

## **Pacific Environment • Jubilee Australia International Accountability Project**

September 12, 2009

Mr. James Mahoney  
Vice President for Engineering and Environment  
United States Import-Export Bank (Ex-Im Bank)  
Washington DC  
(Via email)

### **Re: Joint Submission on Papua New Guinea – Liquefied Natural Gas Project**

Pacific Environment, Jubilee Australia and International Accountability Project hereby respectfully submit comments to you on the Ex-Im Bank's consideration of the PNG LNG project.

Jubilee Australia is an active Civil Society Organization working to expose the root causes of poverty and to propose reforms to the structures that keep people in poverty, with a particular focus on reforms to make international financing more responsible, fair and transparent.

The International Accountability Project (IAP) challenges destructive development projects that uproot and impoverish millions of people across the Global South. Working with grassroots and international partners, IAP advocates for international policies that respect the rights and livelihoods of people threatened by unjust development and supports communities to hold their ground and defend their homes, environment and human rights.

Pacific Environment is a San Francisco based environmental non-governmental organization working to protect the living environment of the Pacific Rim by promoting grassroots activism, strengthening communities and reforming international policies.

Our three organizations have collaborated to undertake a preliminary desktop review of the Environmental Impact Statement (EIS), Social Impact Assessment, (SIA) and other associated documents for the LNG project in Papua New Guinea (PNG LNG).

Our review and subsequent recommendations on the PNG LNG Project fall under seven themes:

- Lack of Application of Ex-Im Bank and International Standards (Part 1)
- Specific EIS/SIA Flaws and Violations (Part 2)
- Climate Change Concerns (Part 3)
- Revenue Transparency, Royalty Sharing Agreements and Equity Concerns (Part 4)
- Anti-Corruption Concerns (Part 5)
- Tax Haven Concerns (Part 6)
- Security Concerns (Part 7)

As a result of this analysis, we conclude the PNG LNG project and its associated environmental and social documents demonstrate acute violations of Ex-Im Bank environmental policy and other international commitments, and undercuts important climate change, anti-corruption and anti-tax haven commitments of the Obama Administration. Therefore, Ex-Im Bank cannot provide financing to PNG LNG without severely violating Ex-Im Bank's internal policies and external commitments.

Thank you for your due diligence on the PNG LNG project.

Yours Sincerely

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## Comments on PNG LNG EIS/SIA and Associated Documents

### Part 1: Lack of Application of Ex-Im Bank and International Standards

#### 1.1 Ex-Im Bank and International Standards

**1.1.1 Background:** Ex-Im Bank's environmental policy includes distinct provisions, and it also incorporates other international policies by reference. As an example of this incorporation, Ex-Im Bank's environmental policy states that the Bank evaluates projects against host country guidelines *and* international environmental guidelines, *inter alia*, the eight International Finance Corporation (IFC) Performance Standards and over sixty Environmental Health and Safety Guidelines. A number of international treaties and agreements also apply in any given instance. Our analysis below refers to the lack of adherence to both distinct and incorporated policies.

**1.1.2 PNG LNG EIS in Context:** Ex-Im Bank's environmental policy distinctly requires that EIAs must discuss "*the policy, legal, and administrative framework within which the EIA is carried out.*" Ex-Im Bank's environmental policy also incorporates IFC Performance Standard 2, which similarly requires such assessments to "*consider all relevant social and environmental risks and impacts of the project, including the issues identified in Performance Standards 2 through 8 [as well as] applicable laws and regulations of the jurisdictions in which the project operates that pertain to social and environmental matters, including those laws implementing host country obligations under international law will also be taken into account.*" [emphasis added]

Yet, the PNG LNG EIS (aka EIA) does not even identify, much less discuss and consider virtually all applicable IFC Performance Standards, Environmental Health and Safety Guidelines and other applicable international laws and policies. Instead, the EIS indicates that the project is designed to meet PNG policies, excluding very exceptional cases. For example, EIS 2.1, Introduction, states:

*In some cases, international codes and standards differ from PNG codes and standards. In these cases, the PNG codes and standards will be used, or an exception will need to be obtained from the relevant PNG regulatory body."*

Meanwhile, the SIA acknowledges the applicability of the IFC Performance Standards and other international standards, yet it focuses on Performance Standard 8, Cultural Heritage, and does not demonstrate compliance with it and the wider range of Performance Standards, including Social and Environmental Assessment (PS 1), Pollution Prevention and Abatement (PS 3), Land Acquisition and Resettlement (PS 5), Biodiversity Conservation and Sustainable Natural Resource Management (PS 6) and Indigenous Peoples (PS 7). Thus, the EIS and SIA are grossly inadequate and demonstrate severe violations with Ex-Im Bank policies.

The EIS indicates that PNG is considering new legislation, which if passed, will bring the country's laws in line with some international standards. However, PNG LNG, a private sector entity, cannot demonstrate project compliance with Ex-Im Bank and international standards on the basis of the mere possibility that the host government might eventually pass new laws. The enactment of host country laws is outside the jurisdiction of both Ex-Im Bank and PNG LNG, and compliance with Ex-Im Bank and international standards must be demonstrated by PNG LNG.

**Conclusion:** *Ex-Im Bank must reject the project EIS and SIA as inadequate due to their failure to identify, much less demonstrate compliance with Ex-Im Bank policy and other applicable international standards.*

## **1.2 Contract Stabilisation Clause**

The Fiscal Stabilization Agreement that is proposed between the project co-venturers and the host government creates another fundamental flaw for the EIS and SIA. According to a Media Update from ExxonMobil, the agreement includes a provision in which “[t]he State also agrees to indemnify the project co-venturers for additional material amounts paid which result from changes to the law in place in PNG as of the date the Fiscal Stability Agreement.”<sup>1</sup> Depending on the exact provision of the agreement, this could prevent or discourage the host government from enacting new environmental and other public interest laws that apply to the project. Stabilization clauses typically either freeze the existing legal regime over the lifetime of the project or require the host government to compensate the project sponsor in the event that new policies affect the profitability of the project. Stabilization clauses thus prevent or discourage the enactment of stronger environmental and social policies in the host country. This policy, administrative and legal framework is not addressed in the EIS or SIA

As previously mentioned, the EIS indicates that PNG is considering new legislation, which if passed, will bring the country’s laws in line with some international standards. Yet, the above-mentioned stabilization clause may instead exempt the project from future changes in laws or require the PNG government to compensate the project for the costs of compliance with these new international standards, reducing the benefits of revenue sharing with the government and undercutting the PNG government’s right and ability to strengthen future environmental and social protections, and preventing the project from meeting required Ex-Im Bank and international environmental and social policies.

**Conclusion:** *The Fiscal Stabilization Agreement is part of the project’s policy, administrative and legal framework, but it is not discussed in the EIS, SIA and associated documentation, in violation of international policy incorporated into Ex-Im Bank policy. Ex-Im Bank should not extend financing for projects where the proponent holds an environmental, social or other public interest-limiting stabilisation clause over a sovereign government. Ex-Im Bank financing to project proponents should contain conditions barring execution or litigation on the stabilisation clause.*

## **Part 2: Specific EIS/SIA Flaws and Violations**

### **2.1 Onshore Pipeline Impacts**

The EIS establishes that the onshore section of the LNG Project Gas Pipeline will be installed from the Hides Gas Conditioning Plant to the Omati River Landfall south of Kopi and the onshore pipeline will be approximately 284 km long. A total of approximately 2,809 ha will be cleared, half in areas not previously disturbed by oil and gas developments. A Right Of Way (ROW) of 30m to 60m will be required and the pipeline will cross 26 major water crossings, 138 minor water crossings and will cross the Kutubu Wildlife Management Area. A 10m ROW will be retained for access road to the pipeline after completion of the pipeline. 1055 hectares of primary tropical forest will be cleared and an estimated 86% of primary tropical forest losses and

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<sup>1</sup> ExxonMobil, Media Update: PNG LNG Project, Fiscal Stability Agreement Signed, 22 April, 2009, available at [http://www.pnglng.com/media/pdfs/media\\_releases/media\\_release\\_090422\\_fiscal\\_stability\\_agreement\\_signed.pdf](http://www.pnglng.com/media/pdfs/media_releases/media_release_090422_fiscal_stability_agreement_signed.pdf)

82% of losses in Classes A1 and A2 (1,220 ha) are concentrated in five broad vegetation groups. Erosion is specifically an issue in areas of step grades (20%-50%) and may result in increased sediment in waterways and erosion.

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

The simple fact of the project's negative impact on high diversity primary tropical forest and other pristine areas dictates the application of IFC Performance Standard 6: Biodiversity Conservation and Sustainable Resource Management. Yet, the EIS fails to discuss, much less demonstrate compliance with the provisions of this Performance Standard. This includes no discussion of Performance Standard 6 requirements for Critical Habitat, Natural Habitat, nor even Modified Habitat, *inter alia*. Also, the EIS does not indicate whether or how natural resources will be managed in a manner which "enables people and communities, including Indigenous Peoples, to provide for their present social, economic and cultural well-being while also sustaining the potential of those resources to meet the reasonably foreseeable needs of future generations and safeguarding the life-supporting capacity of air, water and soil ecosystems," as also prescribed in Performance Standard 6. The proposed biodiversity mitigation measures in Chapter 18 are simple mitigation measures and are not designed to achieve a "no net loss of biodiversity". This is absolutely unacceptable considering the floristic diversity is high - with between 6,000 and 12,000 species of plants present – a high degree of endemism in fauna species.

The proponent has also failed to sufficiently outline and demonstrate management of natural resources per IFC Performance Standard Clause 14-15 in relation to filtration processes through karst landforms and general erosion and river system filtration processes. Soil movement and vegetation clearing on steep slopes will have substantial impact on groundwater hydrology and recharge.

Additionally the proponent does not adequately outline how fugitive sediment from construction activities will be prevented from pollution surrounding water systems as required in IFC Performance Standard 3 on Pollution Prevention and Abatement. Without appropriate management plans for erosion control surrounding rivers will suffer from increased turbidity and possible eutrophication.

EIS Chapter 10 contains much existing baseline information on seismic threats for the project's upstream facilities and onshore pipelines, yet the corresponding EIS Chapter 18 on environmental impacts and mitigation measures contains nothing addressing seismic threats.

**Conclusion:** *Ex-Im Bank cannot approve financing for the proponent since the project and its EIS are in gross violation of IFC Performance Standard 6.*

## **2.2 Offshore Pipeline Impacts**

The PNG LNG project also proposes a 407 km offshore pipeline from Omati River Landfall to Caution Bay and a new LNG facility in Port Moresby. The pipeline will traverse the Gulf of Papua. Impacts from the laying, testing and operation of the pipeline included increased sedimentation rates resulting from trenching. Increased sedimentation reduces light penetration and stunts growth of marine biota. Other environmental management issues include the discharge of 220,000 m<sup>3</sup> of hydrotesting water into the Omati River. The EIS authors suggest the toxicity

threat of discharging the hydrotesting water to IUCN listed threatened species including dugongs, turtles and some species of whales and dolphins is minimal or low. Considering the requirements of Performance Standard 6 and the potential impact of IUCN listed marine species, further studies should be required.

The EIS characterizes the increased sedimentation loads from trenching and dredging the seabed as having low environmental impact as is seafloor habitat destruction from pipelaying. Anchor disturbance along the offshore route from pipelaying is expected to be approximately 33 ha<sup>13</sup>. The pipeline will physically cover approximately 43 ha of seafloor. The only real high-level threats identified in the EIS relate to accidental spillages of hazardous material. We submit that more modeling and investigation is required and that information presented is a premature assessment, and not comprehensive enough to satisfy benchmarking requirements.

EIS Chapter 12 makes no mention of offshore seismic hazards, and Chapter 19, Environmental Impacts and Mitigation Measures for Offshore pipeline includes no section on design and construction for possible seismic hazards. This highlights the superficial level of detail that the EIS provides.

**Conclusion:** *Ex-Im Bank cannot approve financing for the project since the project and the EIS are in gross violation of Performance Standard 3 and 6.*

### **2.3 Plant and Infrastructure Impacts**

LNG liquefaction plants typically rely on their own supply of gas as a source of power to supercool gas for export. The use of this gas as a power source results in pollution emissions. What's more, shipping of LNG results in pollution emissions. According to the EIS (Chapter 20, LNG facilities):

*“During operations, emissions will occur from gas-fired equipment and will largely involve emissions of NO<sub>x</sub>, and VOCs (i.e., BTEX). These emissions will occur over the life of the project. Given onshore winds, emissions of NO<sub>2</sub>, SO<sub>2</sub> and PM<sub>10</sub> from LNG carriers, condensate tankers and tugs could carry emissions from shipping across the LNG Facilities site, resulting in cumulative impacts inland and downwind of the LNG Facilities site.”*

The EIS briefly mentions that emissions impacts will be “mitigated through engineering solutions” that are not described in details, deferring instead to a project “environmental management plan” which has not been published. Similarly, the EIS Chapter 30, Environmental Management, Monitoring and Reporting states that thus-far undisclosed “[m]anagement plans for the operations stage of the project are envisaged to include...[an] Air emissions/greenhouse gas emissions management plan...” The lack of specificity in the EIS and the absence of an Action Plan that has been publicly disclosed and subject to public consultation demonstrate that the project environmental impact assessment process is incomplete and does not provide information adequate to assess compliance with the Performance Standards, other applicable banks’ policies and other international standards.

**Conclusion:** *Ex-Im Bank cannot finance a project when the EIS and associated documents provide insufficient information to demonstrate compliance with Ex-Im Bank and other international standards.*

## 2.4 Social Impact Assessment

Oil and gas projects of the magnitude of PNG LNG have social and health impacts that are not adequately assessed in this EIS and SIA. For example, in the case of the Sakhalin II project (including the Sakhalin II LNG plant) and many others, the influx of thousands of mostly male workers who are necessary to construct the project can lead to an increase in violence and sexually transmitted diseases in local communities and an increase burden on community health, human services and other social infrastructure. The PNG LNG SIA indicates that an estimated 80% of the construction workers will be expatriates, meaning a large influx of workers can be expected to pose the same risks as were manifested on Sakhalin II and other similar projects of this scale.

The SIA includes a section which acknowledges the seriousness of the incidence and spread of HIV in PNG, stating that PNG has “one of the most serious HIV epidemics in the Asia-Pacific region,” and with “[the] PNG LNG Project, which will deliver new and improved road infrastructure, HIV/AIDS presents as a broad socio-economic challenge as well as a major health issue in the PIA [Project Impact Area]. The impact of HIV/AIDS on households can be catastrophic.” Indeed, the impact of HIV/AIDS can be a two-way catastrophe, with increased exposure from expatriate workers to local people and from local people to expatriate workers who then move on to infect other people in other countries once they leave the project area.

The SIA indicates that Oil Search (one of the project sponsors) and CDI (an NGO) have HIV prevention programs, mostly limited to the Kutubu area and in the future may be extended to the Hides, Gobe and Kikori catchments, however it does not indicate any facilities or programs aimed at the communities around the liquefaction plant at and near Caution Bay, nor any aimed at changing behavior of expatriate workers.

The SIA acknowledges that thousands of construction workers will be necessary to build the enormous liquefaction plant at Caution Bay, recommending:

*“Portion 152 [the LNG liquefaction and export facility] presents special challenges most particularly in the construction phase, and thereafter through operations to closure, in respect to both worker force and local community health services. The expected influx of migrants will need to be tightly controlled, as will the large >5000 construction force so that there is minimal contact between them and the local community.”*

While the SIA acknowledges that the threat of HIV is potentially catastrophic, it does not analytically assess the scope and dimensions of how the project is projected to increase the spread of HIV. Acknowledgement of a kind of impact is not the same as the analytical assessment of that impact, which in this case has not occurred.

Moreover, the SIA asserts, without data or demonstrable evidence, that the situation will be better with the project than without. The SIA assertions rely largely on the suggestion that government and other recipients of revenue streams from the project should consider the use of those monies to increase health care. However, arrangements such as a touted Benefit Sharing Agreement are intended to share benefits, rather than to cover expenses of necessary mitigation measures which should be paid for through project costs. In any case, the SIA’s suggestion of how non-project entities should spend their money is an opinion, not an assessment.

Moreover, recommendations by the SIA authors are not the same as commitments by project sponsors to adopt adequate, demonstrable and identifiable mitigation measures. According to the

Performance Standards and internationally accepted practice, the project environmental and social assessment process includes a required Action Plan that contains adequate, demonstrable and measurable mitigation measures and that is publicly disclosed and subject to consultation in concert with the environmental and social impact assessment. Yet, there has been no public disclosure and consultation on any Action Plan. Instead, the SIA simply appears to infer that over the life of the project the project proponents will provide an unspecified amount of support for health facilities and programs for PNG citizens. There are no project commitments to specific adequate and measurable mitigation measures, such as isolated worker colonies, a required level of funding for HIV and other disease prevention measures, specified increases in social, medical, police, water and sewage infrastructure requirements, just to name a few. Failure to disclose Action Plans could be considered as contrary to clauses of the OECD Recommendation of the Council on Environmental Information - C(98)/67. The lack of adequate, demonstrable and measurable mitigation measures in the EIS, SIA and an Action Plan that has undergone public disclosure and consultation places the project out of compliance with international and Ex-Im Bank policies and international standards.

The SIA recognizes that PNG LNG will result in involuntary resettlement, including resettlement of indigenous people, and states that “[a]t the earliest opportunity, the operator should initiate a detailed involuntary resettlement plan (IRP).” The SIA indicates that there is a draft involuntary resettlement plan and a draft Indigenous Peoples Resettlement Plan. However, the Performance Standards and other banks’ policies call for these to be complete as early as possible and at the very least be done in concert with the EIA. However, neither the SIA nor the EIS indicate that such a plan has been completed, despite the fact that irreversible project decisions may have already been made and construction is soon to commence, if not already started. This is in violation of the Performance Standard 5: Land Acquisition and Involuntary Resettlement which requires the client to develop procedures “which will establish the [compensation] entitlements of affected persons or communities and will ensure that these are provided in a transparent, consistent, and equitable manner” or Performance Standard 8: Indigenous Peoples which requires that the company conduct “free, prior and informed consultations,” with Indigenous Peoples.

Also, the SIA does not fully recognize that many indigenous landholders in PNG enjoy customary tribal land rights that are perpetuated and transferred from one generation to the next. Under such legal rights, each generation of tribal people are able to approve or not of any agreements with project sponsors, hence such agreements in the present will have to be renegotiated in perpetuity.

Meanwhile, oil and gas projects of this magnitude have socio-economic impacts that are not adequately assessed in the EIS and SIA. For example, in the case of other projects of the magnitude of PNG LNG (e.g., the Sakhalin II project), socio-economic impacts included dramatic inflation in housing and food costs resulting from the influx in investment and relatively much higher purchasing power of incoming workers and often the relative lack of available supply. However, the EIS and SIA do not even assess the impact of inflation.

**Conclusion:** *The PNG LNG project EIS and SIA fail to adequately assess the risk of impacts such as the increased spread of HIV, increased inflation, resettlement and other severe harm to individual, communities and indigenous peoples. Moreover, there is no published Action Plan with any adequate demonstrable and measurable mitigation measures. Ex-Im Bank cannot finance a project whose EIA SIA, Action Plan and associated documents fail to demonstrate compliance with Ex-Im Bank, IFC Performance Standard 3, IFC Environmental Health and Safety Guideline 3, Performance Standard 5: Land Acquisition and Involuntary Resettlement, Performance Standard 8: Indigenous Peoples, and other international standards.*



### **3: Climate Change Concerns:**

The PNG LNG project is anticipated to have significant greenhouse gas emissions, which Ex-Im Bank estimates to be 3.1 million tons of CO<sub>2</sub> per year. Moreover, these are estimated direct emissions. Indirect emissions produced by this project, including downstream, lifecycle emissions will be manifold higher than direct emissions, when tanker transport, re-gassification and subsequent land transport on another continent are factored in, according to researchers at Carnegie Mellon and other authorities.<sup>2</sup> Also, according to the Friends of the Earth v. Spinelli legal settlement, “Ex-Im-Bank shall issue a record notice for each Category A and B fossil fuel project stating its determination as to whether NEPA review is necessary and, if not, the basis for that determination (e.g., no major federal action, applicability of categorical exclusion, no potential for significantly affecting the quality of the human environment of the United States).” It is not clear that Ex-Im Bank has issued this mandatory record notice, since nothing resembling this appears on Ex-Im Bank’s website.

## **Part 4: Revenue Transparency, Royalty Sharing Agreements and Equity Concerns**

### **4.1 Revenue Transparency and Distribution**

Increasingly, companies are urged to publish the revenues they pay to governments and governments are urged to publish the revenues they receive. Such public disclosure and auditing enables the public to see if any of the revenues are directed towards the uses other than those for which they are intended and ideally to help direct revenues to public interest needs. In order to support this process of revenue transparency, a process called the Extractive Industries Transparency Initiative was set up in 2002 – resource rich developing countries can sign up to the initiative provided that they meet certain minimum transparency requirements.<sup>3</sup> The United States is a supporting country of the Extractive Industries Transparency Initiative and the main project partner, the ExxonMobil Corporation, is a supporting company of the initiative. However, we can find no discussion of these commitments in the available project documentation.

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<sup>2</sup> Jaramillo, Griffin, & Matthews, Carnegie Mellon, Comparative Life Cycle Air Emissions of Coal, Domestic Natural Gas, LNG, and SNG for Electricity Generation.

<sup>3</sup> The 6 EITI criteria are set out as follows:

- 1** Regular publication of all material oil, gas and mining payments by mining companies to governments (“payments”) and all material revenues received by governments from oil, gas and mining (“revenues”) to a wide audience in a publicly accessible, comprehensive and comprehensible manner.
- 2** Where such audits do not already exist, payments and revenues are the subject of a credible, independent audit, applying international auditing standards.
- 3** Payments and revenues are reconciled by a credible, independent administrator, applying international auditing standards and with publication of the administrator’s opinion regarding that reconciliation including discrepancies, should any be identified.
- 4** This approach is extended to all companies including state-owned enterprises.
- 5** Civil society is actively engaged as a participant in the design, monitoring and evaluation of this process and contributes towards public debate.
- 6** A public, financially sustainable work plan for all the above is developed by the host government, with assistance from the international financial institutions where required, including measurable targets, a timetable for implementation, and an assessment of potential capacity constraints.

Project sponsors tout the Benefit Sharing Agreement as evidence of revenue sharing with land owners. However, on May 21, 2009, Transparency International PNG publicly announced their “grave concern” about the transparency of these funds after the group’s invitation to serve as an independent observer at the fund’s negotiating forum was unexpectedly withdrawn.<sup>4</sup> Hence, there is decreasing trust and ability to know whether the promised revenue for communities is adequate and is not diverted.

The issue of landowner benefits is not something to be trifled with. Recently, landowners in the Komo area commandeered and shut down a gas plant, driving workers out and demanding more adequate compensation.<sup>5</sup> This action could portend similar actions taken against PNG LNG. Legitimate or not, the lack and perceived lack of adequate landowner benefits is an issue that very significantly affects the diverse risks of a project that Ex-Im Bank is mandated to assess in its due diligence process.

Meanwhile, an increasing number of revenue transparency advocates in governments, lending institutions, and non-governmental organizations simultaneously advocate for the public disclosure of underlying foreign investment contract between project sponsors and host governments. These foreign investment contracts contain the formula that determines the amount of revenues that should flow to the host government. Coincidentally, these contracts often contain stabilization clauses and other provisions that have implications for the host country’s ability to amend social and environmental laws applicable to the project. As a result, the disclosure of these foreign investment contracts is as much in the public interest as the disclosure of EISs and other environmental and social impacts. The IMF strongly advocates for the disclosure of these contracts,<sup>6</sup> and the IFC requires that significant projects publicly disclose relevant terms of these key agreements that are of public concern.<sup>7</sup> However, we are not aware that this contract has been publicly disclosed.

**Conclusion:** *Ex-Im Bank should not extend financing for the project because project sponsors have not agreed to implement EITI, and not agreed to publish the royalty agreements between PNG and multinational partners, and not allowed for scrutiny by civil society. Furthermore, all private sector partners must be required to undertake country-by-country reporting of all the profits earned from this project. Inconsistent with IMF recommendations and IFC policy, PNG LNG has not publicly disclosed the foreign investment and associated revenue contracts between PNG LNG and the PNG government. Meanwhile, project proponents’ claims that the Benefits Sharing Agreement demonstrates transparent and equitable distribution of project benefits is questionable given the recent ousting of Transparency International as an independent observer from the fund’s negotiating board. This, and the recent takeover of another project gas plant in the Komo area should give Ex-Im Bank pause when it considers risks associated with real and perceived project benefits to local people.*

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<sup>4</sup> Transparency International PNG Press Release, available at [http://www.transparency.org/news\\_room/latest\\_news/press\\_releases\\_nc/2009/2009\\_05\\_22\\_png\\_independent\\_observers](http://www.transparency.org/news_room/latest_news/press_releases_nc/2009/2009_05_22_png_independent_observers)

<sup>5</sup> Post Courier Online, Gas Plant Shut Down, available at <http://www.postcourier.com.pg/20090818/tuhome.htm>

<sup>6</sup> International Monetary Fund, Guide on Resource Revenue Transparency, 2005, available at <https://www.imf.org/external/pubs/ft/grrt/eng/060705.pdf>

<sup>7</sup> International Finance Institution, Policy on Social and Environmental Sustainability, available at <http://www.ifc.org/ifcext/sustainability.nsf/Content/SustainabilityPolicy>

## Part 5: Corruption Concerns

As a member of the OECD Export Credits Group, Ex-Im Bank is obliged to adhere to the *OECD Council's Recommendations on Bribery and Officially Supported Export Credits*. Ex-Im Bank is also obliged to ensure that parties associated with its transactions adhere to the US Foreign Corrupt Practices Act.

These obligations have particular relevance to PNG LNG in part because of the recent front end engineering and design contract awarded to Eos, which is a joint venture of the UK firm, WorleyParsons, and the US firm, Kellogg, Brown and Root (KBR).<sup>8</sup> Ex-Im Bank is well aware of the highly publicized federal prosecution of Albert “Jack” Stanley, a former CEO of KBR. On September 3, 2008, Mr. Stanley pleaded guilty to helping orchestrate a scheme involving \$182 million in bribes paid to secure engineering, procurement and construction contracts for the Nigeria LNG project, Bonny Island, Nigeria. In February 11, 2009, KBR pled guilty and agreed to pay jointly with Halliburton \$579 million in penalties in the second largest Foreign Corrupt Practices Act criminal fine in history,<sup>9</sup> According to public records, in 2002 Ex-Im Bank provided a \$135 million “comprehensive guarantee” for the Nigeria LNG project, listing KBR as the exporter. As a result of this and Ex-Im Bank’s anti-corruption commitments and obligations, it is imperative for Ex-Im Bank to debar KBR and to prosecute under the False Claims Act.<sup>10</sup> Ex-Im Bank has thus far failed to take such actions. Now, KBR is playing a similar contractor role on PNG LNG, thus Ex-Im Bank’s potential funding of the project will benefit KBR, which will place Ex-Im Bank in violation of its international anti-corruption obligations and commitments, and will send a message that Ex-Im Bank rewards, rather than punishes corruption.

Meanwhile, many countries including the US now have laws obliging financial institutions to perform due diligence on Politically Exposed Persons associated with transactions that they finance. Politically Exposed Persons can include:

- current or former senior official in the executive, legislative, administrative, military, or judicial branch of a foreign government (elected or not)
- a senior official of a major foreign political party
- a senior executive of a foreign government-owned commercial enterprise, being a corporation, business or other entity formed by or for the benefit of any such individual
- an immediate family member of such individual; meaning spouse, parents, siblings, children, and spouse's parents or siblings
- any individual publicly known (or actually known by the relevant financial institution) to be a close personal or professional associate.

The PNG LNG joint venture includes many individuals which meet this criteria. However, we are not aware that Ex-Im Bank or any private bank associated with this transaction have conducted due diligence on Politically Exposed Persons.

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<sup>8</sup> Oil and Gas Magazine, KBR WorleyParsons Services Contract Advances PNG LNG, available at [http://www.scandoil.com/moxie-bm2/news/spot\\_news/kbr-worley-parsons-services-contract-advances-png-.shtml](http://www.scandoil.com/moxie-bm2/news/spot_news/kbr-worley-parsons-services-contract-advances-png-.shtml)

<sup>9</sup> US Department of Justice Press Release, Kellogg Brown & Root LLC Pleads Guilty to Foreign Bribery Charges and Agrees to pay a \$402 Million Criminal Fine, available at <http://justice.gov/opa/pr/2009/February/09-crm-112.html>

<sup>10</sup> See September 18, 2008 letter from Pacific Environment and Center for Corporate Policy to James Lambright, Chairman, US Ex-Im Bank.

**Conclusion:** *Ex-Im Bank should debar KBR and prosecute under the False Claims Act and must not finance the PNG LNG project so long as KBR and its joint ventures remain key contractors. Ex-Im Bank must conduct due diligence including on Politically Exposed Persons, and Ex-Im Bank must not extend financing to any project in the absence of complete adherence to its obligations and commitments under the OECD Council's Recommendations on Bribery and Officially Supported Export Credits and the US Foreign Corrupt Practices Act.*

**Part 6: Tax Haven Concerns:** We note the dramatically increased attention that governments are now paying to the problems of tax havens. President Obama recently announced that he intends to change tax policy to crack down on tax havens in part to meet commitments that the US Government has made to the international community. The G-20 is also expected to enact new rules on tax havens. We note that PNG LNG is incorporated in the Bahamas, one of the most notorious tax havens. Ex-Im Bank's provision of public financing for PNG LNG will undercut President Obama's and the G-20's efforts to end the use of tax havens.

**Conclusion:** *Ex-Im Bank should support President Obama's and the G-20's commitment to crack down on tax havens by not financing PNG LNG and any other projects incorporated in these locations.*

### **Part 7: Security Concerns**

PNG landowners and other non-state actors have increasingly expressed frustration over the PNG LNG project's potential impacts and lack of adequate benefits sharing. The recent incident of landowners commandeering a gas plant obviously raises the potential for similar or more direct action aimed at PNG LNG that the company and the PNG government could perceive as a security risk. Invariably, under such circumstances private or public security services will be retained to protect perceived assets. Unfortunately, there is a long history of such security forces committing severe human rights abuses, especially on extractive industry projects, including by some of the corporate actors associated with this project. Such a potential for violence and human rights abuses also greatly increases a diverse set of risks for Ex-Im Bank. Despite the potential social and human rights impacts, there is no information contained in the EIS, SIA or other available documents on who PNG LNG intends to hire, and under what safeguards will apply to their conduct.

**Conclusion:** *We request that Ex-Im Bank conduct due diligence on this concern and obtain and publicly provide information on the security entities the project plans to use and what safeguards will be applied to their conduct.*

### **Final Conclusion:**

Our analysis demonstrates that the PNG LNG project, and its EIS, SIA and associated documents severely violate Ex-Im Bank environmental policy and other international standards in myriad ways including the virtually complete lack of identification and discussion of compliance with relevant standards; irreversible negative impacts on primary tropical forests and other critical and natural habitats, and illegal worsening of climate change. The project and EIS, SIA and associated documents suffer from an inadequate evaluation and mitigation of environmental, social and economic impacts on indigenous and local people, and adequate measures to prevent negative health impacts including the risk of the spread of sexually transmitted disease. The project suffers from lack of adequate revenue transparency and benefit sharing, and an increased risk of corruption, with one entity involved which was already found guilty of corruption associated with another Ex-Im Bank financed LNG project. The project undercuts the Obama

Administration's and the G-20's commitments to crack down on tax havens, and finally, fails to address the increased risk of security concerns in a way that prevents human rights abuses. As a result, we conclude that Ex-Im Bank cannot finance the PNG LNG project without severely violating Ex-Im Bank and international policies and standards, as well as undermining several of the Administration's important initiatives..

We respectfully request a written response from Ex-Im Bank to each of the 7 sections of concern highlighted above.

Thank you for your due diligence on the PNG LNG project.

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