



Canadian Centre for International Justice
Centre canadien pour la justice internationale



UNIVERSITY OF TORONTO
FACULTY OF LAW

INTERNATIONAL
HUMAN RIGHTS
PROGRAM

**CLE COURSE AND WEBINAR ON CRIMINAL AND CIVIL LIABILITY FOR WAR
CRIMES, CRIMES AGAINST HUMANITY, GENOCIDE, AND TORTURE**

**DAY 1 / FRIDAY, MARCH 4TH, 2011 / UNIVERSITY OF TORONTO, FACULTY OF LAW
FLAVELLE HOUSE, BENNETT LECTURE HALL (BASEMENT)**

Introduction to Accountability for International Crimes in Canada

- 9:00 - 9:15 Introduction
- 9:15 - 10:45 Criminal and Other Liability in Canada for War Crimes, Genocide, Crimes against
Humanity and Torture
Instructor: Terry Beitner
- 10:45 - 11:00 Break
- 11:00 - 12:30 Civil Liability in Canada for War Crimes, Genocide, Crimes Against Humanity, and
Torture
Instructor: John Terry
- 12:30-1:30 Lunch Break

Holding Corporations Accountable in Canadian Courts for Human Rights Abuses Abroad

Co-Presented with: Amnesty International Canada



- 1:30-1:45 Setting the Stage: The Importance of Accountability
Speaker: Audrey Macklin
- 1:45-2:45 Policy Perspective and Reflections on Accountability
Moderator: Sara Seck
Panelists: Peter Julian, Penelope Simons, and Catherine Coumans
- 2:45-3:00 Break
- 3:00-4:00 The State of Current Litigation and Strategies Going Forward (see case summaries
attached)
Moderator: Renu Mandhane
Panelists: Murray Klippenstein, Mark Arnold, and Matt Eisenbrandt
- 2:45-3:00 Break
- 4:00-4:45 The Way Forward: Reflecting on the Recent US Experience
Speaker: Beth Stephens

**CLE COURSE AND WEBINAR ON CRIMINAL AND CIVIL LIABILITY FOR WAR
CRIMES, CRIMES AGAINST HUMANITY, GENOCIDE, AND TORTURE**

**DAY 2 / SATURDAY, MARCH 5TH, 2011 / UNIVERSITY OF TORONTO, FACULTY OF LAW
FLAVELLE HOUSE, BENNETT LECTURE HALL (BASEMENT)**

Issues in International Justice

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| 9:00 - 9:15 | Introduction |
| 9:15 - 10:45 | Introduction to Accountability Mechanisms for International Crimes <i>Instructor:</i> Jennifer Orange |
| 10:45-11:00 | Break |
| 11:00-12:00 | The International Criminal Court <i>Instructor:</i> Anna Matas |
| 12:00-1:00 | Representing Persons accused of International Crimes <i>Instructor:</i> David Jacobs [to be confirmed] |
| 1:00-2:00 | Lunch Break |
| 2:00-3:00 | Sexual Violence and International Criminal Law <i>Instructor:</i> Renu Mandhane |
| 3:00-3:15 | Break |
| 3:15-4:45 | Practical Issues in Litigating Universal Jurisdiction Cases <i>Instructor:</i> Matt Eisenbrandt |

BIOGRAPHIES OF SPEAKERS & INSTRUCTORS

Mark Arnold

Mark is a partner at Gardiner Miller Arnold LLP in Toronto. Mark obtained his LL.B. at Dalhousie Law School and his LL.M. in Civil Litigator and ADR from Osgoode Hall Law School. He is certified by the Law Society of Upper Canada as a Specialist in Civil Litigation. Mark has been counsel in many high profile cases, including: Counsel in: *Bouzari v Iran*, *Bil'in et al v Green Park et al*, and *Jacobsen et al v Iran et al*. Prior to becoming a lawyer, he was a college teacher and the first Executive Director for the Prince Edward Island Human Rights Commission, and worked for CBC Radio in Charlottetown as a freelance broadcaster and storyteller.

Terry Beitner

Terry Beitner has been the Director and General Counsel of the Crimes Against Humanity and War Crimes Section of the Department of Justice Canada since 2000. The War Crimes Section is involved in the application of all remedies employed by the Government of Canada when dealing with war crimes matters. In particular, he is responsible for selecting those cases from among the Canadian inventory of war crimes matters under investigation by the RCMP that may ultimately be put before the Attorney General of Canada with a recommendation that the Public Prosecution Service of Canada commence a criminal prosecution under Canada's Crimes Against Humanity and War Crimes Act. Since 2003, he has delivered annual lectures at the Faculty of Law of the University of Ottawa on selected issues with respect to the application of the various remedies available to the Government of Canada to deal with the presence in Canada of individuals who may have been involved in the commission of war crimes or crimes against humanity.

Catherine Coumans

Catherine is the Research Coordinator and Coordinator Asia-Pacific Program at MiningWatch Canada. Catherine's policy work on mining is focussed on legislative reform and the development of effective accountability mechanisms (standards, verification systems, certification systems) to better hold Canadian mining companies to account in Canada for human rights and environmental abuses perpetrated overseas. Catherine has worked with non-governmental organizations and mining affected communities throughout the Asia-Pacific region. Her work has focussed on indigenous peoples affected by Canadian mining companies. She has provided expert testimony on mining in two congressional inquiries in the Philippines (1999, 2001), before the Constitutional Court in Indonesian (2005), before the Parliamentary committees in Canada (Sub-Committee on Human Rights and Democratic Development in Canada, 2005; Standing Committee on Foreign Affairs and Democratic Development, 2009) and in an Amici Brief for the Supreme Court of the United States (2008). In 2006 she was asked by the Government of Canada to participate on an Advisory Group of the Canadian Government's National Roundtables on CSR and the Canadian Extractive Industry in Developing Countries. Catherine has participated in numerous Canadian government-led multistakeholder processes on mining. She is currently on the Interim Steering Committee of the Canadian Center of Excellence in Extractive Resources (2009-2010). Her publications include: *Occupying Spaces Created by Conflict: Anthropologists, Development NGOs, Responsible Investment and Mining in Current Anthropology* (Forthcoming); *Mining, Human Rights, and the Socially Responsible Investment Industry: an examination of community opposition to shareholder resolutions* (book chapter, forthcoming); *Alternative Accountability Mechanisms and Mining: the problems of effective impunity, human rights and agency. Canadian Journal of Development Studies*. 2010; *Realising Solidarity: Indigenous peoples and NGOs in the contested terrains of mining and corporate accountability. In Earth Matters: Indigenous Peoples, the Extractive Industries and Corporate Social Responsibility*, Greenleaf Publishing Limited, U.K. 2008.

Matt Eisenbrandt

Matt is the Legal Coordinator for the Canadian Centre for International Justice (CCIJ) in Ottawa. The CCIJ is a charitable organization that works with survivors of genocide, torture and other atrocities to seek redress and bring perpetrators to justice. As Legal Coordinator, Mr. Eisenbrandt oversees the organization's case work, including investigations of alleged perpetrators, advocacy on behalf of survivors seeking redress, and interventions in other Canadian cases involving issues central to the CCIJ's mission. He is also a member of the Board of Directors of the association bringing the class action case against Anvil Mining for its role in a massacre in the DRC. Prior to joining the CCIJ, Mr. Eisenbrandt served as the Legal Director for the Center for Justice & Accountability (CJA), a U.S.-based non-profit organization that also helps survivors hold perpetrators accountable through legal cases. He received a J.D. from the University of Virginia School of Law and B.A. degrees from the University of Illinois at Urbana-Champaign.

David Jacobs

David P. Jacobs is a partner at the firm and was called to the bar in 1983. David practices in the areas of professional regulation and discipline, health law, labour relations and employment law, human rights, civil litigation, insolvency law, constitutional law and international criminal law. The Globe and Mail described David as 'a tough lawyer'. He has represented tribunals, unions, organizations, corporations and individuals before tribunals and courts at all levels in Canada, Trial and Appeal Chambers of the United Nations International Criminal Tribunal for Rwanda (ICTR) and various administrative tribunals. He is General Counsel to the Health Professions and Appeal and Review Board, and the Violations Review Committee of the Canadian Pallet Council. David is a lecturer, writer and frequent media commentator on administrative, criminal, labour, human rights, constitutional and international law issues. He has long been active in professional associations, including the Ontario Bar Association in the areas of health, human rights, labour relations, and constitutional law. David was Chair of the Constitutional and Civil Liberties Section of the Canadian Bar Association (Ontario), 1993-1994.

Peter Julian

Peter Julian is a Member of Parliament (Burnaby-New Westminster) and the NDP Critic on International Trade and Globalization. A former manual labourer, Peter returned to school later and became a financial administrator. Organizations that he led won consecutive Excellence in Business awards. Peter has been a strong critic of the dysfunctional trade architecture and Canada's trade policies. He opposed the softwood lumber agreement unsuccessfully; the SPP in campaign with activists across the country successfully and working with civil society activists and the labour movement was able to pioneer a new approach on trade legislation through combined opposition to the Canada-Colombia trade deal.

Murray Klippenstein

Murray Klippenstein is a graduate of the University of Toronto, Faculty of Law. He has spent the last 25 years in a broad social justice practice in the fields of native rights, environmental law, affordable housing and housing co-operatives, employment law, defamation and civil rights. Mr. Klippenstein represented the estate and family of Dudley George in nine years of litigation and at the Ipperwash Inquiry, which ultimately resulted in the creation of the Ministry of Aboriginal Affairs and the return of Ipperwash Provincial Park to native ownership. He has also represented the Mushkegowuk Tribal Council on James Bay for over fifteen years in numerous negotiations and court cases. Mr. Klippenstein has successfully represented individuals, environmental groups and co-operatives on issues ranging from promoting energy conservation, to protecting natural gardens, to defending affordable housing rights, to protecting treaty rights to hunt. Mr. Klippenstein is currently co-counsel in a class action against Toronto Police Services and the RCMP over unlawful police actions during the G20 weekend. Mr. Klippenstein has acted for a number of clients in lawsuits in Ontario related to Canadian mining activities abroad including representing a documentary videographer in a

successful defamation lawsuit against the former Canadian Ambassador to Guatemala; representing three Ecuadorean *campesinos* in a lawsuit in Ontario against a Canadian mining company whose security forces assaulted them for protesting against the mine; and representing Angelica Choc in a lawsuit over the killing of her husband, Adolfo Ich Chaman, by the head of security at HudBay Minerals' mine in Guatemala. Mr. Klippenstein is married with two teenaged boys, whom he hopes will make the NHL and then fund his eventual retirement, since his legal practice doesn't make enough money for him to save much.

Audrey Macklin

Audrey Macklin is a professor at the Faculty of Law. She holds law degrees from Yale and Toronto, and a bachelor of science degree from Alberta. After graduating from Toronto, she served as law clerk to Mme Justice Bertha Wilson at the Supreme Court of Canada. She was appointed to the faculty of Dalhousie Law School in 1991, promoted to Associate Professor 1998, moved to the University of Toronto in 2000, and became a full professor in 2009. While teaching at Dalhousie, she also served as a member of the Immigration and Refugee Board. Professor Macklin's teaching areas include criminal law, administrative law, and immigration and refugee law. Her research and writing interests include transnational migration, citizenship, forced migration, feminist and cultural analysis, and human rights. She has published on these subjects in journals such as *Refuge* and *Canadian Woman Studies*, and in collections of essays such as *The Security of Freedom: Essays on Canada's Anti-Terrorism Bill* and *Engendering Forced Migration*.

Renu Mandhane

Renu is the Director of the International Human Rights Program at the University of Toronto, Faculty of Law. Renu graduated from the Faculty with a J.D., articulated at Torys LLP in Toronto, and completed her LL.M. at New York University with a focus on international human rights law. In addition to publishing in the area, Renu is a member of the Advocacy Committee of Human Rights Watch Canada, and has worked at a number of domestic and international organizations focused on advancing women's human rights, including the Centre for Reproductive Rights in New York, and the Association for Women's Rights in Development in Toronto. Prior to joining the Faculty, Renu practiced criminal law from an equality rights perspective for approximately four years and routinely represented survivors of domestic and sexual violence, as well as federally-sentenced prisoners. Most recently, Renu was an Assistant Dean at the Faculty and worked extensively on the review of the first year curriculum.

Anna Matas

Anna Matas is a Canadian lawyer, with degrees in both common and civil law from McGill University. Anna gained practical expertise in international criminal law through experience at both hybrid and ad hoc international criminal Tribunals. In 2004-2005, she worked as a Legal Researcher for the McGill Sierra Leone Special Court Law Clinic. In 2006-2007, she worked as an Associate Legal Officer in Trial Chamber I of the Special Court for Sierra Leone in Freetown, Sierra Leone. In 2009, Anna worked as an Associate Legal Officer in Trial Chamber II of the ICTR. As an Associate Legal Officer, Anna assisted panels of three international judges with the daily management of trials, and with the research and drafting of various interlocutory decisions and Judgments. Anna is currently employed by McCarthy Tétrault LLP, where she practices civil and criminal litigation for a variety of clients. Anna is involved in a number of pro bono initiatives, including the "Unaccompanied Minors" program through which McCarthy's lawyers are paired with minor refugee claimants in order to assist them in navigating Canada's immigration system. Anna is also a member of the CCIJ Toronto Working Group.

Jennifer Orange

Jennifer A. Orange, B.A. (UPenn) 1993, LL.B. (Toronto) 1998, LL.M. (NYU) 2003, called to the Bar of Ontario 2000. Ms. Orange practiced with Torys LLP from 1998-2007 in the areas of

Corporate/Commercial Litigation, Administrative Law, International Human Rights and International Trade. In 2003 she received her LL.M. in international law from New York University. Ms. Orange has published articles in the areas of International Human Rights and International Trade.

Sara Seck

Sara Seck joined the Faculty of Law, University of Western Ontario as an assistant professor in July 2007. In 2008 she completed a PhD at Osgoode Hall Law School, York University on home state obligations to regulate transnational mining companies under international environmental and human rights law. Sara's research interests include corporate social responsibility, international environmental, human rights, and sustainable development law, climate change, and international legal theory. In 2009, Sara was awarded a SSHRC standard grant to examine the scope of the home state duty to protect human rights under the UN Protect, Respect, Remedy Framework from the perspective of both international law/international relations theory and Third World Approaches to International Law (TWAAIL). Also in 2009, she and Professor Craig Brown were awarded the BLG fellowship in order to pursue research on climate change and insurance law.

Penelope Simons

Penelope Simons is an associate professor at the Faculty of Law (Common Law Section), University of Ottawa, Canada. Her current research is focused on the human rights implications of domestic and extraterritorial corporate activity as well as state responsibility for corporate complicity in human rights. She is currently working with on a co-authored book on business and human rights in conflict zones. In addition, she is engaged in a project with two colleagues at the University of Ottawa to develop a new model bilateral investment treaty based on sustainable development principles for the Commonwealth Secretariat. Penelope teaches international human rights law, business organizations, public international law and a course on the intersections between human rights, transnational corporate activity and international economic law.

Beth Stephens

Professor Stephens has published a variety of articles on the relationship between international and domestic law, focusing on the enforcement of international human rights norms through domestic courts. She co-authored a book analyzing U.S. enforcement of human rights norms, *International Human Rights Litigation in U.S. Courts* (Martinus Nijhoff Publishers, 2d ed. 2008). From 1990-1995, she was in charge of the international human rights docket at the Center for Constitutional Rights in New York, where she litigated a series of cases addressing human rights violations in countries around the world, including Bosnia, Guatemala, Haiti, East Timor and Ethiopia. In 1995, Prof. Stephens received the Trial Lawyers of the Year Award from Trial Lawyers for Public Justice in recognition of her work litigating international human rights claims. She was a finalist for the same award in 2001 and 2010. As a cooperating attorney with the Center for Constitutional Rights and a member of the Board of Directors of the Center for Justice and Accountability, Prof. Stephens continues to litigate human rights cases, including cases filed against U.S.- based corporations alleging responsibility for human rights violations committed in the course of their activities abroad. She was co-counsel for the plaintiffs in *Samantar v. Yousuf*, a human rights case decided by the Supreme Court in May 2010, in which the Court ruled 9-0 for her clients. Professor Stephens graduated magna cum laude from Harvard University, received her J.D. degree from the law school of the University of California at Berkeley, and clerked for Chief Justice Rose Bird of the California Supreme Court. She spent six years studying changing the legal system in Nicaragua in the 1980s.

John Terry

John Terry is a litigation partner at Torys LLP in Toronto. He has one of the leading international law practices in Canada, with broad experience in cases ranging from international human rights to

international trade and investment issues. Mr. Terry's international human rights experience includes: acting for the family of Zahra Kazemi, the Canadian journalist killed in Iran; serving as Co-Lead Counsel to the Iacobucci Inquiry involving three Canadians who were detained and tortured in Syria and (in one case) Egypt; working with Frank Iacobucci in his review of Canadian documents relating to the transfer of Afghan detainees; and acting for the UNHCR in its intervention in the Suresh case. Mr. Terry teaches Public International Law and International Commercial and Investor-State Arbitration as an adjunct professor at the University of Toronto Faculty of Law. He writes and speaks frequently on international human rights and international law issues.

CASE SUMMARIES

Choc v. HudBay Minerals Inc.

On September 27, 2009, Adolfo Ich Chamán, a respected indigenous Mayan Q'eqchi' community leader and an outspoken critic of harms and rights violations caused by Canadian mining activities in his community, was hacked and shot to death by security forces employed at HudBay Minerals' Fenix Mining Project near the town of El Estor, Guatemala. Adolfo's widow has brought a lawsuit in Ontario courts to seek accountability for his death. The lawsuit claims \$2 million in general damages and \$10 million in punitive damages and is brought against Canadian companies HudBay Minerals Inc. and HMI Nickel Inc., as well as their Guatemalan subsidiary, Compañía Guatemalteca de Níquel ("CGN").

Bil'in et al v Green Park et al.

Having exhausted the limited remedies available under Israeli domestic land and property law, the villagers of Bil'in, a village in the West Bank, filed a lawsuit in Quebec against two Canadian companies, Green Mount International Inc. and Green Park International Inc. Bil'in argued that the companies violated both international law and Canadian domestic law by acting as agents of Israel, illegally constructing residences and other buildings in the West Bank, a territory internationally recognized as illegally occupied due to an act of war in 1967. Bil'in sought declarations that the Defendants were in violation of international law, as well as damages and demolition of the buildings. The Quebec courts refused to hear the case on the merits on the basis of *forum non conveniens*, i.e. that the action should have been brought in Israel.

Canadian Association against Impunity v. Association Anvil Mining Ltd.

From 1998 to 2010, Anvil Mining Limited, a Canadian corporation, ran a copper and silver mine in the Democratic Republic of Congo (DRC). In October 2004, the Congolese Armed Forces (FARDC) committed widespread atrocities in crushing a small-scale uprising in Kilwa, a port town critical to Anvil's operations, which included extra-judicial executions, torture, rapes, illegal detentions and looting. Anvil, whose Dikulushi mine was located 50km away, admitted providing logistical support to the FARDC in the form of vehicles and airplane transportation. On November 8, 2010, an association of citizens from the DRC filed a petition for certification of a class action in Montreal against Anvil for the company's alleged role in the Kilwa massacre. The petition alleges that Anvil provided trucks, drivers and other logistical support to the Congolese military. The plaintiff in the case, the Canadian Association against Impunity, is made up of Congolese citizens affected by the events that unfolded in Kilwa in October 2004. Matt, as a CCIJ representative, along with members of partner organizations in the DRC and UK act as Board members of the association. The legal action in Canada followed the repeated failure of Congo's judicial system to deliver justice.

COURSE LOCATION

Bennett Lecture Hall, Flavelle House (Basement)
Faculty of Law, University of Toronto
78 Queen's Park

