



FREQUENTLY ASKED QUESTIONS (FAQS): EXPORT CREDIT AGENCIES

WHAT ARE EXPORT CREDIT AGENCIES?

Export credit agencies (ECAs) are public entities that provide corporations with government-backed loans, guarantees, credits and insurance to support exports and foreign investments. ECAs are largely focused on facilitating commerce in lesser-developed countries and emerging economies, under conditions of political and financial risk. ECAs are an important source of finance and insurance for the private sector. Their influence grew significantly in the wake of the 2008 global financial crisis, when states expanded ECAs' mandates, budgets and borrowing power.

WHAT DOES IT MEAN THAT ECA PRODUCTS ARE GOVERNMENT-BACKED?

The governments that own and operate export credit agencies are responsible for their operations and any associated liabilities. In other words, the public is ultimately on the hook for any financial or other obligation that may arise as a consequence of export credit agencies' operations.

WHAT IS EXPORT DEVELOPMENT CANADA?

Export Development Canada (EDC) is a federal Crown corporation. Crown corporations are wholly owned by the Government of Canada. EDC was established in 1944 to support Canada's export trade and to develop Canadian capacity to respond to international business opportunities. EDC reports to Parliament through the Minister of International Trade. In 2013, EDC provided the private sector with close to \$87 billion in financing and insurance. The extractive sector was by far the largest beneficiary of EDC services, receiving close to \$25 billion in support.

HOW DOES EDC ASSESS POTENTIAL CLIENTS?

Export Development Canada uses international standards in its review of prospective clients. These include the [International Finance Corporation's Performance Standards](#) and the [Equator Principles](#). The Performance Standards, on which the Equator Principles are based, suffer from a number of shortcomings, including in the area of human rights.

Moreover, it is unclear whether EDC requires that its clients comply with these standards. EDC discloses virtually no information about its assessment of companies. It is not clear how EDC determines whether a business transaction qualifies for support, what conditions it imposes on successful clients, how it assesses whether clients remain in compliance with these conditions, or how it addresses cases of non-compliance.

It is clear that EDC's due diligence process is inadequate. EDC provides support to companies associated with human rights violations, environmental damage, corruption and tax evasion. See our resource materials for more detail.

IS EDC SUBJECT TO THE *ACCESS TO INFORMATION ACT*?

In 2007, Export Development Canada became subject to the *Access to Information Act*. However, application of the legislation to the Crown corporation is severely curtailed by a broad exemption in the *Export Development Act*. The effect of this exemption is to indiscriminately characterize as confidential all information received by EDC from its clients. The exemption also allows EDC to treat as confidential any internal documentation developed during project assessment, approval and monitoring, given that these documents necessarily contain information received from clients. The exemption effectively undermines the application of the *Access to Information Act* to EDC.

DO EXPORT CREDIT AGENCIES HAVE HUMAN RIGHTS OBLIGATIONS?

Under the international rules of 'state responsibility,' the acts and omissions of state institutions, such as export credit agencies, are attributable to the state. States must ensure that they do not violate their international legal obligations through the operations of their agencies, including in the area of human rights law. This means that the state duty to protect against human rights abuse by third parties (such as companies) extends to the operations of institutions such as export credit agencies. States therefore have international legal obligations to ensure that such institutions neither facilitate nor ignore human rights abuses by the corporations whose activities they support.

According to former UN Independent Expert Cephias Lumina, "[w]hen a Government, directly or through its export credit agency, fails to exercise due diligence to protect human rights from the potentially harmful behaviour of non-State actors, it is in breach of its obligations under international human rights law."

WHAT IS REQUIRED TO PROTECT HUMAN RIGHTS?

The UN Guiding Principles on Business and Human Rights identify the state-business nexus as an area where heightened human rights due diligence is expected. The principles call on states “to protect against human rights abuses by business enterprises that receive substantial support and services from State agencies such as export credit agencies.” They advise states to “encourage and, where appropriate, require human rights due diligence by government agencies and the business enterprises that receive their support.”

The UN Guiding Principles also emphasize the importance of transparency and the need for public reporting on how human rights risks are addressed. Finally, the guiding principles call on states to ensure the effectiveness of domestic judicial mechanisms, including by reducing barriers that could lead to a denial of access to remedy.

ARE HUMAN RIGHTS REQUIREMENTS BEING MET?

Since the endorsement of the Guiding Principles by the UN Human Rights Council in June 2011, states have taken steps at the international, regional and national levels to broach the issue of export credit and human rights. However, these efforts have failed to align export credit agencies’ operations with either international law or the Guiding Principles.

For more information, see the 2015 publication Export Credit Agencies and Human Rights: Failure to Protect by the Halifax Initiative, Both Ends, CounterCurrent, Forum Suape and Rios Vivos.

ARE HUMAN RIGHTS REQUIREMENTS BEING MET IN CANADA?

Canada lacks legislative provisions regarding human rights and export credit. There is no mention of human rights in the statute or regulations that govern EDC.

In 2007, Export Development Canada published a Statement on Human Rights. The statement falls short of the clear, comprehensive human rights policy that is needed to ensure that EDC operations neither facilitate nor ignore human rights abuse by its clients.

The statement explains that:

EDC’s Political Risk Assessment Department routinely conducts country- and project- level political risk assessments that include an analysis of factors that influence human rights conditions in host countries. An additional layer of due diligence will be undertaken for investment projects and countries assessed to have a higher potential for human rights issues.

The statement does not identify the factors that are considered in EDC’s political risk analysis. While “factors that influence human rights conditions in host countries” are reportedly considered, it is unclear how the conditions themselves are assessed. EDC does not identify the threshold it applies for undertaking “an additional layer of due diligence.” The methodology for this supplementary analysis remains unknown.

The statement affirms that “[i]nvestment projects may have potentially significant impacts on the human rights of individuals. EDC recognizes that financial institutions must endeavour to assess the potential for adverse human rights outcomes for individuals directly affected by such projects.” However, the statement is silent on the issue of whether and how EDC assesses this potential, what it expects of its clients in the area of human rights and how it ensures that clients meet those expectations, over the lifetime of a project.

The statement does not articulate a “policy that requires clients to perform adequate due diligence on their potential human rights impacts,” which would allow EDC to “flag up where serious human rights concerns would require greater oversight - and possibly indicate where State support should not proceed or continue,” as recommended by the former UN Special Representative on Business and Human Rights.

WHAT HAVE DECISION-MAKERS DONE TO ADDRESS THESE SHORTCOMINGS?

In 2005, a subcommittee of the Parliamentary Standing Committee on Foreign Affairs and International Trade (SCFAIT) held hearings on the activities of Canadian mining companies in developing countries. SCFAIT, which included parliamentarians from all political parties then represented in the legislature, subsequently released its fourteenth report to the Government of Canada. The report made a number of recommendations aimed at reducing the impacts of Canadian companies. Among other measures, the Standing Committee urged the government to:

[p]ut in place stronger incentives to encourage Canadian mining companies to conduct their activities outside of Canada in a socially and environmentally responsible manner and in conformity with international human rights standards. Measures in this area must include making Canadian government support – such as export and project financing and services offered by Canadian missions abroad – conditional on companies meeting clearly defined corporate social responsibility and human rights standards, particularly through the mechanism of human rights impact assessments.

The SCFAIT report led the Government of Canada to host a comprehensive consultation process on the Canadian extractive industry in developing countries. Among other issues, this groundbreaking roundtable process examined the role of the state in facilitating the overseas

investments of Canadian extractive companies. The consultations culminated with the release of a report that contains a series of policy recommendations for the Canadian government.

The report calls on Export Development Canada to strengthen its due diligence process regarding prospective clients, including in the area of human rights. It also recommends that EDC improve its disclosure policy through the public release of project assessments, information regarding required modifications and mitigation measures, and project monitoring and evaluation documents.

The Canadian government has not adopted the roundtable recommendations.

In 2009, a private member's bill regarding Export Development Canada was tabled in the House of Commons. The legislation sought to establish a set of binding standards for those extractive companies that receive support from EDC, the Department of Foreign Affairs and International Trade (through Canadian embassies and the Trade Commissioner) and the Canadian Pension Plan. Non-compliance would have resulted in the forfeiture of government support. The bill also sought to create a public complaints mechanism regarding extractive companies' overseas operations, open to both Canadians and non-Canadians.

The legislation was defeated in 2010 by a slim margin at third reading.

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