

**Access to Information in Haiti:
Obstacles to the Enjoyment of the Right of Access to Information
in the Context of the Development of the Mining and Tourism Industries
and the Practice of Journalism**

Executive Summary of Submission
to the Inter-American Commission on Human Rights

General Interest Hearing
154th Period of Sessions
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The Kolektif Jistis Min, the Observatoire Mega-Projet, the Global Justice Clinic of New York University School of Law, and a journalist (“the requesting parties”) have requested a general interest hearing to direct the attention of the Inter-American Commission on Human Rights (“IACHR”, “Inter-American Commission”) to the situation of the right of access to information in Haiti. The Inter-American Commission and the Inter-American Court of Human Rights, the Special Rapporteur for the Freedom of Expression, and the member States of the Organization of American States have repeatedly stressed the importance of the right of access to information for the vitality of democracy. Specifically, the IACHR’s Special Rapporteur for Freedom of Expression stated in 2011 that access to information constitutes an important tool for the exercise of other political rights as well as social and economic rights, notably by marginalized groups.¹ In the context of this hearing, and taking into account the present political crisis in Haiti, which has paralyzed Parliament, the requesting parties wish to expose the impacts of the Haitian State’s failure to guarantee full enjoyment of the right of access to information, protected by article 13 of the *American Convention on Human Rights* (“ACHR”) and article 40 of the Haitian Constitution (“the Constitution”).

Specifically, the right of access to information takes on increased importance since the Haitian Parliament ceased to function on January 13 of this year. Considering that Parliament is presently unable to serve as a check on the executive, the Haitian government must redouble its efforts to ensure the greatest transparency in the exercise of its functions. Indeed, given the long-term human rights impacts of certain government decisions, specifically with regard to the development of the mining and tourism industries, the requesting parties consider respect for the right of access to information to be of the greatest importance.

The following points are addressed in the full-length submission²: 1) the Haitian government’s failure to adopt a law and a mechanism guaranteeing effective enjoyment of the right of access to information; 2) the inclusion of a confidentiality clause in the draft mining law barring access to documents and other

¹ Special Rapporteur for Freedom of Expression, Inter-American Commission on Human Rights, *The Right to Access to Information in the Americas: Inter-American Standards and Comparison of Legal Framework*, OEA/Ser.L/V/II.CIDH/RELE/INF. 7/12, 30 December 2011, para 3.

² The full submission is available in French.

information that relates to the public interest for a period of ten years; 3) the impact on directly project-affected communities of the Haitian government's failure to guarantee effective enjoyment of the right of access to information in the context of the development of mining and tourism projects; and 4) the impact of this situation on the practice of journalism and on the media's capacity to inform Haitian citizens about issues of public interest.

First, there is no law implementing the right of access to information as protected by the right to freedom of expression under article 13 of the *American Convention on Human Rights* and articles 28 and 40 of the Haitian Constitution. Furthermore, in Haiti, no administrative procedure exists to respond to requests for access to information made by Haitian citizens. In the context of the Mechanism for Follow Up on the Implementation of the Inter-American Convention against Corruption, the government conceded that "Haiti does not yet have a law defining the right of access to information."³ The Haitian Parliament has equally seen fit to provide, within the *Law for the Prevention and Punishment of Corruption*, that a "law will be adopted to define the right to access to information."⁴ To date, no such law has been proposed or adopted.

Secondly, the insertion of a confidentiality clause within the draft mining law, as written in the version dated August 2014, contravenes the *American Convention on Human Rights*. Article 115's broad wording is at risk of being interpreted to require that all information related to mining must be kept confidential. Such an interpretation could remove from the public's eye social and environmental impact studies and information concerning mining revenues. Therefore, it cannot be said that the restriction on the right of access to information foreseen by article 115 of the draft mining law pursues one of the enumerated objectives of article 13(2) of the *American Convention on Human Rights*, namely to ensure "the respect of the rights or the reputation of others" or to ensure "the protection of national security, public order, or public health or morals."⁵ Additionally, such a general restriction of the right of access to information cannot be justified in a democratic society; that is to say, a general restriction of the right of access to information is neither proportional to the protection of purely commercial information, if that is what the law seeks to protect, nor the least restrictive means possible of serving that interest.⁶

Thirdly, the State's failure to guarantee the right of access to information has important impacts on the Haitian population in the context of the development of the mining and tourism industries. As such, the failure to inform the populations affected by mining exploration activities, and to make relevant information available in Creole, the language of all Haitians, has increased the vulnerability of those communities to such an extent that they have difficulty asserting their rights in relation to mining companies and the Haitian Government. For example, many individuals who have signed a document allowing a mining company to use their land have testified that if they had benefitted from relevant information, especially regarding the impact that exploration activities would have on their land, they would have refused to sign such documents. Additionally, in the context of the development of the tourism project on Île-à-Vache, the failure of the government to guarantee access to information to residents of the region as well as to community organizers interested in the issue, significantly

³ Mechanism for Follow-Up on the Implementation of the Inter-American Convention against Corruption, Republic of Haiti: Final Report, SG/MESICIC/doc.423/14 rev. 4, 12 September 2014, para 149.

⁴ Law on the Prevention and Punishment of Corruption, *Le Moniteur*, 169th year, No. 87, May 9, 2014, Law No. CL-2014-008, Art. 24.

⁵ American Convention on Human Rights, art. 13(2) (a) and (b).

⁶ Inter-American Court of Human Rights, *Case of Claude-Reyes et al. v. Chile*, Judgment of September 19, 2006, Case No. 12.108, para 91.

undermined their ability to organize themselves collectively and to make their voices heard by the authorities.

Fourth, the failure of the State to guarantee access to information also poses obstacles to the practice of journalism. The difficulties journalists encounter in accessing information limits their ability to inform the public and negatively affects the vitality of Haitian democracy. Additionally, journalists' ability to access information assumes heightened importance in light of the fact that the government is poised to take strategic decisions relating to the development of the mining sector while Parliament has not been functioning since January 13, 2015.

Finally, the requesting parties specifically recommend that a law guaranteeing access to information be adopted, in accordance with regular parliamentary procedure; that the government refrain from including a confidentiality clause that violates the *ACHR* in the new mining law; and that it make public the information that it is has concerning the Île-à-Vache tourism project and mining industry development unless the grounds for refusal to disclose that information satisfy the criteria established by the Inter-American Court (that any exception to the presumption in favor of disclosure is provided by law, permitted by the Inter-American Convention and necessary in a democratic society). The requesting parties' recommendations are based on the Inter-American Court's decision in *Claude Reyes v. Chili*⁷ and the recommendations of the expert committee of the Mechanism for Follow Up on the Implementation of the Inter-American Convention Against Corruption.⁸

⁷ *Id.* para 77.

⁸ Mechanism for Follow-Up on the Implementation of the Inter-American Convention against Corruption, Republic of Haiti: Final Report, *supra* note 3, para 153.