

UNIVERSITY OF CALGARY
FACULTY OF LAW

LAW 703
GRADUATE SEMINAR IN LEGAL RESEARCH AND METHODOLOGY

ANNOTATED BIBLIOGRAPHY ON
LIABILITY MANAGEMENT RATING: WHAT HAS *REDWATER* TAUGHT US AND
HOW DO WE MOVE FORWARD

BY
ANDREW MILES
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Description of the Research Proposal

This annotated bibliography has been prepared for my major paper, which focuses on the Supreme Court of Canada's decision, *Orphan Well Association v. Grant Thornton Ltd*, which is commonly known as *Redwater*. In a split majority decision, the Supreme Court held that the Alberta Energy Regulator's (AER) declaration of its statutory authorities over a bankrupt licensee's assets does not prompt federal paramountcy. Previously, the AER's statutory enforcement powers created a conflict with the *Bankruptcy and Insolvency Act* in which federal law would take precedence, but now, post-*Redwater*, there will be no conflict. This means in instances where an oil and gas company goes into insolvency, the costs associated with mitigating their environmental impact will take priority over the costs associated with paying back their creditors.

This decision is significant because of the impact that it has across multiple sectors and legal areas in Canada. One of the areas that will see the greatest impact is Alberta's licensing regime. Specifically, within Alberta's licensing regime, *Redwater* has and will have substantial implications on the AER's liability management ratio (LMR). By analyzing both the *Redwater* decision and the LMR ratio and how the ratio is affected by the decision, my paper seeks to answer the question of whether or not the ratio needs reformation. This annotated bibliography provides a sample of the secondary sources that I will be using to answer that question.

Annotated Bibliography

SECONDARY MATERIAL: ARTICLES

Bourassa, Kelly, Ryan Zahara & Chris Nyberg, “Restructuring Challenges in the Oil and Gas Sector: The Treatment of Regulatory Orders Post-Redwater” (2016) 54 Alta L Rev 383.

The authors of this article represented the secured lender in the *Redwater* case at the Alberta Court of Queens Bench. This article identifies recent legal developments that are relevant to corporate restructuring in the Alberta energy sector. It also analyses current framework of Alberta’s licensing regime and the Alberta Energy Regulator’s licensee liability rating (LLR) program. It finishes by considering the practical challenges faced by licenses and creditors within that regime, and how these challenges should be addressed. This article is beneficial to me because it provides a detailed analysis of Alberta’s licensing framework and the LLR program, a program that makes up a significant portion of the LMR ratio.

Gaston, Melanie, Janice Buckingham & Emily Paplawski, “Implications of the Redwater Decision-Where Does the Buck Stop?” (2016) 30 BFLR 114.

The authors of this article, Janice Buckingham, Melanie Gaston, and Emily Paplawski are all partners at Osler, Hosking & Harcourt LLP in the Calgary office. The authors experience in regulatory, insolvency and restructuring, energy, and environmental law give this article a multitude of perspectives that bind together to create an informative piece on the *Redwater* decision. Similar to the other articles that I am using that analyse the *Redwater* decision, this article does a great job of breaking down the decision and organizing in a way that is

understandable for the reader. Unlike the other articles I am using, this article addresses the potential post-*Redwater* financial state of Alberta's energy industry. Additionally, this article discusses the AER's relationship with the Oil and Gas Conservation Act, the act that gives AER its governing authority. This understanding of the AER's authoritative power is vital to the area of my paper that examines the AER's ability to enforce the LMR ratio.

Lambrecht, Kirk, "Constitutional Law and the Alberta Energy Regulator"(1969) 23 CCS 2.

The author of this article, Kirk N. Lambrecht, Q.C. is a partner at Shores Jardine LLP. This article reviews general principles regarding a tribunal's ability to consider constitutional law, and then goes on to make observations about the ability for the AER to consider constitutional law. The question that is ultimately explored by this article is whether the AER has sufficient capacity to both respect and contribute to the fulfilment of the constitutional norms and obligations of the province that created it. This article is beneficial to my research because of its analyses of the AER's power to govern, and the extent to which it is exercised. In order for me to effectively analyse the LMR ratio and whether or not it is full legal standing, I will first need to understand the power that the AER has to govern; this article will aid in me being able to do so.

Lund, Anna, “Newfoundland & Labrador v AbitibiBowater: Environmental Issues in Abitibi’s Insolvency, Examining the Regulator-Creditor and Past-Operations Expense Tests” in Janis Sarra, ed, Annual Review of Insolvency Law, 2012 (Toronto: Carswell, 2013) 509.

The author of this article, Anna Lund, is an Assistant Professor at the University of Alberta. This article analyses the case of *Newfoundland and Labrador v AbitibiBowater Inc*, 2012 SCC 67 and discusses the reasoning behind how the courts approached their decision. Similar to Jassmine Girgis’s article, this article is important for understanding how the *AbitibiBowater* test was used in the *Redwater* decision. This article’s analysis of the *Bowater* case is vital for my research, it is important for me to understand the *AbitibiBowater* test in order for me to understand the SCC’s decision in *Redwater*.

Stewart, Fenner, “Interjurisdictional Immunity, Federal Paramountcy, Co-operative Federalism, and the Disinterested Regulator: Exploring the Elements of Canadian Energy Federalism in the Grant Thornton Case” (2018) 33 BFLR 227.

The author of this article, Fenner Stewart, is an Assistant Professor at the University of Calgary. This article evaluates the *Redwater* decision at the Court of Appeal by looking at its four constitutional issues: federal paramountcy, interjurisdictional immunity, cooperative federalism and the defence of the “disinterested regulator”. It looks at each of these issues and how they impact Canadian energy federalism, which Fenner describes as the “compact between provinces and the federal government”, which govern the Canadian energy resource production management and transport. This article is beneficial to my work because it deeply analyses the Court of Appeal’s decision and how it impacts the constitutional elements of Canadian law. I will be looking at the

power that the AER has to impose policies in the energy sector, and this article will help me understand these powers.

Wood, Roderick, “The Definition of Secured Creditor in Insolvency Law” (2010) 25 BFLR 341.

The author of this article, Roderick J Wood, is a law Professor at the University of Alberta. This article discusses both the Business Insolvency Act and the Companies’ Creditors Arrangement Act and their respective definitions of what exactly a creditor is. This article posits the idea that despite fundamental changes to bankruptcy and insolvency law in Canada, this definition of what a secured creditor is has remained unchanged. The *Redwater* decision encompasses a significant amount of bankruptcy and insolvency law and it also encompasses the concept of secured creditors. The courts in the *Redwater* decision conflicted on the definition of secured creditors and I believe that in order for me to fully understand the reasoning for this confliction I will need to understand the law that surrounds its definition. That is why this article will be necessary for my work.

SECONDARY MATERIALS: OTHER

Alberta Energy Regulator, “Bulletin 2019-17: 2019/20 AER Administration Fees (Industry Levy)” (11 July 2019), online (pdf): *Alberta Energy Regulator* <www.aer.ca/documents/bulletins/Bulletin-2019-17.pdf>.

This is an article written by the AER on the administrative fees that they collect from the industry. They are not a self-sufficient organization and because of this they require payments from industry producers. While I will try and avoid reading

too many of their articles concerning the LMR to ensure that I am researching from more than one perspective, this article is crucial for me to understand the AER program and how the program is financed. Before I am able to analyse the LMR ratio, I will need to fully understand the AER and how the AER was fashioned.

Bankes, Nigel “Some Things have Changed but Much Remains the Same: the New Canadian Energy Regulator” (15 February 2018), online: ABlawg, http://ablawg.ca/wpcontent/uploads/2018/02/Blog_NB_Much_Remains_The_Same.pdf

The author of this blog post, Nigel Bankes is a Professor and the Chair in Natural Resources law at the University of Calgary. While this topic is dissimilar to the others in this annotated bibliography, it is not lacking in importance. This blog post discusses the structural changes proposed by Bill C-69. The author analyses the current state of the current regulatory and how Bill C-69 will impact it. There will be a portion in my paper that will be devoted to alternative regulator policy measures that surround the AER, and I think that this blog will allow me to gain insight into what the current regulatory framework is like and how it can be affected with legislation. This will be crucial if I come to the conclusion that the LMR ratio is insufficient, because I will then need to propose an alternative policy reform.

Dachis, Benjamin, Black Shaffer & Vincent Thivierge, “All’s Well that Ends Well: Addressing End-of-Life Liabilities for Oil and Gas Wells” (September 2017), online: CD Howe Institute, Commentary No. 492 < <https://www.cdhowe.org/public-policy-research/all%E2%80%99s-wellends-well-addressing-end-life-liabilities-oil-and-gas-wells>>.

The authors of this commentary are researchers at the C.D. Howe Institute, an institute that provides policy research and commentary. This commentary specifically addresses the problems surrounding the abandonment of oil and gas assets in Alberta and how these problems should be addressed. This commentary provides policy recommendations surrounding dealing with the costs associated with those assets. This is a useful paper for the recommendations aspect of my paper. I will be looking at policies that can be implemented to improve Alberta’s orphan well situation, and this paper provides substantial insight into this area.

Farrell, Erin, Jessica Boily & Haddon Murray, “Third Time’s A Charm For Alberta Regulator: How The SCC Decision In Redwater Could Change The Role Of Environmental Orders In Ontario Insolvency Proceedings” (5 March 2019), online: *Gowling WLG* <gowlingwlg.com/en/insights-resources/articles/2019/redwater-could-change-environmental-orders-ontario/#_ftn19>.

The authors of this article are Erin Farrell, Jessica Boily and Haddon Murray. Erin is a partner at Gowling WLG’s Toronto office; Jessica and Haddon are associates at the Gowling WLG Toronto office. This article analyzes the *Redwater* decision and examines the decision at all three levels of court. Additionally, the authors survey the practical implications of the decision and how it is going to impact insolvency proceedings, industries with potential environmental liabilities, contaminated sites and brownfield developments and environmental receivers. This analysis is vital for my understanding of *Redwater*’s financial impact on the

energy sector. In order for me to analyze *Redwater*'s impact on the LMR ratio it is important for me to understand *Redwater*'s effect on the lenders and financial professionals in Alberta's energy regime.

Gaston, Melanie, Janice Buckingham & Emily Paplawski, "Supreme Court of Canada decision in Redwater: Early implications" (1 February 2019), online: *Osler, Hoskin & Harcourt LLP* <www.osler.com/en/resources/regulations/2019/supreme-court-of-canada-decision-in-redwater-early-implications>.

The authors of this article, Janice Buckingham, Melanie Gaston, and Emily Paplawski are all partners at Osler, Hosking & Harcourt LLP in the Calgary office. These are the same authors that wrote the article "Implications of the Redwater Decision-Where Does the Buck Stop?" This article differs from the other because this article was written after the *Redwater* decision in the SCC. This article is necessary for understanding the SCC decision in *Redwater* as well as breaking down the decisions immediate implications. This article breaks down the decisions implications on multiple areas including: the effect on the AER, its environmental effects, lenders and its effects on public companies stock prices. Unlike the other articles that I have chosen that discuss the *Redwater* case, this article does a great job of examining the dissenting judgement in the SCC. The articles discussion of *Redwater*'s financial implications on the energy industry and the dissenting judgement in the SCC make this paper very useful for my research.

Girgis, Jassmine “Lessons from *Redwater*: Discard the *AbitibiBowater* Test and Legislate Super Priority for the Regulator” (1 March 2019), online (pdf): *University of Calgary Faculty of Law* <ablawg.ca/wpcontent/uploads/2019/02/Blog_JG_Discard_AbitibiBowater_Test_Legislate_Super_Priority_for_Regulator_Feb2019.pdf>.

The author of this blog, Jasmine Girgis, is an Associate Professor at the University of Calgary. This blog analyses the *Redwater* decision at the Supreme Court of Canada. Jassmine breaks down the different aspects of the decision and the reasoning for why the court made came to the conclusion that they did. Specifically, the author looks at the *AbitibiBowater* test and how it creates uncertainty in the cases that it has been applied. This is an important blog for my research because it provides updated academic discussion on issues raised in the case of *Redwater*. It focuses on legislating super priority for the regulator; this concept is vital for the successful implementation of the LMR system and this is an important aspect of my paper.

Orphan Well Association, “2017 Annual Report” (2017), online (pdf): *Orphan Well Association* <www.orphanwell.ca/wp-content/uploads/2018/10/OWA-2017-18-Ann-Rpt-Final.pdf>.

This annual report is the most recent annual report published by the Orphan Well Association. This report is valuable for both its qualitative and quantitative qualities. The report’s qualitative elements relate to a discussion of the year and how the orphan well problem in Alberta has originated. The report discusses key factors that have led to the increase in orphan wells and how the OWA is dealing with the situation.

The quantitative elements of the report are statistics surrounding the financing of the OWA and the amount of orphan wells in Alberta. The report does a good job of graphing the yearly differential between the number of orphan wells as well as the operating expenses and funding of the OWA. These quantitative elements will be extremely useful when the OWA produces their 2018/2019 report. The comparison between the two reports, one being pre-*Redwater* and one being post-*Redwater*, will be very beneficial for my analysis on the decision impact on the LMR and the orphan well situation in Alberta.

Stewart, Fenner, “Orphan Well Association v Grant Thornton Limited: What’s at Stake in Redwater” (15 November 2017), online: *ABlawg* <ablawg.ca/2017/11/15/orphan-well-association-v-grant-thornton-limited-whats-at-stake-in-redwater/>.

Similar to Fenner Stewart’s other article, this article evaluates the Redwater decision at the Court of Appeal. The article outlines how *Redwater* complicates the daunting challenge facing the Alberta government and the AER to deal with the problem of orphan wells. Part two of the article sketches the AER’s current regulatory framework for dealing with abandoned wells. Part three of the article explains how *Redwater* adds to the reform challenge. This article is beneficial to my work because it deeply analyses the Court of Appeal’s decision and impact of the AER’s regulatory framework. I will be looking at power that the AER has to impose policies in the energy sector, and this article will help me understand framework of the AER.

Borden Ladner Gervais LLP, “Redwater Decision” (4 February 2019), online: *Borden Ladner Gervais LLP* <blg.com/en/News-And-Publications/Publication_5556>.

This article was written by Chidinma B Thompson, Josef Kruger, Mile Pittman, Neil McCrank, Alan Ross, Daniel Sears, and Matti Lemmens, who are all partners at Borden Ladner Gervais LLP (Calgary). This article was one of the few pieces that were written post-*Redwater* that discusses the decisions implications across multiple sectors, making it the most useful law firm article that I found. The section of the article that will be the most beneficial to me is the section that discusses the lessons that we have learned from the SCC’s decision in *Redwater*. Within this section, the authors separate the paragraphs into: prioritizing the environment, preserving the orphan fund as a reserve, who-wins in the short term and cooperation and changes necessary for a win-win. Additionally, there is a section in the article that discussed the potential immediate impacts of the decision on multiple different industries and professionals in Canada. These sections of the article will be specifically beneficial for helping me understand the immediate implications of *Redwater*’s decision from the SCC. This is a necessary requirement for me to understand how the LMR will operate in the Canadian energy industry, post-*Redwater*.

Wood, Natasha & Brendan Downey, “Bankruptcy is not a licence to ignore rules: Redwater, insolvency, and Alberta’s uncertain regulatory future” (14 May 2019), online: *Borden Ladner Gervais LLP* <www.bdplaw.com/publications/bankruptcy-is-not-a-licence-to-ignore-rules-redwater-insolvency-and-albertas-uncertain-regulatory-future/>.

The authors of this article, Natasha Wood and Brendan Downey are associates at Burnet, Ducksworth & Palmer LLP (Calgary). Similar to the other articles written by law firms, this article breaks down the *Redwater* decision. This article was written post-*Redwater*, so it specifically breaks down the SCC decision. This article differs from the others because it examines how *Redwater’s* is likely going to cause uncertainty for Albertas regulatory future. In my paper I will be examining the opacity of the *Redwater* decision and how this opacity is going to lead to problems in Alberta’s energy regime. This article will be beneficial for its ability to further my knowledge of this discussion and it will be beneficial for answering the question of how *Redwater* has impacted the LMR ratio.

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ANNOTATED BIBLIOGRAPHY ON

THE BUILDUP OF A LEGAL AND REGULATORY FRAMEWORK FOR CARBON
CAPTURE AND STORAGE IN NIGERIA AS A MEANS TO REDUCE CARBON
EMISSIONS: WITH INSIGHTS FROM ALBERTA

BY

OLUWABUKOLA AGBEDE

20 DECEMBER 2019

1. BRIEF DESCRIPTION OF MY RESEARCH PROJECT

This annotated bibliography highlights some of the secondary materials I intend to use for the development of my research project on: “The Buildup of a Legal and Regulatory Framework for Carbon Capture and Storage in Nigeria as a Means to Reduce Carbon Emissions: With Insights from Alberta.”

The research identifies the lack of a legal and regulatory framework on carbon capture and storage in Nigeria as a deficiency that requires a solution in a bid to ensure efficiency in the use of carbon capture and storage. Therefore, to highlight this deficiency, the research will carry out a comparative analysis to draw an analogy between the practices on carbon capture and storage in Alberta and Nigeria. This comparison is needed because Alberta already has a legal and regulatory framework for carbon capture and storage. Thus, the comparison will set the stage for making a case for the development of an adequate legal framework for carbon capture and storage in Nigeria. Also, an analysis of the legal and regulatory framework on carbon capture and storage in Alberta will be conducted to identify practical insights that Nigeria could rely on to develop its legal framework. Additionally, to achieve the goal of my research project, I will adopt the use of a literature review, doctrinal research, and analytical methodology in addressing my research questions. These questions illustrate four legal issues, namely: the property, regulatory, liability, and accountability issues associated with the use of carbon capture and storage.

2. ANNOTATED BIBLIOGRAPHY

SECONDARY MATERIAL: BOOKS

Booth, Wayne C et al, *The Craft of Research*, 4th ed (Chicago: The University of Chicago Press, 2016).

The central purpose of this book is to provide the information needed to serve as a guide for researchers when writing a research project. The authors who are Professors of English Language argue that the maintenance of a clear structure when writing a research project is an essential requirement every researcher must possess. This statement was made because the authors believe that the central focus of researchers should be in facilitating ease of comprehension for their readers. Additionally, the authors also identified logical ways to be followed in making arguments in a research essay. This book is essential for my research project because it serves as a guide in structuring my paper and in preparing and writing my arguments.

Metz, Bert et al, *IPCC Special Report on Carbon Dioxide Capture and Storage*, ed (New York: Cambridge University Press, 2005).

This book contains a special report on carbon capture and storage by the Intergovernmental Panel on Climate Change. It was prepared with the primary aim to serve as a source from which a researcher can extract all the information necessary in understanding carbon capture and storage. This assertion is evident in the comprehensiveness of the information on carbon capture and storage in this book. I also noticed that various articles had cited it. The authors who are experts, qualified researchers and members of Non-Governmental Organizations from different countries, divided the book into two major phases: the guide for policymakers, and a summary of the technicalities associated with the use of carbon capture. They further concluded that the implementation of carbon capture and storage was indeed feasible.

Although this book contains a wide range of information that is not within the focus of my research paper, it remains a relevant source for my research project. This statement is true because I will be relying on it to provide a general overview of carbon capture and storage. While this description will serve as a background to chapter two of my research project, it is also a means to ensure the relatability of the topic to my audience.

SECONDARY MATERIAL: BOOK CHAPTERS

Krupa, Henry J, “The Legal Framework for Carbon Capture and Storage in Canada” in Ian Havercroft, Richard Macrory & Richard B Stewart, eds, *Carbon Capture and Storage: Emerging Legal and Regulatory Issues* (United Kingdom: Hart Publishing Ltd, 2011).

In a bid to ascertain whether there are shortcomings on carbon capture and storage, this book chapter focused on carrying out a critical review of the existing legal framework for carbon capture and storage in the provinces of Canada. The author, who is an energy and environmental counsel with a Canadian law background, argues that the silence on the issues

of regulation and liability is a common weakness with the provinces. He further recognizes the length to which Alberta has gone to make provisions in its laws to address these issues. I believe this book chapter will be necessary for chapter two of my research project. This averment is because it serves as a means of showing the development of research on carbon capture and storage in Alberta. Further, the section on “the regulation of greenhouse gas emissions” in this book chapter is also a necessity for giving effect to the development of chapter one of my research project, which focuses on describing carbon emissions and its impact on the environment.

SECONDARY MATERIAL: ARTICLES

Anastassia, M, O Fredrick & W Malcolm, “The Future of Carbon Capture and Storage (CCS) in Nigeria” (2009) 4:3 Sci World J 1.

In identifying potential storage opportunities for carbon emissions in Nigeria, this article focused on analyzing the use of the enhanced oil and gas recovery method. Therefore, the authors argued that the adoption of the enhanced oil recovery method provides a platform through which Nigeria could avoid the financial barriers it will face in the use of carbon capture and storage. Although the authors’ background in energy services is Canadian, one of the authors happens to be a Nigerian. This article represents one of the few writings on carbon capture and storage in Nigeria. Therefore, a description of this article will be necessary when discussing the existing scholarships on carbon capture and storage in chapter two of my research project.

Bankes, Nigel, Jenette Poschwatta & E Mitchell Shier, “The Legal Framework for Carbon Capture and Storage in Alberta” (2008) 45:3 Alta L Rev 585.

The central focus of this article is to identify and examine the legal issues associated with the use of carbon capture and storage. For this purpose, the authors identified four legal issues and provided recommendations for their development. These issues pertain to matters arising from the use of properties in storing carbon emissions, the regulation of carbon capture and storage activities and the liability, and accountability issues that may arise from the use of carbon capture and storage in Alberta. After identifying these issues, the authors who possess an excellent background in law argued that the settling of these issues remains a necessity in ensuring that a comprehensive legal framework for carbon capture and storage is in place in Alberta. This article is of great importance to my research because it is from it that my research questions and claim were generated.

Galadima, A & ZN Garba, “Carbon Capture and Storage (CCS) in Nigeria: Fundamental Science and Potential Implementation Risks” (2008) 3:2 Sci World J 95.

Similar to the article by Anastassia, Fredrick, and Malcolm on “The Future of Carbon Capture and Storage (CCS) in Nigeria,” this article centers on the economic challenges associated with the use of carbon capture and storage in Nigeria. The authors, with an educational background in chemistry from a Nigerian university, went further to argue that the potential sites for storing carbon emissions in Nigeria indicate tendencies for leakages and may constitute a problem to

the environment. Additionally, the authors advocate the need for environmental policies to curtail the adverse effects posed by the use of carbon capture and storage.

While this article is another representation of the development of writings on carbon capture and storage in Nigeria, it seems that the views of the authors in this article contrast with that of Ojo and Tse, who believe that Nigeria has excellent storage sites for storing carbon emissions. Thus, this article is essential to my research because it will contribute to the development of chapter two. It will also serve as a way to highlight the differences in the views of authors on carbon capture and storage.

Ingelson, Allan & Chilenye Nwapi, “Environmental Impact Assessment Process for Oil, Gas and Mining Projects in Nigeria: A Critical Analysis” (2014) 10:1 L Env't & Dev J 3.

This article focuses on describing the history, evolution, development, and governance of oil and gas in Nigeria with a particular focus on examining the procedures involved in conducting environmental impact assessment for oil and gas activities. After highlighting and reviewing the processes involved in an environmental impact assessment, the authors emphasized the importance of an environmental impact assessment activity in ensuring public safety and environmental protection. The authors who are reputable members of the Canadian Institute of Resources Law concluded that the enhancement of the skills of the agencies regulating environmental impact assessment in Nigeria is required to ensure the smooth running of the activity.

This article is essential for my research project because my research on the laws on carbon capture and storage in Alberta identified the silence on the need to carry out an environmental impact assessment. Thus, since I intend to analyze the laws on carbon capture and storage in Alberta to identify weaknesses that Nigeria can either avoid or build on when making recommendations in chapter five, I believe this article would be of great help in achieving this goal. That is, this article will be an excellent source I can rely on in recommending that Nigeria should include the need for an environmental impact assessment for carbon capture and storage activities. This inclusion is of importance because the use of carbon capture and storage in Nigeria is relatively new when compared to Alberta.

Massicotte, Michael G, Alan L Ross & Chidinma B Thompson, “The Changing Legislation and Regulation of Carbon Capture and Storage: Impacts on Purpose, Policy, and Projects” (2011) 49:2 Alta L Rev 305.

Although the focus of this paper is similar to the position expressed by Bankes, Poschwatta, and Shier in their article on "The Legal Framework for Carbon Capture and Storage in Alberta," this paper further concentrated on highlighting the history and evolution of the legal and regulatory framework for carbon capture and storage in Alberta. The authors who are licensed practitioners at Borden Ladner Gervais LLP, a reputable law firm in Calgary, adopted the use of a comparative law methodology to draw an analogy between the legislations on carbon capture and storage in Alberta with those of other jurisdictions. They concluded by stating that some gaps required attention in the regulatory framework of carbon capture and storage in Alberta.

I find this paper to be useful for my research project in various ways. Firstly, it is one of the writings on carbon capture and storage in Alberta and, as such, will be needed for the development of chapter two. Secondly, it is an excellent source through which I can become conversant with the relevant laws on carbon capture and storage. Therefore, I will be able to conduct the doctrinal research and analysis proposed by my research project. Finally, this paper provides answers to some of my research questions. For example, it expressly makes provisions for the assumption of liability for carbon capture and storage projects in Alberta.

Ojo, Ajoke Celinah & Akaha Celestine Tse, “Geological Characterisation of Depleted Oil and Gas Reservoirs for Carbon Sequestration Potentials in a Field in the Niger Delta, Nigeria” (2016) 20:1 J Appl Sci & Envntl Manag 45.

This article focused on evaluating and identifying potential geological storage for carbon emissions in Nigeria. In this regard, the authors adopted the use of a case study methodology in examining the storage capacity of fifteen oil wells and four reservoirs in the Niger Delta region of Nigeria. After proper scrutiny of the selected oil wells and reservoirs, the authors with an educational background in geology at the University of Port Harcourt in Nigeria concluded that the reservoirs demonstrated excellent capacities for storing carbon emissions. This article is crucial to my research as it would be of great help to show the writings on carbon capture and storage in Nigeria. Also, because it provides a general description of how carbon emissions are significant contributors to climate change, it will serve as an excellent source of reference in providing a background for the chapter one of my research project from the Nigerian perspective.

Randolph, Justus J, “A Guide to Writing the Dissertation Literature Review” (2009) 14:13 Pract Asses, Res & Eval 1, online: <pareonline.net/getvn.asp?v=14&n=13> [perma.cc/MD7U-C79W].

In this article, Randolph focused on identifying the basic requirements needed to write a literature review. With a background in education research, the author, a Professor of Education at Mercer University, identified coverage, focus, goal, perspective, audience, and organization as the things a researcher must have in mind when carrying out a literature review. I believe this article is of immense importance because the use of a literature review is one of the methodologies I intend to adopt in developing my research project. This article will, therefore, serve as a guide in ensuring that chapter two of my project reflects the essentials required in a literature review.

Reitz, John C, “How To Do Comparative Law” (1998) 46:4 Am J Comp L 617.

This article focused on providing a structured guide on how to use a comparative law methodology. The author, who is the director of the American Society of Comparative Law, argued that there are potential benefits inhibited in the use of a comparative law methodology to legal scholarship. He further identified nine principles that a comparatist must be conversant with to carry out a successful comparison of legal systems. Since I will be adopting the use of comparative analysis, I believe this article is a necessity for my research because it provides the steps needed to carry out a comparative study. It also indicated how a comparative

scholarship should be organized alongside making provisions for ways to make recommendations without being disrespectful.

Siems, Mathias, “Malicious Legal Transplants” (2018) 38:1 LS 103.

This article concentrated on describing the term “malicious legal transplant,” alongside identifying instances where proposed legal transplants could become malicious. The author, a renowned Professor of Law and a research associate at the International Academy of Comparative Law, identified the act of comparing legal systems as an excellent means to search for a better law. He, however, argued that the incorporation of certain elements might render this comparison activity harmful. To this end, the author outlined practical ways to avoid malicious legal transplants. Similar to Reitz’s article on “How To Do Comparative Law,” I believe this article is essential to serve as a guide in ensuring that my recommendations do not reflect elements of imposition or forcefulness.

SECONDARY MATERIAL: ELECTRONIC SOURCES

Bankes, Nigel, “Legal Issues Associated With the Adoption of Commercial Scale CCS Projects” (10 November 2008) at 1-32, online (pdf): *Pembina Institute* <www.pembina.org/reports/ccs-discuss-legal.pdf> [perma.cc/UQR4-HGBT].

In comparison with the article by this author and two others on "The Legal Framework for Carbon Capture and Storage in Alberta," this article identifies the legal issues associated with the use of carbon capture and storage but concentrated on explaining the property and regulatory issues. The author, a renowned professor at the University of Calgary, examined the challenges a carbon capture and storage operator may face as a result of the uncertainties of laws in Alberta on the issues identified. After the examination of the potential challenges, the author advocated the need for the government to assume responsibilities in settling these issues.

Although some of the representations in this article are outdated, for example, the Energy Resources Conservation Board, presented as the regulator in charge of natural resources in Alberta, has been replaced by the Alberta Energy Regulator, this article remains relevant to my research project. This assertion is because this article is an excellent source for understanding the use of properties for carbon capture and storage in Alberta. Further, this article will help in providing answers to some of my research questions that portray the property and regulatory issues associated with the use of carbon capture and storage in Alberta. This provision will, in turn, contribute to the development of chapter three of my research project.

Havercroft, Ian & Richard Macrory, “Legal Liability and Carbon Capture and Storage: A Comparative Perspective” (October 2014) at 1-56, online (pdf): *Global CCS Institute* <www.globalccsinstitute.com/archive/hub/publications/179798/legal-liability-carbon-capture-storage-comparative-perspective.pdf>[perma.cc/887G-2J9T].

With the use of a comparative analysis methodology, this article reviewed the issue of legal liability arising from the use of carbon capture and storage in three common law jurisdictions, namely: Alberta, United Kingdom, and Australia. In expounding the term legal liability, the

authors discussed it from the civil, administrative, and emissions trading aspect of it. The authors, with an educational background in environmental law and immense research interest in carbon capture and storage, argued that these aspects of legal liability are what every jurisdiction seeking to adopt the use of carbon capture and storage should address. This article is of importance to my research project because it broadens my understanding of the liability issues that the use of carbon capture and storage may pose. It also touches on the accountability issues arising from the use of carbon capture and storage that chapter three of my research project seeks to describe from Alberta's perspective.

Kaplinsky, Eran & David Percy, "A Guide to Property Rights in Alberta" (last visited 12 December 2019) at 1-30, online (pdf): *Alberta Land Institute* <propertyrightsguide.ca/assets/a-guide-to-property-rights-in-alberta.pdf>[perma.cc/3JSY-FLTA].

The central theme of this article is to describe and examine property rights in Alberta to serve as a guide for learning and knowledge enhancement to researchers. Thus, while being descriptive, the authors who are Professors of Law with a focus on property law and construction law, identified three segments under which property rights should be discussed. These segments include ownership of land, expropriation of property rights, and the legislative protection of property rights. This article is of great importance for my research project because it is a source from which I can understand the ownership of properties regime in Alberta, which is an essential skill for the development of some of my research questions in chapter three. In particular, the article talks about subsurface rights, which is a topic that has been repeatedly highlighted in various scholarly articles on carbon capture and storage when discussing property issues. To this end, I believe this article will facilitate my understanding in this area.

Mikunda, Tom, "Learning From International CCS Policy and Regulatory Developments: Insights From Alberta" (9 April 2014) at 1-32, online (pdf): *CATO* <www.co2-cato.org/publications/library1/ccs-in-alberta>[perma.cc/VDR3-QWW4].

In this article, the legislations and regulatory framework for carbon capture and storage in Alberta were reviewed to draw possible lessons for the development of the European Union's legal framework. For this purpose, the author highlighted the link between carbon emissions and the development of carbon capture and storage. He further emphasized on the liability issues arising from the use of carbon capture and storage, as well as the approval processes involved in the use of carbon capture and storage in Alberta. After conducting the review, the author, whose interest as an energy policy consultant is on carbon capture and storage, and geothermal technologies, concluded that the provincial government of Alberta indicates exceptional financial support and commitment to the development of carbon capture and storage when compared to the European Union. He further commented on the structure of the liability policies put in place for carbon capture and storage in Alberta.

This article proves useful to my research project in various ways. Firstly, by linking the carbon emissions profile in Alberta as the reason for the development and use of carbon capture and storage, this article becomes useful in the development of the introductory part of chapter two because I intend to describe this fact. Secondly, by identifying legislation governing the use of carbon capture and storage in Alberta, this article becomes useful in enhancing the use of the

doctrinal research and analytical methodology to extracting the answers to my research questions. Finally, this article also addresses some of the issues that chapter three of my research project intends to describe. A good example is the regulatory aspect of carbon capture and storage in Alberta.

Sansom, Jeff, “A Regulatory Perspective on Carbon Capture and Storage in Alberta” (15 February 2005), online: *University of Alberta* <www.ualberta.ca/business/centres/carmen/environment/~media/692A7D09985944F0B3BF7A531D8C332E.ashx> [perma.cc/9YAD-BV9V].

This paper carried out an analysis of existing laws in Alberta with particular emphasis on the oil and gas sector, to identify those that could constitute a regulatory framework for the use of carbon capture and storage. After proper scrutiny of the laws, the author concluded that the laws require further development to accommodate the use of carbon capture and storage in its entirety.

Although my findings show that the author does not have a background in law that would have thoroughly equipped him with the necessities for this research activity, I believe this paper is relevant for my research project. This is because the article is one of the writings on carbon capture and storage in Alberta that will be useful for the development of chapter two. Further, the analysis conducted in this paper is similar to the research activity I intend to carry out in chapter four as a way to make a case for the development of carbon capture and storage in Nigeria. Thus, I could adopt this structure as a guide to my reasoning. Additionally, because this planned research activity is tasking, this paper, by emphasizing on the laws in the oil and gas sector, becomes useful in directing me to a good starting point for the analysis.

Sawyer, Dave et al, “Carbon Capture and Storage- The Environmental and Economic Case and Challenges” (October 2008) at 1-26, online (pdf): *Pembina Institute* <www.pembina.org/reports/ccs-discuss-environment-economic-all.pdf> [perma.cc/TAK8-NEP9].

The primary goal of this article is to examine the economic challenges associated with the implementation of carbon capture and storage in Canada, alongside the potential benefits it inhibits in the reduction of greenhouse gas emissions. While the article was silent as to the authors’ biography, my findings indicate that Dave Sawyer is an environmental economist in Canada. Thus, the authors, after engaging in the proper examination of the above goals, concluded that carbon capture and storage had the potentials to reduce greenhouse gases in Canada. They further highlighted specific economic and environmental challenges that may arise from the use of carbon capture and storage, which Canada must endeavor to address.

Although, when compared to the other articles cited, one can say that this paper has a broader scope because it focuses on Canada as a whole, I believe it is relevant to my research project. This claim is because carbon emission is one of the components of greenhouse gas emissions, and one of the things I intend to show in my paper is “why” carbon capture and storage came into being. Thus, I believe this article is an excellent start to link the innovation of carbon capture and storage with carbon emissions from the Canadian perspective. Also, since I already

indicated an article by Tom Mikunda that touches on this area, I believe the use of this article serves as an excellent way to triangulate my data.

The Steering Committee of the Carbon Capture and Storage (CCS) Regulatory Framework Assessment, “Carbon Capture & Storage: Summary Report of the Regulatory Framework Assessment” (21 November 2012) at 1-118, online (pdf): *Alberta* <open.alberta.ca/dataset/5483a064-1ec8-466e-a330-19d2253e5807/resource/ecab392b-4757-4351-a157-9d5aebeced0/download/6259895-2013-carbon-capture-storage-summary-report.pdf> [perma.cc/V82A-XHKU].

This report centers on examining the stages involved in the use of carbon capture and storage and making recommendations for each. The committee, put together by the provincial government of Alberta, consisted of experts and Non-Governmental Organizations who concluded that carbon capture and storage could serve as an efficient means to simultaneously engage in energy production and reduction of carbon emissions if the recommendations made were incorporated. This article is of importance for my research project because I intend to make use of these recommendations when analyzing the legal and regulatory framework for carbon capture and storage in Alberta in chapter three. I also plan to identify and propose recommendations from this report that could be accommodated by the legal system in Nigeria when discussing my conclusions and recommendations in chapter five. Finally, this article represents one of the writings on carbon capture and storage in Alberta, needed in developing my chapter two.

UNIVERSITY OF CALGARY
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LAW 703: GRADUATE SEMINAR IN LEGAL RESEARCH AND METHODOLOGY

***ENSURING ENVIRONMENTAL JUSTICE IN NIGERIA THROUGH NEXT
GENERATION ENVIRONMENTAL ASSESSMENT OF OIL AND GAS PROJECTS***

(ANNOTATED BIBLIOGRAPHY)

(IN PROGRESS)

BY

**KENNETH UGWUOKPE SUNDAY
(30095088)**

DECEMBER 20, 2019.

INSTRUCTOR: PROFESSOR JONNETTE WATSON HAMILTON.

INTRODUCTION

This is an annotated bibliography for my research LL.M thesis at the University of Calgary. My research seeks to evaluate the extent to which Nigeria's current environmental impact assessment law and practice (EIAL) could be improved by adopting the emerging concept of next generation environmental assessment (NGEA). This provides only a preliminary list of relevant primary and secondary materials. In other words, it is a work in progress.

PRIMARY SOURCES

Legislation

Environmental Impact Assessment Act, 1992, Laws of the Federation of Nigeria 2004, Cap. E.12.
Impact Assessment Act, S.C. 2019, C 28.

Regulations

The Environmental Guidelines and Standards for the Petroleum Industry in Nigeria (Lagos: Department of Petroleum Resources, 1991, Revised in 2002).

Jurisprudence

Nigerian

Baytide Nigeria Limited v Aderinokun [2013] LPELR-19956 (CA).

Canada

Tsilhqot'in Nation v British Columbia 2014 SCC 44, [2014] 2 S.C.R. 256

SECONDARY SOURCES

Monographs

Holder, Jane & Donald McGillivray, *Taking Stock of Environmental Assessment: Law, Policy and Practice* (New York: Routledge-Cavendish, 2007).

Jane Holder is a Professor of environmental law at the University College London. Her research interests include regulatory mechanisms, particularly environmental assessment. Donald McGillivray on the other hand, is a Professor of environmental law at the University of Sussex Law School with research interests in land use and environmental regulation. Both are editors of

the book which is a collection of works from American and European environmental assessment experts. By a reflective and contextual approach, the book explored not only the key features of modern environmental assessment but also its successes and failures since its beginning in 1969. One of the defining themes of the book is that precautionary principle should play a central role in assessment decisions, and that sustainable development ought to be the central aim of every environmental assessment decision. It argues for an assessment model in which there is a frank and transparent consideration of the full range of relevant impacts and trade-offs. It maintains that as important as it may be, the best measure of any assessment is not the appraisal of the net benefits of individual decisions or issues but rather a sound and honest consideration of the full range of burdens and benefits of their broadest alternatives. The primary target audience is the academic community. This work will aid me in my argument that environmental assessment in Nigeria should not be done only at the project level, aimed merely at negative impacts mitigation but must involve a robust and transparent considerations of available alternatives.

Articles

Bodde, Maartje et al, “Strategies for Dealing with Uncertainties in Strategic Environmental Assessment: An Analytical Framework Illustrated with Case Studies from The Netherlands” (2018) MDPI 1.

The authors are experts in energy transition, spatial planning, sustainable development and sustainability assessment. The major thesis of the work is that the only way to sustain the credibility and value of strategic environmental assessment as a planning tool for mitigation or avoidance of negative environmental effects of proposed projects or policies, is by developing strategies for effective identification, prevention or mitigation of the uncertainties associated with ex ante decisions about projects or proposals. By adopting a combination of a review of literature on environmental uncertainties about decisions on proposed activities and case studies conducted on spatial planning in the Netherlands, the authors were able to integrate theory and practice on the subject. The primary target audience is the academic community, but it also has a lot of insights for policy makers. The significance of the work to my thesis is that it will aid me in giving due attention to the question of environmental uncertainties of environmental impact assessment in my analysis.

Bonda, Alan, Angus Morrison-Saunders & Jenny Pope, “Sustainability Assessment: The State of the Art” (2012) 30:1 Impact Assessment and Project Appraisal 53.

Mr. Alan Bonda is a Senior lecturer in environmental management at the University of East Anglia with over 20 years' experience in environmental impact assessment. Dr Jenny Pope is a member of the Board of the Environmental Protection Authority of Western Australia and is also a Senior lecturer in environmental management at Edith Cowan University in Australia. Angus Morrison-Saunders is Professor of Environmental Management at Edith Cowan University, Australia and a Professor of environmental sciences and management at North West University, South Africa, with expertise in environmental impact assessment and sustainability. The authors set out to critically evaluate the present state of sustainability assessment, by identifying its strengths and weaknesses and examining the opportunities and threats to its continuing role as a planning, implementation and monitoring tool in the sphere of socio-ecological harmony. They argue that good sustainability assessment must move beyond mere minimization of negative effects of

proposals and take positive steps towards achieving greater communal stability and ecological integrity. According to them, such a model must include a fully collaborative and participatory system-based and integrated assessment of the immediate and long-term social, economic and environmental effects of both the proposal and its broadest alternatives. The authors developed the thesis of their work through a combination of a literature review of theoretical papers and few case study reports published in England, Western Australia, South Africa and Canada. Their target audience is primarily the academic community. Their conceptualization of what a good sustainability assessment should look like, is relevant to my work.

Bonda, Alan, et al, “A Contribution to the Conceptualisation of Quality in Impact Assessment” (2017) Environmental Impact Assessment Review 1.

Mr. Alan Bonda is a Senior lecturer in environmental management at the University of East Anglia with over 20 years' experience in environmental impact assessment. The other six co-authors also have expertise in environmental impact assessment. The main thesis of the work is that there will be greater improvement in understandings and quality of research if researchers acknowledge the limitations imposed by their disparate notions and dimensions of quality, and clarify the particular dimension employed in their works such as obtains in various types of impact assessment, including environmental impact assessment, strategic environmental assessment, health impact assessment and social impact assessment. They also argue that, for greater understanding of research both by researchers and their target audience, the inherent distinction between quality and effectiveness should be clarified in all impact assessment research. The methodology used by the authors was that of literature review of relevant theoretical papers on quality in impact assessment, also drawing significantly on secondary materials on conceptualization of quality and quality management in education, business and health care. The work has academic community as its target audience and will be relevant to my distinguishing between quality and effectiveness in my analysis.

Gibson, Robert B., “Avoiding Sustainability Trade-offs in Environmental Assessment” (2013) 31:1 Impact Assessment and Project Appraisal 1, online: <<https://www.tandfonline.com/loi/tiap20>>.

Robert B. Gibson is a Professor in the department of environmental and resources studies of the University of Waterloo, with expertise in environmental planning, assessment and regulation in Canada. The central theme of this work is that, in assessment of proposals for purposes of sustainability outcomes, trade-offs, whether procedural or substantive must be avoided unless they are the best available options. The author arrived at his conclusions through a retroactive analysis of two completed assessments in which major trade-offs were averted through full considerations of the purposes of the proposals and their broadest alternatives and trade-offs, in processes that enabled full involvement of all relevant stakeholders. The academic community is the primary target audience for the work which is relevant to any work about achieving sustainability in an oil and gas dependent economy like Nigeria's.

Jenkins, Bryan, Dr David Annandale & Dr Angus Morrison-Saunders, “The evolution of a sustainability assessment strategy for Western Australia” (2003) 20 EPLJ 56.

Professor Bryan Jenkins is an Australian environmental planner with a doctoral degree in environmental planning from the Stanford University, USA. David Annandale and Professor Angus Morrison-Saunders have both expertise in environmental management and sustainability. The authors argue that although environmental impact assessment in Western Australia has been largely successful, the process has failed to consider social and economic issues. The article maintains that the solution lies in extending the proven capabilities of environmental impact assessment through a comprehensive system that will allow the incorporation of socio-economic and sustainability issues in the assessment process. Through comparative accounts of institutional and legal positions in Western Australia viz –a- viz other states in Australia and Australia viz –a- viz Canada, the authors argue for a sustainability framework that will engender proactive rather retroactive considerations of possible negative and positive impacts of proposals and policies and their broadest alternatives. This article which has both the academic community and policy makers as its target audience will be relevant to my analysis of transition to the current Nigeria’s environmental impact assessment law to next generation environmental assessment framework.

Laedre, Ola et al, “Determining Sustainability Impact Assessment Indicators” (2015) Impact Assessment and Project Appraisal 33:2 9.

Ola Laedre is a professor in the department of civil and environmental engineering at the Norwegian University of Science and Technology. Ola Laedre, Tore Haavaldsen, Rolf André Bohne, James Kallaos and Jardar Lohne all have research interests in environmental management and sustainability. The central argument of the work is that assigning indicators to the strategic, tactical and operational levels and to any of the economic, social or environmental dimensions of sustainability impact assessment will increase its effectiveness as a planning and management tool. The authors also highlight the three challenges that confront the use of indicators in sustainability impact assessment. These, the authors argue include lack of objectivity in weighting the indicators and in the methodology chosen to weight the indicators. The third challenge is that values that are monetizable usually overshadow those that are not, resulting in economic considerations being given priority over values such as air and water quality. The work further maintains that given the interdependent relationships between the economy, environment and society, every sustainability assessment of economic activities must be carried out within the context of these multidimensional relationships with the sole aim of guaranteeing balanced assessment without jeopardising merited considerations of important impacts. Academic community is the primary target audience and the work will be significant to me in establishing that environmental assessment of oil and gas projects in Nigeria should consider not only the negative economic and environmental consequences of such projects but the whole range of interests that sustain balanced societal living both in short and long terms.

Macintosh, Andrew, “Best Practice Environmental Impact Assessment: A Model Framework for Australia” (2010) 69:4 Australian Journal of Public Administration 401.

Professor Andrew Macintosh is the Associate Dean (Research) at the ANU College of Law and is a leading light in environmental law and policy in Australia with cross-disciplinary research that involves the application of legal, economic and political science methods to the study of

environmental policy problems and processes. The central argument of the article is that, to improve the quality and cost-effectiveness of environmental impact assessment, there is need to look beyond project-based assessments to strategic planning with due attention paid to interjurisdictional coordination between or among all regulatory stakeholders in Australia to avoid regulatory duplication. Through doctrinal and analytical reviews of practical and theoretical purposes of environmental impact assessment, the author suggests thirteen best practice principles to guide development of environmental impact assessment policy in Australia. He also analyses the operationalization of the suggested principles. The primary audience is the academic community. The article will be relevant to my thesis particularly as Nigeria is also a multi-jurisdictional federation with the federal and state governments sharing concurrent powers over environmental issues requiring coordination.

Pope, Jenny & William Grace, “Sustainability Assessment in Context _ Issues of Process, Policy and Governance” (2006) 8:3 *Journal of Environmental Assessment Policy and Management* 373.

Dr Jenny Pope is a member of the Board of the Environmental Protection Authority of Western Australia. William Grace is an Adjunct Professor in the Australian Urban Design Research Centre of the University of Western Australia. Based on an inductive case study (empirical enquiry) of three sustainability assessments of project proposals carried out in Western Australia, the authors identify and recommend three interlinked imperatives of good assessment process namely, the question which determines the assessment process, the influence on the final outcome, and the underlying reasons for sustainability decision-making. Accordingly, they argue that any sustainability assessment based on universal criteria, must consider the relationship between the sustainability assessment process and its wider context as an inevitable socio-ecological frame of reference. They maintain that the relevant context will generally comprise institutional arrangements, policy framework, relevant previous decisions as well as social, physical, political, cultural and economic peculiarities of a given jurisdiction. Given the central theme of the work, inductive case study was an appropriate methodology. This work has the academic community as its primary audience. It is relevant to my research as next generation environmental assessment also provides generic norm frame of analysis within which Nigeria’s environmental impact assessment law will be considered. Accordingly, in my research, Nigeria’s socio-ecological context must command my attention.

Pope, Jenny Angus Morrison-Saunders & David Annandale, “Applying Sustainability Assessment Models” (2005) 23:4 *Impact Assessment and Project Appraisal* 293.

Dr Jenny Pope, David Annandale and Professor Angus Morrison-Saunders all have expertise in environmental management and sustainability. The authors applied the three models of environmental impact assessment, strategic environmental assessment and assessment for sustainability, to a single project to evaluate their core differences and commonalities. From the comparative evaluation and application of these models to an Australian resource proposal — the Gorgon gas development — the authors argue that the result of their case study shows that assessment for sustainability delivers the most optimal net benefits in terms of accommodation of social, economic and environmental objectives that informed the assessments. The article is primarily meant for the academic community and will aid me in making a case for a transition from environmental impact assessment to next generation environmental assessment in Nigeria.

Pope, Jenny, David Annandale & Angus Morrison-Saunders, "Conceptualising Sustainability Assessment" (2004) 24 Environmental Impact Assessment Review 595.

Dr Jenny Pope is a member of the Board of the Environmental Protection Authority of Western Australia. David Annandale holds a PhD in business policy (environmental regulation) from University of Western Australia and is a freelance consultant, dedicated to environmental and social safeguard issues and environmental capacity building. Angus Morrison-Saunders is Professor of Environmental Management at Edith Cowan University, with expertise in environmental impact assessment and sustainability. The main theme of the article is that for sustainability assessment to fulfil its destiny of meaningful contributions towards achieving sustainability, it must be well-defined, and its underlying principles clarified. After a reflective review of relevant literature and an analysis and classification of existing models of sustainability assessment and their respective limitations, the authors suggest a principles-based alternative model termed "assessment for sustainability". Reflective literature review method aided them in studying existing literature on environmental impact assessment and strategic environmental assessment and in analysing their inherent shortcomings. They therefore, argue for an improved sustainability assessment process which moves beyond the mere consideration of whether a project or proposal will contribute to or detract from sustainability target to a model with clearly principled sustainability as an overriding societal goal. The target audience for the article is primarily the academic community, but policy makers also have a lot to benefit from the insights provided by the work. The article will aid my evaluation of the extent to which Nigeria's environmental impact assessment law complies with the aspirational principles of next generation environmental assessment.

Sinclair, A. John & Alan P. Diduck, "Reconceptualizing public participation in environmental assessment as EA civics" (2016) Environmental Impact Assessment Review 1 Online: <<http://dx.doi.org/10.1016/j.eiar.2016.03.009>>.

Dr. John Sinclair is a Professor and Director of the Natural Resources Institute of the University of Manitoba in Winnipeg. He teaches and researches on issues of environmental assessment and governance with a bias for themes such as sustainability and civic engagement in environmental and resources governance. On his part, Dr. Alan P. Diduck is a Professor in the department of environmental studies and sciences and an Acting Associate Dean of science at the University of Winnipeg, with expertise in environmental law, environmental assessment, community engagement and social aspects of sustainability. After identifying the inadequacies of the current environmental assessment regime in Canada as elsewhere, which focuses unduly on power sharing as the denominator of effective public participation, the authors argue for a novel next generation participation process which reconceptualizes public participation as environmental an assessment civic that relies on active citizens base, adaptive learning and collaborative engagement. According to the authors, in order to achieve qualitative and credible assessment outcomes, next generation participation will need to ensure active involvement of all stakeholders including members of the public, relevant authorities and projects proponents in the assessment process. One of the core features of their formulation is that next generation participation processes is applicable throughout the entire assessment cycle and its effectiveness is continuously reinforced through institutionalised feedbacks. The authors seek to achieve their reconceptualization agenda through

a combination of integrated literature review and interdisciplinary methodology. By identifying undue focus on power sharing as the bane of current public participation regime, through integrated review of literature and an interdisciplinary assimilation of insights from “deliberative democracy, collaborative rationality and environmental justice”, the authors were able to formulate a civics-orientated public participation framework that relies on collaborative planning and implementation and interdisciplinary knowledge to achieve sustainability and human and ecological harmony. The article has the academic community as its direct audience. The work is important to my thesis because the theme of the work, next generation participation process is a subset of the theme of my thesis, next generation environmental assessment. Also, the methodology of interdisciplinary assimilation of insights from other areas of knowledge such as ecology, social psychology and political science and the nuanced extrapolation of ideas from existing models of “action civics” and “civics approach to environmental governance”, to environmental assessment participation., will provide some guide for me in my own research.

Yusuf R. O., S. E. Agarry & A. O. Durojaiye, “Environmental impact Assessment Challenge in Nigeria” (2006) 1:1 Journal of Environmental Research and Policies 75.

Yusuf R.O. holds a PhD in environmental engineering from University of Technology Malaysia and is currently a lecturer in the department of chemical engineering at the University of Ilorin in Nigeria. S. E. Agarry and A.O. Durojaive are environmental services researchers. Through a review of 319 projects submitted to Nigeria’s Ministry of Environment between 1995 and 2003, the authors argue that environmental impact assessment in Nigeria is fraught with many challenges including being carried out only at project level and being spatially and temporally narrow in scale as well as lacking in effective follow-up and monitoring. Their approach of archival and data review was appropriate and enabled the authors to determine the nature and extent of challenges of environmental impact assessment in Nigeria. The authors recommend greater institutional commitment to monitoring and follow-up particularly regarding projects outside oil and gas sector. The target audience for the work is primarily the academic community. The work is significant to my thesis especially concerning the common challenges of environmental impact assessment in Nigeria.

Study/Expert Reports/Comments

Gélinas, Johanne, et al, “Building Common Ground: A New Vision for Impact Assessment in Canada - The Final Report of the Expert Panel for the Review of Environmental Assessment Processes” (2017), online: <<https://www.canada.ca/content/dam/themes/environment/conservation/environmental-reviews/building-common-ground/building-common-ground.pdf>>.

Johanne Gélinas, Doug Horswill, Rod Northey and Renée Pelletier were all members of the four-member Expert Panel set up by the then federal Minister of Environment and Climate Change, Catherine McKenna on 15th of August, 2016, to review federal environmental assessment processes and make recommendations. This report contains their findings and recommendations. The main argument (recommendation) of the report was that sustainability should be the centre piece of a new Canadian assessment regime which should look beyond the bio-physical environment to focus on considerations of both likely positive and negative environmental, social, economic, health and cultural effects of a given project. As a result, the report recommended that the name of the new assessment process should be changed from “environmental assessment” to

“impact assessment” to reflect the broader socio-economic and cultural focus. The report also insisted that not only must assessment process guarantee that approved projects, plans and policies contribute to the overall environmental, social, economic, health and cultural well-being of the current and future generations, it must also be transparent, inclusive, collaborative, informed, and meaningful. In accordance with their terms of reference, the panel arrived at its findings and recommendations through extensive consultations with various stakeholders including Canadians, indigenous peoples, relevant non-governmental organizations, provinces, territories and relevant industry practitioners. The intended audience was Canadian policy makers particularly the Canadian federal government and the federal Minister of Environment and Climate Change. The report is significant to my thesis because both align in their conceptualization of environmental assessment as a multi-level, multi-institutional and collaborative tool for achieving sustainability.

Mendell, Anika, National Collaborating Centre for Healthy Public Policy, “Four Types of Impact Assessment Used in Canada” 2010) National Collaborating Centre for Healthy Public Policy Document, online: <www.ncchpp.ca>.

The author works with the National Collaborating Centre for Health Public Policy (NCCHPP). NCCHPP is a Centre funded by the Public Health Agency of Canada which seeks to improve Canadian health policy design and delivery by increasing public health expertise in Canada through the development, sharing and use of knowledge by Canadian public health stakeholders and/or actors. The author argues that there are four approaches to impact assessment in Canada, and that this proliferation has created confusion because the dividing lines between these approaches are usually thin. According to the author, these approaches are, Health Impact Assessment (HIA), Environmental Impact Assessment (EIA), Strategic Environmental Assessment (SEA) and Risk Assessment (RA). The major objective of the work is to clear up this confusion by delineating the thematic and methodological boundaries of the four variants of impact assessment available in Canada. The author seeks to achieve said clarification through a tabular and comparative evaluation of the nature and extent of the thematic reach and policy and operational framework of each of the four variants of impact assessment in use in Canada. The method adopted was appropriate to the research objectives. Unlike my thesis that is meant for my thesis supervisor, examiner and reader as its direct audience, this work is meant for public health practitioners and policy makers in Canada as its direct audience. The importance of this work to my thesis cannot be overemphasized. My thesis essentially seeks to evaluate the strengths and weaknesses of extant Nigeria’s environmental impact assessment law within the theoretical framework of next generation environmental assessment. The thematic and policy and operational delineation in Mendell’s work, will provide some insights for me when assessing how each of the four approaches to impact assessment relates substantively and procedurally to next generation environmental assessment. Next generation environmental assessment essentially covers all the four approaches to impact assessment available in Canada.

UNIVERSITY OF CALGARY
FACULTY OF LAW

LAW 703: GRADUATE SEMINAR IN LEGAL RESEARCH AND METHODOLOGY
ANNOTATED BIBLIOGRAPHY

BY MARYAM LAWAL
20 DECEMBER 2019

ANNOTATED BIBLIOGRAPHY

Description of LLM Thesis

In the wake of a rapidly growing global energy landscape, the Nigerian Government has committed to generating 30% of its total energy from renewable sources by 2030. This LLM thesis adopts a research methodology that aims to appreciate existing legal and institutional frameworks that operate to advance Nigeria's renewable energy transition goals. This research will then consider the extent to which Nigeria has adopted a Multi-Stakeholder Governance Model in its renewable energy transition legal and policy documents. This concept has been analyzed in the context of various terminologies such as Multi-Stakeholder Participation, Stakeholder Participation, Multi-Stakeholder Collaboration, Multi-Stakeholder Approach, etc. Despite the variance in terminologies, the ultimate goal projected by most writers is the advancement of an inclusive governance structure. This governance structure is significant because conventional governance models have failed to produce results for global challenges. The approach aims to ensure that the views of all persons whose interests will be affected by renewable energy development policies are factored into decision-making processes. This is because when individuals are included as active participants rather than passive recipients, laws, and policies are perceived as legitimate.

This research will proceed to develop a set of criteria for evaluating the democratic qualities of Multi-Stakeholder Governance using Habermas as a theoretical framework. This research will use the outcome of this evaluation to proffer recommendations for a comprehensive and effective Multi-Stakeholder Governance Framework for achieving Nigeria's Renewable energy transition goals. I have chosen to use the Habermas because the ideas postulated by Habermas in his landmark work titled the "Theory of Communicative Action" was developed in a time where

traditional authority was being challenged. His theory advances the notion of deliberative democracy. Under this notion, citizens are encouraged to contribute to governance beyond merely exercising voting powers but by the expression of individual concerns and ideas. Given the recognition of Habermas' work as functionalist rather than merely normative, various prominent scholars in different fields of study have since adopted the Communicative Action as a theoretical framework.

PRIMARY SOURCES: LEGISLATION

Constitution of the Federal Republic of Nigeria, 1999.

National Power Sector Reform Act, 2005.

TREATIES AND OTHER INTERNATIONAL AGREEMENTS

Paris Agreement is an Annex to the Report of the Conference of the parties on its twenty-first session, held in parties from 30 November to 13 December 2015--Addendum Part two: Action taken by the Conference of the Parties at its twenty-first session, 4 November 2016, UN Doc FCCC/CP/2015/Add.1, 55 ILM 740 (entered into force 29 January 2016) [Paris Agreement].

The Kyoto Protocol to the United Nations Framework Convention on Climate Change, December 1997, UN Doc FCCC/CP/1997/7/Add.1, 37 ILM 22 (entered into force 16 February 2005) [Kyoto Protocol].

United Nations Framework Convention on Climate Change, 9 May 1992, 1771 UNTS 107, 31 ILM 849 (entered into force 21 March 1994).

GOVERNMENT DOCUMENTS

Draft Rural Electrification Strategy and Plan.

Multi-Year Tariff Order.

National Adaptation Strategy and Plan of Action on Climate Change for Nigeria, 2012.

National Biofuel Policy and Incentives, 2007.

National Energy Policy, 2003.

National Renewable Energy and Energy Efficiency Policy, 2015.

Renewable Electricity Action Programme, 2006.

Renewable Electricity Policy Guidelines, 2006.

Renewable Energy Master Plan, 2012.

Roadmap for Power Sector Reform, 2013.

The National Economic Empowerment and Development Strategy, 2004.

The National Electric Power Policy, 2001.

SECONDARY SOURCES: BOOKS

Gleckman, Harris, *Multistakeholder Governance, and Democracy: A Global Challenge* (Abingdon, Oxon; New York, NY Routledge 2017).

This book examines the concept of multi-stakeholder governance in the context of structural limitations of contemporary multilateralism. The author recognizes the global acceptance of a paradigm shift from traditional governance models to a multi-stakeholder governance model. Also, the author states that proponents argue in favor of this governance model because of a perceived failure by intergovernmental bodies to address global challenges. The author raises concerns about the international communities' role in inadequately evaluating the democratic qualities of the multi-stakeholder governance model. The book explains trends that serve as drivers for a shift in global governance through the lens of twelve political and economic developments within the international political space. The book also considered the global

actors within the multi-stakeholder and multilateralism framework. The fifth chapter of the book examines the challenges that multi-stakeholder governance models pose, different from conventional governance. The content of this book acts as a double-edged sword, contributing to a holistic understanding of the concept of multi-stakeholder governance model by explaining its historical antecedents and challenges to global governance.

Habermas, Jürgen, *The Theory of Communicative Action, Volume One: Reason and the Rationalization of Society* (Boston: Beacon Press, 1984).

Habermas, Jürgen, *The Theory of Communicative Action, Volume Two: Reason and the Rationalization of Society* (Boston: Beacon Press, 1984).

The writings of Jürgen Habermas in his book, *The Theory of Communicative Action*, are widely acclaimed amongst contemporary scholars. The central theme of his theory rests on a distinction between cognitive-instrumental rationality and communicative rationality. For Habermas, communicative rationality evolves around rationality as a product of human communication. At the same time, Habermas addresses communicative rationality within the frames of society as a lifeworld and as a system. His theory advances the notion of deliberative democracy. Under this notion, citizens are encouraged to contribute to governance beyond merely exercising voting powers but through the expression of concerns and ideas. A system that acknowledges the concerns and ideas of its citizens, including minorities and vulnerable persons, fosters collaboration and decisions that integrate the perspectives of all citizens from all spheres of life. Habermas' work is recognized as functionalist rather than merely normative. His theory develops a concept of rationality that advances social theories in the context of unorthodox presuppositions in traditional sociology. Habermas introduces this theory to clarify the normative foundations of society. Habermas' theory works to challenge scholars and academic writers to examine values and norms beyond conventional techniques. The theory of

Communicative Action is important to my research because it serves as the basis for which deliberative democracy can contribute to policy implementation. Additionally, this will serve as a guide in developing a set of criteria for evaluating the democratic qualities of the concept of multi-stakeholder governance and participation.

Hemmati, Minu et al, *Multi-Stakeholder Processes for Governance and Sustainability: Beyond Deadlock and Conflict*, ed by Felix Dodds, (London: Earthscan Publications Ltd, 2002)

This book contributes to the literature on multi-stakeholder processes for governance and sustainability differently from other works of literature by recommending a framework for designing processes and implementation mechanisms. While most works of literature address the multi-stakeholder processes theoretically, this book seeks to produce practical solutions. The fundamental principles and strategies such as flexibility, equity, good governance, accountability, etc are explained in detail by the author. Summarily, the authors recommend that in designing a multi-stakeholder process, the following key points must be addressed; communication channel, stakeholder preparation, facilitation and organizational backup, group composition, goal setting, agenda-setting, issue identification, etc. This literature is significant because it addresses stakeholder participation from a practical perspective. Practical and solution-oriented works of literature contribute to research beyond mere theories and ideas. This literature contributes to my research because it creates strategies for the workability of concepts that are central to my research questions.

Shabani, Omid, *Democracy, Power, and Legitimacy: The Critical Theory of Jürgen Habermas* (Toronto: University of Toronto Press, 2003).

Omid Shabani critically appraises the theory of Jürgen Habermas in the context of Democracy, Power, and Legitimacy. The book begins by giving an account of Habermas' theory and traces

the historical and political underpinning of his philosophical ambitions. The book recognizes the shift from instrumental rationality to communicative rationality. It then goes on to examine Habermas' intersubjective mode of reasons in communicative interactions. Habermas emphasizes the strength of the linguistic turn, which embeds participation and reasoning. The relationship between the linguistic turn and innovation in social and political theories is also examined in greater detail. Most importantly, an entire chapter in this book is dedicated to critically examining the strength and weaknesses of the theory of communicative action. Specifically, Omid Shabani critiques the ideal of consensus building as an extension of communicative rationality. In Shabani's critique of Habermas' theory, he concludes that the importance attached to the ideal of consensus in communicative action should be watered down to avoid the theory's traditionalist approach. Shabani then goes on to recommend that the ideal of consensus be used as a procedurally. Shabani then translates Habermas' theory into a socio-political critique that conceptualizes democracy in advanced capitalism. This book is essential because Habermas' Theory of Communicative Action is a work of literature that may be challenging to understand. This book recognizes this difficulty and breaks down the concept of communicative actions. The author then analysis the languages and terminologies developed by the German author such as; "communicative action," "instrumental rationality", "purposive rationality", "lifeworld", "universal pragmatics", "linguistification" etc and explains them in more straightforward language for readers to comprehend quickly. Additionally, the content of this book contributes to a holistic understanding of Habermas' theory by explaining its historical antecedents and espousing its most prominent critique.

SECONDARY SOURCES: BOOK CHAPTER

Mallon, Karl, “An A to Z of Stakeholders” in Karl Mallon, eds, *Renewable Energy Policy, and Politics: A Handbook for Decision-Making* (London: Earthscan Publication Ltd, 2006).

Karl examines the relationship between stakeholder participation and renewable energy policies. Karl argues that stakeholder involvement is crucial to the implementation of renewable energy policies and achieving energy targets. This chapter begins by defining “stakeholders” and constructs a framework that identifies who should qualify as a stakeholder in renewable energy policies and decision-making processes. The chapter goes on to explain why certain persons should qualify as stakeholders based on the direct economic impact, indirect economic impacts, environmental, and social impacts of the implementation on the renewable energy policies of the respective interests of stakeholders. An essential aspect of this work of literature is the issue of stakeholder resources as a factor in measuring potential proponents and opponents of renewable energy development. Karl goes on to analyze and formulate engagement strategies that may foster successful participation outcomes and results. He also goes a step further by recommending ways to mitigate adverse outcomes. This work of literature is essential to my research because it establishes how the implementation of renewable policies can be fostered or stifled by stakeholders. It stresses the importance of engaging with stakeholders effectively. It identifies potential stakeholders such as citizens, companies, NGOs in three ways. He starts by examining how the interests of persons are affected by a project, persons identified as stakeholders by the media, and self-identifying stakeholders. This central theme in this literature revolves around how engaging stakeholders can be used to manage change and adaptation in the renewable energy space. Karl then examines how best to engage stakeholders, especially in dealing with sophisticated projects

such as the development of nuclear power plants. I have chosen to review this chapter in answering my research question because this work of literature is one of the few works of literature that examines stakeholder participation in the context of renewable energy development.

SECONDARY SOURCES: ARTICLES

Cherp, Aleh, Jewell Jessica & Goldthau, Andreas, “Governing Global Energy: Systems, Transitions, Complexity” (2011) 2:1 Global Policy 75.

According to the authors, the global energy system is riddled with multiple interconnected challenges, namely; global access to energy, energy security, and climate change. These challenges, if not addressed, urgently will have negative impacts on the transition of the global energy system to more efficient and cleaner sources. The article recognizes the complexity of global governance and the interdependence of energy systems spread across nations. The central theme in this article lies on the argument that effective global energy governance can be achieved through practical energy transition strategies and innovative responses to global energy challenges. In addressing the global challenges identified in this article, the global energy governance system must undergo structural changes to its policy integration on its energy mix, supply, and demand matrix across different levels of governance. The complexity of energy challenges also calls for a proliferation of a more inclusive governance system where actors are engaged as active participants. The proliferation occurs against the backdrop of legitimacy, transparency, and a solution-oriented approach to problems in a democratic setting. According to the authors, the interconnection of energy security, energy access, and climate change is central to achieving a successful reform of the global energy governance system. This article is essential to my research because it highlights the inherent challenges with the

global energy system. These challenges need to be taken into consideration in developing effective energy transition strategies. The article recognizes the importance of extensive consultation with actors as central to polycentric energy governance, which is crucial to my arguments on adopting a multi-stakeholder governance approach to energy transition goals.

Edomah, Norbest, Foulds, Chris & Jones, Aled, “Policy Making and Energy Infrastructure Change: A Nigerian Case Study of Energy Governance in the Electricity Sector” (2017) 102 Energy Policy 476.

This article examines policymaking in Nigeria, specifically within decision-making processes that impact on energy deployment, production, and distribution. It examines factors within and outside of Nigeria that affects governance within its energy sector. It also raises questions on the role of stakeholder participation in current policy decision processes. It finds that there is currently a deficiency in imbining stakeholder participation in the Nigerian energy industry. It notes that the decision-making processes adopted in energy production have consequences for the development of the Nigerian energy sector. The authors stress the importance of stakeholder engagements to achieve competent policies. While the article focuses on Nigeria as a case study, the authors note that the challenges identified with the Nigerian energy sector cut across several other developing countries in Africa. The content of this piece of literature is useful because it creates an insight into the deficiencies in the Nigerian renewable energy sector, particularly with stakeholder engagements. The article also highlights recommended practices such as creating explicit and written policies for effective governance in the Nigerian energy sector. The authors empirically explore the role and influences of the decision process(es), how they influenced transition in energy infrastructure provision and their corresponding impact on energy policy transitions.

Gungaha, Aarti, Vincent, Nnaemeka & Diohac, Michael, “Improving Nigeria's Renewable Energy Policy Design: A Case Study Approach” (2019) 130 Energy Policy 87.

The Nigerian Government formulated several renewable energy policy documents and programs to serve as the nation's roadmap for its energy transition goals. This article critically appraises each policy documents and programs undertaken to achieve an efficient energy system in Nigeria. The authors concluded that the country's energy reforms yield insignificant results for several reasons, such as poorly utilized renewable energy resources, effective renewable energy policies, and lack of a useful stakeholder participation model. These reasons work to create a gap between energy demand and supply in the country. The authors appraised the effectiveness, efficiency, equity, and institutional feasibility of each policy. The research contributes to the literature by redesigning Nigeria's energy policy framework to address the gaps and improve its renewable energy policy prescriptions. To achieve Nigeria's renewable energy targets, the authors empathized on the importance of enacting new policies or redesigning existing policies to have specific targets, ensure commitment from the Government, fund research and development, fosters social awareness, and promote public participation. The article identifies the challenges with the regulation of renewable energy development by non-policy instruments in Nigeria. This poses a challenge, particularly in terms of the implementation of renewable energy targets. The article identifies challenges with public participation tied tightly to a lack of awareness by participants and their lack of expertise in technical matters. The article takes a step further by identifying the Bangladesh Rural Electricity Board, which is described as the best model in South Asia in terms of the partnership, especially with rural communities. This article is essential to my research because

it gives an insight into the relevant renewable policy documents from a critically appraised perspective. This will assist in the holistic understanding of the policies and their respective strengths and weakness. The recommendations in this article will help modify the renewable energy policies in the context of public participation. This article also gives an insight into the practice of Bangladesh and recommends that the Government follows this model. My research may borrow a few lessons from this acclaimed model in developing an effective framework for Nigeria.

Howes, Micheal et al, “Environmental Sustainability: A Case Study of Policy Implementation failure” (2017) 165:9 MDPI 1.

The authors argue that governments are unable to achieve environmentally sustainable goals and developments primarily because of policy implementation failure. The authors attribute these implementation failures to several factors, one of which includes the failure to include communities in policy formulation processes. The authors reviewed 94 studies from different parts of the world on sustainable development policy failures. They concluded that these failures are connected to the complexities of the different levels of Government. The authors note key factors in policy implementation failures in developed and developing countries. However, they argue that developing countries face extra challenges when implementation policies do not consider unique situations distinct from developed countries. This article is useful because it reflects an understanding that developing countries have distinct situations, such as cultural dynamics that may impact policy implementation strategies. The article emphasizes that unless policies are customized to address unique situations, developing countries may continue to face challenges in achieving their sustainable development targets.

**Lee, Jungwoo & Yangb, Jae-suk, “Global Energy Transitions and Political Systems” (2019)
115 Renewable and Sustainable Energy Reviews 1.**

The global energy transitioning is responsible for changes in socio-economic conditions in various economies. This article recognizes the link between these changes and different political systems. The central theme of this article revolves around the relationship between the global energy transition and political systems. The article demonstrates that the energy system determines the political system a nation adopts. The analysis adopted examines the state of affairs of energy governance and its influence on political systems in past, present, and their implications for the future. The authors conclude that because of the changing dynamics of the energy market, the status quo has been reversed. Hence, the political system determines the energy governance system in a nation and not the other way around. This article identifies the failure to consider the absence of energy as a factor influencing political systems. Despite international agencies and bodies calling for more practical approaches to energy transition goals in response to planetary emergencies, nations are unwilling to forgo the extraction of fossil fuel and transition to renewable energy sources. However, democratic governments are more willing to transition to cleaner energy. This may be as a result of the nature of the existing political structure in democratic nations as compared to autonomous countries. The article concluded that the attitude of countries to transition from fossil fuel energy to cleaner energy and a carbonized economy to a low carbon economy depends mostly on the existing political system in a country. This article reinforces the importance of addressing the renewable energy transition in the context of governance structures. This article is crucial because it serves as a justification for how political systems influence energy transition goals. Moreover, in the wake of the failure of conventional governance structures to deliver results in terms of sustainable

energy goals, there is an urgent need to proffer governance structures that seek to address the shortcomings in the conventional governance structure.

Lundsgaarde, Erik, “Business Motives in Global Multi-Stakeholder Initiatives: Exploring Corporate Participation in Sustainable Energy for All” (2017) 8:4 Global Policy 464.

Against the backdrop of the growing interest of public actors in multi-stakeholder initiatives (MSIs), this article focuses on corporate participation in the decision-making process in achieving sustainable energy goals. The article aims to examine the motives behind corporate participation in MSI. In other words, why do corporate bodies choose to participate in MSIs? This article answers this question within the defined parameter; the Energy Efficiency Accelerator Platform of the Sustainable Energy for All Initiative. The author concludes that the reasons for corporate participation are diverse. However, the two primary motivating factors for corporate interactions with private actors and Government are; influencing market dynamics and profits derived from networking opportunities. This article gives insights into the reasons for corporate participation. Understanding the motives of business engagement can aid in deducing the potential interests of corporate organizations that may be affected by market transformations that occur as a result of policy directions. While networking opportunities do not have any direct impact on the interest of corporate organizations, they may be utilized as incentives for corporate participation.

O "Neil, Shane, “The Equalization of Effective Communicative Freedom: Democratic Justice in the Constitutional State and Beyond” (January 2004) 17 Can. J. L. & Jur. 83.

Shane understudies the impact of Habermas' emancipatory policies on achieving justice in a state and beyond. Shane argues that although egalitarian justice is a concept rooted in the theories of deliberative democracy, minimal efforts have been made to elaborate on it in

Habermas' work on communicative action. A large portion of Shane's work is based on the notion that to achieve a vibrant form of deliberative democracy, all structurally constituted social groups should be allowed to exercise equal rights in decision making. Hence, according to Shane, "an egalitarian social structure is, therefore, a pre-condition for the inclusion of all citizens as active participants in the democratic process." Shane acknowledges that the law is binding on all citizens. In a democracy setting, citizens may choose to comply with the law, not because of the coercive nature but because there are good reasons to recognize the validity of the law. While the Habermas theory projects an inclusive justice, Shane argues that the equalization of effective communication ensures outcome justice. A study of this nature projects an overarching perspective of justice in the context of deliberative democratic settings. This study contributes to the integration of the principles of equity and equality in the multi-stakeholder design process.

Pinkse, Jonatan & Kolk, Ans, "Addressing the Climate Change—Sustainable Development Nexus: The Role of Multi-stakeholder Partnerships" (2017) 51:1 Business & Society.

This article considers the role of multi-stakeholder partnerships in addressing climate change and sustainable development in developing countries. The author examines the point of convergence between climate change and sustainable development and how multi-stakeholder partnerships can serve as a driver for achieving sustainable development goals. This article focuses on developing countries because most works of literature on multi-stakeholder partnerships are designed to address climate change and sustainable development challenges in developed countries. It elaborates on how multi-stakeholder partnerships can be used to address regulatory, participation, learning, and resource gaps. This article is essential because it creates an insight into the use of multi-stakeholder partnerships as instruments of change in

developing countries. It recognizes developing countries' right to developments and reveals the unbalanced emission reduction target obligations between developing and developed countries.

Rountree, Valerie & Baldwin, Elizabeth, “state-level renewable energy Policy implementation: how and Why Do stakeholders Participate?” (2018) 3:6 Frontiers in Communication 1.

This article examines stakeholder participation in state-level renewable energy policy implementation. This article reinforces the notion that many works of literature agree on the vast benefits of an inclusive governance model because if all actors are involved as participants in decision-making processes, policies and resolution might improve in terms of quality and legitimacy. The authors explain that stakeholder participation aims to ensure quality decision making by integrating the view of the key actors whose interests are or will be affected by the implementation of policies, in this case, renewable energy policies. This article examines not only the benefits of stakeholder participation but also addresses the challenges and arguments opposing the effectiveness of this model. The article examines the challenges with adopting a multi-stakeholder governance model such as costs associated with stakeholder consultations, power asymmetry, and the creation of false legitimacy. Additionally, the authors argue that stakeholder participation may not produce the desired results in instances where technical decisions requiring expertise are needed. For instance, participants may not possess the required expertise to contribute significantly to technical decisions relating to sophisticated nuclear power plant projects. It may also be the case that decision-makers attach little or no significance to stakeholder participation, which may, in turn, affect the attitude of stakeholders in decision-making processes negatively. Also, they argue that many works of literature attempt to develop a theoretical framework for multi-stakeholder governance models to

address climate change and sustainable development. However, most of these existing works of literature do not address multi-stakeholder governance models in the context of renewable energy governance. Additionally, most literature fails to achieve results in developing countries because they ignore policy making at multiple levels. This article is useful because it contributes to a holistic understanding of the stakeholder participation and unveils the most prominent criticism of the multi-stakeholder governance approach, with the aim of better understanding the dynamics of this model.

Eckersley, Robyn. “Habermas and Green Political Thought: Two Roads Diverging” (1990) 19 Theory and Society 739.

This article critiques the Habermas theory from a green political theory perspective. Robyn examines the compatibility of Habermas' theory on communication action and deliberative democracy with green political thought and identifies a point of divergence. From an ecocentric perspective, the environmental crisis that cannot merely be addressed by human democratic participation. The proponents of this perspective argue that unless a shift from an anthropocentric (human-centered) approach to an ecocentric (earth-centered) approach is adopted, very little impact can be made in safeguarding the environment. The most prominent criticism of Habermas' theory from a green theory perspective is the human-centered nature of this theory. In Habermas' response to the green theories, he argues that rationality is subject to norms established as a by-product of deliberation. This critique sheds light on the potential impact of this theory in addressing ecological crisis.

**UNIVERSITY OF CALGARY
FACULTY OF LAW**

**LAW 703: GRADUATE SEMINAR IN LEGAL RESEARCH AND METHODOLOGY
FALL 2019**

ANNOTATED BIBLIOGRAPHY

ON

**LEGAL AND INSTITUTIONAL FRAMEWORK FOR ADVANCING GENDER JUSTICE IN
NIGERIA'S OIL AND GAS INDUSTRY**

COMPILED BY

OLUWADEMILADE PEACE ODU

20 DECEMBER 2019

DESCRIPTION OF MY RESEARCH PROJECT

In compiling my bibliography, I was guided by my research topic, legal and institutional framework for advancing gender justice in Nigeria's oil and gas industry. The principal purpose of this research is to examine the current legal and institutional framework in the Nigerian oil and gas sector and to draw a conclusion as to whether the provisions are sufficient in advancing gender justice. The research will review and analyze existing literature, case laws and legislature on the root causes, drivers and manifestation of gender injustice. The research will attempt a case study drawing examples of gender injustice from the Niger Delta region of Nigeria, which is the only region with a commercial deposit of crude oil in Nigeria, comprising of eight states. The oil and gas sector is the backbone of the economy; thus, everything that affects this sector affects the country at large.

Finally, this research will consider the use of a human rights-based approach as a coherent framework to ensure the advancement of gender justice. The research will also clamour for the amendment of section 12, the *Constitution of the Federal Republic Nigeria 1999*. I envisage at the end of this research; the study will accelerate the need for legal and policy overhaul to address this crisis in Nigeria's oil and gas sector.

Furthermore, This research will address the following question: to what extent does the existing legal and institutional framework and practices in the Nigerian oil and gas industry promote gender equality? In answering the above question, the following sub-questions will be considered; what are the drivers, root causes and manifestations of gender injustice in Nigeria's oil and gas sector? What are the implications of gender justice in Nigeria's oil and gas sector- a

largely unsustainable sector? Whether a human-right based approach is sufficient to provide a coherent framework for achieving gender justice in Nigeria? In answering the research questions, the research will employ the use of the following methodologies; descriptive single case study, doctrinal analysis and literature review.

ANNOTATED BIBLIOGRAPHY

This annotated bibliography is compiled for the course Law 703: Graduate Research and Methodology at the University of Calgary. This annotated bibliography is in progress and not a comprehensive and exhaustive list. I will further expand my scope during the period of this research.

LEGISLATION

Constitution of the Federal Republic of Nigeria, 1999, Laws of the Federation of Nigeria 2004, c 23.

Nigerian Oil and Gas Industry Content Development Act, 2010.

Environmental Impact Assessment Act, 1992. Laws of the Federation of Nigeria 2004. c E12.

The Petroleum Industry Bill 2012.

Niger Delta Development Commission Act, Laws of the Federation of Nigeria 2004, cN87.

INTERNATIONAL INSTRUMENTS AND TREATIES

Convention on the Elimination of All Forms of Discrimination against Women, 18 December 1979, 1249 U.N.T.S. 13.

Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 10 December 1984, 1465 U.N.T.S. 85.

Convention on the Rights of Persons with Disabilities, 13 December 2006, U.N. Doc. A/61/611.

International Covenant on Civil and Political Rights, 19 December 1966, 999 U.N.T.S. 171.

International Covenant on Economic, Social and Cultural Rights, 16 December 1966, 993

U.N.T.S. 3.

International Convention on the Elimination of All Forms of Racial Discrimination, 7 March

1966, 660 U.N.T.S. 195.

Millennium Development Goals, 2000, Goal 3.

Sustainable Development Goals, 2015, Goal 5.

Universal Nations Declaration on the Rights of Indigenous People, 13 September 2007, UN

Doc/A/61/L.67.

Universal Declaration of Human Rights, 10 December 1948, arts 1 2 and 7.

SECONDARY MATERIALS: BOOKS

Olawuyi Damilola, *Principles of Nigerian Environmental Law* (Afe Babalola University Press, 2015).

This book is generally a roadmap to the principles of Nigerian Environmental law. The book provides a theoretical and jurisprudential examination of the term environment and the roles of law in environmental protection. It provides an introduction and a general background on the operations of oil and gas companies in Nigeria. I believe a conclusion as to whether the operation of oil and gas companies are sustainable is essential for this research. The chapter in the book significant to this research examines the operations of oil and gas companies in the Niger Delta region. It concludes that their operations are highly unsustainable. The chapter essential to this research is Chapter six of the book. A significant assertion in this chapter is that the Niger Delta

region is among the most underdeveloped and environmentally degraded in Nigeria and the world at large. It examines the impacts of oil and gas development on indigenous land in the Niger-Delta region. This chapter will help this research to examine whether the operations of oil and gas companies are sustainable on indigenous land. A primary assertion of this research is oil exploration and production in the Niger Delta region harm the host communities. As a result, these negative impacts bear a maximum effect on women. This chapter will thus assist in proving the unsustainability of the oil and gas sector in Nigeria.

The African Commission on Human and Peoples' Rights (ACHPR) & IWGIA, *Indigenous Peoples in Africa: The Forgotten Peoples?* (Copenhagen: Denmark, 2006).

This book tackles the misconception that all Africans are indigenous people. It states the criteria for identifying indigenous people in Africa. The book analyses the protection of the human rights of indigenous people, as seen in the African Charter on Human and Peoples' Rights. This book is of great importance to this research as it helps the author to analyze the true meaning of being indigenous critically. Furthermore, in introducing this research and providing a background of gender injustice in Nigeria's oil and gas sector, the research argues dual vulnerability. The assertion that women are at high risk of injustice; because they are women and because of the indigenous community they belong to. This book will thus provide clarity on the true meaning of indigenous. The book asserts that indigenous people suffer from massive human rights violations, which flows into one of the arguments of this paper that gender injustice on indigenous women is a fundamental human rights violation. This book clamours for the promotion

of indigenous human rights. In proving dual vulnerability, we must first conclude whether people living in the Niger Delta region are indigenous people, Indigenous people face different systematic discrimination and marginalization. This book highlights the characteristics of indigenous people. This will guide this research to the conclusion that women in this community already suffer systematic discrimination and marginalization as a result of their indigeneity. Therefore they suffer injustice first as an Indigenous community, and then they suffer as women.

SECONDARY MATERIAL: BOOK CHAPTERS

Olawuyi S Damilola, “Gender, Indigeneity and the Search for Environmental Justice in Post-Colonial Africa” in Carmen Gonalazez, Sara Seck & Sumudu Attapatu, eds, *Cambridge Handbook on Environmental Justice and Sustainable Development* (Cambridge University Press) [forthcoming in 2020].

The central assertion in this book chapter is that equality and justice can be achieved using a rights-based approach. According to Olawuyi, all relevant stakeholders, including the national authorities, must incorporate three major things into project planning they are; equal participation and representation, burden-sharing and a gender-based impact assessment. This research also advocates the concept of the human-rights based approach to resource development, which advocates the need for equal treatment of men and women in a sustainable development project. This book chapter will help strengthen the arguments for chapter five of this research, which is the recommendation that envisions a reinvigorated legal and institutional framework in Nigeria's oil and gas industry.

SECONDARY MATERIALS: ARTICLES

Ademuson O Adefolake, “Women Domination and Oppression in Nigerian Society: Implications for Sustainable Development” (2016) 19:1 AJPSSI 24.

This article analyses the dangers of gender inequality and the impact this will have on sustainable development. Ademuson argues that the structure of the Nigerian society justifies the marginalization of women, which is a significant argument in this research. The central argument in this article is that gender equality can be achieved through the repatterning of key institutions. In achieving gender equality, we must get rid of cultural limitations, tradition, religion, and other offensive beliefs that subordinate women. This article will help this research, as it will buttress the argument of the author on the vital point that without achieving gender justice, we are far away from sustainable development. This research does not intend to dive into sustainable development arguments. The research will simply highlight the nexus between gender equality and sustainable development. This article will also strengthen the argument of this research that states that cultural factors have a strong influence on the enforceability and applicability of laws in Nigeria. This article will strengthen an argument in this research that emphasizes on key institutional reforms.

Okome Olfnk Mojbol, ‘Domestic, Regional and International Protection of Nigeria Women Against Discrimination: Constraints and Possibilities’ (2002) 6:3 ASQ 33.

This article takes the position that the Nigerian government abandons indigenous philosophies and traditions when it pertains to human rights violations. The system takes solace in the international provision of human rights as the only available option. The article argues that injustice is the creation, maintenance and perpetuation of structures of inequality against women. The central thesis in this article is that

discrimination against women takes different forms in different societies; thus, it requires different strategies in each society. The article argues that the state of affairs that is in accordance with the law may not necessarily guarantee practices that exist in reality. This research argues that gender equality is embedded in our cultural and social norms which thus affects our legal system, this article, in turn, supports that notion by asking us to look into our domestic laws and philosophies. The article strengthens an argument in this research, which states: looking into and strengthening our structure is most important. Thus, this article indicates that the recommendations in this research which seeks to amend the legal Act and institutional reforms are valid. The research looks for reforms within before branching out for a human rights-based approach.

Hazel Reeves & Sally Baden, "Gender and Development: Concept and definition" (2000) 55 IJS 30.

This article embodies concept clarifications concerning gender terms. For example, the term sex and gender mean two different things. Most misconceptions about gender are from the misunderstanding of these terms. Gender terms may be very confusing and sometimes could shift from its literal meaning. This article will serve as a guide to the research, especially chapter one, where the research will be dealing with concept clarifications. This article will be useful in clarifying the search terms I would be using. For this research, I would focus on the following search terms; "gender inequality," "gender injustice," "gender mainstreaming," "environmental injustice," "indigenous people," and "sustainable development." Therefore this article will further guide chapter one of this research that will deal with concept clarification.

Crenshaw Kimberle, "Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory and Antiracist Politics" (1989) 8:1 U Chicago Leg Forum 139.

The term intersectionality was coined from this article. The article examines the multidimensionality framework in which gender intersects with race, class, and other categories to produce forms of oppression, discrimination, subjugation, and marginalization. Women are not a homogeneous category. Therefore their experience of oppression and discrimination is different. The paper explains the oppression of African-American women and how black women experience oppression differently from black men and white women. It further guides this research assertion that gender equality is not just limited to equality between men and women, it includes both equality concerning human rights, equality before the law, equality of opportunities, and responsibilities. Crenshaw argues, double discrimination, black women may have the same experience as black men or white women. However, they face double discrimination based on race and sex. This drives one of the main points of this research that emphasizes the plight of women in oil-producing communities as double vulnerability. They face discrimination because they are women and because they belong in an oil-producing community. Women in the oil-producing communities face the impact of resource development differently and acutely from men. They may even have the same experience as the men in the community; however, they face double vulnerability based on sex. This article will help to strengthen the primary argument of this research that women face double vulnerability. Thus it is valid when this research

views the experiences of women in the Niger Delta region of Nigeria as different from men.

Bond E Johanna, "International Intersectionality: A Theoretical and Pragmatic Exploration of Women's International Human Rights Violations" (2003) 52:1 Emory LJ 74.

The main argument in this paper is that human rights apply to all and that we all experience human rights violations in fundamentally different ways. Bond argues we must see through the lens of intersectionality to reconceptualize women's rights at the theoretical level and practical levels. In Nigeria, there are no sufficient laws to protect host communities yet. Seeing through the lens of intersectionality is still far fetched for women living in oil-producing communities. The Nigeria government seeing through the lens of specific impacts on indigenous women, will help them to understand the multiple forms of human rights violations that indigenous women face. Without seeing through this lens, achieving gender justice may be unrealistic in Nigeria. This article buttresses the argument of this research that intends to advocate the need for intersectional human analysis. This means that using an indigeneity vulnerability assessment can assist the Nigeria government and key stakeholders in anticipating better and addressing double vulnerabilities.

Egede Edwin, "Bringing Human Rights Home: An Examination of the Domestication of Human Rights Treaties in Nigeria" (2007) 51:2 JAL 249.

Nigeria operates a dualist system that states all treaties must be domesticated before they can be enforceable. Egede argues the need for automatic domestication of international human treaties. The articles call for the amendment of section 12 of the *Constitution of the Federal Republic of Nigeria*, as domestic laws are inadequate to protect women. A

primary assertion of this article is, non-domestication of human rights treaties could be as a result of cultural factors. Cultural factors have an impact on the enforceability and practicality of laws in Nigeria. For instance, *the Convention on the Elimination of All Forms of Discrimination against Women*, which has since been signed and ratified by Nigeria has not been domesticated. The article implies the failure to domesticate certain human rights treaties is because the country still has cultural practices and beliefs that are contrary to the provision of these treaties. Therefore the cultural factor and norms of the people are significant influences in the domestication of treaties. This article will help to buttress one of the central claims in this research that cultural practices have a great influence on laws in Nigeria. This article states there are two exceptions to enforcing international treaties without domesticating it. The exceptions are when the international treaties are used as an interpretation by the court and also when the treaties have evolved into the rules of international customary law. This article will serve as a guide to the recommendation of this research. This article will support the claim in this research that domestic laws are currently inadequate to promote and protect women in Nigeria. This research will critically examine section 12 of the *Constitution of the Federal Republic of Nigeria 1999* and propose an amendment of that section so there can be adequate laws set in place for women, especially indigenous women.

Moyo Theresa & Rogers Dhliwayo, "Achieving Gender Equality and Women's Empowerment in Sub-Saharan Africa: Lessons from the Experience of Selected Countries" (2019) 35:2 SAGE 256.

Gender disparities remain persistent in most sub-Saharan countries. This article identifies strategies and lessons from experiences of those countries which have done well in

bridging their gender gap. The article further identifies strategies that will help most Sub-Saharan countries, in which Nigeria is a part of to achieve gender equality and sustainable development goals. The article explains that Goal five of the Sustainable Development Goal is a call to achieve gender equality and the empowerment of women and girls. Empowerment is to be done in critical areas where women and girls are not empowered and areas in which fundamental human rights are violated. This flows into the discussion of this research that calls for equality and empowerment of women in the Niger Delta region because there fundamental human rights have been violated way too long by the impacts of oil and gas development. This article is guided by theoretical and empirical literature on gender inequalities. In highlighting the experiences of selected countries, a significant factor was considered, most countries like Rwanda and South Africa that have done well in closing the gender gap have gender equality embedded in their constitution. This ties into an argument of this research that states a major problem faced in Nigeria is the fact that the only provision for gender equality in the constitution is a section that is not justifiable in court, one cannot seek redress for it, it is only a mere state directive. Therefore the research will further inquire if the provision of equality in the constitution is sufficient. The research argues that the constitution should be an exemplary lead for other acts to follow. Hence an express provision of gender equality in the constitution will be advised.

Ihayere Celestina, Doris Fovwe Ogeleka & Theresa Ifeyinwa Ataine “The Effects of the Niger Delta Oil Crisis on Women Folks” (2014) 6:1 JASD 15.

This article, amongst several articles that will be used for this research, reveals the hardship women in Niger delta go through. It reveals the different experiences of

women and men. This article was guided by a case study with an interview in different communities in the Niger-Delta region. The objective of the study was; to assess the effect of the oil crisis on the Niger Delta women folks, to assess the damage of oil operations on the social-economic lives of women and to recommend possible solutions to these problems. The result showed women were neglected and faced disproportionate benefits to men, the impacts of oil and gas development is felt by everyone but more severe on women. The article clamours for gender justice and adequate compensation to the women folk seeing the strategic importance of the region to oil and gas companies and the federal government of Nigeria. This article will help the research to review and analyze the plight faced by women. It will emphasize the existence of gender injustice in this region. This is of particular importance to my research because it lays the foundation for my review of gender injustice in Nigeria's oil and gas industry.

Seguino Stephanie, "Toward Gender Justice: Confronting Stratification and Power" (2013) 2:1 *Géneros* 1.

This article critically examines gender justice. The goal of this research is to achieve gender justice in Nigeria's oil and gas sector. This article analyzes gender justice as a concept. It unpacks the elements of gender justice. It argues that gender justice not only requires equality of opportunity but equality of outcome, equality of livelihood, which means access to and control of material resources and economic equality. The article also examines the type of policies necessary to promote greater power for women . This article will serve as a guideline to this research in finding out whether the legal and institutional framework for Nigeria oil and gas sector has achieved gender justice in its

operations. Furthermore, if not, what steps and guidelines are to be taken to attain gender justice. This article is very important to this research as it will be the major reference for gender justice.

Randolph J Justus, “A Guide to Writing the Dissertation Literature Review” (2009) 14:13 PARE 1.

This article summarizes how to write a quality literature review. This article is of high importance to my work because one of the methodologies I would be employing is the use of a literature review. This article asserts that critical research cannot be conducted without first understanding the literature in that field. I will be conducting a purposive review of this research. The research will deal with the central articles relevant to this topic. This article will be my guide to ensuring I successfully attempt a purposive literature review.

Baxter Pamela & Susan Jack, “ Qualitative Case Study Methodology: Study Design and Implementation for Novice Researchers” (2008) 13:4 TQR 545.

This article gives an overview of a case study approach. I will be using a case study approach as one of my research methodologies. I intend to draw my study from the Niger Delta region in Nigeria. Although this research will be employing the use of a case study approach, this will be done without an interview. The case study will be carried out using existing case studies on the women folks in the Niger Delta region, newspaper reports, environmental impact assessment reports, interviews conducted by others and any other material deemed necessary to gain insight into this topic. This article will guide my use of the case study approach. The article will assist in streamlining the type of case study I intend to use. The article will be my guide to ensuring I successfully attempt a case study.

SECONDARY SOURCES: REPORTS

”Women’s Economic Empowerment in Oil and Gas Industries in Africa” (2017) at 13, online (pdf): *African Development Bank*
 <https://www.afdb.org/fileadmin/uploads/afdb/Documents/Publications/anrc/AfDB_WomenEconomicsEmpowerment_V15.pdf> [perma.cc/83FE-LNR7].

The main argument of this report is to promote the inclusion of women in the oil and gas industry using local content policies as an entry point. The report asserts that men benefit more in the oil and gas industry than women, which is one of the main arguments of this research, that women experience minimal benefits and yet maximum risks. Local content policies are believed to cure most countries ills. The provisions of the *Nigerian Oil and Gas Industry Content Development Act, 2010* is far from being gendered. It is mostly packed with provisions that speak to nothing about women's inclusion. The Act is meant to be the grundnorm of the oil and gas industry in Nigeria. This article strengthens one of the main arguments of this research that examines the weaknesses and strengths of the local content act in Nigeria. So far, the Act is far from being a point of entry for women inclusion. This article buttresses the argument of this research about Nigeria's oil and gas club frequently described as a boy's club, which is one the central assertion of this paper. This article will provide the support needed for this research to conclude that the local content Act is currently not sufficient to protect and provide for indigenous women.

“Africa Human Development Report 2016: Accelerating Gender Equality and Women’s Empowerment in Africa” (2016) at 2, online(pdf): *United Nations Development Programme* <http://hdr.undp.org/sites/default/files/afhdr_2016_lowres_en.pdf> [perma.cc/VD55-FQNG].

This report reviews gender inequality in African countries and argues that significant and concrete attention should be given to gender issues. The report states that gender equality will stimulate human development and economic growth. It analyses the nexus between gender equality and sustainable development. A key message of this report is that paying more attention to gender equality will be an essential stimulus to accelerate quicker and inclusive human development and economic growth in Africa. It claims that accelerating gender equality is a core governmental function, which flows into this research assertion in clamouring for a legal and institutional change by the Federal government in Nigeria and key regulatory agencies concerned in the oil and gas industry. This report reviews the efforts by African countries to accelerate gender equality and the importance of women receiving the same economic, social and political opportunities as men. The report shows that, although there is a recognition of gender equality, African countries are still far from achieving equality. Furthermore, it shows what the gaps and challenges are. This report shows the nexus between gender equality and human development. This report will help the research prove that the agenda on gender equality can accelerate progress toward Africa's Agenda 2063 and achieving Goal 5 of the Sustainable Development Goals (SDGs), which will serve as a catalyst in achieving other goals as they are interconnected. The report will help the research highlight the importance of gender equality. This research will draw its significance from this report. Although the report focuses on Africa, however, Nigeria is the giant of Africa, which makes the report a necessary tool in this research.

UNIVERSITY OF CALGARY FACULTY OF LAW

LAW 703: GRADUATE SEMINAR IN LEGAL RESEARCH AND METHODOLOGY
[ANNOTATED BIBLIOGRAPHY FOR PROPOSED THESIS]

BY

[VITUS NGAANUMA]

[19 DECEMBER 2019]

AN EXAMINATION OF THE REGALIAN MINERAL OWNERSHIP REGIME AND ITS
IMPLICATIONS FOR PUBLIC PARTICIPATION IN MINERAL DEVELOPMENT

PROCESS IN GHANA

DESCRIPTION OF RESEARCH PROJECT

Every mineral in its natural state in Ghana is public property *vested in the President* who holds it “on behalf of, and in trust for the people of Ghana.”¹ The law in Ghana is that this trust relationship is merely nominal. Consequently, citizens lack standing to question in court, the President in the exercise of mineral rights. The thesis of this proposed research is that the lack of standing is unconstitutional and a gross drawback for public participation and good resource governance.

In examining the thesis, the research will rely on a combination of descriptive, analytical and reform-oriented methodologies for different purposes. The research will rely on documentary sources of literature. These documents will be examined beginning with secondary sources before primary sources. This is because secondary sources are themselves good reference sources for finding primary sources. The research will be theoretically supported by two complementary and mutually re-enforcing concepts; namely, good governance and Habermas’ theory of communicative action and ethics. The concept of good governance is particularly selected because of its close association with developing countries.

¹ *Constitution of Ghana*, Republic of Ghana 1992, art 257 para 6. [Emphasis added] See also *Minerals and Mining Act*, Republic of Ghana 2006, Act 703 s 1 which reproduces the constitutional provision verbatim; Other natural resources in Ghana are held under similar property regime. See generally *Petroleum (Exploration and Production) Law*, Republic of Ghana 1984, PNDCL 84, s 1(1); See also *Water Resources Commission Act*, Republic of Ghana 1996, Act 522, s 12; See also *Forest Ordinance*, Republic of Ghana 1927, s 17 on government held forest reserves.

ANNOTATED BIBLIOGRAPHY

SECONDARY SOURCES: BOOKS

CEK Kumado, *Constitutionalism, Civil Liberties and Development: A Case Study of Ghana since Independence*, 1st ed (Accra: Ghana Universities Press, 1980), online (pdf): opendocs.ids.ac.uk/opendocs/bitstream/handle/20.500.12413/10276/Kumado%20C.E.K%20-%20Constitutionalism.pdf?sequence=3

Kumado is a Constitutional Law scholar and Legal Practitioner who taught the subject at the University of Ghana for over four decades.

The book provides a historical conspectus of Constitutionalism, Civil liberties and Development in Ghana since 1957. He argues that it will be unjustifiable to seek to compare the level of development of the three concepts in the developing world with the developed because of the structural differences. He recommends that the main principles that embody the concepts should be the point of focus. Like Wheare, Kumado defines constitutionalism as the existence of separation of powers, rule of law and judicial review in a jurisdiction. This book provides a historical and Ghanaian context for discussing the thesis of my proposed research on constitutionalism.

CH McIlwain, *Constitutionalism and the Changing World: Collected Papers*, 1st ed (Cambridge: Cambridge University Press, 2010) Chapters 1 & 2.

McIlwain was an American Constitutional Historian of high repute who taught and wrote copiously on the constitutional history of England and the history of political theory.

The book discusses the history of constitutionalism by examining concepts such as sovereignty, due process, liberalism, totalitarianism and government by law. It is an important book that examines the fundamental law behind the Constitution of the United States of America. He argues that constitutionalism seeks to establish that sovereign power must be established with justice and not at discretion.

Like Wheare and Kumado, he provides a comprehensive book for discussing the concept of constitutionalism. The book provides a historical background to the development of the concept in a leading democratic country. It will therefore be relevant in reviewing literature on constitutional governance.

KC Wheare F.B.A, *Modern Constitutions*, 2nd ed 3rd Impression (London: Oxford University Press, 1966).

Wheare was an internationally renowned Constitutional Law Scholar. He was an expert of Constitutional Law of the British Commonwealth.

In the *Modern Constitutions*, Wheare provides a comprehensive overview of what a constitution is and its operations. In the final chapter titled, *Prospects for Constitutional Government*, he argues that constitutionalism means government limited by the terms of a constitution, not government limited only by the desires and capacities of those who exercise power. *Modern Constitutions* is a seminal book for constitutionalism and will provide a guide for testing the thesis of my proposed research.

William B. Gwyn, *The Meaning of the Separation of Powers. An Analysis of the Doctrine from its Origin to the Adoption of the United States Constitution* 2nd ed vol 9 Tulane Studies in Political Science (New Orleans: Tulane University Press, 1965).

Gwyn was a noteworthy Political Science Educator and Scholar. He authored books on political science concepts such as Democracy and Separation of powers.

In this book, he conducted an extensive historical study of the principle of Separation of Powers from as early as the period of Montesquieu to as late as the period of the adoption of the American Constitution. He provides a wealth of history and the development of the principle across time. To him its essence of the principle is to establish a balanced government and ensures that the executive is answerable. This resonates with my proposed research.

SECONDARY SOURCES: ARTICLES

Allan Kanner, “The Public Trust Doctrine, Patrine Patiae, and The Attorney General as the Guardian of the State’s Natural Resources” (2005) 16:57 Duke Env’tl Pol’y Forum 57 at 61.

Allan Kanner is a renowned American Lawyer and Professor of Law. He has extensive experience in environmental law scholarship and practice.

Kanner covers a broad scope of the public trust doctrine including its historical conspectus, definition, the road toward codifying it in the United States of America, defenses against the doctrine and remedies available to litigants. The central theme of the article is an

advocacy for the use of the doctrine as a litigation strategy by Public Attorneys to safeguard the environment and natural resources.

The article is relevant for my research in two ways: first, the history and definition of the doctrine is a good source of beginning literature review on the doctrine. Second, the advocacy for litigating in the public interest is a thread that is shared by my proposed research.

Elmarie van der Schyff, “Unpacking the Public Trust Doctrine: A Journey into Foreign Territory” (2010) 113:5 PER/PELJ 122.

Elmarie Schyff is a Professor of Law and a Legal Practitioner.

The central theme of this article is that public trust doctrine has different meaning in different jurisdictions. The article discusses the doctrine from the perspective of legal philosophy to highlight the different conceptions. It further discusses the American perspective. The article concludes that the introduction of the phrase “public trusteeship” into South African environmental and natural resources laws does not necessarily mean that the doctrine as conceived the United states of America has been introduced in South Africa. A court pronounce on the meaning of “public trusteeship” in the South African context will bring clarity to the matter.

The public trust doctrine is a key concept to be discussed in my proposed research. This article will guide the discussion of the concept in the Ghanaian context. The legal philosophy perspective will also enrich the analysis of the doctrine.

Erika Weinthal & Paulina Jones Luong, "Combating the Resource Curse: An Alternative Solution to Managing Mineral Wealth" (2006) 4:1 *Perspectives on Politics* 35 at 42.

Erika Weinthal is a Professor of Environmental Policy researches on the political economy of the resource curse. Paulina Jones Luong is a Professor of Political Science with experience in resource curse and institutional change.

This article argues that the source of bad resource governance in developing countries is weak institutions caused by public ownership of minerals. They that argue under such ownership regimes, the State has no incentive to strengthen institutions because doing so that will be counterproductive to government's quest for autonomy. It is further argued that economic based solutions to the resource curse have fail. The best solution for this problem is changing the ownership regime from public to private. This will free the government and motivate it to strengthen institutions that will effectively govern the mineral sector. This is an interesting proposition which deserves review in my analysis of mineral ownership regimes.

Ernest Gellhorn, "Public Participation in Administrative Proceedings" (1972) 81:3 *Yale L J* 359.

Ernest Gellhorn was a Professor of Law and an expert of Administrative and antitrust Law.

The central theme of the article is that public participation is contentious. It has its advantages and disadvantages. However, the right to participate is largely won but what remains debatable is how far the right extend. This article provides a critical assessment of the right to public participation and will be useful for reviewing the concept from a critical perspective.

Fui Tsikata, "The Vicissitudes of Mineral Policy in Ghana" (1997) 23:1/2 Resources Pol'y 9.

Fui Tsikata is one of Ghana's foremost scholars in natural resources law, a subject he taught at University of Ghana School of Law for twenty-nine years.

The article provides a historical overview of mining policy in Ghana. It provides a trajectory of the ownership of mineral rights and how the ownership regime was influenced by the different political epochs in Ghana. It particularly highlights the transition of mineral ownership regime from private persons to vesting in the President. The article provides a historical background for the ownership of mining law in Ghana.

Melissa K. Scanlan, "The Evolution of the Public Trust Doctrine and the Degradation of Trust Resources: Courts, Trustees and Political Power in Wisconsin" (2000) 27:1/3 Ecology L. Q.135; online: <scholarship.law.berkeley.edu/elq/vol27/iss1/3>

Melissa K. Scanlan is a Law Professor with expertise in Environmental Law and Policy.

This article takes on a wide scope exploration of the relationships in the Public Trust Doctrine. It explores the relationship between the doctrine and degradation of trust resources, and the role of courts, trustees and political power. The article applies these relationships and dynamics to navigable waters in Wisconsin and concludes that the doctrine is not effectively fulfilling its purpose of protecting natural resources. The article discusses the doctrine in detail. It will be relevant for discussing many aspects of the doctrine in my research.

Nickie Vlavianos, “The Issues and Challenges with Public Participation in Energy and Natural Resources Development in Alberta” (2010) 108 Resources 1.

Nickie is an Assistant Professor of Law and a Research Associate at Canadian Institute of Resources Law.

This article was written following a roundtable discussion by some selected public participation experts and some industry stakeholders. The article appraises the challenges with public participation across the different stages of mineral development. It makes recommendations for improving the form and level of public participation across the different stages. The article is particularly useful to my research because it advocates for the integration of public participation in all stages of natural resource development. Moreover, it equally found the absence of public participation mechanisms in crown mineral and surface rights disposition in the Alberta Province a drawback.

Shaun Fluker, “The Right to Public Participation in Resources and Environmental Decision-making in Alberta” (2015) 52:3 Alt L Rev 567.

Professor Fluker Shaun is an Associate Professor of Law at the University of Calgary and a public participation advocate.

The article scrutinizes the right to public participation in resources and environmental decision-making in Alberta and leads to the conclusion that “there is currently no legal right to public participation in resources and environmental project decision making in Alberta” (at 567). The reason for this conclusion is that the general public is prohibited from asserting

a right to participate in resources and environmental decision-making except where standing is established.

The issue of standing or access to courts on matters of the exercise of mineral rights by the President is the central theme of my proposed research. This article supports my claim that citizens' lack of power to question the President in the exercise of mineral rights stifles public participation.

Steve Manteaw, "Ghana's EITI: Lessons from Mining and Policy Implications for Oil" (2010) 4 Ghana Pol'y J 96.

Steve Manteaw is a Policy Analyst and Chair of Ghana's Public Interest and Accountability Committee.

This article is an outcome of a review of the concepts of accountability, transparency and sustainable management of Ghana's oil revenues. A mixed method of data collection was adopted, namely: reports from Petroleum Transparency and Accountability index, official state data and interviews of key industry stakeholders. The appraisal revealed that though there were improvements in revenue management because of the enactment of the Petroleum Revenue Management Act, there was stagnation in the area of contract transparency. Lack of transparency in the grant of oil and gas contracts and licenses has the potential of breeding corruption. The article is useful for examining the natural resource governance standards of Ghana.

Theodore Nsoe Adimazoya, "Staying Ahead of the Curve: Meeting Ghana's Commitment to Good Governance in the Mining Sector" (2013) 31:2 J Energy & Nat Resources L 147.

Theodore is a Ghanaian Researcher and Legal Practitioner.

This article advocates for informed participation of citizens in the mineral development process in Ghana. It is argued that access to information by citizens is crucial for transparency and accountability. This is however lacking. The article concludes that the lack of access to information is a drawback for good resource governance. The article advocates for good resource governance and generally follows the same path as Steve Manteaw's article. Good governance is one of the concepts to be adopted as theoretical framework for my research. This article will therefore be useful.

Thomas Kojo Stephens, "In Their Name and for Their Welfare: Rethinking Ghana's Constitutional Provisions for the Natural Resource Sector in the Light of Ghana's Upstream Petroleum Industry" (2015) 28 UGLJ 159.

Thomas Stephens is a Law and a member of Ghana's Public Interest and Accountability Committee.

The article examines four key provisions of the Constitution of Ghana that support the creation of a trust relationship in matters of mineral rights. Article 4 demarcates the territory of Ghana, 257 (6) vests mineral rights in the President of Ghana, 268 provides for parliamentary ratification of agreements relating to natural resources, and 269 provides for the creation of natural resource commissions. These articles are expected to protect the interest of the people of Ghana, but the opposite is the case. The article blames this situation on either lack of clarity of the provisions which leaves room for abuse, or the failure to

integrate the provisions into statutes. The article analyzes the constitutional provisions together with parliamentary records to prove for instance that parliamentary oversight under article 268 is ineffective. Therefore, the public interest is not protected.

This article is relevant to my proposed research because it highlights some of the failures of the constitutional arrangements to protect the public interest in relation to mineral rights for which reason citizens should be allowed to participate directly in the mineral development process.