



# **OXFAM CANADA SUBMISSION TO THE 2018 STATUTORY REVIEW OF EXPORT DEVELOPMENT CANADA<sup>1</sup>**

**November 9, 2018**

## **INTRODUCTION**

Export Development Canada (EDC) is a Crown Corporation, created pursuant to an act of Parliament,<sup>2</sup> functioning at arm's length from government. EDC operates as a for-profit corporation, annually paying out dividends to its sole shareholder, the Government of Canada. This submission provides recommendations on two separate themes:

- A) Promoting gender equality
- B) Protecting human rights in all of EDC's commercial and development finance activities

Women's economic inequality is one of the greatest barriers to the full and equal participation of women in society. Women face various forms of discrimination in the global economy (e.g. gender wage gap, barriers to recruitment and advancement, sexual harassment in the workplace, patriarchal norms). They generally have more difficulty accessing capital, land and other resources, which limits their economic opportunities. Research shows that advancing gender equality is key to promoting economic growth and that inclusive growth, gender equality and social development are mutually reinforcing, as discussed further in section A.

More broadly, Canadians' expectations of all business conduct have been growing. They expect that Canadian businesses will operate ethically and within a framework of respect for human rights at home and around the world. The Canadian Government has made significant efforts, developed initiatives and devoted resources to ensuring that Canadian businesses will preserve and enhance the Canadian brand for strong ethical and human rights compliance. Canadians' expectations of Crown Corporations such as EDC would likely be at least as high, or higher, than their expectations of other Canadian companies. Issues related to human rights due diligence for EDC are discussed in section B.

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<sup>2</sup> *Export Development Act*, (R.S.C., 1985, c. E-20)

**SUMMARY OF RECOMMENDATIONS:**

**Recommendation 1:** Given EDC’s role in supporting Canadian exporters and in development finance, Parliament should create a statutory requirement that EDC shall actively promote gender equality.

**Recommendation 2:** Parliament should ensure all EDC commercial and export support activities, as well as all development finance activities, are consistent with international human rights standards.

## A. EDC AND THE PROMOTION OF GENDER EQUALITY

Gender equality has emerged as one of the key global issues of our time. Redressing gender inequality and discrimination is a fundamental matter of justice and global development. As Oxfam Canada notes in its Gender Justice Policy: “successful strategies to end poverty must reflect and respond to these differences [in how women and men experience poverty]..... Underlying all these reasons, we know that discrimination against women – from heinous forms of violence to unequal access to land or public services – constitute the most widespread and systemic forms of human rights violations around the world.”

According to the Office of the High Commissioner for Human Rights (OHCHR), women and girls experience business-related human rights abuses in unique ways, and are often affected disproportionately.<sup>3</sup> Women also face multiple forms of discrimination including wage gaps and being passed over for advancement. Both governments and businesses must give special attention to the unique experiences of women and the structural discrimination and barriers that they face.

Given EDC’s dominant role in supporting Canadian exporters and development finance, Parliament should bring EDC up-to-date and ensure it is consistent with and reflects the progress made on diversity and gender equality in the decade since the last legislative review. EDC’s mandate and legislative framework should at a minimum keep up with or surpass the changing global context and Canadian policy agenda. Gender equality forms part of Canada’s foreign policy, economic diplomacy and development priorities. A renewed mandate for EDC which includes a gender equality provision would build on GAC’s Gender Equality Strategy and Policy on Gender Equality, Canada’s Feminist International Assistance Policy (FIAP) and the mandate of Canada’s recently launched development finance institution, FinDev. It would also be consistent with key global gender equality frameworks endorsed by Canada, including those in the Millennium Development Goals, the Sustainable Development Goals, CEDAW, the Beijing Platform for Action and the Addis Ababa Action Agenda.

**For these reasons, Parliament should create a statutory requirement that *EDC shall actively promote gender equality.***

Promoting women’s economic equality is not just the right thing to do -- it makes financial and business sense. Inclusivity is proven to be a driver for economic success. Ensuring women are involved in and have access to financing and other business services is proven to reap dividends for corporations, businesses, institutions and

<sup>3</sup> <https://www.ohchr.org/EN/Issues/Business/Pages/GenderLens.aspx>

national economies. Women are key economic accelerators – women’s equality with men, if realized, would contribute trillions to the global economy.

In Federal Budget 2018, the Canadian Government announced a \$250 million financing envelope would be made available through EDC, on commercial terms, to provide financing and insurance solutions to women-owned and women-led businesses that export or have plans to export. According to EDC, “This initiative is supported by a broader strategic roadmap of initiatives focused on solving the unique barriers women entrepreneurs face, including targeted knowledge products, training sessions, and connections with foreign buyers.”<sup>4</sup>

FinDev Canada, along with other G7 development finance institutions, committed to mobilise \$3 billion dollars to invest in the world’s women in June 2018. Women’s economic empowerment is one of FinDev Canada’s priority impact goals. EDC is therefore well-placed to promote and accelerate gender equality around the globe.

In Oxfam’s view, EDC can become a champion for gender equality, directly with its clients, through tailored programs, and inside its own organizational structures. Some specific recommendations of ways EDC could promote gender equality are in the following section.

#### **A. 1. GENDER EQUALITY PROMOTION IN EDC’S COMMERCIAL AND DEVELOPMENT FINANCE ACTIVITIES.**

EDC’s products and services should not only be gender-sensitive but gender-transformative. EDC can provide leadership by adopting a positive, proactive approach to women’s economic equality, working to promote and protect women’s rights and interests in all its work. EDC should not only commit to ensuring businesses it works with uphold and protect women’s rights, but it should proactively leverage its business relationships to reduce women’s inequality, and promote innovative policies and strategies to this effect beyond its immediate clientele.

##### **Gender mainstreaming:**

- EDC should apply a gender analysis to all its policies, programs and activities. It should mainstream women’s rights into all policies and programs of EDC. EDC can draw from Global Affairs Canada’s experience in women’s economic empowerment and gender and trade.

##### **EDC can work to ensure its products and services are bias-free and discrimination-free:**

- Women entrepreneurs should be provided with equal access to resources, credits and loans. EDC can identify and help remove barriers that hinder women entrepreneurs from participating equally in the global economy.

##### **EDC should expand targeted support to women entrepreneurs and exporters:**

- EDC can build on the recently announced \$250-million financing envelope over three years by establishing a longer-term portfolio with earmarked support for women-owned businesses. EDC can expand its special training programs to help women overcome barriers and successfully enter export markets.

**EDC should employ its leverage with clients to promote gender equality in clients’ workplaces and in jurisdictions in which they operate. EDC should:**

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<sup>4</sup> Export Development Canada, *Evolving with the Changing Needs of Exporters: Submission to the 2018 Legislative Review of Export Development Canada*, October 2018, p. 38.

- Engage clients to proactively support women's equality in their organizations and supply chains. EDC should promote women's advancement by clients, including opportunities for promotions, pay raises in the private sector, as well as family-friendly policies, such as paid maternity and parental leave and the provision of child care as well as flexible working hours;
- Require clients to conduct supply chain human rights due diligence in accordance with the UN Guiding Principles on Business and Human Rights, and work toward eliminating discrimination against women in their organizations and supply chains;
- Encourage clients in male-dominated sectors to explore any employment participation gaps and wage gaps and how to close them;
- Encourage clients in the manufacturing sector where women workers predominate to improve wages, working conditions and safety, and remove discrimination;
- Encourage clients to procure from local suppliers in jurisdictions in which they operate, with a special emphasis on women-owned businesses;
- Encourage clients to support training for local women and girls in jurisdictions in which they operate to learn business and vocational skills, particularly those who are disadvantaged; and
- Encourage clients to include gender-targeted policies and services in any health care or other services they offer employees, including family planning services.

**EDC's human rights due diligence (see next section) should be performed with a gender lens:**

- EDC's human rights due diligence should pay special attention to the unique experiences of women. For example, when supporting extractive sector projects, women's pre-existing use of natural resources, including various water uses, the collection of firewood, the collection of plants, seeds and other resources from forested areas should be taken into account in assessing the impact of a project on local populations. Consideration of human rights risks to women by armed security providers would be another example of gender-sensitive human rights due diligence; and
- EDC should make particular efforts to track the effectiveness of its responses to human rights impacts on individuals from groups or populations that may be at heightened risk of vulnerability or marginalization, underlining the importance of collecting and using gender-disaggregated data where relevant.<sup>5</sup>

**A.2. GENDER EQUALITY PROMOTION IN EDC'S INTERNAL CORPORATE STRUCTURES AND CULTURE**

- EDC should find opportunities to strengthen its commitments to gender equality in its corporate and human resource policies and practices. It is important to have consistency between EDC's internal functions and its broader work in the world.
- Parliament should require gender parity on the EDC Board of Directors. This was achieved for the first time earlier this year. (There are currently 6 women and 6 men on the Board.); and
- Parliament should require gender parity at the senior management level of EDC, to be introduced progressively over time.

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<sup>5</sup> UNGPs Principle 20 commentary.

## B. HUMAN RIGHTS DUE DILIGENCE OBLIGATIONS OF EDC

Canada has a longstanding policy of supporting ethical and responsible company behaviour, starting with its support for the OECD Guidelines for Multinational Enterprises and more recently with the CSR Strategy for the Extractive Sector in 2009.<sup>6</sup> Canada supported politically and financially the UN Special Representative for Business and Human Rights, Professor John Ruggie, in developing the UN Guiding Principles on Business and Human Rights, adopted unanimously by the United Nations Human Rights Council in 2011. (Select principles of the UN Guiding Principles on Business and Human Rights are excerpted in Annex 1 (Corporate Responsibility to Respect Human Rights) and Annex 2 (State Duty to Protect Human Rights.))

In 2014, the Government of Canada formally endorsed the UN Guiding Principles (UNGPs) as a CSR standard it expects Canadian companies to implement. This was done through the updated CSR Strategy entitled, *Doing Business the Canadian Way: A Strategy to Advance Corporate Social Responsibility in Canada's Extractive Sector Abroad*.<sup>7</sup> The Strategy also reads, "The Government of Canada expects Canadian companies operating abroad to respect human rights and all applicable laws, and to meet or exceed widely-recognized international standards for responsible business conduct." More recently, the Government of Canada noted in a press release, "The Government of Canada is committed to ensuring Canadians everywhere can have confidence in our world-class companies and trust that international trade and investment is working for all."<sup>8</sup> A concrete step the Government of Canada has taken to provide greater human rights oversight of Canadian companies operating internationally was the announcement in January 2018 of the Canadian Ombudsperson for Responsible Enterprise.

The UN Guiding Principles on Business and Human Rights have enjoyed widespread adoption by governments and corporations (particularly those with large market capitalization), but additionally are aligned with numerous laws and soft law instruments requiring different forms of human rights due diligence, including the UK Modern Slavery Act,<sup>9</sup> the French due diligence law,<sup>10</sup> EU<sup>11</sup> and US conflict minerals<sup>12</sup> statutes and the EU non-financial reporting directive<sup>13</sup>. Additionally, ISO 26000<sup>14</sup> (guidance on CSR) the OECD Guidelines on Multinational Enterprises (2011 update)<sup>15</sup> and various supply chain standards require human rights due diligence.<sup>16</sup>

EDC, as a state-owned for-profit corporation, has certain human rights responsibilities, discussed below. The Government of Canada also possesses human rights obligations vis-à-vis the conduct of EDC.

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<sup>6</sup> <http://www.international.gc.ca/trade-agreements-accords-commerciaux/topics-domaines/other-autre/csr-strat-rse-2009.aspx?lang=eng>

<sup>7</sup> <http://www.international.gc.ca/trade-agreements-accords-commerciaux/topics-domaines/other-autre/csr-strat-rse.aspx?lang=eng>

<sup>8</sup> [https://www.canada.ca/en/global-affairs/news/2018/01/the\\_government\\_ofcanadabringingleadershiptoiresponsiblebusinesscond.html](https://www.canada.ca/en/global-affairs/news/2018/01/the_government_ofcanadabringingleadershiptoiresponsiblebusinesscond.html)

<sup>9</sup> <http://www.legislation.gov.uk/ukpga/2015/30/contents/enacted>

<sup>10</sup> <https://www.business-humanrights.org/en/france-natl-assembly-adopts-law-imposing-due-diligence-on-multinationals-to-prevent-serious-human-rights-abuses-in-their-supply-chains>

<sup>11</sup> <http://ec.europa.eu/trade/policy/in-focus/conflict-minerals-regulation/regulation-explained/>

<sup>12</sup> <https://www.sec.gov/opa/Article/2012-2012-163htm---related-materials.html>

<sup>13</sup> [https://ec.europa.eu/info/business-economy-euro/company-reporting-and-auditing/company-reporting/non-financial-reporting\\_en](https://ec.europa.eu/info/business-economy-euro/company-reporting-and-auditing/company-reporting/non-financial-reporting_en)

<sup>14</sup> <https://www.iso.org/iso-26000-social-responsibility.html>

<sup>15</sup> <http://www.oecd.org/corporate/mne/>

<sup>16</sup> <https://docs.google.com/document/d/1jYDS9oBcdVwjnhzEYhJFDBg6kzv7ul8u2pcYdEfy5y4/edit>

### B.1. EDC MUST PREVENT ADVERSE HUMAN RIGHTS IMPACTS LINKED TO ITS PRODUCTS AND SERVICES

As a for-profit corporation, EDC must respect all human rights linked to its operations. It must prevent or mitigate any negative impacts on human rights that arise through its business relationships, even if it has not contributed to those impacts. It must “know and show” that it respects human rights through policies and processes, including human rights due diligence, human right impact assessments, meaningful consultations with affected stakeholders and human rights reporting.<sup>17</sup>

EDC must conduct human rights due diligence on any clients’ activities related to EDC support and ensure that its activities do not harm human rights.<sup>18</sup>

### B.2. EDC’S SIZE AND RESOURCES REQUIRE THAT IT CONDUCT RIGOROUS AND THOROUGH HUMAN RIGHTS DUE DILIGENCE.

According to its Annual Report, EDC supported \$103.7 billion worth of transactions by its customers in 2017. EDC’s enormous size and the resources at its disposal means it must be satisfied that, at minimum, all its services are consistent with international human rights standards, without exception. EDC’s human rights due diligence must scale up with the size and risk of its support.<sup>19</sup>

### B.3. AS A STATE-OWNED ENTERPRISE, EDC IS IN A SPECIAL CATEGORY WHICH INVOKES THE STATE DUTY TO PROTECT HUMAN RIGHTS.

EDC possesses private sector human rights responsibilities to respect human rights, but it goes further. As a state-owned enterprise, EDC’s activities invoke international human rights law duties of the Government of Canada and Parliament to ensure that EDC does not cause, contribute to or be associated with human rights violations. States individually are the primary duty-bearers under international human rights law, and collectively they are the trustees of the international human rights regime. They must not only respect, but also protect human rights. Where a business enterprise is owned by the State, an abuse of human rights by the business enterprise may entail a violation of the State’s own international law obligations. Export credit agencies like EDC are explicitly singled out in the UN Guiding Principles:

“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.”<sup>20</sup>

### B.4. THE OFFICIAL DEVELOPMENT ASSISTANCE ACCOUNTABILITY ACT PROVIDES A PRECEDENT

The *Official Development Assistance Accountability Act*<sup>21</sup> passed by Parliament in 2008 includes a provision that *Official development assistance may be provided only if the competent minister is of the opinion that it ... is consistent with international human rights standards.*<sup>22</sup> The rationale is that project finance and large investments, particularly those in jurisdictions of weak governance, are susceptible to having adverse effects on human rights. The same

<sup>17</sup> See UNGPs principles 11-13, Annex 1

<sup>18</sup> See UNGPs, principles 16-18, Annex 1

<sup>19</sup> See UNGPs, principle 14, Annex 1.

<sup>20</sup> See UNGPs, principles 1-4, Annex 2

<sup>21</sup> <https://laws-lois.justice.gc.ca/eng/acts/O-2.8/page-1.html>

<sup>22</sup> ODAAA s. 4(1)(c)

rationale holds for the financing support and all other services of EDC, and is made stronger by Canada's adoption of the UN Guiding Principles on Business and Human Rights and other instruments in the interim.

The term *international human rights standards* is defined in the ODAAA as: "standards that are based on international human rights conventions to which Canada is a party and on international customary law."

As a state-owned for-profit corporation, EDC's human rights obligations are greater than those of a for-profit corporation. Indeed, EDC's for-profit business model does not reduce its obligation to behave ethically, however it may affect its incentives to do so. A for-profit business model creates moral hazards for a government-owned enterprise, and may tempt EDC to enter into risky business dealings that are highly profitable. It is incumbent upon Parliament to protect human rights that could be infringed by EDC activities.

For its business support and programming to be consistent with international human rights standards, EDC should be able to demonstrate, at a minimum, that it can reasonably expect to "do no harm", meaning that due diligence is exercised to avoid undermining human rights in the country or community.

**For these reasons, Parliament should amend the *Export Development Act* to require human rights due diligence for all of EDC's activities.**

- **EDC's human rights due diligence should pay special attention to the unique experiences of women. EDC should make particular efforts to track the effectiveness of its responses to human rights impacts on individuals from groups or populations that may be at heightened risk of vulnerability or marginalization, underlining the importance of collecting and using gender-disaggregated data where relevant.**<sup>23</sup> The UN Working Group on Business and Human Rights is in the process of developing guidance on how to apply the UN Guiding Principles with a 'gender lens', which could provide useful tools for institutions like EDC.
- **Oxfam supports the recommendations of Above Ground<sup>24</sup> to this legislative review, including its more detailed analysis of mandatory human rights due diligence, the necessary legislative changes to prohibit EDC support to business activities violating human rights, environmental or anti-corruption standards, as well as judicial review of its decisions and its duty to care to stakeholders.**

## CONCLUSION

The 2018 statutory review of EDC is an opportunity for Parliament to ensure that EDC's mandate evolves to keep pace with Canadians' growing expectations and evolving priorities. Parliament should not wait another 10 years to ensure that EDC is not infringing on human rights through its activities, and that EDC becomes a positive force for promoting gender equality.

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<sup>23</sup> UNGPs Principle 20 commentary.

<sup>24</sup> [www.aboveground.ngo](http://www.aboveground.ngo)

## ANNEX 1: UN GUIDING PRINCIPLES ON BUSINESS AND HUMAN RIGHTS: CORPORATE RESPONSIBILITY TO RESPECT HUMAN RIGHTS (EMPHASIS ADDED)

11. Business enterprises should respect human rights. This means that they should avoid infringing on the human rights of others and should address adverse human rights impacts with which they are involved.

12. The responsibility of business enterprises to respect human rights refers to internationally recognized human rights – understood, at a minimum, as those expressed in the International Bill of Human Rights and the principles concerning fundamental rights set out in the International Labour Organization’s Declaration on Fundamental Principles and Rights at Work.

13. The responsibility to respect human rights requires that business enterprises:

- (a) Avoid causing or contributing to adverse human rights impacts through their own activities, and address such impacts when they occur;
- (b) Seek to prevent or mitigate adverse human rights impacts that are **directly linked to their operations, products or services by their business relationships, even if they have not contributed to those impacts.**

14. The responsibility of business enterprises to respect human rights applies to all enterprises regardless of their size, sector, operational context, ownership and structure. Nevertheless, the scale and complexity of the means through which enterprises meet that responsibility may vary according to these factors and with the severity of the enterprise’s adverse human rights impacts.

15. In order to meet their responsibility to respect human rights, business enterprises should have in place policies and processes appropriate to their size and circumstances, including:

- (a) A policy commitment to meet their responsibility to respect human rights;
- (b) A human rights due diligence process to identify, prevent, mitigate and account for how they address their impacts on human rights;
- (c) Processes to enable the remediation of any adverse human rights impacts they cause or to which they contribute.

16. As the basis for embedding their responsibility to respect human rights, business enterprises should express their commitment to meet this responsibility through a statement of policy that:

- (a) Is approved at the most senior level of the business enterprise;
- (b) Is informed by relevant internal and/or external expertise;
- (c) Stipulates the enterprise’s human rights expectations of personnel, business partners and other parties directly linked to its operations, products or services;
- (d) Is publicly available and communicated internally and externally to all personnel, business partners and other relevant parties;
- (e) Is reflected in operational policies and procedures necessary to embed it throughout the business enterprise.

17. In order to identify, prevent, mitigate and account for how they address their adverse human rights impacts, business enterprises should carry out human rights due diligence. The process should include assessing actual and potential human rights impacts, integrating and acting upon the findings, tracking responses, and communicating how impacts are addressed. Human rights due diligence:

- (a) Should cover adverse human rights impacts that the business enterprise may cause or contribute to through its own activities, or which may be directly linked to its operations, products or services by its business relationships;
- (b) Will vary in complexity with the size of the business enterprise, the risk of severe human rights impacts, and the nature and context of its operations;



(c) Should be ongoing, recognizing that the human rights risks may change over time as the business enterprise's operations and operating context evolve.

18. In order to gauge human rights risks, business enterprises should identify and assess any actual or potential adverse human rights impacts with which they may be involved either through their own activities or as a result of their business relationships. This process should:

- (a) Draw on internal and/or independent external human rights expertise;
- (b) Involve meaningful consultation with potentially affected groups and other relevant stakeholders, as appropriate to the size of the business enterprise and the nature and context of the operation.

19. In order to prevent and mitigate adverse human rights impacts, business enterprises should integrate the findings from their impact assessments across relevant internal functions and processes, and take appropriate action.

(a) Effective integration requires that:

(i) Responsibility for addressing such impacts is assigned to the appropriate level and function within the business enterprise;

(ii) Internal decision-making, budget allocations and oversight processes enable effective responses to such impacts.

(b) Appropriate action will vary according to:

(i) Whether the business enterprise causes or contributes to an adverse impact, or whether it is involved solely because the impact is directly linked to its operations, products or services by a business relationship;

(ii) The extent of its leverage in addressing the adverse impact.

20. In order to verify whether adverse human rights impacts are being addressed, business enterprises should track the effectiveness of their response. Tracking should:

(a) Be based on appropriate qualitative and quantitative indicators;

(b) Draw on feedback from both internal and external sources, including affected stakeholders.

21. In order to account for how they address their human rights impacts, business enterprises should be prepared to communicate this externally, particularly when concerns are raised by or on behalf of affected stakeholders. Business enterprises whose operations or operating contexts pose risks of severe human rights impacts should report formally on how they address them. In all instances, communications should:

(a) Be of a form and frequency that reflect an enterprise's human rights impacts and that are accessible to its intended audiences;

(b) Provide information that is sufficient to evaluate the adequacy of an enterprise's response to the particular human rights impact involved;

(c) In turn not pose risks to affected stakeholders, personnel or to legitimate requirements of commercial confidentiality.

22. Where business enterprises identify that they have caused or contributed to adverse impacts, they should provide for or cooperate in their remediation through legitimate processes.

23. In all contexts, business enterprises should:

(a) Comply with all applicable laws and respect internationally recognized human rights, wherever they operate;

(b) Seek ways to honour the principles of internationally recognized human rights when faced with conflicting requirements;

(c) Treat the risk of causing or contributing to gross human rights abuses as a legal compliance issue wherever they operate.

## ANNEX 2: UN GUIDING PRINCIPLES ON BUSINESS AND HUMAN RIGHTS: THE STATE DUTY TO PROTECT HUMAN RIGHTS (EXCERPTS, EMPHASIS ADDED)

1. States must protect against human rights abuse within their territory and/or jurisdiction by third parties, including business enterprises. This requires taking appropriate steps to prevent, investigate, punish and redress such abuse through effective policies, legislation, regulations and adjudication.
2. States must protect against human rights abuse within their territory and/or jurisdiction by third parties, including business enterprises. This requires taking appropriate steps to prevent, investigate, punish and redress such abuse through effective policies, legislation, regulations and adjudication.
3. In meeting their duty to protect, States should:
  - (a) Enforce laws that are aimed at, or have the effect of, requiring business enterprises to respect human rights, and periodically to assess the adequacy of such laws and address any gaps;
  - (b) Ensure that other laws and policies governing the creation and ongoing operation of business enterprises, such as corporate law, do not constrain but enable business respect for human rights;
  - (c) Provide effective guidance to business enterprises on how to respect human rights throughout their operations;
  - (d) Encourage, and where appropriate require, business enterprises to communicate how they address their human rights impacts.
4. **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.