Essex Business and Human Rights Project

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INTRODUCTION

Via research, advisory, and training services, The Essex Business and Human Rights Project (EBHR) 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 human rights and environmental 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 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. EBHR is further looking into undertaking human rights due diligence work commissioned by business companies.

A SAMPLE OF PROJECTS

PAST

Afghanistan: EBHR has been asked by Global Witness, UK to assess the qualities of the proposed Minerals Law of Afghanistan, drafted by the Ministry of Mines but rejected by Cabinet in July 2012. The analysis, after critically reviewing the rejected draft, focused on improved techniques for transparency, human rights protection and effective remedy that new legislation could embody. The overall aim of the project is helping the government of Afghanistan draft a new bill that takes in due consideration, alongside mining companies’ and State’s interests, the human and environmental rights of local populations.

Nigeria: As a consequence of the oil spills in the Niger Delta by a Shell Group subsidiary in Nigeria, EBHR was asked to draft a report by Amnesty International on the potential liabilities of the parent company as well as that of its Nigerian subsidiary. The Corporate Liability in a New Setting: Shell and the Changing Legal Landscape for the Multinational Oil Industry in the Niger Delta Report (“The Niger Delta Report”) placed emphasis on the liabilities arising under environmental law and human rights as an outcome of the company’s oil spill, in addition to the possibility of taking claims against Shell and its Nigerian subsidiary in jurisdictions outside Nigeria.

One of the report’s objectives is to provide Shell investors with the necessary information as well as samples of detailed questions that they could direct to their company in order to acquire more information on the Niger Delta situation. The Niger Delta Report was

**Brazil**: In collaboration with the Rio de Janeiro Prosecutor’s Office and the Federal University of Juiz de Fora, EBHR is providing the Prosecutor’s Office with legal analysis regarding the potential liabilities that the members of the German Thyssen-Krupp group of companies would incur as a result of the latter’s activities in the construction and operation of a steel mill, and their impact on the local populations and environment in the Rio de Janeiro area. In this collaboration, EBHR is also involved in supplementing training to the Prosecutor’s Office in the field of business and human rights.

**Uzbekistan**: Analysis of the use by companies of child and forced labour in the Uzbek cotton industry.

**CURRENT**

**Senegal**: As an increasing number of mining companies are currently prospecting or doing business in Senegal, Amnesty International Netherlands has commissioned EBHR to produce a report on whether the internal legal framework is adequate to ensure human rights, social and environmental protection in light of international standards, in particular the ECOWAS Mining Directive. The legal analysis considered a number of aspects including land rights, health and safety, right to water, environmental issues, gender, as well as the judicial and non-judicial remedies available to local communities affected by notably industrial mining activities. The initial desk-based research was followed by fieldwork investigation in Senegal.

**Non-judicial remedies for human rights abuses by business**: EBHR is part of a three-year research project analysing non-judicial dispute settlement mechanisms for human rights abuses by businesses, particularly those operating outside their home countries. The Project is being conducted in partnership with Melbourne and Monash Universities in Australia, the University of Newcastle, the UK’s Corporate Responsibility Coalition (CORE) and several leading NGOs including Oxfam Australia, ActionAid and the Federation of Homeworkers Worldwide. EBHR’s contribution will be integral to formulating a recommendation for a UK Commission on Business and Human Rights.

The team has carried out a database of the various forms of non-judicial redress mechanisms, as well as the regulatory mapping of UK business and human rights-related legislation, parliamentary and government bodies to serve as lessons for institutional design and operation. EBHR is currently conducting background research into the impact of non-judicial remedies with a view to producing an academic research paper.

**STAFF PARTICIPATION IN EBHR**

In one or more of the above projects there have been contributions from Sheldon Leader, Yousef Farah, Karen Hulme, Sabine Michalowski, Sylvia Meichsner, David Ong, Marios Koutsias. There have also been contributions from the Essex Business School, notably from Sarah Lauwo, and, in previous years, Steffen Boehm and Neil Kellard. 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

PhD students: Several students have played key roles in developing some of the projects listed above. These are Sara Hourani, Tara Van Ho, Anil Yilmaz, Sufyan El Droubi (Essex School of Law) and Chiara Macchi (PhD candidate at the Sant'Anna School of Advanced Studies in Pisa, Italy). For some students, the projects overlap with the focus of their thesis.

MA and LLM students: A number of students undertaking postgraduate degrees at the University of Essex (such as the International Human Rights Law or Economic Relations and Human Rights LLM programmes) have produced background materials for several themes covered by the projects. For example, EBHR has benefited from research assistance on ongoing projects (such as the Senegal and Brazil projects) from Marcelo Santiago Featherston, Sofia Manukyan, Alice Kuczkiwicz or Alessandra Gregg. Students have also been able to introduce research topics of their choosing which usefully complements their studies.

VISITING SPEAKERS PROGRAMME

Listed below are a total of nine talks delivered by external speakers during the current academic year (2012/13). The audience was comprised of mainly postgraduate human rights students as well as interested academic staff. As regular attendees, students were given the opportunity to enhance their knowledge both on the specific topics as well as possible career options in the field of business and human rights.

- EBHR Speaker Series Seminar on 12th December 2012: John Morrison, Institute for Human Rights and Business, “Business and Human Rights: Human rights due diligence in business relationships; how far has business come so far?”
- EBHR Speaker Series Seminar on 23rd January 2013: Peter Frankental, Economic Relations Programme Director, Amnesty International UK, “Holding Transnational Corporations Accountable – is the tide beginning to turn?”
• EBHR Speaker Series Seminar on 27th February 2013: Juman Kubba, Global Witness, “Securing accountability and transparency in the Afghan Mining Sector”

• EBHR Speaker Series Seminar on Wednesday 6th March 2013: Michael Addo, University of Exeter and UN Working Group Business and Human Rights, “The UN Guiding Principles as a Corporate Governance Regime”

• EBHR Speaker Series Seminar on 20th March 2013: Louise Rouse, ShareAction, “Improving the environmental and social impacts of companies through the use of shareholder power”.

EVENTS

In collaboration with the Rio de Janeiro Prosecutor’s Office and the Federal University of Juiz de Fora, Professor Sheldon Leader has travelled to Brazil to present a number of seminars on business and human rights. The partnership with the University of Juiz de Fora to date includes teaching, training and research.

EBHR has attended a civil society experts’ roundtable hosted by the CORE (the UK’s Corporate Responsibility) Coalition in February 2013 on evaluating redress mechanisms. As noted above, this is a project EBHR is working on with Monash and Melbourne Universities in Australia, among other partners. The EBHR team has produced a follow-up report summarising the workshop discussions and will continue aforementioned research work into non-judicial mechanisms for victims of corporate abuse.

PLANNED CONFERENCES / THEMATIC MEETINGS

As a follow-up to the issues raised by the Niger Delta Report, EBHR will be organising a roundtable meeting on potential changes in patterns of liability for parent companies for damages caused by their subsidiaries. Invitees will include leading business and human rights experts and practitioners involved in recent legal developments in this area.

In partnership with the Essex Transitional Justice Network, EBHR is planning to hold a conference on the Mau Mau case. The latter represented a legal victory against the British government for claimants’ abuses suffered during the Mau Mau uprising in colonial Kenya. The conference panel will include academics and the lawyers involved in the decision. Possible collaborations with the Theatre and Arts Departments are also being considered for this project.

IMPACT

Most EBHR project outputs have a wider impact. Since the previous newsletter, the Niger Delta Report published in December 2012 was referred to by leading news agencies such as
Al Jazeera\textsuperscript{1}, in addition to coverage by the Business and Human Rights Resource Centre. The latter contains Royal Dutch Shell’s initial response to the report.\textsuperscript{2}

As previously noted, the report’s influence will extend to the organisation of a follow-up experts’ roundtable meeting. Further press coverage is also envisaged with a view to raising awareness of the issues highlighted in the report to the business community.

Excerpt from a Press Release by Amnesty International (10 December 2012)\textsuperscript{3}:

“Amnesty International welcomes the findings of today’s independent report. It draws attention to Shell’s precarious legal position arising from its appalling impacts in the Niger Delta and brings closer the day when the company will be held accountable.

“Large parts of the Niger Delta, home to more than 30 million people, have become a polluted wasteland due to the activities of oil companies.

“Numerous oil spills have left local communities with little option but to drink polluted water, eat contaminated fish, farm on spoiled land, and breathe in air that reeks of oil and gas.

“Yet, Shell has consistently failed to own up to its responsibilities and appears to be operating to lower standards in the Niger Delta than elsewhere, simply because it thinks it can get away with it. This report makes clear that the parent company, Royal Dutch Shell, can be held liable for its subsidiary’s failure to operate to acceptable standards.”

(Peter Frankental, Economic Relations Programme Director of Amnesty International UK)

Moreover, several of our future mandates build on current projects and activities. For example, EBHR’s collaboration with Amnesty International Netherlands on the Senegal Project detailed above will be taken forward in advising the State of Senegal on reforming its mining legislation to integrate international human rights standards.

There are additional proposals to advance cooperation with other partners. To name a few, Global Witness has proposed collaboration in respect of work related to Afghan universities and NGOs and Michael Addo, Member of the UN Working Group on Business and Human Rights has put forward a research project proposal. There are also plans to extend the partnership with the University of Juiz de Fora to advising local NGOs in Brazil. Further, a joint FCO award for local implementation of human rights due diligence for medium-sized enterprises is in the process of being completed.

Other future commitments include human rights due diligence work expected to be commissioned by multinational companies as well as a book project featuring notable EBHR projects and activities completed to date.

**CURRENT PROJECT STAFF AND ASSOCIATES**

*Core Team:*

\textsuperscript{1} See: \url{http://www.aljazeera.com/indepth/opinion/2012/12/2012129122836827844.html}.
\textsuperscript{2} As published on 7 January 2013: \url{http://www.business-humanrights.org/Links/Repository/1016408}.
\textsuperscript{3} See: \url{http://www.amnesty.org.uk/news_details.asp?NewsID=20496}. 
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Dr Karen Hulme, Essex School of Law
Professor Prem Sikka, Essex Business School
Dr Hardy Thomas, Essex Business School
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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/eb

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