



Amnesty International

ECGD
PO Box 2200
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30 March 2010

Dear Mr Dodgson,

Lack of Impact Assessment of Proposed Policy Change to Revise Application of ECGD's Business Principles

Amnesty International is responding to ECGD's invitation to provide further comment on the issue of the ESHR impact of its proposals for revising application of its Business Principles and Ancillary Policies. Our concern focuses in particular on the failure of ECGD to conduct any assessment of the impacts on human rights of these proposed changes

We note ECGD's assertion in the letter of 17th March 2010 to respondents to the public consultation (including Amnesty International), that no assessment could be undertaken of the potential impacts of ECGD's proposal to revise application of the Business Principles to certain categories of transactions. We also note your follow-up letter to Leigh Day and Co of 24th March 2010 reiterating this point.

We believe that the justification advanced for the lack of any Impact Assessment, as reflected in your letter and in the Parliamentary Answer by Lord Davies of Abersoch, the Minister for Trade, Investment and Small Business on 25th January 2010, is fundamentally flawed.

The assertion that the potential impact of ECGD's proposal on the protection of human rights cannot be assessed because "ECGD does not know, and cannot estimate, the level of future demand for support for exports falling into the above category" reflects a misunderstanding of the purpose of an Impact Assessment in the context of business impacts on human rights. Predicting future outcomes relating to implementation of any government policy, programme or intervention is inevitably a matter of conjecture. However, the fact that outcomes are unpredictable and difficult to objectify does not obviate the need for the Government to take proactive steps to avoid providing support

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to business activities that might contribute to human rights abuses, including the exploitation of child workers and the use of forced labour.

The purpose of an ex ante impact assessment in this case is for ECGD to anticipate the multiple scenarios under which its prospective clients might be involved in projects and transactions that are linked to human rights violations, and for ECGD to take all reasonable steps to ensure that it does not support such activity.

The need for ECGD to assess the human rights risk attached to its proposed policy change exists regardless of the categories of transactions that are subject to that policy change. The fact that the transactions at issue have a repayment period of less than two years or a value of under SDR10m does not remove them from the possibility of contributing to human rights abuses, and therefore does not remove the UK Government's obligation to assess and mitigate the risks involved in supporting such transactions.

It is not material to the potential human rights impacts of a transaction whether the period of an export credit guarantee is short-term or long-term. An exporter of products containing child labour or forced labour should not be a beneficiary of any kind of governmental support for such exports regardless of its duration. Nor should credit guarantees be used to underpin any trade in goods that might be used in a way that is damaging to health, such as pesticides or pharmaceutical products. A similar consideration applies to goods that are exported to countries and in contexts where they might be used in a way that contributes to human rights abuses; e.g. bulldozers that are being used to destroy homes in violation of international law, or a component for a nuclear facility.

In 2002 Amnesty International in conjunction with the International Business Leaders Forum (IBLF) published 'Business and Human Rights: A Geography of Corporate Risk'. This mapping exercise illustrates that companies across sectors can and do contribute to a range of abuses reflecting the broad spectrum of human rights. It negates the view that the adverse impacts of companies on human rights are limited to a few companies operating in selective sectors and countries. It reinforces the view of the UN Special Representative on the Issue of Human Rights and Transnational Corporations and other Business Enterprises that the human rights issues confronting companies are near-universal.

In the light of this, it is foreseeable that ECGD's proposed revisions to its Business Principles and ancillary policies will increase the risk of ECGD providing financial support for business transactions that might interfere with human rights. The purpose of conducting an impact assessment is to forestall such risk.

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The UN Special Representative, Professor Ruggie, in his oral evidence to the UK Parliamentary Enquiry on business and human rights (3rd June 2009), cited export credits as an example of a lack of consistency and coherence of governmental policy towards addressing the human rights impacts of business. In his 2009 report to the UN Human Rights Council, he argued that “There is ‘vertical’ incoherence, where Governments sign on to human rights obligations but then fail to adopt policies, laws and processes to implement them. Even more widespread is ‘horizontal’ incoherence, where economic or business-focused departments and agencies that directly shape business practices – including trade, investment, export credit and insurance, corporate law and securities regulation – conduct their work in isolation from and largely uninformed by their Government’s human rights agencies and obligations.”

Amnesty International takes the view that the failure of ECGD to conduct an impact assessment of its proposed policy changes represents a failure to take reasonable and proactive steps to protect human rights. In this respect it is a failure of due diligence on the part of ECGD. We urge you to undertake such impact assessment and to give proper consideration to this before taking a decision on any revision of ECGD’s Business Principles.

Yours sincerely,

Peter Frankental
Economic Relations Programme Director

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