



## **Submission to the Business, Innovation and Skills Committee on the subject of Government Assistance to Industry**

Amnesty International is a worldwide movement of people who campaign for internationally recognised human rights to be respected and protected. Our vision is for every person to enjoy all of the human rights enshrined in the Universal Declaration of Human Rights and other international human rights standards. Our mission is to conduct research and take action to prevent and end grave abuses of all rights – civil, political, social, cultural and economic.

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# **Amnesty International's Concerns about the Performance and Role of the UK Export Credits Guarantee Department (ECGD)**

## **SUMMARY**

Amnesty International is concerned that the ECGD's modus operandi is inconsistent with the UK government's international treaty obligations in the sphere of human rights, as well as being inconsistent with other governmental initiatives addressing human rights. There are several aspects of the ECGD's operations that fall short of what would be required to ensure that the ECGD does not support projects or transactions that might contribute to human rights abuses.

First, fundamental policy decisions have been taken by the ECGD without any assessment of their impacts on human rights despite prima facie evidence that there is a human rights dimension to those policy changes. One such policy decision is the downgrading of the ECGD's Business Principles, which were introduced in 2000 to ensure, inter alia, that the ECGD's conduct is consistent with the UK's international obligations. Another policy decision is the removal of certain types of transactions, such as those falling under the remit of the Letter of Credit Guarantee Scheme (LCGS), from screening procedures that might identify prospective human rights abuses. Amnesty International takes the view that the failure of the ECGD to conduct an impact assessment of its proposed policy changes represents a failure to take reasonable and proactive steps to protect human rights.

Second, the ECGD's activities are not aligned with steps that the UK government is taking to address the human rights impacts of UK companies operating abroad, including initiatives located elsewhere within the Department of Business, Innovation and Skills (BIS), as well as within the Foreign and Commonwealth Office (FCO) and the Ministry of Justice (MoJ).

Third, the ECGD is out of kilter with the recommendations to the Human Rights Council of the *UN Special Representative on the Issue of Human Rights and Transnational Corporations and other Business Enterprises*, Professor Ruggie. In his oral evidence in June 2009 to the UK Parliamentary Enquiry on Business and Human Rights, he cited export credits as an example of a lack of consistency and coherence of governmental policy towards addressing the human rights impacts of business.

Fourth, the UK government has rejected the recommendations of Parliamentary Committees that have scrutinised the ECGD's activities, in particular those contained in reports of the Environmental Audit Committee (October 2008) and of the Joint Committee on Human Rights (December 2009). There appears to be a growing gap between the views of Parliament and those of Government with regard to the conduct of the ECGD.

Fifth, Amnesty International is concerned that the ECGD may be hiding behind the OECD's Common Approaches, using the review of this inter-governmental standard for export credit

agencies as a pretext for lowering its own social and environmental standards, while failing to make the case for stronger measures at OECD and inter-governmental level.

At the root of the problem appear to be issues of accountability and oversight. With regard to this, we ask the BIS Committee to consider the following questions:

1. Is the ECGD being led by the demands of its private sector clients to the exclusion of other constituencies' legitimate concerns, including those relating to human rights and the environment?
2. What mechanisms exist to ensure that the ECGD balances the interests of its clients against other societal interests?
3. What processes exist to bring the ECGD into line with the UK government's policies on business and human rights, in particular with regard to holding UK companies to account for their adverse impacts on human rights abroad?
4. To what extent are Ministers willing and able to subject the ECGD to critical scrutiny with regard to issues relating to its human rights and environmental impacts?
5. Are the levels of the ECGD's disclosure of relevant information sufficiently transparent to allow for Ministerial and parliamentary scrutiny?
6. Has the ECGD become too self-contained, self-policing and opaque to ensure proper oversight of its activities?

We believe that these questions need to be addressed to correct the incongruous situation whereby the ECGD is de-prioritising its social and environmental impacts, and weakening procedural safeguards that would enable it to identify and prevent situations where it might provide support to UK companies for transactions that could be implicated in human rights abuses.

Amnesty International urges the BIS Committee to recommend reforms to the ECGD that will address the deficits identified, and that will ensure appropriate levels of accountability and greater coherence with UK government policy in the sphere of business impacts on human rights.

## **1. Amnesty International is concerned that the ECGD's modus operandi reflects a failure to engage with the UK's international human rights obligations**

1.1 The activities of the ECGD, as an agency of the government, are covered by the UK's obligations under international treaties to which it is a signatory. State obligations under international covenants extend to holding companies based in the state territory to account for the impacts that their activities have on human rights both inside and outside the state territory. In particular, the state obligation to protect human rights requires adequate oversight and regulation of the acts of companies over which the state exercises control.

1.2 The UK has many instruments at its disposal to regulate, influence and sanction the behaviour of companies to ensure that they do not have adverse impacts on human rights. These include legislation, listing and reporting requirements, procurement policy, screening procedures, export licences, and the role of administrative bodies and regulatory agencies. Such instruments should be deployed in all contexts where there is a risk that a particular activity that a company undertakes might contribute to human rights abuses.

1.3 In the case of export credit guarantees provided by the UK, whether directly to exporters or via third parties, the UK is in a position to use its investment support to exercise a degree of control over the human rights impacts of the exporting company. Such guarantees, whatever their form and context, and however they are packaged, should be framed with regard to the UK's human rights obligations.

## **2. Amnesty International is concerned that fundamental policy decisions have been taken by the ECGD without any assessment of their human rights impacts**

2.1 The most recent example of a failure to address its impacts relates to the ECGD's proposal to downgrade its Business Principles. In a joint submission<sup>1</sup> to the ECGD's public consultation on proposed revisions to the ECGD's Business Principles, several non-governmental organisations, including Amnesty International, made the following points:-

*Para. 79. The Consultees note that the current consultation documents contain no Impact Assessment of the costs of the proposals. In addition, the ECGD does not appear to have considered the impacts of its proposals on those most affected by its proposed changes - most notably child workers and bonded labourers. Indeed, the consultation documents contain no evidence that impact assessments have been conducted on any ESHR aspects of the proposals.*

*Para. 80. In response to parliamentary questions by Lord Lester as to "what assessment had been made of the impact of the proposed revisions . . . on the protection of social and human rights, including protection against the use of child workers and forced labour abroad", the Minister for Trade and Investment (Lord Davies of Abersoch) did not question the need for such an assessment but responded:*

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<sup>1</sup> Joint NGO response to the ECGD consultation, March 2010; signatories were Amnesty International UK, Campaign Against Arms Trade, Jubilee Debt Campaign, Oxfam GB, The Corner House, WWF UK

*Para. 81. “No assessment has been made of the potential impact of [ECGD’s proposals] on the protection of social and human rights, including protection against the exploitative use of child workers and the use of forced labour overseas, because ECGD does not know, and cannot estimate, the level of future demand for support for exports falling into the [exempted] category. Without such prior knowledge, ECGD cannot estimate the proportion of those within that category that might have possible environmental and social impacts, including on human rights, or determine the classification between A, B or C impacts and whether such impacts would satisfy international standards as specified in the OECD recommendation on common approaches and, therefore, be eligible in principle for ECGD support.”*

*Para. 82. If, as the Minister claims, no such assessment is possible, then the Consultees would contend that the ECGD should not proceed with its proposed changes, since it is unable to give any assurance that the impacts will be proportionate or justifiable.*

*Para. 83. Contrary to the Minister’s assertions, however, the ECGD is in fact well placed to assess the general nature and extent of the impacts that might flow from its proposed policy changes. As already noted, the Dutch ECA Atradius DSB already screens and assesses projects with a repayment period under two years. The ECGD could – and should – request details of such assessments and employ them to gauge the likely extent to which exempted projects might impact the environment and human rights.*

2.2 Amnesty International takes the view that the justification advanced by the ECGD and by the Government for the lack of any impact assessment of the proposal to revise application of ECGD’s Business Principles is fundamentally flawed. The Government’s assertion that the potential impact of ECGD’s proposal on the protection of human rights cannot be assessed because “*ECGD does not know, and cannot estimate, the level of future demand for support for exports falling into the above category*” reflects a misunderstanding of the purpose of an impact assessment in the context of business impacts on human rights. Predicting future outcomes relating to implementation of any government policy, programme or intervention is inevitably a matter of conjecture. However, the fact that outcomes are unpredictable and difficult to objectify does not obviate the need for the Government to take proactive steps to avoid providing support to business activities that might contribute to human rights abuses, including the exploitation of child workers and the use of forced labour.

### **3. Amnesty International is concerned that ECGD appears to be out of alignment with initiatives undertaken by other parts of the UK government to address the human rights impacts of UK companies operating abroad**

3.1 Within BIS, the UK National Contact Point under the OECD Guidelines for Multinational Enterprises has upheld complaints relating to the human rights impacts abroad of several UK companies.<sup>2</sup> It has also issued public statements drawing attention to those elements of the Guidelines that these companies have been in breach of. This raises the possibility of one department of BIS condemning a company for breach of international standards, while another department of BIS (ECGD) offers financial support to the same company.

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<sup>2</sup> Das Air, Afrimex, Vedanta Resources

3.2 The FCO has published a toolkit on business and human rights for circulation to its missions overseas.<sup>3</sup> This outlines existing UK policy on business and human rights issues and suggests actions that FCO staff can take to promote human rights in the context of the operations of UK companies operating abroad.

3.3 The Equality and Human Rights Commission, under the aegis of the Ministry of Justice, has established a leadership team on business and human rights to help promote higher standards of conduct for UK companies.

#### **4. Amnesty International is concerned that the ECGD is out of kilter with the recommendations to the Human Rights Council of the UN Special Representative on the Issue of Human Rights and Transnational Corporations and other Business Enterprises**

4.1 The UN Special Representative, John Ruggie, has repeatedly drawn attention to the anomaly of export credit agencies that pursue policies in contradiction to those of other parts of their government in the sphere of business and human rights. In his 2008 report to the Human Rights Council, he asserted that “*ECAs may be State agencies or privatized, but all are mandated by the State and perform a public function. Despite this State nexus, however, relatively few ECAs explicitly consider human rights at any stage of their involvement; indeed, in informal discussions, a number indicate they might require specific authority from their government overseers to do so.*” (para. 39)

4.2 In his oral evidence in June 2009 to the UK Parliamentary Enquiry on Business and Human Rights,<sup>4</sup> he cited export credits as an example of a lack of consistency and coherence of governmental policy towards addressing the human rights impacts of business. This is also reflected in his 2009 report to the UN Human Rights Council where he drew attention to the situation (para. 18) “*where economic or business-focused departments and agencies that directly shape business practices – including trade, investment, export credit and insurance, corporate law and securities regulation – conduct their work in isolation from and largely uninformed by their Government’s human rights agencies and obligations.*” He reinforced this point in his 2010 report to the Human Rights Council (paras 18 and 29).

4.3 In view of the Government’s stated support for the mandate of the UN Special Representative and for his framework for addressing business impacts on human rights<sup>5</sup>, it seems incongruous that the Government should be disregarding his many statements on the need for export credit agencies to address human rights.

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<sup>3</sup> Business and Human Rights Toolkit, *How UK Overseas Missions can Promote Good Conduct by UK Companies*, HM Government

<sup>4</sup> Oral Evidence to Joint Committee on Human Rights, 3<sup>rd</sup> June 2009

<sup>5</sup> Business and Human Rights Toolkit, *How UK Overseas Missions can Promote Good Conduct by UK Companies*, HM Government, p4

## **5. Amnesty International is concerned that the ECGD has ignored the recommendations of Parliamentary Committees that have held its activities up to scrutiny**

5.1 The UK government has over the years systematically ignored recommendations from Parliamentary Committees that have exercised oversight of aspects of ECGD's conduct. Examples of critical reports that have been disregarded are the House of Commons Environmental Audit Committee's Report on "*The Export Credits Guarantee Department and Sustainable Development*" of 20 October 2008, and the Joint Committee on Human Rights Report "*Any of our business? Human Rights and the UK private sector*" of December 2009.

5.2 Extracts from Environmental Audit Committee's Report:

*No offer of support should be made, whether actual or provisional, until the ECGD's Business Principles Unit has completed its assessment, and its recommendations have been duly considered. The Government must be prepared to provide the ECGD with whatever further resources are necessary for the Business Principles Unit to carry out its sustainable development assessment work swiftly, effectively, and consistently. (Paragraph 20)*

*We recommend that the ECGD commissions an independent study into how its environmental and sustainable development standards could be tightened, including an assessment of how UK Sustainable Development objectives could be effectively reflected in the ECGD's assessment standards. Such a study should be used to help the ECGD raise international standards. The ECGD should devise and publish a strategy, so that it can be properly scrutinised, and so that UK exporters and other Export Credit Agencies are aware of the ECGD's intentions. Where a standard can be raised without undue impact on the competitiveness of UK industry, the higher standard should be adopted and concomitant action from other Export Credit Agencies should be encouraged. (Paragraph 23)*

*We do not believe that the ECGD has struck the appropriate balance between protecting commercial confidentiality and ensuring due transparency. The ECGD provides support from public funds and exporters must therefore recognise that this facility should necessarily entail certain conditions to ensure adequate disclosure and scrutiny of funding decisions. In 2003, our predecessor Committee recommended that 'requests for confidentiality should be tested against rigorous criteria to ensure that only such information as might genuinely compromise clients' commercial activities is withheld. A high degree of disclosure should become a condition of ECGD support.' We reiterate this recommendation. (Paragraph 35)*

5.3 Extracts from Joint Committee on Human Rights report:

*The Minister told us that the Government wants to create a framework where UK businesses conduct their business with respect for human rights. We find this difficult to square with his assertion that it would be too onerous to require UK companies seeking the support of the Export Credit Guarantee Department to perform due diligence of the human rights impacts of its application. We endorse the many constructive recommendations made by the House of Commons Environmental Audit Committee in its 2008 Report, *The Export Credits Guarantee Department and Sustainable Development*. The implementation of its proposals on increased transparency and disclosure in the CIAP process would improve the capacity of the ECGD system to incorporate human rights principles into its decision*

*making and to pursue its statutory purpose more consistently with the Government's wider goals and obligations on sustainable development and human rights. (para. 244)*

*We regret that the Government has rejected most of these proposals, except for a commitment to raise the issue of transparency during the review of the OECD Common Approaches to the Environment and Officially Supported Export Credits in 2010. This response appears to confirm concerns that the ECGD Business Principles, while 'good on paper', do not play a key role in the ECGD decision making process. It indicates that the UK Government is unwilling to show leadership on human rights issues, where to do so might impact negatively on UK business. (para. 245)*

*At a minimum, we recommend that the Government expands its position on the 2010 reviews of both the OECD Common Approaches on the Environment and Officially Supported Export Credits and the OECD Guidelines to ensure that the work of the Special Representative is considered. We recommend that the Government should promote a common position which takes forward Professor Ruggie's recommendation that there should be a logical link between export credit and other forms of support and compliance with the OECD Guidelines. If no common position can be agreed, we recommend that the Government acts unilaterally to ensure that there are clear consequences following a negative final statement of the UK NCP against a UK company, including for any future applications by it for export credit. (para. 246)*

*The ECGD decision-making process has been the subject of criticism by parliamentarians and others for many years. While the introduction of the Business Principles in 2000 has improved the framework for decision making on the human rights impacts of business, it is not clear whether this has had any impact on the decisions of the ECGD. Without increased transparency and openness in the assessment of applications, this impression is likely to endure. If the Government does not agree that the assessment process should follow more open and accountable procedures, we recommend that the Business Principles should be incorporated into the ECGD's statutory framework. (para.247)*

5.4 The above quotations from two different parliamentary committees illustrate the chasm that exists between Parliament and Government with regard to the conduct of the UK ECGD. Since these reports were released, the ECGD has abandoned its Business Principles in direct contradiction to the above recommendation that "the Business Principles should be incorporated into the ECGD's statutory framework". These Business Principles provided the normative foundations for addressing human rights issues.

## **6. Amnesty International is concerned that the ECGD may be hiding behind the OECD's Common Approaches, using the review of this inter-governmental standard for export credit agencies as a pretext for lowering its own social and environmental standards, while failing to make the case for stronger measures at OECD and inter-governmental level**

6.1 When Amnesty International meets governmental officials to discuss the ECGD, there is invariably a suggestion that we shouldn't expect UK ECGD to do more until the UK's competitors raise their standards and/or the OECD raises its standards. This approach has been refuted by John Ruggie who asserts that "*Some export and investment promotion agencies claim that considering human rights would put them and their clients at a competitive disadvantage. International*



*cooperation can help level the playing field, but it must do so by raising the performance of laggards.”*

6.2 The UK government has a current opportunity to promote higher standards at inter-governmental level, where there is a process that is intended to harmonise standards for export credit agencies internationally. These OECD standards, known as the Common Approaches, are currently under review.

6.3 Amnesty International doubts whether the UK government is minded to promote higher standards for export credit agencies at OECD level. Unusually for OECD states participating in discussions on the Common Approaches, the representatives of the UK are all ECGD staff. There doesn't appear to be any involvement from civil servants outside the ECGD. This delegation of responsibilities by the Government for setting standards for export agencies ignores the vested interest that the ECGD might have in maintaining the status quo and in minimising constraints that stronger international standards might impose on its business operations.

## **7. Conclusion**

7.1 In the context of all the above factors, it is incongruous that the ECGD should be de-prioritising human rights and weakening procedural safeguards that would enable it to identify and prevent situations where the UK government might provide support to UK companies for transactions that could be implicated in human rights abuses.

7.2 The conduct of the ECGD raises fundamental issues of accountability and oversight. Amnesty International asks the BIS Select Committee to consider the following questions:

1. Is the ECGD being led by the demands of its private sector clients to the exclusion of other constituencies' legitimate concerns, including those relating to human rights and the environment?
2. What mechanisms exist to ensure that the ECGD balances the interests of its clients against other societal interests?
3. What processes exist to bring the ECGD into line with the UK government's policies on business and human rights, in particular with regard to holding UK companies to account for their adverse impacts on human rights abroad?
4. To what extent are Ministers willing and able to subject the ECGD to critical scrutiny with regard to issues relating to its human rights and environmental impacts?
5. Are the levels of the ECGD's disclosure of relevant information sufficiently transparent to allow for Ministerial and parliamentary scrutiny?
6. Has ECGD become too self-contained, self-policing and opaque to ensure proper oversight of its activities?

7.3 Amnesty International urges the BIS Committee to recommend reforms to the ECGD that will address the deficits identified, and that will ensure appropriate levels of accountability and greater coherence with UK government policy in the sphere of business impacts on human rights.