

Course Outline

COURSE: LAWS 4601 A (Fall) (Transnational Law and Human Rights)

TERM: Fall 2022-2023

PREREQUISITES: Prerequisite(s): one of [LAWS 3503](#), [LAWS 3602](#), and LAWS

CLASS: **Day & Time:** **Wednesdays 2:30 – 5:30** (*Please refer to the public schedule on Carleton Central*)
Room:

INSTRUCTOR: Doris Buss

CONTACT: **Office:** Loeb D486
Online: Tuesday 3:00-4:00 pm via zoom
Office Hrs: Students can also make an
Telephone: appointment to see me if my office hours are not convenient.
613-520-2600 x. 8011
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CALENDAR COURSE DESCRIPTION

Examination of the role of law in addressing human rights issues that transcend traditional categories of domestic and international law; the potential and limits of law in addressing human rights issues; the growth of transnational approaches to law and human rights. (From the Undergraduate Calendar)

COURSE DESCRIPTION

This course is about transnational mining activities and human rights. Mining companies, many of which are registered as Canadian corporations, are the focus of growing advocacy concerns, and multi-scalar law and policy interventions to address the human rights abuses, and development limitations linked to resource extraction, such as land displacement, killings or human rights abuses against those protesting mining, sexual and gender-based violence, armed conflict, lack of community consultation, environmental degradation, and the list goes on. The various initiatives to address the mining-human rights nexus span multiple scales - transnational, global, international, and local - and regulatory types – state laws, international law, norms, rules, best practices, guiding principles, frameworks – providing a dynamic context in which ‘law’ and ‘human rights’ take on different meanings. This course will explore mining-related human rights abuses and related challenges arising when mining companies registered in the global North, operate in the global South. The readings and the assignments invite a closer, explicitly interdisciplinary look at the complex contexts of mining, human rights, and law, and they demonstrate different approaches to studying law and human rights. The course materials combine scholarly study of mining and transnational contexts, with NGO reports, media reports, to invite closer, indepth consideration of the politics of global justice and the political economies of human rights.

Objectives: By the end of the course, students will be better able to:

- a. Identify and critically analyze the human rights dimensions of resource extraction, and the kinds of legal, political and analytical challenges posed by transnational mining companies (demonstrated in short review essays, the group presentation, and final essay).
- b. Analyze academic argument, from different disciplinary locations, on human rights and resource governance, demonstrating an ability to identify key analytical arguments, evaluate and relate those arguments to others discussed in class/readings. (demonstrated in short review essays, partly in the group presentation, and in the final essay).
- c. Investigate, synthesize and present on different transnational legal mechanisms to address human rights contexts of resource extraction (group presentations).
- d. Marshall academic scholarship from the course syllabus, together with other materials discussed in class and/or in the presentations, to a critical consideration of the challenges in addressing transnational human rights implications of resource extraction (final essay and partly in group presentations);
- e. Engage in peer assessment of fellow-student presentations, providing reflective and supportive feedback (group presentation reviews); and
- f. Demonstrate engaged participation in an academic course by staying up to date on readings, attending class regulatory, following class discussion (which might include participation, but could also be demonstrated though other means such as

incorporating class discussion into written assignments), active participation in all group activities (including classroom small-group work).

Required Text: Course materials are available on ARES and on web addresses provided (but the readings are also easily found through Carleton Library's online catalogue).

Evaluation: Standing in a course is determined by the course instructor subject to the approval of the Faculty Dean. This means that grades submitted by the instructor may be subject to revision. No grades are final until they have been approved by the Department and the Dean.

ASSESSMENTS (further information is provided in a separate assignment instruction document, uploaded to Brightspace).

Biography of yourself:	3%	
Reading Commentaries:	30%	(3 assignments x 10% each) **Must be uploaded on Brightspace before class on the week they are due (see Assignment Instructions for more information)
Group presentation:	21%	
Reviews of (other) Group presentations	6 %	(2 reviews x 3% each)
Final Essay:	30%	
Participation:	10%	
TOTAL:	100	

Global ASSESSMENT INSTRUCTIONS (in addition to those found on Brightspace):

**Assignments handed in more than 15 minutes past the due date and time will be marked late. Late assignments will be deducted 2 grades/day. Assignments more than three days late will be graded "0". Extensions will only be granted in extreme cases and with appropriate documentation. I cannot guarantee that late assignments will be marked prior to the end of term.

Extensions for longer than 7 days will normally not be granted.

F. COMMUNICATING

I have regular office hours and am happy to chat with you during breaks/after class OR you can also make an appointment to see me (via Zoom) outside of class and office hours. I also respond to emails within a few days. BUT PLEASE NOTE: I do not look at email on the weekends or in the evenings.

G. PLAGIARISM

Plagiarism is presenting, whether intentional or not, the ideas, expression of ideas or work of others as one's own. Plagiarism includes reproducing or paraphrasing portions of someone else's published or unpublished material, regardless of the source, and presenting these as one's own without proper citation or reference to the original source. Examples of sources from which the ideas, expressions of ideas or works of others may be drawn from include but are not limited to: books, articles, papers, literary compositions and phrases, performance compositions, chemical compounds, art works, laboratory reports, research results, calculations and the results of calculations, diagrams, constructions, computer reports, computer code/software, and material on the Internet. Plagiarism is a serious offence. More information on the University's Academic Integrity Policy can be found at: <https://carleton.ca/registrar/academic-integrity/>.

Examples of plagiarism include, but are not limited to:

- any submission prepared in whole or in part, by someone else;
- using ideas or direct, verbatim quotations, paraphrased material, algorithms, formulae, scientific or mathematical concepts, or ideas without appropriate acknowledgment in any academic assignment;
- using another's data or research findings without appropriate acknowledgement;
- submitting a computer program developed in whole or in part by someone else, with or without modifications, as one's own; and
- failing to acknowledge sources through the use of proper citations when using another's work and/or failing to use quotations marks.

Plagiarism is a serious offence. More information on the University's Academic Integrity Policy can be found at: <https://carleton.ca/registrar/academic-integrity/>.

PLEASE SEE end of course schedule for more information on: University and Departmental Policies on academic accommodations.

SCHEDULE AND READINGS:

Please note the following dates:

September 7	Fall term begins
September 14	FIRST class, LAWS 4601
October 10	Statutory holiday
October 24 – 27	Reading week
Dec 9	End of Fall term

WEEK	TOPIC	Assignments
WK 1. Sept. 14	<p>Introduction to Course; Introduction to transnational dimensions of human rights.</p> <p>The readings for this week are 'light': mostly composed of journalism and one human rights report. We will be discussing these readings and the themes of the course in the first class which will run for the full time.</p> <p>a. "Australian mining company in prosecution spotlight for role in Congo massacre", Human rights Law Centre, 4 August 2017; https://www.hrlc.org.au/news/2017/8/4/australian-mining-company-in-prosecution-spotlight-for-role-in-congo-massacre</p> <p>b. <i>Canadian Association against Impunity (CAAI) v. Anvil Mining Ltd.</i> Québec Court of Appeal, Case summary: https://www.internationalcrimesdatabase.org/Case/207/CAAI-v-Anvil-Mining/</p> <p>c. https://www.theguardian.com/cities/2017/mar/03/toronto-hidden-history-how-city-built-mining</p>	<p>Write a short biography of yourself, (area of study, where you live/come from; your plans for next year; hobbies, pets). Next write a separate paragraph: what relationship do you have with mining? Do you live near a mine? Do your family members work for a miner? Are they miners? What life experiences do you think you will draw upon in this course?</p>

		<p>What do you think of when you hear human rights and mining? What do you think is the relationship between mining and human rights?</p>
<p>WK 2. Sept 21</p>	<p>Resources Extraction and Colonialism</p> <ul style="list-style-type: none"> a. Bonny Ibhawoh. 2017. <i>Human rights in Africa</i>, chapter 4 “Natives and Colonists”, pp. 90-112 (in an ideal world: read the whole chapter, but if you are running short of time, read just to p 112.) b. Jeffrey M. Bartos. 2018 “Mining for Empire: GOLD, AMERICAN ENGINEERS, AND TRANSNATIONAL EXTRACTIVE CAPITALISM, 1889-1914” PhD dissertation, History, University of Montana, 2018; pp. 1-51 (BUT if pressed for time, just read pp 37-51). c. https://www.theglobeandmail.com/canada/article-pope-visit-doctrine-of-discovery/ d. Victoria Schneider. 2020. “How the legacy of colonialism built a palm oil empire”, <i>Mongabay Series: Global Palm Oil</i>. https://news.mongabay.com/2020/06/how-the-legacy-of-colonialism-built-a-palm-oil-empire/ 	<p>If you haven’t already completed your biography on CU Portfolio/Bright space, it must be done by the start of class this week (Sept 21).</p>
<p>WK 3 Sept 28</p>	<p>Injustice and the Politics of Human Rights</p> <ul style="list-style-type: none"> a. Michael Goodhart. 2018 <i>Injustice: Political Theory for the Real World</i>. Oxford University Press - Read Chapter 6, “Political Theory and Politics of Injustice”, pp. 177 – 192 *see note below b. Susan Marks. 2011. “Human Rights and Root causes” <i>Modern Law Review</i> 74: 57-78 c. Amy Kapczynski. 2020. “What comes after not enough?” blog, LPE Project, https://lpeproject.org/blog/what-comes-after-not-enough/ 	<p>First reading commentary due this week (mandatory for all students). See Assignment Instructions</p>

	<p>*NB: The Goodhart reading is part of a chapter in a longer book in which the author is engaged in an academic conversation with other political theorists. Some of those comments are not relevant to our interest here. But most of the chapter, and the sections I have chosen, provide a useful introduction to key concepts (hegemony, ideology, articulation, transformation, injustice), and to the author’s arguments for an approach to the politics of human rights that will be useful to us in this course.</p>	
<p>WK 4 Oct 5</p>	<p>Resource Curses and Mining Enclaves: the complex political economies of resource extraction</p> <ul style="list-style-type: none"> a. Natural Resource Governance Institute. 2015. “The Resource Curse: The political and economic challenges of natural resource wealth”, <i>NRGI Reader</i>, March 2015 (https://resourcegovernance.org/sites/default/files/nrgi_Resource-Curse.pdf) b. *Ferguson, James. 2006. <i>Global Shadows: Africa in the Neoliberal World Order</i>. Chapter 8, « Governing Extraction : new spatializations of order and disorder in neoliberal Africa » pp. 194-210; c. *Michael Watts. 2016. “The Political Ecology of Oil and Gas in West Africa’s Gulf of Guinea: State, Petroleum, and Conflict in Nigeria”, in Thijs van de Graaf et al.. eds. <i>Palgrave Handbook of international political economy of energy</i>, pp. 559-576; d. https://www.africanexponent.com/post/18261-uk-court-exposes-corrupt-mining-giants-exploiting-african-nations e. https://www.theguardian.com/environment/2022/jul/21/revealed-oil-sectors-staggering-profits-last-50-years?utm_term=62d932df26449838b37a3e468d6a9cc5&utm_campaign=GreenLight&utm_source=esp&utm_medium=Email&CMP=greenlight_email f. https://www.reuters.com/world/africa/congo-auditor-says-400-million-went-missing-state-mining-company-2022-06-04/ g. For an overview of the multiple legal actions and advocacy against Shell and its conduct in Nigeria, this podcast is a good start: 	<p>Students may submit a second reading commentary this week (optional).</p>

	<p>https://www.theguardian.com/business/audio/2019/oct/09/shell-nigeria-and-a-24-year-fight-for-justice</p>	
Wk 5 – Oct 12	<p>Mining, conflict and ‘conflict mining’</p> <p>https://www.business-humanrights.org/en/latest-news/shell-lawsuit-re-oil-pollution-in-nigeria/</p> <p>a. *LeBillon, P. 2006. “Fatal transactions: Conflict Diamonds and the (Anti)Terrorist Consumer” <i>Antipode</i> 38(4): 778-801;</p> <p>b. *Séverine Autesserre. 2012. “Dangerous tales: dominant narratives on the Congo and their unintended consequences” <i>African Affairs</i> 111/443, 202-218;</p> <p>c. Global Witness. 2008 “<i>Faced with a gun, what can you do? War the the Militarisation of Mining in Easter Congo</i>. Pp. 5-21</p>	Reading commentary (optional) can be submitted this week.
Wk 6 Oct 19	<p>Mining and Dispossession</p> <p>a. *Emilinah Namaganda, K Otsuki, and G Steel. 2022. “Learning from Africana critical theory: A historicized contextualization of the impacts of Mozambique’s natural gas project”, <i>Extractive Industries and Society</i> 10: 101075: 1-8;</p> <p>b. *Daniel Braaten. 2022. “A triangle of vulnerability: Global demand for resources, political marginalization, and culture of impunity as causes of environmental defender killings”, <i>Human Rights Quarterly</i> 44: 537-563</p> <p>c. International Justice and Human Rights Clinic. 2018. “Breaking new ground: Investigating and Prosecuting Land Grabbing as an International Crime” https://allard.ubc.ca/sites/default/files/2020-06/breaking_new_ground_-_allard_ijhr_land_grabbing_manual_-_public_version.pdf</p> <p>d. https://www.ohchr.org/en/press-releases/2018/05/un-experts-condemn-deadly-police-response-protest-against-copper-smelting</p>	<p>Reading commentary (optional) can be submitted this week.</p> <p><i>Remember: you must submit two commentaries (one from week 2, and one other) before we break for reading week. This is your last chance for a second commentary.</i></p>

	e. https://www.globalwitness.org/en/campaigns/environmental-activists/numbers-lethal-attacks-against-defenders-2012/	
Wk 7 Oct 26	READING WEEK - ** NO CLASS ***	
WK 8 Nov 2	<p>Social License and Free Prior and Informed Consent</p> <p>a. *Juliette Syn. 2014. “The social license: Empowering communities and a better way forward” <i>Social Epistemology</i> 28 (30-4): 318-339</p> <p>b. *Cesar Rodriquez Garavito. 2011. “Ethnicity.gov: Global Governance, indigenous peoples, and the right to prior consultation in social minefields” <i>Indiana Journal of Global Legal Studies</i> 18(1): 263 – 305</p> <p>c. https://www.cbc.ca/news/canada/thunder-bay/neskantaga-legal-action-ring-of-fire-1.6266870</p>	.
<p>Redressing transnational dimensions of human rights in extractives contexts</p> <p>- Start of Group presentations</p>		
WK 9 Nov 9	Group presentation work time/meeting time: each group will arrange a time to meet with me via zoom and have time to meet and work as a group. There will be no in person class this week.	
WK 10 Nov 16	<p>United Nations – Guiding Principles on Business and Human Rights</p> <p>a. Rajiv Maher, D Monciardini, S Bohm. 2021. “ Torn between Legal claiming and Private Remedy: Rights mobilization against Gold Mining in Chile” <i>Business Ethics Quarterly</i> 13 (1): 37 - 74</p> <p>b. Ruggie, John G. 2014. “Global Governance and ‘New Governance Theory’: Lessons from Business and Human Rights’, <i>Global Governance</i> 20: 5-17;</p> <p>c. UN Guiding Principles on Business and Human Rights, https://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf</p> <p>d. UN Global Compact - https://www.unglobalcompact.org/what-is-gc/mission</p>	Group presentation 1

	<p>e. https://www.ohchr.org/sites/default/files/Documents/Publications/FAQ_PrinciplesBussinesHR.pdf</p>	
<p>WK 11 Nov 23</p>	<p>Its in the supply-chain: Corporate sourcing and conflict mineral regimes</p> <p>A. Supply chain due diligence and transnational regulation of responsible sourcing (Group 2):</p> <ol style="list-style-type: none"> a. Galit A. Sarfaty. 2015. "Shining Light on Global Supply Chains: <i>Harvard International Law Journal</i> 56: 419-441; b. Global Witness "What is supply chain due diligence" Issue brief: https://www.globalwitness.org/en-gb/campaigns/what-supply-chain-due-diligence/ c. https://www.oecd.org/corporate/mne/mining.htm d. Global Witness. "Can the EU hold companies to account?" https://www.globalwitness.org/en/campaigns/holding-corporates-account/can-eu-hold-companies-account/ e. Review: The EU Conflict Minerals Regulation Explained: https://ec.europa.eu/trade/policy/in-focus/conflict-minerals-regulation/regulation-explained/ f. https://www.business-humanrights.org/en/latest-news/france-la-cour-de-cassation-rejette-la-comp%C3%A9tence-des-tribunaux-de-commerce-dans-laffaire-total-ouganda/ <p>B. Conflict Minerals and Global Governance Regimes (Group 3)</p> <ol style="list-style-type: none"> a. Eliana Cusato (2021) Transnational law and the politics of conflict minerals regulation: construing the extractive industry as a 'partner' for peace, <i>Transnational Legal Theory</i>, 12:2, 269-293, DOI: 10.1080/20414005.2021.1967683 b. https://ipisresearch.be/publication/evaluating-due-diligence-programs-for-conflict-minerals/ 	<p>Group presentations 2</p> <p>Supply chain due diligence and s. 1502 Dodd Frank Act + EU Conflict Minerals regulation</p> <p>Group presentation 3: Conflict minerals and transnational governance:</p>

	<p>OECD Due Diligence Guide for Responsible Supply Chain of Minerals from Conflict-Affected and High Risk Areas, 3d ed. http://www.oecd.org/daf/inv/mne/OECD-Due-Diligence-Guidance-Minerals-Edition3.pdf</p> <p>g. https://www.globalwitness.org/en/campaigns/natural-resource-governance/conflict-rubies-how-luxury-jewellers-risk-funding-military-abuses-myanmar/</p> <p>h. https://www.gao.gov/products/gao-21-531 (this report by the US government agencies responsible for reviewing implementation of s. 1502 provides a good overview of how s. 1502 works)</p>	
<p>WK 12 Nov 30</p>	<p>Sustainable Development and Corporate Social Responsibility: The promises of mining</p> <p>Sustainable Development and CSR</p> <p>i. Emma Gilberthorpe and G Banks. 2012. “Development on whose terms?: CSR discourse and social realities in New Guinea’s extractive industries sector”, <i>Resources Policy</i> 37: 185-193;</p> <p>ii. A. Buxton. 2012. “MMSD+10: Reflecting on a decade of mining and sustainable development”, International Institute for Environment and Development, https://pubs.iied.org/16041iied</p> <p>iii. Barrick Gold – Sustainability policy https://www.barrick.com/English/sustainability/default.aspx</p> <p>iv. https://shiftproject.org/most-canadian-mining-companies-are-lagging-when-it-comes-to-human-rights-reporting-heres-why/</p> <p>CSR and OECD complaint process</p> <p>i. Marina Welker. 2016. “Notes on the Difficulty of Studying the Corporation”, <i>Seattle University Law Review</i> 39: 397-422;</p> <p>ii. Benjy Radcliffe. 2009. The corporation as a person: Legal fact or fiction?, <i>TheCourt.ca</i> blog (http://www.thecourt.ca/the-corporation-as-a-person-legal-fact-or-fiction/)</p> <p>iii. OECD Guidelines for Multinational Enterprises a. https://www.oecdwatch.org/</p>	<p>Group presentations 4 + 5</p> <p>Group 4. Mining and Sustainable Development: the role of extractive companies</p> <p>Group 5. Corporate Social Responsibility in resource contexts</p>

	<p>b. National Contact Points complaint process: https://www.oecdwatch.org/oecd-ncps/national-contact-points-ncps/</p> <p>c. Complaint by Mining Watch Canada, 2011 concerning Barrick Gold Corp at the Pogera Joint Venture Mine, PNG: https://www.oecdwatch.org/complaint/miningwatch-canada-et-al-vs-barrick-gold-corporation/</p> <p>https://theconversation.com/investors-are-increasingly-shunning-mining-companies-that-violate-human-rights-154702 (feb 2021)</p>	<p>OECD national contact points;</p>
<p>WK 13 Dec 7</p>	<p>Make- Up Class (if needed)</p>	