Essex Business and Human Rights Project

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INTRODUCTION

The Essex Business and Human Rights Project (EBHR) is located at the University of Essex, UK. Via research, advisory, and training services, it focuses on human rights and environmental issues as they arise in various areas of international business. Together with collaborators outside of the university, it is concerned to make the latest academic research available to deal with practical problems, and in turn it draws on its practical experience in order to enrich future research.

The focus of EBHR has been on the impacts of mining, petroleum extraction and transport, commercial farming, and the construction of large infrastructure installations such as roads and hydroelectric installations. In each case EBHR looks at the concrete human rights and environmental problems that arise for workforces, local populations, and the wider society. It has worked on projects commissioned by organizations in Uganda, Kosovo, Liberia, Nigeria, Afghanistan, Turkey, and Brazil.

THE ISSUES IN BRIEF

The projects mentioned below lie at the intersection between business activity and what is described as ‘rights-based’ development. On this strategy, the developmental benefits of investment are not simply measured by aggregates in national wealth creation, but instead by the contribution any given project makes to certain key social and economic rights as well as civil and political liberties. The legal frameworks within which international business activity takes place can provide substantial gains to this rights-based course of development. However, those frameworks can also fall short of providing the targeted improvements that this strategy advocates. Instead, investment treaties and contracts between international companies and host governments often create special regimes within which the company is given privileges and exemptions from having to meet basic rights guarantees. Companies also take advantage of the fact that the controlling parent enterprise, located in e.g. Europe or North America, is able to escape responsibility for damage done because it is legally separate from the subsidiary operating elsewhere. EBHR carries out analyses of these and allied issues on particular projects at the request of non-governmental organizations and inter-governmental organizations. It has also collaborated with the UK Foreign and Commonwealth Office on elaborating norms for UK investment that will confront these problems.
A SAMPLE OF PROJECTS

PAST

Near East: Formulated and negotiated with British Petroleum the first legally
binding human rights guarantee in an international investment agreement: the Human
Rights Undertaking for the BTC oil pipeline linking the Caspian and Mediterranean.
(2003). Supported by Amnesty International, UK,

Kosovo: a/ Analysis of the human rights impacts of property expropriation in
Kosovo, with focus on infrastructure development. b/ Analysis of privatization
strategies for Socially Owned Enterprises (2008-9). Commissioned by the
Organization for Security and Cooperation in Europe (OSCE).

Liberia: a/ Analyses of investment contracts between the government of
Liberia and a corporation covering rubber production and a company covering mining
(2006-7). b/ Analysis of model investment agreement and clauses in new legislation

Congo: Analysis of investment agreement between Chinese companies and the
Democratic Republic of Congo for mining of cobalt and copper and social

Afghanistan: a/ Analysis of mining contracts between the government of
Afghanistan and a Chinese copper consortium for the development of a copper
deposit, 2011; b/ Analysis of gold mining contract between the government of
Afghanistan and a local Afghan enterprise (2011).

OECD: Sheldon Leader chaired a session for a committee of experts convened
by the OECD which advised on an expanded set of human rights provisions within
the OECD Guidelines for Multinational Enterprises (25 January 2011).

UK Foreign and Commonwealth Office: The EBHR team was invited by the
Foreign Office to organise the academic input into a series of four meetings focused
on the UK’s implementation of the UN Guiding Principles on Human Rights
responsibility of Transnational Enterprises – the ‘Ruggie’ Principles. The meetings
took place in February-March, 2012 with businesses, NGOs, and trade unions. A
preliminary report will be published by the Foreign Office in autumn 2012.

CURRENT

Nigeria: The EBHR team will soon be publishing its report on the activities of
companies related to a globally operating oil extracting consortium in the Niger Delta,
 focusing on environmental issues as well as the possible liabilities of the parent
company alongside its Nigerian subsidiary. The report explores the possibility of
taking claims in jurisdictions other than from Nigeria: principally the UK, the
Netherlands and the USA, including a consideration of the impact of recent
developments in EU law.

Uganda: The EBHR team has been working with the ‘Westminster
Foundation for Democracy’ on a project concerning the human rights/environmental
aspects of the law governing the Ugandan petroleum industry. It has focused on the Parliament’s role in helping to shape the new petroleum legislation. It proposed detailed amendments to the statutes for Parliament’s consideration, and provided training to members of Parliament on core issues in extractive industries that call for legislative oversight.

Non-judicial remedies for human rights abuses by business: The EBHR is partner with Monash University in Melbourne in a long-term project analysing non-judicial dispute settlement methods for business and human rights issues. It aims to provide foundation principles for the establishment of a UK Commission on Business and Human Rights. So far, the EBHR team has prepared case study summaries of several dispute settlement mechanisms and is planning interviews with various actors, such as NGOs, public servants, and business leaders, who are involved with and experienced in these mechanisms. A final report is due to be published in 2014.

Brazil: The EBHR has a partnership with the Prosecutor’s Office in Rio de Janeiro and the Federal University of Juiz de Fora, in order to carry out training and research. The partnership includes helping the Prosecutor’s Office in analysing the potential liabilities of members of a European group of companies, arising out of the latter’s construction and operation of a steel mill in the environs of Rio de Janeiro.

Afghanistan: The EBHR team has been asked by Global Witness, UK to assess the qualities of the proposed Minerals Law drafted by the Ministry of Mines that has recently been rejected by the Cabinet. The analysis will focus on improved techniques for transparency and human rights protection that new legislation could embody.

Canada: The EBHR team has petitioned the Supreme Court of Canada to be granted intervener status in the case of ACCI v. Anvil Mining Ltd that is currently pending before the Court. The case concerns an attempt to hold an internationally active mining company to account within the jurisdiction of Quebec for its alleged violations of human rights in the Congo.

Staff participation in EBHR

In one or more of the above projects there have been contributions from Sheldon Leader, Youseph Farah, David Ong, Sylvia Meichsner, Sabine Michalowski, and Marios Koutsias. There have also been contributions (some beginning in the previous academic year) from Steffen Boehm and Neil Kellard from the Essex Business School. In the project with Monash University, there are planned contributions from Michael Bailey, Sociology; Teck Yong Eng, and Vania Sena, who are both from Essex Business School Southend; and from Sumohon Matilal from the Essex Business School.

Student participation and employability enhancement

The Human Rights Clinic: Corporate Social Responsibility Section: This is a group that has engaged in several projects for EBHR. The most recent has been a background analysis in preparation for our Uganda project (see above), and has
helped us to prepare an amicus brief for the Canadian Supreme Court in the *Anvil Mining* case. The EBHR has also worked on developing links between the Clinic and the leading human rights law firm, Leigh, Day and Co in London.

*PhD students:* Several students have played key roles in developing several of the projects listed above. These are Tara Van Ho, Anil Yılmaz, Sufyan El Droubi (Essex School of Law) and Ulisses Neto (sociology department at University of Essex). For three of these four, the projects overlap with the focus of their dissertations.

*MA and LLM students:* Several students who are following the Economic Relations and Human Rights LLM program at University of Essex have produced background materials for the themes being covered by the FCO meetings (see above). They have also participated in the Clinic’s Uganda project. Students from law, business, history and sociology have been participating in the project with Monash University, drawing up summaries of existing multinational dispute settlement mechanism.

**VISITING SPEAKERS PROGRAMME**

Talks as part of our regular visiting speakers’ programme have been delivered by Clifford Chance; Amnesty International UK; Corner House; and the British Institute for Business and Human Rights. Students attending the talks were given the opportunity to gather advice from the speaker of every session on possible career choices in his or her respective field.

**CONFERENCES / THEMATIC MEETINGS**

Following its London conference on human rights and the finance industry, in partnership with the Law Society in early 2011, the EBHR aims to hold two thematic meetings (small conferences) on topical issues. These are ‘Corporate Governance, the Media and Protection of the Right to Privacy; ‘Sovereign Wealth and Human Rights: When and to Whom Should Assets be Released in Transitional States Such as Afghanistan, Libya, Tunisia, or Egypt?’.

**INDICATION OF IMPACT**

Excerpt from a Press Release by the Ugandan Parliament (January, 2012):

“Members of the Ugandan Parliament have completed a three day training programme on Legislative Oversight of the Extractive Industries in Uganda in anticipation of their forthcoming consideration of draft legislation concerning the management of Uganda’s fledging oil and gas industry. … The training was delivered by a team of specialists from [the] Essex Business and Human Rights Project, within the School of Law, University of Essex, UK: Dr. Youseph Farah, Mr. David Ong, and Prof. Sheldon Leader. … Speaking at the closing of the workshop on Thursday, Hon. Michael Kafabusa Werikhe, who Chairs the Natural Resources Committee said, "Hon.
Members, our .... friends from the University of Essex have done their part in equipping us with skills on what to look for in the upcoming petroleum related Bills due to be presented to Parliament next month, it is now up to us to utilize these tools which we have acquired today to make good laws for the benefit of Ugandans. If we fail in this national duty, we will have no one else but ourselves to blame’ Werikhe concluded.”

ALLIED ACTIVITIES:

EBHR staff regularly present research at conferences and speak on business and human rights issues. Some examples of the engagements since 2011 have been:

Miss Tara Van Ho
• Delegate of the American Society of International Law to the “Fourth Conference of States Parties to the UN Convention Against Corruption” in Marrakesh, Morocco (14-28 October 2011)

• Presented paper on applying the Ruggie Framework in Transitional States to the “Academy of Global Governance Doctoral School” at the European University Institute in Florence, Italy (2-3 December, 2011)

Ms. Sylvia Meichsner
• “Jo Negociata: Pondering the Use of Visual Methods in Consultancy Work” at the “Second International Visual Research Methods Conference” at the Open University in Milton Keynes, UK (13-15 September, 2011)

Professor Sheldon Leader


• “The Duty of the EU and Member States to Protect, Regulate Business and Provide Remedies: An Insight into the UN Framework”, European Parliament, Brussels (13 July, 2011)

• “The implications of the UK Bribery Act” at Global Compact Network UK hosted by HSBC London (6 October, 2011)

• Peace Brigades International: “The Human Cost of Advocating Against Environmental Degradation and Land Rights Violations” at University of London, UK (31 October, 2011)
• “UN Guiding Principles for Business and Human Rights: What new is offered for companies and states?” Friedrich-Ebert-Stiftung, Berlin (21-22 November, 2011)


**CURRENT PROJECT STAFF AND ASSOCIATES**

*Core Team:*

Professor Sheldon Leader, Essex School of Law (Director)
Dr Steffen Boehm, Essex Business School (Deputy Director)
Mrs Gail Howell (Project manager)
Ms Sara Hourani (Project assistant)
Ms Iulia Nicolescu (Project assistant)
Dr Youseph Farah, Essex School of Law
Ms Aygun Kazimova, Business and HR Consultant
Ms Rasmiya Kazimova, Investment and HR Consultant
Ms Sylvia Meichsner, Social Science Researcher
Miss Tara Van Ho, Essex School of Law
Ms Anil Yilmaz, Lawyer at the Istanbul Bar Association

*Project Associates:*

Professor Paul Hunt, Essex School of Law
Professor Neil Kellard, Essex Business School
Professor Todd Landman, Essex Government Department
Professor Sabine Michalowski, Essex School of Law
Professor David M. Ong, Nottingham Trent University
Dr Clara Sandoval, Essex School of Law
Dr Judith Schonsteiner, Universidad Diego Portales, Chile
Professor Prem Sikka, Essex Business School
Dr Hardy Thomas, Essex Business School
Professor Shahzad Uddin, Essex Business School

**WEBSITE**

For more information on any of the EBHR current or past activities and links to useful resources please see the project website: http://www.essex.ac.uk/ebhr/

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