

**THE ENVIRONMENTAL AUDIT COMMITTEE INQUIRY**

**EXPORT CREDITS GUARANTEE DEPARTMENT  
AND SUSTAINABLE DEVELOPMENT**

**Memorandum from The Corner House  
by  
Nicholas Hildyard and Susan Hawley  
19<sup>th</sup> May 2003**

## SUMMARY AND RECOMMENDATIONS

- I. Export Credit Agencies (ECAs) are the largest source of public finance for private sector projects in the world. Today, 80% of financing for projects and investment in poorer countries comes from ECAs, because few companies will operate in those countries without ECA support. Export credit agencies have a huge and disproportionate say on what kind of projects get backed in poor countries.
- II. Despite the clear social and environmental impact that ECAs have on patterns of development, ECAs have historically been subject to few, if any, environmental, human rights or developmental safeguard standards and policies. Calls for reform have been met with a limited response.
- III. Whilst the UK Export Credits Guarantee Depart (ECGD) has taken some welcome steps at reform, its policies and practices still fall far short of compliance with the Government's sustainable development commitments.
  - The ECGD's revised Mission Statement fails to put sustainable development at the heart of the ECGD's business. Moreover, the government's interpretation of the ECGD's founding Act of Parliament limits the Department's ability to take proactive steps to promote sustainable development and to exclude companies whose activities are unsustainable;
  - The legal status of the ECGD's new Business Principles is unclear and their implementation largely discretionary. As such, they fail to provide the incentives, penalties and binding rules that would make them a suitable instrument for governing the ECGD's business practice;
  - The ECGD's portfolio remains dominated by unsustainable projects and sectors, as exemplified by its continuing support for arms and fossil fuel projects;
  - The ECGD has failed to refocus efforts on the elimination of poverty, a key UK Government commitment;
  - The ECGD has adopted a limited approach to the evaluation of Human Rights issues;
  - The ECGD's policy on Labour Rights allows for the Use of Child Labour and Forced Labour;
  - The ECGD's procedures for assessing Debt Sustainability are inadequate;
  - Defence and aerospace contracts – a major segment of the ECGD's portfolio – are excluded from the environmental screening process;
  - There is no requirement to consult with affected communities over the impacts of projects;
  - The ECGD's procedures for vetting projects for corruption are flawed;
  - The ECGD remains unaccountable and its disclosure policy remains inadequate.

- IV. The new Case Study procedures and Impact Questionnaire that the ECGD has recently brought into force contain many welcome steps in the right direction. However, both the procedures and the impact questionnaire fall short of best practice and, in The Corner House's view, fail to ensure that the ECGD meets the UK Government's sustainable development objectives. Specifically:
- The benchmarking approach adopted by the ECGD is discretionary and lacks mandatory standards and procedures;
  - The Impact Questionnaire is open to abuse and has major gaps – notably with regard to the impacts of corruption – which must be addressed;
  - The exclusion of defence and aerospace contracts from screening violates the ECGD's obligations under the “Common Approaches on the Environment and Officially Supported Export Credits”,<sup>1</sup> which the UK has pledged itself to implement;
  - The proposed disclosure policy is too restrictive and is in potential violation of the ECGD's obligations under the Human Rights Act and the new European Directive on Public Access to Information;
  - Given the impacts of corruption on sustainable development, additional due diligence procedures should be introduced by ECGD as part of its case impact assessment;
  - The ECGD's review process lacks a legally-binding framework and set of procedures, potentially exposing exporters and affected communities to arbitrary decision-making;
  - When compared with the international best practice, ECGD still lags far behind, despite its new Case Study Procedures. The Corner House would argue that the ECGD's weak environmental standards and inadequate transparency not only put ECGD at increased financial risk but also threaten the reputation of both ECGD and the UK Government more generally.
- V. To address the institutional and procedural failures identified in this submission, and to bring the ECGD in line with the Government's sustainable development policies and objectives, The Corner House recommends that:
- Parliament consider amending the Export and Investment Guarantees Act 1991 in order to require the ECGD to promote sustainable development through its lending practices and operations and to permit the ECGD to discriminate in favour of environmentally sustainable sectors and exporters.

In addition, The Corner House recommends that the ECGD should:

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<sup>1</sup> Since 1999, the Export Credit Group of the OECD has been negotiating an agreement on Common Approaches on the Environment and Officially Supported Export Credits. In November 2001, 24 out of the 26 member countries agreed to implement the provisions of a draft text with effect from 1 January 2002. The draft text - known as "Rev 6" - was rejected by the USA as being too weak and by Turkey for containing reference to ethnic minorities. The ECGD described the draft as "ground-breaking". For the text of Rev 6, see: [www.oecd.org/pdf/M00023000/M00023467.pdf](http://www.oecd.org/pdf/M00023000/M00023467.pdf)

- Establish exclusion criteria against which projects are screened prior to their consideration for support. Categorical exclusions should include: arms; nuclear projects; new fossil fuel power stations and oil exploration projects; and projects in countries with poor human rights records;
- Establish a clear set of good governance conditions that must be met by companies prior to their making a formal application to ECGD for support;
- Make the publication of basic project information – name, a short description of the project, its potential environmental, social and human rights impacts and its impact category – a precondition of appraisal for all projects, including cases involving insurance only;
- Adopt clear, ex-ante human rights, development and environmental standards that apply to all its projects;
- Require all contracts to include a clause binding contractors and sub-contractors to abide by the OECD Guidelines for Multinational Enterprises, in addition to the ILO Tripartite Declaration on Multilateral Enterprises and Social Policy;
- Adopt tighter anti-corruption due diligence procedures, including suspending cover while companies are being investigated for corruption allegations and debarring companies found guilty of corruption;
- Adopt legally-binding administrative procedures for assessing project impacts, including appeals and redress mechanisms.

## 1.0 INTRODUCTION

**1.1** The Corner House is a not-for-profit research and advocacy group, focusing on human rights, environment and development. It aims to support the growth of a democratic, equitable and non-discriminatory civil society in which communities have control over the resources and decisions that affect their lives and means of livelihood, as well as the power to define themselves rather than to be defined only by others.

**1.2** Over the past four years, The Corner House has closely monitored the policies and operations of the UK Export Guarantees Department, submitting evidence to a number of parliamentary inquiries<sup>2</sup> and UK Government departments.<sup>3</sup> In addition, it has participated in seven field missions to assess the social and environmental impacts of a number of projects for which ECGD support was or is being sought, notably the Ilisu<sup>4</sup> and Yusufeli<sup>5</sup> dams and the Baku-Tbilisi-Ceyhan pipeline.<sup>6</sup> It has also undertaken in-depth research into a number of ECGD-backed projects which have been tainted by allegation of bribery (*see* Appendix 1).<sup>7</sup> In May 2002, it co-ordinated a public seminar – “Beyond Business Principles”<sup>8</sup> – to review the ECGD’s practices with regard to human rights, environment, labour standards, debt and corruption and to propose improvements (*see* Annexes).

**1.3** The Corner House welcomes the Environmental Audit Committee’s current inquiry and is grateful for the opportunity to comment on the issues that the Committee has chosen to examine, namely:

- The extent to which ECGD’s policies and operations reflect the Government’s commitment to environmental protection and sustainable development;
- The extent to which ECGD’s revised mission statement, the development of its Statement of Business Principles and the introduction of new tools such as the impact questionnaire have led to changes in the ways in which ECGD incorporates sustainable development considerations into its operations and activities;

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<sup>2</sup> See, for example, submissions to inquiries into the Ilisu Dam by the Select Committee on Trade and Industry and by the International Development Committee

<sup>3</sup> For example: “UK Export Credits Guarantee Department (ECGD) minimum conditions for reform : A memorandum from concerned non-governmental organisations and parliamentarians”, July 2000; “Lessons of the Ilisu Dam UK Export Credit Policy, Corporate Governance and Future Investment in Turkey: Lessons from the Ilisu Hydroelectric Project. A Memorandum from Concerned Non-Governmental Organisations”, January 2002.

<sup>4</sup> See, for example: Campaign to Reform the World Bank, Corner House, Kurdish Human Rights Project, Ilisu Dam Campaign, Pacific Environment, WEED, *If the River were a Pen - The Ilisu Dam, the World Commission on Dams and Export Credit Reform*, March 2001.

<sup>5</sup> See: Amis de la Terre, Corner House, France Liberte, Friends of the Earth (EWNI), Ilisu Dam Campaign, *Damming Indictment: How the Yusufeli Dam Violates International Standards and Peoples’ Rights*, July 2002.

<sup>6</sup> See: Baku Ceyhan Campaign, Campaign to Reform the World Bank, Corner House, Kurdish Human Rights Project, Platform, *Report of International Fact Finding Mission on Baku-Tbilisi-Ceyhan Project – Turkey Section*, August 2002; and *Second Report of International Fact Finding Mission on Baku-Tbilisi-Ceyhan Project – Turkey Section*, April 2003.

<sup>7</sup> Hawley, S., *Turning a Blind Eye: Corruption and the UK’s Export Credit Guarantee Department*, The Corner House, forthcoming. The report’s Executive Summary and Summary of Cases are included at Appendix 1 of this submission.

<sup>8</sup> Corner House, Friends of the Earth, WWF, Kurdish Human Rights Project, Globe UK, Campaign Against Arms Trade, World Development Movement, War on Want, *Beyond Business Principles – Seminar on Export Credit Reform*, House of Commons, 23 May 2002.

- The ways in which the transition to a trading fund may affect transparency, particularly in relation to environmental information; and
- The scope and need for further reform.

## **2.0 EXPORT CREDIT AGENCIES AND SUSTAINABLE DEVELOPMENT**<sup>9</sup>

### **2.1 THE FINANCIAL IMPORTANCE OF ECAS**

Export Credit Agencies (ECAs)<sup>10</sup> are the largest source of public finance<sup>11</sup> for private sector projects in the world, currently underwriting 10% of global exports from large industrial countries. Between 1982 and 2001, ECAs supported \$7,334 billion worth of exports, primarily to Southern countries, and \$139 billion of foreign direct investment.<sup>12</sup> In 2000, export credit agencies were providing a total of \$500 billion in guarantees and insurance to companies operating in developing countries and issued \$58.8 billion worth of new export credits that year alone.<sup>13</sup> This compares to a total of \$60 billion given out globally in overseas development assistance that year and the \$41 billion provided as loans by multilateral development banks (such as the World Bank or Asian Development Bank) in 2000.<sup>14</sup>

### **2.2 THE INFLUENCE OF ECAS ON DEVELOPMENT**

As a high proportion of their business involves projects in developing and transition countries, ECAs have come to play a key role in influencing the pattern and direction of development in the Third World and Eastern Europe. That influence stems from a range of factors, including:

#### **2.2.1 The Disproportionate Influence of ECAs in Development Finance**

Today, 80% of financing for projects and investment in poorer countries comes from ECAs, because few companies will operate in those countries without ECA support.<sup>15</sup> This means that export credit agencies have a huge and disproportionate say on what kind of projects get backed in poor countries. In the last five years, there has not been a single project backed by Western banks over \$20 million in poor countries that has not had some form of official public guarantee.<sup>16</sup>

#### **2.2.2 The Sectors and Projects Supported by ECAs**

A major portion of ECA support goes to large industrial and infrastructure projects, including power plants, large-scale dams, mining projects, road development in tropical forests, and oil pipelines, which often have significant environmental and social impacts. ECAs also are the world's largest public financiers of nuclear power plants (12 out of 25 nuclear reactors under construction in the world today are backed by ECAs) and arms sales (approximately one-third of UK export credits go to arms sales, often to countries with deplorable human rights records). In addition, ECAs have played – and continue to play<sup>17</sup> – a crucial role in enabling the privatisation of developing countries' public utilities by providing investment insurance to multinationals seeking to buy up or run previously state-owned enterprises.<sup>18</sup> Such privatisations can adversely affect the access of poorer people to essential services, such as water and health, with major implications for poverty alleviation.<sup>19</sup> The choice of projects that ECAs support can thus significantly skew development in directions

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<sup>9</sup> This section is largely drawn from Hawley, S., op.cit. 7 and Corner House et al, op. cit 8.

that are antithetical to the goals of sustainable development and poverty alleviation.

### 2.2.3 The Subsidising of Damaging Projects

Many of the projects underwritten by ECAs carry high commercial risks and would be rejected for export credit cover or investment guarantees by the private sector.<sup>20</sup> Without the support of government-backed ECAs, the majority of such projects would therefore be most unlikely to be implemented. Whilst such support might be justified where ECAs are able to demonstrate clear-cut sustainable development benefits (for example, promoting renewable energy in a difficult market), the subsidising<sup>21</sup> of projects which damage people and the environment can only serve to shore up or extend the commercial and political influence of institutions – in the host country and the ECA’s own country alike – whose interests operate against sustainability. In addition, where taxpayers’ money is used, there is arguably a moral imperative to ensure that such money is not spent on projects that would damage the environment or undermine human rights, poverty alleviation and sustainability.

### 2.2.4 The Political Support given to Multinationals by ECAs

The mandate of ECAs is to promote exports from their own country. Many projects are therefore supported which, although of benefit to the companies that

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<sup>10</sup> For the most part, Export Credit Agencies are governmental or semi-governmental bodies, underwritten by taxpayers’ money, which help their country’s companies win investment and export business overseas. ECAs typically provide export finance in the form of guarantees and insurance (though some also provide direct loans). The main purpose of their support is to protect companies against the principle commercial and political risks of not being paid while operating abroad.

<sup>11</sup> The public nature of official ECAs stems from their financial liabilities being underwritten, in the final event, by national governments and hence by the taxpayer. ECAs argue that taxpayers’ money is not at risk, however, since they are required to cover any losses from the premiums which they charge companies for the services they provide. However, premium charges have generally been low and income from premiums has only ever covered a portion of the losses made by ECAs. Between 1982 and 1997, for instance, ECAs that were members of the Berne Union received a total of \$40.2 billion in premiums, but paid out \$153.6 billion in claims. They clawed back \$70.9 billion through recoveries (see S. Estrin, S Powell, P Bagci, S. Thornton, P Goate, “The Economic Rationale for the Public Provision of Export Credit Insurance by ECGD: a report for the Export Credit Guarantee Department”, National Economic Research Associates, April 2000, Appendix D). In 2000 and 2001, ECAs received around \$2 billion in premium income and paid out around \$3 billion in claims (OECD, “2001 cashflow report from the Export Credit Group Members”, [www.oecd.org/pdf/M00038000/M00038847.pdf](http://www.oecd.org/pdf/M00038000/M00038847.pdf)). Indeed historically, ECAs have operated at a loss, paying out far more in claims than was covered by premium charges and recoveries that they were able to make on claims. Between 1982 and 1997, Export Credit Agencies lost taxpayers from their respective countries a total of \$64.5 billion. (See: Malcolm Stephens, “The Changing Role of Export Credit Agencies”, IMF, 1999, Introduction; S. Estrin, S Powell, P Bagci, S. Thornton, P Goate, “The Economic Rationale for the Public Provision of Export Credit Insurance by ECGD: a report for the Export Credit Guarantee Department”, National Economic Research Associates, April 2000, p 14, footnote 18.)

<sup>12</sup> Vivian Brown, “Looking to the Future”, Berne Union Yearbook 2003, p.5.

<sup>13</sup> World Bank, *Global Development Finance 2002*, Chapter 4; OECD, “Officially supported export credits – levels of new flows and stocks”, data from 1999 and 2000.

<sup>14</sup> Figures from OECD DAC Statistics and US Treasury note on Multilateral Development Banks, [www.ustreas.gov/omdb/tab9.pdf](http://www.ustreas.gov/omdb/tab9.pdf). The World Bank, for instance, makes \$20-25 billion of new loan commitments a year.

<sup>15</sup> World Bank, *Global Development Finance 2002*, Chapter 4

<sup>16</sup> *ibid.*

<sup>17</sup> ECA investment insurance has rocketed from \$9 billion in 1990 to \$58 billion at the end of 2000 largely because of this privatisation. World Bank, *Global Development Finance 2002*, Chapter 4; OECD, “Officially supported export credits – levels of new flows and stocks”, data for 1999 and 2000.

<sup>18</sup> Thames Water, for example, has received cover under the ECGD’s Overseas Investment Insurance (OII) scheme “for a series of investments into the water industry in Chile”. The insurance covered Thames’ investment in the ESSEL water and wastewater company (which serves over 500,000 people) and ESSAM, “the fourth largest state-owned water and wastewater entity in Chile.” See: ECGD, *Review of the Year and Annual Report and Resource Accounts for 2001/02*, p.15 and p.21.

<sup>19</sup> For a case study of the impacts of water privatisation on the poor in Ghana, see: Christian Aid, *Master or Servant?*, London, November 2001.

<sup>20</sup> While the terms of loans supported by of ECAs to developing countries are similar to commercial terms to those offered by the private sector, officially-supported ECAs generally provide cover for larger sums, longer periods and for higher risk countries than the private sector is willing to do.

<sup>21</sup> The subsidy arises from the fact that ECAs back projects that the market would not be willing to support at the rates which ECAs charge, if at all.



receive ECA backing, are of little or no development benefit to the people of the country in which the project is implemented. Where companies receive support from official ECAs, they are able to call upon the supporting governments in the event of problems over payment or other commercial conflicts. ECA support thus considerably enhances a company's bargaining during negotiations with a host government. Whilst this may act as a force for good, it can – and typically has – also resulted in the company's interests being promoted at the expense of the people of the host countries.<sup>22</sup>

### **2.2.5 The Onerous Impact of ECA Debt**

The impact of debt on poorer people and on overall patterns of development is well-documented and does not require repeating here. Suffice it to note that the debt burden incurred through ECA-supported projects<sup>23</sup> inevitably acts to the detriment of sustainable development by exacerbating poverty and reducing the scope for public investment in health care, education, community development programmes and the adoption of environmentally-sustainable technologies. Export credit debt is particularly onerous for developing countries because it is charged at commercial rates of interest, not the lower rates incurred by bilateral or multilateral loans.<sup>24</sup> One-quarter of the \$2.2 trillion debt owed by developing countries and one-half of all debt owed by developing countries to official creditors<sup>25</sup> is owed to ECAs.<sup>26</sup> Some 95% of the debt owed to the UK Government by Southern countries is export credit debt. Between one-third and one-half of this debt consists of interest owed on original debts and penalties.<sup>27</sup>

### **2.2.6 The Arming of Repressive Regimes by ECAs**

The UK Government acknowledges that respect for human rights is integral to sustainable development.<sup>28</sup> Such respect sits uneasily, if at all, with the role that

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<sup>22</sup> In Indonesia, for example, numerous western companies “used the corrupt nature of the Suharto regime to their advantage and won lucrative orders for large, unnecessary and overpriced projects”,<sup>22</sup> notably in the energy sector. Many of the projects were backed by western ECAs. Following the fall of Suharto, the new Indonesian government sought to investigate and renegotiate a number of contracts which it had reason to believe had been corruptly awarded, or to challenge them in court. Indonesia was forced to abandon the investigations, however, after the companies successfully enlisted the support of their ECAs in bringing pressure to bear on the Indonesian government. As the Berne Declaration reports: “In July 1999 – two weeks before the renegotiation of international development cooperation with Indonesia – a delegation of export credit agencies travelled to Indonesia. The delegation included representatives of Exim Bank and OPIC (USA), JEXIM (Japan), Hermes (Germany) and the Swiss Export Risk Guarantee. The delegation held meetings with various ministers and warned that a renegotiation of the power purchasing contracts with the IPPs would have a detrimental effect on the Indonesian investment climate. ‘The future investment climate will be shaped by a long-term resolution (...) that protects the fundamental rights of the investors’, the agencies pointed out in a letter to the Indonesian Finance Minister. They added that a refusal to pay would ‘impair Indonesia and our ability to work with you in the future’. Two weeks before Indonesia’s negotiations with donor governments, this was certainly a clear message.” For a full account, see Bosshard, P., *Publicly Guaranteed Corruption – Corrupt Power Projects and the Responsibility of Export Credit Agencies in Indonesia*, Berne Declaration, November 2000.

<sup>23</sup> When ECAs give backing to a company or bank, they almost always require the importing country to offer a counter guarantee. This means that in the event of a default, such as if a contracting party does not pay up or the project proves unviable, the importing government must compensate the ECA concerned. If it does not do so, the amount is added to the importing country's official debt stock as a bilateral (government to government) debt.

<sup>24</sup> Multilateral debt is owed to institutions such as the World Bank and International Monetary Fund (IMF) or to regional development banks like the African Development Bank or Asian Development Bank. Bilateral debt is government-to-government debt. Private debt is owed to commercial banks and other private creditors. Multilateral and bilateral debt usually incurs far lower interest rates than other types of debt.

<sup>25</sup> For example, the Multilateral Development Banks, IMF and governments, as opposed to private creditors, such as banks.

<sup>26</sup> Horst Kohler, “Reforming the International Financial System”, in *The Berne Union 2001 Yearbook*, February 2001

<sup>27</sup> Much of the debt now owed to the ECGD has been incurred because of a lack of hard currency to repay British companies, debt that the ECGD described as incurred as a result of political, rather than commercial, risk. Often overseas companies or governments have been able to repay British companies in local currency by depositing money into a local bank, only to run into the obstacle that the bank is unable to convert the local currency into sterling or US dollars. Export credit agency activity can thus lead to a balance of payments crisis for the borrowing country and macroeconomic instability.

<sup>28</sup> For example: “Sustainable development is not possible unless human rights are protected for all, including the poorest and the most disadvantaged”. See: Department for International Development, *Eliminating World Poverty*, White paper 1997, p.18

ECAs have played – and continue to play – in supporting arms sales to regimes that are recognised to be repressive. In the last two decades, for example, Britain’s ECGD backed arms sales to Iraq, Indonesia (which at the time was deploying death squads in East Timor), Saudi Arabia and Turkey – all countries with human rights records that have been subject to international criticism and, in the case of Turkey, condemnation by the European Court of Human Rights.<sup>29</sup> By arming repressive regimes, ECAs have helped sustain practices that are antithetical to sustainable development – most notably through the denial of political rights.

### **2.3 LACK OF BINDING STANDARDS**

Despite the clear and disproportionate impact that ECAs have on patterns of development, ECAs have historically been subject to few, if any, environmental, human rights or developmental safeguard standards and policies. The principle body charged with formulating ECA policy at the international level is the Working Party on Export Credits and Credit Guarantees – known as the Export Credit Group (ERG) – of the Paris-based Organisation for Economic Co-Operation and Development (OECD). Of the 26 ECAs represented in the ECG only:

- 1 (USA) has binding environmental standards;
- 3 (Australia, Japan and USA) require the publication of an Environmental Impact Assessment for a high impact project.<sup>30</sup>

The rest are committed solely to observing “host government standards”,<sup>31</sup> a phrase that is interpreted by some ECAs as encompassing only local technical standards relating to the environment rather than the entire body of local laws.

### **2.4 CALLS FOR REFORM**

Since the late 1990s, a series of calls have been made for ECAs to adopt binding standards.

#### **2.4.1 G8 Environment Ministers’ Declaration**

In March 2001, for example, the G8 environment ministers called on G8 governments:

"to quickly develop and implement common binding environmental guidelines for ECAs . . . based on the practices of other internationally recognized, publicly supported multilateral finance agencies such as the EBRD and the International Finance Corporation of the World Bank [and] adopt common measures to increase the transparency of their decision making process, including public access to environmental information, public

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<sup>29</sup> See, for example, Council of Europe Committee of Ministers, Interim Resolution ResDH(2002)98, adopted 10 July 2002.

<sup>30</sup> See: WWF, “WWF-UK’s Submission to the ECGD Public Consultation on Case Impact Analysis”, August 2002.

<sup>31</sup> “Projects should comply with standards of the host country”. See: OECD, Working Party on Export Credits and Credit Guarantees, “Draft Recommendation on Common Approaches on Environment and Officially Supported Export Credits: Revision 6, Paris, 2000, para 15.

consultation and consideration of relevant elements of the recommendations of the World Commission on Dams (WCD)."<sup>32</sup>

#### **2.4.2 NGO Declarations**

Non-governmental Organisations have also been pressing the case for reform, widening the agenda to include calls for mandatory human rights, development and labour standards. In 2000, a comprehensive set of policy reforms – now known as the Jakarta Declaration<sup>33</sup> (*see* Appendix 2) – were agreed by NGOs and presented to the Export Credit Group. In the UK, a Memorandum by Concerned NGOs on Export Credit Reform was also drawn up.<sup>34</sup> In the European Union, NGOs have also developed a common platform for ECA reform (*see* Appendix 3), outlining measures considered necessary to “ensure that European government-backed ECAs contribute to the fulfillment of their countries’ legal obligations and commitments to sustainable development”.<sup>35</sup>

#### **2.4.3 NGO Reform Agenda**

The key elements of the NGO reform agenda include the adoption of:

- Clear pre-conditions for ECA involvement in projects, including ensuring that affected communities and other interested parties are adequately and freely informed and consulted prior to a decision for ECA support being approved;
- Binding environmental, human rights and development standards consistent with best practice and procedure and the obligations set out in international instruments;
- Transparent and accountable procedures, including the timely disclosure prior to project approval of all project-related information that is relevant to informing the public as to project risks;
- Rules to ensure that companies are supported only if they have mechanisms in place to enforce the highest standards of corporate social responsibility;
- Policies aimed at building a sustainable energy portfolio, including the phasing out of support for fossil fuel and unsustainable energy technologies;
- Strict due diligence procedures to eliminate support for projects that involve corruption, including the imposition of sanctions where there is convincing evidence of bribery and exclusion from support when a company is debarred by other international or national institutions;
- An end to support for arms sales, including for the construction of military bases;

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<sup>32</sup> G-8 Environment Ministers’ Statement, Trieste, March 2001.

<sup>33</sup> The Jakarta Declaration is available from: <http://www.fern.org/pubs/ngostats/jakarta.htm>

<sup>34</sup> “UK Export Credits Guarantee Department (ECGD) minimum conditions for reform : A memorandum from concerned non-governmental organisations and parliamentarians”, July 2000.

<sup>35</sup> European ECA Reform Campaign, “Key Reforms needed for Export Credit Agencies”, Brussels, January 2003. Copies are available from: FERN, 20 Avenue des Celtes, 1040 Bruxelles, Belgium.

- Categorical exclusion and prohibition lists, proscribing support for specified activities that are detrimental to sustainable development or for projects that would impact on environmentally-sensitive areas.

## **2.5 LIMITED PROGRESS IN REFORM: THE COMMON APPROACHES AGREEMENT**

The response of the OECD's Export Credit Group (ECG) to the calls for ECA reform has been limited. In 2002, after more than five years of deliberations, an agreement was reached by 24 out of 26 member countries of the ECG on the adoption of a common approach to environmental screening of projects. The agreement, described as "historic" by the UK,<sup>36</sup> was rejected by the USA as too weak and by Turkey because it was too onerous. Because OECD agreements have to be ratified by all parties, the agreement has not come into full force.

**2.5.1** The agreement has been heavily criticised by NGOs as inadequate and flawed, particularly in the key areas of standards and transparency. For example:

- *The Agreement contains no mandatory environmental standards that projects supported by ECAs must meet.* The only stipulated requirement is that projects meet host government standards – in effect, that project developers do not break local law;
- *A "pick-and-mix" approach to screening projects is adopted whereby projects are "benchmarked" against international standards.* The choice of standards is entirely discretionary and there is no requirement to justify the choice of particular standards. (For further comments on this benchmarking approach, see below);
- *Projects that do not meet international standards are permitted,* although the ECA "should indicate the reasons for this" in its annual report to the ECG;
- *For projects where an ECA's share is under SDR 10 millions, only limited environmental screening is required.* In the case of the Ilisu dam, this would have meant that many participating ECAs (Germany's Hermes, for example) would not have been required to carry out a detailed environmental review;<sup>37</sup>
- *Even for projects that are categorised as "Category A" (that is, having a high potential impact on the environment), there is no requirement for an Environmental Impact Assessment to be produced, only an "expectation" that one would be required;*<sup>38</sup>
- *Where EIAs are carried out, ECAs are not required to make them public;*

<sup>36</sup> ECGD Press Release 19.01 "UK at the heart of ground-breaking environmental agreement for exports", 03 December 2001

<sup>37</sup> OECD, op. cit. 31, para 5.

<sup>38</sup> "For a Category A project in or near sensitive areas and for large greenfield projects in sensitive sectors, Members would be expected to require an EIA". See: OECD, op.cit. 31, para 11.

- *There is no requirement on ECAs to release any information about the project they are supporting.*<sup>39</sup>

**2.5.2** Britain's ECGD played an active role in negotiating the Common Approaches agreement and has endorsed the agreement without reservation. This is regrettable, since it has left more progressive voices within the international ECA community isolated. That said, the role played by the ECGD in pushing for all projects to be screened, regardless of their value, and for the scope of the agreement to be widened beyond the environment is to be welcomed.

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<sup>39</sup> ECAs are expected to "encourage project sponsors to make environmental impact information publicly available" (para V.18) but the decision rests with the project sponsor. See: OECD, *op.cit.* 30.

### **3.0 THE EXTENT TO WHICH ECGD'S POLICIES AND OPERATIONS REFLECT THE GOVERNMENT'S COMMITMENT TO ENVIRONMENTAL PROTECTION AND SUSTAINABLE DEVELOPMENT.**

#### **3.1 THE UK GOVERNMENT'S SUSTAINABLE DEVELOPMENT COMMITMENTS**

The UK Government has set out a number of policy commitments with respect to sustainable development. Critically, Government ministers have recognised that “Truly sustainable development entails the integration and balancing of the economic, the social and the environmental wherever possible, and *making hard choices* and trade-offs where this is not” (emphasis added).<sup>40</sup>

With respect to international development, a number of specific policy goals have been set out, notably in two White Papers: *Eliminating World Poverty: A Challenge for the 21<sup>st</sup> Century* (1997) and *Eliminating World Poverty: Making Globalisation Work for the Poor* (2000). These goals include:

- Refocusing international development efforts on the *elimination of poverty* and encouragement of economic growth that benefits the poor;
- Giving particular attention to human rights, transparent and accountable government and core labour standards, building on the Government's ethical approach to international relations;
- Using the Government's resources proactively to promote political stability and social cohesion and to respond to conflict;
- Encouraging financial stability and the reduction of the external debt of developing countries to sustainable levels;
- Promoting economic growth that is equitable and environmentally sustainable;
- Working to reduce violent conflict, including through tighter control of arms trade;
- Working to reduce corruption and ensure respect for human rights and a greater voice for people;
- Encouraging corporate social responsibility by national and transnational companies;

**3.1.1** In addition, the UK Government is bound to honour its commitments under the Rio Declaration, the Convention on Biological Diversity and the Kyoto Protocol. Other international instruments, such as the European Convention on

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<sup>40</sup> Speech by Hilary Benn MP to the Overseas Territories Consultative Council, Strategies for Sustainable Development, 24-26 September 2001.

Human Rights and the five core International Labour Organisation Conventions, also contain obligations that bear critically on the UK's sustainable development commitments to human rights and labour rights. In 2002, the European Commission also set out a number of sustainable development objectives to which the UK is legally committed.<sup>41</sup>

### 3.2 *ECGD POLICY AND UK SUSTAINABLE DEVELOPMENT POLICY*

Since the end of 2000, ECGD has taken some welcome steps towards aligning its activities with the commitments of the UK Government.<sup>42</sup> These include the development of a set of aspirational Business Principles, which require ECGD to "take into account" the Government's international policies on sustainable development, environment, human rights, good governance and trade. However, as documented below, both initiatives fall far short of moving ECGD towards compliance with the Government's sustainable development commitments.

#### 3.2.1 Revised Mission Statement

The ECGD's revised Mission Statement fails to put sustainable development at the heart of the ECGD's business. In particular:

- The Aims are weakly worded and inconsistent.
- The wording also serves to circumscribe, and weaken, the commitments made in the Objectives. For example, although Objective 3 of the Mission Statement requires the ECGD "*to ensure its activities accord with other government objectives, including those on sustainable development, human rights, good governance and trade*", the Aims of the Mission Statement limit this obligation by requiring the ECGD only to "*take into account the Government's international policies*". This wording clearly fails to reflect the conclusions of the ECGD's own Review of its Mission and Status<sup>43</sup> and leaves the ECGD's responsibilities unclear. The requirement to "take account of government policies" is discretionary and does not have the same force in law or in practice as a requirement to be bound by them.
- The Mission Statement limits the ECGD's ability to take proactive steps to promote sustainable development and to exclude companies whose activities are unsustainable.
- The ECGD interprets its founding Act of Parliament as requiring it to consider all applications for business.<sup>44</sup> It argues that it is not therefore in a position to introduce a positive list of projects to which it will give

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<sup>41</sup> Communication from the Commission to the European Parliament, the Council, the Economic and Social Committee and the Committee of the Regions, "Towards a Global Partnership for Sustainable Development", 2002.

<sup>42</sup> See, WWF, op. cit. 30.

<sup>43</sup> The July 2000 Review of ECGD's Mission and Status clearly that: "ECGD's Mission should explicitly reflect the **requirement** to provide its support in a way that is consistent with wider Government objectives." (emphasis added).

<sup>44</sup> See, for example, statement of David Allwood, ECGD's Business Principles Adviser, to "Beyond Business Principles" seminar, op. cit. 8: "As a public body, ECGD has a statutory duty to consider all applications for support. It then decides on the acceptability of the application according to the process that I have just described. ECGD cannot reject applications without justification. Whether a refusal to support would be justified on environmental or social/human rights grounds must be viewed in relation to the facts of each individual case. So ECGD cannot adopt a list of classes of potential applications that it would decline even to consider."

favourable consideration or to implement an exclusion list of unsustainable sectors. This severely limits its ability to take a proactive stance on sustainable development.

- Although the ECGD's interpretation of the Export and Investment Guarantees Act 1991 is open to question, the Mission Statement leaves the issue unresolved. The Corner House views this as a key issue and would strongly recommend that Parliament considers the possibility of amending both the Act and the Mission statement to require the ECGD to promote sustainable development through its support for UK exports.

### **3.2.2 Business Principles**

The aspirations embodied in the Business Principles are to be welcomed. However:

- The legal status of the Principles is unclear.
- The Business Principles are largely discretionary.
- The July 2000 Review of the ECGD's Mission and Status states: "ECGD should develop a statement of Business Principles to *govern* its business practice in relation to matters such as openness, debt sustainability, human rights, sustainable development, corporate governance and business integrity" (emphasis added). The word "govern" implies a set of clear-cut rules, with accompanying sanctions, incentives and mechanisms for enforcement and legal redress.
- Except in the section on corruption, the Business Principles currently offer no indication of intended enforcement mechanisms or sanctions in the event of the principles being breached. As such, they fail to provide the incentives, penalties and binding rules that would make them a suitable instrument for governing the ECGD's business practice.

## **3.3 ECGD OPERATIONS AND UK SUSTAINABLE DEVELOPMENT COMMITMENTS**

Evaluating the degree to which the ECGD's operations and policies comply with the Government's stated commitments on sustainable development is severely hampered – if not made impossible – by the ECGD's lack of transparency. In and of itself, such lack of transparency, which remains unrectified (*see below*), is clearly in conflict with the Government's stated sustainable development commitment to ensuring "transparent and accountable government".

**3.3.1** Until 2002, few details were published on the projects that ECGD supported. Although the Department introduced new disclosure measures in 2002 and published a list of ECGD guarantees in its Annual Report,<sup>45</sup> such disclosure applied to only one-third of the ECGD's total portfolio. Moreover, because disclosure required the client's permission, the list was incomplete, two clients

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<sup>45</sup> For guarantees, the Annual report included a list detailing exporter, market, buyer, project description and ECGD's maximum liability.



(with guarantees valued at just under 10% of the total) insisting on the information remaining confidential.

**3.3.2** No details are given in the listing of the environmental impacts of the guarantees, nor of their impacts on poverty alleviation, good governance or other sustainable development criteria. It is noteworthy, however, that two of the listed guarantees are now subject to corruption allegations. One – the Blue Stream Pipeline Project – is currently under official investigation in Turkey (*see* Appendix 3). The other is subject to an enquiry by the national Ombudsman in the country concerned.

**3.3.3** No listing has ever been provided on the projects guaranteed through the Overseas Investment Insurance (OII) scheme since, until new disclosure provisions were announced in 2003, details of ECGD insurance facilities were kept confidential.<sup>46</sup> From information provided in the main body of the 2001/02 ECGD *Annual Report*, however, it is clear that such OII guarantees (which increased fivefold in value from 1998-2002) may have major sustainable development implications – Thames Water’s take-over of a Mexican public water utility being a case in point.<sup>47</sup>

**3.3.4** In addition, some general observations may be made:

**3.3.4.1 The ECGD’s portfolio remains dominated by unsustainable projects and sector**

A comparison of the support provided by the ECGD prior to the adoption of its Business Principles and post adoption reveals no substantive change in the sectors supported or in the percentage breakdown of support by sector:

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<sup>46</sup> ECGD, “ECGD Case Information”, [www.ecgd.gov.uk/home/pubscheme\\_home/pubscheme\\_coi\\_ecgd/coi\\_-\\_ecgd\\_case\\_information.htm](http://www.ecgd.gov.uk/home/pubscheme_home/pubscheme_coi_ecgd/coi_-_ecgd_case_information.htm), accessed 7 May 2003.

<sup>47</sup> ECGD, *Review of the Year and Annual Report and Resource Accounts for 2001/02*, London, 2002, p.21.

	1999/2000	2001/2002
Airbus	21%	20%
Other Aerospace	1%	4%
Defense	31%	29%
Civil	47%	47%

This would suggest *either* that the ECGD was already complying with the UK Government’s sustainable development objectives *or* that the Business Principles have had little impact in shifting ECGD support away from unsustainable projects. Closer scrutiny suggests the latter:

- Of the four principle sectors supported, three (airbuses, other aerospace and defence) are associated either with high environmental impacts or with adverse developmental impacts (defence). Moreover, since well over half of the airbus sales were to OECD countries, it is difficult to understand their contribution to poverty alleviation, a major UK Government sustainable development objective.
- *Of the businesses supported within the fourth sector (civil), the majority is again associated with high social and environmental impacts – power generation and transmission, mining and transport.* Of particular concern, given the UK’s commitment under the Kyoto protocol to reduce greenhouse gas emissions, is the *rise* in support (as a percentage of overall business) for power generation and energy projects – up from 42% in 1999/2000 to 47% in 2001/2002. Moreover, ECGD is clearly committed to continued support for the oil and gas sector and describes the prospects for major future business as “promising”.<sup>48</sup> The 2001/2002 *Annual Report* notes that the ECGD is involved in negotiations over:
  - Petrobras’ Marlim Sul development in Brazil;<sup>49</sup>
  - A liquified natural gas expansion project in Nigeria;<sup>50</sup>
  - The Baku-Tbilisi-Ceyhan oil pipeline project which is solely intended to bring Caspian oil to Western markets and which is already threatening major human rights abuses (*see* Appendix 5); and
  - The Sakhalin 2 project in Russia which threatens the endangered Gray Whale (*see* Appendix 6).

<sup>48</sup> ECGD, Annual Report 2001/2002, p.17. The ECGD also reports: “ECGD’s oil and gas team is continuing to receive a significant level of enquiries as the demand for British expertise in the world’s oil and gas sectors remains strong.”

<sup>49</sup> ECGD, Annual Report 2001/2002, p.17. The project involves deep sea exploitation of oil and gas fields.

<sup>50</sup> ECGD, Annual Report 2001/2002, p.17. ECGD states: “The project will assist Nigeria to realise the financial benefits of its gas reserves and reduce gas flaring in the Niger Delta, bringing major economic and environmental benefits to the country.”

- *The ECGD's new "Good Projects in Difficult Markets" programme – introduced since its Business Principles were adopted – is specifically designed for supporting oil and gas projects.*<sup>51</sup>
- *In 1999/2000 and 2001/02, the ECGD's top ten markets for guarantees issued were dominated by countries that have been internationally criticised for their human rights record. In both years, Saudi Arabia, according to the ECGD, topped the bill, accounting for over £1 billion of the total value of guarantees issued.*<sup>52</sup> Saudi Arabia has been criticised by the US State Department for its use of torture.<sup>53</sup>
- *Although the ECGD introduced its impact questionnaire in 2000, not a single project vetted up to the end of 2001 had been rejected on the basis of the screening process.*<sup>54</sup> Even where projects are clearly in violation of international sustainable development standards, such as the World Bank's safeguard policies, the ECGD has not refused cover. In the case of both the Ilisu and Yusufeli projects, the ECGD ceased to be involved only as a result of the applications for support being withdrawn by the client companies. This would suggest that the ECGD is unwilling to make the "hard choices" that the Government acknowledges need to be made in the pursuit of its sustainable development policy.

#### **3.3.4.2 Failure to "Refocus efforts on the elimination of poverty"**

Since September 1997, the UK has refused to issue export credits for any expenditures which are not defined as "productive".<sup>55</sup> However, the "productive expenditure test" is only applied to IDA countries<sup>56</sup> – and even then, only with respect to arms sales.<sup>57</sup> As Romilly Greenhill of Jubilee Research points out: "This means that ECGD is continuing to provide export credits for defence expenditures in other developing countries, many of which are also heavily indebted."<sup>58</sup>

Indeed, far from making the productive expenditure test – and more specifically, poverty reduction – central to its business strategy, the ECGD's Mission statement has defined "sustainable development" in a manner which gives ample leeway for

<sup>51</sup> *Project Finance*, 1/11/01, p.44, "Image and Reality: ECA Review"

<sup>52</sup> ECGD, Annual Report 2001/02, p.7

<sup>53</sup> For further details, see Human Rights Watch, [www.hrw.org](http://www.hrw.org)

<sup>54</sup> Information supplied by the ECGD, March 2002.

<sup>55</sup> Dfid, White Paper, "Eliminating World Poverty: Making Globalisation Work for the Poor", December 2000.

<sup>56</sup> Define IDA

<sup>57</sup> Greenhill, R., "Recommendations for the Export Credit Guarantee Department on Debt and Export Credits", Jubilee Research, in Corner House et al, op. cit. 8.

<sup>58</sup> Ibid

backing projects which have no poverty alleviation benefits.<sup>59</sup> Greenhill points out, for example, that the wording is such that projects may be considered “sustainable” if they comply with just one of five criteria;

- “assisting social and economic development”
- *or* maximising benefits to areas most affected by poverty
- *or* tackling problem areas where private investment is not available
- *or* “wherever possible” earning foreign exchange
- *or* encouraging viable self-financing projects.

As Greenhill notes: “In other words, projects are not required to promote social and economic development or to reduce poverty provided that they earn exchange or are self financing.”

Given the historical propensity for investment in many of the sectors which the ECGD supports (arms and oil and gas, for example) to be associated with poverty *generation*, the failure of the ECGD to place poverty alleviation at the heart of its business is of grave concern. Significantly, a recent internal review of the World Bank’s investments in extractive industries (such oil, mining and gas) concludes:

“Increased investment in the EI [Extractive Industries’] sector has the potential to bring important development benefits but it is not a universal good. In fact, the evidence suggests that it is more likely to lead to bad development outcomes when governance is poor. Because of the Bank’s focus on poverty, and the links between poverty and poor governance, this means that increased EI investment is likely to lead to bad development outcomes for many if not most of the Bank’s clients.”<sup>60</sup>

The Bank’s Operations Evaluations Department recommends that the World Bank stop promoting increased investment in extractive industries in countries with weak governance. Instead, the Bank should focus its efforts on helping those countries to maximize the economic benefits, and control the risks, of their existing extractive industries’ sector. *The conflict between this view and the ECGD’s continuing commitment to the oil and gas sectors is clear.*

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<sup>59</sup> See Greenhill, R., op. cit. Greenhill points out that the wording is such that projects may be considered “sustainable” if they comply with just one of four criteria; “assisting social and economic development” *or* maximising benefits to areas most affected by poverty *or* tackling problem areas where private investment is not available *or* “wherever possible” earning foreign exchange *or* encouraging viable self-financing projects. As Greenhill notes: “In other words, projects are not required to promote social and economic development or to reduce poverty provided that they earn exchange or are self financing.”

<sup>60</sup> World Bank, 2003, para. 5.1).

### **3.3.4.3 Limited Approach to Evaluation Human Rights Issues**

Since 2000, the ECGD has, to its credit (and virtually alone among the ECA community), included questions in its impact questionnaire on the human rights implications of projects. Nonetheless, its approach to human rights is limited and runs the risk of failing to ensure that the ECGD meets its obligations under the Human Rights Act. For example, there is no requirement for affected communities to be consulted on (or indeed informed about) the potential impacts of projects unless they are deemed to be of high potential impact. Yet the right of citizens to participate in the decisions that affect their lives and livelihood is at the heart not only of sustainable development policy but also of the European Convention of Human Rights and other international human rights instruments. For that right to be respected, it is critical that citizens are informed *in advance* of such decisions and have opportunities to challenge the decision if their rights are violated. A pre-requisite for compliance with this set of rights would appear to be the timely disclosure of *all* applications received by the ECGD and their outcome.

The ECGD's Impact Questionnaire also demonstrates an approach to human rights that is of limited use in ensuring that human rights abuses do not flow from a project. Their prime aim appears to be to elicit information on threats to property rights (for example, whether land will be compulsorily acquired) and to labour rights and the rights of certain vulnerable groups. Whilst this is welcome, the questionnaire fails to elicit any information about the human rights context in which the project will take place. For example: are people free to express their views without fear of retribution? Does the political culture encourage or permit freedom of expression? Is dissent permitted? Such questions are of fundamental importance if affected communities are not only to be properly consulted on projects but also if their rights are to be protected. The failure of the ECGD to address this issue, or even to show signs of considering it, is a major lacuna and would appear to conflict head-on with the Government's stated policy that sustainable development should "ensure respect for human rights".

### **3.3.4.4 Labour Rights: Derogations on the Use of Child Labour and Forced Labour**

The UK Government states that it will "give particular attention to core labour standards" when supporting investment abroad. The UK has ratified the United Nations Convention on the Rights of the Child and the International Labour Organisation (ILO) Conventions on the Abolition of Child Labour. It has also

ratified the ILO Convention on the elimination of forced or compulsory labour. Whilst the ECGD expects projects to conform to these Conventions, it nonetheless allows for derogations. In its April 2003 Guidance Notes for its Impact Analysis Procedures, for example, it states: “There must be exceptional circumstances for ECGD to provide cover to projects which involve child labour”. In effect, whilst the ECGD is unlikely to support a project that uses child labour, it is nonetheless willing to do so.<sup>61</sup> A similar derogation is applied to the ILO Convention on Forced Labour, although the ECGD states that “it is difficult to imagine circumstances in which the ECGD could provide cover to projects which involve forced labour.” The Corner House considers this position to be in direct conflict with the Government’s stated commitment to uphold the relevant ILO conventions.

### **3.3.4.5 Inadequate Procedures for Assessing Debt Sustainability**

The UK, along with all the other bilateral donors who are members of the OECD’s Development Assistance Committee (DAC), has committed itself to meeting the Millennium Development Goals, agreed at the United Nations General Assembly in September 2000. Those goals commit all DAC members to “deal[ing] comprehensively with the debt problems of developing countries through national and international measures in order to make debt sustainable in the long term”. The ECGD has also committed itself to “ensuring that debt sustainability will be the prime determinant of the provision of support for exports”.<sup>62</sup>

In December 2000, the UK’s ECGD committed itself to write off 100% of the debts owed to it by Heavily Indebted Poorer Countries (HIPC). The total amount of debt owed by these 42 countries was £1.9 billion (\$3 billion) at the time of the announcement.<sup>63</sup> As of September 2002, the ECGD had written off £888 million (\$1.4 billion) and was committed to write off a further £1.3 billion (\$2 billion).<sup>64</sup>

The ECGD has however so far written off 100% of the debts only only the 8 countries that have reached the World Bank and IMF’s “Completion Point”.<sup>65</sup> It is no longer accepting any payments from an additional 18 countries that have passed “Decision Point” under the HIPC initiative. However, the UK Treasury, via the Department for International Development,

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<sup>61</sup> David Allwood, the ECGD’s Business Principles Advisor, has expanded on the conditions under which child labour might be permitted: “We . . . would only support projects involving child labour if working hours were limited, there was proper provision for education and recreation, and working conditions were independently monitored and reported on.” See: David Allwood, “Beyond Business Principles – ECGD Response” in Corner House et al., op. cit. 8.

makes up the difference to the ECGD once the ECGD agrees to give 100% debt forgiveness, ensuring, as the ECGD website puts it, that “ECGD and its customers are therefore not disadvantaged”.<sup>66</sup>

Eleven countries are still being billed by the ECGD for debt service payments, because they have still not reached “Decision Point” – including several African countries that are, or have until recently been, embroiled in civil wars, such as Cote D’Ivoire, DR Congo, Liberia, Somalia and Sudan.<sup>67</sup> In fact, the World Bank recognises that bringing such countries to “Decision Point” is going to be a near impossible task because of the conflicts that have torn them apart and rendered them unable to implement the economic programmes required by the World Bank and IMF.<sup>68</sup>

However, in December 2001, the UK Government committed itself to holding payments from pre-Decision Point countries in trust, which would then be returned to these countries when they reach Decision Point. The ECGD has not received any payments from the war-torn countries mentioned above since December 2000, but continues to invoice them for debts owed.<sup>69</sup> *In recognition of their inability to pay, and as a contribution to a longer term peace in these countries, the ECGD should declare 100% cancellation immediately for such war-torn countries.*

As part of international efforts to ensure that countries do not build up unsustainable debt burdens again, the ECGD now applies “productive expenditure” criteria to 63 countries – the 42 HIPC countries plus 21 countries that are eligible for zero interest loans from the World Bank’s International Development

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<sup>62</sup> ECGD Business Principles, December 2000.

<sup>63</sup> [www.britainusa.com/economy/xp/asp/Sarticletype.1/Article\\_ID.520/qx/articles\\_s...](http://www.britainusa.com/economy/xp/asp/Sarticletype.1/Article_ID.520/qx/articles_s...), “Britain forgives all its Third World Debt,” 21/12/99

<sup>64</sup> Figures taken from the ECGD website ([www.ecgd.gov.uk](http://www.ecgd.gov.uk)). The ECGD has issued various contradictory figures however. A February 2003 letter from the ECGD Communications Director, John Ormerod, to The Corner House however says that the ECGD has written off £700 million (\$1 billion) of debts and that the ECGD is only committed to writing off a further £370 million (\$589 million) (Letter 27 February 2003).

<sup>65</sup> The ECGD includes Yemen in its list of countries that have reached completion point, and for which it has written off £9.3 million of debts. However, according to World Bank documents, Yemen has not reached completion point but is rather among those countries considered to have potentially sustainable debt burdens, along with Angola, Kenya, and Vietnam (see [www.worldbank.org/hipc/progress-to-date/HIPC\\_Grouping\\_Mar03.pdf](http://www.worldbank.org/hipc/progress-to-date/HIPC_Grouping_Mar03.pdf)).

<sup>66</sup> ECGD, *Annual Report and Resource Accounts 2001-2002*, p 26; see also <http://www.ecgd.gov.uk/graphic/debtdev/debtfor.asp?sid=6&hdr=Sustainable%20Development>. The UK government insists that this is new money and not aid money however that is being diverted.

<sup>67</sup> The full list is: Angola, Central African Republic, Cote d’Ivoire, DR Congo, Republic of Congo, Kenya, Liberia, Somalia, Sudan, Togo, and Vietnam. The ECGD has written off £32 million (\$50 million) so far to these countries.

<sup>68</sup> The World Bank’s Operations Evaluation Department (OED) Reviews the Successes and Challenges of the Heavily-Indebted Poor Countries Initiative, Fact Sheet, February 2003 ([www.worldbank.org/hipc/OEC\\_Review.pdf](http://www.worldbank.org/hipc/OEC_Review.pdf)). In one of the contradictions of the HIPC Initiative, Uganda has been given debt relief as a reward for good economic performance, despite the fact that this performance is due not least to its exploitation of resources in the Democratic Republic of Congo, a war-torn country which is yet to reach ‘decision’ point (Neil Cooper and Michael Pugh, “Security-sector transformation in post-conflict societies”, The Conflict, Security and Development Group Working Papers, February 2002, [csdg.kcl.ac.uk/publications/assets/PDF%20files/Working%20paper%20number%205.pdf](http://csdg.kcl.ac.uk/publications/assets/PDF%20files/Working%20paper%20number%205.pdf))

<sup>69</sup> Its last payments from these countries were: Sudan (1984), Somalia (no payment ever made), Liberia (1994) Republic of Congo (1997), DR Congo (1990), Cote D’Ivoire (1999) – figures provided by ECGD in an email to The Corner House, 17/3/03.

Association.<sup>70</sup> This criteria means that projects or exports contribute to social and economic development without pushing the country into unsustainable debt. Under this criteria however, the ECGD has backed the Mozal Aluminium smelter in Mozambique – a project that, despite successful local community projects introduced by the company, has been characterised by tax holidays on all corporate profits and expatriate worker salaries, and the repatriation of all dividends.<sup>71</sup> Because of these incentives, while the smelter contributes impressively to Mozambique’s economic growth figures, it does not translate clearly into resources for poverty reduction in Mozambique itself.

Most importantly, debt relief initiatives have not ensured that ECAs accept mutual responsibility for the bad business deals they have backed. As the UK Executive Director at the IMF and World Bank for the years 1994-1997, Huw Evans, put it: “loans that turn out badly mean poor decisions by both lenders and borrowers . . . [genuine debt cancellation] require[s] governments (and their export credit agencies) to admit past mistakes.”<sup>72</sup>

Recognition of such mistakes would involve the ECAs of richer countries conducting a thorough audit of their export credit debt portfolios to identify projects that failed because of corruption on the part of Western companies and because of their own negligence and immediately writing off any relevant amounts from the debt portfolios of all developing countries, not just the poorest ones.

Jubilee Research, which campaigns on debt issues, has expressed concern that export credits are still being issued for countries with significant debt burdens.<sup>73</sup> They cite the example of South Africa where the ECGD recently (2000/01) guaranteed an export credit of around £1.7 billion for trainer/fighter aircraft being sold by BAE Systems.<sup>74</sup> “While South Africa’s external debt of \$24.5bn<sup>75</sup> is lower, as a proportion of her GDP, than that of the HICs, she does have a significant domestic debt problem. In total, her domestic debt is now at \$4.6bn, or a little under one third of her Gross National Income. She is now spending about \$4.6bn per year, or 16% of her total budget, in servicing her domestic and external debt, in contrast to about 11% of her budget on health.<sup>76</sup> In other words, in a country where 20% of

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<sup>70</sup> In fact there are 81 countries altogether which are eligible for loans from the IDA (see <http://web.worldbank.org/WBSITE/EXTERNAL/EXTABOUTUS/IDA/0,,contentMDK:20054572~pagePK:83988~piPK:84004~theSitePK:73154,00.html>), and the ECGD should certainly extend its productive expenditure criteria to all these 81 countries.

<sup>71</sup> World Bank, *Global Development Finance* 2002, Chapter 4, box 4.4.

<sup>72</sup> Huw Evans, “Debt Relief for the Poorest Countries: why did it take so long?” *Development Policy Review*, September 1999

<sup>73</sup> Greenhill, R., “Recommendations for the ECGD on Debt and Export Credits”, Paper presented to “Beyond Business Principles Seminar”, in Corner House et al, op. cit 8.

<sup>74</sup> ECGD Annual Report and Resource Accounts 2000/01.

<sup>75</sup> Global Development Finance, 2002.

<sup>76</sup> “A Peoples’ Guide to the Budget”, South African National Treasury, [www.finance.gov.za](http://www.finance.gov.za)



the adult population is infected with HIV, debt service is about one and half times the level of spending on health.”<sup>77</sup>

It is questionable whether increasing this debt through the sale of fighter aircraft meets with the UK Government’s stated sustainable development goal of “reducing the external debt of developing countries to sustainable levels”.

### **3.3.4.6 Failing to Promote Environmentally Sustainable Development: Supporting Fossil Fuels**

The UK Government is committed to *promoting* (not simply encouraging) “economic growth that is equitable and environmentally sustainable”. As noted above, Government ministers acknowledge that this necessitates “hard choices”. The ECGD’s policy of “constructive engagement” in order to improve the quality of project, though admirable in intent, shies away from that reality and fails to recognise that a number of the sectors in which ECGD is involved are inherently environmentally unsustainable.

ECGD support for fossil fuel plant illustrates the point. Recent research has shown that ECGD supported power plants contribute an annual 13.3 million tonnes of carbon emissions,<sup>78</sup> despite Government commitments to reduce the UK’s emissions by 26.5 million tonnes and to assist developing countries to curb their emissions.<sup>79</sup> Although the ECGD has now made available some £50 million of cover for the UK renewable energy sector,<sup>80</sup> the support it offers is a fraction of that offered to projects relying on fossil fuels. Other recent research shows similar unsustainable activities supported by the ECGD with regard to dams and forestry.<sup>81</sup>

It is also of concern that, despite the recommendation of the Trade and Industry Committee,<sup>82</sup> defence and aerospace contracts – a major segment of the ECGD’s portfolio – are excluded from the screening process.

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<sup>77</sup> Greenhill, R., “Recommendations for the ECGD on Debt and Export Credits”, Paper presented to “Beyond Business Principles Seminar”, in Corner House et al, op. cit 8.

<sup>78</sup> ‘New research shows Blair “exporting global warming”’, Greenpeace press release, 12 July 2002. Cited in WWF, op. cit 30.

<sup>79</sup> In June 1997, the Prime Minister told the Special United Nations Session on Sustainable Development: “Industrialised countries must work with developing countries to help them combat climate change . . . We must live up to our side of the bargain and ensure they have the resources to do this.” The November 1997 White Paper, *Eliminating World Poverty*, went on to spell out strategies for fulfilling this pledge, including “promoting and encouraging the use of renewable energy resources”. Similarly, the UK Minister for the Environment, along with colleagues from other G8 countries, has stressed the need for international policies that “encourage developing countries to abate their greenhouse gas emissions while taking full account of their legitimate need to eradicate poverty and achieve sustainable development.”

<sup>80</sup> “Sustainable Development at the Heart of UK Export Credit Support”, ECGD Press Release, 28 April 2003, [http://www.ecgd.gov.uk/news\\_home.htm?id+5278](http://www.ecgd.gov.uk/news_home.htm?id+5278)

<sup>81</sup> ‘Illegal logging and ECAs’, FERN, April 2002. ‘UK Export Credit Policy – lessons from Ilisu’, FERN, January 2002, [www.fern.org/pages/eca/pubs.html](http://www.fern.org/pages/eca/pubs.html) Cited in WWF op. cit. 30.

<sup>82</sup> Trade and Industry Committee, Third Report, p.xxxi: “We can see no reason for defence and aerospace sectors to be exempted from the [environmental] screening process.”

If the ECGD is to be a force for sustainable development, there is an urgent need for policies that actively promote sustainable development and discriminate against unsustainable sectors. A step forward would be the development of a positive list of sectors that the ECGD will in future favour. This would be in line with ECGD's commitment to measure applications against sustainable development criteria<sup>83</sup>, as well as Government commitments to cut carbon emissions.

### 3.3.4.7 Inadequate Anti-Corruption Measures<sup>84</sup>

Although all industry sectors can apply for ECGD support to do business abroad, the Department primarily provides support to six industrial sectors: military and defence; civil aerospace; power generation and transmission; water; energy and transport.<sup>85</sup> Several of these sectors have some of the worst records on corruption.<sup>86</sup>

Almost one-third (30%) of ECGD backing goes each year to defence projects – almost half between the years 1998 and 2001.<sup>87</sup> The defence industry has consistently been one of the worst corruption offenders, second only to construction and public works in Transparency International's Bribe-Payers Index. According to the US Department of Commerce, half of all bribes paid between 1994 and 1999 involved defence contracts, despite the fact that arms constitute only 1% of world trade.<sup>88</sup>

Of the civil (rather than military) projects that the ECGD supports, the highest percentage (25% in 2000/01 and 41% in 1999/2000) is in the power generation sector – a sector ranked sixth on TI's list of corrupt industries. The oil and gas industry, meanwhile, another key and related area for the ECGD and the focus of its new "Good Projects in Difficult Markets"<sup>89</sup> initiative<sup>90</sup> is the third most corrupt industry in TI's Index.

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<sup>83</sup> ECGD, 'Public Policy Issues: Sustainable Development', 28 July 2002 [www.ecgd.gov.uk/graphic/debtdev/susdev.asp?sid=6](http://www.ecgd.gov.uk/graphic/debtdev/susdev.asp?sid=6)

<sup>84</sup> This section is drawn from Hawley, S., *Turning a Blind Eye: Corruption and the UK's Export Credit Guarantee Department*, The Corner House, forthcoming. The report's Executive Summary and Summary of Cases are included at Appendix 1 of this submission.

<sup>85</sup> Only 1-2% of ECGD support goes to education and medical projects.

<sup>86</sup> Transparency International press release, 14/5/02 "Transparency International releases new Bribe payers Index (BPI) 2002"

<sup>87</sup> ECGD, *Annual Report and Resource Accounts 2000/01*, p.40.

Nearly 55% of the ECGD's defence portfolio goes to the Middle East and 38% to Asia. The bulk of military cover is for aircraft (58.2%), vehicles (23%), radar and radios (12%) and ancillary equipment (6%). See, Nicholas Hildyard, *Snouts in the Trough*, Corner House Briefing 14, July 1999, p 14 ([www.thecornerhouse.org.uk/briefing/14ecas.html](http://www.thecornerhouse.org.uk/briefing/14ecas.html)).

<sup>88</sup> Catherine Courtney, "Corruption in the Official Arms Trade", Transparency International, Policy Research Paper 001, April 2002, p.3; *The Economist*, "Odd Industry Out", 18 July 2002

<sup>89</sup> The Good Projects in Difficult Markets scheme is for projects in countries where the ECGD would not usually accept projects because of risks of non-payment by the importing government in case of default. The scheme is primarily for projects in Africa, the Caspian Area and the Middle East and in the oil and gas, petrochemical, mining, telecommunications and airport and port construction sectors. Projects under this scheme must be financially viable, generate hard currency, use escrow accounts (special accounts in which money is held to pay for taxes, premium on insurance and other ongoing costs on time), and have majority private sector ownership. So far, UK company involvement in the Blue Stream Pipeline between Russia and Turkey (see Section 3, Case study 1), in a £1.24 billion Liquid Natural Gas Plant on Bonny Island in Nigeria, and in the construction of the Kotoka airport in Ghana have been funded under this scheme.

<sup>90</sup> *Project Finance*, 1/11/01, p.44, "Image and Reality: ECA Review"

It is hardly surprising, therefore, that the ECGD is implicated in some of the worst scandals involving British business operating abroad. In the mid-1980s, it backed the Al Yamamah deal with the Government of Saudi Arabia, a deal that included the sale of Hawk and Tornado jets. It is estimated that between 15-20% of the contract price included commissions and bribes to middlemen and officials. Throughout the 1990s, there were persistent rumours of corruption.<sup>91</sup> A 1992 report by the UK's National Audit Office into the deal has yet to be published despite repeated requests from Parliament.

These high-profile cases were not just one-offs. Research undertaken by The Corner House reveals an institutional culture within the ECGD that underestimates corruption as a serious risk factor that could undermine the viability of projects and a range of institutional practices that permit corrupt practice to go unpunished. These include:

- *A persistent failure to take account of corruption allegations* when deciding whether to back projects;
- *A reluctance to investigate* such allegations and woefully inadequate investigatory procedures;
- *An unwillingness to pass on allegations to the appropriate external investigatory authorities;*
- *A disregard for international concerns about corruption* in countries in which the ECGD support projects;
- *Inadequate vetting of UK companies with poor track records* of corporate governance;
- *A lack of openness and accountability* regarding projects that it backs.

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<sup>91</sup> Campaign Against the Arms Trade, "Memorandum submitted to the International Development Committee hearing on corruption, March 2001; Paul Ingram and Ian Davis, *The Subsidy Trap: British Government Financial Support for Arms Exports and the Defence Industry*, Saferworld and the Oxford Research Group, July 2001, [www.saferworld.co.uk/pubsubsidy.pdf](http://www.saferworld.co.uk/pubsubsidy.pdf)

#### **3.3.4.8 Inadequate Consultation Measures**

The UK Government is committed to “working to ensure a greater voice for the people” in development planning. With regard to dams, for example, it has stated that: “The UK government fully recognises the need to respect human rights, fundamental freedoms and the importance of dialogue with affected peoples organisations. Every effort must be made to take their interests into account in the context of the wider aims of the project.”<sup>92</sup>

Although ECGD has opened up considerably to NGOs and now holds regular consultations with them, it does not require consultation with project affected peoples, except in cases where projects are classed as High Potential Impact (and even then, the ECGD’s benchmarking approach permits an element of discretion).

Until May 2003, no details were given of credits being considered for support by the ECGD in advance of a decision being made on their approval. As a result, those affected were effectively denied an opportunity to comment on the projects – since one cannot comment on what one does not know about. As noted above, such a failure to disclose project details and documents may well place the ECGD in conflict with its duties under the Human Rights Act.

#### **3.3.4.9 Inadequate Measures to Encourage Corporate Social Responsibility**

Given its duty to promote UK exports, the ECGD is well placed to encourage corporate social responsibility (CSR) by adopting proactive policies and practices that would favour companies committed to CSR over those who are not.

If sustainable development is to be at the heart of the ECGD's future practice, then, in The Corner House’s view, businesses whose products and corporate behaviour are incompatible with sustainable development should not be eligible for ECGD support. The ECGD’s Business Principles should address this issue upfront, clearly outlining corporate practices that will not be acceptable to the ECGD. However, the ECGD has rejected both of these measures, opting merely to collect information on whether or not applicants have corporate policies on human rights, occupational Health and Safety and other issues. It gives no indication as to how the information received will be used to encourage CSR.

A positive step in encouraging CSR would be for the ECGD to require all contracts to include a clause binding contractors and sub-contractors to abide by the OECD Guidelines for Multinational Enterprises, in addition to the ILO Tripartite Declaration on Multilateral Enterprises and Social Policy.

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<sup>92</sup> Department of Trade and Industry, Foreign and Commonwealth Office, Department for Environment, Food and Rural Affairs, Export Credits Guarantee Department, Department for International Development, “World Commission on Dams Report – Towards a UK Position”, Consultation Draft, 22 September 2002.

#### **3.3.4.10 Lack of Transparency**

As the ECGD's own *Mission and Status Review* notes, transparency is important for maintaining public confidence in and understanding of ECGD,<sup>93</sup> and for demonstrating accountability.<sup>94</sup> It is also important for the reputation of the UK Government.

With the adoption of the Business Principles – which commit the ECGD to “being as open as possible whilst respecting legitimate commercial and personal confidentiality” – ECGD staff have shown themselves willing to share information and the ECGD now makes public more information than it used to. Nonetheless, the rules under which staff operate frequently prevent them from best practice. In the case of Ilisu, for example, the ECGD refused to release the Resettlement Action Plan (RAP) for the project on the grounds not of confidentiality but that it was the property of the Turkish Government. Release of the EIA and RAP for the Yusufeli hydroelectric project was also denied on similar grounds.

The ECGD's failure to release key documents relating to the Ilisu Dam, for example, was criticised by several parliamentary committees for its lack of transparency. Writing in February 2000, for example, the Trade and Industry Committee commented: "The process of consideration of whether to grant export credit for the dam has been bedevilled by an excessive degree of secrecy."<sup>95</sup>

The non-release of the EIAs and RAPs constitutes a major institutional failure. Public access to environmental information and participatory consultation with stakeholders *prior* to decisions on financial support is a *sine qua non* of best international development practice. Moreover, non-disclosure runs counter to – and may be in violation of – a number of conventions to which the UK is a signatory, including the European Convention of Human Rights and the UN/ECE Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matter (the Aarhus Convention) which recently entered into force.

#### **3.3.4.11 Lack of Accountability**

The UK Government lays great stress on the links between sustainable development and good governance. It is therefore of regret that the ECGD lacks an easily accessible appeals

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<sup>93</sup> Export Credits Guarantee Department, *Mission and Status Review 1999-2000*, London, 2000.

<sup>94</sup> Cited in WWF, *op. cit.* 30.

<sup>95</sup> Trade and Industry Committee, Sixth Report, *Application for Support from ECGD for UK Participation in the Ilisu Dam Project*, House of Commons, The Stationery Office, 28 February 2000, p.x.

mechanism<sup>96</sup> through which members of the public – and particularly project affected peoples – may challenge its decisions.

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<sup>96</sup> Currently, the ECGD can only be challenged through judicial review or the parliamentary ombudsman.

#### 4.0 THE EXTENT TO WHICH THE INTRODUCTION OF NEW TOOLS SUCH AS THE IMPACT QUESTIONNAIRE HAVE LED TO CHANGES IN THE WAYS IN WHICH ECGD INCORPORATES SUSTAINABLE DEVELOPMENT CONSIDERATIONS INTO ITS OPERATIONS AND ACTIVITIES.

##### 4.1 NEW CASE STUDY PROCEDURES

The new Case Study procedures and Impact Questionnaire that the ECGD recently brought into force contains many welcome steps in the right direction. In particular:

- The ECGD now makes it clear what standards will be used to assess projects;
- EIAs will be made available for High Potential Impact projects, albeit only with the client's permission;
- Limited project Information will be made available on the ECGD's website for High Impact Projects prior to a decision being made on an application;
- Overseas Investment Insurance projects will not be excluded from the above procedures.

However, both the procedures and the impact questionnaire fall short of best practice and, in The Corner House's view, fail to ensure that the ECGD meets the UK Government's sustainable development objectives. Specifically:

- **The benchmarking approach adopted by the ECGD is discretionary and lacks mandatory standards and procedures.** The ECGD's policy of constructive engagement is misplaced and detrimental to the interests of UK industry, the UK taxpayer and project affected peoples. The ECGD should screen out projects that conflict with sustainable development objectives at the earliest possible moment and should adopt exclusion criteria for that purpose. The ECGD should also establish a clear set of good governance conditions which must be met by companies prior to their making a formal application to ECGD for support.
- **The Impact Questionnaire is open to abuse and has major gaps – notably with regard to the impacts of corruption – that must be addressed.** The ECGD should require supporting documentary evidence of claimed compliance with the standards specified.
- **The exclusion of defence and aerospace contracts from screening violates the ECGD's obligations under the 'Common Approaches on the Environment and Officially Supported Export Credits',<sup>97</sup>** which the UK has pledged itself to implement. The ECGD should honour its commitments under the Common Approaches.

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<sup>97</sup> Since 1999, the Export Credit Group of the OECD has been negotiating an agreement on Common Approaches on the Environment and Officially Supported Export Credits. In November 2001, 24 out of the 26 member countries agreed to implement the provisions of a draft text with effect from 1 January 2002. The draft text - known as "Rev 6" - was rejected by the USA as being too weak and by Turkey for containing reference to ethnic minorities. The ECGD described the draft as "ground-breaking". For the text of Rev 6, see: [www.oecd.org/pdf/M00023000/M00023467.pdf](http://www.oecd.org/pdf/M00023000/M00023467.pdf)

- **The proposed disclosure policy is too restrictive and is in potential violation of the ECGD's obligations under the Human Rights Act.** Disclosure of environmental impact assessments, resettlement plans and other required project information should be a condition of appraisal.
- **Given the impacts of corruption on development, additional due diligence procedures should be introduced by ECGD as part of its case impact assessment.**
- **The ECGD's review process lacks a legally-binding framework and set of procedures, potentially exposing exporters and affected communities to arbitrary decision-making.** The ECGD should formalise its underwriting process through an amendment to the Export and Investment Guarantees Act 1991. The Amendment should stipulate the ECGD's information requirements for each stage in the review process, its compliance requirements, enforcement mechanisms and appeal procedures.

#### **4.1.1 Lack of Mandatory ex-ante Standards and Procedures**

An impact assessment process can be fair, transparent and accountable only if the standards against which projects are assessed are made explicit from the outset and applied uniformly to all applications.

Instead of introducing a set of clear, legally binding, ex-ante environmental, development and human rights standards, ECGD's new procedures are based on a "benchmarking approach" under which specified standards are applied on a case-by-case, discretionary basis. In the case of project involving resettlement, for example, the ECGD states that it will use the World Bank's Operational Directive 4.30 on Involuntary Resettlement as a "benchmark". Whilst the ECGD "expects" projects to comply with this standard, however, there is no requirement for them to do so. Even standards which the UK Government is bound by law to apply (for example, the ILO Convention on Child Labour) are applied on a discretionary basis – the ECGD reserving the right to derogate from the Convention "under exceptional circumstances" (*see above*).

Different standards are thus applied (or not applied) at the discretion of ECGD staff, encouraging an ad hoc approach that is bureaucratic, unwieldy and potentially open to abuse.

The discretionary approach embodied in the Case Handling Process also fails to provide exporters with the clarity and predictability that they need for long-term planning – to the potential detriment of the UK economy as a whole and to the disadvantage of individual companies. Discretionary implementation of standards is also likely to build unnecessarily elaborate and bureaucratically time-consuming processes in the determination of standards for each particular case. This can only create extra demands on ECGD staff time that could instead be freed up for other aspects of environmental review and risk analysis if, for instance, benchmarking were to be replaced by a clear, consistent and transparent commitment to common ex-ante standards. Put simply, if the ECGD "expects" a project to conform to a specified benchmark, it should introduce procedures that require such compliance.



#### **4.1.2 Failure to Screen Out Projects and Adopt Exclusion Criteria**

The ECGD has a policy of "constructive engagement with a view to achieving necessary improvements in the project's impacts." Consequently, it is not intended that the Impact Questionnaire should be used to screen out projects that fail to comply with the ECGD's stated aims and requirements, but rather to identify those that need further scrutiny and improvement.<sup>98</sup>

Although the aim of improving projects is laudable, the policy of constructive engagement is misplaced and detrimental to the interests of UK industry, the UK taxpayer and project affected peoples:

ECGD has neither the capacity nor the expertise to undertake such a demanding task. To give the impression that it does is misleading.

ECGD itself recognises that some projects cannot be improved.<sup>99</sup> It should not therefore beguile exporters into believing that they can. To do so is not only to waste taxpayers' money: it is also to mire companies in a costly and time-consuming assessment process that would be avoided if the ECGD screened out projects that do not meet its requirements at the earliest possible opportunity.<sup>100</sup>

By engaging with projects in which the prospects of improvement are slim or where the project itself is inherently incompatible with sustainable development objectives, ECGD exposes itself to unwarranted and uncontrollable reputational risks, an action that directly conflicts with its legal obligation to ensure the proper management of its portfolio.<sup>101</sup>

The ECGD has powers under Section 3 of the Export and Investment Guarantees Act to "make any arrangements considered to be in the interests of the proper management of the ECGD portfolio."<sup>102</sup> We recommend that the ECGD uses these powers to screen out projects that are incompatible with sustainable development objectives at the earliest possible opportunity.

#### **4.1.3 The Impact Questionnaire Has Major Gaps and Should Require Supporting Documentary Evidence of Claimed Compliance with Stated Standards**

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<sup>98</sup> Consultation Document, p.3: "The analysis of potential impacts has not impeded the processing of any application and we do not propose to change this . . ."

<sup>99</sup> Consultation Document, p.19: "It is ECGD policy to constructively engage with the exporter/investor to improve exports/projects to bring support of the export/investment into conformance with the Business Principles. However, if this is not possible then support would not be provided."

<sup>100</sup> It is significant, for example, that Balfour Beatty has stated that it would have become involved in the Ilisu project had it known in advance the controversy that would have surrounded it. Much of that controversy might have been avoided had the ECGD screened out the project as unacceptable from the outset.

<sup>101</sup> It is testament to the weakness of the ECGD's current risk management procedures that the Department failed to take steps to contain the clear adverse reputational risks incurred through its involvement in both the Ilisu and Yusufeli projects. Even when these risks were apparent, the Department continued its involvement and was only spared further embarrassment through when the companies, rather than the Department, took the initiative and withdrew their applications. Even now, were new applications to be made, the ECGD has stated that it would consider both projects, despite their evident failure to meet basic human rights standards.

<sup>102</sup> ECGD, Annual Report and Resource Accounts 2000/01, London, 2002, p.46

#### **4.1.3.1 Format**

The "tick-the-box" format of the questionnaire is open to abuse. For example, Section 3 simply asks whether the project/business has been designed to meet specified environmental, health and safety, and social standards and gives a series of boxes to tick as a response. No evidence is required to demonstrate compliance with the standards that are ticked. Moreover, the ECGD undertakes no checks to verify the information supplied in the questionnaire for projects it assigns to Category C and only occasional checks for Category B projects

This is of serious concern. Given that Category C projects are not subject to any further investigations or conditionality (beyond the standard requirement "for compliance with laws"), there is likely to be considerable pressure on companies to squeeze borderline cases into Category C. It is therefore imperative that claims made in the questionnaire are subject to vigorous checks.

#### **4.1.3.2 Content**

Whilst the impact questionnaire adequately covers major environmental impacts – which also form the prime determinant of the categories into which projects are assigned – it is weak on impacts related to debt, climate, development, human rights and labour rights.

Corruption, for example, has major social, environmental and economic impacts. Corruption arising in projects supported by the ECGD, meanwhile, poses serious reputational as well as material risks both to the ECGD itself and to British exporters in general. The Corner House believes that to avoid this, the ECGD needs to ensure that it tightens up its due diligence procedures for deterring and detecting corruption. We believe that this should include additional questions relating to corporate governance and accountability at the Impact Questionnaire stage, additional requirements to prove compliance with anti-corruption legislation and accounting standards at the warranty stage, further anti-corruption procedures, and increased risk assessment of buyer institutions.

#### **4.1.3.3 Scope**

As noted above, The Corner House believes that defence sales should be excluded from ECGD support. Should they remain as part of the ECGD's portfolio, however, we see no reason why they should be exempted from the Impact Questionnaire and from its attendant assessment procedures. The Corner House notes that this view has also been expressed by the Trade and Industry Committee.<sup>103</sup>

Indeed, we believe that the exclusion of defence sales from the case impact analysis process is in violation of the UK's commitments under the OECD's Draft Agreement on Common Approaches on the Environment and Officially Supported Export Credits, which the UK has undertaken to implement. The Agreement is explicit: "This Recommendation applies to officially supported export credits for projects with a repayment term of two years or more . . .

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<sup>103</sup> Trade and Industry Committee, Third Report, p.xxxi: "We can see no reason for defence and aerospace sectors to be exempted from the [environmental] screening process."

Members are expected to screen *all* applications for officially supported export credits covered by this Recommendation" (emphasis added).<sup>104</sup>

Whilst we welcome the ECGD's proposal to screen projects irrespective of value, we would urge that it honour its obligations under the Agreement and apply its screening process to *all* projects, irrespective of their sector.

#### 4.1.3.4 Disclosure

Ensuring timely public access to – and consultation on – environmental impact assessments, resettlement action plans and other project, *prior* to project approval, is fundamental to the credibility of any impact assessment procedure.<sup>105</sup>

We therefore welcome the ECGD's proposals to publish project information and EIAs for certain categories of projects. However, we view with deep concern the ECGD's intention to restrict disclosure of EIAs to High Potential Impact projects and to place the final decision on disclosure with the client.

High potential impact cases represented only 12 out of 93 projects supported in 2001. The ECGD should make early disclosure of *all* projects at least three months before it makes a decision, so that potentially affected communities in the countries concerned and public interest groups have an opportunity to register their concerns with the ECGD. By so doing, the ECGD will be able to obtain a more accurate picture of the potential impact of the project. From an anti-corruption point of view, it means that people will be able to alert the ECGD to allegations of corruption more easily *before* the ECGD backs a project. Local people are also best equipped to bring potential environmental and social impacts to the ECGD's attention .

As noted above, The Corner House believes that the proposed restrictions may place the Department in potential violation of its obligations under the European Convention on Human Rights, as enacted by the Human Rights.<sup>106</sup> We also note Friends of the Earth's view that the new procedures "fall foul" of the new European Directive on Public Access to Environmental Information (2003/4/EC) and of the proposed implementing Regulation, which are predicted to come into force during the course of 2003.<sup>107</sup>

Whilst we accept that the ECGD should not release information that is determined to be "business confidential", we would insist that it should also not approve a project until a satisfactory EIA has been released to the public. In that respect, we note that the ECGD's concerns about confidentiality have already

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<sup>104</sup> OECD Draft Agreement on Common Approaches on the Environment and Officially Supported Export Credit Agencies, OECD, Paris, December 2001.

<sup>105</sup> IFC, Public Disclosure, September 1998. As the World Bank's International Finance Corporation notes: "Experience has demonstrated that consultation and sharing of information with local communities affected by IFC-financed projects, as well as with cofinanciers, partners, and groups and individuals with specialized knowledge of private sector development issues, helps to enhance the quality of IFC-financed operations. . . Therefore, the Corporation's approach to information about its activities embodies a presumption in favor of disclosure where disclosure would not materially harm the business and competitive interests of clients."

<sup>106</sup> See: Corner House and Kurdish Human Rights Project, "ECGD and the Human Rights Act" in Corner House et al, op. cit. 8.

<sup>107</sup> Friends of the Earth, Memorandum to Environmental Audit Committee, May 2003. FOE notes: "We are aware that the ECGD has concerns about commercial confidentiality. In some cases such concerns *may* be legitimate in relation to a small amount of the information in question. It is not however open to the ECGD to determine in advance (as it appears to be proposing) that all such information, other than the limited classes proposed to be published, are automatically exempt from disclosure."

been satisfactorily addressed by other ECAs, such as the Ex-Im Bank, through a requirement that applicants agree, when requested, to submit a copy of EIAs and other impact assessment documents in a form authorised by the project sponsors.

#### **4.1.3.5 Insufficient Assessment of Impacts of Corruption**

The Impact Questionnaire includes no questions on corruption. Given the detrimental social, economic and political impacts of corruption, this is a grave lacuna.

## 5.0 THE SCOPE AND NEED FOR FURTHER REFORM

**5.1** When compared with the international best practice, ECGD still lags far behind, despite its new Case Study Procedures. In particular, The Corner House regrets the ECGD's continuing lack of clear environmental standards and of measures to enhance the environmental sustainability of its project portfolio. The Corner House would argue that the ECGD's weak environmental standards and inadequate transparency not only put ECGD at increased financial risk but also threaten the reputation of both ECGD and the UK Government more generally.

**5.2** To address the institutional and procedural failures identified in this submission, and to bring the ECGD in line with the Government's sustainable development policies and objectives, The Corner House recommends:

### 5.2.1 Export and Investment Guarantees Act 1991

We recommend that Parliament consider amending the Export and Investment Guarantees Act 1991 in order to:

- Require the ECGD to *promote* sustainable development through its lending practices and operations;
- Permit the ECGD to discriminate in favour of environmentally sustainable sectors and exporters;
- Permit the ECGD to debar companies found guilty of corruption.

### 5.2.2 Business Principles

Each section of the Principles should contain a clear statement detailing:

- *enforcement mechanisms* – for example, procedures for vetting the social and environmental impacts of projects; the corporate governance of applicant companies; and listed international treaties, EU Directives and UK Government policies that the Principle must comply with.
- *sanctions in the event of non-compliance* – for example: clawback mechanisms that would be included in contracts; career sanctions; and financial or other penalties in the case of companies receiving ECGD support;
- *mechanisms available to project-affected communities for seeking redress* – for example, through an inspections panel (such as that operated by the World Bank);
- *a time table* by which the above will be implemented; and
- *clear monitoring procedures*.

### 5.2.3 Pre-Conditions for Support

We recommend that the ECGD:

- **Establishes exclusion criteria against which projects are screened prior to their consideration for support.** Categorical exclusions should include: arms and other non-productive expenditure; nuclear projects; fossil fuel power stations; oil exploration projects in frontier areas; all phases of the fossil fuel and mining cycles - prospecting, exploration, test drilling, exploitation, as well as construction of related infrastructure such as pipelines and roads; projects affecting indigenous lands that do not enjoy the prior informed consent of the indigenous occupants; projects involving involuntary displacement; projects in protected areas; projects in countries with poor human rights records; projects that have a direct and demonstrably detrimental effect on other nations or communities, where extensive prior consultation and disclosure has not been carried out with those groups; and projects that undermine international conventions to which the exporting country is a signatory, not just the host country.
- **Establishes a clear set of good governance conditions which must be met by companies prior to their making a formal application to ECGD for support.** At minimum, companies should be obliged to demonstrate that they have enforceable policies in place to protect human rights; to combat bribery and corruption; and to protect labour standards. Companies should also be obliged to be in compliance with the OECD's Guidelines on Multinational Enterprises.
- **Makes the publication of basic project information – name, a short description of the project, its potential environmental, social and human rights impacts and its impact category – a precondition of appraisal for all projects, including cases involving insurance only.** Given that the ECGD is a public institution, we see no reason why the name of the applicant and the amount of support requested should not also be disclosed.
- **Makes the acceptance of applications conditional on applicants agreeing to the publication of EIAs, SIAs, RAPs and Indigenous Action Plans, where such documents are required.**

#### 5.2.4 Mandatory, Ex-ante Standards

We recommend that the ECGD adopt:

- **clear, ex-ante human rights, development and environmental standards that apply to all its projects.** Such standards should reflect best international practice, as exemplified, for example, by the recommended guidelines of the World Commission on Dams, and should cover human rights (UN Universal Declaration and assorted Conventions plus the Core Labour Convention of the ILO), environment, cultural heritage, gender and development impacts. At a minimum, the ECGD should adopt standards based on those of the World Bank/IFC, EBRD and European Union.

#### 5.2.5 Format of Questionnaire

We recommend that:

- The ECGD requires all assertions as to compliance with the standards specified in Section 3 of the Impact Questionnaire to be backed by documentary proof.
- All categories of project are subject to spot checks to confirm the information provided throughout the Impact Questionnaire.

#### 5.2.6 Disclosure

With regard to point in the ECGD process at which project information, including EIAs, should be disclosed, we note that the ECGD has stated that it "expects all projects to comply with the World Bank's Safeguard Policies on, amongst other things, involuntary resettlement, cultural property and the rights of indigenous people."<sup>108</sup> It would therefore seem appropriate that the ECGD employs the same disclosure procedures as the World Bank. We therefore recommend that:

- ECGD should require EIAs, SIAs, RAPs and Indigenous Peoples Development Plans to be disclosed prior to appraisal in a form and language comprehensible to affected peoples.
- Where an applicant objects to the releases of required documents, processing of the applicant should cease immediately.

We further propose that:

- A 120-day public consultation period follow disclosure and that the ECGD be required to demonstrate how account has been taken of the issues raised.
- After approval of a project, a mandatory "flagging" period should be instituted, during which time concerned groups or members of the public can raise their concerns. Where the concerns raised are widespread or substantial, projects should be reexamined by an independent review body.

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<sup>108</sup> Alwood, D., "Beyond Business Principles - ECGD Response", Beyond Business Principles Seminar, 23rd May 2002, House of Commons.

### 5.2.7 Corruption

The Corner House recommends that companies seeking ECGD support should be required to:

- **Provide evidence that they have an anti-corruption programme in place that ensures compliance with the law.** That evidence should include a description of how the policy is being implemented within the company, as well as by others working on the company's behalf.
- **Provide a signed declaration that the company's accounts accurately reflect all transactions made by the company, and that the company has adequate systems of internal accounting controls.** This is to ensure compliance with Article 8 of the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions.
- **Disclose whether they will make publicly available information on net investments and revenues flowing from the project.**

We further recommend that, for the anti-corruption warranty process to be effective, the ECGD should be required to apply the following additional measures:

- **Suspend cover while companies are being investigated for corruption allegations.**
- **Debar companies** found guilty of corruption.
- **Exclude commissions** from the amount to be guaranteed or insured, or capping of amount of commission that will be guaranteed or insured.
- **Require companies to provide information on agents** in all cases and not just high profile ones.
- **Change the basis for withholding cover from a court conviction for corruption to where convincing evidence for corruption has been obtained**, an investigation from either a government agency or multilateral institution has ascertained evidence for corruption or an explicit confession.
- **Refer all allegations to the SFO and instigate internal investigations.**



### **5.2.8. Legally-binding Administrative Procedures**

The ECGD's review process lacks any such legally-binding framework and set of procedures. Both exporters and affected communities, however, have a right to protection against arbitrary decision-making, and the ECGD should therefore formalise its underwriting process through an amendment to the Export and Investment Guarantees Act 1991. The ECGD should stipulate:

- the issues on which it needs to be satisfied before approving support;
- the information that it requires from exporters in order to make its decision;
- the point in the review process that such information is required;
- the disclosure requirements that applicants are obliged to observe;
- the procedures that will be used to assess the information supplied;
- the compliance and enforcement mechanisms the ECGD requires of applicants; and
- the mechanisms that are available to appeal the ECGD's analysis of impacts.

## **6. IMPLICATIONS OF ECGD BECOMING A TRADING FUND**

**6.1** The Corner House is researching the implications of ECGD becoming a trading fund and will forward the Committee its findings as soon as they are available.

Sue Hawley and Nicholas Hildyard  
The Corner House  
Station Road  
Sturminster Newton  
Dorset DT10 1YJ  
Tel: 01258 473795

Email: [cornerhouse@gn.apc.org](mailto:cornerhouse@gn.apc.org)

Web: [www.thecornerhouse.org.uk](http://www.thecornerhouse.org.uk)

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## APPENDIX 1

### Executive Summary

#### *Turning a Blind Eye:*

#### *The UK's Export Credit Guarantee Department and corruption*

By

Dr. Susan Hawley, The Corner House

(Forthcoming 2003)

Corruption undermines democratic accountability, encourages poor governance and increases poverty. In poorer countries, corruption has a particularly devastating and immediate impact: it diverts public expenditure away from areas such as health and education to more lucrative ones such as construction and defence.

The international community is increasingly demanding that poor countries eradicate corruption within their countries if they want to receive aid. Yet, despite a major international convention on combating bribery signed by 34 largely industrial countries in 1997, large and mainly Western companies continue to bribe their way into government contracts around the world. Western governments are not doing enough to tackle this kind of corruption effectively

Official Export Credit Agencies (ECAs) play an important role in exacerbating corruption. ECAs use taxpayers' money to support companies doing business abroad and are now the largest source of public finance for private sector projects around the world. Yet, as this study reveals, such taxpayers' money is often underwriting corruption by supporting projects that involve bribery and corruption. And it is the people of Southern countries – the people who can least afford it – who are ultimately picking up the tab in the form of increased debts and overpriced, poorly planned projects.

Focusing on Britain's Export Credits Guarantee Department (ECGD), this study is *the first ever in-depth investigation of an ECA's record on corruption*. Its assessment of nine specific ECGD-backed projects for which allegations of corruption have been made indicates a series of institutional practices within the Department that have permitted corrupt practice to go unpunished. These include:

- **the ECGD's persistent failure to take account of corruption allegations when deciding whether to back projects;**
- **its reluctance to investigate such allegations and woefully inadequate investigatory procedures;**
- **its unwillingness to pass on allegations to the appropriate external investigatory authorities;**
- **its complete disregard for international concerns about corruption in countries in which they support projects;**
- **its inadequate vetting of UK companies with poor track records of corporate governance;**
- **its own lack of openness and accountability regarding projects that it backs.**

This study *examines recent reforms within the ECGD relating to corruption and finds that its new procedures, while an important step forward, fall short of international best practice, and of what is required to combat corruption more effectively*. The study looks at one project backed by the ECGD since it brought in its new procedures, which reveals ongoing weaknesses in the ECGD's approach to corruption. It finds that:

- **the ECGD needs to be doing more to foster compliance with the UK legislation that implements the OECD Convention on Combating Bribery and makes bribery abroad illegal, in order to live up to its commitment to full implementation of the Convention;**
- **the ECGD has yet to meet all the requirements for Export Credit Agencies under the OECD Action Statement on Bribery and Officially Supported Export Credits;**
- **the ECGD has yet to implement in full the recommendations of the UK Parliament's March 2001 International Development Committee report on corruption, in particular, with regard to introducing a requirement that all projects supported are won through competitive**

- tender, and ensuring that suspicion of corruption is given due weight when considering applications;
- despite receiving seven allegations of corruption in as many years, the ECGD has only ever referred one allegation to the Serious Fraud Office, although it states that it does so as a matter of routine procedure;
  - the contract the ECGD signs with companies requires the ECGD to give five days notice before entering the premises of the company for inspection and audit and to hold in confidence any information that it obtains, thus rendering its investigatory procedures practically useless;
  - its new warranty procedure, whereby companies state that they have not engaged in bribery, is virtually unenforceable because of the ECGD's lack of investigatory powers;
  - the ECGD continues to give backing to projects in countries that have severe corruption problems, and in several instances has given backing even though the buyer institution in the host country has been recognised as among the most corrupt government department or state company in that country;
  - the ECGD's secrecy concerning its expanding Overseas Investment Insurance division means that Southern governments become liable for debts they know nothing about; and
  - the ECGD still has some way to go in being open and transparent enough to be truly publicly accountable.

*Action is required if the UK is to live up to its international commitments to combat bribery and corruption. The Corner House strongly recommends that:*

- The ECGD stipulates that in order to be eligible for cover companies must be able to show that they have a properly enforced and comprehensive code of conduct bringing them into compliance with the UK legislation that implements the OECD Convention on Combating Bribery.
- The ECGD rewords its warranty, to include wording that makes companies aware of the legal consequences of bribery in international business transactions.
- The ECGD seriously rethinks its investigatory procedures, preferably through an independent review. In particular, it needs to rewrite the contract it signs with companies to give it greater powers of investigation and to make a formal commitment to refer all cases of alleged corruption to the Serious Fraud Office or appropriate police force.
- The ECGD acts immediately to bring itself into line with international best practice by debarring from further ECGD cover or insurance any company found guilty of fraud or corruption for a period of at least three years.
- The ECGD introduces a requirement that the contracts it supports have been won through transparent, fair and competitive tender processes, and publish post-issue monitoring reports on projects with significant cost over-runs.
- The ECGD introduces a requirement that buyer institutions in countries where it supports projects meet certain benchmarks on institutional integrity, including their ability to account for resources, their commitment to transparency, public disclosure and public participation, and their commitment to transparent public procurement processes.
- The ECGD extends its due diligence to ensure that advice from donor agencies and civil society is sought regarding the appropriateness of projects before it gives cover.
- The ECGD introduces a system of staff incentives that rewards underwriters for providing cover to projects that meet enhanced due diligence standards for combating corruption, and penalise those who consistently fail to meet these standards.

- The ECGD enhances its own transparency and accountability by making it a condition of cover (rather than an option which companies can reject) that the ECGD will publish full details about projects it supports; by including in its annual report a list of all projects covered under its Overseas Investment Insurance scheme; and by including in its annual report a detailed breakdown of the corruption allegations it has received, investigated and passed to the Serious Fraud Office.

### **Summary of Case Studies in the Report**

The study outlines ten ECGD-backed case studies in which corruption has been alleged - nine from between 1986 and 2000 before the ECGD introduced its new anti-corruption procedures and one since 2000 when these procedures took effect. These case studies reveal high levels of negligence by the ECGD in relation to corruption.

- In Kenya in 1986, the ECGD ignored international outcry and allegations of corruption from well-placed officials to back a British company's involvement in building the Turkwell dam. The dam has since proved to be a white elephant that cost three times what it should have done and produces half as much electricity as was projected.
- Again in Kenya in 1990, despite international outcry over corruption in the country and an impending aid embargo, the ECGD backed the same UK company in another hydro-electric scheme at Ewaso Ngiro. The ECGD ignored concerns raised by the World Bank that the contract backed by the ECGD cost five times more than it should have done, and that potential financial mismanagement was involved. The dam has never been built.
- In Bangladesh in 1992, the ECGD supported UK investment in a fertiliser plant, the contracts for which were signed in the last days of the notoriously corrupt dictatorship of General Ershad. The ECGD ignored both the risk of corruption and the allegations of existing corruption in backing this project, which has drained Bangladesh of nearly \$350 million. Equipment for the plant was so substandard that it could not function properly for five years and the plant still relies heavily on subsidies from the Bangladeshi government.
- In Lesotho between 1993 and 1997, the ECGD backed the involvement of three British companies on the Lesotho Highlands Water Project. The lead companies of the consortia to which these companies belong face prosecution for bribery in Lesotho. The ECGD continued to give guarantees on this project after the first corruption allegations were raised. It has failed to institute a proper investigation against the companies.
- In Ghana in 1994, the ECGD backed the construction of two hotels by a UK company with close links to the former president, Jerry Rawlings, and with a large outstanding tax bill to the UK's Inland Revenue. The hotels were surrounded by allegations of financial mismanagement and conflicts of interest. This is the only project for which the ECGD has actually carried out extensive inquiries into corruption and passed information onto the UK's Serious Fraud Office. Despite these allegations, the ECGD has paid out claims to the company concerned.
- In India in 1995, the ECGD backed the involvement of Rolls Royce in a power generation plant run by an Indian food company that had no previous experience of the power sector. Documents placed before Indian courts reveal that Rolls Royce subsidiaries made commission payments of £14.5 million to the managing director of the company running the plant in order to obtain contracts to build and operate the plant. Rolls Royce is currently facing a court case in the UK by minority shareholders of the company for bribery.
- In Qatar in 1996, the ECGD backed the sale of defence equipment that has subsequently been investigated by authorities of the UK's offshore island of Jersey because of allegedly "corrupt" payments. The Jersey authorities found that two UK companies backed by the ECGD had made

payments into a bank account owned by the Foreign Minister of Qatar. The ECGD has admitted that it responded to enquiries by the Jersey Authorities but has denied receiving any allegations of corruption.

- In India in 2000, the ECGD reinsured the involvement of a UK company in the Dabhol Power Plant – part owned at the time by the now bankrupt US energy giant Enron - despite the fact that several government-commissioned reports pointed to serious financial mismanagement and governance failure and two court cases initiated alleging bribery and corruption in the project had been initiated (although not followed through). The ECGD has also insured the involvement of several British banks in the project. The plant has been a disaster, has shut down since Enron collapsed, and may soon be consigned to “junk” status.
- In South Africa in 2000, the ECGD backed the sale of defence equipment in a deal that has been the subject of numerous corruption allegations and several government investigations. The ECGD has so far failed to investigate the allegations.

Since the ECGD introduced its new measures in 2000 to prevent corruption it has backed one project that suggest these measures are not effective:

- In Russia and Turkey in 2000 and again in 2001, the ECGD backed the involvement of a UK-based subsidiary of a foreign company that has only one British director, and against which several legal cases for anti-competitive practices are pending, in the Blue Stream pipeline. The pipeline has been beset by corruption allegations in Turkey that the Turkish authorities are currently investigating, and has led to the resignation of an Energy Minister. The main buyer institution in the project is a company part-owned by Gazprom, Russia’s state oil and gas company, which is also under investigation by the Russian authorities for asset-stripping and misappropriation of state funds.

The Corner House has also learned of another instance where bribery by a UK company has been alleged and is currently under investigation by a national government authority in the country concerned.

## APPENDIX 2

### **Jakarta Declaration For Reform of Official Export Credit and Investment Insurance Agencies**

June 13, 2000

Over 50 representatives of Indonesian and international non-governmental organizations (NGOs), and social movements convened in Jakarta and South Sumatra 1-7 May, 2000 for a strategy meeting on official export credit and investment insurance agencies (ECAs). They agreed on the following Declaration, endorsed by 347 NGOs from 45 countries.

#### **1 Introduction**

Non-governmental organizations around the world call the attention of governments and international institutions to the mounting adverse environmental, social, human rights and economic consequences of ECA activities. We have directly witnessed the unconscionable human suffering and environmental devastation that ECAs have produced in Indonesia, which is only one of many country examples. ECAs have supported many projects—e.g. in the mining, pulp and paper, oil and power sectors—which have had devastating social and environmental impacts. ECAs have supported the export of arms used for human rights abuses by the Suharto government. In 1996, ECA exposure in Indonesia was \$28 billion, an amount equivalent to 24% of Indonesia's external debt. The Indonesian ECA debt places an unacceptable burden on the Indonesian people, crippling their future development. As a 22 September 1999 "Financial Times" article pointed out, careless industrialized country export credit agencies share a major responsibility for "violence in East Timor and economic disaster in Indonesia."

Official Export Credit and Investment Insurance Agencies have become the largest source of public international finance, supporting in 1998 over eight percent of world exports. In 1998 ECAs supported \$391 billion in private sector business and investment, of which \$60 billion was for middle- and long-term guarantees and loans, mainly supporting large-scale project finance in developing countries. This exceeds all bilateral and multilateral development assistance combined, which has averaged some \$50 billion over the past decade. ECAs account for 24 percent of all developing country debt, and 56 percent of the debt owed to official governmental agencies.

In April, 1998 163 NGOs from 46 countries sent to the finance and foreign ministries of the major industrialized OECD countries a "Call of National and International Non-Governmental Agencies for the Reform of Export Credit and Investment Insurance Agencies." The NGOs called for transparency in ECA decision making, environmental assessment and screening of ECA financial commitments, including participation of affected populations, social sustainability (equity and human rights concerns) in appraisal of ECA commitments, and for an international agreement in the OECD and/or G8 on common environmental and social standards for ECAs.

Over the past two years the major industrialized countries have only made the minimal commitment to work towards common environmental approaches and guidelines in the OECD. The lack of transparency and meaningful public consultation in the OECD Working Party on Export Credits and Credit Guarantees, particularly the lack of any consultation with representatives of affected groups and organizations from non-OECD recipient countries, has rendered this process a travesty. ECAs have consistently learned no lessons from the past and continue to approve financing for environmentally and socially destructive operations.

The social and environmental negligence, support for human rights violations, and lack of transparency of ECAs must come to a halt. ECA financing for major arms transactions, for obsolete technologies rejected or illegal in their home countries, and for economically unproductive investments is a scandal of global proportions.

### **Call for Reform**

Based on the experiences of Indonesia and many other countries, NGOs from around the world reiterate the April, 1998 international Call for Reform of Export Credit and Investment Insurance Agencies. We call upon OECD governments, ministers and national legislatures to undertake with due dispatch the following reform measures for their ECAs:

1. Transparency, public access to information and consultation with civil society and affected people in both OECD and recipient countries at three levels: in the assessment of ongoing and future investments and projects supported by individual ECAs; in the preparation within national ECAs of new procedures and standards; and in the negotiation within the OECD and other fora of common approaches and guidelines.
2. Binding common environmental and social guidelines and standards no lower and less rigorous than existing international procedures and standards for public international finance such as those of the World Bank Group and OECD Development Assistance Committee. These guidelines and standards need to be coherent with other ongoing international social and environmental commitments and treaties, for example, the conventions of the International Labor Organization and the United Nations Convention on Biological Diversity. In addition ECAs must conduct full, transparent accounting for climate change impacts and move to increase investments in sustainable renewable energy. So far, some governments have established, or are establishing, environmental and social policies which substantially deviate from, and are below these internationally recognized standards and guidelines.
3. The adoption of explicit human rights criteria guiding the operations of ECAs. This should be done in consultation with affected people and civil society, and based on existing regional and international human rights conventions. In Indonesia and elsewhere ECAs have not only supported arms exports directly linked to egregious human rights abuses, their support for mining, paper and pulp mills and other major infrastructure investments often has been accompanied by destruction of indigenous and local peoples' rights to land and livelihood resources, armed suppression of dissent, and suppression of press freedom to criticize such abuses.
4. The adoption of binding criteria and guidelines to end ECAs' abetting of corruption. According to Transparency International, the continued lack of action by ECAs to address this issue is bringing some ECA practices "close to complicity with a criminal offense." We endorse the recommendations of Transparency International submitted to the OECD and European Union in September, 1999, on how ECAs should avoid continued complicity in corruption. These include, *inter alia*, recommendations that export credit applicants must state in writing that no illegal payments related to a contract were made, and that any contravention of the ban on illegal payment should entail cancellation of the state's obligation to pay. Companies found guilty of corruption should be banned from further support for five years, and export credit agencies should not underwrite commissions as part of the contracts they support.
5. ECAs must cease financing non-productive investments. The massive ECA support for military purchases and white elephant projects, such as nuclear power plants, that would be rejected by OECD bilateral aid agencies and multilateral development agencies such as the World Bank must end.
6. The cancellation of ECA debt for the poorest countries, much of which has been incurred for economically unproductive purposes. We support the call of the Indonesian anti-debt coalition for the cancellation of Indonesian ECA obligations, now placing an insupportable burden on the Indonesian people.



## **Conclusion**

The OECD Development Assistance Committee declared in 1996 that " we should aim for nothing less than to assure that the entire range of relevant industrialized country policies are consistent with and do not undermine development objectives." The OECD ECAs, and the OECD Export Credit Working Party, completely disrespect this call. These ECAs have so far refused to accept any responsibility for their past mistakes, and to draw any meaningful lessons from them. The current practices of the ECAs embody a form of corrupt, untransparent, environmentally and socially destructive globalization as serious and reprehensible as the concerns raised by civil society and activists around the world about the World Trade Organization, the proposed Multilateral Agreement on Investment, and the International Monetary Fund and World Bank.

We call upon concerned citizens and organizations around the world to turn their attention to ECAs and their negotiating forum, the OECD, and to press their governments to undertake reform without further delay.

*List of Signatories available on request*

## APPENDIX 3

### BLUE STREAM AND CORRUPTION ALLEGATIONS

From: Dr. Susan Hawley, *Turning a Blind Eye: The UK's Export Credit Guarantee Department and corruption*  
The Corner House, (Forthcoming 2003)

#### *Blue Stream Pipeline, Turkey and Russia, 2000*

“Blue Stream is likely to occupy a sore spot in Turkey’s energy sector for years to come”  
*Dr Ferruh Demirmen, international petroleum lecturer*<sup>109</sup>

In October 2000, the ECGD gave backing under its "Good Projects in Difficult Markets" scheme to the Blue Stream Gas Pipeline for the reinsurance of goods and services worth £81.5 million provided by two UK-based services and contracting companies, Saipem UK and Sonsub Limited. In 2001/2002, it gave a further guarantee worth £120.9 million to Saipem UK for the Blue Stream Project. Saipem UK and Sonsub Ltd are both subsidiaries of the Italian oil and gas company, ENI (Ente Nazionale Indrocarburi), which is still part owned by the Italian government. Their immediate parent company is Saipem International BV which is incorporated in the Netherlands.

The Blue Stream Pipeline has been built to supply gas from Russia to Turkey. It runs 750 miles (501 kilometres) from Izobilnoye, near Krasnodar in southern Russia to Ankara in Turkey. One section runs 2,150 metres under the sea, deeper than any pipeline has ever been laid before. The Blue Stream Pipeline Company, which has overseen the construction of the offshore section of pipeline and will operate it, is a joint venture between the Italian oil and gas company, ENI, and Gazprom, the Russian state-controlled oil and gas company.

A natural gas sales purchase agreement that initiated the project was signed between the Turkish and Russian governments in December 1997. ENI and Gazprom formed the Blue Stream Pipeline Company in 1999 in order to implement the inter-governmental agreement. The \$3.2 billion pipeline itself was completed in October 2002, three years behind schedule, and gas started to flow four months later in February 2003. Under the 25-year contract, the pipeline will supply 4 billion cubic metres of gas to Turkey in 2003 and up to 16 billion cubic metres annually by 2008.<sup>110</sup>

From the moment the contract was signed, the Blue Stream Pipeline has been at the centre of a string of as yet uninvestigated and unresolved allegations of corruption in Turkey. Some assert that these corruption allegations brought down Mesut Yilmaz’s ruling Motherland Party in Turkey’s national elections in late 2002.<sup>111</sup> Yilmaz himself has been accused of lobbying for the pipeline solely to benefit his friends in the construction industry and of awarding contracts to associates in the Motherland Party.<sup>112</sup>

Most of the allegations centre around the awarding of a contract with no competitive tender to the Oztas Haznedaroglu Stroytransgaz (OHS) consortium, made up of two Turkish companies, and one Russian one, which was contracted to build the section of the pipeline between the Turkish port of Samsun and Ankara. Stroytransgaz is 50% owned by senior Gazprom managers and their relatives. The two Turkish companies in the consortium had close ties to Yilmaz and the Turkish Motherland Party. BOTAS, the Turkish state pipeline company that issued the contract, meanwhile, made an advance payment of £31.8 million (\$52 million) - some 15% of the contract - to the consortium 6 months before work began. In 2001 investigators from Turkey’s Interior Ministry were probing allegations that this payment had been misused, and that the

<sup>109</sup> Dr Ferruh Demirmen, “Blue Stream: a project Turkey could do without”, *Turkish Daily News*, 23/4/01

<sup>110</sup> Antonio Tricarico, “The Blue Stream-Black Sea Gas Pipeline Project”, *Eyes on SACE Campaign*, Rome, September 2001

<sup>111</sup> *Eurasianet.org*, 30/10/02, “Scaled-Back Pipeline marks advance in Russian-Turkish relations”

<sup>112</sup> *Eurasianet.org*, 31/5/01, “Corruption Scandal threatens to sink Blue Stream Pipeline Project”

consortium had hired a sub-contractor to build the pipeline at a cheaper price, while charging the Turkish government the full price.<sup>113</sup>

The corruption allegations have already claimed some scalps. In April 2001, Turkey's Energy Minister, Cumhuri Ersumer; was forced to resign after he was named in a bribery charges were brought by Turkish state prosecutors against 15 officials from his ministry charged with corruption in relation to the Blue Stream pipeline.<sup>114</sup> In July 2001, the head of the Turkish state pipeline company, BOTAS, which oversaw and helped build the Turkish part of the pipeline, was sacked during an investigation into possible corruption in the project. In October 2002, the Turkey's highest appeal court, the Court of Cassation, gave permission to the Public Prosecutors Office to investigate whether two former chairmen of BOTAS, Nevzat Arseven and Gokhan Yardim,<sup>115</sup> gave an unmerited payment to the Turusgaz company, a joint venture between BOTAS and Gazprom which handled the Turkish side of the Blue Stream project, and whether they were involved in several other irregularities.<sup>116</sup>

Other controversies have arisen in Turkey because of questions as to how much Turkey really needs the gas from the Pipeline. In September 2002, because of Turkey's sluggish economy and because gas demand was much lower than forecast, Turkey had already negotiated with Russia that its delivery of gas in 2003 would be halved.<sup>117</sup> Many analysts suspect that Turkey will soon have an excess supply of natural gas; the US-based think-tank, the Centre for Strategic and International Studies, has stated that the Turkish market for gas is already effectively saturated because of over-supply.<sup>118</sup> In the words of one journalist, the pipeline could turn out to be "a vastly underutilized asset, a giant technological feat with little chance of paying for itself".<sup>119</sup> Its effect on Turkey's already fragile economy could be devastating. The country already faces \$1 billion worth of penalties under "take or pay" deals<sup>120</sup>, of which Blue Stream is one.<sup>121</sup> The fact that Blue Stream's costs have ballooned from \$3.2 billion to about \$5 billion will not help matters.<sup>122</sup>

In Russia, meanwhile, the project has also been contentious. The contract was signed before an ecological review was undertaken, despite the fact that such a review is required under Russian law. Critics have raised concerns that the pipeline might not be stable on the corrosive Black Sea seabed and that it has been laid in a seismically active area. The ecological review, finally carried out in 1998 by the Russian State Committee of Environmental Specialists, concluded that any leak in the pipeline could cause an enormous explosion and extensive damage to the marine ecosystem of the Black Sea. The pipeline also went through a protected nature-reserve, the Arkhipo-Osipovskoe forest. Local people held several protests to stop the felling of trees in the reserve which contravened federal legislation. The local administration, however, withdrew protected status for this particular patch of forest so that the pipeline could go ahead, an act which critics again claimed was illegal.<sup>123</sup> Russian federal requirements for consultation with local communities and publication of impact assessments appear to have been flouted as well.

Gazprom, the Russian state oil and gas company, has long been a by-word in Russia and internationally for corruption and asset stripping. In May 2001, President Vladimir Putin sacked the chair of Gazprom's board after a string of allegations that some £2.6 billion of Gazprom assets were being transferred each year to family and friends of top management officials.<sup>124</sup> In January 2002, the deputy chief and two top executives

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<sup>113</sup> *AP Worldstream*, "Turkish energy minister sacks top official amid corruption claims", 23/7/01; *NEFTE Compass*, "Italy lays way for Russian gas to power Turkey", 28/6/01, No 26, Vol 10, p3; *NEFTE Compass*, "Turks Probe Blue Stream Corruption Allegations", 10/5/01, No 19, Vol 10, p 3

<sup>114</sup> Energy Information Administration, US Department of Energy, "Russian: Oil and Natural Gas Export Pipelines", [www.eia.doe.gov/emeu/cabs/russpip.html](http://www.eia.doe.gov/emeu/cabs/russpip.html)

<sup>115</sup> *Turkish Daily News*, 10/10/02, "Former Botas Chairmen to face trial"

<sup>116</sup> *ibid.*

<sup>117</sup> *Eurasianet.org*, 30/10/02, "Scaled-Back Pipeline marks advance in Russian-Turkish relations"

<sup>118</sup> *Turkish Daily News*, 30/9/02, "Blue Stream gas to arrive in December"; *Turkish Daily News*, 20/8/02, "Think tank criticises Turkey's overblown gas deals"

<sup>119</sup> *Radio Free Europe, Radio Liberty*, "Russia: Blue Stream Pipeline A Technological Feat, but an economic misadventure", Michael Lelyveld, 23/10/02

<sup>120</sup> "Take or pay" deals require the purchaser to pay for goods or services provided whether or not they are used to full capacity.

<sup>121</sup> *Turkish Daily News*, 20/8/02, "Think tank criticises Turkey's overblown gas deals"

<sup>122</sup> *Eurasianet.org*, 31/5/01, "Corruption Scandal threatens to sink Blue Stream Pipeline Project"

<sup>123</sup> Antonio Tricarico, "The Blue Stream-Black Sea Gas Pipeline Project", *Eyes on SACE Campaign*, September 2001

<sup>124</sup> *BBC News Online*, "Europe's need for Gazprom's gas", 30/5/01

of a subsidiary were arrested by Russian prosecutors trying to track down funds allegedly siphoned out of Gazprom.<sup>125</sup> In April 2002, the Russian prosecution service was investigating Gazprom for misappropriating state funds.<sup>126</sup>

The ECGD's backing for this project appears to be riddled with serious failures of due diligence, all of which raise questions about its commitment to combating corruption, particularly in its "Good Projects in Difficult Markets" scheme. There is no suggestion that there was any impropriety in the UK-backed section of the project, or by either of the two UK-based companies backed by the ECGD. However, the ECGD's generous backing for Saipem UK is surprising. As of March 2002, four of Saipem UK's six directors and its company secretary were based in Italy and had Italian nationality. Only one of its directors, Rossano Tomaselli, had British nationality. Given that the ECGD's aim is to "benefit the UK economy by helping exporters of UK goods and services", its support for a subsidiary of a foreign company run mainly by foreign nationals is puzzling.<sup>127</sup>

What also makes Saipem UK a surprising choice for ECGD backing is that in its Directors' report for 2001, Saipem stated that it was facing a number of class action anti-trust cases<sup>128</sup> brought by several major oil producing companies. The report states that these cases "involve alleged anti-competitive practices in the bidding process for installation projects during the 1990s".<sup>129</sup> Such liabilities do not suggest a company with a good track-record, again raising questions about the ECGD's due diligence procedures.

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<sup>125</sup> Vladimir Isachenkov, "Prosecutors detain Gazprom Execs", *Johnson's Russia List*, 10/1/02

<sup>126</sup> *BBC Monitoring Service*, 29/4/02, "Russian prosecutors say R42 bn lost to budget through abuse of state assets"

<sup>127</sup> Sonsub, likewise has only one British Director. The rest are Italian.

<sup>128</sup> Anti-trust cases are brought against companies trying to form or abuse a monopoly, or engaging in anti-competitive behaviour. Class actions are where one or more parties file a complaint on behalf of themselves and all others who are in the same position as them.

<sup>129</sup> Saipem UK Ltd, Directors' report and financial statements, 31 December 2001. These lawsuits were brought by a number of Norwegian oil companies against Saipem in December 2000, who accused Saipem of violating the Norwegian Pricing Act of 1953 in connection with projects in Norway (US Securities and Exchange Commission, Form 10-K, Annual Report of McDermott International, Inc. [http://media.corporate-ir.net/media\\_files/NYS/mdr/reports/MDR\\_ar01c.pdf](http://media.corporate-ir.net/media_files/NYS/mdr/reports/MDR_ar01c.pdf))

## APPENDIX 4

### THE BAKU-TIBLISI-CEYHAN OIL PIPELINE

#### EXECUTIVE SUMMARY OF SECOND REPORT INTERNATIONAL FACT FINDING MISSION, MARCH 2003.

This report constitutes the findings of an international Fact Finding Mission (FFM) that visited Turkey from 16<sup>th</sup>-24<sup>th</sup> March 2003 to assess the planning and implementation of the proposed Baku-Tbilisi-Ceyhan (BTC) oil pipeline, which BP and other companies (as part of the BTC Consortium) intend to build in order to bring oil from Caspian Sea oilfields to western markets. Funding of the project will be sought from a number of public bodies, notably the International Finance Corporation (IFC) of the World Bank Group, the European Bank for Reconstruction and Development (EBRD) and a number of western Export Credit Agencies.

The FFM is the second international fact-finding mission to have visited the Turkish section of the pipeline. The previous Mission to Turkey in July 2002 found that the project was in violation of a range of international standards relating to consultation and resettlement. It also raised concerns over potential conflicts between the legal agreements for the project and international human rights and environmental law.

#### FINDINGS OF THE MARCH 2003 FFM

##### Systemic and Systematic Abuses

Whilst the current FFM found that the project developers – the BTC Consortium or BTC Co. - have taken steps which partially address a number of the concerns identified by the July 2002 Mission, *continuing violations of international standards on consultation, compensation and resettlement still characterise the project*. The FFM also identified a number of apparent conflicts between the Resettlement Action Plan (RAP) for the project and the Turkish Expropriation Law. Most worrying of all, the FFM found clear-cut evidence of systemic flaws in the project, arising from the political context in which the pipeline has been planned and would operate, that cannot be addressed by piecemeal policy changes.

Systemically, the FFM found:

- A pattern of serious and ongoing human rights abuses in regions through which the pipeline passes, notably in the north-east, where there has been a marked recent rise of detentions, arbitrary arrests, surveillance and harassment by state and military officials;
- A pervasive atmosphere of repression and lack of freedom of speech in the region which precludes dissent about the BTC project;
- The strong likelihood that the human rights situation in the region would be worsened by the introduction of the pipeline, particularly due to militarisation via the use of the Gendarmerie (Turkey's military police) as the main security force.

Such abuses were particularly evident in the north-eastern section of the proposed pipeline route, in Kars and Ardahan provinces, a region whose population is approximately 30% Kurdish. *Here the Mission found clear-cut evidence of political repression so systemic as to invalidate the consultation exercises that the project developers have undertaken*. Indeed, the FFM was itself detained by the Gendarmerie on two occasions and, due to police harassment and intimidation, was forced to abandon a number of planned visits to villages affected by the pipeline for fear of exposing local villagers to potential human rights abuses by the state security agencies.

These problems of social context were compounded by an array of specific deficiencies in the BTC project, including:

- Fundamental flaws in both the design and the implementation of crucial project documents like the Environmental Impact Assessment (EIA) and the Resettlement Action Plan (RAP), including widespread inadequacies in consultation of appropriate NGOs and social groups;
- Repeated suggestions that BTC Co. is not carrying out the process of compensation in the manner claimed. These included allegations of systematically paying well below market rates for land; imposing rather than negotiating prices; failing to compensate certain groups of landowners and users; not providing affected people with proper information about their rights; and failing to inform them of the many potential negative impacts of the project. These failures are generating growing anger among affected people. **They are also of particular concern because BTC has recently written to the Government of Turkey insisting that BOTAS complete the land acquisition process as soon as possible - or risk losing the contract;**<sup>130</sup>
- The failure of the project to take sufficient account of the differential impacts of the pipeline on vulnerable groups, including ethnic minorities, women and the poor, or to mitigate those problems appropriately.

The FFM notes that this catalogue of deficiencies puts the BTC project in potential conflict with the Turkish Expropriation Law, and hence also with the Host Government Agreement reached between BTC Co. and the Turkish Government. It also places the project in violation of a number of World Bank group's mandatory standards, including OD 4.30 (Involuntary Resettlement), and guidelines, including the IFC *Good Practice Manual on Consultation and Disclosure* and IFC *Handbook on Preparing a Resettlement Action Plan*. The FFM also finds compelling reasons why OD 4.20 (Indigenous Peoples) should be applied in order to prevent disproportionately adverse impacts on ethnic minorities in the region.

In the FFM's view, the atmosphere of repression in the north-eastern region of Turkey – as manifested by arbitrary arrests and detentions, the inhibition of dissent through police intimidation, and the constant surveillance of political groups and ordinary people alike by state security personnel – are such that implementation of the project to international standards is currently unattainable. Specifically, such repression renders impossible:

- *Credible consultation with affected communities*, in particular minorities and vulnerable groups, since the pre-condition for credible consultation – freedom of expression and speech – does not exist;
- *Free and open compensation negotiations* by affected landowners and users as to the payment they receive for the loss of their land;
- *Independent monitoring of the project*.

***Given the extent of repression in the north-east, coupled with heightened tensions over the Kurdish issue in the east of Turkey as whole,<sup>131</sup> the FFM is also gravely concerned by the human rights implications of the arrangements for policing the pipeline, should it be built.*** Under the legal agreements reached between the Republic of Turkey and the project developers, the security of the pipeline is the sole responsibility of the Turkish state – a responsibility that has been designated to the Gendarmerie, whose record on human rights has been repeatedly criticised by the Council of Europe.<sup>132</sup> ***In the FFM's view, such arrangements***

<sup>130</sup> See Deniz Zeyrek, "Ultimatum to Prime Minister", *Radikal*, 13 April 2003. English translation available on request.

<sup>131</sup> A number of events lie behind the increased tension in the region. In particular, the decision by the Turkish authorities in 2002 to restrict the access of Abdullah Öcalan, the imprisoned leader of the Kurdistan Workers Party (PKK), to his lawyers recently prompted the Presidential Council of KADEK, the PKK's successor, to issue a statement threatening to end its ceasefire. In addition, tensions between the Turkish authorities and the Kurdish minority have markedly increased due to Turkey's intervention in Northern Iraq and likely reinstatement of the State of Emergency to the Kurdish regions of southeast Turkey.

<sup>132</sup> See for example Council of Europe Committee of Ministers, Interim Resolution ResDH(2002)98, adopted 10 July 2002

*carry high risk of precipitating human rights abuses, particularly in the north-eastern section of the pipeline route.*

*In such circumstances, the FFM considers that it would be irresponsible for BTC Co. to proceed with the project unless and until there is independent confirmation that concerned parties, in particular those directly affected by the pipeline, are in a position and a socio-cultural environment to express their views on the project without fear of reprisal or intimidation and to negotiate freely over compensation for loss of land and other damages. The FFM also deems it essential that security concerns arising from the poor human rights record of Turkey's security forces be addressed prior to work commencing on the project.*

## **A MORATORIUM IS URGENT**

*Given the gravity of the situation, the FFM has called for the project developers and the funding agencies that have been approached for financial support to impose a Moratorium on the project.*

Whilst many of the deficiencies identified by the FFM (for example, with regard to levels of compensation) may be remedied by making more funds available and by taking more time to resolve the outstanding violations of international standards and potential conflicts with domestic law, **the systemic problems arising from repression in the region are not amenable to remedial action by either the project developer or the international financial institutions from which funding for the project is being sought. There are a number of reasons for this:**

- *The World Bank has no safeguard policies relating to human rights and therefore no human rights standards that the project must meet if it is to receive funding.* Indeed, the Bank has specifically argued that its Articles of Agreement, which forbid the Bank from intervening in the political affairs of client states, preclude the Bank from adopting any such guidelines since human rights are inherently “political” issues.<sup>133</sup> Nonetheless, as Ibrahim Shihata, the former General Counsel of the Bank notes: “Members’ obligations under the UN Charter prevail over their other treaty obligations, including their obligations under the Bank’s Articles of Agreement, by force of an explicit provision in the UN Charter (Article 103). The Bank itself is bound, by virtue of its Relationship Agreement with the UN, to take note of the above-mentioned Charter obligations assumed by its members....”<sup>134</sup> From this legal experts have concluded that, “the Bank is obliged, as is any other subject of the law, to ensure that it neither undermines the ability of other subjects, including its members, to faithfully fulfil their international obligations nor facilitates or assists violation of those obligations.”<sup>135</sup> **In effect, the Bank’s inability to act to address the human rights concerns identified in this report, coupled with its obligation to ensure that human rights abuses do not flow from the project should it be involved, points to its withdrawal until measures have been taken to remedy the concerns raised as the only viable option open to it.**
- The BTC Consortium is a private company and, whilst the Host Government Agreement (HGA) it has signed with Turkey gives it considerable legal powers over those living in the pipeline corridor, it cannot introduce the necessary policy reforms that would ensure that

<sup>133</sup> For a discussion of the Bank’s position vis a vis human rights, see: Roth, K., “Head of Human Rights Watch urges Bank to adopt rights-based approach to development”, World bank, INTRANet, 18 February 2003.

<sup>134</sup> Cited in MacKay, F., “Universal Rights, or A Universe Unto Itself? Indigenous’ Peoples’ Human Rights and World Bank Draft OD 4.10 on Indigenous Peoples”, *American University International Law Review*, Vol. 17., No.3, p.554, AM.U.Int’l rev.[17:527 2002]554. It is relevant in this context to note that the Bank’s Operational Policy 4.01 on Environmental Assessment clearly states that, “the Bank takes into account ... the obligations of the country, pertaining to project activities, under relevant international environmental treaties and agreements. The Bank does not finance project activities that would contravene such country obligations, as identified during the EA” World Bank Operational Manual, Operational Policy 4.01, Environmental Assessment, para. 3 (1999)

<sup>135</sup> Ibid, p.554. See also: The World Bank, the IMF and Human Rights, at 63; and, D. Bradlow & C. Grossman, Limited Mandates and Intertwined Problems: A New Challenge for the World Bank and the IMF. 17 *Human Rights Q.* 411, 428.

Turkish citizens enjoy the freedom of expression necessary to participate in a proper consultation on the project or to safeguard their property rights.<sup>136</sup>

- It is Turkey, not BTC Co, that is responsible for security, as specified in the HGA. The project developers therefore have no powers to control the security provisions and operations for the pipeline without a renegotiation of the HGA, to which all parties would have to agree. Nor does the FFM believe that it is in the interests of project affected people for the project developers to have the capacity to do so.

In such circumstances, the FFM believes that a Moratorium on appraising, financing or building the BTC project constitutes the only legitimate means available to the International Financial Institutions and the project developers for ensuring that human rights violations do not flow from the project. As such, it represents the most responsible course of action.

Indeed, in the absence of significant progress being made to address the repression in the north-east of Turkey, the FFM believes that any decision by officials of European Union governments to support the BTC project financially through the World Bank, the EBRD or official Export Credit Agencies (ECAs) could be open to a legal challenge. Such a challenge might emerge from human rights violations flowing from the region, arising directly from a project for which either funding or insurance had been provided.

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<sup>136</sup> As the BTC Consortium notes in its own regional review for the project: "The issues covered in this review are complex and controversial, and in many respects outside the control of the projects. Many cannot be addressed directly by investors undertaking a commercial project. Many are predominantly, if not exclusively, the domain of sovereign governments." See: BTC/AIOC/Shah Deniz/BP, *Regional Review: Executive Summary*, February 2003, p.5.



## APPENDIX 6

### SAKHALIN PROJECT, RUSSIAN FEDERATION

#### NGO Statement of Common Demands by Environmental NGOs regarding the Sakhalin-1 and Sakhalin-2 Oil and Gas Projects

This document is a list of common demands from Sakhalin, Russian Far Eastern, Russian and international environmental non-governmental organizations regarding key environmental issues associated with Sakhalin oil and gas development on Sakhalin Island and on the island's coastal shelf, as well on the shelf and coastal areas of Khabarovsk Region that will be affected by development of the Sakhalin-1 and Sakhalin-2 projects.

**Environmental organizations believe** that the Sakhalin oil and gas projects, including:

- Sakhalin – 1 (operator: Exxon Neftegaz Ltd, a subsidiary of ExxonMobil Corporation, further referred to as Exxon);
- Sakhalin – 2 (operator: Sakhalin Energy Investment Company, Ltd, a subsidiary of the Royal Dutch/Shell Corporation, Mitsui, and Mitsubishi, further referred to as Sakhalin Energy-Shell)

**should not move forward until the companies involved adopt the following commitments as the minimum necessary actions** required to protect the environment and biological resources, and to ensure that oil development on Sakhalin Island, in Khabarovsk Region, and in the seas that surround and that are adjacent to these regions takes place in an environmentally and socially responsible manner.

Environmental organizations believe that until oil companies fully comply with these minimal criteria, Russian and Sakhalin authorities, international financial institutions, consumers, and other interested parties should not allow the Sakhalin projects to move forward.

#### 1. General Demands

- All companies must use best available technology. For example, companies should re-inject drilling wastes back into the geological formations.
- All companies must comply with highest global environmental standards, norms, and rules. For example, companies should comply with the "zero discharge" standard and oil spill prevention and response preparedness standards as used in Alaska and the North Sea.
- All companies must comply with Russian law, especially environmental protection law. For example, it is unacceptable to violate the laws in the way that Sakhalin Energy – Shell has done, by discharging drilling wastes into the sea even though the Russian Federation Water Code and other Russian laws directly forbid this action.

#### 2. Gray Whale Conservation

- Any anthropogenic activity that could potentially disturb gray whales, or deleteriously impact the ecosystems in which they feed or migrate, should fully protect gray whale habitat and should be mitigated to eliminate disturbance while feeding and protecting this critically endangered species. Oil companies must use the precautionary principle to prevent any potential impacts to the species.
- Any proposed drilling platform should be installed sufficiently distant from shore and gray whale feeding habitat to mitigate all potential acoustic and other impacts. Specifically, the new proposed

platform for the Piltun-Astokhskoye field for Sakhalin Energy - Shell's Sakhalin-2 Phase 2 must be moved at least 12 nautical miles from shore in order to ensure that the platform does not harm gray whale habitat. Exxon needs to ensure, with the help of preliminary scientific study that is freely available to the public, that its onshore drilling pads at Piltun will not have a negative acoustic impact on the gray whales.

- All underwater pipelines should be constructed and routed outside of the gray whale feeding habitat to ensure their safety. In particular, Sakhalin Energy - Shell should change the route of its proposed pipeline from Molikpak to shore further to the South - at least 12 nautical miles from gray whale feeding habitat - to fully avoid any disturbance to critical gray whale habitat.
- Sakhalin Energy - Shell must immediately stop all discharges of drilling muds and cuttings, as well as all other types of waste water, from Molikpak into the sea and must refuse to discharge any wastes from any future platform to prevent deleterious impacts to benthic communities and to prevent toxic impacts to the whales themselves.
- Any disruption of the seabed must be avoided year-round in the feeding area of gray whales or within 12 miles of gray whale habitat.
- Exxon should not construct pipelines in or otherwise disturb Piltun Lagoon. Alternatively, Exxon should construct its pipeline by land around the north end of Piltun Lagoon.
- Exxon should eliminate planned construction of a pier off of Piltun Lagoon into gray whale habitat and any marine offloading of equipment in gray whale habitat and within 12 miles of habitat. Alternatively, Exxon should transport equipment to site by road;
- All oil companies should avoid any seismic exploration within 30 km of gray whale feeding habitat and migration corridors during periods that whales are present in these areas;
- All companies should avoid any construction activities in gray whale feeding habitat and in a 30 km zone around that habitat as well as in migration lanes during those portions of the year when gray whales are found in these areas.
- All companies should reject any development of underwater quarries or dredging of the seabed (as was done to provide seabed for the Molikpak platform), and should limit impact to the seabed within the specific infrastructure areas.
- All companies should review the issue of cumulative impacts to gray whales and to their habitat from all oil production projects on the Sakhalin shelf over the entire period of development.
- All companies should guarantee financing for independent, peer-reviewed scientific research with complete transparency of information from all research projects.

### **3. Pipelines**

- Environmental organizations demand that offshore-to-onshore pipelines not cross either gray whale feeding habitat or Piltun Lagoon. These pipelines must be constructed in a manner that eliminates any noise impact in gray whale habitat.
- Although there are problems even with the Trans-Alaska Pipeline, environmental organizations demand that the safety level of Sakhalin pipelines be no lower than that used for construction of the Trans-Alaska pipeline.
- All pipelines for the Sakhalin-1 and Sakhalin-2 projects must be built with all necessary safety measures to protect from seismic activity and to guarantee accident free operation without ruptures

in the event of a 9.0 Richter scale earthquake. To ensure this, pipelines must be built above ground on special vertical support systems to guarantee adequate flexibility without ruptures during earth movements.

- Pipeline crossings across all spawning rivers and streams on Sakhalin Island and on the coast of Khabarovsk Region must be made with a bridge over the river, on specially designed suspension systems, to avoid damage to the streambed and water channels. Environmental organizations categorically oppose trench crossings of salmon streams and rivers.
- Environmental organizations demand that the construction of new pipeline infrastructure be limited to a minimum in order to maximally protect spawning rivers, fisheries resources and forests. Therefore, environmental organizations demand that oil companies involved in the Sakhalin-1 and Sakhalin-2 projects use a common infrastructure for transport of oil (processing, pipelines, and off-loading terminals). First and foremost, this should involve improving the current Rosneft – Sakhalinmorneftegaz pipeline to the mainland and using this pipeline to transport all oil from both shelf projects to a single off-loading terminal facility on the mainland.
- Exxon must reject its plans to construct a subsea gas pipeline from the Sakhalin-1 fields to Japan due to the large threat of extremely negative impacts to marine biological resources and fisheries, especially to salmon migration routes.

#### **4. Oil Spill Dangers**

- Environmental organizations believe that Sakhalin Energy - Shell and Exxon must adopt much more aggressive and effective measures in order to prevent oil spills and to be prepared for their clean up. The first priorities for such measures should be the primary recommendations from the report “Sakhalin’s Oil: Doing It Right,” (Yuzhno-Sakhalinsk, 1999) including the establishment of mandatory, safe tanker routes along all coastlines, mandatory inspections of each tanker by independent inspectors, introduction of tugboat escort of tankers in critical navigation areas, installation of a real-time, continuous tanker traffic monitoring system for the entire route in coastal waters and continuous communications between tankers and shore side dispatchers, a significant increase of the volume of oil spill response equipment stockpiled on Sakhalin Island and its placement at special bases along tanker routes and in those locations most vulnerable to oil spills (for example, at the entrances to the bays in northeastern Sakhalin) or that are considered dangerous from the point of view of potential accidents (for example, La Perouse Strait) (cf: “Sakhalin’s Oil: Doing It Right,” (Yuzhno-Sakhalinsk, 1999).
- Sakhalin Energy - Shell and Exxon must carry out response trainings in the open sea and in coastal waters in various weather conditions, and that provide for both product cleanup and also for wildlife and environmental response.
- Sakhalin Energy – Shell and Exxon must categorically reject the use of dispersants as an oil spill response technique in or near gray whale habitat and within a 30 km zone around this habitat, and in or near key fisheries areas. Dispersants should in no instance be used in waters less than 40 meters deep.
- Environmental organizations categorically oppose any winter transport of oil in ice conditions with the use of icebreakers, as currently proposed by Exxon from the port of De-Kastri, and demand that Exxon develop an alternative that does not involve transport of oil through ice-clogged seas. Any current oil transport operations in the vicinity of Molikpak must also occur only in ice-free conditions.

#### **5. Discharge of Drilling Wastes**

- Sakhalin Energy – Shell must provide for zero discharge, i.e. 100% reinjection of all drilling wastes (including oil-based, synthetic-based, and water-based drilling muds, drilling cuttings, produced waters, and sewage) back into the formations. "Zero discharge" standards must be applied at Molikpak and at any other platform. Environmental organizations fully support the decision of Exxon to introduce the "zero discharge" standard that calls for 100% reinjection of all drilling wastes at all future drilling platforms and drilling sites.
- Sakhalin Energy – Shell must fully reject its plans to discharge production and sewage wastes into Aniva Bay in southern Sakhalin. All the wastes from the proposed LNG plant, LNG offloading terminal, and oil offloading terminal in the area of the village Prigorodnoye on the coast of Aniva Bay should be 100% reinjected underground or separated and stored in as safe a manner for the environment as reinjection. Discharge of any wastes into Aniva Bay is categorically impermissible.
- Existing discharge at Molikpak must be immediately halted.

## **6. Fisheries**

- Sakhalin Energy – Shell and Exxon, prior to the start of operations, must fully estimate damage to commercial and non-commercial fisheries resources, to spawning grounds, to migratory fish populations (salmonids), to terrestrial flora and fauna that is caused during construction and operations. All damages must be compensated to stakeholders (government, fishermen, indigenous peoples, hunters, municipal administrations, etc.).
- Special routes and safety corridors must be set up for all tankers transporting oil along the eastern shore of Sakhalin Island and through the Tatar Strait, as well as in the Sea of Japan. All other types of vessels should be denied entry into these areas. Losses caused to fisheries as a result of annexation of fishing zones for tanker corridors should be paid by the oil companies to the fishing community.
- All technical plans and decisions whose implementation will have a negative impact on fisheries must be coordinated with all fishing companies and organizations, and personally with the heads of the ten largest fishing companies in the region whose interests will be affected by such plans.
- Since the Sakhalin-1 and Sakhalin-1 projects affect the interests of practically the entire population of the Russian Federation and create a direct environmental threat to Japan, public hearings should not be limited to Sakhalin Region. Hearings must be held in other cities of the Russian Far East, in Moscow, and also in Japan.

## **7. Access to Information and Public Participation**

- Sakhalin Energy – Shell and Exxon must provide complete access to all information on the status and protection of the environment, and in particular, all data on environmental monitoring. The public must be provided information, in print and electronic forms, promptly upon a first inquiry. Environmental organizations believe that the responsibility associated with the current extreme difficulties in receiving environmental information about the Sakhalin projects are first and foremost the responsibility of Sakhalin Energy - Shell and Exxon.
- Oil companies must coordinate their activities, projects, and activities with all interested parties, and in particular with all indigenous peoples upon whose traditional lands the projects are developing, which has not yet fully occurred. It is necessary also to fully research all potential impacts to all interested parties together with their representatives.

- All scientists carrying out research as part of the Sakhalin projects must be allowed to freely use and disseminate all information obtained. Oil companies must exclude from contracts all conditions requiring the confidentiality of scientific research and scientists should retain all rights to publish such research. The right of final review of all scientific research must rest only with the authors of this research, and not with international consulting firms hired by oil companies or with the oil companies themselves, as is now the general practice.
- Sakhalin Energy – Shell and Exxon must adopt and guarantee much more proactive measures to ensure effective and appropriate public participation than is currently provided. For example, Shell’s public participation measures both for public consultations on phase 2 of its project and for public discussions of its Western Gray Whale Protection Plan were extremely lacking and did not provide the public with the opportunity to make substantive recommendations for improving this work. Exxon’s public participation measures for public consultations on phase 1 of its project were also extremely lacking.

## **8. Socio-Economic Issues and Financial Responsibility**

- Environmental organizations are extremely concerned that research by the Russian Federation Audit Chamber (2000-2001) shows that the people of Sakhalin will not receive their fair share of project revenues. Sakhalin Energy – Shell and Exxon must agree to immediately restore all Sakhalin regional and local tax payments from the Sakhalin-1 and Sakhalin-2 project and from all project contracts and subcontracts.
- Environmental organizations believe that the oil companies, in order to solve a very serious energy crisis on Sakhalin, must sell extracted natural gas on the local market for heat and electricity at domestic Russian prices and not at world prices as is now planned by Sakhalin Energy – Shell.
- Production sharing agreements for both projects should be available to the public (except for information that by Russian law is secret). The project budgets for all development phases must also be transparent to avoid financial dealings of the "Enron" type and to avoid unjustified project cost overruns and infringement upon the interests of Sakhalin and Russian contractors.
- Sakhalin Energy – Shell and Exxon must fully pay for normative and excessive emissions and discharges to the environment, as required in the Russian Federation "Law on Protection of the Environment." Exxon currently refuses to comply, which is unacceptable.
- Sakhalin Energy – Shell and Exxon must incur full financial responsibility for any oil spill, without exception, that results from their operations, including tanker accidents, oil loading, and other causes. This responsibility must include an obligation to pay for all clean up costs of polluted areas, damage and compensation payments to oil spill victims (local residents, indigenous peoples, fishing companies, tourist companies, local governments, etc.) as well as all non-economic (environmental) damages.
- Sakhalin Energy – Shell must immediately cease flaring gas at Molikpak since it is not prescribed in the project and was not approved through the government environmental impact review ("ekspertiza") or by Russian officials and so therefore is illegal. Such irresponsible corporate behavior with valuable resources leads to thoughtless environmental pollution and losses on the Russian side, which could use this gas as fuel.

*List of Signatories available on request*