



# Special Institute on **Human Rights Law and the Extractive Industries**

**Marriott Panama Hotel  
Panama City, Panama  
February 18-19, 2016**

*Traducción simultánea del inglés al español  
será disponible durante el curso.*

Human rights are critical to the oil and gas, mining, and timber industries. Extractive industries must operate where the resources are found, often in jurisdictions that lack the governmental and civil institutions necessary to protect human rights or that have records of failing to respect those rights.

Around the world, human rights groups and individuals have challenged natural resource development proposals. Projects have been compromised for failure to adequately address human rights issues.

Learn about practical approaches taken by industry to respond to these concerns and about the increasing body of international human rights law. This conference will be an invaluable opportunity for all stakeholders—including in-house, outside, and agency counsel, managers, NGOs, academics, and government officials—to gather and share their respective experience, and will produce practical and scholarly papers with lasting value.

Highlights include:

- The legal basis for business enterprises' human rights obligations
- UN Guiding Principles on Business and Human Rights
- The legal duty to respect human rights and provide access to remedy for violations
- Tools for compliance, stakeholder engagement, identifying risks, and redressing violations
- Considerations of special relevance to the extractive industries
- Problems arising in conflict zones
- Labor and environmental laws and standards
- Ethical issues in advising clients in a corruption investigation
- Practical advice for respecting and reporting on human rights

We hope that you can join us for this timely and relevant conference, centrally located to bring together professionals from many countries who work in this area.

*Course materials and audio recordings are available in various formats if you are unable to attend. See inside for details.*

# Human Rights Law and the Extractive Industries

Thursday, February 18, 2016

7:30 – 8:00 am – **Registration**

8:00 – 8:15 am

## **Introductions and Opening Remarks**

STEVIA M. WALTHER, Executive Director, Rocky Mountain Mineral Law Foundation, Westminster, CO

PHILLIP R. CLARK, President, Rocky Mountain Mineral Law Foundation; Partner, Bryan Cave, Denver, CO

DAVID L. DEISLEY, Program Co-Chair, Executive Vice President and General Counsel, NovaGold Resources Inc., Salt Lake City, UT

CONSTANCE L. ROGERS, Program Co-Chair, Partner, Davis Graham & Stubbs LLP, Denver, CO

8:15 – 8:45 am

## **Opening Keynote Remarks**

DAVID W. RIVKIN, President, International Bar Association; Partner, Debevoise & Plimpton, LLP, London & New York, NY

## **PART ONE: OVERVIEW OF HUMAN RIGHTS LAW**

8:45 – 9:30 am

### **Human Rights: The Applicable Legal and Political Frameworks**

This overview of international human rights law will describe the legal foundation for the protection of human rights. The relevant documents and international organizations, including the Universal Declaration of Human Rights; International Covenant on Civil and Political Rights; International Covenant on Economic, Social and Cultural Rights; International Labor Organization's Declaration on Fundamental Principles and Rights at Work; UN Declaration on the Rights of Indigenous Peoples (UNDRIP); and UN Guiding Principles, and their applicability to business organizations will be placed into context to provide the basis for understanding the duties of business enterprises regarding human rights. The paper also will address the considerations relative to adopting the UNGPs into a binding international treaty.

ERIKA GEORGE, Professor, S.J. Quinney College of Law, University of Utah, Salt Lake City, UT

9:30 – 10:30 am

### **Comparative Overview of Human Rights Laws in the Americas and Africa**

Human rights laws arise under international, regional, and domestic laws. To understand the interplay of domestic and international standards, this session will compare the framework of human rights law in the Americas and Africa. The speakers will describe the relevant laws, conventions, documents, and organizations, and their applicability to business organizations, including relevant decisions and current issues.

PACIFIQUE MANIRAKIZA, Commissioner, African Commission on Human and Peoples' Rights, Ottawa, ON

NORMA A.C. COLLEDANI TORANZO, Human Rights Specialist, Inter-American Commission on Human Rights, Washington, DC

PAULO VANNUCHI, Commissioner, Inter-American Commission on Human Rights, Washington, DC

10:30 – 10:45 am – **Coffee Break**

## **PART TWO: GUIDING PRINCIPLES ON BUSINESS AND HUMAN RIGHTS**

10:45 – 11:45 am

### **Identifying and Working with Stakeholders**

Throughout the UNGPs, business enterprises are mandated to identify, communicate with, consult, and provide access to remedy for interested stakeholders. This presentation examines the provisions of human rights laws that address the identification of, consultation with, and engagement of stakeholders. In addition to defining whose rights are protected by such laws, this presentation will examine the role of States, different governmental approaches to business and human rights relative to the extractive sector, and the relationships between NGOs and business with respect to human rights (e.g., collaborative opportunities), and will offer guidance on practical strategies to engage stakeholders on human rights issues within both legal and voluntary standards for consultation.

LUKE J. DANIELSON, Attorney, President and Co-Founder, Sustainable Development Strategies Group, Gunnison, CO

integrating human rights considerations into management, decision-making processes, and legal compliance.

CAROLINE REES, President, Shift Project; former lead advisor to Professor John Ruggie, Special Representative of the United Nations Secretary-General for Business and Human Rights, New York, NY

1:15 – 2:00 pm

### **Anticipating and Managing Human Rights Risks**

The UNGPs direct business enterprises to conduct "due diligence" in order to identify, prevent, mitigate and account for how they address potential human rights impacts. This presentation will provide a "how to" on conducting effective due diligence, risk management, performance monitoring, and internal and external communication in relation to human rights risks, both legal and reputational.

YOUSUF AFTAB, Principal, Enodo Rights, New York, NY

11:45 am – 12:15 pm – **Hosted Lunch**

12:15 – 1:15 pm

### **Overview of the Guiding Principles: Keynote Address**

The keynote speaker will describe the issues that were raised, considered, and addressed during the process of developing the UNGPs, relate the UNGPs to the historical and future development of international human rights law, and articulate the opportunities for and benefits to business enterprises from

2:00 – 2:45 pm

### **Incorporating Human Rights into Business Decision Making and Legal Compliance**

This presentation will explore, with legal compliance as a baseline, the importance of integrating human rights into the internal fabric of a company—through a policy commitment, compliance culture, training, and budget—as well as into external decision making around business projects and partnerships: joint ventures, governments, communities, and supply chains.

ADRIEN SERGE DELÉCLUSE, Principal, ASDConsulting LLC, San Francisco, CA

2:45 – 3:00 pm – **Coffee Break**

3:00 – 3:45 pm

### **Human Rights Due Diligence**

The UNGPs provide that companies should conduct human rights due diligence in order to identify, prevent, and mitigate adverse human rights impacts, and to account for monitoring performance. Formal assessments, including Human Rights Impact Assessments (HRIA), are vehicles for identifying, predicting, monitoring and responding to the potential and actual human rights impacts of a business operation. An effective HRIA will identify the appropriate international and domestic legal regimes applicable to a specific project or host country, and, similar to an environmental assessment, identify risks, impacts, and potential mitigation to address such risks, impacts, and legal compliance. This session will discuss the development of HRIsAs and how to utilize them effectively.

MARK WIELGA, Attorney and Director, NomoGaia, Denver, CO

LLOYD LIPSETT, Shift Project, Montreal, QC

## **PART THREE: TREATIES, DECLARATIONS, AND OTHER LEGAL STANDARDS RELEVANT TO THE EXTRACTIVE INDUSTRIES**

4:30 – 5:30 pm

### **Generally Applicable Legal Standards**

Business enterprises can affect virtually the entire spectrum of internationally recognized human rights. This paper will identify the international human rights documents that define general legal standards relevant to all business enterprises, including the extractive industries. The presentation will discuss the United Nations Global Compact, Global Reporting Initiative,

3:45 – 4:30 pm

### **Social Reporting Standards and Transparency Initiatives— From Public Relations to Legal Requirements**

Transparency initiatives such as sustainability reporting and other forms of non-financial reporting by corporations are heralded as a way to improve corporations' human rights performance. This presentation discusses how these transparency initiatives, including legally required reporting, aim to improve human rights performance, and their actual performance to date. The presentation will address such initiatives as the Global Reporting Initiative, the Sustainability Accounting Standards Board, and the California Transparency in Supply Chains Act.

DAVID HESS, Associate Professor of Business Law and Business Ethics, Ross School of Business, University of Michigan, Ann Arbor, MI

OECD Guidelines for Multinational Enterprises, Working Group on the Issue of Human Rights and Transnational Corporations and Other Business Enterprises, IFC Compliance Standards, and the Equator Principles.

SIOBHÁN MCINERNEY-LANKFORD, World Bank Senior Counsel in Human Rights Issues Studies, Washington, DC

5:30 – 6:30 pm – **Hosted Reception**

## **Friday, February 19, 2016**

### **PART THREE (Continued)**

8:00 – 8:45 am

### **Labor Law and Standards**

The extractive industries frequently operate in areas of countries that are remote, underserved by governmental entities, and dominated by subsistence agriculture. These conditions exist in developing countries as well as isolated regions of developed countries. In such circumstances, there is a greater economic incentive for individuals of all ages to seek wage employment. The lack of economic diversity and government presence creates the potential for abusive labor conditions. Several key international legal conventions address labor law issues and human rights. This session will explore the ILO Declaration on Fundamental Principles and Rights at Work; Safety and Health in Mines Convention (ILO No. 176); Minimum Age Convention (ILO No. 138); and the Worst Forms of Child Labor Convention (ILO No. 182).

OSCAR DE LA VEGA, Partner, Littler De la Vega y Conde, México, D.F.

8:45 – 9:30 am

### **Environmental Laws and Standards**

While the importance of environmental laws and standards for sustainable development has been well recognized by the international community for decades, increasing attention is being given to the relationship between human rights and environmental protection. This session will examine long-standing institutions and standards including the 1992 Rio Declaration, an outcome of the UN Conference on Environment and Development (Earth Summit), the World Conservation Union, and Coalition of Environmentally Responsible Economies. The recent work of the UN Independent Expert and now Special Rapporteur on Human Rights and Environment, Professor John Knox, will also be examined, along with examples of relevant legal and industry standards and domestic implementation.

SARA SECK, Associate Professor, Western University Faculty of Law, London, ON

9:30 – 9:45 am – **Coffee Break**

9:45 – 10:30 am

### **Indigenous Peoples: Legal Rights in International Human Rights Law**

In recent decades, the international community has focused on the human rights of indigenous peoples, as evidenced by the adoption of international standards and guidelines, and the establishment of institutions and bodies that target the concerns of indigenous people. This presentation will address the roles of the Special Rapporteur on the Rights of Indigenous Peoples, UNDRIP, ILO 169, and International Council on Mining and Metals guidelines, and their relationship to domestic and international laws.

JAMES ANAYA, Regents Professor and James J. Lenoir Professor of Human Rights Law and Policy, University of Arizona James E. Rogers College of Law; former UN Rapporteur on Indigenous Peoples, Tucson, AZ

REBECCA TSOSIE, Regents' Professor of Law, Sandra Day O'Connor College of Law, Arizona State University, Tempe, AZ

10:30 – 11:15 am

### **Use of Force: Business and Human Rights in Conflict Zones**

This presentation will focus on the Voluntary Principles on Security and Human Rights, human rights guidelines that were established in 2000 specifically for extractive sector companies.

ANITA RAMASASTRY, UW Law Foundation Professor of Law; Director, Graduate Program in Sustainable International Development, University of Washington School of Law, Seattle, WA

11:15 am – Noon

**Anti-Corruption Laws**

Due to legal requirements and good corporate practice, companies have been developing compliance policies that include launching anti-corruption policies, codes of conduct, and anti-bribery policies, among others. This presentation will address the OECD Convention on Combating Bribery of Foreign Public Officials, Extractive Industries Transparency Initiative, UN Convention Against Corruption, U.S. Foreign Corrupt Practices Act, Canada Corruption of Foreign Public Officials Act, U.K. Bribery Act, and U.S. Bribery Act. The international framework of anti-corruption laws, and the interplay of the emerging collaborative processes, stakeholder engagement and involvement of non-legal actors in negotiating human rights laws, can give rise to unanticipated issues.

GWENDOLYN WILBER JARAMILLO, Partner, Foley Hoag LLP, Boston, MA

ANTHONY D. MIRENDA, Partner, Foley Hoag LLP, Boston, MA

Noon – 1:30 pm – **Lunch on Your Own**

1:30 – 2:30 pm

**Advising Clients Doing Business During a Corruption Investigation: A Simulation and Review of Ethical Considerations**

This session will examine the risks when entering into a major business transaction with an entity that is involved in an ongoing multi-jurisdictional corruption investigation, and the tools available to mitigate such risks—as well as the ethical issues encountered by counsel advising the various participants. The format will be a simulation of a not entirely hypothetical set of facts as viewed through the lens of different participants in the proposed transaction. The simulation will highlight various issues and dilemmas faced by the parties, including inherent conflicts of interest, confidentiality, and legal privilege concerns, and examine and discuss the considerations and potential actions that can be taken. Reference will be made to the ABA Model Rules.

CYNTHIA URDA KASSIS, Partner, Shearman & Sterling LLP, New York, NY

DANFORTH NEWCOMB, Of Counsel, Shearman & Sterling LLP, New York, NY

MANUEL A. ORILLAC, Partner, Shearman & Sterling LLP, New York, NY

2:30 – 2:45 pm – **Coffee Break**

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**PART FOUR: ENFORCEMENT OF HUMAN RIGHTS STANDARDS**

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2:45 – 3:30 pm

**Access to Remedy**

Extractive industries often work in countries that lack the governmental and civil institutions necessary to protect human rights or that have a record of failing to respect those rights. Individuals and groups assert human rights claims in national and international fora in challenging natural resource development proposals. Just as in domestic commercial agreements, where parties often address this lack of an appropriate forum to settle legal disputes by using arbitration or mediation, the international human rights community utilizes private or extra-legal grievance processes to avoid, mitigate, or redress human rights legal risks and impacts. Panelists will address the emerging use of collaborative measures, including mediation, industry initiatives, multi-stakeholder efforts, and collaborative measures. How such voluntary or collaborative efforts work within existing legal frameworks will also be considered.

SARAH McGRATH, Legal and Policy Coordinator, Remedy Programs, International Corporate Accountability Roundtable (ICAR), Washington, DC

3:30 – 4:15 pm

**Remedying Human Rights—From the International, Regional, and Domestic Status Quo to Future Innovation**

This presentation will review a variety of international, regional, and domestic judicial and private grievance mechanisms that provide remedy for human rights and play a role in the enforcement of human rights standards in North America, Latin America, Africa, OECD countries, and elsewhere. The presentation will outline the remedial

avenues in relation to leading standards of human rights as used in mining and finance. The status quo will then be critically reviewed in light of the access to remedy goals of the UNGPs, with a proposal for a new approach to remedy global environmental and social matters and human rights in the mining sector.

MICHAEL TORRANCE, Lawyer, Norton Rose Fulbright LLP, Toronto, ON

4:15 – 5:15 pm

**Legal Remedies for Human Rights Violations Post-Kiobel**

After the 2012 U.S. Supreme Court decision in *Kiobel v. Royal Dutch Petroleum*, the focus of human rights advocates seeking to ensure compliance with international standards or remedies for corporate wrongdoing is shifting away from Alien Tort Claims Act suits and toward new legal strategies in a range of fora: from utilization of industry-specific mechanisms, to common law claims against firms, to antitrust and environmental enforcement actions. This presentation will examine questions surrounding direct cases (horizontal claims) as well as suits against states asked to regulate corporate conduct (vertical actions).

NOAH BENJAMIN NOVOGRODSKY, Professor of Law, University of Wyoming College of Law, Laramie, WY

5:15 – 5:30 pm – **Closing Remarks and Adjournment**

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## Rocky Mountain Mineral Law Foundation

# Upcoming Programs

**Federal Offshore Regulatory Enforcement**  
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**Mining Form 5 LLC: A Workshop on the New Exploration, Development and Mining Limited Liability Company Model Forms**  
March 5, 2016 in Toronto, ON  
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**Core Course on International Oil and Gas Law**  
March 14-18, 2016 in Amsterdam, The Netherlands

**Water Acquisition and Management for Oil & Gas Development: Legal and Regulatory Requirements**  
April 7-8, 2016 in Houston, TX  
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**Oil and Gas Agreements: Purchase and Sale Agreements**  
May 12-13, 2016 in Santa Fe, NM

**62nd Annual Rocky Mountain Mineral Law Institute**  
July 21-23, 2016 in Squaw Valley, CA

**Challenging and Defending Natural Resource Agency Decisions**  
September 14-15, 2016 in Westminster, CO

**International Oil & Gas Law, Contracts & Negotiations: Part 1**  
September 26-30, 2016 in Houston, TX

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January 26-27, 2017 in Santa Fe, NM

**International Mining and Oil & Gas Law, Development, and Investment**  
April 26-28, 2017 in Quito, Ecuador

## Visas

Citizens of most countries do not need a visa to enter Panama, but please check the website of Panama's U.S. Embassy for the latest information: <http://tinyurl.com/panama-visa>

## Course Materials

All available papers, PowerPoint presentations, and speaker biographies will be accessible on the Foundation's website starting two weeks before the meeting. After the conference, the online materials will be updated, and the full set of materials will also be made available to download in a single file. If you wish to obtain a hard copy of these materials in our typical looseleaf format, they will be available at cost, plus shipping, a few weeks after the conference. If you have any questions, please email us at [info@rmmf.org](mailto:info@rmmf.org).

## What To Do in Panama

Panama—a country of unparalleled natural beauty and home to diverse indigenous cultures—offers numerous travel options, many of which can be enjoyed as day trips. Stroll through Panama City's 17th century old quarter, el Casco Viejo, a UN World Heritage site filled with Spanish & French Colonial architecture. Spend the day on the white sand beaches of Contadora Island, surrounded by the crystalline waters of the Pacific, or enjoy an exciting day of deep-sea fishing. Cruise the Panama Canal along with a tour of Gatun Lake to see monkeys, crocodiles, sloths, and toucans. Take a boat to the stunningly beautiful San Blas Archipelago and experience the unique Guna Indian art and culture. Or visit the Anton Valley, land of eternal spring, home to waterfalls and an inhabited volcano. It's even possible to scuba dive in the Atlantic and the Pacific on the same day!

If you plan to take any tours or excursions before or after the conference, and you don't have your own travel agent, the Panama Ministry of Tourism recommends PTY Safety Shuttle & Tours. Their catalog of activities is available at <http://tinyurl.com/pxwk6hd>, and information on Panama is available at their website below. PTY can also arrange private airport transfers upon request, including a welcome meeting point and a welcome kit at the airport, along with information on special discounts for tours and excursions. Contact PTY at:

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## Human Rights Law and the Extractive Industries



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# HUMAN RIGHTS LAW AND THE EXTRACTIVE INDUSTRIES

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- Online – <http://tinyurl.com/rockym108>
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**Registration Fees:** Include online course materials, refreshments, and hosted functions as listed in this brochure. These fees do not include hotel costs or transportation. Registrations will be accepted only when accompanied by a check, money order, government purchase order or training form, credit card information, or wiring information. No registrations can be processed without payment.

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