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NGO Working Group
on the Export Development Corporation

Submission to the *Stratos* Inc. consultations on the
EDC's environmental review framework

October 1, 2001

The NGO Working Group on the Export Development Corporation welcomes the opportunity to provide comments on the Environmental Review Framework (ERF). We have been asking for this opportunity since April 1999 when EDC first released the ERF. It is our recommendation that the second version of the ERF be released in draft, before its adoption by the Corporation. Version 2.0 of the ERF will include such critical information as performance and process standards and EDC's stakeholders should have an opportunity to comment on the specifics of the policy. This process has been followed by EDC in its release of the draft disclosure policy and subsequent comment period.

A critique of the existing Environmental Review Framework can be found in our policy paper, *Race to the Top*, and in the introduction to *Reckless Lending, Volume I*. Our outline of a good environmental assessment process for EDC can be found in *Environmental Assessment and the Export Development Corporation: The Shock of the Possible*. All three of these documents are available on our website at www.halifaxinitiative.org. This submission is based on these documents and our participation in the sub-committee on the EDC, convened by the Canadian Environmental Assessment Agency.

Before commenting on the specific issues identified by Stratos, we would like to raise the issue of accountability. It is crucial that the EDC be accountable to the government and its shareholders, the Canadian public, for its environmental assessment policy. Authority given to the Auditor General's Office to audit the implementation and suitability of the framework is a positive step. Similarly, the recommendation that the EDC conduct internal audits on a regular basis could be a positive step, assuming these

audits will be made public. However, EDC would be most accountable to the public if the process it is to follow would be established as a regulation under the Canadian Environmental Assessment Act (CEAA). EDC could have its own regulation under CEAA that would meet the needs of greater accountability and increase ministerial oversight.

Currently, there are no proposals on the table other than a review by the Office of the Auditor-General (OAG) every five years as to how to hold EDC accountable for non-compliance to the policy. As well as enshrining Version 2.0 of the ERF as a regulation under CEAA, we propose the following:

- (1) The creation of an independent, fully autonomous accountability mechanism, such as the World Bank's Inspection Panel, to receive and address complaints from external parties on possible EDC policy violations; and
- (2) all transactions with known or potential significant adverse impacts must be approved by the Board of Directors of EDC.

Considering that EDC was in violation of some aspect of the existing ERF in 92 % of cases reviewed by the OAG, this issue of non-compliance and accountability is paramount to any discussion of a revised policy.

Objective:

1- How could the revised ERF's objective be effectively aligned with EDC's role as Canada's Export Credit Agency, and with its legislative mandate to support and expand Canadian trade?

This question presupposes a conflict between environmental assessment and business that we reject. The positive relationship between environmental assessment and commerce has been noted by the Canadian courts, by business leaders and by public financial institutions that introduced high standards for environmental assessments, despite industry reluctance.

Canadian court:

One of the primary initiatives taken by governments in rationalizing economic activity with environmental imperatives has been the enactment of statutes providing for environmental assessment. These measures have generally been aimed at moving away from correcting environmental problems ex post facto, towards preventing them from occurring ab initio or, at least, assuring that they are contained at tolerable levels. It is well to point out that this is not only environmentally sound but is economically desirable as well, inasmuch as the costs of rectifying long term effects often eclipse short term burdens. In any event, it appears just plain common sense to require development of resources to await the relatively short time that will be taken to allow adverse environment effects to be assessed and mitigated, if not eliminated.

Accordingly, it can be said that the process of environmental assessment is not a frill engrafted on the development process, nor should it be regarded as an administrative hurdle to be gotten over in the march towards economic development. It is, rather, an integral part of economic development.

— Labrador Inuit Association v. Newfoundland, Minister of Environment and Labour, Newfoundland Court of Appeal, 22 September 1997, paras. 9 and 10.

Business leaders:

“If we can conduct our affairs in an appropriate way, it provides a good return to the company”, remarked one senior vice-president of a Canadian petroleum company.

The World Council for Sustainable Development has noted that many companies have changed from seeing only costs and difficulties in the concept of sustainable development to seeing savings and opportunities.

IFC and Ex-Im:

“When we first obtained financing from IFC, the environmental standards seemed like an obstacle, but we realize now that they have helped us build a strong business,” noted one of IFC clients.

James Harmon, President of Ex-Im Bank, has noted that its experience with environmental guidelines has been positive. Since 1995, Ex-Im estimates that U.S. exporters have augmented their export sales by \$10 million by upgrading projects to meet basic environmental criteria.

As the Auditor General mentioned in its report in May 2001, “Canadians expect that the projects their institutions support are environmentally sound and sustainable.” The ERF’s objective should be to ensure that projects supported by the EDC are environmentally sound and sustainable. The objectives outlined in the guidance from the Government are sound.

The EDC’s mandate is to support and expand trade. However its mandate should be amended to ensure that the EDC acts consistently with Canada’s international obligations. Mr. Pettigrew agreed in his recommendations that the EDC will be required to take into account Canada’s international commitments, especially in human rights, core labour standards and the environment. This requirement should be added in the mandate of the EDC, as outlined in the Export Development Act.

Scope of coverage:

2- On what basis should specific EDC transactions be subject to the EDC’s environmental review requirements?

Key to scope of coverage will be the definitions used. Project should be defined as “all operations or transactions considered by EDC or a financial intermediary”. Limiting the environmental review to greenfield projects or major expansions is too narrow of a definition. This is not to suggest that all EDC transactions would undergo an environmental assessment. Instead it ensures that all transactions would be reviewed for environmental risk.

The repayment term, or proportion of support, should not exempt a transaction from a screening process. A categorisation system should be used to focus EDC’s environmental review process.

Threshold-leverage:

4- What threshold amount and/or proportion of support to a project would be appropriate for EDC?

The OAG’s report clearly stated that the influence test should be eliminated. In the OAG’s report, the EDC actually agreed to eliminating the influence test. Therefore, to determine what projects should be reviewed for environmental risks, no attention should be given to the amount or proportion of support for a project, but only to the type of transaction and project, and to the potential adverse environmental impacts. Likewise, thresholds are financial determinants and should not be used as criteria for determining if an environmental assessment must be done. Large transactions can have no environmental risks, while small transactions, or several small ones, can have important adverse impacts.

Categorisation:

5- What should be the key objectives of a categorisation system adopted by EDC?

A categorisation system will provide predictability, consistency, and it will help to keep the focus on projects with adverse impacts. Social impacts and human rights should also be considered at this stage.

6- What criteria should EDC use to categorise projects?

Categorisation should be based on the anticipated environmental effects, the characteristics of the site, the necessity to relocate communities, the type of project. The categories A, B, C should be aligned with those of the IFC.

Standards:

7- To what extent should compliance with international review process-related standards be required? Should EDC take into account differing host country conditions?

Compliance to international standards should be required at all times. EDC should, for example, adopt the Pollution Prevention and Abatement Handbook of the World Bank that sets levels of pollution acceptable, and deviance from these standards should not be allowed. Allowing deviance from a standard on the basis that host country laws may be

lower allows a Canadian company to take advantage of a situation where due to lack of capacity or political will, environmental standards are lower than the norm.

The process of benchmarking proposed in the Government Guidance on a Revised ERF document allows for deviations in certain situations. This creates important loopholes and can lead to dumping of technologies, worsening global environmental conditions and the wrong incentives being used for attracting technology or investment, in other words, a race to the bottom in terms of standards.

If deviation from agreed upon standards is to be argued, it must be argued at the Board level and not by EDC management.

Also, the EDC must sign on to the World Commission on Dams recommendations.

EDC should expand its environmental assessment process to include social and human rights impacts. There is little guidance in the operational sections of the current ERF to help collect information on social and human rights impacts. The IFC has detailed protocols and procedures that should be adopted by EDC.

8- When is it appropriate for EDC to benchmark a project against international performance-related standards where the project meets host country standards?

As a result of services provided by the EDC, Canadian companies have business interests in countries which are not prepared to pay attention to crucial human rights and environmental considerations, or to secure basic protections, due to limited economic or institutional capacity, or lack of political will. International standards should be applied in all times, for predictability, harmonisation, simplicity and to enhance environmental protection abroad. Some countries may not have the standards that ensure environmental, social and human rights commitments are protected, and a crown corporation should help these rights to be respected. Host country standards must be respected at all times but international standards, when higher, must also be met.

9- Should the same level of review be required for projects where environmental review and approval standards are widely deemed acceptable?

The reviews should confirm that these standards are equal to international standards.

Content of environmental assessment reports

10- What are the appropriate elements of an Environmental Impact Assessment (EIA)?

Summary of general project, baseline data, description of existing environment, environmental and social impacts (including as examples, air quality, water use and quality, protection of water resources, waste management, natural hazards, sociocultural context, greenhouse gas emissions, noise levels), consultation of local populations, disclosure of information and EIA, alternatives possible, monitoring process, and cumulative impacts.

11- Should an EIA be required for all category A projects?

EIAs should be compulsory for category A projects so that the EDC has sufficient information to decide to extend support for this project, or to decline support.

12- To what extent should EDC take into account the diverse reporting and documentation requirements of host country jurisdictions?

Due to diverse reporting and documentation requirements, EDC must adopt international standards when assessing a project.

13- Under what circumstances and to what extent can EDC require an analysis of alternatives to the proposed project for commercial projects? For sovereign projects?

EDC should propose alternatives to a project, whether commercial or sovereign, if it is impossible, for physical or financial reasons, to mitigate a project's risks.

Decision criteria:

14- Are there clear and objective environmental criteria that could be used at the outset of the environmental review process to decline support to a project?

An exclusion list can be used. OPIC's (Overseas Private Investment Corporation, from USA) environmental framework, by example, lists the following as categorical prohibitions:

- infrastructure and extractive projects located in primary tropical forests
- projects involving the construction of large dams that significantly impact biodiversity or ecosystems, etc.
- projects involving the commercial manufacturing of ozone depleting substances or persistent organic pollutants (POPs)
- projects requiring resettlement of more than 5000 people
- projects impacting World Heritage sites, or protected parks and areas

15- What would constitute reasonable grounds for EDC to support projects that deviate from internationally-recognised standards?

See response to question #8.

Compliance monitoring:

16- To what extent should EDC apply covenants and compliance monitoring that reflect the project's potential for significant adverse environmental effects?

Covenants detailing environmental and social mitigation requirements must be signed. Category A projects, and some category B projects, should be monitored to ensure that

the environmental effects and risks of the projects are as described prior to approval by the EDC. Monitoring reports must be made public.

Disclosure:

17- Has EDC's Draft disclosure policy set an appropriate level of public disclosure of environmental information by project proponents?

Disclosure is an essential part of any EIA, as mentioned in the AG's report and in the OECD Draft agreement on export credit guarantees. The EDC's disclosure policy will allow for great improvement by releasing environmental information prior to approval of projects for projects with high risks. However, disclosure at minimum 60 days prior to approval, instead of 45 days, gives parties such as local communities more time to respond. EFIC (Australia ECA) requires a 45-day public consultation, while EBRD requires the release of environmental information at least 60 days prior to approval.

All relevant social and environmental information must be disclosed to the public. For example, the public has a right to know and comment on emergency response plans. Similarly, the EDC should make public the human rights information received from DFAIT and other sources.

There should be no thresholds for the disclosure of information, contrary to what the draft disclosure policy states. Disclosure of information should be based on the category of the project.

Local public consultations:

18- To what extent should EDC recognise that, due to the legal, political and cultural context of the host country, project proponents may not conduct the type and or level of consultation that might be expected in other jurisdictions?

There must be a minimum effort for consultation. Without a local consultation for Category A and B projects, EDC will not have enough information to assess adequately the risks of the project.

Also, consultations must be made in a meaningful way which is context-specific. Emerging best practices on consultation point to the free and informed consent of local and Indigenous communities to projects on their lands. Consultation should occur over the full project cycle.

We hope these recommendations are taken into consideration during the development of a strengthened ERF. The Working Group's members strongly believe that projects supported by the EDC should not endanger the environment and local communities abroad. When EDC does not respect the highest possible standards for environmental assessments, whole ecosystems are negatively affected. We believe that business for EDC will be improved with higher standards. Environmental protection makes for better business.