
Export Development Canada and Human Rights - Risk or rights?

Overview

Export Development Canada (EDC) is a federal crown corporation that was set up in 1944 through the Export Development Act (EDA) 'for the purposes of supporting and developing, directly or indirectly, Canada's export trade and Canadian capacity to engage in that trade and to respond to international business opportunities.'¹ As such, it is the main source of publicly-supported export financing in Canada, and was designed to complement financial support provided by private sector banks and financial institutions. Like other export credit agencies, EDC does this by providing government-backed loans, guarantees and insurance to corporations in the home ECA country.

As a public financial institution, EDC purports to "promote the protection of internationally recognized human rights." Yet it has no measures in place for taking account of the impacts of its projects on human rights even though as public institution and an entity of the state, it has an obligation to do so. Current policies simply help to insulate companies against the risks that human rights violations might pose to their investments, but do not assess the potential human rights effects of these investments.

As a first step toward enhancing its human rights practices, EDC should develop a human rights impact assessment mechanism for screening the impacts of projects on human rights, based on existing models.

EDC and Human Rights

Projects that EDC has funded - such as the Urrà dam in Colombia and Three Gorges dam in China, the PT Tel Pulp and Paper Mill in Indonesia, and the Antamina Copper mine in Peru - have had serious human rights impacts. These include arbitrary arrest, use of paramilitary 'security' forces, forced resettlement, poor labour conditions and impacts on worker health, disappearances and kidnappings, inadequate consultation and compensation, environmental destruction, loss of livelihood and destruction of sacred and spiritual sites.

In the case of the Urrà dam in Colombia, in 2000, the dam submerged over 7,400 hectares, including old-growth forest and the lands and homes of 411 families, none of whom had individual legal land titles, only collective indigenous land rights. 2800 people were forcibly resettled for the project, while a further 70,000 people were directly impacted. According to

¹ For further discussion, see "The Legal Obligations with Respect to Human Rights and Export Credit Agencies", Özgür Can and Sara Seck, Published by ECA-Watch, ESCR-Net and the Halifax Initiative Coalition, June 2006.

local indigenous leader Kimy Pernia Domico, “The [Urrà] dam has brought death to our people, death to the fish, and death to the members of our community who have seen their source of protein vanish, and death to our leaders who have protested or challenged the dam.”²

Risk vs. Rights

EDC has responded to these concerns with only half measures. While its business code of ethics now makes reference to valuing “human rights and promot[ing] the protection of internationally recognized human rights, consistent with the policies of the government of Canada,” it has done little to realize this goal. EDC did sign a memorandum of understanding with the Department of Foreign Affairs (DFAIT) to strengthen internal communications and the exchange of information on human rights. It now uses classified information from DFAIT, as well as other public material to get an overview of a country’s human rights situation. This feeds into a larger assessment the crown corporation conducts to identify potential and political market risks (to EDC and its clients) of conducting business in a specific country. In theory, human rights issues may increase the risk rating beyond a threshold that is too risky for EDC, but there is no predetermined level of risk that effectively vetoes a project. This, however, only determines the risk certain human rights issues may engender to the investment that EDC is guaranteeing and to its own reputation, that is the impacts of human rights on a specific project.

More recently, EDC also started what it calls ‘reverse flow analysis.’ This is a technical term for essentially looking at the impacts of a specific project on human rights. However, this is used to inform EDC’s own reputational risk analysis, rather than an actual assessment of human rights impacts.

Although an important first step, these measures fall short of what one might expect from a public financial institution. Political risk assessments do not take account of the impacts of projects on communities. Rather, they insure project sponsors and financiers against risk. This means that EDC translates risks into premiums rather than into standards and international legal obligations that projects must meet. In 2003, for example, EDC signed a \$300 million plus line of credit with Nortel for its work in Colombia.³ As condition of IMF and World Bank support, Colombia had been required to privatize its national telecommunications industry, and Nortel saw the privatization as an opportunity for regional expansion. With the privatization, however, 10,000 unionized telecommunications workers lost their jobs that year, and over 70 trade unionists were murdered by paramilitaries for demonstrating against the privatization.⁴ A human rights screen would have likely anticipated and avoided some of these impacts.

² Kimy Pernia Domico, Embera Katio leader, before the Standing Committee on Foreign Affairs and International Trade, November 1999.

³ “Nortel Networks announces a US\$750 Million Support Facility with EDC and Details of Special Matters to be Considered at Upcoming Shareholders Meeting”, February 14, 2003, News Release, www.nortelnetworks.com.

⁴ Personal Communication, Jorge Lerma, President, Colombian Telecommunications Worker’s Union, and Justice for Colombia mailing list.

Companies argue that having to take into account human rights would put them at a competitive disadvantage. This, however, suggests that current competitive advantage is built on violating human rights. Countless companies now acknowledge the hollow nature of this argument, and are signing on to initiatives such as the UN Global Compact, which although voluntary, encourages companies to change their business operations in keeping with nine core principles, including the International Labour Organization (ILO) Fundamental Principles and Rights at Work.

Taking account of human rights is possible

Models for screening human rights also exist. The Norwegian Agency for Development (NORAD) has developed a human rights screening mechanism for development projects, and the UN High Commission for Human Rights is developing a human rights impact assessment for trade policies. The Danish Institute for Human Rights has even designed a tool for companies that corresponds to the structure of the business unit and only takes 40 hours to implement. It both recognizes where companies are in violation of specific human rights, and provides suggestions for how they might correct this. Both Canadian Rights and Democracy - a non-partisan organization created by Parliament - and the International Finance Corporation - the private sector lending arm of the World Bank Group - are also in the process of developing human rights impact assessment tools for communities and companies respectively. Some export credit agencies are already taking account of human rights. The British Export Credit Guarantee Department (ECGD) asks companies to respect ILO core labour standards, and the six key United Nations human rights conventions that the project country has ratified. ECGD has also been prohibited by Parliament from supporting projects that involve forced or child labour.

With screening tools now well developed, and potential and actual human rights impacts continuing to aggravate some situations, EDC should start screening projects for human rights impacts.

Policy Recommendation

As a first step toward enhancing its human rights practices, EDC should develop a screening mechanism for assessing the human rights impacts of the projects it supports, in particular those with potentially significant adverse human rights impacts, in consultation with human rights groups. This might include projects taking place in countries with a poor human rights record, in sensitive environmental areas, or near traditional indigenous lands and territories.

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