

**A FEMINIST REGULATORY APPROACH TO  
HUMAN RIGHTS DUE DILIGENCE TO ADDRESS  
SEXUAL VIOLENCE IN LARGE-SCALE MINING**

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A THESIS SUBMITTED FOR THE DEGREE OF DOCTOR OF PHILOSOPHY

Under the supervision of Dr Michael Rawling and Dr Gabrielle Simm

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## **CERTIFICATE OF ORIGINAL AUTHORSHIP**

I, Anaïs Tobalagba, declare that this thesis, is submitted in fulfilment of the requirements for the award of a Doctor of Philosophy, in the Faculty of Law at the University of Technology Sydney.

This thesis is wholly my own work unless otherwise referenced or acknowledged. In addition, I certify that all information sources and literature used are indicated in the thesis.

This document has not been submitted for qualifications at any other academic institution.

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## **PUBLISHED WORK**

This thesis is a conventional thesis following the requirements established by the University of Technology Sydney. Chapter 5 of this thesis incorporates original work arising from research undertaken during candidature that has been published in a peer-reviewed journal: Anaïs Tobalagba, ‘Corporate Human Rights Due Diligence and Assessing Risks of Sexual Violence in Large-Scale Mining Operations’ (2021) *Australian Journal of Human Rights*.

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## LIST OF ACRONYMS

ASM: Artisanal and Small-scale Mining

BHR: Business and Human Rights

BSR: Business for Social Responsibility

CEDAW: Convention on the Elimination of All Forms of Discrimination against Women

CEDAW Committee: Committee on the Elimination of Discrimination against Women

CSR: Corporate Social Responsibility

DEVAW: Declaration on the Elimination of Violence against Women

EITI: Extractive Industries Transparency Initiative

EU: European Union

GRI: Global Reporting Initiative

HR: Human Rights

HRDD: Human Rights Due Diligence

IACHR: Inter-American Commission on Human Rights

ICJ: International Court of Justice

ICMM: International Council on Mining and Metals

IFC: International Finance Corporation

ILO: International Labour Organization

IRMA: Initiative for Responsible Mining Assurance

MONUC: United Nations Organization Mission in the Democratic Republic of the Congo

NGO: Non-Governmental Organisation

OEIWG: Open-ended Intergovernmental Working Group

OECD: Organisation for Economic Co-operation and Development

OECD Guidelines for MNE: OECD Guidelines for Multinational Enterprises

OHCHR: Office of the High Commissioner on Human Rights

PJV: Porgera Joint Venture

RAID: Rights and Accountability in Development

UDHR: Universal Declaration of Human Rights

UN: United Nations

UNGC: UN Global Compact

UNGPs: UN Guiding Principles on Business and Human Rights

VPs: Voluntary Principles on Security and Human Rights

WEPs: Women's Empowerment Principles

## ABSTRACT

Large mining projects are often accompanied by systemic risks of sexual violence against women in communities where the mine operates. In this context, sexual violence is increasingly associated with the practices of multinational mining companies that find themselves involved in sexual violence through their employees or the security forces they employ or through their association with State armed forces. Prominent examples involve Anvil Mining in the Democratic Republic of Congo, Barrick Gold in Tanzania and Papua New Guinea, Monterraico Metals in Peru and Hudbay Minerals in Guatemala. Analysis of these cases reveals that there are numerous challenges to the effective implementation of regulatory initiatives that have emerged within the ‘business and human rights debate’ to regulate corporate behaviour and limit the adverse consequences of business activities on human rights. The most authoritative, the United Nations Guiding Principles on Business and Human Rights, provide that this objective should be achieved through the establishment by corporate stakeholders of human rights due diligence processes to identify, prevent, mitigate and account for how they address their impacts on human rights. Using a theoretical approach that draws on both feminist and regulatory scholarship, this thesis examines the notion of human rights due diligence to test its potential to prevent mining-related risks of sexual violence against women. This analysis demonstrates that it is possible for mining companies to inadequately address or to exclude sexual violence from their due diligence processes while still complying with their international responsibilities under business and human rights standards. Ultimately, this thesis argues that despite the limitations of human rights due diligence, reinforcing separate but complementary systems of regulation (corporate self-regulation, State law and civil society monitoring) to align them with feminist objectives may constitute an avenue for more gender-responsive due diligence and more effective prevention of mining-related sexual violence.