

Impact case study (REF3b)

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| <p>Institution: University of Essex</p> |
| <p>Unit of Assessment: 20 – Law</p> |
| <p>Title of case study: Protecting Human Rights in Global Investment</p> |
| <p>1. Summary of the impact</p> <p>Professor Sheldon Leader has worked on assessing the impact of foreign direct investment on human rights and sustainable development. This research has analysed investment contracts that have been damaging for human rights in developing countries, and Leader’s work has resulted in recommendations for better human rights protection in future investment contracts. His recommendations have been adopted in new contracts, such as that between BP and the government of Turkey. His analyses of damaging investment, through his work as Director of the Essex Business and Human Rights Project, have informed the work of NGOs such as Amnesty International and Global Witness, and his consultations have contributed advice to the work of the UK’s Foreign and Commonwealth Office to develop a government strategy on business and human rights.</p> <p>2. Underpinning research</p> <p>Leader’s research has specialised in the impact of business investment in developing countries. Such investment, especially in the extractive industries, has often resulted in contravention of international human rights conventions, particularly in cases in which it is against a company’s commercial interests to heed human rights standards. Leader’s research focuses on situations in which investors seek a compromise between human rights standards and commercial interest, and has examined and explained existing investment contracts and their relation to human rights concerns. This work has led him to develop proposals for an alternative way to guarantee human rights standards are adhered to while meeting the commercial interests of investors. It is these proposals that have most directly underpinned the impact of his research.</p> <p>Leader has applied his analysis of investment negotiations to several substantive issues, including:</p> <ol style="list-style-type: none"> 1. The mutual adjustment between competing social and economic rights, where some rights are furthered, while others are damaged, by investment projects. Leader has applied his observations about directions of adjustment to criticise cases such as that of an Exxon Mobil pipeline in Chad and Cameroon, where a contract between the host countries and Exxon Mobil means that those countries would face hefty financial penalties for prosecuting the company for human rights violations (see 2006 and 2011). 2. The conflict between an investor’s concern for predictable regulation of their investment activity, and the host state’s concern for regulatory flexibility, where the latter is often aimed at fresh social and environmental initiatives. In these cases the concern is that the investment contracts preclude changes to local human rights regulation that may occur within the lifetime of the investment project, which could mean that these regulations lag behind developments in international human rights. Leader’s work in this area has focussed on the case of BP’s Baku-Tbilisi-Ceyhan (BTC) oil pipeline construction project in Turkey. His research on this case (published in a report for Amnesty International, 2003) revealed that BP struck a deal with Turkey whereby BP would be compensated for any changes to local regulations adopted in compliance with international human rights legislation. His Amnesty report proposes that contractual mechanisms should be introduced to ensure that the BP investment poses minimal risks to the human rights of local populations (see also 2006). |

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3. The tendency of some international investors to allow for damage to occur and subsequently pay compensation, rather than taking measures to proactively prevent damage. Leader has argued that if the correct direction of adjustment is adopted, investment regulation will require investors to take proactive measures rather than allowing for human rights contravention (2011).

This research on investment and human rights has been informed by Leader's engagement in high profile cases of negotiations between international investors and host states. In this respect the research and the impact of the research has had a mutually influential relation, with his advice in negotiations informed by his research, and further research publications informed by practical engagement.

3. References to the research (indicative maximum of six references)

- Leader, S. (2003) *Human Rights on the Line*, Amnesty International UK [available from HEI on request]
- Leader, S. (2005a) Two ways of linking economic activity to human rights, *International Social Science Journal*, 57 (185), 541-550. DOI: 10.1111/j.1468-2451.2005.00569.x
- Leader, S. (2005b) Collateralism, in R. Brownsword (ed.) *Global Governance and the Search for Justice*, Oxford: Hart Publishing. ISBN: 9781841134093
- Leader, S. (2006) Human rights, risks, and new strategies for global investment, *Journal of International Economic Law*, 9 (3), 657-705. DOI: 10.1093/jiel/jgl015
- Leader, S. (2011) Risk management, project finance, and rights based development, in S. Leader and D. Ong (eds.) *Global Project Finance, Human Rights, and Sustainable Development*, Cambridge: Cambridge University Press. ISBN: 9780521762601

Research Funding:

- S. Leader; *International Project Finance and Human Rights*; The British Academy; 14-15 September 2006; £1,998.
- S. Leader; *Global Project Finance Rights and Sustainable Development*; Economic and Social Research Council; 1 July 2005 – 4 September 2007; £136,356.

4. Details of the impact

The protocols Leader has outlined for best negotiating commercial interests and human rights have been applied to existing and new international investment contracts. Leader has provided extensive guidance on investment and human rights law for governments (including in Uganda and the UK) and for NGOs working in this field (including Amnesty International and Global Witness). Much of this activity is undertaken in his role as Director of the Essex Business and Human Rights Project (EBHR), a University centre that fosters interdisciplinary work on business and human rights and offers training and research digests for non-academic users. Leader and EBHR's impact activities in the REF impact period have been varied, and the most notable examples are included below.

BP and Amnesty International

Leader's Amnesty International paper on the BTC pipeline project (2003) attracted the attention of BP, which invited Amnesty and Leader to aid their negotiation of additional clauses to the BTC contract. Using the principles developed in the research, he formulated the content of a *Human Rights Undertaking* for the BTC contract and with the support of Amnesty International UK secured its adoption by BP [corroborated by Amnesty International UK's Economic Relations Programme Director, source 1]. While the instrument was adopted in 2003, new phases in its impact have arisen since 2008. The BTC case received significant attention from legal practitioners and international bodies such as the UN and the International Finance Corporation

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(IFC). Leader's meetings with senior officials in Washington DC and his contribution to two World Bank workshops prompted the UN, IFC, and the World Bank to undertake their own research in this area. This research included a report published in 2009 and led by the UN Secretary-General's Special Representative for Business and Human Rights, Professor John Ruggie. The report entitled, 'Stabilization Clauses and Human Rights', was influenced by Leader's research and as a result covered the details of the BTC case [corroborating source 2]. This impact has also been confirmed by Amnesty International's Head of Business Networks:

'The significant institutional impacts of which I am aware include: 1)...Professor John Ruggie, published a report [that] drew largely on Professor Leader's analysis. 2) ...The interactions that Sheldon had with the World Bank and International Finance Corporation...has led to recognition by the IFC that the interface between investment contracts and human rights is a significant issue that needs to be addressed. An outcome of this was IFC's involvement in and co-sponsorship of the research undertaken on this by Professor Ruggie's team'

Economic Relations Programme Director, Amnesty International UK

The most recent impact of the *Undertaking* was on the OECD UK National Contact Point, which in 2011 decided not to uphold complaints made against BP. Their decision was partly based on the fact that BP had agreed to the *Human Rights Undertaking* drafted and negotiated by Leader [corroborating source 3, especially para 27].

Finally, his work with Amnesty International has also had a significant and broader influence on their NGO activities: 'Sheldon Leader is a widely acknowledged expert in the field of business and human rights, whose leadership has served as a catalyst for research and advocacy initiatives that might not otherwise have taken place' [Economic Relations Programme Director, Amnesty International UK].

Impact on Ugandan legislation

In 2012 Uganda's Parliament appointed a Committee on Natural Resources to evaluate legislation drafted to manage the country's developing oil and gas industry. To help with the Committee's assessment of the legislation, in January 2012 Leader delivered a three-day training programme in Uganda for members of the Committee. The training programme used Leader's research to inform them of the human rights dangers related to the extractive industries and to recommend legislative solutions to the problems faced in Uganda. In the words of the Chairperson of the Natural Resources Committee, 'the training helped improve the understanding of members about the oil and gas sector' [source 4]. The Committee has also confirmed that Leader's training programme influenced changes to the draft legislation. These changes included the addition of new clauses to increase transparency of the management of the extractive industries, to ensure full state ownership of a new National Oil Company, and to give the Ugandan Government discretion in deciding whether to open up new areas for extraction licencing [source 4].

Global Witness, and Government Petroleum Contracts

Leader has collaborated with NGO Global Witness on a number of occasions to analyse investment contracts in Liberia and to inform Global Witness campaigns for contractual amendments to protect the rights of Liberian citizens. His contribution to the work of Global Witness in Liberia has been most prominent with regard to two major investment contracts:

- Leader and EBHR have provided analysis of the contract between the Government of Liberia and Firestone Liberia Inc. The contract, first signed by the Transitional Government and later

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amended without substantial public consultation in February 2008, came under scrutiny from Global Witness which published a report based on his analysis in November 2008 [source 5].

- Leader and EBHR have also provided analysis of Liberia's Mineral Development Agreement with China Union Investment Company, signed in January 2009. His analysis of the contract informed a Global Witness statement on the dangers of the contract [source 6].

His contribution to the operation of Global Witness and the effectiveness of their campaigns, both in general and in the above cases, has been attested by their Team Leader in Conflict Resources, who writes: 'I cannot overemphasise how important that work of Prof Leader and the other experts has been to Global Witness and in turn to Liberia. It has enabled the Government of Liberia to negotiate contracts that will benefit the people of Liberia' [source 7]. EBHR has also contributed to Global Witness campaigns concerning Afghanistan and Uganda [as corroborated by their Deputy Campaigns Director, source 8].

The UK Foreign and Commonwealth Office

From 2012 Leader has given extensive guidance to the UK's Foreign and Commonwealth Office, specifically to their Human Rights and Democracy Department on their work to develop a Government strategy on business and human rights. His aid to the FCO's development of the strategy primarily took the form of his contribution of academic inputs to four stakeholder meetings, each held to consult a range of relevant institutions to discuss the best way to implement the UN Guiding Principles on Business and Human Rights. In the words of the FCO's Deputy Head of its Human Rights and Democracy Department, 'Leader played a leading role in introducing sessions and stimulating debate...His role was essential in drawing on his depth of knowledge and expertise in order to ask the right probing questions'. The Deputy Head has told us 'that without this help from Essex our work would have been much harder and less well-informed' [source 9].

5. Sources to corroborate the impact [All sources saved on file with HEI, available on request]

1. Economic Relations Programme Director, Amnesty International UK
2. 'Stabilization Clauses and Human Rights', IFC and the UN Special Representative to the Secretary General on Business and Human Rights, 27 May 2009: <http://www.business-humanrights.org/media/documents/stabilization-clauses-and-human-rights-27-may-2009.pdf>
3. UK National Contact Point – Revised Final Statement, 22 February 2011: <http://www.bis.gov.uk/assets/biscore/business-sectors/docs/r/11-766-revised-final-statement-ncp-btc.pdf>
4. Chairperson of the Ugandan Parliamentary Committee on Natural Resources
5. 'Recommendations for future concession contract negotiations drawn from the amended firestone contract', Global Witness (December 2008): http://www.globalwitness.org/sites/default/files/import/amended_firestone_agreement_update_d_overview.pdf
6. 'Liberian legislature must be given time to review US\$2.6 billion Chinese contract', Global Witness: http://www.globalwitness.org/sites/default/files/import/09jan30joint_press_release_on_china_union_pwypl_gw_final.pdf
7. Team Leader in Conflict Resources, Global Witness
8. Deputy Campaigns Director, Global Witness
9. Deputy Head of Human Rights and Democracy Department, Foreign and Commonwealth Office