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Workshop Report: Sustainable Mining, International Law, and the Rights of Women and Girls

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INTRODUCTION

Canada is a leading player in mining exploration and development both domestically, in communities across Canada, and internationally, with mining operations around the world. The Canadian Government has expressed a commitment to corporate social responsibility and sustainable development in international extractive operations (see 2014 Enhanced Corporate Social Responsibility Strategy) as well as to the global protection of women's rights and gender equality (see DFATD 2014). The international community has equally championed sustainable development, inclusive of the promotion and protection of the rights of women and girls, most recently in the 2015 UN Sustainable Development Goals (SDG 2015). Yet, adverse impacts on human rights and the environment stemming from large-scale mining operations continue to plague some mining communities both in Canada and abroad (see MiningWatch Canada; Business & Human Rights - Canada). These negative experiences are not gender neutral, rather, there are many which are gender-specific, confronting women and girls differently. Yet these remain under-appreciated, under-examined, and their prevention and remedy under-addressed.

This Workshop aimed to begin a conversation between academics and civil society working on the rights of women and girls and the extractive sector. The objective was to build an enriched understanding amongst attendees and bridge gaps between the work of organizations interacting directly with affected women and communities and the work of academics who research international and national standards governing states and corporations in these contexts.

The workshop was organized and chaired by Professor Sara Seck with organizational assistance from PhD candidate Kirsten Stefanik. They would like to extend a big thank you to Western University and Western Law for providing funding support to host the workshop. Additionally, they would like to extend a thank you to all the workshop participants.1

1 A special thank you is extended to the student rapporteurs who attended and took notes during the workshop: James Goacher, Tammy Lambert, Sarah Nimigan, and Jessica Pandza. An additional thank you to Kirsten Stefanik who prepared this workshop report.
WORKSHOP AGENDA

11:00 Introductions and Welcome
   Sara Seck, Western Law

11:15-12:30 Women and Mining in Peacetime
   Catherine Coumans, MiningWatch (in-person)
   Rachel Warden, Kairos (In-person)
   - See Women of Courage Program
   Karen Drake, Lakehead U, Bora Laskin Faculty of Law (in-person)
   Mona Paré, Faculty of Law, Civil Law, U Ottawa, and Interdisciplinary Research Centre on the Rights of the Child (Skype)
   Areli Valencia, Pontificia Universidad Católica del Peru – PUCP, U Ottawa Human Rights Research Education Centre (Skype)
   Mona Paré, Faculty of Law, Civil Law, U Ottawa, and Interdisciplinary Research Centre on the Rights of the Child (Skype)
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WOMEN AND MINING IN PEACETIME

Dr. Catherine Coumans - Research Coordinator and Asia-Pacific Program Coordinator, MiningWatch Canada

MiningWatch Canada is an Ottawa-based, non-profit non-governmental organization established in 1999 to provide a coordinated public interest response to the threats to public health, water and air quality, fish and wildlife habitat and community interests posed by irresponsible mineral policies and practices in Canada and around the world. MiningWatch Canada aims to ensure mineral development occurs in a manner consistent with the promotion of sustainable communities and ecological health and works to reduce risks associated with mineral development in Canada and worldwide.

Dr. Coumans began by discussing the particular health impacts on women who work in mines (air & water quality, dust). Common metals differently affect women’s health from men’s health. She noted instances of mining dependent communities where many children were dying - a fact picked up upon by the women of the community, but less so the men. She discussed cases in Tanzania and Papua New Guinea where indigenous women in the mining communities were subjected physical and sexual violence. In some communities the cultural stigmatization of rape places a victim at risk of rejection by both her family and community. While a judicial remedy program was developed in Papua New Guinea, victims were excluded from the development of the program, while women from the capital were able to participate. Consequently, the program maintained a paternalistic view of the issue and potential solutions. Critically, Dr. Coumans noted that in mining contexts women may possess a variety of opinion, interests, concerns, and need. She referenced past instances where tensions have arisen between women mine workers and women in mining-affected communities who do not work in the mines.

Ms. Rachel Warden - Latin American Partnerships and Gender Justice Program Coordinator, KAIROS

KAIROS is a Canada-based ecumenical organization formed in 2001 by 10-inter church coalitions and based in Toronto and Ottawa. The non-governmental organization advocates for human rights and ecological justice across Canada, Africa, Latin-America, Asia-Pacific and the Middle East. In particular, KAIROS, along with its global partners, focuses on supporting efforts to hold extractive industries accountable for infringements of human rights, in particular indigenous rights, as well as ecological rights. KAIROS has an equally committed focus on gender justice founded in the understanding that “while women around the world face many injustices, women are also key catalysts and agents for change when given opportunities to exercise leadership in human rights and peacebuilding.”
Ms. Warden discussed KAIROS’ work on issues of indigenous rights and gender justice. Women are disproportionately and differently affected by resource extraction and have an important leadership role in defending impacts in environment. These gendered impacts and the role of women is not very visible, therefore, KAIROS focuses on making these issues visible. In May 2014, KAIROS organized a delegation of indigenous women who travelled to the UN Permanent Forum on Indigenous Issues. In November 2014, KAIROS hosted a symposium in Ottawa with participation from indigenous women across Canada (see Executive Summary). A further symposium is to be held in Vancouver in October 2015. The aim is to continue building and strengthening a network of women and to further understandings of issues faced by women both by living in mining communities and in resisting mining operations in their communities. Ms. Warden emphasized a lot of work is going on at local, grassroots levels; however, due to lack of visibility it is often isolated from the mainstream dialogue. She stressed KAIROS’ desire to continue building networks and expanding their existing network of NGOs and indigenous women and to bring academics and researchers into the network (for example, see “Gendered Im[pacts: Indigenous Women and Resource Extraction”)  

Professor Karen Drake - Associate Professor, Lakehead University, Faculty of Law

Professor Drake is a member of the Métis nation and an expert in indigenous legal tradition in Canada. She is interested in role that indigenous women play in Canada when it comes to consultation on proposed projects on indigenous territories. In Canada, indigenous traditional knowledge of the land is gendered, for example, among the Anishnaabe, water is the purview of women. Often indigenous women are not at the negotiating table when mining operations are proposed for their territories. There are many potential reasons behind this exclusion: indigenous women’s position is distorted by colonial institutions, such as the Indian Act, which excludes certain women from being able to register as Indian, and though this has been corrected to some extent, there are still those who argue that changes have not gone far enough to incorporate women who have lost their Indian status. Further, even where indigenous governance systems provide a role for indigenous women, these structures may be at odds with the conventions of non-indigenous communities. For example, assumptions about democratic processes often do not comply with traditions among certain indigenous nations such as a consensus governance model as compared to the western liberal representative democracy system. Indigenous women who call for greater involvement have, in some cases, being criticized by their own communities for adopting western liberal feminism. Professor Drake advocated for looking to indigenous legal systems, on a case-by-case basis, to see what tools and principles each system provides which indigenous women in that community can draw upon to support their desire to participate in negotiations. This requires an examination of the stories and songs of the indigenous community to identify its legal traditions and principles.
Dr. Mona Paré - Associate Professor & Vice-Dean (Research), Faculty of Law (Civil Law), University of Ottawa

Professor Paré is a founding member of the Interdisciplinary Laboratory on the Rights of the Child (IRLRC) and her work focuses on the rights of children and children’s access to justice. The rights of children are underexplored in mining contexts. Most documents and discourses related to children and child rights take a gender neutral approach, only focusing on girls in some cases of sexual exploitation. Even when considered in a gender neutral fashion, consideration of children’s rights in mining contexts tends to be limited to the issue of child labour and even there the tendency is for the focus to be skewed toward the boy child. Negative effects of mining operations disproportionately affect women and children, who tend to get fewer benefits from the mining, but it must also be recognized that girls suffer specific and different impacts from women and boys. Professor Paré emphasized that a lot more work needs to be done to examine these girl-specific impacts, intersectionalities between being female and being a minor, and child-headed households which are often the consequence of conflict-affected areas.

Dr. Areli Valencia - Professor, Pontificia Universidad Católica del Peru; affiliated with the University of Ottawa Human Rights Research Education Centre

Professor Valencia’s work focuses on the intersection of human rights and international development with a focus on a capabilities approach. Her PhD dissertation examined smelter communities in Peru where half the population was dependent on the smelter for jobs, their livelihoods, and yet the smelter was also the cause of 90% of the pollution, lead poisoning, premature and still births, etc. in the community. While her research had not been designed with a gender focus, she nonetheless observed effects that were not gender neutral. Women in this community were dependent on their husband’s work in the mining sector, there were few opportunities for women to develop economic independence from the mining sector or from their husbands, and they feared domestic violence at the hands of their spouses when raising concerns over smelter pollution. Professor Valencia identified a serious gap in existing research on the issue of how women in these contexts organize and react to these threats. An interesting case study is in Ecuador where women formed a grassroots organization, Women Defenders of Mother Earth, aimed at increasing awareness about the negative impacts of mining operations on women’s ability to earn a living doing traditional farming.

Ms. Tracy Glynn - PhD Candidate, University of New Brunswick

Ms. Glynn has been working in the mining community of Soroako in Indonesia for 15 years. A nickel mining and smelting operations has been in the community since the 1970s. Her PhD research is examining the impact of the mine on the women of the community and the ways in which they’ve been resisting the
mining operations. She has been conducting a photo voice project documenting the daily lives, the strengths and hopes of the community, and its problems and challenges. A common concern expressed by the women is the lack of access to the land and how they are considered and treated as illegals, squatting on the land. They are struggling economically and have been restricted from accessing the company’s dump, previously a source of economic sustenance.

WOMEN AND MINING IN CONFLICT-AFFECTED AREAS

Dr. Valerie Oosterveld - Professor & Associate Dean (Research and Administration), Western Law

Professor Oosterveld works extensively on international criminal justice institutions (ie ICC, ICTY, ICTR, SCSL, domestic trials, etc) and often brings a gendered dimension to consideration of these institutions and their case law. In particular, she has done research on the Special Court for Sierra Leone where issues of mining, women and girls often arose. The cases before the court against the RUF and former Liberian President, Charles Taylor dealt a lot with slavery which occurred in diamond mining areas during the conflict. Ongoing research examines the continuities between the status of women in pre-conflict Sierra Leone, their status during the conflict, and their status after the conflict and the role criminal justice can play in addressing the status of women. Over time the SCSL increasingly came to pay more attention to gender-based violence, sexual slavery, and forced marriage. She concluded by emphasizing the need to consider what role international criminal justice can play where the rights of women and girls are being infringed in connection to mining operations and the equally important question of whether international criminal tribunals provide a venue that is helpful (or not) to addressing such human rights violations.

Dr. Penelope Simons - Professor, Faculty of Law (Common Law), University of Ottawa

Professor Simons was appointed to the 1999 Canadian Assessment Mission to Sudan (the Harker Mission), tasked by the Minister of Foreign Affairs with investigating issues of human rights violations in north and south Sudan as well as Canadian oil company Talisman’s ongoing operations in conflict-affected Sudan. She spoke to the findings of the Mission, crucially the finding of gendered impacts of resource extraction, specifically oil development. The Mission identified instances of starvation, forcible displacement, and abduction. Government forces and militia were used to protect the area in which oil operations were taking place and the oil infrastructure itself. The militia would inflict terror on local communities by killing, committing rape, looting and burning villages to the ground. The militia were not paid but would extract payment by looting and abducting women and children into domestic slavery. Professor Simons also spoke to the idea of “conflict” being broader than the traditional or legal definition of “conflict”, specifically with regard to civil
conflicts, where local tensions might exist that do not necessarily amount to an armed conflict. Additionally she mentioned the difficulty in civil wars of delineating and defining conflict and non-conflict zones. She noted that one approach to circumvent this difficulty would be to avoid the terminology of “conflict zones” altogether and she suggested “weak government zones” as an alternative term. Finally, Professor Simons touched on the importance of feminist structural bias theory as a tool for examining bias within the international system and assessing the differentiated impact on women of mining activities. It is also a useful lens for understanding the ways in which the international legal system, including its relationship with domestic law facilitates and protects corporate activity and tolerates corporate impunity for violation of human rights.

**Dr. Audrey Macklin** - Professor & Chair in Human Rights Law, Faculty of Law, University of Toronto

Professor Macklin also participated in the 1999 Canadian Assessment Mission to Sudan (the Harker Mission). She spoke to some of the insights she acquired from this experience and how she explored them in her own research. In particular she identified the issue of securitization of extractive industry sites directly contributing to the insecurity of women. She commented on the importance of understanding power relations, particularly power gender relations, in the societies where extractive industries establish operations. An understanding of power gender relations prior to commencement of operations is important so that corporations can better understand how their operations may affect existing structures of inequality within a particular society. Noting ongoing litigation in Canadian courts stemming from allegations of human rights abuses by Canadian mining companies or their subsidiaries or partners in foreign countries (ie Hudbay, Nevsun, Tahoe), she suggested it would be useful to examine the ways in which the impacts on women are (or are not) being represented in litigation and how women are represented (eg as victims, as plaintiffs, etc).

**Ms. Fanny Leveau** - Associate Legal and Programme Officer, Women's Initiatives for Gender Justice

Women’s Initiatives for Gender Justice (Women’s Initiatives) is an international organization advocating for women’s rights and gender justice through the International Criminal Court as well as domestically through national justice systems and processes such as peace negotiations. The Women’s Initiatives works with grassroots partners and is informed by victims/survivors of sexual and gender-based violence. Its aim is to increase the health, well-being, sense of security, and voice of women.

Ms. Leveau spoke to Women’s Initiatives’ expertise in working on issues of sexual and gender-based violence against women and working with the victims/survivors of sexual and gender-based violence in conflict and post-conflict contexts. While Women’s Initiatives does not work directly on mining issues,
women and girls living in mining areas are particularly vulnerable to the types of harms the organization focuses on. Sexual and gender-based violence can affect the health of women and girls, their ability to work, and also their ability to self-advocate for their rights. Partnering with grassroots organizations in the affected countries and communities where they engage in their work, Women’s Initiatives and their partners, seek to provide medical and psycho-social services for victims/survivors, to document these harms to provide evidence for potential prosecutions at the International Criminal Court or in national justice systems, and to provide a voice for these women and girls. A key objective of the organization’s work is to reduce the stigma associated with the violence and harms suffered by these women and girls and encourage them and facilitate their increased participation in advocating for the protection of their rights, for the accountability of those that have committed violations of their rights, and to share their experiences. Women’s Initiatives focuses on both preventing sexual and gender-based violence as well as accountability where sexual and gender-based violence has already occurred.

Ms. Kirsten Stefanik - PhD Candidate, Western Law

Ms. Stefanik specializes in international humanitarian law [IHL], the law that applies during armed conflicts. She discussed whether the discussion of harms against women and girls in mining contexts using a “Peacetime” vs “Conflict” framework is appropriate. Many of the mining cases of rights infringements do not occur in contexts that satisfy the legal requirements/threshold of an “armed conflict” even if they are conflict-affected areas. As such, “conflict” in the legal IHL sense is likely not the most useful and if the language of “conflict” is to be used it must be distinguished and defined so as to differentiate it from IHL. The rules of IHL can nonetheless be useful tools for prevention of harms. She noted that feminist critiques of IHL have criticized the body of law’s failure to take into account harms caused by economic and social deprivation, and while Ms. Stefanik sees this as being outside the scope of what should be properly included in and addressed by IHL, they are most definitely relevant in the context of harms suffered by women and girls in mining operations. Ms. Stefanik also spoke to the potential importance of considering a broader geographical scope than the original point of extraction. Human rights infringements are not limited to the origin of extraction, further down the commodity chain, for example where minerals and ores are smelted, there are often significant environmental harms infringing environmental and health rights of individuals in the smelting communities.

OPEN DISCUSSION

On Existing Research & Literature

Dr. Coumans stressed that there is a great deal of existing research and literature on issues of the impacts of mining operations on communities, largely
from civil society as opposed to academics, but it is often difficult to find. This existing work could provide a wealth of information that could be mined for academic study on these issues.

Ms. Warden echoed Dr. Coumans comments, stressing that at local levels and within civil society a lot of research is being produced. What is needed is to link this research to the work of academics in order to systematize it. Greater assistance could be provided to local communities that are monitoring and documenting the effects of mining operations in their communities.

On Whether a Focus on “Women and Girls” is useful

Dr. Coumans noted that mining operations tend to destabilize the status quo and division of labour. When men abandon traditional work for the mines, women are doubly impacted - first, they must take up the work formerly done by men in addition to the work they have always done; and two, men’s work becomes valued in a new and different way, no longer equal to that done by women. Women’s work is increasingly devalued because of the cash men bring in from their work in the mines.

On the Division between Peace and Conflict

Dr. Coumans noted how problematic the distinction or division between peace and conflict is, for example, the criminalization of dissent in otherwise peaceful countries, violence limited to targeting human rights defenders.

Ms. Warden commented that when working with indigenous communities a broader notion of conflict and violence is required since the indigenous communities and individuals KAIROS works with repeatedly comment on how environmental degradation is very much related to violence directed at themselves.

Professor Valencia commented that much of the discussion in Latin America is framed, not as Peacetime vs Conflict, but in terms of “Socio-environmental Conflicts” drawing on concepts of political ecology and a human rights perspective.

Professor Seck suggested that perhaps a better framing (as opposed to Peace vs Conflict) would be Prevention and Accountability/Remedy which would map nicely with existing business and human rights literature.

On Types of Remedies

Professor Seck commented on existing business and human rights literature which opens the door to non-judicial mechanisms as well as non-state initiated mechanisms, such as corporate or industry-created mechanism or community-created mechanisms, such as citizens’ tribunals.
On Existing International Law

Professor Seck stressed the importance at looking at different international legal documents, standards, and mechanisms to see what existing protections are available to women and girls in mining contexts. She wondered if there might be an issue of different bodies of law or different rights instruments operating in silos, focusing on narrow issues without appreciation for the different nuances raised by rights. For example, she suggested an examination of documents and instruments may demonstrate women’s rights protections enshrined, but without proper cultural consideration, or without consideration of age, and that children’s rights may lack consideration of gender, and so on.

Comments from Professor dos Santos

Professor dos Santos commented that the issue might be accurately framed as the problem of the center vs the periphery, not simply in its traditional Global North vs Global South meaning, but also in the power dynamics and relations between a parent company and a subsidiary, or a subsidiary company and a mine site. She raised the issue of service providers, such as local police or armed forces hired by a corporation to provide security for their mining site. She noted that the impacts of mining operations may proceed the actual commencement of mining, for instance, during the construction phase where an influx of maybe 8,000 men come into a community for 3-4 years to build the mine itself and its infrastructure. Finally, she stressed that from a corporate perspective advocates (academics, civil society, etc) need to bring solutions that businesses can implement and not simply critiques and identification of problems.

In Attendance:

Dr. Catherine Coumans - Research Coordinator and Asia-Pacific Program Coordinator, MiningWatch Canada
Professor Daniela dos Santos - Adjunct Professor, Western Law & SJD Candidate, University of Toronto
Professor Karen Drake - Associate Professor, Lakehead University, Faculty of Law
Ms. Tracy Glynn - PhD Candidate, University of New Brunswick
Professor David Grinlinton - Cassels Brock Visiting Professor in Mining Law, Western Law & Associate Professor, Faculty of Law, University of Auckland
Ms. Fanny Leveau - Associate Legal and Programme Officer, Women’s Initiatives for Gender Justice
Dr. Audrey Macklin - Professor & Chair in Human Rights Law, Faculty of Law, University of Toronto
Dr. Valerie Oosterveld - Professor & Associate Dean (Research and Administration), Western Law
Dr. Mona Paré - Associate Professor & Vice-Dean (Research), Faculty of Law (Civil Law), University of Ottawa
Dr. Sara Seck - Associate Professor, Western Law
Dr. Penelope Simons - Professor, Faculty of Law (Common Law), University of Ottawa
Ms. Kirsten Stefanik - PhD Candidate, Western Law
Dr. Areli Valencia - Professor, Pontificia Universidad Católica del Peru
Ms. Rachel Warden - Latin American Partnerships and Gender Justice Program Coordinator, KAIROS

Student Rapporteurs:

Mr. James Goacher - JD Candidate, Western Law
Ms. Tammy Lambert - PhD Candidate, University of Western Ontario
Ms. Sarah Nimigan - PhD Candidate, University of Western Ontario
Ms. Jessica Pandza - JD Candidate, Western Law