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Fédération Internationale des Ligues des Droits de l'Homme

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OPEN LETTER

FIDH URGES G8 COUNTRIES TO ENSURE THE INTEGRATION OF HUMAN RIGHTS INTO EXPORT CREDIT AGENCIES GUIDELINES

Introduction

One of the more striking features of globalization is the increasing schizophrenia of States: while they ratify legally binding international human rights instruments, they sign trade, financial or monetary agreements the clauses of which endanger the very rights the States committed themselves to protecting and respecting..

While promoting sustainable development through their development assistance agencies, they "race to the bottom" through their trade or economic policies. This growing schizophrenia is especially true of industrialized countries and nowhere is this contrast as acute as with export credit agencies (ECAs).

ECAs provide companies with billions of dollars annually of tax payers support as insurance against the main commercial and political risks of foreign investments.

Together with international financial institutions and transnational companies, they play a key role in determining the nature of the economic relations with, and trade policies applied to, developing countries – and hence, in promoting or not promoting sustainable development.

As the trend is now towards private sector financing and ownership of large infrastructure projects, the ECAs constitute increasingly powerful actors in the process of economic globalization.

Years of pressure by civil society have triggered a steady, if painstaking, improvement of the activities both of Multilateral Development Banks (MDBs), such as the World Bank Group, and of MultiNational Enterprises (MNEs).

A growing number of guidelines in the human rights and environmental fields are now being applied to these institutions and corporations, with varying results; but what has become clear is that trade and investment practices can no longer develop in insulation from other aspects of international relations and international law, specifically international human rights law.

Unfortunately, this increasing demand for transparency, accountability and the respect for universal human rights has been very slow to reach the ECAs, due to a strong resistance from these agencies as well as from key governments, such as France, Germany, or Spain.

By their nature, the activities of these institutions are less visible than those of MDBs and MNEs, allowing ECAs to operate in relative secrecy, even though their impact has increased tremendously in the last decade.

In recent years the ECAs of OECD countries have subsidized almost 10% of world trade. approaching a

the total debt was owed to ECAs. ECA support now exceeds by far the total annual investments made by the World Bank and other multilateral development banks.

The record of ECAs in financing or insuring projects with disastrous environmental or human rights impacts is well-known and well-documented, at least for a few projects, from the Three Gorges Dam in China to the Ilisu Dam in Turkey or the Total pipeline in Burma¹, where forced labour is endemic.

It has been FIDH's constant emphasis that international human rights law prevails over any other international agreement; the supremacy of international human rights law within international law is now widely acknowledged.

This means in particular that (i) the full range of government policies, most notably those affecting developing countries, should be subordinated to, and conditioned by, the objective to promote and respect human rights; and (ii) that organized institutions, be they public, semi-public or private, should respect universally accepted norms and values.

Human rights are not an option from which an organisation can simply opt out when deemed convenient. Indeed, the preamble of the Universal Declaration of Human Rights states: "every individual and *every organ of society* (...) shall strive (...) to promote respect for these rights and freedoms" (italics ours). Furthermore, art. 2(1) of the International Covenant on Economic, Social and Cultural Rights states that "each state party (...) undertakes to take steps, individually and *through international assistance and cooperation* (...) with a view of achieving progressively the full realization of the rights recognized in the present Covenant" (italics ours).

ECAs cannot be regarded as exempt from respecting international human rights law. Yet, currently, while corporations have unfettered access to publicly provided support through ECAs, there are no reciprocal binding responsibilities governing their impact on human rights, and in particular on labour rights, whether in the host or home countries.

While the FIDH welcomes the attempts of the G8 and the work of the OECD Working Party on Export Credits and Credit Guarantees with a view to reforming ECAs and defining common environmental guidelines for these agencies, the current proposals have so far been weak and extremely disappointing. In fact nowhere in the various drafts are labour and human rights mentioned.

¹ For a more detailed analysis, see N. Hildyard, The CornerHouse Briefing 14, "*Snouts in the Trough - Export Credit Agencies, Corporate Welfare and Policy Incoherence*"; and www.eca-watch.org.

The FIDH deeply regrets :

- **that the proposed "approaches" are limited to environmental concerns**
- **that they are non-binding, which greatly limits their potential impact**
- **that countries which publicly support strong social, human rights and environmental standards in other fora, such as Germany, Spain and France for example, have shown a strong resistance in applying normative standards to ECAs.**

The FIDH believes that ECA operations should be consistent with international human rights law, and that the scope of the guidelines should be broadened to encompass the obligation to respect all human rights, and in particular economic, social and cultural rights as the areas that ECA operations affect the most. That must be done in a binding manner.

States which have ratified legally binding human rights instruments should not exempt these public or semi-public bodies from accountability and responsibility in the human rights field, but have a direct obligation to ensure the conformity of ECA-backed projects with human rights norms.

This could translate into a screening mechanism that would prevent ECAs from getting involved in countries where human rights are massively violated and where the nature of the investment is likely to further encourage human rights violations.

The ECAs should further ensure that the companies recipient of ECA-money abide by the same principles of transparency, accountability and respect for human rights.

It is all the more urgent that binding ECA guidelines would also, through a ricochet effect, impact on the behaviour of MNEs.

Studies show that ECA concerns over social and environmental impacts of a given project do not lead to its cancellation, since many of the projects backed by ECAs would not go forward without their support, but to a modification and an improvement of its means of implementation, thus obliging companies to higher standards in the social, human rights and environmental fields.

Conversely, the current lack on standards for ECAs tends to weaken the efforts of MDBs to adopt strong guidelines in this respect. Several examples (and most notably the Three Gorges Dam in China) show that ECAs are always ready to "scoop up" projects rejected by the World Bank on environmental or social grounds.

The FIDH therefore strongly urges all relevant authorities, national or international, to press for an integration of human rights standards in the proposed ECA guidelines. International human rights instruments offer the only consistent and comprehensive framework for ensuring that ECA-backed projects effectively promote sustainable development and human rights for all.

Recommended steps:

1. **ECAs guidelines and conditionality requirements should incorporate international human rights standards as defined by international instruments, and particularly**
 - a. the UDHR;
 - b. the UN Covenant on Economic, Social and Cultural Rights;
 - c. the UN Covenant on Civil and Political Rights;
 - d. the UN Convention on the Rights of the Child;
 - e. the five core ILO Conventions (on the elimination of forced labour, of child labour, on non-discrimination, on freedom of association, and the right to collective bargaining)
 - f. the UN Convention on the Elimination of Discrimination Against Women;
2. **Independent mechanisms of control should be set up to ensure compliance of the ECAs with the guidelines**, in order to ensure that inappropriate projects are screened out and that approved projects comply fully with agreed standards.
3. In particular, **ECAs should develop internal staff capacity to assess compliance with international human rights conventions and covenants.**
4. **Social Development Impact Assessments (SDIAs) that build in a human rights dimension should be made mandatory along with Environmental Impact Assessments (EIAs)**, and a proper procedure for incorporating them in project assessments should be set up.
5. **ECAs should not support non-productive projects and programmes**, including arms exports and the export of equipment that could be used for military means or civil repression.
6. **ECAs should set up a screening mechanism designed to prevent ECAs from getting involved in countries where human rights are massively violated and where the nature of the investment is likely to further encourage human rights violations.**
7. **ECAs should set up a formal mechanism to consult with civil society**, both in OECD and in recipient countries.
8. **ECAs should have a clear policy of public access to documents, and in particular make public all documents relevant to the human rights, environmental and development impacts of ECA-backed operations**; the presumption should be in favour of disclosure, with companies having to demonstrate commercial confidentiality before a document is withheld from public release.

9. **ECAs should establish an independent procedure available for affected people to raise concerns and to adjudicate complaints over ECA-supported projects, perhaps in the line of the World Bank's Inspection Panel.**
10. **G8 governments should cancel all ECA-created debt.**
11. **ECAs should adopt a clause requiring recipients of ECA money to be transparent about payments they make to national governments.** More generally, the ECAs should ensure that the companies recipient of ECA-money abide by the same principles of accountability and respect for human rights.

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