OXFAM
Australia

Submission to the Senate inquiry into Australia’s Trade and Investment Relationships with the Countries of Africa

May 2018

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- undertakes long-term development programs;
- provides emergency response during disaster and conflict;
- undertakes research, advocacy and campaigns to advance the rights of poor and marginalised people, including women and works with them to achieve equality; and
- promotes fair trade, supporting local artisans and producers throughout shops and Fairtrade foo brand.

We are a long-term Australian Government development partner.

In the 2016-17 financial year, Oxfam globally reached 19.2 million people in 80 countries around the world during 2016–2017. Of that number, Oxfam Australia directly reached more than 1.8 million people. In partnership with our Oxfam affiliates, we supported almost 11.1 million people affected by disaster or conflict. Oxfam Shop also worked with more than 113 fair trade and ethical producer partners in 39 countries, including Australia. Through our advocacy and policy work, we have reached millions more.

More than half a million Australians annually support Oxfam Australia by contributing skills, time and financial support to advance our work.

Oxfam Australia is a member of Oxfam International, a global confederation of organisations that work together, last year collectively reaching more than tens of millions of people around the world.

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Acronyms

AAMEG	Australia Africa Minerals & Energy Group
ATO	Australian Tax Office
DFAT	Department of Foreign Affairs and Trade
EI	Extractive Industry
FPIC	Free Prior Informed Consent
NAP	National Action Plan
NGOs	Non-Government Organisations
SDGs	Sustainable Development Goals

Overview

Oxfam Australia is submitting to this inquiry with particular regard to the trade relationship between Australian extractive industry (EI) companies and the governments of Africa.

Oxfam Australia has worked in the extractives sector for over 15 years, focussed on supporting communities around the world who have been impacted by mining, oil and gas projects. We have pioneered policies supporting some of the most vulnerable people impacted by extractive industries: Indigenous Peoples with our work on Free, Prior and Informed Consent, and women with our work on the gendered impacts of mining. Our current program operating in South Africa, Malawi, Zimbabwe, Zambia and Mozambique is aimed at working with partner organisations to improve the lives of communities impacted by extractives industries.

There is a large presence of Australian EI companies in Africa which is likely to increase given the large mineral reserves on the African continent.

The Australian Government, in its pursuit of building economic trading relationships with Africa has an interest in ensuring that Australian business in Africa thrive sustainably. For business to thrive, they must ensure they have the 'social licence to operate' from communities nearby, as well as contribute more broadly to the sustainable development of nation where they are operating. Due to the nature of the sector, Australian extractive companies are at high risk of having negative social impacts and being a party to human rights abuses. Ensuring businesses are behaving in a socially responsible manner and upholding their responsibility to respect human rights, in accordance with the United Nations *Guiding Principles on Business and Human Rights*, would help build productive, long-term trade relationships between Australia and Africa.

In particular, a country's ability to leverage their natural resource base to raise revenues and stimulate their economic development may contribute to the achievement of Sustainable Development Goals (SDGs). Tax avoidance by mining firms is a significant risk for African governments' tax bases, and the Australian Government should develop measures, including penalties and tax transparency initiatives like public country by country reporting, that ensure multinational firms pay their fair share of taxes wherever they do business.

The activities of Australian EI companies must also be consistent with the shared international responsibility to tackle climate change, including supporting the transition from fossil fuels and aligning with countries' Nationally Determined Contributions under the Paris Agreement.

This submission addresses the inquiry's focus on:

a) existing trade and investment relationships;
b) emerging and possible future trends;
c) barriers and impediments to trade and investment
f) the role of Australian based companies in sustainable development outcomes, and lessons that can be applied to other developing nations;
g) the role of Australian based companies in promoting the achievement of Sustainable Development Goals.

Summary of Recommendations

Recommendation 1: The Australian Government should introduce greater tax transparency measures, including the Extractive Industries Transparency Initiative (EITI), as well as public country-by-country reporting, and project by project reporting for the extractives sector, to enable public scrutiny over EI firm tax affairs and that Australian firms are paying their fair share of taxes in countries in which they operate.

Recommendation 2: Concurrently with building trade relations with African nations, the Australian Government should increase foreign aid efforts focused on building the revenue raising capacity of recipient countries' tax administrators, in line with Australia's commitment under the Addis Tax Initiative to doubling our support in the area of taxation and domestic resource mobilisation in developing countries from $16 million in 2014-15 to $32 million by 2020. This could include DFAT working with the ATO to increase its bilateral efforts on building tax capacity in more countries in sub-Saharan Africa.

Recommendation 3: The Australian Government should help build institutional and regulatory capacity in key countries across Africa, including building the relevant ministries' skills and technical skill sets, to improve the regulation of EI companies. Improving the regulatory environment builds business investment certainty and community acceptance of projects, leading to prosperous long-term trade relationships. A key component to a sound regulatory environment includes transparency measures, including the Extractive Industries Transparency Initiative[1], where key production indicators including royalties and taxes from mining operations must be publicly published.

Recommendation 4: The Australian Government should require all Australian EI companies, as a high-risk sector for human rights abuses, to adopt a human rights policy and conduct human rights due diligence that is aligned with the highest applicable legal frameworks and voluntary standards (whether international legal frameworks or national laws), including the UN *Guiding Principles on Business and Human Rights*. Australian Government support for Australian EI companies should be conditional on meeting these requirements.

Recommendation 5: The Australian Government should develop a National Action Plan on Business and Human Rights in consultation with stakeholders, including NGOs and trade unions, on the domestic implementation of the United Nations *Guiding Principles on Business and Human Rights*. The National Action Plan should include measures to ensure that private sectors incorporate effective safeguards to protect human rights and facilitate remedies for victims where violations occur in their value chain.

Recommendation 6: The Australian Government should encourage Australian EI companies operating in Africa to include local content provisions in mining contracts with host African governments in order to maximise the EI sector's contribution to SDGs.

Recommendation 7: The Australian Government should require all Australian EI companies to demonstrate that their activities reinforce international efforts towards

[1] See: https://eiti.org/

decarbonization, including that they support countries’ Nationally Determined Contributions under the Paris Agreement.

Recommendation 8: The Australian Government should rule out any public financing or subsidies for fossil fuel projects overseas (and in Australia), as inconsistent with Australia’s global commitment to international action on climate change.

1. Tax avoidance by foreign firms undermines Africa's progress to achieving the SDGs and a prosperous Australia-Africa trade relationship

Illicit financial flows are a major concern for Africa's revenue base. Africa is estimated to be losing more than $50 billion annually in illicit financial flows.[2]

EI companies' tax avoidance is particularly concerning as EI activities are a significant means by which resource rich developing countries could raise revenue. Domestic resource mobilisation (the flow of tax and other income to government treasuries) is key to achieving SDGs.[3] Tax avoidance makes developing countries relatively more reliant on foreign aid for public spending, leading to unnecessarily prolonged reliance on aid from donor countries, and hinders their ability to reach SDG targets.

Oxfam is concerned to read Government of Mauritius's submission (sub. 31) to this inquiry, which promotes itself as a 'financial services centre…[with] two decades of experience in cross border investment', touting its 'wide network of…double taxation agreements (21)', and its lengthy tax holiday arrangements. Double taxation agreements have legitimate purposes. However, they can also be a prominent means by which firms are able to exploit differences in tax rules, to shift profits to low tax jurisdictions. Taken together, one interpretation of the Mauritian government's submission could be as an invitation for Australian firms to use Mauritius as a base for tax-avoidance arrangements to potentially avoid paying taxes on their profits made in other African countries. Such an outcome would serve as an impediment to contributions sustainable human development.

Turning a blind eye to the Australian EI companies' tax avoidance practices abroad can be read as tacit endorsement of profit shifting practices. Such practices are not limited to developing countries – and can and do also result in the loss of public money to Australia. The Australian Government should closely monitor and penalise Australian firms, particularly EI firms, entering into tax avoidance schemes.

Furthermore, the Australian Government should invest in building the tax collection capacity of African countries (SDG 17.1), potentially through foreign aid efforts. This would be in line with our commitment under the Addis Tax Initiative to double our support in the area of taxation and domestic resource mobilisation in developing countries from $16 million in 2014-15 to $32 million by 2020. Such an initiative will also increase the strength of Australia's diplomatic relations with newly emerging economies. Given Australia and the Australian Tax Office's (ATO) global reputation measures against corporate tax avoidance, Australia should leverage its comparative advantage in tax administration to assist more African countries in building tax collection capacities.

Mandatory public country by country reporting of tax affairs for large multinational companies – and project by project reporting for extractive firms – are important measures the Australian Government should implement domestically to ensure tax transparency is practiced by Australian firms no matter where in the world they operate. Australia should

[2] High Level Panel on Illicit Financial Flows from Africa (2015), Illicit Financial Flow, commissioned report by the AU/ECA Conference of Ministers of Finance, Planning and Economic Development.
[3] http://www.worldbank.org/en/topic/governance/brief/domestic-resource-mobilization

also enact the same laws we promote in other nations, and so follow through on our own commitment to implementing the Extractive Industries Transparency Initiative (EITI) in Australia. To date, little concrete action has occurred to give effect to the Government's announcement, leaving Australia lagging behind over 50 other countries who are implementing the EITI. These measures would allow the public to scrutinise firms and governments and hold them to account over their tax practices anywhere in the world.

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Recommendation 2: Concurrently with building trade relations with African nations, the Australian Government should increase foreign aid efforts focused on building the revenue raising capacity of recipient countries' tax administrators, in line with Australia's commitment under the Addis Tax Initiative to doubling our support in the area of taxation and domestic resource mobilisation in developing countries from $16 million in 2014-15 to $32 million by 2020. This could include DFAT working with the ATO to increase its bilateral efforts on building tax capacity in more countries in sub-Saharan Africa.

2. Existing trade and investment relationships & emerging future trends

There is a sizeable presence of Australian extractive industry (EI) companies in Africa and the EI presence is likely to grow, although the actual numbers are not clear. (The reported number of Australian publicly listed resource companies present in Africa vary from 139[4] to 150[5].) Nonetheless, the value of EI investments in Africa is significant. According to AAMEG, 40% of Australian EI sector abroad is based in Africa, where the total value of projects was estimated to be in the tens of billions of dollars in 2015.[6]

Yet many African countries have not been benefiting from their natural resource endowments. Oxfam produced a report in 2016 identifying the countries which face the greatest economic developmental challenges, based on the capacity of government, domestic tax base, and aid dependence (Appendix 1). These countries were home to some of the world's poorest 20 percent (248 million) of people in 2011, and have high dependence on foreign aid. The vast majority of these countries are in Africa, which include a third of the countries which have the highest number of Australian mining projects[7] in 2017.

Trade between Australia's EI sector and Africa is likely to continue into the near future. Africa ranks first or second in quantity of world mineral reserves for a number of key

[4] Publish What You Pay (2017), Abundant resources, absent data.
[5] Australia Africa Minerals & Energy Group (2017), Australia and Africa Assessing the scale and potential of Australian engagement in Africa.
[6] An 'Australian company' is defined as either: a primary listing on the ASX, head office based in Australia with executive employees present, or most of the revenue accruing to Australia or Australian shareholders.
[7] The top 10 countries are: Tanzania, South Africa, Burkina Faso, Mali, Namibia, Ghana, Zambia, Botswana, Cote d'Ivore, and Mozambique Australia Africa Minerals & Energy Group. Source: AAMEG (2017), Australia and Africa Assessing the scale and potential of Australian engagement in Africa.

commodities, with projected increase in production levels in the near term.[8] There have also been significant discoveries of oil and gas deposits (e.g. in Kenya, Mozambique and Tanzania) in recent years.

Given this setting, the Australian Government should ensure Australian firms operating in Africa conduct their business in a fair, equitable, sustainable manner.

3. Barriers and impediments to trade and investment

As mentioned, there is a lack of data on Australian EI company presence in Africa, which is not only an impediment to the Australian Government identifying ways to maximise trade opportunities, it is an indicator that Australian EI companies are operating in a non-transparent environment, which is conducive to corruption and human rights abuses. The lack of clarity around Australian investments in Africa is acknowledged by DFAT's submission to this inquiry (sub. 30), that 'it is very difficult to get a clear sense of Australian investment in Africa partly because recorded data is uncertain'.

This lack of transparency is a concern for organisations like Oxfam because it suggests businesses are poorly regulated and monitored, which undermines citizens, and governments', ability to scrutinise business behaviour, particularly considering that proper regulatory systems for EI sectors in Africa are often lacking.

Without a clear understanding of Australian EI companies' activities, including its tax practices or labour conditions for its miners, there is greater risk Australian mining firms will behave in socially unconscionable ways, placing human rights at risk and damaging the Australian brand.

Poorly regulated environments, as is often the case in natural resource governance, are also conducive to corruption which in turn forms an obstacle to legitimate business sectors developing. Community conflict as a result of unregulated, negative impacts of EI companies, or a perceived lack of community benefits, can increase business risk as they may be subject to sudden business disruption. There are significant human rights risks in mining, including labour rights transgressions, impacts on women's security and health, and the displacement of local people to make way for new mines.

Given the large presence of Australian EI companies in Africa, the Australian Government could do much more to ensure Australian companies are conducting businesses in a socially responsible manner.

The Australian government and EI companies should be investing in building regulatory capacity in the host country to improve the regulation of EI sectors, in order to increase investment certainty and a more enabling business environment.

The Australian Government should also ensure EI companies are abiding by human rights standards, which would in turn position Australia to be a much more vocal and effective

[8] US Geological Survey (2017), 2014 minerals yearbook – Africa.

leader in international business and human rights fora. This would be beneficial as Australia takes up its new position as a member of the UN Human Rights Council.

Under the *United Nations Guiding Principles on Business and Human Rights*, companies are required to respect human rights by acting with due diligence to avoid infringing on the rights of others and to address adverse impacts in which they are involved. Implementation of the Guiding Principles should seek to ensure that Australian companies operating overseas, and particularly those doing business in weak institutional settings and conflict zones, uphold international standards and do not undermine efforts that promote economic growth and poverty reduction.

The primary way in which governments are supporting the realisation of these guidelines is through the development of National Action Plans (NAPs) on the implementation of the Guiding Principles. The UK, the Netherlands and Denmark have released NAPs and over 30 countries are in the development stage. Australia should develop a NAP on the Guiding Principles on Business and Human Rights.

Recommendation 3: The Australian Government should help build institutional and regulatory capacity in key countries across Africa, including building the relevant ministries' skills and technical skill sets, to improve the regulation of EI companies. Improving the regulatory environment builds business investment certainty and community acceptance of projects, leading to prosperous long-term trade relationships. A key component to a sound regulatory environment includes transparency measures, including the Extractive Industries Transparency Initiative[9], where key production indicators including royalties and taxes from mining operations must be publicly published.

Recommendation 4: The Australian Government should require all Australian EI companies, as a high-risk sector for human rights abuses, to adopt a human rights policy and conduct human rights due diligence that is aligned with the highest applicable legal frameworks and voluntary standards (whether international legal frameworks or national laws), including the UN *Guiding Principles on Business and Human Rights*. Australian Government support for Australian EI companies should be conditional on meeting these requirements.

Recommendation 5: The Australian Government should develop a National Action Plan on Business and Human Rights in consultation with stakeholders, including NGOs and trade unions, on the domestic implementation of the United Nations *Guiding Principles on Business and Human Rights*. The National Action Plan should include measures to ensure that private sectors incorporate effective safeguards to protect human rights and facilitate remedies for victims where violations occur in their value chain.

[9] See: https://eiti.org/

4. The role of Australian based companies in sustainable development outcomes, and lessons that can be applied to other developing nations; and the role of Australian based companies in promoting the achievement of Sustainable Development Goals

Australian EI companies are world leaders in the sector, and have the potential to contribute to a number of Africa's SDG targets, but such a contribution is not an inevitable outcome of EI investment in Africa and must be supported by appropriate Government support and safeguards. For example, the report, *Mapping Mining to the Sustainable Development Goals: An Atlas,*[10] shows that the mining sector has significant scope to contribute to many of the targets – including poverty alleviation (SDG1) and decent jobs (SDG8), and infrastructure (SDG9). Civil society bodies like Oxfam are engaged with the EI sector in the Southern Africa region to work on local procurement to maximise opportunities for the EI sector to contribute to SDGs.

Obtaining the social license to operate from local communities is critical to the success of foreign investments. Social license includes allowing communities to tangibly and directly observe the benefits from mining operations. Employment opportunities (SDG8) is a fundamental first step in garnering social licence to operate, and there are significant local employment opportunities during mining construction stage for unspecialised local labour. Ensuring businesses contribute to, rather than compete for, communities' needs for water (SDG6) is also critical for avoiding conflict with local populations.

Good governance is critical to tackling inequality (SDG10) and achieving shared and sustainable growth. When wealth captures government policy making, the rules bend to favour the rich, to the detriment of the rest of the community. As discussed, the Australian Government should work with developing country partner governments to ensure good governance is pursued alongside sustainable growth.

Recommendation 6: The Australian Government should encourage Australian EI companies operating in Africa to include local content provisions in mining contracts with host African governments in order to maximise the EI sector's contribution to SDGs.

The activities of Australian companies in Africa, including EI companies, must also be consistent with the shared international responsibility to tackle climate change, including efforts to limit the global average temperature rise to 1.5°C.

This requires rapidly accelerating the transition away from fossil fuels, and working towards universal access to clean energy. In this regard, we note that Australian EI companies have substantial coal interests in Africa, mostly concentrated in South Africa, including proposed mines that would open up substantial new coal reserves.[11] Further investment in coal mining and coal-fired power generation will not contribute to the achievement of the SDGs,

[10] Columbia Center on Sustainable Investment, UNDP, UN Sustainable Development Solutions Network, and World Economic Forum (2016).
[11] Fuelling Injustice: Women's rights and Australian coal mining in Africa (2017), Action Aid http://www.actionaid.org/sites/files/actionaid/africa_down_under_report_september_2017.pdf

including SDG7 on access to energy, and will serve to undermine many development gains through exacerbating the impacts of climate change.[12]

Recommendation 7: The Australian Government should require all Australian EI companies to demonstrate that their activities reinforce international efforts towards decarbonization, including that they support countries' Nationally Determined Contributions under the Paris Agreement.

Recommendation 8: The Australian Government should rule out any public financing or subsidies for fossil fuel projects overseas (and in Australia), as inconsistent with Australia's global commitment to international action on climate change.

[12] More Coal Equals More Poverty: Transforming our world through renewable energy (2017), Oxfam Australia
https://www.oxfam.org.au/wp-content/uploads/2017/05/More-Coal-Equals-More-Poverty.pdf

Annex 1: Most Challenged Countries

In 2016 Oxfam conducted an analysis of the 23 "most challenged" countries, selected according to the following criteria:

- **Limited government capacity:** government spending below $1,000 per capita per year.
- **Limited potential tax base:** annual household consumption below $2,000 per capita per year.
- **Aid dependence:** ODA was the largest external flow into the country.

Country	Population in bottom global income quintile	% of national population in bottom global income quintile	Household consumption/person 2011 (constant 2005 USD)	Govt spend/person 2011 (PPP$)	Net ODA 2011 (USD)	ODA/capita (USD)	ODA/GDP (%)	ODA/total inflows (%)	ODA/person in bottom 20% (USD)	ODA/total govt spend (%)
Benin	5,910,054	60.43	453.09	346.67	673,250,000	68.84	3.91	52.51	113.92	44.60
Burkina Faso	8,182,400	51.14	274.43	311.25	959,160,000	59.55	4.05	75.48	117.22	43.71
Burundi	8,192,952	85.88	110.61	275.86	555,430,000	56.73	7.96	90.45	67.79	61.02
Cambodia	2,827,035	19.35	556.93	519.37	774,610,000	53.08	2.00	31.59	274.00	29.99
Cameroon	7,073,788	33.43	719.08	535.90	586,680,000	27.78	1.06	40.40	82.94	11.31
CAR	2,835,384	63.86	356.06	144.51	259,380,000	57.25	6.41	68.76	91.48	79.18
Comoros	385,280	55.04	553.80	322.64	49,530,000	69.18	5.13	73.54	128.56	39.41
DRC	56,418,225	88.25	193.70	79.92	5,380,510,000	79.02	12.80	51.08	95.37	113.59
Eritrea			141.80	382.84	125,610,000	26.23	1.86	55.55		12.94
Gambia	721,929	41.73	343.74	392.08	130,690,000	74.72	4.88	44.29	181.03	59.31
Kenya	19,459,890	46.3	464.56	579.47	2,437,390,000	58.85	2.24	47.23	125.25	22.38
Liberia	3,233,400	79.25	397.01	193.73	744,060,000	182.39	24.89	38.53	230.12	174.89
Malawi	12,159,290	78.65	208.15	261.53	785,620,000	51.59	6.80	73.57	64.61	54.73
Mali	8,944,726	62.03	297.38	386.91	1,249,380,000	79.89	5.23	53.27	139.68	51.43
Pakistan	43,091,182	24.46	568.73	831.49	3,482,260,000	20.05	0.46	15.09	80.81	8.26
Rwanda	7,898,260	70.9	318.41	316.72	1,234,980,000	116.99	8.37	80.51	156.36	77.80
Senegal	5,741,231	43.07	630.96	607.60	1,026,500,000	76.85	3.56	30.61	178.79	26.90
Sudan	8,870,705	24.35	546.15	681.81	1,068,150,000	28.93	0.73	40.78	120.41	9.23
Tanzania	25,376,625	54.75	357.28	393.60	2,397,830,000	50.88	2.37	46.88	94.49	35.48
Timor-Leste	547,166	46.37	478.60	441.86	274,070,000	244.62	12.45	63.03	500.89	19.94
Togo	3,889,764	60.12	308.79	287.50	517,880,000	78.87	6.28	31.31	133.14	60.84
Uganda	16,260,390	46.26	310.69	261.14	1,546,400,000	45.14	2.74	47.64	95.10	38.22
Vanuatu			1,231.73	712.01	91,990,000	380.32	13.05	48.87		48.36
Total	**248,019,676**				**26,351,360,000**					
Average		**54.08**	**427.03**	**192.76**		**86.42**	**1.81**	**37.48**	**106.25**	**24.79**

These countries were home to 18 per cent of the poorest 20 per cent of the world's population in 2011 (248 million people). However, bilateral DAC donors contributed less than 14 per cent of their total aid to these countries per year between 2000 and 2014.

Source: Oxfam International, *Accountability and Ownership,* September 2016.