

Amnesty International Public Statement

AI index: IOR 10/001/2012
12 November 2012



Review of the OECD Recommendation of the Council on Common Approaches for Officially Supported Export Credits and Environmental and Social Due Diligence

In June 2012, the Export Credit Group (ECG) of the Organisation for Economic Cooperation and Development (OECD) concluded its review of the 2007 Recommendation on Common Approaches on the Environment and Officially Supported Export Credits and published a revised set of standards in the Recommendation of the Council on Common Approaches for Officially Supported Export Credits and Environmental and Social Due Diligence (the “Common Approaches”).¹ The Common Approaches are an international instrument that recommends standards and measures for export credit agencies (ECAs) to address the environmental and social impacts of officially supported projects and activities.

The review process took place over a period of more than two years and involved three meetings with civil society organisations. Amnesty International welcomed the opportunity to engage in, and contribute to, the review process, together with other non-governmental organisations such as the coalition ECA-Watch. Despite a number of positive steps, Amnesty International believes that the OECD failed to deliver standards that guarantee the high level of environmental and social performance it set out to achieve through this review, in particular with regards to ensuring greater protection of human rights in the context of ECA- supported projects and activities.

Throughout the review, Amnesty International and other organisations called on the OECD to include adequate safeguards to ensure that the human rights of individuals and communities affected by officially supported projects and activities are respected and protected. In this context, the organisation highlighted the need for both ECAs and their clients to implement adequate human rights due diligence processes to effectively protect and respect human rights.

Amnesty International welcomes the extension of the Common Approaches' scope to "social impacts", and the inclusion of "human rights impacts" in particular. Social impacts are defined as *"project-related impacts on the local communities directly affected by the project and on the people involved in the construction and operation of the project; these social impacts encompass relevant adverse project-related human rights impacts."* Despite this positive development, the organisation feels that the term "social impacts" is too vague and unclear. The inclusion of adverse human rights impacts is a very positive step, but the subsequent lack of specificity and definition of these impacts and the failure to include an express reference to international human rights standards can potentially deprive this standard of any real meaning. In sum, the reference to and definition of "social impacts" does not provide the necessary clarity to ECA practitioners and policy-makers to adequately evaluate and regulate the human rights impacts of ECA operations. Moreover, the new document fails to explicitly require ECAs and their clients to make a clear and unambiguous commitment to respect human rights and establish adequate human rights due diligence processes to this end.

Amnesty International consistently stressed the need for the Common Approaches to adopt a robust human rights framework by adopting, at a minimum, the Universal Declaration of Human Rights and the United Nations core human rights conventions. However, the standards used by the Common Approaches to benchmark project-related impacts remained the International Finance Corporation's (IFC) Performance Standards. The IFC's revised Performance Standards fall far short of the human rights due diligence requirements² set out in the UN Guiding Principles on Business and Human Rights which had been endorsed by the UN Human Rights Council a year earlier, on 16 June 2011.³

More alarmingly, the ECG failed to adopt or reflect the human rights standards and due diligence procedures recommended by the OECD in the revised OECD Guidelines for Multinational Enterprises.⁴ Throughout the review Amnesty International asked that at a minimum, the Common Approaches reflected the standards adopted in the new human rights chapter of the revised OECD Guidelines for Multinational Enterprises. However these standards, despite having been adopted by the same organisation a year before, were flagrantly ignored.

Amnesty International also stressed that, following the adoption by the UN Human Rights Council of the UN Guiding Principles on Business and Human Rights, the Common Approaches should explicitly state that official support should not be provided to projects and activities that cause or contribute to human rights abuses. The UN Guiding Principles on Business and Human Rights are clear in this respect. Principle 4 asserts: *“States should take additional steps to protect against human rights abuses by business enterprises that ... receive substantial support and services from State agencies such as export credit agencies and official investment insurance or guarantee agencies, including, where appropriate, by requiring human rights due diligence.”* Disappointingly, no such clear recommendation was included in the Common Approaches.

In sum, despite having at its disposal the normative framework to draw from to ensure the revised Common Approaches incorporated widely accepted standards of behaviour of both business enterprises and those who support them to ensure protection and respect of human rights, the ECG failed to mirror these standards in the new document. As a consequence, the Common Approaches do not use robust enough standards to guarantee that operations or projects supported by ECAs do not negatively impact on human rights.

Amnesty International notes the expressed intention to build a body of experience from members’ practices with regard to “associated facilities” and supply chain due diligence. This is a critical area for effective human rights protection and the ECG should make sure that a strict timeline is agreed on to gather comments from members and incorporate them in further policy.

It is clear that in the current normative landscape reflected by the new OECD Guidelines on Multinational Enterprises and the UN Guiding Principles on Business and Human Rights, the OECD's Export Credit Group should now look to expand and strengthen the Common Approaches' Human Rights provisions and reporting commitments in order to strengthen standards and monitor effective implementation.

¹ Available at <http://search.oecd.org/officialdocuments/displaydocumentpdf/?cote=TAD/ECG%282012%295&doclanguage=en>

² For a detail argument on Amnesty International's position and analysis, see Amnesty International, A missed opportunity to better protect the rights of those affected by business related human rights abuses. Available at <http://www.amnesty.org/en/library/asset/IOR80/006/2011/en/190a4b80-d11a-417b-a63f-50b441b31e86/ior800062011en.pdf>

See also: Amnesty International. International Finance Corporation's draft Sustainability Policy and Performance Standards – Amnesty International Comments, available at <http://alturl.com/gq2r3>.

Amnesty International Submission to the Review of the International Finance Corporation (IFC) Sustainability Framework, May 2010. Available at <http://alturl.com/m62jt>

³ New Guiding Principles on Business and Human Rights endorsed by the UN Human Rights Council, <http://www.ohchr.org/FR/NewsEvents/Pages/DisplayNews.aspx?NewsID=11164&LangID=E>

⁴ Amnesty International, Public Statement The 2010-11 Update of the OECD Guidelines for Multinational Enterprises has come to an end: the OECD must now turn into effective implementation. 23 May 2011. Available at <http://www.amnesty.org/en/library/asset/IOR30/001/2011/en/601f0e2c-a8a3-4fbc-b090-c0abb3c51ab2/ior300012011en.pdf>.