the Office of the United Nations High Commissioner for Human Rights and the Commonwealth Secretariat, the Independent Expert urges the country's development partners to support these initiatives as a matter of priority.

102. The Independent Expert noted with concern the insufficient coordination of development strategies between the Government and the donor community, as well as the lack of a regulatory environment that guarantees a transparent, accountable and people-centred delivery of aid. Efforts should be devoted to ensure adequate coordination of aid delivery, and to put in place effective and harmonized monitoring mechanisms to guarantee efficient and transparent use of funds and to assess the impact of development aid. The Government should take full responsibility for the direction that aid takes in the country.

103. The unsatisfactory monitoring of public affairs in Solomon Islands, including the use and management of aid funds and debt management, underscores the need for the Government to urgently establish an independent mechanism to monitor the use and management of public funds and the performance of Government agencies and privatized companies, as well as aid programmes. Such mechanism should be financially and institutionally independent and it should report directly and regularly to Parliament. Consideration should also be given to including provisions in the country's Constitution to ensure effective Parliamentary oversight of loan contraction, use and management.

### **C. Other development partners**

104. The Independent Expert welcomes the support provided to Solomon Islands by its development partners. However, he considers that it is equally important for the country's development partners to promote self-sustaining economic growth and human development and to ensure that the country is able to break the cycle of aid dependency. Donor interventions should support the Government's development strategy without undermining its leadership role. Efforts should also be made to design, in partnership with the Government, a medium-term exit strategy for the development assistance provided to the country.

105. The Independent Expert urges development partners to better coordinate their aid activities in the country and to ensure the close and clear alignment of their development agenda with the development priorities of the Government of Solomon Islands, in order to guarantee national ownership of the development agenda.

106. Effective capacity-building should promote, rather than hinder, the empowerment of local professionals, both in Government and civil society. There is a need to reduce the excessively large number of technical advisers deployed in Government institutions. Greater effort should be directed towards affording Solomon Islanders the opportunity to assume responsibility and there should be a clear timetable for the capacity-building endeavour.

107. Development assistance programmes should avoid prescribing or supporting the implementation of policy and structural reforms that may adversely impact on the enjoyment of human rights, particularly economic, social and cultural rights, and that may expose the country to a risk of renewed conflict.

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