



The Mining Industry in Haiti: Issues and Realities Summary

The revival of the mining sector in Haiti

The wealth beneath Haitian soil may be worth up to 20 billion dollars.¹ The Haitian government and its international partners are now working on developing the mining sector, which had been dormant since the beginning of the 1980s. The development of mining resources is one of the priorities of the Haitian government, as the economic benefits they generate contribute to the finances and progress of the country. In view of this, the government has begun the process of reforming the mining law, which has been in place since 1976, evaluating the mineralogical potential of the country and making it known to foreign investors.²

The Haitian public became aware of this process when investigative journalists brought it to their attention. The Haitian government's approach has sparked a reaction among Haitian civil society organizations that are committed to defending human rights and the right to development. The information revealed by the Haitian press has reverberated internationally and opposing the development of the mining sector in the current context has become an issue of international solidarity.

The lack of transparency and information from the State makes one fear for the worst for Haiti's fragile ecosystems and the communities who rely on their land for survival, land that is now being coveted by or conceded to foreign companies. The Haitian public was never informed about the important changes that the government hopes to bring to the legislation that regulates the mining sector and the issues that they raise, including their environmental and social impacts.

The mining sector has seen a significant revitalization since Michel Martelly came into power in May 2011. On the one hand, he personally sought bilateral and cooperative agreements with his counterparts in Chile, Ecuador and Jamaica for the mining sector.³ On the other, his government undertook the reform of the mining law with the help of the World Bank and issued the first mining permits to Canadian and U.S. companies.

In December 2012, the Bureau of Energy and Mines (*Bureau des mines et de l'énergie*) issued the first mining permits since adopting the 1976 Mining Law. Two exploitation permits to mine a copper deposit in the Northeast department were granted to Majescor Resources Inc., a Montréal-based company, through its Haitian subsidiary, Société Minière du Nord-Est. On the same day, a third exploitation permit was issued to VCS Mining Inc., a U.S. company, to mine a gold deposit in the North department. Another U.S. company and the second largest gold producer in the world, Newmont Mining Inc., has 27 exploration permits and 19 prospection permits.

Granting these permits generated intense debate, namely among the members of Haiti's Senate who, in January 2013, summoned the Director General of the Bureau of Mines to remind him that any mining exploitation agreement must be approved by the Parliament of Haiti. In February 2013, the Senate adopted a resolution calling the executive branch to halt all exploration and mining activities. This moratorium is still in place and has slowed down foreign mining companies operating in Haiti.

The creation of a new mining law

Since March 2013, the World Bank's Extractive Industries Technical Advisory Facility has provided assistance the Haitian government for the revival of the mining sector. The objectives of the Haiti Mining Dialogue Technical Assistance project, which receives US\$ 650,000 in funding from an Advisory Facility trust, are to update the legal and regulatory framework of the mining sector in Haiti, set up a registry of mining permits, organize the First Mining Forum and strengthen the capacity of state institutions to develop policies and negotiate mining agreements. A task force consisting of representatives from different government authorities and an international consultant hired by the World Bank prepared a draft mining law, which was first presented to mining companies that are active in Haiti. A second version of the draft law has been circulating non-officially since August 2014. The lack of transparency and consultation with the public and communities who are likely to be affected by mining projects drew a strong reaction from human and environmental rights organizations.

The draft law fits within a global context in which different countries are revising their mining codes and advocating deregulation and the withdrawal of government involvement. The withdrawal of the State implies that responsibility will be transferred to private multinational companies in the mining industry, particularly as it relates to the development of communities that live around or near the mine.

The draft law proposed by the Haitian government is, first and foremost, designed to satisfy investors in mining activities. It has a purely commercial orientation, although authorities support the draft law and believe it gives them the opportunity to use the natural resources beneath Haitian soil towards the country's social and economic development.

One of the fundamental changes in eliminating the convention system is that mining projects will no longer require the approval of the Parliament of Haiti. In its current form, the draft law stipulates that any mining convention will be authorized by the Prime Minister on the joint proposal of the Ministry of Economy and Finance (*Ministère de l'Économie et des Finances*) and the National Mining Authority (*Autorité minière nationale*), after consultation with commissions responsible for overseeing mining in the two houses of Parliament.

While the environmental impact of mining projects is a major issue that mobilizes communities and social actors around the world, the environmental protection measures in Haiti's draft mining law fall below international standards and need to be developed and strengthened in the law itself as well as in the regulation that will govern its application.

In view of the real risks of ecological disaster in Haiti, the development of the mining sector must be accompanied by a rigorous legislative framework and a stronger capacity of the Minister of the Environment (*Ministère de l'Environnement*) and the National Mining Authority to closely monitor the effectiveness of the means of reducing social and environmental impacts.

Mobilization against the mining industry in Haiti

Human rights groups and peasant organizations have been mobilizing against the mining industry in Haiti for several years. This opposition is fuelled by reflections on the many aspects of the mining industry: the mining sector as an engine of sustainable and inclusive development, the distribution of the wealth generated by the nation's natural resources, the transparency and accountability of all actors in the mining sector, including the government, and, obviously, the harmful effects on the environment and the population that inevitably arise from mining.

The Haiti Mining Justice Collective (*Kolektif Jistis Min an Ayiti, KJM*) support communities as they organize to defend their rights and the environment in the face of mining.⁴ Moreover, its members are mobilizing to ensure that the development of the new mining code is subject to public consultation with the participation of communities affected or likely to be affected by these mining projects and society in general.

A key action of Collective is to provide information to communities about the adverse direct and indirect effects of mining. Because this information is not necessarily accessible to the communities or available in Creole, the Collective has chosen a direct approach by communicating information in community meetings in the areas affected by mining activities. The Collective has organized discussions, workshops and film viewings to raise awareness among the population about their rights and the impact of mining activities.

Moreover, the Collective submitted to the World Bank a request for inspection of the Haiti

Mining Dialogue Technological Assistance project in January 2015. The request for inspection was motivated by the World Bank's support of the Government of Haiti's task force, which is responsible for preparing the draft mining law in Haiti. Among other things, the Collective's request for inspection addressed the lack of consultation with Haitian civil society organizations and communities directly affected by mining activities, the protection of the environment and open-pit mining as well as land rights, forced resettlement and access to farm lands.

The World Bank refused to consider the complaint filed by the Collective and the communities. In its decision, the Panel that evaluated the complaint argued that the Bank's operating policies and procedures do not apply to the Mining Dialogue Technological Assistance project in Haiti because it is funded by a trust executed by the Bank.

In March 2015, the Haiti Mining Justice Collective had a hearing with the Inter-American Commission on Human Rights (IACHR) on access to information in Haiti. The Collective expressed its concerns about the draft mining law's confidentiality clause barring access to documents and information that relates to the public interest for a period of ten years, and the lack of an access to information law in Haiti. Yet, with the development of the mining industry in Haiti, accessing information about the environmental and social impacts of mining, the use of land by mining companies and the scope of the work at different stages of a project (exploration, exploitation and rehabilitation) is crucial for communities who are likely to be affected and civil society organizations who want to participate in the State's public affairs.

THE CANADIAN MINING INDUSTRY ABROAD: WHAT ARE HAITI'S PROSPECTS?

Canada is a major player in the international mining industry and a global hub for mining financing. As of October 2015, 1472 mining companies were listed on the Toronto Stock Exchange and had shares in more than 5700 mining properties, with 200 active mines in Canada. According to Natural Resources Canada, Canadian mining assets abroad totalled 169.7 billion dollars in 2014. Moreover, Canadian direct investment in mining abroad reached 69.03 billion dollars in 2014.⁵ This is the third largest sector and represents 18% of the total of Canada's direct investment abroad.⁶

Canadian mining companies are active in 104 countries across the world.⁷ The top destination for Canadian mining capital is Latin America and the Caribbean, with 45.8 billion dollars invested directly into mining extraction in 2014, which is more than two thirds of Canadian direct investment in this sector.

Canadian mining companies have been in Haiti since the 1950s and remain very active in prospection and research. Eurasian Minerals, based in Vancouver, received an exploration permit in December 2012 for the Grand Bois site (North department) and Majescor Resources, based in Montréal, owns 15% of the shares of SOMINE, a Haitian company that

has a gold exploitation permit in the Northeast department. However, exploitation projects have been placed on hold due to the moratorium imposed by the Senate of Haiti.

The Government of Canada actively supports the Canadian mining industry abroad through a four-pronged strategy:

- ① Political support;
- ① Economic support;
- ① Negotiation of bilateral or regional free trade agreements and private investment treaties;
- ① Partnerships with the mining industry for development activities, more specifically in the area surrounding the mines and to implement the Corporate Social Responsibility (CSR) policy for mining companies that operate abroad.

In 2012, CIDA granted 10 million dollars to the World Bank's Extractive Industries Technical Advisory Facility and it is through this Facility that the World Bank supports the legal reform of the mining sector in Haiti. From 2009 to 2014, CIDA contributed more than 67 million dollars to projects in the private development sector, targeting, among others, prospection and mineral exploration, the precious metals and minerals subsector and industrial minerals.

Haiti remains a priority for Canada, and, given the importance of the Canadian mining industry abroad and its continued presence in Haiti, the Government of Canada is expected to play a very active role in this area in the near future, as it currently does in countries where Canadian mining companies are present. In the new 2015-2020 strategy for Canada's engagement in Haiti, the mining sector has been identified as one of the country's drivers of economic development. The Ambassador of Canada to Haiti recently confirmed this approach at a recent conference, stating that the Canadian government would support the development of the mining sector in Haiti.⁸

Given the importance of Canadian mining companies on the international scene, the interest they have shown in the development and exploitation of natural resources in Haiti, and the multiple sources of support that they have received from the Canadian government, Canada must take a series of measures to guarantee that international standards and human rights will be respected. Moreover, because Haiti lacks real fiscal or environmental control mechanisms, it cannot ensure that resources will be exploited responsibly and fairly in a way that contributes to the development of the country and helps reduce inequality and poverty.

These concerns are entirely justified in the context of Haiti. Among the challenges the country faces are an undeniably fragile environment, the chronic weakness of human rights protection and state apparatuses that are incapable of properly guiding large-scale projects. These projects require a framework that goes beyond the technical aspects of developing natural resources, which is what the government of Haiti seems to be concentrating its

efforts on.

In view of this, *Concertation pour Haïti*, staying true to their mission of raising public awareness, working in solidarity with the Haitian people and promoting human rights and community-based development, will work towards ensuring that the Haitian people and, in particular, the communities affected by mining have access to the necessary information to make free and enlightened decisions about the future of mining projects in their country.

To this end, the *Concertation pour Haïti* makes the following recommendations to the Government of Canada:

1. Stop directing international development assistance and diplomatic services towards the promotion of mineral extraction abroad, specifically in Haiti.
2. Strengthen the capacity of Haitian institutions to evaluate and follow up on the impacts of mining activities, namely their environmental and social impacts.
3. Promote and support the Haitian government's efforts to create an access to information law in accordance with its obligations under international human rights law.
4. Promote and defend, through international cooperation and assistance, the human rights and environmental rights of populations that are likely to be affected by the mining industry in Haiti to ensure that the people of Haiti may exercise fully their economic and social rights.
5. Promote and support the Government of Haiti's efforts to establish consultation mechanisms for the mining industry that are inclusive and adapted to the Haitian context.
6. Support, through bilateral assistance and cooperation, the development and implementation of an effective plan to protect and restore the environment in Haiti.
7. Encourage the Government of Haiti to adopt standards of environmental and social protection in accordance with the highest international standards and to include these standards in the mining code that is currently in development.
8. Propose to the Government of Haiti tax measures and measures to collect mining royalties that effectively support the development of the country and local communities.
9. Hold Canadian companies operating abroad accountable and lift existing

legal barriers to allow foreign citizens who are injured by the actions of Canadian mining companies to seek justice in Canada.

10. Support the United Nations Human Rights Council's elaboration of an international legally binding instrument to regulate, in international human rights law, the activities of transnational corporations and other business enterprises (Resolution A/HRC/26/L.22/Rev.1, June 25, 2014).

Notes

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- ¹ "Ruée vers l'or en Haïti. Qui va s'enrichir? Ki yès k ap vin rich?," *Ayiti Kale Je*, last modified May 31, 2012, <http://goo.gl/di6SuK>.
 - ² At the same time, the Government of Haiti adopted an identical approach to the country's energy resources (oil and gas). Gas and oil concessions were granted to national and foreign companies.
 - ³ Ludner Remarais, "Vers un développement du secteur minier en Haïti. Actions menées par la Présidence et le gouvernement haïtiens en vue de la relance du secteur minier métallique" (presentation at Haiti's First Mining Forum, June 2-3, 2013). <http://goo.gl/yd303a>.
 - ⁴ The Collective includes the *Plateforme d'organisations haïtiennes des droits de l'homme* (POHDH), the *Plateforme haïtienne de plaidoyer pour un développement alternatif* (PAPDA), the *Défenseur des opprimées-oppriés* (DOP), the *Mouvement démocratique populaire* (MODEP), *Tèt kole ti peyizàn* (a Haitian peasant union) and *Batay Ouvriye* (a trade union). Dozens of other organizations from communities located in mining zones are also associated with the Collective.
 - ⁵ Direct investments in supporting activities for mining and oil and gas extraction represent an additional \$30.5 billion in Canadian direct investment abroad. The data in this section is grouped together and does not make a distinction between the mining, oil and gas industries.
 - ⁶ "Table 376-0052 – International investment position, Canadian direct investment abroad and foreign direct investment in Canada, by North American Industry Classification System (NAICS) and region," *Statistics Canada*, last modified 2015, <http://goo.gl/VJueJy>.
 - ⁷ "Canadian Mining Assets (CMA) by Country and Region, 2013 and 2014," *Natural Resources Canada*, <https://goo.gl/W7QygB>.
 - ⁸ "Haïti-Canada : Plaidoyer pour l'unification d'Haïti avec sa diaspora," *Haïti Libre*, last modified November 14, 2015, <http://goo.gl/zmve3b>.