

Business Network Annual Report



December 2021



**British Institute of
International and
Comparative Law**

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Introduction

The Business Network is comprised of leading companies who understand the importance of the Rule of Law to business. Founded on the understanding that the collective voice is stronger than a single corporate voice, the Network allows members to work collaboratively to defend and promote the Rule of Law through participation in research, events and capacity building initiatives. Issues identified by members inform the programme of research undertaken by the Bingham Centre for the Rule of Law (the Bingham Centre) and the British Institute of International and Comparative Law (BIICL). This report details relevant research, commentary, events and other activities undertaken by the Bingham Centre and BIICL since 1 November 2020, which have been informed by discussions in the Business Network.

Modern Slavery and Human Rights

The Modern Slavery and Human Rights Policy and Evidence Centre (“the Modern Slavery PEC”) was created to enhance understanding of modern slavery and transform the effectiveness of laws and policies designed to address it. The PEC is a consortium of six organisations (four universities and two Independent Research Organisations) led by the Bingham Centre and is funded by the Arts and Humanities Research Council on behalf of UK Research and Innovation (UKRI). The PEC officially launched in September 2020, marked by an international virtual conference on assisting and protecting survivors of modern slavery.



In April 2021, the PEC published its [Strategy for 2021-2024](#), with the focus on impacting laws and policies against modern slavery and the inclusion of people with lived experience at its heart. The strategy followed an extensive [consultation](#) with policy makers and key actors, including business, which was

carried out between July and October 2020. The consultation included a survey with 121 respondents and eight roundtables with 75 participants.

The PEC’s work is divided into four research areas: prevention; survivor support; supply chains and effectiveness of legal enforcement. It has an additional research area that addresses emerging and cross-cutting issues, such as the impact of the Covid-19 pandemic on modern slavery.

During the reporting period, the PEC issued two open calls for research and five calls for responsive research. A total of six new research projects were started in addition to 18 ongoing projects, and

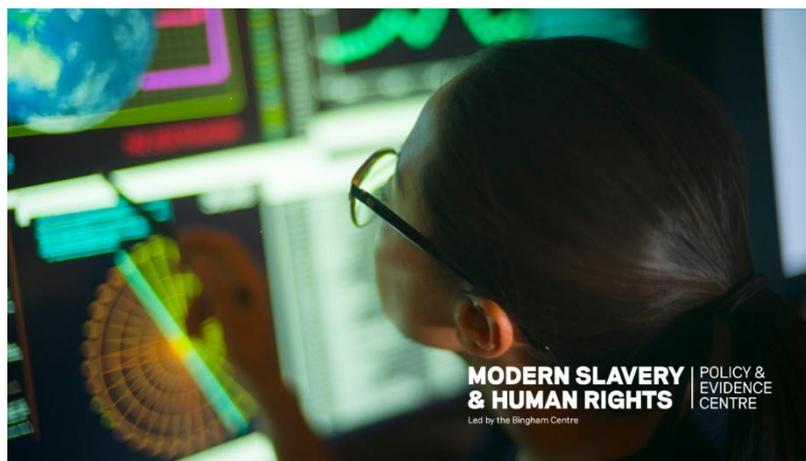
13 research reports were published. Many of these reports concern modern slavery in global supply chains.

Business Engagement

The Modern Slavery PEC has convened a series of roundtables for interested businesses since it was first established, including two within the reporting period: in November 2020 and June 2021. At the November business roundtable, two PEC research projects were presented and discussed: [Data for Investor Action on Modern Slavery](#) and [Effectiveness of UK Supply Chain Measures](#) (outlined below). In addition, participants proposed several additional or expanded modern slavery research priorities for the PEC to consider, reflecting priority questions for business.

At the June roundtable, the PEC presented a draft paper outlining business research priorities, as identified in earlier discussions with business. This received broad support from businesses in attendance for the majority of the research topics. Following the roundtable, the PEC revised and refined the paper and is now using it internally to inform the design of relevant research calls. The most widely supported research area formed the basis for the responsive research call '[Visibility of long supply chains](#)' for which bids are currently being invited.

More recently, the PEC has committed to business engagement at a more granular level, focusing on particular sectors. In September 2021, the PEC held a finance sector roundtable, inviting financial institutions to discuss the evidence gaps where new research could support their actions to



address modern slavery. Several evidence gaps were identified, in some cases aligning closely with those previously identified, and these will inform the PEC's future research calls. We [published a blog post](#) summarising key takeaways from the finance sector roundtable.

Research Outputs of interest to business

The Bingham Centre has led two PEC projects in collaboration with other organisations in the consortium. The first project, in partnership with the Bonavero Institute of Human Rights, examined the [Effectiveness of Section 54 of the Modern Slavery Act](#) in holding UK businesses accountable for modern slavery in their supply chains. The project report, published in February 2021, considers the effectiveness of a legal model which relies predominantly on civil society monitoring and draws

from other UK regulatory models to explore the possibilities and limits of section 54 in achieving its legislative objectives.

The second project, in partnership with the Alan Turning Institute, considered Data for investor action on modern slavery. The project report, published in June 2021, found that although recent years have seen progress in developing data resources, there are significant obstacles to obtaining the kinds of actionable data-driven insights needed by investors. The research sought to identify strategies for overcoming these obstacles, laying the groundwork for developing new and improved data solutions that cater to investors' information needs.

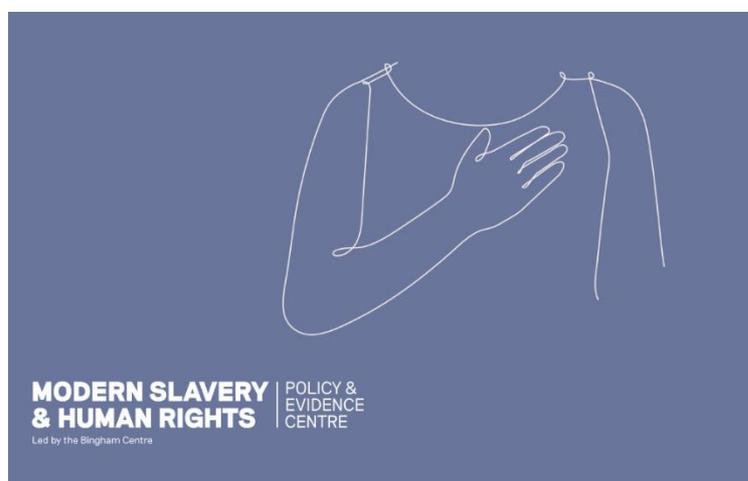
In addition to the two projects mentioned above, the PEC published five other research reports on topics of particular relevance to business.

- i. Research on the Impact of Covid-19 on management of supply chains, led by the University of Liverpool and the University of Nottingham Rights Lab, which analysed the impacts of the pandemic on the actions of UK-based businesses to tackle modern slavery. Findings highlighted a rapid rate of supplier turnover with expedited due diligence processes in place, alongside two more positive developments: many firms increased their knowledge of their supply chains, presenting an opportunity to apply that knowledge in future to tackle modern slavery, and 80% of supply chain and procurement practitioners surveyed believed stronger legislation is needed in relation to the Modern Slavery Act's corporate reporting requirements.
- ii. A project led by the University of Sheffield and Worker Rights Consortium which explored The unequal impacts of Covid-19 on global garment supply chains. Gathering evidence from Honduras, India, Ethiopia and Myanmar, the project found that labour and living conditions for garment workers severely worsened during the pandemic. Business responses played a role: some companies took actions, such as cancelling orders or withholding payment, that exacerbated worker vulnerabilities, while others took measures, such as providing advance payments or permitting flexibility with delivery times, mitigating the worst impacts of the pandemic.
- iii. A report on Forced labour in the Malaysian medical gloves supply chain, led by Newcastle University and partners, which measured the prevalence of forced labour indicators in the sector during Covid-19, finding that several increased while some remained steady or reduced. A workshop was held to discuss the findings with policymakers from across the UK Government and the project was cited in relevant media coverage.
- iv. Research, led by the University of Nottingham Rights Lab and partners, which explored the Impact of Covid-19 on Romanian and Bulgarian workers in UK agriculture, against a backdrop of reduced demand, the introduction of personal protective equipment (PPE) and recruitment challenges. The project found increased vulnerability due to loss of wages, additional pressures in the workplace and limited regulatory oversight of workplaces as a result of pandemic restrictions.

- v. Finally, a project led by researchers at the University of Melbourne, Royal Holloway and the University of Glasgow, which looked at [Addressing consumer \(in\)action towards modern slavery](#). Key findings included the limits of awareness-raising for changing consumer behaviour and the importance of identifying clear actions on modern slavery that particular audiences can take, in order to motivate behaviour change.

Policy Briefs

The PEC publishes policy briefs on key topical issues relating to modern slavery, providing policymakers and practitioners with the best evidence to inform their decision-making. In July 2021, the PEC published a policy brief on the [Effectiveness of forced labour import bans](#), which identified that while there is limited evidence to date on the effectiveness or potential wider consequences of such bans, the available evidence does allow for key factors in the design and implementation of import bans to be outlined.



In November 2021, the PEC published a policy brief on the [Impact of the Covid-19 pandemic on modern slavery](#). This brief includes a rapid evidence assessment of the impacts of Covid-19 both on modern slavery itself and on efforts, including by business, to address modern slavery. There is a dedicated [summary brief](#) highlighting

relevant findings and recommendations for business stakeholders. Key findings include: that the pandemic has increased vulnerability to modern slavery, particularly among certain groups, including migrant workers, those in informal employment and women; that vulnerability to modern slavery increased by a greater amount in low and middle income countries; and that there is evidence of an increase in the risk of forced labour both in supply chains that experienced demand spikes (e.g. PPE production) and in those that experienced a significant reduction in demand.

Business and Human Rights

In recent years, cases have illustrated that companies can cause, contribute to or be directly linked to human rights and environmental harms, both in their own operations and in their value chains. From issues of child labour, forced labour, poor and unsafe working conditions, to environmental damage and the climate-related impact of corporate activities, all sectors are concerned. The Covid-19 pandemic has shone light on the difficulties arising out of unregulated global supply

chains and raised questions in terms of the human rights compatibility of business responses to the crisis.

Although most domestic legislative measures that address supply chain due diligence tend to be sector - or issue - specific, a new wave of legislative developments, including in France, Germany and at EU level, is seeking to introduce a general duty on companies to undertake due diligence for their human rights and environmental harms. BIICL has been working extensively on this area of business and human rights. Some of our activities are highlighted below.

BIICL duty to prevent model

The legal model that was proposed in the 2020 BIICL report on a UK failure to prevent mechanism for corporate human rights harms is being used as the basis for a UK legislative campaign for the introduction of a new UK 'mandatory human rights and environmental due diligence' law.

The civil society call is being supported by 36 leading businesses and investors, including Microsoft, Tesco, Primark and Nestlé, who are seeking for such a law to be introduced in the UK. The call, which was featured in the Guardian and other media outlets, coincided with a legal opinion by Timothy Otty QC and Naina Patel of Blackstone Chambers, which analyses and refers to the BIICL report with reference to the 2020 independent review which Alison Levitt QC undertook of labour practices in the Boohoo supply chain. The legal opinion includes the BIICL model as an annex and concludes that "Boohoo could have been found liable for breaches of the Guiding Principles under mandatory human rights due diligence/UK 'failure to prevent' legislation in the form of the BIICL Model Legal Provision, had such legislation been in place during the relevant period of time."

Human Rights Due Diligence for Climate Change Impacts

In January 2021, BIICL published a report on its webinar series 'Human Rights Due Diligence for Climate Change Impacts', which ran from September – October 2020. The series considered the nature of due diligence as a legal standard of care, how this can be applied in relation to climate change, and what the practical implications for companies are likely to be.

This report provides an overview of the discussions and is divided into four parts according to the episodes' topics. It contains the written versions of each speaker's presentation, in the order that they took place.



Human Rights Due Diligence for Climate Change Impacts Webinar Series Report

Edited by Lise Smit and Ivano Alogna



Human Rights Responsibilities in the Tourism and Hospitality Sector in Cuba



BIICL recently started a new project to analyse the obligations on companies and States to mitigate and respond to labour exploitation in the tourism and hospitality sector in Cuba. With regards to companies, it will consider responsibilities to assess the risk of, and identify, cases of exploitation in their supply chains and to take steps to ensure access to an appropriate remedy

where required. In relation to States, the project will examine obligations to prevent and punish human rights abuses and protect victims, as well as compliance with international obligations.

The analysis will be based on the international legal framework, as well as on recent regional developments and domestic legislation. It will also draw on consultation with businesses and other key stakeholders to develop a set of recommendations for States and businesses to better comply with their obligations.

Webinar series

BIICL convened two webinar series with the Nova Centre for Business, Human Rights and the Environment in Lisbon. The first series, which ran from September 2020 to January 2021, examined Business and Human Rights Developments in Southern Europe. Through five episodes, the series provided a spotlight on five countries (Greece, Switzerland, Italy, Spain and Portugal) in which important developments are taking place.

The second series, which ran from January to June 2021, considered Business, Human Rights and the Environment in Europe. The series was opened by the Late John Ruggie, who was the main author of the UN Guiding Principles on Business and Human Rights. The contributions have been published on the Nova Centre for Business, Human Rights and the Environment blog page.

Human Rights Due Diligence and Systemic Inequalities

In October 2021, BIICL convened a two-day conference in partnership with the University of Copenhagen, to consider Human Rights Due Diligence and Systemic Inequalities. Existing equality legislation has often focused on individual abuses of the right to inequality, such as discrimination in the workplace. This conference explored the human rights due diligence responsibilities of companies in relation to systemic inequalities from an intersectional perspective.

Commentary

- [ASOS Calls for Mandatory Human Rights Due Diligence legislation](#), April 2021, Just style
- [The UK must take the global lead against modern slavery once more](#), April 2021, The Times
- [Companies Coming Out in Public Support of 'Failure to Prevent' Law on Human Rights Obligations](#), May 2021, JD Supra

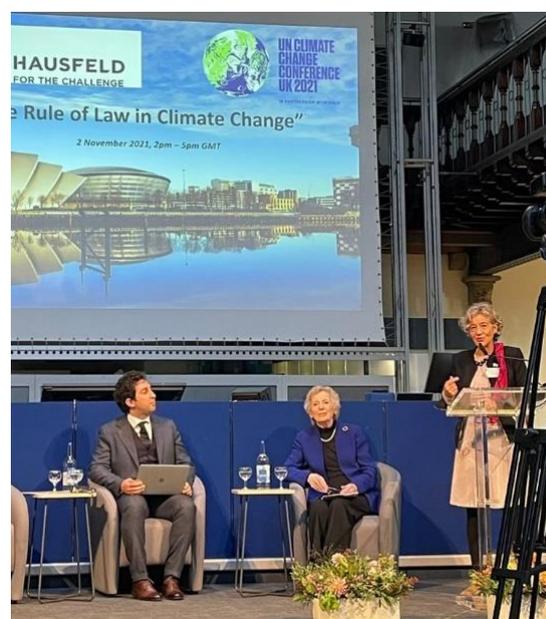
Climate Change

Climate change is one the most pressing global environmental concerns. BIICL is pushing the knowledge boundaries on climate change legislation and litigation, through comparative and international law research projects, events, publications and training.

Our Future in the Balance

In July 2021, BIICL and global law firm Hausfeld partnered to convene an international virtual summit on [Our Future in the Balance: The Role of Courts and Tribunals in Meeting the Climate Crisis](#). This event was held at a critical moment in the lead-up to COP26 and at a time when the law is playing an increasingly important and visible role in responding to the climate crisis. From this event, we published a [Declaration on Climate Change, Rule of Law and the Courts](#), distilling some of the critical conclusions and outlining the fundamental role of the law and judiciary in tackling climate change.

As Official Observers at COP26, we convened [Mobilising the Rule of Law in Climate Change](#), again in partnership with Hausfeld and also the University of Glasgow School of Law. Mary Robinson, Former UN Special Envoy on Climate Change and High Commissioner for Human Rights, and Vanessa Nakate, Ugandan climate justice activist, presented our Declaration. It was then discussed with panellists including David Boyd, United Nations Special Rapporteur on Human Rights and the Environment, and Professor Christina Voigt, Chair of the IUCN World Commission on Environmental Law (WCEL), and Co-chair of the Paris Agreement's Compliance and Implementation Committee.

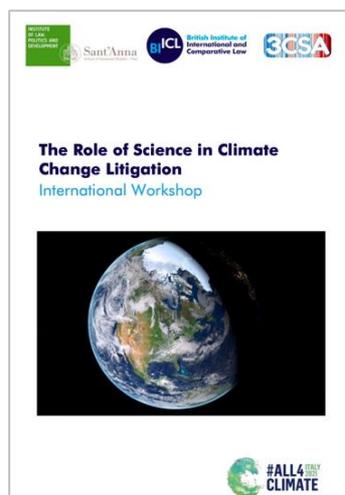


1 BIICL's Ivano Alogna, Mary Robinson and Ingrid Gubbay of Hausfeld LLP at COP26 Glasgow, November 2021

Ideas and Perspectives for a Climate Emergency Bill

Ideas and Perspectives for a Climate Emergency Bill: Developing a Toolkit for Legislators to Tackle Climate Change, focused on legal developments in the field of climate change from a comparative perspective, emphasising the legislative solutions developed in the UK, France and Denmark, and explored the possibility and need for a new Climate Emergency Act in the UK.

The Role of Science in Climate Change Litigation



An interdisciplinary dialogue on The Role of Science in Climate Change Litigation took place 14-15 July. It examined the current, and potential future role of science in climate litigation from both the legal and scientific perspective. The event was part of the "All4Climate - Italy 2021" Programme, promoting 2021 as the Year of Climate Ambition. The workshop brought legal and scientific experts together to consider current legal obligations of States and private actors, to discuss inter-related issues, and to identify how science can further play a role in climate change litigation.

The event was co-convened with Sant'Anna School of Advanced Studies (SSSA, Pisa) and the Center for Climate Change Studies and Sustainable Actions (3CSA, Pisa/Pavia). You can find out more in the event report.

Climate Change Litigation: Global Perspectives

BIICL recently edited and published: Climate Change Litigation: Global Perspectives (Brill 2021) with contributions and analysis by some of the most respected scholars and practitioners, including: Michael Gerrard, Andrew Sabin Professor of Professional Practice and Director of the Sabin Center for Climate Change Law at Columbia Law School; Ingrid Gubbay, European Head of Human Rights and Environmental Law at Hausfeld; Tianbao Qin, Luoja Professor of Law and Director of the Research Institute of Environmental Law, Wuhan University; Harro van Asselt, Professor of Climate Law and Policy with the Centre for Climate Change, Energy and Environmental Law at the University of Eastern Finland.

Other key events

- Corporate Accountability and Liability Mechanisms for Climate Change. This seminar examined the models of corporate accountability and liability for climate change impacts. The focus on the recent Shell Case is reflective of its importance, its nature as a follow on to previous decisions by the same courts, and the impetus it has provided for further corporate litigation.

- Rising Sea Levels: Promoting Climate Justice through International Law, was a webinar series on approaching climate-induced rising sea level as a global problem and the possible implications arising from it through the lens of international law and climate justice.

Commentary and Publications

- What does human rights due diligence for climate change impacts look like?, January 2021, BIICL
- Emission Trading: International Law and Dispute Resolution, January 2021.
- Corporate Due Diligence and Climate Change, May 2021, BIICL

Legal Perspectives on Covid-19

Breathing Space Concept

The BIICL guidelines for the resolution of disputes following the 2020 pandemic have now been translated into seven languages making them more widely accessible. The guidelines set out practical ways in which corporates might be encouraged to adopt a more conciliatory approach to Covid-19 related contractual disputes without prejudicing or altering parties' legal rights. The earlier concept notes developed as part of this project are available [here](#).

Data-Driven Responses to Public Health Emergencies

Supported by the UK Arts and Humanities Research Council, the Bingham Centre is undertaking an interdisciplinary Covid-19 rapid response project on the role of the Rule of Law and good governance in securing and maintaining public trust in data-driven responses to public health emergencies. The Bingham Centre is the lead partner in a consortium which includes the Global Health Academy of the University of Edinburgh, the Alan Turing Institute, and the Ada Lovelace Institute.

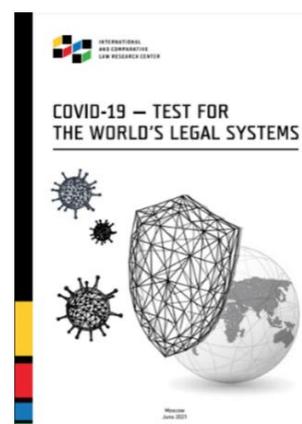


As part of this work, we have submitted written evidence to the Public Administration and Constitutional Affairs Committee (PAACC) on vaccine certification. We have also published commentary on the ethics of vaccination certification and digital health passports (see below).

Covid-19 Test For the World's Legal Systems

BIICL Senior Fellow, Professor Duncan Fairgrieve, and Bingham Centre Fellow, Ronan Cormacain, contributed to a new study by the International and Comparative Law Research Centre, [COVID-19 - Test For the World's legal Systems](#), published in June 2021.

The research examines the legal framework applicable to emergencies in general and the current pandemic at the international, regional and national levels. It considers the pre-existing regulation and its evolution caused by the Covid-19 pandemic. It outlines the tools to support organisations and individuals, as well as restrictive measures imposed to combat the spread of the virus and mitigate the consequences of the pandemic.



Effective Covid-19 control technologies

In September 2020, the Bingham Centre began a one-year project on the Rule of Law and effective Covid-19 control technologies, in collaboration with the Munich Center for Technology in Society and the Centre for Artificial Intelligence and Data Governance at the Singapore Management University. The project examines issues arising from the development and implementation of contact-tracing and other Covid-19 related mobile phone apps that are continuously accessible to state authorities. As part of this project, the Bingham Centre co-authored a working paper on [The Rule of Law and Covid-19 Related Technologies](#), which explains the advantages and challenges of using a Rule of Law lens when assessing the introduction of new technologies.

Commentary

- [Effective Pandemic Management Requires the Rule of Law and Good Governance](#), November 2020, Verfassungsblog.
- [Rule of Law as a Perimeter of Legitimacy for COVID-19 Responses](#), April 2021, Verfassungsblog.
- [Part 1: The Great Vaccination Passports Debate: "ID Cards on Steroids" or the Rational Way Forward?](#), April 2021, BIICL.
- [Part 2: Getting Digital Health Passports Right? Legal, Ethical and Equality Considerations](#), April 2021, BIICL.

Artificial Intelligence (AI)

Contesting AI explanations in the UK

Legal explanations of artificial intelligence (AI) are shaping its future. The General Data Protection Regulation includes a 'right to explanation' that secures a limited opening of the algorithmic 'black box', potentially enabling challenges to automated decisions by data subjects.



In February 2021, BIICL co-convened an event on Contesting AI explanations in the UK to consider whether the explanations currently being generated are sufficient to maintain justice and the Rule of Law in the context of rapid social and economic transformation. The event brought together figures leading contestation actions across key sectors (criminal justice, health,

education, environmental regulation and constitutional affairs) to discuss with interested researchers and policymakers their experience of using the law to obtain explanations of data driven decision making, as well as to reflect on shared policy priorities and how best to pursue them.

Ongoing Bingham Centre projects

Credit Rating Agencies

The Bingham Centre is undertaking research on the relationship between Debt Instruments, Credit Rating Agencies and the Rule of Law, in collaboration with Linklaters LLP. Credit Rating Agencies play a fundamental role as information brokers, with ratings conveying an assessment of a sovereign's or a corporate's creditworthiness. The Rule of Law is an important factor determining likelihood that financial obligations will be upheld and as such, compliance with Rule of Law principles should flow through to the ratings process.

National monitoring, implementation and reporting on human rights

One of the central purposes of the Rule of Law is to ensure that governments are subject to the law, not above it. The Bingham Centre, in collaboration with the Universal Rights Group in Geneva and the Human Rights Implementation Centre at Bristol University and with the support of Freshfields Bruckhaus Deringer LLP, is conducting a global survey to understand the systems and processes that States have put in place to implement their international human rights commitments under UN treaties.



The survey includes interviews with diplomats from a geographically representative sample of approximately 60 states to examine how they deal, at national level, with country-specific recommendations made to them by UN bodies. The project aims to distil best practice on national mechanisms which will be central to efforts to "build back better" after the pandemic.

Rule of Law Monitoring of Legislation

This project provides MPs, peers and the public with timely analysis of proposed legislations from a Rule of Law perspective, including constructive recommendations of amendments to Bills. The project has had notable impact in empowering Parliamentarians to amend legislation to ensure respect for Rule of Law standards. Examples of this can be seen in the following cases:

- a. The Centre's detailed reports, blogs and engagement with Parliamentarians sought to highlight how the Overseas Operations Bill breached the Rule of Law principle of legality in creating obstacles to the prosecution of members of the armed forces for war crimes. These culminated in the Bingham Centre drafting amendments to the Bill which were agreed to by the House of Lords, resulting in a policy change by the Government.
- b. Our Rule of Law analysis of the UK Internal Market Bill was cited by nine different Lords in objecting to the notion that the UK could disregard domestic and international law through the Bill.
- c. We provided timely analysis on the Coronavirus Bill and Government regulations related to the pandemic to address the pragmatic shift towards increasing executive power. Our work has been extensive, including eight reports which were frequently cited in Parliamentary debates on issues such as the proportionality of lockdown measures.
- d. Our report identifying troubling aspects of the Environment Bill was quoted by nine peers and our proposed amendments were tabled for discussion in the House of Lords on a cross-party basis. This work was also cited in the Financial Times and The Independent highlighting how the new Office for Environmental Protection would be weaker than its EU predecessor.



Looking Ahead

Recruitment

The Bingham Centre is currently recruiting two significant new posts, a Director of Research and Research Fellow in Business and Modern Slavery/ESG.

The Director of Research will be responsible for setting a clear Rule of Law research agenda for the Centre, providing intellectual leadership and academic direction. The appointee will also develop a detailed five-year Research Strategy to deliver the research agenda, ensuring coherence across the Centre's various areas of focus.

The Research Fellow, at post-doctoral level or equivalent, will develop and deliver a programme of research of direct relevance and interest to business, capable of influencing both policy and business practice. The appointee will work closely with Business Network members to identify research priorities, ensure relevant consultation and involvement in research and inform members of key findings through accessible reports and briefings.

Future research themes

Looking ahead to the remainder of this year and 2022, the following areas of research are being developed:

- i. The Centre is developing a programme of work on the **Rule of Law as an essential foundation for Environmental, Social, and Governance considerations (ESG)**. This will aim to increase understanding of the interdependence between ESG, the Rule of Law, corporate behaviour and sustainable economic growth. It will promote greater strategic and practical focus on developing and embedding the Rule of Law in business and investment, which will in turn support a fairer and more sustainable economic system.
- ii. Both the Centre and the Modern Slavery PEC are developing work on the **metrics** businesses and investors require to evaluate business behaviour in relation to both modern slavery and the Rule of Law.
- iii. We plan to examine the **Rule of Law issues arising from Covid-19 economic mitigation and recovery measures**, in particular whether it is possible to identify best practice with regards to balancing the rights of citizens against protecting the economy. We envisage this work including comparative analysis of different employment support schemes, such as the UK furlough scheme and the German Kurzeit, as well as direct support to businesses in different jurisdictions.
- iv. We will be developing our research and training in the area of **Artificial Intelligence (AI)**. AI and technology more broadly add an additional dimension to international law. Our aim is to partner with technology hubs in the UK and across the globe, looking at innovation models, exploring the policy issues and setting the parameters of the international and national regulatory contexts against which technologies are embedded. We are also developing a training programme on AI regulation to run in 2022 together with Singapore Management University.

Conclusion

The Business Network is building understanding around the concrete Rule of Law challenges that confront business by providing a forum for members to identify and exchange learning on real issues facing them in their jurisdictions of operation, and an opportunity to help shape a long term programme of business-relevant research.

If you would like to discuss opportunities for your company to become more involved in the work of the Bingham Centre, the Modern Slavery PEC and BIICL, please contact Florence Skinner, Deputy Development Director, on f.skinner@biicl.org.

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