



# *Transnational Corporations and Extractive Industries*

*Sara L Seck, PhD, Associate Professor, Western Law, Ontario,  
Canada*

# Two Stories...

## *International Sustainable Mineral Development Law*

- Johannesburg PI: “mining, minerals and metals” are “important to the economic and social development of many countries” and “minerals are essential for modern living”
- P2 (sovereignty over natural resources, do no harm)
- P11 (environmental laws?)

## *Global Environmental Justice and Mining-Affected Communities*

- JPI: satisfying consumption patterns of the “north” or sustainable livelihoods of the “south”?
- Indigenous Rights; Environmental Rights
- Resistance: “environmental human rights defenders”

# Two Responses...

## *States*

- Good governance: capacity/will
- Participation of stakeholders
  - local and indigenous communities, and women, to play an active role ...
- Mining Policy Framework

## *Extractive companies*

- Business responsibilities for human rights
    - Indigenous and environmental rightsholders?
- OR
- Stakeholders?



# Indigenous Rights

- UN Declaration on Rights of Indigenous Peoples
  - (Canadian law: s.35 constitutional protections?)
- James Anaya, Special Rapporteur, HRC (2013)
  - Free prior and informed consent (FPIC)
    - Substantive rights? Property, culture, religion including sacred places, health, clean and healthy environment, priorities in development as part of self-determination...
  - Consultation and consent, prior impact assessment, mitigation, benefit-sharing
  - Independent responsibility of extractive companies
  - Indigenous companies?

# Environmental Rights

- John Knox, Independent Expert on Human Rights and the Environment (2014 Mapping)
  - Procedural environmental rights:
    - Access to information (assess impacts, make public)
    - Public participation in decision-making (expression, association, life, liberty, security...)
      - [environmental human rights defenders]
    - Access to justice
  - Substantive environmental rights:
    - Legal framework (constitutional rights?)
    - Water, health, healthy environment
    - State obligations to regulate private actors



# *Business and Human Rights*

- 2011 United Nations Guiding Principles for Business and Human Rights: *polycentric governance*
  - State duty to protect (IHRL)
  - Business responsibility to respect (society?)
    - All rights: Indigenous Rights; Environmental Rights?
    - All businesses
    - Policy, HR due diligence, remedy
- Access to Remedy
  - Judicial and Non-Judicial (NJGMs)
  - State-based and Non-state-based including company level

# *Canadian Mining Internationally*

- 2005 – 2009
  - SCFAIT Report, Gov't Response; Roundtables
  - Advisory Group Report
  - Bill C-300 ...etc
- 2009 CSR Strategy
  - International Standards: IFC; GRI; VPs; OECD MNE
  - CSR Counsellor
  - OECD National Contact Point
- 2014 Revised CSR Strategy (enhanced)
  - 2011 UN GPs for Business and Human Rights
  - OECD Supply Chain Due Diligence Guidance
  - Conditionality (economic diplomacy support)



# *IFC Performance Standards*

- PS1: Assessment and Management of Environmental and Social Risks and Impacts
  - BHR; “Affected Communities”
- PS3: Resource Efficiency and Pollution Prevention
- PS4: Community Health, Safety and Security
- PS5: Land Acquisition and Involuntary Resettlement
- PS6: Biodiversity Conservation and Sustainable Management of Living Resources
- PS7: Indigenous Peoples (FPIC)

*Scope of application? Developing countries, Equator Principles*



# OECD MNE Guidelines

- General Policies
  - Sustainable development; respect IHRL
  - Meaningfully engage relevant stakeholders including local communities
- Environment Chapter
  - Management systems, etc
  - Information, consultation (qualified) (assessment)
  - *(No reference to remedy)*
- Human Rights Chapter:
  - mirrors UNGPs
- *(No) reference to indigenous peoples; Adhering states?*

# *Recent Developments: Complexity & Conclusions*

- DRAFT OECD Due Diligence Guidance for Meaningful Stakeholder Engagement in the Extractives Sector! (April 2015)
- Canada's Enhanced CSR Strategy: "Doing Business the Canadian Way: A Strategy to Advance Corporate Social Responsibility in Canada's Extractive Sector Abroad" (November 2014)
- China Chamber of Commerce of Metals, Minerals & Chemicals Importers & Exporters, "Guidelines for Social Responsibility in Outbound Mining Investments" (October 2014)
- EM MNEs in the "north"? EM MNEs & OECD?



# Related Publications

## by Sara L Seck

- “Transnational Corporations and Extractive Industries” in *International Environmental Law: Perspectives from the Global South* edited by Shawkat Alam, Sumudu Atapattu, Carmen G. Gonzalez and Jona Razzaque, (Cambridge University Press, 2015).
- “Canadian Mining Internationally and the UN Guiding Principles for Business and Human Rights” (2011) 49 *Canadian Yearbook of International Law* 51-116.
- “Emerging-Market Multinational Enterprises, Human Rights, and Sustainable Development: Lessons from the Canadian Experience”, (2013) 22 *Transnational Corporations* 73-100.