Environmental Law
an instrument to promote and protect health in extractive industries
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Ghana becomes an oil nation

Ghana starts production from one of the largest recent oil discoveries in West Africa, transforming it into a significant oil-producer, but raising fears over the associated risks.

While the country, seen as a model of democracy in the region, has been counting its blessings because of the riches the oil will bring, it needs only to look to nearby Nigeria to understand the potential dangers.

In Nigeria and other countries, major oil production and the money that flows with it have been accompanied by widespread corruption and the neglect of other industries.

The oil curse, as some call it, could well take hold in Ghana, reversing development and political gains highlighted when US President Barack Obama visited last year.
Off-shore oil exploration
On-shore facilities

The footprint of oil and gas activities is much bigger than just the well.
Ancillary facilities and infrastructure

Requires construction of pipelines, transport corridors, sometimes ports, and power and water infrastructure.
Possible problems
Oil extraction and public health

- **Major environmental and social change** often accompanies discovery and extraction of mineral resources

  - Rapid demographic change (influx)
  - Great expectations of wealth and opportunity
  - Land use changes
  - Environmental degradation/pollution

  **Social**
  **Environmental**
Rapid demographic change

- **Cause**
  - In-migration of people in search of new income/livelihood opportunities

- **Effects**
  - Pressure on local services
  - Competition for resources/income
  - Inflation and increase in cost of living
  - Change in disease patterns
Example: Alberta, CANADA (2010)

- Community health status lower than in other regions

- "boom town" effect
  - virtual doubling of population in less than a decade

- Individual and family pressures
  - Inflation (rent, food prices)
  - Housing and labour shortages

- Infrastructure pressures
  - Investment in health infrastructure not as fast as population growth

- Increased crime, alcohol and drug use, family stress

Source: RSC Expert Panel, Environmental and Health Impacts of Canada's Oil Sands Industry, Dec 2010
Land use changes

- **Cause/driver**
  - Need for infrastructure to service project

- **Effects**
  - May require involuntary resettlement
  - Implications on local livelihoods
  - Vulnerable populations most often affected
Example: Chad-Cameroon (2000-2003*)

- Small land parcels cultivated for family subsistence not considered in compensation plan for lost land

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<th>Environmental, social, or institutional determinant of health affected</th>
<th>Resulting health impacts</th>
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<td>Population influx</td>
<td>Competition for resources or livelihood opportunities</td>
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<td>Strain on infrastructure/social services</td>
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<td>Exposure to environmental risk factors (chemicals, noise, air pollution, etc.)</td>
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<td>Loss of access to land</td>
<td>Accidents and injuries</td>
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<td>Loss of biodiversity, ecosystems services</td>
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Rationale for the use of a legal lens
Environmental law as an instrument for health protection

- Leverage proactive (preventive) or corrective actions to ensure that conditions (for good health) are upheld.

- Initial entry points considered:
  - National regulations and legislation
  - Loan covenants
  - Regional environmental law

- Focus on role of health sector in enhancing the effectiveness of this instrument.
National legislation / regulation
(overall framework in which projects operate)

- Environmental regulations
  - Pollution thresholds (gas flaring, emissions)
  - Legacy issues (environmental remediation)
  - Permit procedures (environmental assessment)

- Public participation

- Information disclosure

- Access to justice/grievance mechanisms

- Labour requirements
  - Local content requirements
  - Health and safety standards

- Land tenure and related requirements for compensation

- Community resistance to the leasing of lands for oil exploration activities

- Basis for claim - **integrity of the Environmental Impact Assessment undertaken**
  - US National Environmental Protection Act required consideration of human health impacts and that the EIA was inadequate.

- US District Court of Appeals ruled in favour of the Community
  - The Bureau of Land Management ordered to prepare a supplemental EIA.

- A health impact assessment (HIA) was undertaken as part of the supplemental EIA and revealed that the health and well-being of the population would be adversely affected.

- **On the basis of health evidence generated by the HIA**, oil and gas leasing in the Teshekpuk wetlands was deferred for ten years.
Loan covenants
(as part of financing agreements)

- **Multilateral Financial Institutions**
  - World Bank
  - International Finance Corporation
  - African Development Bank
  - Etc.

- **Environmental and social performance standards (safeguards)**
  - Included within loan agreement (contract law)

- **Safeguards include provisions for:**
  - Environmental and social impact assessment
  - Information disclosure
  - Public participation
  - Access to environmental justice/grievance procedures

Sample MFI performance standards
(e.g. International Finance Corporation)

- **PS 1:** S&E Assessment and Management Systems
- **PS 2:** Labour and Working Conditions
- **PS 3:** Pollution Prevention and Abatement
- **PS 4:** Community Health, Safety & Security
- **PS 5:** Land Acquisition and Involuntary Resettlement
- **PS 6:** Biodiversity Conservation and Sustainable Natural Resource Management
- **PS 7:** Indigenous Peoples
- **PS 8:** Cultural Heritage
### Strengths and limitations associated with the use of MFI safeguards

#### Strengths
- Influence overall project design
- Public participation
- Information disclosure
- Access to grievance mechanisms
- In-house expertise
  - environmental and social specialists*

#### Limitations
- Influence diminishes after loan disbursement
- Project based mechanism
- Depends on point of engagement of MFI in project
- Lack of public health expertise
  - To make sure health issues adequately addressed
  - To ensure appropriate involvement of health authorities
- Linkages with and use of country systems
Regional Environmental Law
(e.g. European Commission Directives)

- **Environmental Impact Assessment (85/337/EEC)**
  - Includes direct and indirect impacts of a project on: human beings, the fauna, the flora, the soil, water, air, the climate, the landscape, material assets and cultural heritage, as well as the interaction between these various elements.
  - Provisions for public participation, information disclosure, access to justice and grievance

- **Integrated Pollution, Prevention and Control (96/61/EC)**
  - Competent authorities required to determine, for each installation, an integrated permit based on best available techniques to ensure high level of protection of the environment
  - Includes requirement to ensure that the conditions of the permit are complied with by the operator when operating the installation.

European Financial Institutions must also abide by these directives.
Court of Justice of the European Union

- Jurisdiction on various categories of proceedings:
  - **preliminary ruling** – interpretation of a point of EU law
  - **actions for failure to fulfill an obligation** – for not applying EU law (transposition)
  - **actions for annulment** – against laws thought to violate the EU treaties or fundamental rights
  - **actions for failure to act** – for failing to make decisions required of them
  - **direct actions** – brought by individuals, companies or organizations against EU decisions or actions
Example: Sicily
(European Commission v Italian Republic, 2011)

- German television features a programme about petrochemicals production in Sicily (2006)
  - Concerned citizen submitted Petition to European Parliament

- European Commission accepted petition (2007)
  - **Basis for claim:** installations were subject to EU Directive on Integrated Pollution Prevention and Control (96/61/EC)

- Commission investigated whether Italian Authorities progressed with permitting requirements under the Directive.

- Commission initiated an infringement case against the Member State (2010).

- European Court of Justice ruled that Italy failed to fulfil its obligations arising from the IPPC Directive (2011).
  - Italian authorities ordered to pay costs.
Initial findings
(gaps and loopholes)

- Health often a principal concern (trigger) but not often basis for corrective action
- Health is there but not often adequately addressed
- Effectiveness of legal entry point very context specific
- Burden of proof not always easy to demonstrate
  - Evidence of harm/wrong-doing dependent on access to information and on quality of information disclosed
- Lack of uniform interpretation and application
  - Sphere of responsibility
  - Scope of coverage (e.g. narrow or broad definition of health within environmental requirement)
  - Persons or public affected (who has standing)
Initial findings
(opportunities)

- Examples of successful application of environmental law for health protection do exist

- Many instances where there are **existing provisions** related to the promotion and protection of public health that are **not being fully realized**

- Health sector will not only **benefit from this but also has a key part to play** in enhancing the effectiveness of its application
Role for the health sector
(National Health Authorities)

- Can help to identify and prioritize relevant health issues
  - Known health risks associated with industrial activities
  - Generate/endorse baseline of health status

- Scientific evidence of links (causality) between exposure and disease outcomes
  - Latency issues and implications for statute of limitations

- Provide standards on how those issues should be identified and addressed

- Monitor and evaluate the health "performance" of policies, plans and projects
  - Accountability and compliance
  - Evidence of health impacts (burden of proof)
Role for the health sector
( WHO )

- Leveraging environmental law for health protection significant potential to contribute to governance for sustainable development

- Core elements are largely in place – need for specialization to help identify and leverage opportunities that exist in different contexts

- Raise awareness about the ways in which environmental law can provide opportunities for public health
  - Develop tools, guidance materials and document case examples

- Influence the development of a discipline on environmental law and public health
Thank you!