

Natural Resources, Human Rights and Inequality

The University of Texas School of Law

Fall 2016

Unique 29537 LAW 397S

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Mondays, 3:45-5:45 pm

Meetings will be held in JON 5.206 on days with no speakers.
Outside speakers will present in the Sheffield-Massey Room (TNH 2.111).

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Course Description

This seminar will address the human rights issues that arise in the context of natural resource extraction and governance, especially in relation to resources such as fossil fuels, minerals and timbers. It will examine how persistent inequalities between and within countries pose additional challenges for the realization of human rights in relation to natural resource extraction. Natural resource extraction is often seen as a means to raise needed revenue for development and realization of social and economic rights within countries, but it is also often located on the land of indigenous or otherwise socially marginalized groups, who may oppose it. Moreover, extractive projects often seem to benefit the corporations or governments that control them more than the local population that bear their costs. Does a human rights perspective help us adjudicate these tensions? How do existing inequalities influence how the benefits, risks and decision-making authority in relation to natural resource governance are distributed? Would a human rights lens help redress some of these inequalities? What alternative governance regimes can we envision that might most effectively address the inequalities that arise in the context of natural resource extraction? What should we do about the downstream effects of fossil fuel extraction, such as the carbon it releases into the atmosphere?

The seminar will be organized around the visits of leading scholars and practitioners in the fields of natural resources and human rights who will come to the Law School to present their research.

Students will spend two weeks considering work by each speaker. In the first week, we will meet in a traditional seminar format to discuss the speaker's work and related readings. In the second week, the speakers will present their work in a public forum, and will engage in dialogue with seminar students, as well as with others in the University community who choose to attend the talk. Students will thus have the opportunity both to participate in critical discussion of the work in a small setting and to observe and contribute to a conversation with the authors in a broader audience.

Where permission has been given by the guest speakers, recordings of the lectures are available on the Rapoport Center for Human Rights and Justice's website at:
<https://law.utexas.edu/humanrights/event-type/colloquia/>

Schedule

August 29 (in class discussion): *Natural Resource Governance, Human Rights and Sites of Governance*

In the first class of this seminar we will explore the various harms arising from mining and resource extraction, especially to local communities and indigenous peoples, and the various ways in which human rights claims and discourses are used to contest such harms and hold various perpetrators, including companies and governments, accountable. We will also begin to explore the many different international and domestic legal regimes which regulate extractive activities and their impacts.

- Please watch the 30-minute video from “Yes to Life, No to Mining”, available at <http://www.yestolifenotomining.org/in-defence-of-life/>, keeping in mind the questions below
- Please bring to class a recent newspaper article discussing issues of human rights harms or benefits related to natural resource extraction (please post your article to Canvas before class)

Questions:

- What harms do the videos and the articles show that can arise from mining practices or “bad” resource governance?
- Can you identify (or imagine) the various spaces where decisions about resource extraction are being made?
- Where does law appear in these stories? How is law implicated in the production of the various harms but also in the response to them?
- Where and to whom do we see human rights claims being made in the context of mining and resource governance? What other normative language is being used to make claims?
- Do you see economic inequality as an important part of the story – whether because it is implicated in producing the harms, or is a result of the way in which extraction takes place?

September 5: No Class (Labor Day Holiday)

September 12 (in class discussion): *The Political Economy of Natural Resource Governance*

In this class we examine the broader political economy of natural resource governance, paying attention to how the benefits, harms and risks from resource extraction are distributed and the legal arrangements that create such unequal results. We will also introduce debates around the so-called “resource curse” as well as contemporary efforts to promote better natural resource governance for equitable, sustainable development.

Reading:

- Macartan Humphreys, Jeffrey D Sachs, Joseph E Stiglitz “Introduction: What is the Problem with Natural Resource Wealth” in Macartan Humphreys, Jeffrey D Sachs, Joseph E Stiglitz (eds) *Escaping the Resource Curse* (Columbia University Press, 2007).
- “The Natural Resource Paradox: Resource Wealth Amid Human Poverty” in *Africa Progress Report 2013 - Equity in Extractives: Stewarding Africa’s Natural Resources for All* (2013) pp. 14-31, DRC case study pp. 55-58; Recommendations for direct action pp.92-98.
- “Chapter 1: Globalization and natural resources: themes, challenges and dilemmas” in Elena Blanco and Jona Razzaque, *Globalization and Natural Resources Law: Challenges, Key Issues and Perspectives* (Edward Elgar: 2011).

Additional reading:

- Natural Resource Governance Initiative, *Natural Resource Charter* (2nd edition), available at <http://resourcegovernance.org/approach/natural-resource-charter>.
- “Introduction: Concepts and Principles” in Nico Schrijver, *Development without Destruction: The UN and Global Resource Management* (Indiana University Press, 2010) pp. 1-13.

Background reading on human rights (these are optional for students who have not studied human rights previously):

- Nigel Rodney, “International Human Rights Law” in Malcolm D Evans (ed) *International Law*, 4th edition (Oxford University Press, 2014).
- Kassi Tallent & Karen Engle, *A Brief History of International Human Rights Law and Practice* (2006) (revised Dec. 2013).

September 19 (in class discussion): “*Extractive Industries and Inequality: Intersections of Environmental Law, Human Rights and Environmental Justice*”

In preparation for the guest lecture by Sumudu Atapattu, this class we will examine what a human rights lens brings to discussions of extractive industries and how the rights paradigm

compares to frameworks for North-South equity in international environmental law or vocabularies of environmental justice. We will also discuss how climate change considerations might affect how we think about human rights in relation to mining, especially in the context of coal, gas and oil extraction.

Reading:

- Sumudu Atapattu, “The Right to a Healthy Environment and Climate Change: Mismatch or Harmony?” in John Knox (ed) forthcoming
- Sumudu Atapattu, “Justice for Small Island Nations: Intersections of Equity, Human Rights and Environmental Justice” in Randell S. Abate (ed) *Climate Justice Case Studies in Global and Regional Governance Challenges* (ELI Press, forthcoming).
- “Petition to the Commission on Human Rights in the Philippines Requesting for Investigation of the Responsibility of the Carbon Majors for Human Rights Violations or Threats of Violations Resulting from the Impacts of Climate Change” submitted by Greenpeace Southeast Asia and Philippines Rural reconstruction Movement, September 22, 2015, available at <http://www.greenpeace.org/seasia/ph/PageFiles/105904/Climate-Change-and-Human-Rights-Complaint.pdf>

Additional reading:

- Maximilian Spohr, “Human Rights Risks in Mining: A Baseline Study” (prepared by Max Planck Foundation) available at https://www.bmz.de/rue/includes/downloads/BGR_MPFPR_2016_Human_Rights_Risks_in_Mining.pdf
- Sara L. Seck, “Transnational Corporations and Extractive Industries” in Shawkat Alam, Sumudu Atapattu et al, *International Environmental Law and the Global South* (Cambridge University Press, 2015).
- Keith Schneider, “Big Banks Finance Water-Damaging, Climate Warming Energy Projects” *Circle of Blue*, 8 August 2016, available at <http://www.circleofblue.org/2016/asia/big-banks-finance-water-damaging-climate-warming-energy-projects/>.

September 26 (public lecture): “Extractive Industries and Inequality: Intersections of Environmental Law, Human Rights and Environmental Justice”

Sumudu Atapattu, Director of Research Centers and Senior Lecturer, University of Wisconsin Law School

October 3 (in class discussion): *The Exploitation Bias in the Transnational Law of Natural Resource Extraction*

In preparation for the guest lecture by Isabel Feichtner, this class will examine how international legal regimes – especially those pertaining to trade and foreign investment – impact upon the governance of natural resources domestically, particularly in Third World contexts. We will also

explore some emerging transnational private governance initiatives aimed making private actors comply with human rights obligations.

Reading:

- Isabel Feichtner, “[International \(Investment\) Law and Distribution Conflicts over Natural Resources](#)” in Stephan W. Schill, Christian J. Tams and Rainer Hofmann (eds) *International Investment Law and Development: Bridging the Gap* (Edward Elgar: 2016) 256 – 284.
- Isabel Feichtner, “The Exploitation Bias in the Transnational Law of Natural Resource Exploitation” (work in progress).

Additional reading:

- General Assembly Resolution 1803 (XVII) “Permanent sovereignty over natural resources” 1194th plenary meeting, (14 December 1962), available at http://www.un.org/ga/search/view_doc.asp?symbol=A/RES/1803%28XVII%29
- Isabel Feichtner and Manuel Wörsdörfer, “10 Year Equator Principles: A Transdisciplinary Inquiry” (2014) 5(3) *Transnational Legal Theory* 409-416.

October 10 (public lecture): *The Exploitation Bias in the Transnational Law of Natural Resource Extraction*

Isabel Feichtner, Assistant Professor for Law and Economics, Goethe University, Frankfurt

October 17 (public lecture): *Extraction, Indigenous Rights and Prior Consent*

Patricia Tobón Yagarí, Emberá indigenous activist and lawyer, National Indigenous Organization of Colombia

Unfortunately, the public lecture on this topic has had to be scheduled prior to our class discussion. We therefore STRONGLY SUGGEST that you do next week’s reading prior to the guest lecture in order to be able to properly engage with the material.

October 24 (in class discussion):

Following up from the guest lecture by Patricia Tobón Yagarí, this class will focus on indigenous rights in the context of mining, especially the “right” to free, prior and informed consent. The discussions will explore the tensions and challenges for indigenous rights realization through an examination of the contemporary situation in Colombia, including recent court decisions and development in the transnational justice process.

Reading:

- Kelsey Jost-Creegan, “Colombian Constitutional Court Calls for Better Protection of Human Rights and Prior Consultation in National Mining Policy” (forthcoming, 2016)
- James Anaya, *Report of the Special Rapporteur on the rights of indigenous peoples, James Anaya: Extractive industries and indigenous peoples* Human Rights Council, 24th session, A/HRC/24/41 (1 July 2013).
- César Rodríguez-Garavito, “Ethnicity.gov: Global governance, Indigenous Peoples, and the Right to Prior Consultation in Social Minefields” (2011) 18(1) *Indiana Journal of Global Legal Studies* 263.

Additional reading:

- Richard Doughman “Might the Keys to Peace Open the Doors to Extractivism?: Reflections on Colombia’s Post-Conflict Extractive Economy” in Fredy Cante and Hartmut Quehl (eds) *Handbook of Research on Transitional Justice and Peace Building in Turbulent Regions* (IGI Global, 2016).

October 31 (in class discussion): *Using Ghana’s Oil Wealth to Promote Social Rights: a Vanishing Dream?*

In preparation for the guest lecture from Lucie White and William Forbath, this class will examine whether and how extractive industries can contribute to development and the realization of social and economic rights. We will explore the tensions and contradictions that emerge between different rights claimants with different agendas within the nation through a discussion of recent debates over oil extraction in Ghana.

Reading:

- Lucie White, “Collaborative Lawyering in the Field? On Mapping the Paths from Rhetoric to Practice” (1994) 1 *Clinical Law Review* 157 – 171.
- Emmanuel Debrah and Emmanuel Graham, “Preventing the Oil Curse Situation in Ghana: The Role of Civil Society Organizations” (2015) 7(1) *Insight on Africa* 21 – 41.
- Giles Mohan and Kojo Pumpani Asante, “Transnational capital and the political settlement of Ghana’s oil economy” (2105) *ESID Working Paper No. 49*, Manchester, UK.
- Abigail Ackah-Baidoo, “Fishing in troubled waters: oil production, seaweed and community-level grievances in the Western Region of Ghana” (2013) 48(3) *Community Development Journal* 406 – 420.

Additional Reading:

- Jasper Ayelazuno, “Oil wealth and the well-being of subaltern classes in Sub-Saharan Africa: A critical analysis of the resource curse in Ghana” (2014) 40 *Resources Policy* 66 – 73.

November 7 (public lecture): *Using Ghana's Oil Wealth to Promote Social Rights: a Vanishing Dream?*

Lucie E. White, Louis A. Horvitz Professor of Law, Harvard Law School
William E. Forbath, Lloyd M. Bentsen Chair in Law, Texas Law

November 14 (in class discussion): *Violence against Women and Resource Extraction*

In preparation for the guest lecture by Penelope Simons, this class will examine various initiatives to impose human rights obligations on transnational corporations and hold them accountable for the impacts, including the gendered impacts, of their operations. These include various forms of self-governance and “corporate social responsibility”, the UN *Guiding Principles on Business and Human Rights* and as well as initiatives to try and hold transnational corporations accountable in the countries where they are registered.

Reading:

- Penelope Simons, “International Law’s Invisible Hand and the Future of Corporate Accountability for Violations of Human Rights” (2012) 3(1) *Journal of Human Rights and the Environment* 5-43.
- Columbia Law School Human Rights Clinic & Harvard Law School International Human Rights Clinic, “Barrick Gold's Remedy Mechanism for Sexual Violence in Papua New Guinea: Key Concerns and Lessons Learned” (November 2015): <http://www.rightingwrongspergera.com>, pp: 1-12, 23-29, 33-37, 109-116
- *Choc v. Hudbay Minerals Inc.*, 2013 ONSC 1414

Additional reading:

- *Guiding Principles for Business and Human Rights*, available at http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf.
- *Voluntary Principles on Security and Human Rights*, available at http://voluntaryprinciples.org/files/voluntary_principles_english.pdf.

November 21 (public lecture): *Unsustainable International Law: Transnational Resource Extraction and Violence against Women*

Penelope Simons, Professor of Law, University of Ottawa

November 28: Mini-conference: student paper presentations

Program available here: <https://law.utexas.edu/wp-content/uploads/sites/31/2016/02/NGR-HR-and-Inequality-Mini-Conference-Program-rev.pdf>

December 5: Mini-conference: student paper presentations

Program available here: <https://law.utexas.edu/wp-content/uploads/sites/31/2016/02/NGR-HR-and-Inequality-Mini-Conference-Program-rev.pdf>

Speaker Biographies

Sumudu Atapattu

Sumudu Anopama Atapattu is the Director of Research Centers and Senior Lecturer at University of Wisconsin Law School. She teaches in the area of International Environmental law and her book titled "Emerging Principles of International Environmental Law" was published by Transnational Publishers, New York in 2006. She holds an LL.M. (Public International Law) and a Ph.D. (International Environmental Law) from the University of Cambridge, U.K., and is an Attorney-at-Law of the Supreme Court of Sri Lanka. She is affiliated with UW-Madison's Nelson Institute for Environmental Studies and the Center for South Asia and was a visiting professor at Doshisha University Law School, Japan, in summer 2014. Her publications include *Human Rights Approaches to Climate Change: Challenges and Opportunities* (Routledge: 2016) and she is co-editor of *International Environmental Law and the Global South* (CUP: 2015).

Isabel Feichtner

Isabel Feichtner is an Assistant Professor (Juniorprofessur) of Law and Economics at Goethe Universität in Frankfurt. She studied law in Freiburg i. Br., at the Universiteit van Amsterdam and Humboldt University Berlin. She holds an LL.M. from Cardozo Law School, New York and was admitted to the New York Bar in 2001. After her LL.M. studies she worked for one year as an associate in the securitization department of Cravath, Swaine and Moore in New York. From 8/2006 until 12/2007 she was Visiting Doctoral Researcher and Teaching Assistant to Joseph Weiler at NYU Law School. From 2004 to 2006 and 2008 to 2010 Isabel Feichtner was Senior Research Fellow at the Max Planck Institute for Comparative Public Law and International Law in Heidelberg. Her doctoral dissertation "The Law and Politics of WTO Waivers. Stability and Flexibility in Public International Law" was published in 2011 by Cambridge University Press and was awarded the Baker&McKenzie Prize 2010 for best doctoral dissertation in economic law at Goethe University Frankfurt am Main. Her current research focuses on transnational law of natural resources. Her recent publications include "10 Years Equator Principles: A Transdisciplinary Inquiry" (with Manuel Wörsdörfer) in *Transnational Legal Theory*, 2014.

Patricia Tobón Yagarí

Patricia Tobón Yagarí, an Emberá indigenous attorney in Columbia, currently works with the National Indigenous Organization of Columbia. Her expertise is in constitutional rights. She focuses on educating Emberá communities about the dangers of female genital mutilation, and is dedicated to ending the practice amongst her people through education and advocacy. She has also worked significantly to analyze the impact of the extraction of natural resources on indigenous communities in Columbia. Among other efforts, she has testified before the National Indigenous Organization of Colombia about the ongoing human rights abuses occurring in Columbia's indigenous communities. She also presented before the Inter-American Commission on Human Rights in 2013 about how natural resource extraction and violence have threatened the annihilation of indigenous communities and led to a sharp increase in suicides amongst indigenous women. Tobón Yagarí co-authored the UNICEF report "Suicidio adolescente in pueblos indígenas: Tres estudios de caso."

Lucie E. White

Lucie White is the Louis A. Horvitz Professor of Law at Harvard Law School and Interim Faculty Chair of the Harvard Committee on African Studies. After working for two decades on critical lawyering and client voice in the context of US poverty, she turned to the issue of extreme poverty in sub-Saharan Africa. Thus, for a decade she has worked with Ghanaian partners on an interdisciplinary Right to Health project that challenges the ways that Ghana's health finance system contributes to economic and social inequality. She has been a Fulbright Senior Africa Scholar, a Carnegie Scholar on Teaching and Learning, a scholar in residence at the Harvard Divinity School, and a Bunting Scholar at Radcliffe College. In 2006, with support from the Rockefeller Foundation's Bellagio Center, she initiated "Stones of Hope," a collaboration among African human rights activists and distinguished human rights scholars to examine African innovations in Economic and Social Rights advocacy. This project culminated in a recent book, L. White and J. Perelman eds., *Stones of Hope: African Lawyers Use Human Rights to Challenge Global Poverty* (Stanford University Press, 2010).

Penelope Simons

Penelope Simons is a Professor, Faculty of Law, Common Law Section at the University of Ottawa. Prior to taking up her position at the Faculty of Law, Penelope was a Senior Lecturer in Law at Oxford Brookes University, Oxford, UK. She was called to the British Columbia Bar in 1996 and practiced corporate/commercial law with McCarthy Tétrault LLP. She has also worked in the nongovernmental sector on peace and disarmament issues. Penelope has been engaged in research on corporate human rights accountability for over a decade. In December 1999 she participated in the Canadian Assessment Mission to Sudan (the Harker Mission), appointed by Canada's Minister of Foreign Affairs and International Trade, to investigate allegations of slavery as well as links between oil development in Sudan and violations of human rights. Her current research is focused on the human rights implications of domestic and extraterritorial corporate activity, state responsibility for corporate complicity in human rights violations, as well as the intersections between transnational corporate activity, human rights and international economic law. Her publications include (with Audrey Macklin) *The Governance Gap: Extractive Industries, Human Rights, and the Home State Advantage* (Routledge, 2014) and (with J. Anthony VanDuzer and Graham Mayada) *Integrating Sustainable Development into International Investment Agreements: A Guide for Developing Country Negotiators* (Commonwealth Secretariat, 2013). She holds a B.A. from the University of British Columbia, an LL.M. from Cantab., LL.B. (Dalhousie), of the Bar of British Columbia.