



**VALE COLUMBIA CENTER**  
ON SUSTAINABLE INTERNATIONAL INVESTMENT  
A JOINT CENTER OF COLUMBIA LAW SCHOOL AND  
THE EARTH INSTITUTE AT COLUMBIA UNIVERSITY



**CENTER FOR ENERGY,  
MARINE TRANSPORTATION  
AND PUBLIC POLICY**



**VALE**

**ONTARIO**  
CANADA

# **Extractive Industries and Sustainable Development: The Challenges of Implementation**

Regulating, negotiating, monitoring, and adjudicating a sustainable framework for FDI in the  
extractive industries

**October 27-28, 2010  
Columbia University**

## **PROGRAM**

**Vale Columbia Center on Sustainable International Investment  
Columbia Law School/The Earth Institute**

**Center for Energy, Marine Transportation and Public Policy**

with support from

**Vale and Ontario, Canada**

## Conference Organizers

### **Vale Columbia Center on Sustainable International Investment Columbia Law School/The Earth Institute**

The Vale Columbia Center on Sustainable International Investment promotes learning, teaching, policy-oriented research, and practical work within the area of foreign direct investment (FDI), paying special attention to the sustainable development dimension of this investment. It is a joint center of Columbia Law School and The Earth Institute. For more information, see: [www.vcc.columbia.edu](http://www.vcc.columbia.edu)

### **Center for Energy, Marine Transportation and Public Policy (CEMTPP) School of International and Public Affairs (SIPA)**

CEMTPP—the Center for Energy, Marine Transportation and Public Policy—is dedicated to helping policymakers, business leaders and the general public manage energy in optimal ways. The mission of CEMTPP is to support an unparalleled and comprehensive education in International Energy Management and Policy (IEMP) and to contribute to informed policy discussion and decision making through original, insightful research.

For more information, see: [www.cemtp.org](http://www.cemtp.org)

### **Vale**

Vale is a global company headquartered in Brazil, operating in five continents through its mining operations, mineral surveying, steel production, energy production, logistics and commercial offices. For Vale, sustainable development is achieved when its activities add value to its shareholders and other stakeholders.

Vale's principle is to leave a positive social, economic and environmental legacy in the areas where it operates, through strong social and environmental policies and partnerships with other stakeholders. For

more information, see: <http://www.vale.com>

### **Ontario, Canada**

Ontario, Canada's highly diversified economy includes automotive, aerospace, natural resources, ICT and the life sciences. In 2009 the Province passed the Green Energy Act, establishing Ontario as North America's leader in producing and using renewable energy. Ontario continues to address issues that will better protect the environment, combat climate change and create a healthier future for generations. For more

information, see: [www.investinontario.com](http://www.investinontario.com)

## Background

The challenges of poverty alleviation, environmental sustainability and governance can and should be addressed in an effective sustainability framework for foreign investment. The shared goal of companies, host-country governments and civil society is an investment framework that promotes sustainable development and the mutual trust needed for long-term investments. The extractive industries face a special need for such trust, given the massive long-term investments that they undertake in poor and potentially unstable countries. For investors to succeed, and for host-countries to reap the potential benefits of such investments, a mutually agreeable sustainable investment framework should last for decades and accommodate unexpected shocks that inevitably will arise during the lifetime of the investments. Thus, implementing a framework for sustainable development for extractive industries should be a cooperative effort among companies, governments and civil society.

The purpose of this conference is to discuss and assess how past and ongoing initiatives to promote cooperative, transparent, equitable, and efficient FDI in the extractive industries have succeeded, how success is measured, and how success can be scaled up and better implemented in the future to achieve real development outcomes. It is time to take stock, ask the critical questions and build on what has been done in order to move forward with this more holistic approach to the problématique of implementing sustainable development in resource rich countries.

This conference brings together the range of important stakeholders, including corporate executives, investors, government ministers, high-level administrators and regulators, and representatives of NGOs and international financial institutions. The conference will be a Davos-style discussion that will be forward looking and solution-oriented. Historical initiatives, context and theoretical discussion have been summarized in background notes for the conference, so that the discussion at the conference itself can be focused on the generation of innovative ideas from the most critical minds. The sessions will follow the combination of the two processes that are at the core of the problématique:

- The investment process for an extractive project, as embodied in an investment contract and its life-cycle, from “winning” the contract<sup>1</sup> through implementation, monitoring and enforcement and dispute resolution.
- The host country development process, which is profoundly dependent on the investment process in many countries, and yet goes far beyond extractive industry investments into the saving and spending on state infrastructure and key public services.

If the sequence of the panels follows a pre-established logic, the sessions themselves aim at fostering a productive and dynamic discussion unconstrained by any formal presentation or guidelines. Panelists are expected to have in mind concrete solutions to the problems discussed and engage in active brainstorming with their co-panelists and all conference participants.

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<sup>1</sup> For this conference, we are taking some license with the term “contract” and include all contracts, licenses, bids that companies need to have the right to develop oil, gas, and minerals, including *inter alia*, exploration and production, transportation, refining, processing, exportation. We are also, in some instances, admittedly using “contract” or “bargain” as a short-hand term for the legal framework applicable to a particular company, knowing that the contract does not constitute the entirety of that framework in most countries.

## October 27, 2010, Wednesday

8:30 – 9:00     **Breakfast and registration**

9:00 – 9:30     **Opening remarks**

- **Karl P. Sauvant**, Executive Director, Vale Columbia Center on Sustainable International Investment
- **Ma Shixia**, Chair, Dalian Chamber of Commerce
- **Albert Bressand**, Aristotle Onassis Professor in the Practice of International and Public Affairs; Executive Director, Center for Energy, Marine Transportation, and Public Policy

9:30- 12:30     **Session I: Reaching a better bargain**

This session will look at the institutional environment governing extractive industry projects. This includes the formal regulatory framework, embodied primarily in laws and contracts (though also including treaties and local law), as well as informal community and societal institutions. The relevant laws are many: investment, taxation, oil, gas, and mining, environmental, land, and labor, among others. The relevant contracts can be numerous as well. Together, these make up “the regulatory framework” that governs the relationship between companies and governments for extractive industry projects and dictates the means of entry for companies to a country and the underpinnings of the bargain between companies and governments. Among other issues, this panel will explore:

- What are the benefits and limitations of putting more resources in legislation, contracts or informal understandings? What might a flexible fiscal regime that balances predictability with increasing governmental and societal capacity and uncertainty look like?
- What are the key elements of a mutually fair, beneficial and sustainable project? And what formal and informal institutional structures and processes lead to such projects?
- What might innovative approaches to investment promotion such as cost-sharing and infrastructure development by host countries look like?
- How can community and country-wide institutions complement their formal counterparts in a manner that enhances the economic, environmental and socio-political sustainability of extractive industry projects, and when is the optimal time for the onset of developing these informal institutional structures?

**Moderator:** **Louis Wells**, Herbert F. Johnson Professor of International Management, Harvard Business School

### **Panelists:**

- **Tom Dimitroff**, Independent Consultant, expert in oil industry negotiations
- **Philip Hemmens**, Senior Vice President of Safety and Environment, Exploration and Production Division, eni
- **Witold Henisz**, Professor, Wharton, University of Pennsylvania
- **Herbert M'cleod**, Office of the President, Sierra Leone
- **Diarmid O'Sullivan**, Director of Oil Campaign, Global Witness
- **Jim Otto**, Independent Consultant, mining law and economics

12:30 – 14:30     **Lunch**

**Keynote address:** “Breaking the resource curse through transparency,” **Benjamin L. Cardin**, U.S. Senator, Maryland; Introduction by **Karin Lissakers**, Director, Revenue Watch Institute

## 14:30 – 16:00 **Session II: Ensuring countries and companies get what they bargained for**

Reaching the optimal bargain does not ensure that the mutual obligations and responsibilities will be effectively and fully implemented and monitored during the lifecycle of the investment. Thus, this session will investigate:

- Are there institutional gaps in the coordination of contract implementation and legislative enforcement that could result in less than optimal fulfillment of these obligations by government and companies?
- In what areas is there a greater need for better contract monitoring and enforcement, by whom and how? Environmental compliance? Project development and approval?
- How can corresponding government and company departments (e.g. governmental environmental regulators and companies' environmental engineers) work more closely to ensure a coordinated approach internally on each side and mutually by both parties?
- What are the strengths and weaknesses of reporting frameworks (for example, GRI, EITI, industry reporting indicators) that would be useful to monitor contract implementation?

**Moderator: Maria Cattai**, Former Secretary General, International Chamber of Commerce

### **Panelists:**

- **H.E. Esperança Bias**, Minister of Mineral Resources, Mozambique
- **Peter Brady**, Deputy General Counsel, Sustainability, Litigation & Regulatory Affairs, Vale S.A.
- **Danielle Brian**, Executive Director, Project on Government Oversight
- **Peter Eigen**, Chair, Extractive Industries Transparency Initiative
- **Thero Setiloane**, Executive Vice President of Sustainability, AngloGold Ashanti

## 16:15 – 18:15 **Session III: Limiting disputes and achieving better resolutions**

Disputes are, for many projects, an unavoidable part of the life-cycle of the contract; and, depending on the dispute resolution process, they can cause much damage in terms of reputation and profitability of the government and/or company. Among the issues assessed in this panel are the following:

- What are the most common causes of disputes?
- How can contracts and arbitration be made more flexible to maintain the long-term relationship?
- What dispute resolution models tend to achieve mutually agreeable outcomes to both sides?
- How should (and could) sustainable development criteria be considered in dispute prevention and resolution?
- Can a company build a comparative advantage on promoting renegotiation rather than arbitration?

**Moderator: Jose Alvarez**, Herbert and Rose Rubin Professor of International Law, New York University Law School

### **Panelists:**

- **Kathryn Khamsi**, Associate, International Arbitration, Shearman & Sterling LLP
- **Srilal Perera**, Former Chief Counsel for Legal Claims, MIGA
- **Ted Posner**, Partner, Crowell & Moring
- **Manfred Schekulin**, Chair, OECD Investment Committee

## 18:15 – 21:00 **Drinks followed by a networking dinner**

## **October 28, 2010, Thursday**

8:30 – 9:00     **Breakfast**

9:00 – 12:00   **Session IV: Beyond the contract and contracting parties: integration of extractive industry investments into local communities and the regional economy**

Many extractive industry projects take place in poor regions with vast development potential. It is a challenge both for investors and governments to optimize the contribution of extractive projects to the sustainable development of the local communities and the national or international communities affected by the extractive projects. Failure to meet this challenge can engender political and social opposition which leads to suboptimal development and investor outcomes. Avoiding such negative outcomes requires an understanding of the complex development needs of the communities and countries in which the investments take place and creative solutions to integrating the engineering, financial and legal aspects of projects with the long-term development goals of the communities and countries. The issues raised by this panel include:

- How can resource rich countries and extractive companies maximize the development impact of mega projects, e.g., through forward and backward linkages, training, infrastructure development, and integrated local development plan? What constraints exist and how can we move beyond them? What are examples of success?
- Who should finance infrastructure and training? What are the tradeoffs between state, private sector, World Bank, and sovereign development financing and how can countries and companies decide which option is best in the myriad situations they face?
- What challenges have governments and companies encountered in the promotion of regional trade, infrastructure and development frameworks? Are there any regional legal frameworks, policies or treaties in the area of extractives that are models for others?
- What forms of community relations and stakeholder engagement strategies generate the best designed community development initiatives that yield the highest payoffs for communities, government, and investors?

**Moderator: Peter Rosenblum**, Professor, Human Rights Clinic, Columbia Law School

### **Panelists:**

- **Glenn Denning**, Professor, School of International and Public Affairs at Columbia University
- **Rev. Séamus P. Finn OMI**, Director, JPIC/SRI Ministry, Missionary Oblates
- **Paul Jourdan**, Independent Consultant, expert in resource based integrated development strategy
- **Meg Taylor**, Vice President, Compliance Advisor Ombudsman, IFC
- **Mark Tercek**, President and CEO, The Nature Conservancy

12:00 – 13:30   **Lunch**

13:30 – 15:30   **Session V: National planning for the optimal benefit of extractive resources**

A successful, mutually beneficial relationship of governments and extractive industry companies requires a long-term development plan for the country, to ensure that the country and the population benefit from the resource extraction. Companies have an interest in the long-term development of the country as well, both as potential markets in the future and to ensure social and political stability over the lifecycle of an investment. This session will consider:

- How should long-term development plans consider extractive industry investments? What special considerations should resource-rich countries take into account? What role can companies play in development planning?
- What role can resource funds play in long-term development planning? What lessons have been learned from past experiences with natural resource funds?
- How can we ensure stakeholder representation in the management of resource funds and in long-term planning? How can we limit political influence (keeping politics out of development)?

**Introductory remarks by H.E. Minister Natty B. Davis**, Minister of State without Portfolio and Head, Philanthropy Secretariat, Republic of Liberia

**Moderator: Jeffrey Sachs**, Director, Earth Institute at Columbia University

**Panelists:**

- **H.E. Esperança Bias**, Minister of Mineral Resources, Mozambique
- **Paul Jourdan**, Independent Consultant, expert in resource based integrated development strategy
- **Mick Keen**, Assistant Director, Fiscal Affairs Department, IMF
- **Petter Nore**, President, Oil for Development

15:45 – 17:45 **Session VI: Integrated implementation: moving to specific next steps**

This last panel will focus on synthesizing lessons learned from the previous panels and generating specific next steps toward the implementation of an integrated development approach for governments and companies. It will deal with the challenging solutions of designing a comprehensive framework for extractive industries committed to sustainable development and of measuring success of an integrated development strategy on both the company and government sides.

**Moderator: Jeffrey Sachs**, Director, Earth Institute at Columbia University

**Panelists:**

- **Motoko Aizawa**, Head of the Policy and Standards Unit, Environment and Social Development Department, International Finance Corporation
- **H.E. Nahas Angula**, Prime Minister, Republic of Namibia
- **Luke Danielson**, President, Sustainable Development Strategies Group; Former Director, Mining Minerals and Sustainable Development Project
- **Karin Lissakers**, Director, Revenue Watch Institute
- **Kathryn McPhail**, Senior Program Director, International Council for Mining and Metals

**Remarks by H.E. Minister Katuska King Mantilla**, Minister Coordinator of Economic Policy, Ecuador

17:45 – 18:00 **Closing remarks**

- **Ellena Fotinatos**, Special Projects Coordinator, Center for Energy, Marine Transportation and Public Policy
- **Karl P. Sauvant**, Executive Director, Vale Columbia Center on Sustainable International Investment