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***HUMAN RIGHTS IMPACTS
OF GOLD MINING IN HAITI***

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I. INTRODUCTION

1. The Global Justice Clinic² (“GJC”) at NYU School of Law, *Kolektif Jistis Min* (Justice in Mining Collective),³ respectfully submit to the Human Rights Council information regarding Haiti’s compliance with and commitment to its obligations under international human rights law in the context of the country’s emerging gold mining sector.⁴ Unless otherwise noted, the information in this submission is drawn from the report written by the Global Justice Clinic and Haiti Justice Initiative entitled, *Byen Konte, Mal Kalkile? Human Rights and Environmental Risks of Gold Mining in Haiti* (2016).⁵
2. Efforts to develop a mining industry in Haiti must be understood in light of the country’s social, environmental, and political context, and against the backdrop of Haiti’s complex history with foreign intervention and investment. The promise of gold mining glitters deceptively on the horizon in Haiti, but the reality of an uncertain political future, weak institutions, and widespread impoverishment suggests that it may be little more than a mirage. Celebrated as the only nation in the world born of a successful slave revolution, but known today as the poorest country in the Western Hemisphere, Haiti is a fragile, if resilient, place. Rights are precarious and basic resources are scarce. As of 2014, only 62 percent of all households in Haiti had access to safe drinking water, while less than 50 percent enjoyed such access in rural areas.⁶ The cholera epidemic that erupted in 2010, which has taken more than 10,000 lives to date,⁷ has revealed the vulnerability of the Haitian population due to inadequate water, sanitation, and health infrastructure. But it has also highlighted the power of popular protest.
3. The government of Haiti has identified mining as key to the country’s economic growth over the next two decades and has encouraged foreign investment in the sector.⁸ In the past ten years, companies have reportedly invested over \$30 million in gold exploration activities. However, the mining sector has been effectively on hold for a variety of reasons since 2013, when the Haitian Senate passed a resolution calling for a moratorium out of concern over the lack of Parliamentary and public engagement in decisions about mining.
4. In mid-2013, the government sought assistance from the World Bank (“the Bank”) to rewrite its outmoded mining law. The Bank supported an international expert to join a law reform task force made up of representatives of various Ministries and offices within the Haitian government. Representatives of companies with interests in the mining sector in Haiti reported that they were consulted during this process, but mining-affected communities and the public more generally were shut out.
5. Haitian communities affected by mining activity have organized to learn more about the industry and to discuss how the development of the sector may affect their futures. It has been more than a year since the draft of the new mining law (“the Draft Mining Law”)⁹ produced by the task force was reportedly sent to the prime minister’s office, yet there have been no public discussions of the draft law with community representatives or other members of civil society.

6. The inclusion of the Haitian people in discussions of the mining sector grew even more indeterminate in 2015 as the country entered a period of rule by presidential decree. Elections were postponed three times in the winter of 2015-2016. On February 7, 2016, then-President Michel Martelly stepped down. A provisional government has since assumed office, made up of Provisional President Jocelerme Privert. On March 20th, Parliament rejected President Privert's proposed Prime Minister, Fritz Alphonse Jean.¹⁰ Government posts remain vacant and all parties doubt that elections will take place as scheduled on April 24, 2016. While the political future of Haiti is uncertain, the human rights obligations of the Haitian state are unchanged.
7. Minerals can be exploited only once. The construction and operation of a modern gold mine fundamentally alters existing uses of land, water, and other natural resources, often displacing housing and community structures or disrupting farming and other economic activities. The significant footprint of modern mining could exacerbate existing food crises. As of February 2016, the World Food Program declared a food crisis in Haiti, reporting that over 3.6 million Haitians face food insecurity and more than 1.5 million live with severe food insecurity.¹¹ While 88 percent of people in urban areas are able to satisfy their nutritional needs, just 62 percent in rural areas are able to do so. In some areas up to 70 percent of the Haitian population is facing food insecurity, and rates of malnutrition have risen above emergency levels.¹²
8. Moreover, mining has "spillover" effects beyond the mine's perimeter, including pollution of air and water, as well as disturbance and depletion of surface and groundwater resources. In Haiti, water is a scarce resource, and safe water is even scarcer. In 2014, only 62 percent of all households in Haiti had access to safe drinking water, while less than 50 percent enjoyed such access in rural areas.¹³ Haiti is in its third consecutive year of drought, which has caused drastic water shortages in the country.¹⁴
9. The current moment, before mining has begun, presents a unique opportunity for the Haitian people to engage in a robust public debate about the risks and benefits of mining and for the Haitian State to implement preventive measures to avoid future human rights abuses and environmental harms. Until and unless key information has not been made available to the Haitian people, no prior and informed consent can be obtained for mining. Further, the government of Haiti is manifestly unprepared for the regulatory and monitoring tasks that the gold mining industry demands.
10. For these reasons, this UPR submission calls for a moratorium on all metal mining activities, including the issuance of permits, until the necessary transparency, public education, and active engagement of Haitian communities has been established. Neither of Haiti's submissions for the first-cycle UPR¹⁵ or the mid-term report¹⁶ made any reference to mining. Until now, most discussions about mining have occurred behind closed doors among government officials, company stakeholders, and international financial institutions. The UPR process is an opportunity for the international community to ensure that the people of Haiti are at the center of decisions about the future of mining in their country, and that the Haitian State takes all needed steps to ensure the human rights of its people are protected.

11. The next section of this document provides information about the legal framework relevant to mining in Haiti, facts concerning the state of the sector and the human rights concerns it raises, and suggested recommendations to be made by the Human Rights Council to the State of Haiti during the UPR process.

II. HUMAN RIGHTS IN THE CONTEXT OF MINING IN HAITI

A. Right to Information

12. Freedom of information has been recognized by the UN General Assembly as a fundamental human right, and as “the touchstone of all the freedoms to which the United Nations is consecrated.”¹⁷ The right to information is also an integral part of the various rights enshrined in the International Covenant on Economic, Social and Cultural Rights (“ICESCR”)¹⁸ and the International Covenant on Civil and Political Rights (“ICCPR”),¹⁹ both ratified by Haiti.²⁰ Furthermore, the right to information is enshrined in the Haitian Constitution, both in the preamble and in Article 40.²¹
13. In Haiti, the right to information is often violated and unrealized. Many citizens cannot meaningfully participate in the activities of their government due to lack of access to information and the absence of mechanisms for citizen input. These conditions are compounded by the inability of the press to obtain ostensibly public information from government officials.
14. This obscurity encompasses the mining sector, which is governed by an outmoded Mining Decree, promulgated in 1976, as well as two mining conventions executed in 2005. The conventions specifically require that the government treat as confidential all information provided by companies to the government pursuant to the conventions. Much like the current legal regime for mining in Haiti, Article 115 of the Draft Mining Law imposes a sweeping confidentiality requirement that is inconsistent both with international best practice and with specific guarantees of the right to information under the Haitian Constitution and international human rights law. The provision states that all reports, documents, and data relating to the results of work completed under a mining title will remain confidential for a period of 10 years after filing with the government—unless the mining permit holder discloses them or authorizes their disclosure. This violates the right to information and Article 40 of the Haitian Constitution.
15. On March 17, 2015 members of Haitian civil society organizations testified at a thematic hearing before the Inter-American Commission on Human Rights (IACHR) about the human rights abuses that occur when communities lack access to information and are excluded from decisions about the development of the mining industry. The Haitian government failed to appear at the hearing, despite being officially invited by the IACHR.²² In its report about the session, the IACHR commented on the “troubling information on existing obstacles to the exercise of the right of access to public information, particularly related to foreign investment projects, tourism developments, mining, and exploitation of natural resources.”²³ Based on this information, the IACHR Office of the Special Rapporteur for Freedom of Expression called on Haiti to “implement a specific law governing access to information.”²⁴

Recommendations

16. The government of Haiti should:
 - a. Make available and accessible information about proposed changes to the legal framework for mining, the environmental and social impacts of mining, and other prerequisites for effective public oversight and regulation of the mining industry;
 - b. Ensure that information of public interest is made available in Creole, both in writing and through oral modes of communication such as radio;
 - c. Publicly commit to disclosure of information regarding mining activities including, at a minimum, information concerning planning and permitting, environmental and social mitigation measures, regulatory compliance, negotiation and implementation of community development commitments, and payment and distribution of mining revenues;
 - d. Enact a law and accompanying regulations that guarantee the effective enjoyment of the right of access to information.

B. Right to Participation

17. Domestic and international law guarantee the right of all Haitians to participate fully and equally in deliberations about their country's affairs,²⁵ including decisions about mining. The Haitian constitution protects "the participation of all the population in the grand decisions engaging the national life."²⁶ The Committee on Economic, Social and Cultural Rights (CESCR), General Comment No. 21, states that individuals have the right "[t]o take part freely in an active and informed way, and without discrimination, in any important decision-making process that may have an impact on his or her way of life."²⁷ Rural women's right to participate in and benefit from rural development is expressed in General Recommendation No. 34 of the Committee on the Elimination of Discrimination against Women (CEDAW) on the rights of rural women.²⁸
18. Even at the earliest phases of mining exploration, residents in communities affected by metal mining activities report violations of their right to participation, leading to concerns about future violations if mining moves ahead. Some residents of communities where mining companies have explored for gold and other metals in Haiti have complained of individuals entering their lands, marking their property, taking samples without permission, and failing to provide adequate information about the purposes of these preliminary mining activities.
19. In some communities, companies have obtained land access agreements from local land owners in order to occupy land necessary for mining-related work. Many community members have complained that they did not understand the agreements, were not given adequate notice of their terms, or were asked to thumbprint the agreements to signal their accord without having been read the text. Government officials have been notably absent from interactions between communities and mining companies over land access for exploration.
20. These absences demonstrate that, even in preliminary phases of mining, the Haitian State has failed to protect the local population's right to information and participation.

Community members have expressed frustration at being excluded from decisions that affect their lives. There is a risk that these violations would be exacerbated during the extraction phase of gold mining, when large tracts of land would be occupied and community members likely displaced.

Recommendations

21. The government of Haiti should:

- a. Inform the Haitian people about the processes, potential benefits, and risks of mining, including through measures designed to reach residents of remote communities and Haitians who do not read or write;
- b. Ensure that communities that have been or are likely to be affected by mining can meaningfully participate in decisions related to legal reform, the development of the mining sector and potential mining projects;
- c. Reject any project or proposal lacking the free, prior, and informed consent of each of the communities affected by the planned mining activities.

C. Social and Environmental Rights

Right to Food

22. Article 22 of the Haitian Constitution guarantees the right to food. The right to food is also implicit in Article 11 of the ICESCR guaranteeing the right of everyone to an adequate standard of living.²⁹ This right extends to “people depending on land for their livelihoods,” who often experience hunger and lasting loss of livelihood when land used for subsistence agriculture is expropriated or sold.³⁰ The right to food is violated if people who depend on land for their livelihood are deprived of access to land without being provided suitable alternative sources of livelihood.³¹

23. Violations of the right to food have been ongoing in Haiti for many years. Recently, as stated above, these violations have reached levels of acute concern.

24. Some communities that have experienced metal mining exploration have alleged that these activities have already destroyed their crops. Development of the mining sector may increase violations of the right to food. In northern Haiti where the majority of mining permits are held, most communities are dependent on subsistence farming for food. Expropriation of tracts of land large enough for industrial mining would almost definitely include land currently used for subsistence farming. Further, the potential impacts of metal mining activities—such as depletion of water resources and harm to the environment by chemicals or toxic mine drainage—could have deleterious impacts on subsistence farmers beyond the area of any given mine.³²

Right to Water

25. All Haitians have a right to sufficient amounts of clean, affordable water close to their homes.³³ While the right to water is not specifically mentioned in the Haitian Constitution, it is implicitly protected because it is “inextricably related”³⁴ to the achievement of rights that are explicitly enumerated, including the rights to health, decent housing, education, food, social security, and work.³⁵ The right to water is explicitly

enumerated in the Convention on the Elimination of all forms of Discrimination against Women and the Convention on the Rights of the Child (CRC), and is implicit in guarantees set out in the ICESCR and the ICCPR.

26. Metal mining activity threatens to further undermine the right to water. Because the Haitian government does not provide water to most of its citizens, Haitians must instead use surface and/or groundwater or buy their water.³⁶ Increased industrial use of water for mining may further decrease already threatened supplies of water. Consequently, costs for purchased water may rise with increased demand, which would make water—especially potable water—significantly less accessible to many communities.

Right to a Healthy Environment

27. Article 19 of the Haitian Constitution specifies that the State “has the absolute obligation to guarantee the right to life, health, and respect of the human person for all citizens without distinction.” Article 253 declares that the “environment is the natural framework of the life of the people, [and] any practices that might disturb the ecological balance are strictly forbidden.”³⁷ Implicit in the right to health is a right to the underlying preconditions for health, including a healthy environment, access to safe water and sanitation, adequate food, housing, and access to information related to health. Several provisions in the core international human rights treaties protect the right to health, including Article 12 of the ICESCR, Article 12 of the CEDAW, Article 5 of the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), and Article 24 of the CRC.³⁸ The ICESCR articulates the right to “the enjoyment of the highest attainable standard of physical and mental health” and the CESCR has explained that “health is a fundamental human right indispensable for the exercise of other human rights.”³⁹
28. Many Haitians’ rights to health remain unfulfilled. Haiti has some of the most dismal health indicators in the world. Haiti’s under-five mortality rate is more than three times the regional average.⁴⁰ Contaminated water is one of the known leading causes of child mortality and more than half the annual death toll in Haiti is caused by waterborne illnesses, such as typhoid, cholera, and chronic diarrhea.⁴¹
29. Metal mining may exacerbate existing obstacles to the right to health by negatively affecting underlying determinants of health.⁴² Even during exploration, metal mining activities may cause toxic mine drainage, an organic process by which rocks from deep in the earth leach toxins when they are exposed to oxygen and water.⁴³ During the extraction phase of mining, the use of chemical processing and industrial-scale digging and crushing equipment may cause environmental problems, including water contamination, production of unmanageable amounts of solid waste and dust, loss of tree cover, and landslides.⁴⁴ These harms can impact health severely.⁴⁵

Freedom from Forced Displacement

30. Freedom from forced displacement is implicit in the Universal Declaration of Human Rights (UDHR), the ICCPR, ICERD, CEDAW, and the CRC, and is inherent in multiple rights set forth in these treaties, including the right to freedom of movement and choice of

residence, the right to respect for the home and for privacy, and the right to respect for the family.⁴⁶ CESCR General Comments No. 4 and No. 7 recognize that all people have the right to adequate housing and the right to use land⁴⁷ free from forced eviction.⁴⁸ Even those who cannot prove formal title to the land they occupy are protected against forced eviction.⁴⁹ These rights also include freedom from economic displacement, which is embedded in the right to an adequate standard of living also found in the above treaties.⁵⁰

31. Freedom from forced displacement is also implicitly protected by the Haitian Constitution, which guarantees the right of every citizen “to decent housing,” “to engage in work of his choice to meet his own and his family’s needs,” and “to private property.”⁵¹
32. In Haiti, land use and ownership patterns are complex, where many people have lived on land without formal title for generations while depending on that land for their livelihoods. The combination of insecure tenure and dependence on land and water for survival adds to the risks posed by metal mining, heightening the vulnerability of Haiti’s subsistence farmers to physical and economic displacement and forced eviction in mining areas. Human rights law is particularly important in this context because it provides protections regardless of formal title.⁵²

Recommendations concerning Social and Environmental Rights

33. If the government of Haiti adopts a new mining law and accompanying regulations, they must ensure that mining activities do not exacerbate ongoing violations of economic, social and cultural rights. Specifically, the law must:
 - a. Strengthen requirements regarding identification and protection of water and forest resources;
 - b. Include articles that ensure that mineral activity will not poison or degrade the environment;
 - c. Guarantee that public revenues gained by mining will be directed toward the progressive realization of economic, social, and cultural rights;
 - d. Require mining companies to compensate affected communities and individuals harmed by their actions; ensure resettlement and livelihood restoration or improvement for displaced communities; fully remediate and restore all mining and processing sites after mining concludes; and ensure that there will be adequate funding for safe mine closure and compensation for injuries if pollutants migrate off site.

D. Duty to Protect Against Third-Party Harm

34. The duty to protect against third-party harm is a fundamental State responsibility and principle under human rights law.⁵³ The obligation to protect requires that the State take action to prevent violations, and where violations have occurred, to investigate, prosecute, and punish individuals, companies, or other entities that harm individuals’ human rights.

35. Haiti's legal and regulatory framework is manifestly inadequate to these tasks. Haiti must build the capacity of its institutions and secure the funds and human resources needed to effectively monitor and regulate the mining industry. As set out above, the Draft Mining Law falls short of protecting guaranteed rights. It also restricts parliamentary oversight, delegating important legal and policy decisions to a governmental institution that the law would create, the Autorité Minière Nationale.⁵⁴
36. Without sufficient human capacity and material resources within the relevant government agencies, there is no way to ensure that mining in Haiti would benefit and not harm the Haitian people or their environment. Without deliberate debate, careful planning, and reinforcement of governmental regulatory capacity, there is a risk that mining companies may recommence activities under a new mining law and proceed to construct and operate a mine before the State is equipped to ensure that mineral extraction benefits and does not harm the Haitian people and their environment.

Recommendations concerning Protection Against Third-Party Harm

37. Considering that the Haitian people have not been informed about the risks and benefits of the mining industry, the demonstrated lack of government capacity to respect, protect, and fulfill the human rights of the Haitian people, and the significant and often unavoidable risks that metal mining activity poses to the environment and to communities, the Government of Haiti should formalize in law a moratorium on all metal mining activity and prohibit the issuing of new mining permits.
38. If the government and an informed public choose to exploit Haiti's gold reserves, they must enact rules and regulations sufficient to protect Haiti's environment and the human rights of the Haitian people. At a minimum, before the government proceeds with mining activities, it should:
- a. Undertake a comprehensive assessment of its institutional and technical capacity to regulate the mining industry, working with international organizations and foreign governments to identify and fill capacity and resource gaps;
 - b. Review existing mining permits and conventions to ensure their conformity with best practices in the mining industry;
 - c. Establish an independent mining authority adequately resourced and endowed with the capacity to enforce regulatory compliance and rigorously monitor mining activities.

E. Right to an Effective Remedy

39. International human rights law guarantees individuals the right to an effective remedy for human rights violations.⁵⁵ This is rooted in the UDHR and has also been expanded upon in treaties such as the ICCPR, CRC, CERD, and CEDAW, as well as in commentary by the CESCR.⁵⁶ The Haitian Constitution also guarantees its citizens a judicial remedy in Articles 27, 36-2, and 42. When allegations of harm related to mining activities arise, the State must ensure that all actors in the sector fulfill their responsibility to respond.

40. The Draft Mining Law and the accompanying Model Mining Convention require that any dispute—over the interpretation of the Draft Mining Law or the impacts of a mining company’s activities on third party—be resolved through arbitration rather than litigation.⁵⁷ Such mandatory arbitration, circumventing the Haitian judiciary, is inconsistent with the constitutional guarantee of judicial remedy.⁵⁸
41. A legal framework that preserves rights-protective dispute resolution, including recourse to the judiciary, the constitutional right to petition an objective and competent tribunal, could not only avoid short-term risks but also support the long-term goal of ensuring a strong, independent, and functioning judiciary in Haiti.

Recommendations concerning the right to a remedy

42. The government of Haiti should:
- a. Ensure that individuals can petition an independent and competent Haitian tribunal to enforce their rights;
 - b. Revise provisions of the Draft Mining Law that foreclose options for judicial recourse;
 - c. Ensure that the judiciary is trained and prepared to adjudicate mining-related disputes within its jurisdiction, including claims concerning human rights.

III. CONCLUSION

43. This is the first time that mining has been presented as a topic of concern during Haiti’s Universal Periodic Review. The human rights risks associated with gold mining are well known. They can be mitigated and, in many cases, avoided. The government of Haiti is in the fortunate position to build the necessary capacity and legal framework before it proceeds with metal mining activity, preventing severe violations of human rights in the future.
44. Of primary concern are the rights to information, participation, food, water, a healthy environment, freedom from forced displacement, protection from third-party harm, and an effective remedy. To avoid actions that will stunt respect for and progressive realization of these rights, the government of Haiti should formally pass into law a moratorium on all metal mining and prohibit the issuance of new mining permits.

¹ This communication does not purport to represent the institutional views, if any of NYU.

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³ The Justice in Mining Collective consists of the following member organizations: *Komisyon Episkopal Nasyonal Jistis ak Lapè* (National Episcopal Commission of Justice and Peace, or JILAP), *Mouvman Demokratik Popilè* (The Movement of Popular Democracy, or MODEP), *Plateforme Haitienne de Plaidoyer pour un Developpement Alternatif* (Haitian Platform for an Alternative Development, or PAPDA), *Tèt Kole Ti Peyizan Ayisyen* (Haitian Peasants Heads Together, or Tèt Kole), and the *Platfòm Òganizasyon Ayisyen Dwa Moun/Plateforme Haïtienne des Organisations des droits humains* (Platform of Haitian Human Rights Organizations or POHDH).

⁴ This submission focuses primarily on gold mining. Unless otherwise noted, the terms “mining” and “metal mining” are used interchangeably to denote the extraction of hard-rock metals, including but not limited to gold and copper.

⁵ Unless otherwise noted, factual information relied upon in this submission is drawn from: GLOBAL JUSTICE CLINIC AND HAITI JUSTICE INITIATIVE, BYEN KONTE, MAL KALKILE? HUMAN RIGHTS AND ENVIRONMENTAL RISKS OF GOLD MINING IN HAITI (2016), <http://chrgj.org/report-launch-byen-konte-mal-kalkile-human-rights-and-environmental-risks-of-gold-mining-in-haiti/>. That document provides in-depth citations to primary and secondary sources.

⁶ GOVERNMENT OF HAITI, THE WORLD BANK GROUP & THE UNITED NATIONS, CLEAN WATER, IMPROVED SANITATION, BETTER HEALTH: HAITI CONFERENCE PAPER (Oct. 9, 2014), http://www.worldbank.org/content/dam/Worldbank/document/book_haiti_6oct_print.pdf.

⁷ See *Cholera Accountability*, IJDH (last visited Mar. 13, 2016), <http://www.ijdh.org/cholera/>.

⁸ See generally *Actualités*, LE CONSEIL DE DÉVELOPPEMENT ECONOMIQUE ET SOCIAL (CDES) (last visited Nov. 24, 2015), www.cdes.ht/fr/actualites.html (identifying mining as one of the focal areas for the country’s development strategy); see also *Haiti: Mining for Economic Growth*, WORLD BANK (July 25, 2013), <http://www.worldbank.org/en/news/feature/2013/07/25/haiti-mining-for-economic-growth> (quoting then- prime minister Lamothe as stating that the mining sector is key to Haiti’s “emergence” by 2020).

⁹ See RÉPUBLIQUE D’HAÏTI, PROJET DE LOI MINIÈRE, ÉLABORE PAR UN TASKFORCE COMPOSE DE : BUREAU DES MINES ET DE L’ÉNERGIE, MINISTÈRE DE L’ÉCONOMIE ET DES FINANCES, MINISTÈRE DE L’ENVIRONNEMENT, EXPERT INTERNATIONAL (Aug. 2014) [hereinafter Draft Mining Law], <http://www.accountabilitycounsel.org/wp-content/uploads/2015/01/Draft-Mineral-Law.pdf>.

¹⁰ Joseph Guyler Delva, *Haiti Lawmakers Reject Prime Minister’s Plan, Deepening Election Uncertainty*, REUTERS (March 20, 2016), <http://www.reuters.com/article/us-haiti-politics-idUSKCN0WN040>.

¹¹ Press Release, World Food Program, El Niño, Drought Blamed as Severe Food Insecurity Doubles in 6 Months in Haiti (Feb. 9, 2016), <http://www.wfp.org/news/news-release/el-nino-drought-blamed-severe-food-insecurity-doubles-6-months-haiti>.

¹² *Id.*

¹³ THE GOVERNMENT OF HAITI, THE WORLD BANK GROUP, & THE UNITED NATIONS, CLEAN WATER, IMPROVED SANITATION, BETTER HEALTH: HAITI CONFERENCE PAPER 10 (Oct. 9, 2014), http://www.worldbank.org/content/dam/Worldbank/document/book_haiti_6oct_print.pdf.

¹⁴ Press Release, World Food Program, El Niño, Drought Blamed as Severe Food Insecurity Doubles in 6 Months in Haiti (Feb. 9, 2016), <http://www.wfp.org/news/news-release/el-nino-drought-blamed-severe-food-insecurity-doubles-6-months-haiti>.

¹⁵ National report submitted in accordance with paragraph 15 (a) of the annex to Human Rights Council resolution 5/1 – Haiti, U.N. Doc. A/HRC/WG.6/12/HT1 (July 19, 2011).

¹⁶ MPH-ONUG/MMD/mmd/0386-2014,

http://lib.ohchr.org/HRBodies/UPR/Documents/session12/HT/Haiti_Implementation.pdf.

¹⁷ Preamble, UN General Assembly Resolution A/RES/59(I) Calling of an International Conference on Freedom of Information.

¹⁸ Ratified by Haiti on 8 October 2013.

¹⁹ Ratified by Haiti on 6 February 1991.

²⁰ Haiti has ratified the following multilateral human rights treaties, *inter alia*: International Covenant on Economic, Social and Cultural Rights, *opened for signature* Dec. 16, 1966, 993 U.N.T.S. 3; S. Treaty Doc. No. 95- 19(1967) (entered into force Jan. 3, 1976) [hereinafter ICESCR]; International Covenant on Civil and Political Rights, *opened for signature* Dec. 16, 1966, 999 U.N.T.S. 171, S. Treaty Doc. No. 95-20 (1966) (entered into force Mar. 23, 1976) [hereinafter ICCPR]; Convention on the Elimination of All Forms of Discrimination Against Women, *opened for signature* Dec. 18, 1979, G.A. Res. 34/180, 34 U.N. GAOR, 34th Sess., Supp. No 46, at 193, U.N. Doc A/34/46 (entered into force Sep. 3, 1981) [hereinafter CEDAW]; Convention on the Protection and Promotion of the Rights and Dignity of Persons with Disabilities, *opened for signature* Mar. 30, 2007, G.A. Res 61/106, Annex I, U.N. GAOR, 61st Sess., Supp. No. 49, at 65, U.N. Doc. A/61/49 (Dec. 13, 2006) (entered into force May 3, 2008) [hereinafter CRPD]; International Convention on the Elimination of All Forms of Racial Discrimination, *opened for signature* Mar. 7, 1966, 660 U.N.T.S. 195 (entered into force Jan. 4, 1969) [hereinafter ICERD]. In many cases, these rights are also guaranteed by the Haitian Constitution.

²¹ See CONSTITUTION DE LA RÉPUBLIQUE D'HAÏTI, (1987), preamble, art. 40 (1987), https://www.constituteproject.org/constitution/Haiti_2012?lang=en [hereinafter Haitian Constitution or CONST. D'HAÏTI].

²² The Commission expressed its regret at the State's absence. See Brief submitted by Global Justice Clinic, NYU School of Law, Lafontaine Orvild, Independent Journalist, Justice in Mining Collective and the Megaprojects Observatory, *La situation de l'accès à l'information en Haïti*, Inter-Am. Comm'n on H.R., 154th Sess. (Mar. 17, 2015), http://chrgj.org/wp-content/uploads/2015/03/150325HaitianRelease_French.pdf (in French); Inter-Am. Comm'n on H.R., *Rep. on the 154th Sess. of the IACHR* (Mar. 13-27, 2015), at 12, <http://www.oas.org/es/cidh/prensa/docs/Report-154.pdf>.

²³ Inter-Am. Comm'n on H.R., *Rep. on the 154th Sess. of the IACHR* (Mar. 13-27, 2015), at 12.

²⁴ *Id.*

²⁵ ICCPR, arts. 2(1), 3, 25; ICESCR, arts. 2(2), 3, 15; U.N. Econ. & Soc. Council, U.N. Comm. on Econ., Soc. & Cultural Rights (CESCR), General Comment No. 21: Right of everyone to take part in cultural life, ¶ 40, U.N. Doc. E/C.12/GC/21 (Dec. 21, 2009) [hereinafter CESCR, General Comment No. 21] (individuals have the right “[t]o take part freely in an active and informed way, and without discrimination, in any important decision-making process that may have an impact on his or her way of life”); U.N. Human Rts. Comm., General Comment No. 25: The right to participate in public affairs, voting rights and the right of equal access to public service (Art. 25), ¶ 1, U.N. Doc. CCPR/C/21/Rev.1/Add. 7 (Aug. 27, 1996) [hereinafter HRC, General Comment No. 25] (Governments must proactively take all steps “necessary to ensure that citizens have an effective opportunity to enjoy” the right to participation). The right of all groups to participate fully, free from interference and discrimination, and on a basis of equality, is guaranteed by a range of human rights treaties. See ICCPR, arts. 2, 3, 25; ICESCR, arts. 2, 3, 15; CEDAW, arts. 3, 7; CRPD, arts. 3, 29, 30.

²⁶ The right to participation is also implicit in a range of rights set forth in the Haitian Constitution, including the right to vote and the right to equality under the law. See CONST. D'HAÏTI pmb., arts. 52, and 52-1.

²⁷ CESCR, General Comment No. 21, ¶ 49(e).

²⁸ CEDAW, General Recommendation No. 34 on the rights of rural women, (Art. 14), ¶ 2(a), U.N. Doc.

CEDAW/C/GC/34 (Mar. 4, 2016),

http://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/1_Global/INT_CEDAW_GEC_7933_E.pdf

(“States parties should establish enabling institutional, legal and policy frameworks to ensure that rural development, agricultural and water policies, including forestry, livestock, fisheries and aquaculture, are gender-responsive and adequately budgeted,” by, *inter alia*, integrating “a gender perspective in all agricultural and rural development policies”).

²⁹ ICESCR, art. 11.

³⁰ Rep. of the Special Rapporteur on the right to food (2009), Special Rapporteur on the Right to Food, Rep. of the Special Rapporteur on the right to food, U.N. Human Rights Council, Annex at 16, U.N. Doc. A/HRC/13/33/Add.2 (Dec. 28, 2009) (by Olivier De Schutter), at ¶ 4; see also ICESCR, art. 11(1). The two core components of the right to adequate food are “the availability of food in a quantity and quality sufficient to satisfy the dietary needs of individuals,” and the “accessibility of such food in ways that are sustainable.” U.N. Econ. & Soc. Council, U.N. Comm. on Econ., Soc. & Cultural Rights, General Comment No. 12: The right to adequate food (art. 11), ¶ 8, U.N. Doc. E/C.12/1999/5 (May 12, 1999) [hereinafter CESCR, General Comment No. 12]. Availability includes the possibility of feeding oneself directly from productive land and resources or from market and distribution systems that can move food from where it is produced to where it is needed. *Id.* ¶ 12. Accessibility refers both to a household's ability to obtain food in a way that does not threaten or compromise other basic needs, and to the ability of all households to access food. *Id.* ¶ 13.

³¹ Special Rapporteur on the Right to Food, Rep. of the Special Rapporteur on the right to food, U.N. Human Rights Council, Annex at 16, U.N. Doc. A/HRC/13/33/Add.2 (Dec. 28, 2009) (by Olivier De Schutter), at 16, ¶ 4.

Recognizing these risks, the U.N. Special Rapporteur on the Right to Food has proposed a set of principles aimed at ensuring the protection of the right to food in the context of large-scale land acquisitions or leases. *Id.* The Haitian Constitution recognizes that agriculture is “the main source of the Nation's wealth” and “a guarantee of the well-being of the people and the socio-economic progress of the Nation.” For this reason, the government “has the obligation to establish the structures necessary to ensure the maximum productivity of land” in Haiti. CONST. D'HAÏTI art. 249.

³² Patti Strohmayer, *Soil Stockpiling for Reclamation and Restoration Activities After Mining and Construction*, 4 RESTORATION & RECLAMATION REV. 5 (1999),

<http://conservancy.umn.edu/bitstream/handle/11299/59360/4.7.Strohmayer.pdf?sequence=1> (“The exploratory phase

[of mining projects] may involve clearing of wide areas of vegetation...to allow the entry of heavy vehicles mounted with drilling rigs. Many countries require a separate EIA for the exploratory phase of a mining project because the impacts of this phase can be profound.”). The same report also identified 13 other mines that describes as likely to generate perpetual water pollution. *See also* ENVIRONMENTAL LAW ALLIANCE WORLDWIDE, *GUIDEBOOK FOR EVALUATING MINING PROJECT EIAs* 3 (2010) [hereinafter *ELAW GUIDEBOOK*], <http://www.elaw.org/files/mining-eia-guidebook/Full-Guidebook.pdf>.; Katia Moskvitch, *Biomining: How Microbes Help to Mine Copper*, BBC NEWS, (March 21, 2012), <http://www.bbc.com/news/technology-17406375>.

³³ *See* CEDAW, art. 14(2); CRC, art. 24(2). CESCR General Comment No. 15 sets out the key elements of the right, as well as the duties of various actors. In brief, water must be available, accessible, acceptable and of adequate quality.

³⁴ CESCR General Comment 15, at ¶ 3.

³⁵ *See* CONST. D’HAÏTI arts. 19, 22, 23, 32, 35.

³⁶ CENTER FOR HUMAN RIGHTS AND GLOBAL JUSTICE, PARTNERS IN HEALTH, ROBERT F. KENNEDY MEMORIAL CENTER FOR HUMAN RIGHTS, & ZANMI LASANTE, WÒCH NAN SOLEY: THE DENIAL OF THE RIGHT TO WATER IN HAITI 16 (2008), http://parthealth.3cdn.net/0badc680352663967e_v6m6b1ayx.pdf.

³⁷ CONST. D’HAÏTI. art. 253.

³⁸ International human rights treaties protecting the right to health, include the ICESCR art. 12, CEDAW art. 12, CERD art. 5, and CRC art. 24. The ICESCR articulates the right to “the enjoyment of the highest attainable standard of physical and mental health,” ICESCR, art. 12, and CEDAW emphasizes the importance of equal access to healthcare for women and for rural women in particular. *See* CEDAW, arts. 12, 14. The CESCR has explained that “health is a fundamental human right indispensable for the exercise of other human rights.” CESCR, General Comment No. 14, at ¶ 1.

³⁹ CESCR, General Comment No. 14, at ¶ 1.

⁴⁰ World Bank Development Indicators, WORLD BANK (2015),

<http://databank.worldbank.org/data/reports.aspx?source=world-development-indicators> (select ‘World Development Indicators’ as Database, select ‘Haiti’ and, in Aggregates, ‘Latin America & Caribbean (developing only)’ as Country, select ‘Mortality rate, under-5 (per 1,000 live births)’ as Series, and select ‘View Recent Years 5’ as time).

⁴¹ *See* Katherine Sentlinger, *Water in Crisis-Haiti*, The Water Project (2016), <https://thewaterproject.org/water-in-crisis-haiti>; UNITED NATIONS ENVIRONMENT PROGRAMME, UN-HABITAT, GRID-ARENDA, SICK WATER?: THE CENTRAL ROLE OF WASTE-WATER MANAGEMENT IN SUSTAINABLE DEVELOPMENT, (Corcoran, E., C. Nellemann, E. Baker, R. Bos, D. Osborn, H. Savelli eds., 2010).

⁴² The Inter-American Commission on Human Rights has found that a State’s failure to prevent or mitigate the impacts of mining on communities and the environment violates the right to health. In the 1985 case of the Yanomami Indians, the IACHR found that the Government of Brazil had failed to protect the Yanomami from health violations that resulted from exploitation of the rainforest. Coulter et al., Case 7615, Inter-Am. Comm’n H.R., Res. No. 12/85, OAS/Ser.L/V/II.66, doc.10 rev. 1 (1985).

⁴³ *See, e.g.,* AIMÉE BOULANDER & ALEXANDRA GORMAN, *WOMEN’S VOICES FOR THE EARTH, HARDROCK MINING: RISKS TO COMMUNITY HEALTH* (2004), https://www.earthworksaction.org/files/publications/MiningHealthReport_WVE.pdf?pubs/MiningHealthReport_WVE.pdf

⁴⁴ Lyuba Zarsky, *Sustaining Development: Extractive Industries and Local Communities*, WORLD POL. REV. (Aug. 6, 2013), <http://www.worldpoliticsreview.com/articles/13145/sustaining-development-extractive-industries-and-local-communities>. For a discussion of the effects on rural women specifically, see BERNIE WARD WITH JOHN STRONGMAN, WORLD BANK, *GENDER-SENSITIVE APPROACHES FOR THE EXTRACTIVE INDUSTRY IN PERU: IMPROVING THE IMPACT ON WOMEN IN POVERTY AND THEIR FAMILIES* (2011), <https://openknowledge.worldbank.org/handle/10986/2516>.

⁴⁵ *Dirty Gold's Impacts*, NO DIRTY GOLD, <http://nodirtygold.earthworksaction.org/impacts#.UzzhUfldWet> (last visited Oct. 4, 2015).

⁴⁶ *See* Universal Declaration of Human Rights (10 Dec. 1948), U.N.G.A. Res. 217 A (III) art. 13 (1948). [hereinafter UDHR]; ICCPR, art. 12; ICERD, art. 5(d)(i) and (f); CEDAW, art. 15 (the right to freedom of movement and choice of residence); *see* UDHR, art. 12; ICCPR, art. 17; CRC, art. 8(16) (the right to respect for the home and for privacy); and *see* UDHR, art. 16; ICESCR, art. 10; ICCPR, arts. 17 and 23; CRC, arts. 16 and 18 (the right to respect for the family.).

⁴⁷ Land rights have been recognized as central to the entitlements of indigenous peoples, *see* U.N. Human Rts. Comm., General Comment No. 23: The rights of minorities (Art. 27), ¶ 7, U.N. Doc. CCPR/C/21/Rev.1/Add. 5

(Apr. 26, 1994), and as an important dimension of women's equality, see CEDAW, art. 14. Emerging from these specific contexts are broader understandings that land rights are often bound up with livelihood strategies such as agriculture, and rights essential to daily life, such as the rights to water, food, and shelter. *See* Gilbert, *Land Rights as Human Rights*, at 123–24.

⁴⁸ *See* U.N. Econ. & Soc. Council, U.N. Comm. on Econ., Soc. & Cultural Rights (CESCR), General Comment No. 7: The right to adequate housing (art. 11(1) of the Covenant): Forced evictions, U.N. Doc. E/1998/22, annex IV at 113 (May 20, 1997).

⁴⁹ *See* Special Rapporteur on Adequate Housing as a Component of the Right to an Adequate Standard of Living, Rep. of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, U.N. Human Rights Council, ¶ 21, U.N. Doc. A/HRC/4/18 (Feb. 5, 2007) (by Miloon Kothari).

⁵⁰ *See e.g.* UDHR, art. 25; ICESCR, art. 11; ICERD, art. 5(e)(iii); CEDAW, art. 14(2)(h); and CRC, art. 27 (the right to an adequate standard of living, including food and housing).

⁵¹ CONST. D'HAÏTI, art. 22, 35, 36, 36-2 and 36-3. Note that while Article 36-6 allows mining, it requires that the State (as owner of the gold reserves in trust for the Haitian people), the mining companies (as concessionaires), and the surface owners of the land beneath which minerals lie share equitably in the profits of mining. For this mandate to be fulfilled the financial terms of the mining law must be improved and the Haitian government must ensure that it will conserve and invest the revenues it receives from royalties and taxes for the benefit of the Haitian people.

⁵² Numerous human rights, such as those that have developed concerning housing and food, and in relation to women and indigenous peoples, bear on the relationship of rural Haitians to the land that they occupy and use in their daily lives. *See, e.g.*, Special Rapporteur on Adequate Housing as a Component of the Right to an Adequate Standard of Living, Rep. of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, U.N. Human Rights Council, ¶ 21, U.N. Doc. A/HRC/4/18 (Feb. 5, 2007) (by Miloon Kothari).

⁵³ The rights concerned as set out in the ICESCR article 2(1); CEDAW articles 2 and 11; CRC article 2; and the Convention on the Rights of Persons with Disabilities (CRPD) article 4, especially (1)(b), (e-i) and (2). The submission put forth by Boston College Law School and the Institute for Justice and Democracy in Haiti further elaborate.

⁵⁴ *See* Draft Mining Law, art. 4.

⁵⁵ UDHR, art. 2, 6, 7, & 8 (“Everyone has the right to effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by the law.”)

⁵⁶ *See* ICCPR, art. 2(3), 14(1); CRC, art. 49; CERD, art. 6; CEDAW, art. 2; *see also* CESCR General Comment 9, ¶ 3.

⁵⁷ *See* Draft Mining Law, art. 151 (requiring that disputes regarding revocation of mining titles be submitted to arbitration), 161–163 (requiring that disputes regarding compensation for land use or damages be submitted to arbitration); *see also* RÉPUBLIQUE D'HAÏTI, CONVENTION MINIÈRE TYPE art. 35.2 (2014), <http://www.accountabilitycounsel.org/wp-content/uploads/2015/01/Model-Mining-Convention.pdf> (providing that disputes regarding the interpretation of the mining convention or the interpretation or application of laws and implementing decrees related to mining be submitted to arbitration, when they cannot be resolved amicably). Article 294 of the Draft Mining Law stipulates that for companies with 50 percent or greater foreign ownership, disputes not amicably resolved must be referred to arbitration under International Chamber of Commerce rules. *But see* Draft Mining Law, art. 292 (recognizing the rights of mining titleholders and the state to administrative, arbitral, or judicial remedy).

⁵⁸ *See, e.g.*, CONST. D'HAÏTI, arts. 27, 36-2, 42.