



A HISTORY OF NEGLECT **UK EXPORT FINANCE AND HUMAN RIGHTS**

BRIEFING

June 2013

A History of Neglect
UK Export Finance and Human Rights

Published by Amnesty International UK, June 2013

©Amnesty International UK
London 2013

Amnesty International UK
Human Rights Action Centre
17-25 New Inn Yard
London EC2A 3EA

Tel 020 7033 1578

A HISTORY OF NEGLECT UK EXPORT FINANCE AND HUMAN RIGHTS

Contents

Executive summary	2
Introduction to export credit agencies	5
1 The international context	6
2 UKEF's standards and procedures	10
3 UKEF – a comparative international perspective	16
4 UKEF resists transparency and accountability	19
5 UKEF ignores emerging UK government consensus on business and human rights	26
6 Recommendations	28

TERMINOLOGY

In November 2011 the UK Export Credits Guarantee Department (ECGD) changed its name to UK Export Finance. Throughout this briefing we will refer to this agency as UK Export Finance (UKEF), except where its name is used in a quotation that pre-dates the name change.

Executive summary

The UK's export credit agency, established in 1919, was the world's first. It is a government department operating under an act of parliament and reporting to the Secretary of State for Business, Innovation and Skills (BIS).

Background

As the government department responsible for providing financial support to British exporters, UK Export Finance (UKEF) is a hugely influential body. However, its eagerness to help secure new overseas contracts for British companies often comes at the expense of human rights.

Unlike export credit agencies (ECAs) in some other countries, UKEF does not conduct any human rights or environmental screening of support worth less than 10 million SDRs¹ (£10m) or for less than two years.

During 2011-12 UKEF supported £2.32 billion² worth of business, involving 204 policies and guarantees in total. In 2011/12, it provided loans for a methanol plant in Azerbaijan, a Chinese nuclear power plant, a natural gas delivery system in Nigeria, and two coal mines in Russia.

In addition, around £2.3 billion of 'third world debt' is owed to UKEF. Figures released by UKEF in November 2012 show, for example, that three-quarters of Indonesia's debt comes from loans to the former authoritarian government of President Suharto to buy weapons, some of which were used for repressive purposes. Meanwhile a quarter of Egypt's debt comes from loans for military equipment to the former regimes of Presidents Hosni Mubarak and Anwar Sadat.³

This briefing examines the approach of UKEF to addressing the human rights context of its activities. Its findings indicate deficits in policy, transparency and accountability that together fall short of what would be required to ensure UKEF does not support projects or transactions that might contribute to human rights abuses.

Transparency and disclosure – years of silence

Civil society organisations and parliamentarians have raised concerns over UKEF's lack of transparency and disclosure for many years, but successive governments and UKEF itself have consistently ignored them. As a result, a high level of mistrust and suspicion has developed around UKEF's policies and practices. Obtaining information from UKEF is a monumental task, and the agency shows no apparent willingness to change. This has consequences for UKEF's image and its stakeholder relations, and also raises public accountability issues.

One accountability issue of particular concern to Amnesty International is the extent to which fundamental policy decisions have been taken by UKEF and the UK government without any apparent assessment of the human rights impact, despite prima facie evidence that there is a human rights dimension to those policy changes. Amnesty International believes UKEF's failure to conduct an impact assessment of such proposed policy changes represents a failure to take reasonable and proactive steps to protect human rights.

1 SDRs are Special Drawing Rights, an IMF manufactured currency. For the purposes of the OECD Common Approaches 1 SDR = £1

2 ECGD Annual Report and Accounts 2011-2012 – Business Commentary Page 16 www.ukexportfinance.gov.uk/assets/ecgd/files/publications/plans-and-reports/ann-reps/uk-export-finance-annual-report-and-accounts-2011-12.pdf

3 www.gov.uk/government/uploads/system/uploads/attachment_data/file/190838/ukef-sovereign-debt-data.pdf

UKEF's modus operandi reflects a failure on the part of the government to give effect to the UK's international human rights obligations. This runs counter to the State's 'Duty to Protect', which is the bedrock of the international human rights system. It is also in sharp contrast to the government's stated position that it is committed to helping British companies operate in ways that take account of human rights and avoid negative human rights impacts.

This report illustrates the challenge the government faces in aligning its departments' business and human rights policies to avoid the current incoherence. The key problems are:

1. UKEF has taken fundamental policy decisions without proper assessment of their human rights impact

The most notable of these decisions was the downgrading of UKEF's Business Principles, which were introduced in 2000 to ensure, inter alia, that UKEF's conduct took into account the UK's international human rights commitments. Another decision removed certain types of transactions, including those falling under the remit of the Letter of Credit Guarantee Scheme (LCGS), from any screening or review procedures that might identify potential human rights abuses. Other forms of support, including export credits with repayment terms of less than two years, are now exempt from environmental, social and human rights review.

2. UKEF is not aligned with initiatives undertaken by other parts of the UK government to address the human rights impacts of UK companies operating abroad

UKEF's activities are not aligned with initiatives being taken elsewhere within the UK government, including the Department of Business, Innovation and Skills (BIS), inside which UKEF is located. While the UK is committed to implementing the UN Framework and Guiding Principles on Business and Human Rights, UKEF has moved in the opposite direction, stepping back from its human rights undertakings.

3. UKEF is out of kilter with current standards and best practice on business and human rights

UKEF, having previously aspired to be a leader in committing to review all its projects for social impact and ensure its policies accorded with the UK's human rights obligations, is now falling behind current standards and best practice for export credit agencies. According to the UN Guiding Principles on Business and Human Rights, endorsed by the UN Human Rights Council in June 2011, states are explicitly expected to protect against human rights abuses by companies that receive substantial support or services from the state, such as export credit guarantees. These measures would require both the export credit agency and the businesses they support to conduct due diligence in situations that might pose a risk to human rights.

4. The UK government has ignored the recommendations of parliamentary committees on UKEF

There appears to be a growing gap between the views of parliament and those of government with regard to UKEF's conduct. This is reflected in the reports of the Environmental Audit Committee (October 2008), the Joint Committee on Human Rights (December 2009), and the All-Party Parliamentary Group on International Corporate Responsibility (November 2012).

5. UKEF is using deficiencies in standards set by the Organisation for Economic Co-operation and Development (OECD) as a pretext for sliding back on its previous commitments

UKEF appears to have decided not to strengthen its environmental and human rights processes unless they – and the international standards they relate to – are reflected in the OECD Common Approaches. This is a regressive approach as standards for export credit agencies at OECD level are developed consensually on a 'lowest common denominator' basis of what is acceptable to the vast majority of member states. It also leads to incompatibility with international standards including other OECD standards such as the Guidelines for Multinational Enterprises, which contain human rights requirements that go much further than those in the Common Approaches.

Recommendations

Arising from these findings are recommendations that, if implemented, would enable UKEF to operate in a way that is compatible with the UK's international human rights obligations, best practice amongst export credit agencies, and evolving international standards on business and human rights. These recommendations are divided between those directly applicable to the UK government and those specifically relevant to UKEF.

Recommendations to the UK government

1. The government should conduct and publish a human rights impact assessment on any policy decision relating to the operations of UKEF that might affect human rights.
2. The government should ensure UKEF's policies and practices are consistent with all the UK's international human rights obligations and policy commitments in the sphere of business and human rights, including those relating to the implementation of the UN Framework and Guiding Principles on Business and Human Rights.
3. The government should consult with civil society organisations before and during any future revision of the OECD Common Approaches.
4. The government should ensure any promotion of trade and investment by its departments and agencies, such as UKEF and UK Trade & Investment (UKTI), which works with UK-based businesses to ensure their success in international markets and encourages overseas inward investment, is not at the expense of human rights. All agencies and departments promoting trade and investment should demonstrate awareness of the UK's human rights obligations and the necessity for human rights due diligence in all cases of business support.
5. The government should amend the legislation governing UKEF to incorporate a 'duty of care' towards those affected by the agency's processes, decisions and activities, with an appropriate avenue of redress for any breaches.

Recommendations to UKEF

1. UKEF, its client companies and financial intermediaries should ensure human rights due diligence is carried out for all the trade and investment transactions it supports, irrespective of the amount, duration of the support and categorisation of the project.
2. UKEF should impose an explicit ban on supporting any project involving or likely to involve child and/or forced labour.
3. UKEF should demonstrate greater transparency in all aspects of its operations. In particular it must disclose the outcome of its assessment processes, any conditions for its support, and any monitoring reports relating to compliance with those conditions. It should adopt a 'disclose or explain' policy with a presumption of transparency unless there are compelling reasons for non-disclosure.
4. UKEF should implement an effective grievance mechanism to enable those adversely affected by processes, decisions and activities to lodge a complaint and obtain remedy.
5. UKEF should not offer support to any company deemed to be in breach of the OECD Guidelines for Multinational Enterprises for a period of time following the company's citation for breaching the guidelines.

Introduction to Export Credit Agencies

Export Credit Agencies (ECAs) have taken on renewed significance since 2008 as OECD and G20 governments have pledged support for export credits to ensure liquidity in global trade and investment in response to the financial crisis.

ECAs are, with a few exceptions, publicly funded and accountable institutions that provide domestic companies with government-backed loans, credits, guarantees and insurance to support exports and foreign investments, typically those of a high-risk nature in developing countries and emerging markets. ECAs are viewed as insurers of last resort because they are prepared to support projects that private insurers normally consider too financially or politically risky.⁴

ECAs sometimes also support projects rejected by the World Bank and other international financial institutions due to their adverse environmental, social or human rights (ESHR) impacts. For example, UKEF (in its previous incarnation as the ECGD) was prepared to support the Ilisu Dam project in Turkey even though the World Bank would not. The Sakhalin II oil and gas development in Russia is another example: after funding the first phase of the project, the European Bank for Reconstruction and Development (EBRD) refused further funding in January 2007, whereas UKEF continued to consider an application to support the project.

ECA support usually takes the form of direct financing, through loans or credit, or risk cover in the form of insurance or guarantees. According to data compiled by the Berne Union, an international association of export credit agencies, exposure of its members for 2011 amounted to over US\$1.7 trillion.⁵

Amnesty International is particularly interested in the activities of these agencies because the sectors that most often benefit from ECA financing or risk cover include arms, oil, gas, mining, dams, power plants, heavy manufacturing, and the pulp and paper industry – the same heavy-footprint business sectors most commonly associated with human rights violations.

Amnesty International UK is part of a group of NGOs, the Clean Up Britain's Exports (CUBE) network, calling for urgent reform of UKEF. Other members of CUBE include: the Campaign Against Arms Trade, Christian Aid, The Corner House, the Ecumenical Council for Corporate Responsibility, the Global Poverty Project, Jubilee Debt Campaign, Jubilee Scotland, Rights & Accountability in Development, SPEAK, the World Development Movement and WWF UK.

UKEF has attempted to distance itself from the adverse human rights impacts of projects it supports on the grounds that these occur outside the UK's jurisdiction. In response to a 'Grounds for a Judicial Review' case brought by two NGOs, The Corner House and Samata, the ECGD in 2010 stated categorically that it is under no legal obligation to assess the contracts it supports abroad for their potential use of child or forced labour because it 'does not owe obligations to persons outside the jurisdiction of the UK'.⁶

4 ECAs are commonly prepared to insure companies against: war, civil strife, revolution, rebellion, nationalisation, government confiscation or expropriation without compensation, export or import embargoes, and conversion or transfer risks.

5 Berne Union statistics for export credit agencies for 2011 www.berneunion.org/pdf/Berne%20Union%202012%20-%20Charts%20and%20numbers%20for%20website.pdf

6 www.thecornerhouse.org.uk/resource/court-action-stop-uk-government-department-lifting-ban-child-and-forced-labour, para 57

1. The international context

1.1 International rules of the game and costs to the taxpayer

ECAs operate under an internationally agreed standard, the 1978 OECD Arrangement on Officially Supported Export Credits (OECD Arrangement), which is legally binding within the EU via a European Commission directive. The OECD Arrangement establishes an international level playing field that requires ECAs to ‘break-even’, so any losses are balanced by profits over the long term. The World Trade Organisation (WTO), while generally prohibiting state subsidies for exports, allows governments to support business through ECAs as long as they adhere to the OECD Arrangement. Thus ECAs from non-OECD countries such as Brazil, China and India are effectively bound by the same basic rules of the game even though they have no part in ‘setting the rules’ (however, they do have ‘observer status’ at Common Approaches reviews).

What are the implications for the taxpayer? If the buyer fails to pay the exporter or if an insured risk occurs and UKEF has to reimburse an exporting company for non-payment, the money is supposed to be recoverable from the premiums the exporter pays for the service. Where the export is to a state-backed project, UKEF generally obtains a ‘sovereign counter guarantee’ from the host country, in which case any money paid out to the exporter by the ECA is added to the host country’s national debt.

However, there are costs. As developing country governments have to assume responsibility for defaulted transactions, ECA activity has significant implications for sovereign debt. UKEF is by far the biggest holder of developing world debt owed to the UK government.⁷ Where sovereign debt is cancelled by an ECA, OECD donor countries generally report the ‘forgiven portion of the debt’ as official development assistance (ODA), even though ECAs have no development mandate and the project that led to the debt in the first place may have had no development benefits.

There are therefore real costs to taxpayers in terms of public money that could be more effectively targeted under genuine ODA, as well as to the governments of developing countries, which have a more limited pool of funds available to realise people’s rights to health, education, social security and a decent standard of living, including to food, housing, water, sanitation and energy.

UKEF is mandated to break even⁸ and operate at no net cost to the taxpayer. Nonetheless, there have been some covert subsidies.

In 2005, the UK government admitted that the annual cost of the ECGD to the taxpayer was £150 million.⁹ Most recently, in April 2011, Vince Cable, Secretary of State for the Business, Innovation and Skills Department (BIS), told the BIS committee that Fixed Rate Export Finance (FREF) involved an implicit taxpayers’ subsidy. He said:

‘It is not subsidised; ECGD is a self-financing organisation. Of course, these are mostly short-term facilities, so there is a lot of rollover involved. It is a revolving fund and essentially that is how a lot of these things operate. One particular scheme that has been discontinued is the long-term fixed-rate finance scheme. One of the reasons

7 Jubilee Debt Campaign, *The Department of Dodgy Deals: Ending the UK’s support for toxic debt*, ©2011, p.3. Also the Dutch Ministry of Foreign Affairs has found that ECA debt cancellation amounted to 19 per cent of total Dutch aid to Africa between 1998-2006.

8 Briefing by the Secretary of State for Trade and Industry and the Chief Secretary to the Treasury, 16 March 2005, ‘Estimating the economic cost of ECGD’ paragraph 2 <http://webarchive.nationalarchives.gov.uk/+http://www.berr.gov.uk/files/file16384.pdf>

9 Briefing by the Secretary of State for Trade and Industry and the Chief Secretary to the Treasury, 16 March 2005, ‘Estimating the economic cost of ECGD’ paragraph 3 highlighted sentence <http://webarchive.nationalarchives.gov.uk/+http://www.berr.gov.uk/files/file16384.pdf>

it is being discontinued is that it enjoyed an implicit taxpayer subsidy. We did not feel that was appropriate. That stopped operating four weeks ago.’

In short, there is much debate as to whether ECAs are subsidised. In principle, although taxpayers do not fund ECAs, they remain their ultimate guarantors. ECAs argue that they offer support to projects the private sector is unwilling to provide and are therefore correcting a ‘market failure’.

1.2 International ECA standards: the OECD Common Approaches

In 2003, the OECD introduced some measures of protection against the adverse environmental impacts of member states’ ECA-backed projects. These took the form of the OECD Common Approaches on Environment and Officially Supported Export Credits (Common Approaches), which were given the status of an OECD Recommendation (albeit non-binding) in 2007. OECD member states were urged to review high-risk projects for their potential environmental impact (which was understood as also including social impact) and to benchmark them against international standards such as those of the World Bank Group. Such an approach, however, lacked an explicit reference to human rights.

The Common Approaches were updated in 2007 and again in 2012 following a review during 2011-12.

1.2.1 The OECD Common Approaches (revised 2012)¹⁰

This OECD Recommendation to member states applies to all types of officially supported export credits for capital goods or services with a repayment term of two years or more.

Screening:

Members should screen all applications for officially supported export credits covered by this recommendation. The screening should take place as early as possible in the risk assessment process, and applies to:

- All export credits with a repayment term of two years or more.
- All projects in which the member’s share is equal to or above SDR 10 million.
- All projects destined to take place in identified locations that are in or near sensitive areas irrespective of whether their share is below SDR 10 million.

Classification:

Projects should be classified by OECD members – in practice this means their ECAs – in accordance with their potential positive and negative environmental and social impacts¹¹. The three categories of classification are:

- Category A: Projects that have the potential to cause significant adverse environmental and/or social impacts, including those in sensitive sectors or located in or near sensitive areas.
- Category B: Projects with potential environmental and/or social impacts less adverse than Category A and for which mitigation measures are more readily available.
- Category C: Projects likely to have minimal or no potential adverse environmental and/or social impacts

Environmental and Social Reviews:

For a Category A project, ECAs should require an Environmental and Social Impact Assessment (ESIA). The applicant company is responsible for providing the ESIA report, together with other studies, reports or action plans covering the relevant aspects of the project. The requirements for

10 See Working Party on Export Credits and Credit Guarantees, *Recommendations of the Council on Common Approaches for officially supported export credits and environmental and social due diligence (The ‘Common Approaches’)* <http://search.oecd.org/officialdocuments/displaydocumentpdf/?cote=TAD/ECG%282012%295&doclanguage=en>

11 Social impacts included are described in Paragraph 10 – Recommendations of the Council on Common Approaches for officially supported export credits and environmental and social due diligence (The ‘Common Approaches’) <http://search.oecd.org/officialdocuments/displaydocumentpdf/?cote=TAD/ECG%282012%295&doclanguage=en>

Category B projects are reduced in so far as they may vary from project to project with regard to the extent of the information required. Information required may be contained in an ESIA. No further action is necessary for Category C projects.

All non-project finance projects should be benchmarked against:

- The relevant aspects of all ten World Bank Safeguard Policies, or
- Where appropriate, all eight International Finance Corporation (IFC) Performance Standards

All limited or non-recourse finance projects should be benchmarked against:

- Relevant aspects of all eight IFC Performance Standards

In exceptional cases: 'A Member may decide to support a project that does not meet the international standards against which it has been benchmarked, in which case, the Member state shall report its justification for supporting the project, amongst other things, to the Working Party on Export Credits and Credit Guarantees (ECG) in accordance with paragraph 41 of the 2012 Common Approaches.'¹²

The 2012 Common Approaches continues to provide the 'exceptional cases' get-out clause, which in effect permits ECAs to support projects that fail to meet relevant international standards.

Reporting and Monitoring of this Recommendation:

Paragraph 44 of the 2012 Common Approaches states:

'Members shall give further consideration to the issue of human rights, including with regard to relevant standards, due diligence tools and other implementation issues, with the aim of reviewing how project-related human rights impacts are being addressed and/or might be further addressed in relation to the provision of officially supported export credits. Members shall report to the ECG on their work not later than two years from the date of adoption of this recommendation.'¹³

As this recommendation was adopted on 28 June 2012, a report would need to be submitted by June 2014.

1.2.2 Shortcomings of the 2012 Common Approaches

Amnesty International is disappointed that the 2012 revision of the Common Approaches does not contain an explicit statement 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 have gone much further in this respect. Principle 4 asserts:

'States should take additional steps to protect against human rights abuses by business enterprises that are owned or controlled by the State, or 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.'

In a letter to the OECD Secretary-General in June 2011, Amnesty International urged the OECD Export Credit Group (ECG) to take the following steps to ensure OECD member states, through their ECAs, do not support projects that violate human rights:

1. Provide a clear commitment that the OECD expects ECAs, through the Common Approaches, to take the necessary steps to ensure they do not support projects that cause

12 See Paragraph 28 of the Recommendations of the Council on Common Approaches for officially supported export credits and environmental and social due diligence (The 'Common Approaches')
<http://search.oecd.org/officialdocuments/displaydocumentpdf/?cote=TAD/ECG%282012%295&doclanguage=en>

13 See Paragraph 44 of the Recommendations of the Council on Common Approaches for officially supported export credits and environmental and social due diligence (The 'Common Approaches')
<http://search.oecd.org/officialdocuments/displaydocumentpdf/?cote=TAD/ECG%282012%295&doclanguage=en>

or contribute to human rights abuses (for example projects that cause contamination or pollution, which leads to unsafe drinking water and loss of livelihoods, or projects resulting in forced evictions). This means ECAs must require their clients to undertake human rights due diligence by: requiring clients to have a statement of policy that they are committed to respecting human rights and identify potential negative human rights impacts, and ensure these are prevented throughout the activity in question. An assessment of possible human rights impacts may be included in social and environmental impact assessments, but they must explicitly consider adverse impacts on human rights.

2. Ensure, as an absolute minimum, the revised version of the Common Approaches is consistent with international human rights standards as well as the international framework on human rights and business as outlined in Professor John Ruggie's 2008 report *Protect, Respect and Remedy: a Framework for Business and Human Rights*.

The recommendations in points 1 and 2 are consistent with provisions included in the 2011 OECD Guidelines for Multinational Enterprises' chapter on human rights.¹⁴ Such changes would reflect a significant step forward to better protecting those affected by business-related human rights abuses.¹⁵

In failing to embody these measures, the most recent review of the Common Approaches was a missed opportunity, leading Amnesty to conclude that:

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.¹⁶

14 Chapter IV Human Rights – www.oecd.org/daf/internationalinvestment/guidelinesformultinationalenterprises/48004323.pdf

15 www.amnesty.org/en/library/asset/IOR30/002/2011/en/c85a12b1-db83-40d0-bf8f-5af3a9d9c9f3/ior300022011en.pdf

16 www.amnesty.org/en/library/asset/IOR10/001/2012/en/26e27ec3-72c3-48e2-b70a-6690ab434204/ior100012012en.pdf

2 UKEF's standards and procedures

2.1 The need for Human Rights Standards and Assessment Procedures

While UKEF currently supports the aerospace industry disproportionately, it has historically backed oil and gas, major infrastructure projects (including dams and power plants) and heavy manufacturing, all of which are high impact industries that have been linked with adverse human rights impacts. Examples of UKEF supported projects that have had such associations include:

The Lesotho Highlands Water Project (late 1990s) ^{17, 18, 19}

UKEF provided support for this project amounting to £66 million in loan guarantees to five UK companies: Balfour Beatty, Kier, Stirling, Kvaerner Boving, and ABB Generation's UK subsidiary.

The project was linked to:

- Worker intimidation and harassment
- Negative impacts on farmers' right to water
- Involuntary resettlement
- Adverse effects on right to health through an influx of workers carrying sexually transmitted diseases
- Corruption

Baku-Ceyhan-Tbilisi (BTC) Oil Pipeline (2003-7) ²⁰

The BP-led consortium behind the project was supported by UKEF.

The project was linked to:

- Allegations of security-force intimidation of local communities
- Allegations of detention of peaceful protestors
- Reports of exacerbating ethnic tensions and conflict
- The UK's OECD National Contact Point (which raises awareness of OECD guidelines and implements a complaints mechanism) found the project to be in breach of the OECD Guidelines for Multinational Enterprises

Sakhalin II oil and gas project (2003-8) ^{21, 22}

The Sakhalin II project was supported by UKEF and involved a Royal Dutch Shell-led consortium.

The project was linked to:

- Negative effects on the rights of indigenous minorities, including on their traditional fishing and hunting practices

These cases highlight UKEF's exposure to association with human rights abuses, and reinforce the need for it to adopt international human rights standards and due diligence processes. This would ensure risks to human rights are identified, mitigated and prevented, benefitting both the affected individuals and communities, and the reputation of UK companies and UKEF itself.

17 AI Index: AFR 33/02/96 UA-228/96 Lesotho: Excessive use of force/fear for safety www.amnesty.org/en/library/asset/AFR33/002/1996/en/63c559f3-eade-11dd-b22b-3f24cef8f6d8/af330021996en.pdf

18 www.unhcr.org/refworld/publisher,AMNESTY,,LSO,3ae6aa046c,0.html

19 www.thecornerhouse.org.uk/resource/lesotho-highland-water-development-project-what-went-wrong

20 Amnesty International report 'Human rights on the line' www.amnesty.org.uk/uploads/documents/doc_14538.pdf

21 In 2007, WWF and The Corner House filed for a judicial review of the decision by ECGD to support Sakhalin II www.thecornerhouse.org.uk/resource/wwf-files-court-proceedings-against-government-department

22 Memorandum from The Corner House to the Environmental Audit Committee to a 2008 Inquiry into the Export Credits Guarantee Department and Sustainable Development www.thecornerhouse.org.uk/resource/export-credits-guarantee-department-and-sustainable-development

If rigorous human rights due diligence was in place, UKEF would be in a better position to abort untenable projects, prevent human rights abuses, stop problems from escalating and mitigate any harm that does occur.

2.2 UKEF ties itself to International Standards

In 2000, following a far-reaching ECGD mission and status review and in a move that predated the Common Approaches, the UK's then Secretary of State for Trade and Industry, Stephen Byers, introduced a set of Business Principles for UKEF's operations. It was designed to 'promote a responsible approach to business and ensure our activities take into account the Government's international policies, including those on sustainable development, environment, human rights, good governance and trade.'

The Business Principles Unit (BPU) was established within UKEF to implement the principles, with assessments carried out via the Case Impact Analysis Process (CIAP) on the basis of information provided by the exporter through an impact questionnaire. The BPU was meant to report any concerns to the UKEF's Risk Committee, which in turn decided whether to support the application or not. The aerospace and defence sectors are subject to a separate screening process.²³

Under the CIAP, the BPU benchmarked projects against international standards, usually World Bank Group Safeguard Policies, which include the International Finance Corporation's Performance Standards²⁴. Despite the Business Principles committing UKEF to ensuring projects accorded with UK sustainable development policies, the CIAP did not benchmark against all such policies, though the views of other government departments were sought on 'potentially sensitive' cases.

Public disclosure of information relating to UKEF-backed projects is negligible. UKEF does not proactively disclose the impact assessments it makes of high risk projects, apart from in response to Freedom of Information requests. Where it has approved support for 'sensitive' cases, UKEF has issued 'decision notes' setting out the standards against which the project has been assessed.

2.3 UKEF downgrades its Business Principles

In 2010, following a consultation process, the government abandoned its Business Principles for UKEF, and in doing so, signalled it was no longer attempting to assert leadership on sustainability standards for ECAs. Instead, the government decided to pursue a policy for UKEF of adopting, but not going beyond, the OECD Common Approaches:

'This document gives the Government's Response on those proposals for change... that ECGD should, in future, adopt a presumptive policy position of following OECD Agreements related to the environment, sustainable lending and bribery, neither creating nor operating policies which go beyond those Agreements.'²⁵

Before May 2010, UKEF screened all non-aerospace projects and subjected those with a medium or high potential impact to an environmental and social review. Since May 2010, UKEF has only conducted impact reviews for projects covered by the OECD Common Approaches, regardless of the potential environmental, social and human rights (ESHR) risks.²⁶

23 The Export Control Organisation, which lies within the Department for Business, Innovation and Skills (BIS), undertakes the export licensing process in respect of defence exports, including military and dual-use items.

24 The arm of the World Bank that lends to the private sector. It is commonly referred to as the IFC.

25 Final Government response to the Public Consultation on Proposed Revisions to ECGD's Business Principles and Ancillary Policies 1 April 2010 paragraph 3

26 UK Export Finance, Guidance to Applicants, Section 7 ESHR Impacts www.ukexportfinance.gov.uk/assets/ecgd/files/prods-servs/guidance-on-processes-and-factors.pdf

In relation to environmental, social and human rights impacts, currently UKEF only reviews projects where:

- The export credit has a repayment term of two years or more; and
- The project is a new commercial, industrial or infrastructure undertaking at an identified location or where there is a material change in output or function to an identifiable existing project; and
- The total amount of UKEF support for a contract or contracts is equal or greater than the equivalent of Special Drawing Rights (SDR) 10 million (£10m) or the project is in or near a sensitive area; and
- The project is classified as Category A or B within the terms of the Common Approaches.²⁷

In Category A cases, UKEF will ‘normally’ need the project sponsor to supply the information contained in an Environmental Impact Assessment and/or Social Impact Assessment and/or Resettlement Action Plan – but this is no longer mandatory²⁸.

UKEF’s stated policy used to be that ‘projects should comply in all material respects with the relevant safeguard policies, directives and environmental guidelines of the World Bank Group’.²⁹ The new guidance, however, contains no such wording, instead referring to meeting the requirements of the Common Approaches, which have a lower threshold, with merely an ‘expectation’ that the project meets international standards.

The current application forms and impact questionnaires (IQs) no longer make any statements as to UKEF’s policy on meeting World Bank standards. Instead they merely state UKEF is ‘interested in’ the sustainable development impacts of its projects and that it benchmarks them against international standards:³⁰

- All applicants used to have to fill in an IQ. Now IQs are only required for projects classified as medium impact or above
- All applicants used to have to answer questions about social and environmental impacts, including on child labour. Now applicants whose contract value is below £10 million are exempt from answering these questions, which in any event are only asked of applications that fall within the ambit of the Common Approaches. No such questions are asked for any of the new support schemes offered by UKEF.
- The procedures set out by UKEF remain discretionary.³¹

Amnesty International is particularly concerned that by downgrading its Business Principles in this way, UKEF has rendered ineffective its own absolute ban on supporting projects or transactions that use child or forced labour. For such a prohibition to be implementable, all projects and transactions would need to be subject to assessment, not merely those above OECD thresholds.

This prohibition was introduced in 2003 as a result of parliamentary pressure. Previously UKEF’s policy was to allow support for projects involving child or forced labour in ‘exceptional circumstances’.³² Under the old rules, all exporters were informed of UKEF’s policy and required to answer questions on whether or not such practices were involved in the projects for which they were requesting support. Now exporters are only told about the policy if the value of their contract is above £10 million, their repayment term more than two years, and the projects is deemed to have a medium or high impact (at which point there is a requirement to fill in an IQ).

27 GUIDANCE TO APPLICANTS: PROCESSES AND FACTORS IN UK EXPORT FINANCE CONSIDERATION OF APPLICATIONS www.gov.uk/government/uploads/system/uploads/attachment_data/file/190194/guidance-on-processes-and-factors_2_.pdf

28 Para 6.4 of the CIAP stated that such an EIA was a requirement. The new Guidance contains no such requirement – it simply states that an assessment is ‘normally’ needed.

29 CIAP, para 2.6

30 www.ecgd.gov.uk/assets/bispartners/ecgd/files/prods-servs/apli-forms-specimens/rel-docs/eshr-impact-quest-april-2011.pdf

31 ECGD, GUIDANCE TO APPLICANTS: PROCESSES AND FACTORS IN ECGD CONSIDERATION OF APPLICATIONS, www.ecgd.gov.uk/assets/bispartners/ecgd/files/prods-servs/guidance-on-processes-and-factors.pdf

32 ECGD, ‘Summary of Case Impact Procedures’, 2003, Annex 1, Guidance Notes, p.iv. ECGD stated: ‘In common with most countries around the world, the UK has ratified the United Nations convention on the Rights of the Child and the International Labour Organisation conventions on the abolition of child labour. There must, therefore be exceptional circumstances for ECGD to provide cover to projects which involve child labour’.

Where the contract is worth less than £10 million, exporters are even exempted from responding to those sections of some application forms that request information on child and forced labour.³³ In effect, UKEF neither informs all exporters of this prohibition nor assesses for compliance with it as a matter of course. Whilst UKEF's ban nominally remains in force, a 'don't ask, don't tell' policy appears to have been put in place that greatly increases the risk that it may now be giving taxpayer-guaranteed support for projects involving child or forced labour.

2.3.1 Lack of impact assessment of policy changes

In a joint NGO submission to UKEF's consultation on the Business Principles, Amnesty International and other NGOs voiced concerns over the failure to: 'Comply with the Government's Code of Practice on Consultations, in that ECGD has conspicuously failed to conduct an impact assessment of its proposed policy changes.'³⁴

In a submission to the Business, Innovation and Skills (BIS) Committee on government assistance to industry on 23 September 2010, Amnesty International also argued: '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.'³⁵

In a response to a parliamentary question in February 2010, then Minister of Trade and Investment, Lord Davies of Abersoch, said: 'No assessment has been made of the potential impact of such a proposal 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 above 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.'

Amnesty International considers this answer to be unsatisfactory. An essential part of governmental processes is to anticipate, assess and take into account the consequences of administrative decisions. Predicting outcomes relating to the implementation of any government policy, programme or intervention is inevitably a matter of conjecture. However, the fact that outcomes are unpredictable and difficult to anticipate with great accuracy, does not obviate the need for the government to attempt to assess the range of impacts its policy changes are likely to have.

2.3.2 Human rights effects of the policy change

Amnesty International remains concerned about the potential human rights ramifications of this policy change, especially in relation to child and forced labour. These concerns have not been diminished by the government's reassurances in 2010³⁶ that it was committed to monitoring levels of UKEF support to business below the OECD thresholds over the 2010-11 financial year, and reporting the findings to the Export Guarantees Advisory Council (EGAC).³⁷

33 See for example https://whitehall-admin.production.alpha.gov.co.uk/government/uploads/system/uploads/attachment_data/file/188321/supplier-credit-financing-facility-proposal.pdf

34 Joint NGO response to the ECGD consultation, 3 March 2010; signatories were Amnesty International UK, Campaign Against Arms Trade, Jubilee Debt Campaign, Oxfam GB, The Corner House and WWF UK. Page 4 paragraph 10

35 Amnesty International UK Submission to the Business, Innovation and Skills Committee on the subject of Government Assistance to Industry, 23 September 2012, Summary page 1, second paragraph

36 Final Government response to the Public Consultation on Proposed Revisions to ECGD's Business Principles and Ancillary Policies 1 April 2010 paragraph 14

37 In practice, EGAC primarily advises the department and its ministers on the policies the ECGD applies when doing business including: environmental impacts and human rights; sustainable lending; bribery and corruption; and disclosure.

Such reassurances do not address the fundamental concerns about the lack of human rights review procedures for certain types of transactions. In its final response to the Business Principles Public Consultation, the government indicated it would seek EGAC's advice on whether to carry out a review of the effects of the policy, taking into account any changes to the OECD's Common Approaches emanating from its current review.³⁸

Since these policy changes were introduced, BIS's Trade and Investment for Growth white paper (February 2011) has been published. It envisages a much increased share of UKEF support for small and medium sized enterprise (SME) exporters. Most of these exports are likely to fall below the OECD thresholds, and therefore will not be subject to reviews.³⁹ This will increase the risk of UKEF's portfolio contributing to human rights abuses, which might otherwise have been prevented or mitigated, had there been adequate due diligence procedures in place.

2.3.3 Government buys into 'business burden' myth

Amnesty International refutes the underlying premise used to justify downgrading of the Business Principles, namely that UKEF had imposed 'a burden upon UK exporters not imposed by the Common Approaches upon exporters of other OECD countries'.⁴⁰

Firstly, the impact questionnaire upon which UKEF's initial screening was previously based, is a six-sided document containing ten questions⁴¹ and comparable with other ECAs' questionnaires. Completing such a form can hardly be described as 'a burden', particularly when it also serves to educate exporters about the importance of environmental, social and human rights-related risks, and financial and reputational costs.

Secondly, in the Final Government Response to the Public Consultation on Proposed Revisions to ECGD's Business Principles (1 April 2010) the government stated: 'It has been ECGD's practice to review any cases falling below the OECD thresholds that are categorised as A or B... This, however, has not been the practice of the majority of OECD Members' ECAs. In this respect, and to that extent, ECGD has placed a burden on UK exporters not shared by many of their competitors.' This claim appears to lack objectivity and supporting evidence. The available evidence points to UKEF operating to lower standards than some of its OECD competitors as illustrated in Section 3 of this report. This raises the question as to whether the government is giving too much credence to the self-serving views of the British Exporters Association, whose evidence it draws on and cites.

The British Exporters Association has consistently applied pressure to the government and UKEF. In its May 2010 Newsletter, just after the General Election, its chairman wrote: 'We have been lobbying for years for ECGD to be more proactive, but it has been hampered in the last decade by very restrictive Business Principles. Now that it has been released from its shackles, we hope that we will see a new ECGD, innovative and entrepreneurial.'⁴²

Amnesty International acknowledges UKEF may need to become more 'innovative and entrepreneurial', but this should not be at the expense of effective due diligence procedures to prevent and mitigate potential adverse human rights impacts.

38 Final Government response to the Public Consultation on Proposed Revisions to ECGD's Business Principles and Ancillary Policies 1 April 2010 paragraph 14

39 The export credit has a repayment term of two years or more; the total amount of ECGD support for a contract or contracts is greater than the equivalent of Special Drawing Rights (SDR) 10 million (£10m) or the project is in or near a sensitive area; and the project is classified as either category A or category B within the terms of the Common Approaches.

40 ECGD, Consultation, Public Consultation on Proposed Revisions to ECGD's Business Principles and Ancillary Policies <http://webarchive.nationalarchives.gov.uk/20130109053809/http://www.ukexportfinance.gov.uk/Consultations/revisions-business-principles>

41 Source: VAI's Questionnaire 2005 (Freedom of Information request) www.thecornerhouse.org.uk/resources/results/taxonomy:63

42 British Exporters Association May 2010 Newsletter, Chairman's word www.bexa.co.uk/docs/May%202010%20Newsletter.pdf

2.4 UKEF introduces new products that bypass all forms of review

Launched in October 2009, the Letter of Credit Guarantee Scheme (LCGS) bypasses human rights screening processes. Under the scheme, UKEF provides partial guarantees to UK banks under a ‘master guarantee agreement’ aiming to boost small-scale British exports. Small exporters that want a guarantee against the possibility of foreign customers defaulting on payments can ask their customer to provide a letter of credit underwriting the payment from its bank (a foreign-issuing bank from a non-EU or non-OECD country). If the exporter’s UK bank lacks confidence in the foreign bank’s letter of credit, UKEF will guarantee it up to an amount, typically 50-90 per cent of its value. The government underwrites the risk of providing letters of credit with five banks: Barclays, RBS, HSBC, Lloyds TSB and Standard Chartered.⁴³

Amnesty International is concerned that the projects supported are exempt from human rights screening and review, even for child or forced labour. UKEF’s spokesman, Steve Roberts-Mee, said at the time of the scheme’s launch: ‘Letters of Credit tend to be used for short-term payment and smaller amounts, so they are used more by small and medium-sized businesses than by larger companies.’⁴⁴ However, this statement reflects current transactions but not necessarily future patterns of business; according to UKEF’s own website: ‘There is no minimum or maximum value of a letter of credit.’⁴⁵

This means the type of transactions supported by letters of credit will reflect business needs and UKEF’s appetite for risk. The LCGS doesn’t preclude support for heavy-footprint projects or those that may entail serious human rights-related risks. Even in the case of much smaller transactions, it is quite possible for an SME to be supplying a component part of a major project, which has potentially significant adverse human rights impacts.

A further concern is that, under the LCGS, human rights considerations are not treated as robustly as corruption. LCGS exporters are required to: ‘Contractually warrant that neither they nor anyone acting on their behalf... have engaged or will engage in corrupt activity in relation to the letter of credit or the export which underwrites it.’⁴⁶ No such human rights-related assurances are required.

43 Source: www.lawdonut.co.uk/news/law/government-guarantee-scheme-to-secure-payment-for-exporters

44 The Law Donut, 30 October 2009, Government guarantee scheme to secure payment for exporters, www.lawdonut.co.uk/news/law/government-guarantee-scheme-to-secure-payment-for-exporters

45 UK Export Finance, Quick guide for exporters to the Letter of credit guarantee scheme, December 2011, www.ukexportfinance.gov.uk/assets/ecgd/files/prods-servs/quickguides/quick-guide-to-lcgs-for-exporters-v5.pdf

46 ECGD Consultation on Introduction of a Product Guaranteeing Reimbursement of UK Confirming Banks under Letters of Credit Arrangements, p10-11.

3. UKEF – a comparative international perspective

3.1 UKEF ignores trends and developments in business and human rights

The government's decision to downgrade UKEF's Business Principles, in conjunction with UKEF's deficient approach to human rights due diligence in general, signals a lack of commitment to addressing the human rights context of the agency. The UK bases its approach on adherence to the 'letter' of the minimalist Common Approaches position.⁴⁷ This runs counter not only to several UK Parliamentary Select Committee report recommendations, but also international trends and developments on business and human rights.

The UN Framework and Guiding Principles on Business and Human Rights, endorsed by the UN Human Rights Council in June 2011, provide a global benchmark for both states and companies.⁴⁸ The author of the UN Guiding Principles, Professor John Ruggie, in his capacity as UN Special Representative on Business and Human Rights, repeatedly drew attention to ECAs that pursue policies running counter to those of other parts of their government on business and human rights.

In oral evidence in June 2009 to an enquiry conducted by the UK's Parliamentary Joint Committee on Human Rights (JCHR), Professor Ruggie cited export credits as an example of a lack of consistency and coherence in government policy towards addressing the human rights impact of business.

UN Guiding Principle No. 4 directly addresses the role of ECAs (*italics added*):

'States should take additional steps to protect against human rights abuses by business enterprises that are owned or controlled by the State, or 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.'

In the accompanying commentary, the UN Special Representative elaborates (*italics added*): 'A range of agencies linked formally or informally to the State may provide support and services to business activities. These include export credit agencies... and development finance institutions. *Where these agencies do not explicitly consider the actual and potential adverse impacts on human rights of beneficiary enterprises, they put themselves at risk* – in reputational, financial, political and potentially legal terms – *for supporting any such harm*, and they may add to the human rights challenges faced by the recipient State.

'Given these risks, States should encourage and, where appropriate require human rights due diligence by the agencies themselves and by those business enterprises of projects receiving their support. A requirement for human rights due diligence is most likely to be appropriate where the nature of business operations or operating contexts pose significant risk to human rights.'

The UN Guiding Principles have the potential to raise standards and 'level the playing field', ensuring that responsible UK companies are not undercut by those operating to lower standards and are better equipped to identify, prevent, mitigate and account for any adverse human rights impacts. The UK's approach to the human rights context of export credit guarantees is not just incongruent with the UN Guiding Principles, but also with other standard-setting initiatives including:

⁴⁷ www.oecd.org/officialdocuments/displaydocumentpdf/?cote=TAD/ECG%282007%299&doclanguage=en

⁴⁸ *Guiding Principles on Business and Human Rights: Implementing the United Nations 'Protect, Respect and Remedy' Framework*, 21 March 2011, A/HRC/17/31.

- The International Organization for Standardization has aligned its ISO 26000 Social Responsibility⁴⁹ standard with the principle of human rights due diligence, reflecting the work of the UN Special Representative on Business and Human Rights.
- The OECD Guidelines for Multinational Enterprises⁵⁰ were revised in June 2011 to include a separate human rights chapter containing standards on the minimum expected conduct of companies with regard to human rights. This is largely in line with the UN Guiding Principles on Business and Human Rights.
- The International Finance Corporation (IFC) has revised its Performance Standards⁵¹ (upon which the OECD Common Approaches have drawn) to reflect some aspects of international human rights norms such as the free, prior and informed consent of indigenous peoples with regard to land acquisition and resettlement.⁵²

These standards are indicative of the development of international norms and instruments on business and human rights that national export credit agencies should heed.

3.2 UKEF falls behind its competitors

In 2000, UKEF set a standard with the introduction of its Business Principles, which underpinned aspirations to promote responsible practices that reflect internationally recognised standards on human rights, the environment and sustainable development. However, the last decade has been one of complacency and lost opportunity, with UKEF falling behind some of its competitors, despite claims to the contrary. For example:

- An OECD Export Credit Group Survey in 2009 revealed 17 of the OECD member ECAs had a formal policy of assessing (not merely screening) projects with a repayment period of under two years where they are revealed to have impacts deemed of concern and/or where they involve specific sectors that are known to have potential adverse impacts.⁵³

Significantly, such assessments are undertaken by the majority of UK's competitors: Germany, France, Japan (for Japan Bank International Corporation-supported loans), Canada, Austria, Australia, Sweden, Switzerland, the Netherlands and Norway.

A subsequent OECD Export Credit Group Survey in 2010 revealed the following information in answer to the question: 'Are all applications screened? If not, please provide details of any exemptions from screening, including the value of any threshold used'. The results reported were (italics added):⁵⁴

- Twenty eight OECD Members/ECAs responded that all applications are screened. Four ECAs (Finland, Luxembourg, Portugal and Spain) specifically responded that this referred to all applications covered by the 2007 Recommendation, i.e. for support with a repayment period of two years or more. One ECA (Korea Eximbank) screens all applications for support covered by the OECD Arrangement on Officially Supported Export Credits, i.e. Common Approaches.
- Two ECAs responded that not all applications are screened. They were New Zealand which reported having a threshold of NZD 20 million, and the *United Kingdom* which reported that applications for support in the aerospace and defence sectors are subject to separate screening provisions and *that, in 2010, a screening threshold of SDR 10 million was introduced.*

49 ISO 26000 Social Responsibility – www.iso.org/iso/discovering_iso_26000.pdf

50 OECD Guidelines for Multinational Enterprises 2011 Edition – www.oecd.org/daf/internationalinvestment/guidelinesformultinationalenterprises/48004323.pdf

51 IFC's Sustainability Framework – 2012 Edition includes 'The Performance Standards', which define clients' responsibilities for managing their environmental and social risks – www1.ifc.org/wps/wcm/connect/115482804a0255db96fbffd1a5d13d27/PS_English_2012_Full-Documents.pdf?MOD=AJPERES

52 IFC Performance Standard 7 Indigenous Peoples paragraphs 10 – 15 www1.ifc.org/wps/wcm/connect/1ee7038049a79139b845faa8c6a8312a/PS7_English_2012.pdf?MOD=AJPERES

53 OECD Export Credit Working Group, 'Survey on the Environment and Officially Supported Export Credits Projects', 2009, www.oecd.org/department/0,3355,en_2649_34169_1_1_1_1_1,00.html

54 OECD Working Party on Export Credits and Credit Guarantees – Export Credits and the Environment: 2010 Review of Members' responses to the survey on the environment and officially supported export credits – page 6 <http://search.oecd.org/officialdocuments/displaydocumentpdf/?cote=TAD/ECG%282010%2910/FINAL&docLanguage=En>

Germany's ECA (Euler Hermes) reviews transactions below the OECD thresholds 'with regard to their [ESHR] effects only if they obviously involve specific [ESHR] risks. This holds particularly true for projects in especially sensitive areas, which deserve protection'. The Dutch ECA (Atradius) 'both screens and assesses all short term credits'.

The Australian, Canadian, Danish and US ECAs have all joined the Equator Principles, a framework for determining, assessing and managing environmental and social risk in Project Finance transactions. The Equator Principles are tied to the International Finance Corporation's Performance Standards.

Australia's ECA, the EFIC, undertook a review of its Environment Policy (2009-10), consulting widely with NGOs, and has committed to consider 'the establishment of some form of grievance mechanism to resolve complaints about EFIC-supported projects.'⁵⁵

Canada's ECA, the EDC, has issued a CSR annual report since 2004. Canada also has a Compliance Officer, which 'operates independently from EDC management, receiving and reviewing complaints from stakeholders. The Officer also fields inquiries about EDC's fulfilment of its Corporate Social Responsibility (CSR) policies and initiatives.'⁵⁶ This ombudsman-like function was put in place in 2001 and reconfirmed in 2005.

The Danish ECA, EKF, introduced an 'Openness Policy' in July 2010, stating: 'As a state-owned institution it is important that the way EKF fulfils our mission and administers the money made available to us by the Danish state for this purpose is transparent to the Danish society.'⁵⁷ The EKF publishes an annual 'CSR report based on the principles of the Global Reporting Initiative and the UN Global Compact (published in April)'.

In this light, UKEF appears to be lagging behind by operating to lower standards than some of its main OECD competitors.

55 Letter to EFIC from Oxfam Australia, 17 December 2010.

56 Source: www.edc.ca/EN/About-Us/Management-and-Governance/Compliance-Officer/Pages/default.aspx

57 For full details see: www.ekf.dk/en/about-ekf/CSR-at-EKF/Pages/openness.aspx

4. UKEF resists transparency and accountability

4.1 Transparency and trust

Transparency is an important attribute of an export credit agency, because it engenders trust with key stakeholders, facilitates accountability for its decisions and processes, and legitimises the use of public funds. Although there may be some legitimate reasons why information may be withheld under certain circumstances, these should not become a pretext to conceal information routinely and unnecessarily to avoid scrutiny.

Several NGOs and civil society organisations have had to resort to using the Freedom of Information (FOI) Act 2000 to obtain information. The Corner House, which has worked for a number of years with communities adversely affected by UKEF-supported projects, has often had to resort to FOI requests to find out about the extent of procedures undertaken by UKEF to address the social and environmental impacts of projects it supports.

A few examples demonstrate the lengths to which UKEF has gone to avoid disclosing information. This behaviour has created the impression of an entity reluctant to be transparent about its activities. The examples also highlight criticism by the UK Information Commissioner of UKEF's conduct and the long periods of time that FOI requests have taken to be concluded.

Example 1:

This FOI request relates to the Baku-Tbilisi-Ceyhan Pipeline (BTC) project. On 8 August 2005, The Corner House asked UKEF to provide information about the project, which it believed should be available under the Environmental Information Regulations 2004 (EIR). The request was, in the words of the Information Commissioner's Office, 'large and complex'. Following on from the original request were numerous exchanges between UKEF and The Corner House, including a request for an internal review of UKEF's decision to withhold some of the information. In November 2006, UKEF released the results of its internal review.

In December 2006, a complaint was made to the Information Commissioner about the way UKEF had handled the request and the excessive time taken to carry out its internal review. In July 2008, nearly three years after the original request, the Information Commissioner's Office made available its decision. There were three elements to it:⁵⁸

- The Information Commissioner requested that UKEF supply to The Corner House various pieces of information it had withheld.
- The Information Commissioner found UKEF had breached a number of regulations pertaining to making information available and criticised its excessive delay in responding to the request.

The Information Commissioner's decision includes the following critical statement about UKEF's attitude and behaviour towards the legislation governing FOI:

- 'The Commissioner has found complaint 4 to have been amply justified and criticises ECGD accordingly for its poor performance and cavalier disregard for the procedures set out in the legislation.'

⁵⁸ The Information Commissioner's decision pertaining to this request is available on the ICO website www.ico.gov.uk/tools_and_resources/decision_notices.aspx at this link View PDF of Decision Notice FER0145666 paras 29, 53 and 54

Example 2:

This request relates to the sale of armoured vehicles by Alvis Vehicles Ltd, part of BAE Systems, to Indonesia and the payment of agent's commission on the transaction. It was submitted by The Corner House in February 2005. In this instance the process lasted until June 2010, when the Information Commissioner's Office issued its adjudication on the complaint.⁵⁹

Although the Information Commissioner found in favour of UKEF, the decision included a number of criticisms:

- The Commissioner found that UKEF breached section 17(1) of the act in failing to issue a refusal notice within the time limit specified.
- UKEF was criticised for the time taken to undertake an internal review, a subject that the Information Commissioner has issued guidelines on, indicating that 20 working days is reasonable, with up to 40 working days in exceptional circumstances.
- The Commissioner did not consider five months an acceptable time to conduct an internal review in any particular case.

Example 3:

These requests relate to the sale of armoured vehicles to Indonesia in the mid-1990s. The vehicles were supplied by Alvis Vehicles Ltd. Once again the Information Commissioner's Office in its adjudication supported several of the complaints made by The Corner House, though not all of them. It was again critical of the time taken by UKEF to conduct internal reviews related to this case, concluding that it 'does not consider that 8 months for request 2 and 4 months for request 3, part 2, are acceptable time periods to conduct an internal review in any case'.

Parliamentary Select Committees cite UKEF for lack of transparency

Several Parliamentary Select Committees have commented on the need for UKEF to improve its transparency:

Environmental Audit Committee (EAC):

In October 2008, the Environmental Audit Committee (EAC) reported on its investigation into 'The Export Credits Guarantee Department and Sustainable Development'. The report included the following observations:

- The ECGD must improve the transparency of its assessment processes and increase the level of disclosure of project information.
- A bolder approach from the ECGD on sustainable development issues and transparency will be vital in improving the performance of Export Credit Agencies in general.⁶⁰
- A lack of transparency lies at the root of a substantial part of the criticism directed at the ECGD during the course of our inquiry. There is a need for review of the ECGD's approach to transparency and the disclosure of information.
- We do not believe that the ECGD has struck the appropriate balance between protecting commercial confidentiality and ensuring due transparency.⁶¹

Whilst acknowledging the need for commercial confidentiality the EAC stated: 'However, it remains the case that the ECGD's use of public funds demands greater levels of transparency.'⁶² In conclusion, the EAC could not find any persuasive justification for the reluctance of UKEF to be more transparent, and it repeated its recommendations for the implementation of demands made five years earlier and still not implemented.

Joint Committee on Human Rights (JCHR):

In December 2009, the JCHR published its report on business and human rights, 'Any of our

⁵⁹ The Information Commissioner's decision pertaining to this request is available on the ICO website www.ico.gov.uk/tools_and_resources/decision_notices.aspx at this link [View PDF of Decision Notice FS50199771 paras 125, 128, 129 and 130](#)

⁶⁰ www.publications.parliament.uk/pa/cm200708/cmselect/cmenvaud/929/929.pdf Summary page 3

⁶¹ www.publications.parliament.uk/pa/cm200708/cmselect/cmenvaud/929/929.pdf page 19 para 12

⁶² www.publications.parliament.uk/pa/cm200708/cmselect/cmenvaud/929/929.pdf page 16

business? Human rights and the UK private sector⁶³, a section of which focused on UKEF. The JCHR challenged the adequacy of UKEF's processes and the government's political will to address UKEF's failings. These are reflected in the following extracts (italics added):

*'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 Credits Guarantee Department to perform due diligence of the human rights impacts of its application.'*⁶⁴

*'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.'*⁶⁵

It is indicative of the gulf between parliamentarians and the government over a number of years regarding the policies and practices of UKEF that the government not only ignored the above JCHR recommendations but also dismantled the Business Principles.

The rest of the committee's conclusions and recommendations with regard to UKEF summarise well a number of the on-going criticisms of UKEF by civil society, as well as provide some constructive solutions for improving UKEF's transparency, disclosure and due diligence practices (italics added):

'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.'

'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.'

'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.'

63 www.publications.parliament.uk/pa/jt200910/jtselect/jtrights/5/5i.pdf

64 www.publications.parliament.uk/pa/jt200910/jtselect/jtrights/5/5i.pdf page 73 para 244

65 www.publications.parliament.uk/pa/jt200910/jtselect/jtrights/5/5i.pdf page 73 paras 244, 245, 246 and 247

Business Innovation and Skills Committee (BISC):

In 2011, BISC conducted its ‘Rebalancing the Economy: Trade and Investment’ investigation, which reported in June 2011. Although its main focus was how to promote and stimulate trade and investment in the UK, the final report referred to the concerns raised by Amnesty International and other NGOs regarding the impacts of UKEF on human rights, the environment, debt, bribery and the arms trade. In its conclusion in ‘Wider Scrutiny of Export Credit Agencies’ it commented on the need for transparency (*italics added*):

‘We support the OECD rules which govern all Export Credit Agencies. We also acknowledge that many NGOs do not have faith that all ECAs abide by them. *We look to the Government to work towards the highest level of transparency in ECGD transactions so that all interested parties can have confidence that ECGD activities abide by both the letter and the spirit of the OECD rules.*’⁶⁶

OECD Export Credit Group Survey on Disclosure in 2010:

The OECD Export Credit Group, an inter-governmental body of export credit agencies, conducted a survey in 2010 on the extent to which export credit agencies require project sponsors to make monitoring reports and related information publicly available or seek to make such information publicly available themselves. The survey revealed that there are four members/ECAs that have no requirement for disclosure of monitoring reports and related information: Finland, Italy, Turkey and the UK.⁶⁷

4.2 Accountability

In submissions to government consultations and select committee enquiries, Amnesty International has argued that processes should exist to bring UKEF into line with the UK’s international obligations and the 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. Amnesty has also raised the following questions:

- To what extent are ministers willing and able to subject UKEF to critical scrutiny with regard to issues relating to its human rights and environmental impacts?
- Are the levels of UKEF’s disclosure of relevant information sufficiently transparent to allow for ministerial and parliamentary scrutiny?
- Has UKEF become too self-contained, self-policing and opaque to ensure proper oversight of its activities?

Criticisms of the lack of accountability and transparency of decisions made by export credit agencies have also come from the UN. A UN report published in August 2011 – ‘Effects of foreign debt and other related international financial obligations of States on the full enjoyment of all human rights, particularly economic, social and cultural rights’⁶⁸ – by UN appointed independent expert Cephias Lumina concluded as follows (*italics added*):

‘Projects supported by export credit agencies can have an adverse impact on sustainable development and human rights in the countries in which they are implemented. *Often, export credit agencies lack transparency and do not adequately incorporate environmental, social and human rights considerations into their funding decisions.* Under the international law of State responsibility, officially supported export credit agencies are organs or agents of the home State, and their wrongful acts or omissions may be attributable to that State. As such, home States are under an obligation to regulate their activities. In addition, export credit agencies have a responsibility to respect human rights.’⁶⁹

One aspect of accountability of particular concern to Amnesty International is the extent to which fundamental policy decisions have been taken by UKEF and the UK government without any

66 www.publications.parliament.uk/pa/cm201012/cmselect/cmbis/735/73511.htm#a41 para 219

67 <http://www.oecd.org/officialdocuments/displaydocumentpdf?cote=tad/ecg%282010%2910/final&doclanguage=en> page 33 para 60

68 www.un.org/ga/search/view_doc.asp?symbol=A/66/271

69 www.un.org/ga/search/view_doc.asp?symbol=A/66/271 para 54

apparent assessment of their impacts on human rights, despite prima facie evidence that there is a human rights dimension to those policy changes. Amnesty views the failure of UKEF to conduct an impact assessment of its proposed policy changes as a failure to take reasonable and proactive steps to protect human rights.

One such example is the policy decision to downgrade UKEF's Business Principles, which were introduced in 2000 to ensure UKEF's conduct was consistent with the UK's international obligations. Another such policy decision was 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.

This failure is extended to the most recent products introduced by UKEF to broaden its portfolio. The concern is that many of the new products such as the Bond Support Scheme, the Export Working Capital Scheme and the Foreign Exchange Credit Support Scheme would also not be covered by the Common Approaches and as a result UKEF would not be obliged to screen and assess requests for support involving these new products.

In principle, UKEF and the ministers responsible for it are accountable to parliament and in particular to Select Committees. While Select Committees have criticised UKEF and made recommendations to improve its transparency, public accountability and due diligence to prevent and/or minimise human rights abuses, successive UK governments have rejected such recommendations. In doing so they have missed opportunities to make UKEF more transparent and accountable with strengthened due diligence processes and improved monitoring and disclosure. This would almost certainly have improved the agency's impact on human rights.

Another concern is that UKEF may have been hiding behind the recent review of the OECD's Common Approaches, using the review 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.

The recommendations of the UN Independent Expert's report provide an excellent template for states and their export credit agencies to improve levels of accountability:⁷⁰

- (a) States adopt measures to ensure that their export credit agencies adopt and *implement stronger environmental and social safeguards that are consistent with international human rights standards.*
- (b) *States ensure that their export credit agencies improve transparency and accountability by implementing disclosure policies that require, inter alia, public disclosure of all information on the environmental, social, human rights and development impact of agency-supported transactions and that such information is made accessible to the affected communities.*
- (c) States take measures, including adopting legislation, to ensure that their export credit agencies do not support projects that cause or contribute to human rights violations, and in this regard, that they *ensure that their export credit agencies discharge their obligation to respect human rights by adopting a human rights due diligence framework through which they can assess the actual and potential negative human rights impact and address risks effectively.*
- (d) *States ensure access to effective national legal remedies for those affected by export credit agency-supported projects and exports, including the victims of human rights violations arising from export credit agency-supported activities.*
- (e) The implementation of the OECD Common Approaches in environmental, social and human rights screening policies of export credit agencies become mandatory.
- (f) The international community adopt a moratorium on the repayment of current export credit agency debt for the poorest countries, much of which has been incurred for economically unproductive purposes, debtor countries conduct transparent public audits of all export credit agency claims to determine their legitimacy in conformity with the odious debts doctrine, and all debt found to be contrary to the doctrine be unconditionally cancelled.

70 www.un.org/ga/search/view_doc.asp?symbol=A/66/271 pages 16 and 17 para 55

This UN report highlights generic weaknesses of ECAs from a human rights perspective. Many of the failings referred to are shared by UKEF.

4.3 Prevention and monitoring

One area that has been of particular concern to a number of NGOs and civil society groups for several years has been the lack of access to monitoring reports on UKEF-supported projects. In particular where any due diligence has identified the need for actions to prevent or minimise human rights abuses, access to monitoring reports on the success or otherwise of those actions should be automatic.

Reports by parliamentary committees in recent years would indicate that access to those monitoring reports is the exception rather than the norm. The Environmental Audit Committee's (EAC) 2008 report, *The Export Credits Guarantee Department and Sustainable Development*, posed the following questions: How satisfactory is the level of information disclosed by ECGD about existing projects and projects under consideration? What information should be disclosed, and how and where should this information be made available? How can the commercial interests of industry be reconciled with the need for transparency?

Responses included the following from the environmental NGO WWF: 'WWF made a number of requests regarding the Sakhalin II project. Some of these were simple factual requests, regarding progress on the project or monitoring reports. Worryingly ECGD was not able to provide this kind of information as the department did not hold it. This suggests that the department was not even closely following the development of the project, despite its claims that it is actively involved in improving the projects it considers for support.'⁷¹

'Disclosure of a summary of the assessments made by ECGD in its decision on categorisation for each project and publication of the case specific assessment procedures and monitoring processes that will be undertaken in light of this categorisation should be published in order that the accuracy of ECGD's categorisation and the fulfilment of required assessments can be sufficiently scrutinized.'⁷²

In addition, the EAC reported 'the ECGD does not normally disclose the impact assessments that it makes of projects and has only ever done so in response to Freedom of Information requests.' Even when assessments are made available they are heavily redacted and therefore of limited use. This makes monitoring and assessment of any due diligence carried out by the ECGD difficult to undertake.

There appears to be a presumption on the part of UKEF of not making key documents available, which could assist the public in monitoring and potentially helping to improve the effectiveness of UKEF's due diligence. When they are made available, it is often only after prolonged Freedom of Information requests. Amnesty International believes UKEF should adopt a policy of 'disclose or explain', posting on its website all completed human rights and environmental screening assessments, impact questionnaires and other assessments of projects, as a matter of course. Commercial confidentiality is too often being used as a convenient pretext for secrecy, which is inappropriate for a publicly accountable body.

4.4 Access to Remedy

There are very few channels for those whose human rights have been adversely affected by a UKEF-supported transaction or project to claim a remedy. In many instances the country where the abuse is alleged to have taken place, does not have a sufficiently robust, fair and impartial judicial system to ensure claimants receive a fair hearing. In these cases bringing action in the home state against the company involved and the ECA may be the only option left.

71 www.publications.parliament.uk/pa/cm200708/cmselect/cmenvaud/929/929.pdf Ev6 answers to Question 4

72 www.publications.parliament.uk/pa/cm200708/cmselect/cmenvaud/929/929.pdf Ev6 answers to Question 4

However, this is very difficult and expensive for victims of UK companies operating abroad. The jurisdictional hurdles and other administrative barriers are considerable. Legislation passed in parliament in 2012, the Legal Aid, Sentencing and Punishment of Offenders Act, will also create practical and procedural barriers for victims of UK companies abroad seeking justice via the UK courts.

UKEF lacks an effective grievance mechanism for those adversely affected by projects it supports. This is compounded by the fact that there is no requirement in the legislation governing UKEF that it exercises a 'duty of care' to those affected by its operations.

A 'duty of care' clause inserted into the legislation governing UKEF would, if breached, provide grounds for adversely affected individuals to take action against UKEF, as well as against any companies or financial institutions involved in the project concerned.

4.5 The All Party Parliamentary Group (APPG) on International Corporate Responsibility's Inquiry into UK Export Finance – exploring the tension between trade and responsibility

In April 2012, the APPG on International Corporate Responsibility launched an inquiry into UK Export Finance (UKEF). It was jointly chaired by Lisa Nandy MP (Labour and also the APPG chair), Martin Horwood MP (Liberal Democrat), and Harriet Baldwin MP (Conservative).

In November 2012, the APPG published its report.⁷³ Most of its 10 recommendations relate to the way UKEF works with exporters and its product range, but three specifically relate to its accountability and transparency (highlights are as in the report's recommendations):

- UKEF should regard the OECD Common Approaches as a starting point for ESHR [environmental, social and human rights] standards; **expand the standards to all project applications**, including aerospace and at all values; impose penalties on companies that violate standards; appoint a non-executive director with human rights experience to the management board, and allow EGAC to review current applications on request. No project should be granted cover until its ESHR assessment is completed. More transparency is welcomed.
- UKEF should establish a **grievance mechanism**; consult on a prohibitions list for arms; and conduct a review of existing best practice on human rights and the environment in the private sector to ensure UKEF standards do not cover projects that the private sector would not on ethical grounds.
- UKEF should **publish all impact assessments**, subject to reasonable commercial confidentiality constraints and audit all debts owed.

The report's final conclusion was: 'The inquiry holds that delivering export-led growth and upholding ethical and environmental business standards are not mutually exclusive; that examples exist of export credit agencies from all over the developed world that are at once more active in supporting their countries' exports and demand more rigorous standards in their human rights and environmental due diligence. If UKEF is to genuinely fill a gap that the private sector cannot provide, demanding reasonable standards of their clients in this space should not impede British competitiveness and with public money, certain standards should be expected to protect the reputation of British business.'

This report builds on previous parliamentary reports, referenced earlier in this briefing, which made recommendations to the UK government and UKEF calling on UKEF to be made more accountable and transparent in how it gives effect to human rights and environmental standards.

73 <http://appgicr.files.wordpress.com/2012/12/ukef-final-report-2.pdf>

5. UKEF ignores emerging UK government consensus on business and human rights

UKEF is out of kilter with the steps the UK government is taking to address the human rights impacts of UK companies operating abroad, including initiatives elsewhere in the Department of Business, Innovation and Skills (BIS), as well as within the Foreign and Commonwealth Office (FCO) and Ministry of Justice (MoJ).

Just as UKEF was consulting on downgrading the Business Principles and its commitment to human rights due diligence, BIS declared in March 2010 that it was supporting an initiative to strengthen standards for companies: ‘The UK Government supports an update of the [OECD Guidelines for Multinational Enterprises]... The UK Government feels that by providing support for an update, this offers an opportunity to exploit the UK’s strong position as an ‘effective’ NCP to influence the outcome of the OECD consultations. The Government believes the potential benefits of an update include: promoting a level-playing field for UK multinationals; improving the Guidelines’ contribution towards sustainable development; potentially raising the standard of operation of the NCPs in other countries; and increasing the reach of the Guidelines...

‘The Government supports Ruggie’s work towards proposing ways to implement his framework on business and human rights, and will therefore support a Ruggie-based due diligence approach, and adequate guidance to multinationals, in the context of the update of the Guidelines.’⁷⁴

Within BIS too, the UK National Contact Point (NCP) under the OECD Guidelines for Multinational Enterprises has upheld complaints relating to the human rights impacts abroad of several UK companies. One such complaint pertains to the UKEF backed BTC pipeline.⁷⁵

Amnesty International is concerned that whilst one department that reports to BIS has offered financial support to a company, another department within BIS has condemned the same company for breaching international standards. Although these two actions were not contemporaneous, the fact that they can take place illustrates the problem of incoherence in the UK government’s policies and actions with regard to business and human rights.

This raises the question of whether UKEF should be extending support to a UK company that has been cited by the UK NCP for a breach of the OECD Guidelines for Multinational Enterprises. A more fundamental question is where do human rights fit into the UK’s commitment to promoting growth and prosperity through trade and investment?

A process the government is undertaking may help to address this question. In the wake of the June 2011 Human Rights Council’s endorsement of the UN Guiding Principles on Business and Human Rights, the UK government is developing a cross-departmental strategy on business and human rights. This follows the incorporation of the UN framework into both OECD and EU processes. This work is being coordinated by a cross-Whitehall steering group comprising representatives of different departments involved in aspects of British business activity overseas. The steering group is being coordinated by the Human Rights and Democracy Department of the FCO.

The government’s stated position is that it is determined to help British companies develop their business activities at home and overseas, while being deeply committed to human rights as a core

⁷⁴ BIS: Department for Business, Innovation and Skills, *Government Response to the UK Consultation on the Terms of Reference for an Update of the OECD Guidelines for Multinational Enterprises*, March 2010, URN 10/802.

⁷⁵ UK National Contact Point – Revised Final Statement 22 February 2011 – Specific Instance: BTC Pipeline <http://webarchive.nationalarchives.gov.uk/20121205150610/http://www.bis.gov.uk/assets/biscore/business-sectors/docs/r/11-766-revised-final-statement-ncp-btc.pdf>

value at the heart of government policy, and is therefore committed to helping British companies do business in ways that take account of human rights situations and avoid negative human rights impacts.⁷⁶

In keeping with this approach the FCO has published a toolkit on business and human rights for circulation to its missions overseas.⁷⁷ 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 abroad.

Amnesty International welcomes such initiatives and urges the government to face up to the challenge of becoming more coherent in aligning policies on business and human rights across departments to avoid the prevailing situation of departmental policies that are too often mutually incompatible.

⁷⁶ FCO website, Business and human rights www.fco.gov.uk/en/global-issues/human-rights/international-framework/business/

⁷⁷ Business and Human Rights Toolkit, *How UK Overseas Missions can Promote Good Conduct by UK Companies*, HM Government, June 2011

6. Recommendations

Arising from these findings are recommendations that, if implemented, would enable UKEF to operate in a way that is compatible with the UK's international human rights obligations, best practice amongst export credit agencies, and evolving international standards on business and human rights. These recommendations are divided between those directly applicable to the UK government and those specifically relevant to UKEF.

Recommendations to the UK government

1. The government should conduct and publish a human rights impact assessment on any policy decision relating to the operations of UKEF that might affect human rights.
2. The government should ensure UKEF's policies and practices are consistent with all the UK's international human rights obligations and policy commitments in the sphere of business and human rights, including those relating to the implementation of the UN Framework and Guiding Principles on Business and Human Rights.
3. The government should consult with civil society organisations before and during any future revision of the OECD Common Approaches.
4. The government should ensure any promotion of trade and investment by its departments and agencies, such as UKEF and UK Trade & Investment (UKTI), which works with UK-based businesses to ensure their success in international markets and encourages overseas inward investment, is not at the expense of human rights. All agencies and departments promoting trade and investment should demonstrate awareness of the UK's human rights obligations and the necessity for human rights due diligence in all cases of business support.
5. The government should amend the legislation governing UKEF to incorporate a 'duty of care' towards those affected by the agency's processes, decisions and activities, with an appropriate avenue of redress for any breaches.

Recommendations to UKEF

1. UKEF, its client companies and financial intermediaries should ensure human rights due diligence is carried out for all the trade and investment transactions it supports, irrespective of the amount, duration of the support and categorisation of the project.
2. UKEF should impose an explicit ban on supporting any project involving or likely to involve child and/or forced labour.
3. UKEF should demonstrate greater transparency in all aspects of its operations. In particular it must disclose the outcome of its assessment processes, any conditions for its support, and any monitoring reports relating to compliance with those conditions. It should adopt a 'disclose or explain' policy with a presumption of transparency unless there are compelling reasons for non-disclosure.
4. UKEF should implement an effective grievance mechanism to enable those adversely affected by processes, decisions and activities to lodge a complaint and obtain remedy.
5. UKEF should not offer support to any company deemed to be in breach of the OECD Guidelines for Multinational Enterprises for a period of time following the company's citation for breaching the guidelines.

Amnesty International UK
The Human Rights Action Centre
17-25 New Inn Yard
London EC2A 3EA
www.amnesty.org.uk

