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November 15, 2014

Dr. Jim Yong Kim, President of the World Bank
cc: Sophie Sirtaine, Director of the World Bank Group for the Caribbean Region
Mary Barton-Dock, World Bank Special Envoy to Haiti, Latin America & Caribbean
Paulo de Sa, Manager, Oil, Gas and Mining Unit, Sustainable Energy Department
Remi Pelon, Sr. Mining Specialist, Sustainable Energy, Oil, Gas, and Mining
Michelle Keane, Lead Country Director, Haiti

cc: The World Bank Inspection Panel
World Bank
1818 H Street, NW
Washington, DC
20433 USA

**Re: Concerns Regarding the Infrastructure & Institutions Emergency Recovery Project-
Additional Funding (AF-IIERP) in the Republic of Haiti.**

Dear President Kim:

During the past several years, the World Bank has provided both technical assistance and financing for mining-related activities to the government of Haiti through the Extractive Industries Technical Advisory Facility (EI-TAF) and an International Development Association (IDA) grant of Additional Funding (AF) to the project entitled "Infrastructure & Institutions Emergency Recovery Project" (IIERP) (P130749) (together, AF-IIERP). We submit this letter as members and representatives of communities and individuals who have experienced, and fear future harms resulting from the World Bank's assistance to the Government of Haiti in relation to the mining of gold and other minerals.

The signatories of this letter are Haitian civil society organizations with both national and local constituencies (including in the affected communities in the Artibonite, Central Plateau, North, North West, and North East Departments of Haiti), as well as the NYU School of Law Global Justice Clinic, which represents members of communities that have been, and will continue to be, directly affected by the development and reform of the Haitian mining sector. This letter expresses the joint concerns of these communities and organizations that have experienced harm, and fear future harm, as a result of the World Bank's involvement in the mining sector in Haiti.

Project Information

Approved on September 27, 2013, the IIERP-AF aims to rebuild key institutions and infrastructure in the wake of the devastating earthquake of January 2010. The stated aims of the project include improving the efficiency and transparency of public resource use, strengthening public sector management systems, improving public infrastructure such as aviation and roadways and providing support to the Ministry of Public Works, Transport Energy and Communications.¹ Included among the more specific aims of the project is the objective to “build equity and accountability through policy reforms and updating of the regulatory and legal frameworks for key sectors such as energy and mining.”² While very little detail is provided about the Bank’s activities under this portion of the project, we have learned that the Bank’s activities in this sector include: intensive work to draft a new national mining law, capacity building for the *Bureau des Mines et de l’Énergie* (BME), assistance with the mining cadaster (comprehensive land ownership registry), and other activities related to the development of the mining sector.

Statement of Concerns

We write to express our concerns that:

- (1) Communities in Haiti, particularly people affected by mining activity, have not been adequately informed or consulted about the development of the mining sector.
- (2) Proposed mining legislation (“the draft law”),³ drafted by a Task Force made up of World Bank experts and Haitian government officials, if implemented, would fail to adequately protect the environmental and human rights of the Haitian people, directly violating the World Bank’s own Safeguard Policies.
- (3) The World Bank’s involvement in the mining sector in Haiti has been erroneously categorized as Category C. This failure in screening and miscategorization has resulted in a failure to comport with the Bank’s relevant Safeguard Policies.
- (4) The proposed mining legislation would violate the Haitian Constitution and impede the Haitian State in meeting its human rights obligations under international law.

We request that the World Bank work with the Government of Haiti—including but not limited to the Office of Energy and Mines, the Ministry of the Economy and Finance, and the Ministry of the Environment—to address the concerns set out in this letter. Most importantly, we ask that the World Bank work with the Government of Haiti to adequately inform and consult with the Haitian people, especially communities located in areas where mining prospecting and exploration have already taken place and any other communities that are likely to be directly affected by the development of the Haitian mining industry.

Lack of Information and Consultation

¹ World Bank. 2012. *Haiti - Additional Financing for the Infrastructure and Institutions Emergency Recovery Project*. Washington, DC: World Bank. <http://documents.worldbank.org/curated/en/2012/09/16732303/haiti-additional-financing-infrastructure-institutions-emergency-recovery-project> (hereinafter “Report No. 71882”).

² *Id.* at 45.

³ The latest version the signatories to this letter have in their possession is dated February 2014. It is unknown whether there is a later draft.

Residents of communities affected by mining have been categorically excluded from conversations about the development of the mining sector. Dozens of interviews and community meetings that we have conducted have demonstrated that residents of such communities are not aware that the Government of Haiti, with assistance from the World Bank, is rewriting the mining law and engaging in plans to expand mining in the future. Many residents do not know what a mine is, or, for example, that gold is a non-renewable resource. In most cases, communities have received no information whatsoever about mining and the processes used in the extractives sector other than the information that several of the signatories of this letter have provided.

To date, access to information about the World Bank's technical assistance and financial support of the mining sector has been extremely limited. The Bank has primarily shared information with only a small circle of Haitian government officials and has made only two attempts to share some minimal information with a broader group. These two attempts consisted of meetings held in French⁴ in Port-au-Prince by the World Bank in partnership with the joint Government of Haiti-World Bank Mining Law Task Force and the *Conseil de Développement Economique et Social* (Council on Economic and Social Development or CDES). The first meeting was a Mining Forum held in June 2013, and the second was a Round Table discussion on the development of the mining sector held in June 2014. However, these meetings are not examples of effective consultation or information sharing. Both events were by invitation only and, to our knowledge, not a single member of a community where mining companies have been active was invited to either meeting. The meetings were held in hotels in Port-au-Prince, many hours by car or bus away from communities where companies have explored for gold and other metals. Neither hotel is accessible by public transit. Invitations to attend the forum and the Round Table discussion were distributed via email in French.⁵ Fewer than five Haitian people representing civil society attended either event. The vast majority of participants at both events represented the private sector.

Although some Bank employees have told us that additional information about the Bank's role in the mining sector in Haiti would be made public, thus far very little information is available. The Bank has not provided information online other than the IIERP-AF grant documents and project proposals.⁶ These IIERP-AF documents contain only a few passages referring to capacity building in the mining sector. No information about the substance of the EI-TAF engagement appears to be available. The most extensive presentation by the Bank of its work on mining in Haiti is a single page of text on the internet discussing the June 2013 Mining Forum.⁷ In addition, the draft mining law is not posted online, and has not been made available in Haitian Kreyòl.

⁴ French is spoken and written by those who have benefited from many years of education. The Haitian majority speak Kreyòl.

⁵ World Bank data shows 10.6% of the Haitian population has access to the internet. <http://search.worldbank.org/data?qterm=internet+user&language=&format=>. Although statistics about rural and urban internet access were not available, given the socio-economic conditions prevailing in rural Haiti, it is fair to assume that an extremely small percentage of rural Haitians benefit from internet access.

⁶ <http://www.worldbank.org/projects/P130749/af-infrastructure-institutions-emergency-recovery?lang=en>

⁷ <http://www.worldbank.org/en/news/feature/2013/07/25/haiti-mining-for-economic-growth>; A PowerPoint presentation by the head of the BME is posted on another part of the Bank's website.

<http://www.worldbank.org/content/dam/Worldbank/document/Extractives/pdac2014/9.%20Ludner%20Remarais%20-%20Vers%20un%20developpement%20du%20secteur%20minier%20en%20Haiti.pdf>

This lack of consultation and information dissemination undermines the stated principles and operational policies of the World Bank on a fundamental level, including the World Bank Access to Information Policy. These gestures at consultation are plainly inadequate in the face of the potentially major, irreversible consequences of development of the mining sector in Haiti, and they thus violate the Bank's Safeguard Policies.

The Draft Law Lacks Adequate Social and Environmental Protections

As explained above, the communities that are most directly affected by mining have not been informed of the law reform process or the contents of the draft law. However, civil society organizations and community members who have learned of the contents of the draft law are extremely concerned that the law as written will succeed in attracting investment in Haiti's mining sector, but fail to protect the country from severe environmental and social harms.

The following is a non-exhaustive set of concerns that stem from the draft law. As discussed in more detail below, a substantive national and local conversation and public comment period concerning the draft law is badly needed so that all such concerns can be discussed and addressed.

First, the current draft law is unable to effectively protect the environment. In particular, vague language in the draft leaves many of the most important protections to later regulation.⁸ If passed into law in its current form, the inadequate environmental safeguards in the draft will be unable to prevent degradation of the already "extremely fragile environment."⁹ In particular, the draft law is currently insufficient to protect against the depletion and pollution of the water supply by future mining activities, or to preserve the land and water for future generations. Communities have already reported what they believe to be exploration-linked environmental harms in areas where mining companies have been active. These harms include the loss of trees and crops, as well as degradation of the quality of soil, which is essential to the livelihoods of Haiti's many primarily agricultural communities.

We are also greatly concerned that the current draft law fails to protect against future social harms that are likely to result from development of the mining industry, including, but not limited to, large scale involuntary resettlement. Article 3 defines mining as an activity of public utility. Article 150 would allow the Government of Haiti to use compulsory acquisition to obtain private property. Together, these provisions would make it easier for the Government of Haiti to seize land for mining since the presumption that mining is for the public good established in Article 3 would make it easier for companies to justify the state's use of the otherwise extraordinary power of expropriation. This risk is made worse by Article 250, which grants the holder of a mining title use of all land necessary for exploration and exploitation.

Moreover, the draft law does not provide adequate provisions to protect the quality of life, private property, and livelihoods of communities affected by future mining operations in Haiti.

⁸ Article 115 of the draft law concerns environmental protections without providing details. The provisions concerning mine closure and rehabilitation are alarmingly vague, leaving substantive content and enforcement to be determined by the government's regulatory and enforcement capacity. *See* Articles 72, 90, 153, 177-178, 183, 185, and 191.

⁹ World Bank, Report No. 71882 at 56.

For example, a 50-meter buffer between mining activities and other buildings (including residential communities), as described in Article 158, is not sufficient distance to protect residents.

Further, the Government of Haiti may lack the capacity to develop the additional protections that the draft law leaves for future regulation, and it may also lack the capacity to enforce even those weak and vague provisions that are included in the draft. As the Bank itself stated in the Project Proposal:

“Haiti’s history of political instability has weakened its institutions and governance mechanisms, contributing to fiscal, regulatory and planning constraints. The January 2010 earthquake further deepened the existing governance challenges by severely diminishing already weak government capacity.”¹⁰

The signatories to this letter have directly observed the government’s lack of capacity in relation to mining. The BME has admitted to us that it lacks personnel with adequate training, does not have sufficient material to independently undertake its mandated monitoring activities, and cannot staff regional offices in mining-impacted areas. The affected communities have expressed a fear of the gold mining sector as a whole given the manifest lack of capacity on the part of the Haitian government to monitor and enforce the law.

Finally, we are concerned that Article 114, requiring all documents and reports related to mining activity to be kept confidential for a period of 10 years, does not conform to international best practices and would reduce accountability across the sector. Further, such a confidentiality term offends the Bank’s stated goal to “improve efficiency and transparency in public resource use and strengthen Haiti’s public sector management systems.”¹¹

Should the draft law be implemented, threats to land tenure, lack of local authority, and environmental degradations would not only continue, but are likely to increase dramatically, due to the inadequate safeguards included in the draft law combined with the known risks associated with large-scale gold mining.

The Project should have been labeled as Category A

The World Bank has erroneously labeled its engagement in the development of Haiti’s mining sector as Category C. Although World Bank support to this project has been given in the form of Technical Assistance (TA), which is typically labeled as Category C, the project concerns the development of Haiti’s entire mining industry and therefore has the capacity to cause environmental and social harms that span far beyond the reach of a typical TA project. Mining is an inherently high-risk activity, particularly in a country where the governmental capacity to monitor mining activities and enforce the rule of law is manifestly extremely poor.¹² This project

¹⁰ World Bank, Report No. 71882, at 10.

¹¹ World Bank, Report No. 71882, at 10.

¹² The World Bank overtly addresses the historic, and current, lack of capacity of the Haitian government in the Project Proposal documents. While these documents were written in 2012, the political situation (discussed later in this letter) has only worsened in the interim period. See World Bank, Report No. 71882, at 9.

thus should have been labeled as Category A from the outset, and all of the Safeguard Policies intended to promote environmental and social sustainability in Category A projects, including the requirements concerning consultation of affected peoples, should apply.¹³

Violations of the Constitution of Haiti and the Human Rights of Haitians

The practices of the World Bank and the Haitian Government to date in developing the mining sector do not respect and protect the environment and they fail to protect the rights of the people to participate in decisions that affect their lives. The Constitution of Haiti protects the environment, the right to information, and the right to freedom of expression.¹⁴ The right to participate in decision-making processes, including in relation to development, is enshrined in the International Covenant on Civil and Political Rights (ICCPR)¹⁵ and the International Convention on Economic, Social and Cultural Rights (ICESCR).¹⁶ Haiti has ratified both the ICCPR and the ICESCR and thus is bound by their provisions regarding the right to participation.¹⁷ As applied to mining, the right to participation includes a continuous process of dialogue, consultation and negotiation, enabling communities to play an active role in mining development.¹⁸ This should include participation in the development of relevant mining laws. If the Bank and the government continue to exclude those directly impacted by mining, and if the draft law is implemented in its current form, the Haitian Government will stand in breach of its Constitution and international human rights commitments.

Political, Social, and Economic Context in Haiti

The organizations that sign this letter would like to emphasize the political, social and economic context in Haiti today. Although this letter provides detailed concerns about the development of the mining industry, these concerns apply to other sectors as well. The organizations that sign this letter note that the economic foundation of Haiti is agriculture. They note, too, that mining activity may have a significant impact on farming. The organizations that sign this letter note that

¹³ Under OP 4.01, for Category A and B projects proposed for IDA financing, the borrower must reach out to project-affected groups and local nongovernmental organizations as early as possible during the environmental assessment process and consult with them about the project's environmental aspects, taking their views into account. World Bank, Operational Policy on Environmental Assessment –OP 4.01 para 14, *available at* <http://go.worldbank.org/K7F3DCUDD0>. For Category A projects specifically, the WB policy states that the borrower should consult with these groups at least twice. *See Id.*

¹⁴ CONSTITUTION DE LA RÉPUBLIQUE D'HAÏTI, art. 253, 40 & 28.

¹⁵ International Covenant on Civil and Political Rights, adopted Dec. 16, 1966, 999 U.N.T.S. 171 (1967) (hereinafter, ICCPR), ratified by Haiti on Feb. 6, 1991.

¹⁶ International Covenant on Economic, Social and Cultural Rights, adopted Dec. 16, 1966, 993 U.N.T.S. 3 (1967) (hereinafter ICESCR), ratified by Haiti on Oct. 8, 2013.

¹⁷ The right to participation derives from Article 25 of the ICCPR.

¹⁸ *See, e.g., UNITED NATIONS, REPORT OF THE WORLD SUMMIT ON SUSTAINABLE DEVELOPMENT (2002), UN Doc. A/CONF. 199/20, ¶46 (b):* “Enhancing the contribution of mining, minerals and metals to sustainable development includes actions at all levels to: Enhance the participation of stakeholders, including local and indigenous communities and women, to play an active role in minerals, metals and mining development throughout the life cycles of mining operations, including after closure for rehabilitation purposes, in accordance with national regulations and taking into account significant transboundary impacts.”

according to the World Bank, only half of rural Haitians have access to an improved water source.¹⁹ Meanwhile, mining activity, particularly gold mining, requires massive amounts of water. The organizations that sign this letter note that the World Bank is supporting the Haitian Government to draft a new law to replace that of 1976 and that Parliament is not yet aware of the contents of the new law. The organizations that sign this letter call attention to the experience of two mining companies that have operated in Haiti in the past century, Reynold's Mining and Sedren. Residents from areas where Reynold's and Sedren operated report that even today, decades later, the land is not as fertile as it once was.

In addition, the proposed law has been created with input from the mining industry but without the participation of Haitian communities, despite the fact that the Haitian Constitution declares that mineral resources are part of the public domain. Often, community members observe those who work for mining companies arrive in their communities, enter their gardens, enter their courtyards, and drill holes to test the soil. Community members do not know who these individuals are or where they are from. Residents also do not know what international institution is investing and residents feel as though decisions that affect their lives are made under the table. The organizations that sign this letter are concerned that the development of tourist zones that attract foreigners but fail to inform or engage local people, agribusiness that engages with corporations but fails to engage with the people who work the land, do not contribute to Haitian led development, the only sort of development that is durable.

The current political situation in Haiti presents a unique challenge to the democratic passage and responsible implementation of the draft law – a scenario which only heightens the danger that the law will result in future mining activities that are carried out irresponsibly and lead to severe social and environmental harm. Elections for many municipal and legislative positions in the Haitian Government have been continually postponed for the past three years. If the long-promised elections do not take place before the terms of ten senators expire in January 2015, Parliament will be dissolved, throwing the country into further political discord. President Michel Martelly may then begin to rule by decree. Haitian Prime Minister Laurent Lamothe has suggested that the overdue elections for municipal and legislative positions will be held by early next year, but communities remain concerned, as similar assurances have been made in past months and the promised elections have failed to materialize.

In the original IIERP Project Information Document, the Bank extensively addressed “Haiti’s long history of political instability,” which “has considerably weakened the institutions and government mechanisms.”²⁰ As of 2012, the Bank described the political situation as improving, and presented the newly elected President and Prime Minister as functioning in an increasingly stable

¹⁹ Poverty and Inclusion in Haiti: Social gains at a timid pace, World Bank, 2014 available at:

<http://www->

wds.worldbank.org/external/default/WDSContentServer/WDSP/IB/2014/07/21/000442464_20140721112314/Rendered/PDF/895220BRI00pau00Box385284B00PUBLIC0.pdf

²⁰ World Bank. 2012. *Haiti - Additional Financing for Infrastructure and Institutions Emergency Recovery Project*. Washington, DC: World Bank, at 3. <http://documents.worldbank.org/curated/en/2012/07/16554755/haiti-af-infrastructure-institutions-emergency-recovery>.

government.²¹ Recent developments, however, call these assessments into question. The future of the rule of law in Haiti is viewed as unpredictable.

Advancing the democratic reform of a law with significant implications for Haiti's future is difficult in the best of times, since it takes concerted efforts to create a national dialogue that is accessible to the whole population. If the Haitian political process does break down, and especially if the Executive begins to rule by decree, such a dialogue will be impossible. Should this happen, it is imperative that the World Bank not cooperate with or assist in the implementation of a new mining law outside the democratic deliberative process of debate and passage by a freely elected Parliament. Further, any analysis of the adequacy of the draft law's social, environmental and other protections must take into account the country's unstable political situation and the historically limited capacity of the Haitian Government.

Requests for the World Bank

In response to the concerns set out in this letter, we request that the World Bank undertake or, where appropriate ensure that the Government of Haiti undertakes, the following actions:

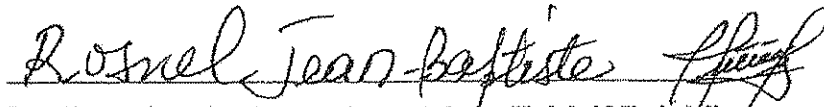
- 1) Translate the draft law into Haitian Creole and make it available to civil society and social movement organizations as well as local government and the media, to ensure that the draft law is distributed broadly and reaches communities affected by or likely to be affected by mining. Present accurate and accessible information regarding the implications of the draft law to communities who have been, or may be affected, by future mining activities in Haiti in order to enable them to effectively participate in consultations on the draft law. This should include information concerning the planned development of the mining sector and the potential future impacts of mining on communities.
- 2) Hold consultations with communities that may be affected by future mining activities in Haiti regarding the draft mining law, the future planned development of the mining sector, and potential impacts of mining on communities and their livelihood activities. Ensure that consultation concerning the draft law includes information about how the proposed law purports to protect the environment and to encourage meaningful consultation of affected people. The conversations must also address concerns that the Government of Haiti lacks the capacity to enforce the law and monitor violations.
- 3) Hold a public comment period of at least six months, and provide an opportunity for the draft law to be revised in response to any comments received, before the draft law is formally presented to Parliament.
- 4) Re-categorize the World Bank's assistance in the mining sector as Category A due to the scale of potential impacts and harms that may occur as the project continues and the draft law is implemented. As Category A status would require, the Bank and the Government of Haiti should formulate and implement a plan to address vulnerable populations in the development of the mining sector, as well as a plan to address potential negative environmental impacts that gold mining and other mining activities present.

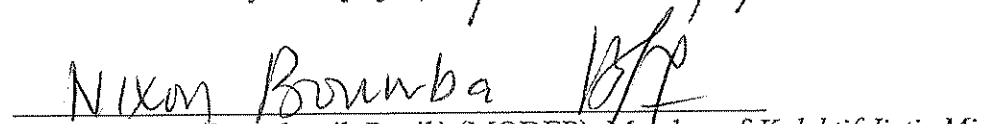
²¹ *Id.* at 2.

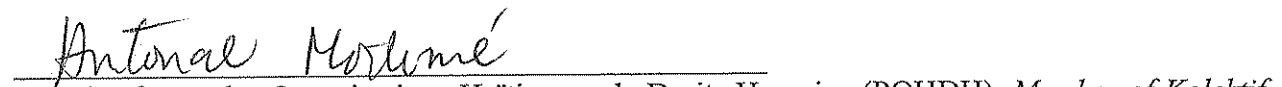
- 5) Revise the draft law so that it better protects against social and environmental harms resulting from mining activities and exploration. The law must also comport with Haiti's international human rights commitments, notably the right to participation as articulated in the ICCPR and ICESCR.
- 6) Assert pressure on the Government of Haiti, including withholding of further financing, if the Government proceeds to pass any law or set of laws governing mining activity without having realized the actions described in points 1-5 above.


We welcome any opportunity to engage in further dialogue regarding our concerns and to work to resolve these fears. It is in the best interest of the signatories, and the Haitian people as a whole, to have these concerns addressed in a swift and effective manner. We would be more than willing to provide any assistance or information necessary to facilitate this conversation and, hopefully, the implementation of our requested actions. Thank you for your time, and we look forward to working with you in the near future.


Signed by:



 Pou Tèt Kole Ti Peyizan Ayisyen, Mèm Kolektif Jistis Min


 For Mouvmàn Demokratik Popilè (MODEP), Member of Kolektif Jistis Min


 For Plateforme des Organisations Haïtiennes de Droits Humains (POHDH), Member of Kolektif Jistis Min


 For Plateforme haïtienne de Plaidoyer pour un Développement Alternatif (PAPDA), Member of Kolektif Jistis Min


 For Défenseurs des Opprimées/Opprimés (DOP), Member of Kolektif Jistis Min


 For Global Justice Clinic, NYU School of Law
 As Representatives of the KJM and its Coordinating Committees