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Export Development Act
Legislative Review

Submission by the Halifax Initiative Coalition
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The Halifax Initiative is a coalition of human rights, environmental, faith-based, development and labour organizations. Our objective is to transform the international financial institutions to achieve poverty eradication, environmental sustainability and the full realization of universal human rights.

This submission addresses Theme D of the 2008 legislative review, “EDC’s place within government,” with a focus on accountability and corporate social responsibility.

In her 2004 audit, the Auditor General stated that “[i]ncreased expectations for greater accountability in both the private and public sectors impose on EDC a greater responsibility to demonstrate that it exercises its discretion wisely. In our view, the counterbalance to the broad discretion in EDC’s environmental review policies is greater transparency (...) our Report recommends additional steps that EDC needs to take to enhance transparency and to assure Parliament and Canadians that EDC’s environmental review processes uphold high standards of environmental protection and sustainable development.”¹

Four years later, the Auditor General’s concerns remain valid. Virtually no information is available to the public regarding EDC decision-making processes. EDC does not disclose how it assesses client proposals; what constitutes an acceptable project; the conditions it imposes on successful clients, if any; how it assesses whether clients remain in compliance with imposed conditions and/or relevant standards; or how it address cases of non-compliance. Recent legislative reform that brought EDC within the purview of the *Access to Information Act* failed to remedy this problem.

Moreover, EDC lacks an explicit, comprehensive policy on human rights and in several important areas, the standards that EDC reportedly employs to assess project acceptability fall significantly short of “best practice.”

¹ Auditor General of Canada. *Environmental Review at Export Development Canada*. 2004. http://www.oag-bvg.gc.ca/internet/English/aud_parl_otp_2004_e_14903.html#chhd3a

The *Export Development Act* should be amended to explicitly address these shortcomings.

1. Disclosure and accountability

Legislative and policy provisions governing the release of information by EDC include a presumption against public disclosure. The few exemptions that exist to this blanket prohibition are ill-defined.

In 2007, Export Development Canada became subject to the *Access to Information Act*. Unfortunately, the application of the Act to EDC is severely hampered by an extensive “carve out” in subsection 24.3 of the *Export Development Act*:

(1) Subject to subsection (2), all information obtained by the Corporation in relation to its customers is privileged and a director, officer, employee or agent of, or adviser or consultant to, the Corporation must not knowingly communicate, disclose or make available the information, or permit it to be communicated, disclosed or made available.

(2) Privileged information may be communicated, disclosed or made available:

(a) for the purpose of the administration or enforcement of this Act and legal proceedings related to it;

(b) for the purpose of prosecuting an offence under this Act or any other Act of Parliament;

(c) to the Minister of National Revenue solely for the purpose of administering or enforcing the *Income Tax Act* or the *Excise Tax Act*; or

(d) with the written consent of the person to whom the information relates.

This extremely broad exemption is explicitly recognized in subsection 24 (1) of the *Access to Information Act*:

The head of a government institution shall refuse to disclose any record requested under this Act that contains information the disclosure of which is restricted by or pursuant to any provision set out in Schedule II.

Schedule II includes section 24.3 of the *Export Development Act*.

Subsection 24.3 of the *Export Development Act* provides a mechanism for the disclosure of privileged information, via the written consent of the person to whom the information

relates. However, EDC's policy on the use of this mechanism is unclear. According to the EDC Disclosure Policy,² EDC will "seek" to have all project sponsors of Category A projects in G7 countries consent to EDC disclosing very basic information about a transaction (e.g. country, project name). Consent for such disclosure is not a precondition for EDC support. For projects outside G7 countries, EDC will require that the client consent to disclose such information and that the client release "available" environmental impact information. However, this requirement may be waived by EDC. Beyond these limited circumstances, the EDC Disclosure Policy is silent on the release of privileged information.

The effect of these statutory provisions is to indiscriminately characterize all information received by EDC from its clients as confidential. This includes information, the public release of which would not prejudice EDC clients. These provisions also treat as confidential any internal EDC documentation developed during project assessment, approval and monitoring phases, given that these documents necessarily contain information received from clients. These legislative measures effectively undermine the application of the *Access to Information Act* to EDC.

As a consequence, it remains impossible for the Canadian public and parliamentarians to know how EDC makes decisions about project categorization, how EDC assesses the social, environmental and human rights risks associated with projects, what modifications or mitigation measures EDC requires of clients, how EDC assesses on-going project compliance, the results of post-approval monitoring activities and any sanctions that EDC applies for non-compliance. In short, the considerable discretion that EDC wields is not balanced with effective transparency practices.

Calls for reform

In 2006/7, a comprehensive consultation process was carried out by the Canadian government on Corporate Social Responsibility and the Canadian Extractive Industry in Developing Countries. Among other issues, this groundbreaking roundtable process examined the role of the state in facilitating the overseas investments of Canadian extractive companies. The consultations culminated with the release of a final report³ that contains a series of policy reform recommendations for the Government of Canada. The consensus-based report was prepared by a multi-stakeholder Advisory Group that included representatives from industry, labour, academia, civil society and responsible investors. Since its release, the report has been publicly endorsed by a national mining industry association and by a broad coalition of civil society organizations.

The final report includes specific recommendations regarding Canada's export credit

² http://www.edc.ca/english/docs/disclosure_policy_e.pdf

³ National Roundtables on Corporate Social Responsibility (CSR) and the Canadian Extractive Industry in Developing Countries. Advisory Group Report. March 29, 2007.
<http://geo.international.gc.ca/cip-pic/library/Advisory%20Group%20Report%20-%20March%202007.pdf>

agency that aim to strengthen its due diligence processes and improve the corporate social responsibility performance of its clients. The report also addresses disclosure. Recommendation 2.3.2.3⁴ states:

[i]t is recommended that Export Development Canada (EDC) improve its disclosure policy. Subject to bona fide commercial confidentiality concerns, EDC should publicly release:

- Project classification rationales;
- Project assessments (undertaken during EDC due diligence);
- Modifications and mitigation measures required by EDC; and
- Project monitoring and evaluation documents generated by EDC, project proponents and consultants throughout project implementation.

Recommendation

The *Export Development Act* should be amended to remove the section 24 “carve out” that effectively exempts EDC from the application of the *Access to Information Act*. The *Access to Information Act* should apply, without restriction, to Export Development Canada. The EDC Disclosure Policy should be amended so that it is consistent with the provisions of the *Access to Information Act*.

2. Human Rights⁵

Export credit agencies form part of the state apparatus. In fact, Export Development Canada is explicitly identified in the *Export Development Act* as an agent of the government. This legal nexus to the state is highly significant under international law. It means that states have legal responsibility for the operations of their export credit agencies. In the area of international human rights law, this signifies that Canada is responsible for any breaches of its legal obligations that are committed by Export Development Canada.

Canada’s international human rights obligations

International human rights law imposes obligations on states to respect, protect and fulfill human rights.⁶ The United Nations treaty bodies have been delegated the task of interpreting the core human rights treaties. Most of the treaty bodies have indicated that state parties to the treaties have a duty to protect against corporate abuse affecting individuals within a state’s jurisdiction. They have stated that the obligation to effectively

⁴ *Ibid.* at 19.

⁵ For a more detailed discussion, see the 2008 Halifax Initiative publication, *Export Credit Agencies and the International Law of Human Rights*. http://www.halifaxinitiative.org/updir/ECAs_and_HR_law.pdf

⁶ Committee on Economic, Social and Cultural Rights. General Comment No 12 on the Right to Food, E/C.12/1999/5.

regulate and adjudicate corporate activity with respect to human rights includes the adoption of legislation to safeguard the rights of individuals. The treaty bodies have recommended that states provide adequate resources for the effective enforcement of all regulatory measures and have identified the need for states to ensure independent monitoring of third party compliance, even prior to allegations of abuse. Further, the treaty bodies have recommended that once a complaint is made, including those complaints concerning corporations, that states investigate and adjudicate the complaint, punish third parties who interfere with the enjoyment of human rights and provide effective remedies to the victims.⁷

Because states are responsible under international law for the operations of their export credit agencies, they must ensure that they do not violate their international legal obligations through these agencies, including in the area of human rights law. This means that the state duty to protect against human rights abuse by third parties extends to the operations of export credit agencies. States therefore have international law obligations to ensure that ECA operations neither facilitate nor ignore human rights abuses by the corporations whose activities they support.

When we revisit the elements of the state duty to protect, as described above, it becomes clear that Canada is failing to fulfill these obligations in the provision of official export credits and investment insurance. Canada lacks legislative provisions regarding human rights and Export Development Canada. There is no mention of human rights in the *Export Development Act*. Export Development Canada reports that it applies a human rights assessment process as part of its due diligence. This process employs “policy-level guidance” from the Government of Canada with respect to Canada’s international obligations and includes country-level political risk assessments.⁸ For those projects “in markets where there are known human rights sensitivities,” EDC undertakes a more detailed human rights assessment.⁹ Unfortunately, the details of this human rights assessment process, which EDC refers to as its “proprietary methodology,” are not public, nor are the results of project-specific human rights assessments.¹⁰ This lack of transparency makes it impossible to assess the effectiveness of EDC’s methodology, as applied by its employees. The Crown corporation reports that “monitoring human rights is an ongoing function at EDC.”¹¹ However, it is not known whether this monitoring function is undertaken at the project level and if so, whether it involves independent experts. The results of human rights monitoring activities are not published.

⁷ *State Responsibilities to Regulate and Adjudicate Corporate Activities under the United Nations’ core Human Rights Treaties*. Prepared for the mandate of the Special Representative of the United Nations Secretary-General (SRSG) on the issue of human rights and transnational corporations and other business enterprises. 12 February 2007. A/HRC/4/35/Add.1

www.reports-and-materials.org/State-Responsibilities-to-Regulate-Corporate-Activities-under-UN-Core-Treaties-12-Feb-2007.pdf

⁸ See letter dated November 5, 2007 from Rosemarie Boyle, Vice-President, Corporate Communications and External Relations, EDC to Karyn Keenan, Program Officer, Halifax Initiative Coalition. www.halifaxinitiative.org/index.php/projects_correspond/1068

⁹ *Ibid.*

¹⁰ *Ibid.*

¹¹ www.edc.ca/english/social_csr.htm#Human_Rights

Finally, while EDC is one of few export credit agencies that has established a complaints mechanism, this internal officer is no substitute for an independent adjudicative body and cannot provide victims with appropriate remedies. In 1998, a law suit was initiated in Canada on behalf of indigenous people who claimed to suffer human rights violations when the Omai mine in Guyana caused a major environmental disaster. The Canadian company that developed the mine received political risk insurance from Export Development Canada. The Canadian court that received the plaintiff's case refused to consider it, arguing that Guyana was the appropriate venue for the suit. The court was not persuaded by expert testimony regarding the unwillingness and incapacity of the Guyanese judiciary to provide the victims with a fair trial.¹² A subsequent case brought before a Guyanese court was also dismissed, leaving the victims without recourse.¹³ The Government of Canada has taken no action to remedy this judicial lacuna.

Calls for reform

A number of actors have called on the Government of Canada to address these shortcomings. In 2005, a subcommittee of the Parliamentary Standing Committee on Foreign Affairs and International Trade (SCFAIT) held hearings on the activities of Canadian mining companies in developing countries. SCFAIT, which includes parliamentarians from all political parties that are represented in the legislature, subsequently released its fourteenth report¹⁴ to the Government of Canada. The report identifies a number of recommendations aimed at improving the social and environmental responsibility of Canadian companies. Among other recommended actions, the members of the Standing Committee urged the government to:

[p]ut in place stronger incentives to encourage Canadian mining companies to conduct their activities outside of Canada in a socially and environmentally responsible manner and in conformity with international human rights standards. Measures in this area must include making Canadian government support – such as export and project financing and services offered by Canadian missions abroad – conditional on companies meeting clearly defined corporate social responsibility and human rights standards, particularly through the mechanism of human rights impact assessments.¹⁵

SCFAIT recommendations led the Government of Canada to host the 2006/7 roundtables on Corporate Social Responsibility and the Canadian Extractive Industry in Developing Countries. The consensus-based Advisory Group report that was released at the end of

¹² See Scott, Craig and Robert Wai, "Transnational Governance of Corporate Conduct through the Migration of Human Rights Norms: The Potential Contribution of Transnational 'Private' Litigation," in C. Joerges, P. Sand and G. Teubner, eds., *Transnational Governance and Constitutionalism* (Oxford: Hart Publishing, 2004) 287-319.

¹³ www.secinfo.com/d14X74.vu4.c.htm#1stPage

¹⁴ www.cmte.parl.gc.ca/cmte/CommitteePublication.aspx?COM=8979&Lang=1&SourceId=178650

¹⁵ *Ibid.*, paragraph 2.

that process addresses the treatment of human rights at EDC. Recommendation 3.4.2.1¹⁶ calls on Export Development Canada to apply a set of Canadian corporate social responsibility standards in the development of its policies, practices and in the assessment of proposed projects. This standard set includes the Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights, and references related instruments that have been adopted by Canada. The recommendation urges EDC to apply a compliance management process to make companies more aware of human rights considerations and to bring non-compliant companies into compliance. The report instructs EDC to include a provision in its client contracts stating that serious non-compliance with the standards will lead to the withdrawal of EDC services.

In his final report to the UN Human Rights Council, the Special Representative of the United Nations Secretary-General on Business and Human Rights, John Ruggie, had this to say about export credit agencies:

[o]n policy grounds alone, a strong case can be made that ECAs, representing not only commercial interests but also the broader public interest, should require clients to perform adequate due diligence on their potential human rights impacts. This would enable ECAs to flag up where serious human rights concerns would require greater oversight - and possibly indicate where State support should not proceed or continue.¹⁷

EDC Human Rights Statement

Following the release of the Special Representative's final report, EDC published a "Statement on Human Rights."¹⁸ The EDC Statement "sets out the principles that guide its consideration of potential impacts on the human rights of individuals affected by the transactions it has been asked to support."¹⁹

The "Statement" falls far short of the clear, comprehensive human rights policy that is needed to ensure that EDC operations neither facilitate nor ignore human rights abuses by the corporations whose activities it supports. The Statement explains that "EDC's Political Risk Assessment Department routinely conducts country- and project- level political risk assessments that include an analysis of factors that influence human rights conditions in host countries. An additional layer of due diligence will be undertaken for investment projects and countries assessed to have a higher potential for human rights issues."²⁰

¹⁶ *Supra* note 3.

¹⁷ *Protect, Respect and Remedy: a Framework for Business and Human Rights. Report of the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprise, John Ruggie.* 7 April 2008. A/HRC/8/5. Paragraph 40. <http://www.reports-and-materials.org/Ruggie-report-7-Apr-2008.pdf>

¹⁸ http://www.edc.ca/english/docs/news/2008/mediaroom_14502.htm

¹⁹ *Ibid.*

²⁰ *Ibid.*

However, the Statement does not identify the factors that are considered in its political risk analysis. While “factors that influence human rights conditions in host countries” are reportedly considered, it is unclear how the conditions themselves are assessed. EDC does not identify the threshold it utilizes for undertaking “an additional layer of due diligence.”²¹ Moreover, the procedure utilized in this supplementary analysis is unknown.

However, the Statement’s greatest shortcoming is its failure to explicitly set out EDC policy regarding the potential human rights impacts associated with the investments of its prospective clients. The Statement affirms that “[i]nvestment projects may have potentially significant impacts on the human rights of individuals. EDC recognizes that financial institutions must endeavour to assess the potential for adverse human rights outcomes for individuals directly affected by such projects.”²² However, the Statement is silent on the issue of whether and how EDC assesses this potential, what it expects of its clients in the area of human rights and how it ensures that clients meet those expectations, over the life of a project.

The Statement does not articulate a “policy that requires clients to perform adequate due diligence on their potential human rights impacts,” which would allow EDC to “flag up where serious human rights concerns would require greater oversight - and possibly indicate where State support should not proceed or continue,” as recommended by John Ruggie.²³

Recommendation

The Government of Canada can adopt a number of mechanisms to fulfill its international human rights obligations and to avoid international responsibility for human rights violations in the provision of export credit and investment support to the private sector.

Canada should amend the *Export Development Act* to explicitly mandate EDC to protect against the interference of human rights by its clients. Canada should then enforce this legislation by ensuring that any human rights policies and practices that are adopted by EDC are effective in achieving this legislated mandate and that they are consistently applied by EDC. It is important that this requirement be legislated, both to ensure compliance by EDC and to guarantee that Canada is in fulfillment of its international law obligations. In addition, Canada should dedicate sufficient human and financial resources to ensure that these tasks are effectively carried out. Canada should establish independent investigative and adjudicative procedures to address allegations concerning EDC and third party interference with human rights, and should provide effective remedies to victims in cases of human rights abuse.

The human rights policies adopted by EDC should identify and clearly explain:

²¹ *Ibid.*

²² *Ibid.*

²³ *Supra* note 17.

- the human rights standards to which clients must conform
- performance indicators
- those forms of trade and investment support that are not offered by EDC on the basis of human rights concerns
- specific information that clients are required to provide regarding the human rights impacts of proposed projects
- the EDC procedure for assessing human rights impacts
- the EDC procedure for assessing the human rights context in the host state
- the EDC procedure for including human rights considerations in decision-making processes regarding the provision of support
- the EDC procedure for monitoring compliance with human rights standards during all stages of a project and beyond
- sanctions for non-compliance, such as withdrawal of EDC support.

In order to guarantee access-to-information rights and to promote accountability, both the *Export Development Act* and the EDC Disclosure Policy should be amended to ensure the timely release, to the public, of EDC human rights policies and procedures, as well as the following project-specific information:

- human rights impact assessments
- host state human rights assessments
- information provided by the client regarding the potential human rights impacts of the proposed project
- how human rights considerations were included in the decision-making process regarding the provision of support
- mitigation measures required of a client
- the results of human rights monitoring activities
- any reports generated by the client regarding compliance with the human rights policy
- findings of non-compliance
- enforcement measures taken and sanctions applied.

3. Environmental and Social Standards

Is compliance discretionary?

In the years since the release of the last Auditor General’s report, Export Development Canada has adopted a number of social and environmental standards to demonstrate its commitment to corporate social responsibility. Most notably, EDC adopted both the International Finance Corporation’s²⁴ Performance Standards and the Equator Principles. The latter instrument, which was developed by private banks and is now endorsed by “Equator Principle Financial Institutions,” is largely based on the Performance Standards.

²⁴ The International Finance Corporation is the private sector lending arm of the World Bank Group.

While the Performance Standards have emerged as an important reference for the operations of transnational corporations, they raise a number of concerns.²⁵ The Standards represent a shift, within the World Bank, towards a more flexible system that relies heavily on the discretion of clients and individual decision-makers at the International Finance Corporation (IFC). In many important areas, the Performance Standards employ vague language, making it difficult to ascertain client requirements.

Moreover, non-compliance with the Performance Standards is tolerated by the IFC, as long as clients continue to improve their performance. In its Policy on Social and Environmental Sustainability, the IFC explains that it “endeavors to invest in sustainable projects that identify and address economic, social and environmental risks with a view to continually improving their sustainability performance *within their resources and consistent with their strategies*” (emphasis added).²⁶ Moreover, there is no requirement that an IFC client comply with the Performance Standards for the life of the project and beyond. The IFC will merely “encourage the client to continue to meet the Performance Standards after IFC’s exit from the project.”²⁷ Finally, in the case of client non-compliance, the IFC pledges to “work with the client to bring it back into compliance *to the extent feasible*, and if the client fails to reestablish compliance, exercise remedies *when appropriate*” (emphasis added).²⁸

Compliance with the Equator Principles is also discretionary. Projects must comply with the Performance Standards to the satisfaction of the implementing financial institution. Moreover, non-compliance is permitted as long as any deviation from the Standards is “justified.”²⁹ No guidance is provided regarding the acceptable threshold for “satisfactory” levels of compliance or “justified” deviation from the Standards.

The office of the Compliance Advisor/Ombudsman (CAO) at the World Bank undertakes compliance reviews regarding the environmental and social performance of two Bank agencies.³⁰ The CAO provides independent advice to Bank management and assesses complaints received by people affected by private sector investments that are supported by the Bank.

In December 2007, the CAO released an Advisory Note regarding the Performance Standards’ first eighteen months of application. The CAO had this to say about the IFC’s new approach:

²⁵ For more information see the Halifax Initiative publication, *One Step Forward, One Step Back: An Overview and Analysis of the International Finance Corporation’s Sustainability Policy, Performance Standards and Disclosure Policy*. 2006.

http://www.halifaxinitiative.org/index.php/World_Bank_Reports/683

²⁶ IFC. *Policy on Social and Environmental Sustainability*. April 30, 2006, p.2.

<http://www.ifc.org/ifcext/enviro.nsf/Content/SustainabilityPolicy>

²⁷ *Ibid.*, p.5.

²⁸ *Ibid.*

²⁹ <http://www.equator-principles.com/>

³⁰ The International Finance Corporation and the Multilateral Investment Guarantee Agency.

[i]n the new policy framework, IFC moved from a focus on detailed procedural requirements tied to a project's environmental and social risk category to an outcomes-based framework that allows IFC and its clients greater flexibility in agreeing means to achieve desired outcomes based on project-specific risks. While the CAO has welcomed this new approach, we have maintained that increased flexibility and discretion necessarily need to be accompanied by greater transparency around each project's agreed processes and outcomes, both in the interest of IFC's own accountability, and to create predictability around processes and desired outcomes for affected communities.³¹

In addition to enhanced project-related information, the CAO called for greater disclosure to assess the overall effectiveness of the IFC's new management system:

[f]urther implementation data should be made available to the Board: are projects of similar nature treated comparably by different specialists, are system entries of consistent quality; are important policy decisions consistently logged in the system, and supported by rationales; does the system capture information regarding a client's compliance with project requirements (...) If there are early application inconsistencies, as can be expected with any new system, how does the quality assurance team go about improving the overall quality of due diligence and system entries?³²

It is clear that both the IFC and the Equator Principles Financial Institutions exercise significant discretion in the application of their respective standards. Unfortunately, as identified by the CAO, little information is publicly available about the criteria and processes utilized in the exercise of this discretion. The same can be said of Export Development Canada. It's unclear whether EDC's approach to client compliance mirrors that established in the IFC's Policy on Social and Environmental Sustainability. Nor has EDC provided information, in its capacity as an Equator Principles Financial Institution, regarding its policy on satisfactory levels of compliance and justified deviations from the Standards.

Best practice?

In several important areas, the Performance Standards / Equator Principles fall significantly short of "best practice."

³¹ CAO. *Advisory Note: IFC's Policy and Performance Standards on Social and Environmental Sustainability and Disclosure Policy. Commentary on IFC's Progress Report on the First 18 Months of Application.* December, 2007, p.2. <http://www.cao-ombudsman.org/html-english/documents/CAOpublicstatementIFCperformancestandards121707.pdf>

³² *Ibid.*, p.5.

A key issue concerning many foreign investments in developing countries is the ability of locally-affected populations to exercise meaningful influence over relevant decision-making processes. Many of the investments that are supported by public financial institutions have the potential to generate significant adverse environmental, social and human rights impacts and offer few lasting benefits to local populations. The involvement of potentially-affected populations in decision-making and regulatory processes regarding such investments is critical.

To address this issue, the Performance Standards include the requirement that clients consult with communities on an on-going basis and, in the case of Category A projects, that clients engage in free, prior and informed consultation with communities. However, neither the Performance Standards nor the Equator Principles incorporate the requirement established in the IFC Policy on Social and Environmental Sustainability that such consultation lead to “broad community support” for an investment.

The “broad community support” standard is significantly weaker than the “free, prior and informed consent” threshold recognized in the United Nations Declaration on the Rights of Indigenous Peoples and in international jurisprudence.³³ Moreover, the CAO has expressed concerns regarding the lack of clarity on precisely how the IFC evaluates “broad community support.”³⁴ However, despite these limitations, the “broad community support” standard is far more rigorous a threshold than the community consultation process assumed by EDC through its adoption of the Performance Standards and Equator Principles.

A second example concerns the Environmental Health and Safety Guidelines that accompany the Performance Standards. These sector-specific Guidelines provide detailed technical guidance to IFC clients. However, in some important areas, the Guidelines fall below “best practice.” The Guidelines on Mining, for example, a sector that receives significant support from EDC, include water quality standards that are not protective of fish or other aquatic life, and that are more permissive than existing standards in many countries.³⁵

Recommendation

The *Export Development Act* should be amended to include the requirement that EDC publicly disclose clear, comprehensive information regarding its policies and procedures. EDC should be legally required to ensure that its clients comply with designated environmental and social standards. Moreover, the Crown corporation should be statutorily-mandated to ensure that, at a minimum, these standards are consistent with international “best practice.”

³³ Saramaka People v. Suriname. Inter-American Court of Human Rights. 2007.

³⁴ *Supra* note 31.

³⁵ BIC, Center for Science in Public Participation, Earthworks, Oxfam International, WWF International. *Undermining Communities and the Environment: A Review of the International Finance Corporation’s Environmental, Health and Safety Guidelines for Mining*. September 2007. Personal communication, David Chambers, Center for Science in Public Participation.

Conclusions

The Auditor General's 2004 call for greater transparency at EDC, as a mechanism to enhance accountability at the Crown corporation, has not been heeded. Public confidence in the agency can only be secured through the disclosure of its policies, procedures and decision-making processes. Subject to *bona fide* commercial confidentiality concerns, project documentation should also be released to the public. To achieve greater transparency, the *Export Development Act* should be amended to ensure the effective application of the *Access to Information Act* to Export Development Canada. The EDC Disclosure Policy should also be modified so that it is consistent with the provisions of the *Access to Information Act*.

To guarantee the fulfillment of its international human rights obligations, the Government of Canada should amend the *Export Development Act* to explicitly mandate EDC to protect against the interference of human rights by its clients. This statute should also be modified to include the legal requirement that EDC ensure client compliance with its social and environmental standards, and that these standards meet international "best practice."

EDC receives requests to back investments that have the potential to generate significant social, human rights and environmental impacts. The Tenke Fungurume mine in the Democratic Republic of Congo is a case in point.³⁶ The Canadian public will remain justifiably concerned about EDC support for such projects until it is assured that the Crown corporation has rigorous human rights, environmental and social policies in place. Such assurances can only be made through the public disclosure of all relevant information.

³⁶ See <http://www.halifaxinitiative.org/index.php/correspondence/1088>