

March 9, 2015

Via Electronic Mail

Dr. Jim Yong Kim
President
The World Bank Group
1818 H Street, N.W.
Washington, DC 20433

Re: Lack of Accountability for World Bank Involvement in Haitian Mining Sector

Dear President Kim,

We, the undersigned organizations, are deeply concerned that the World Bank is helping to develop Haiti's mining sector, an inherently high-risk industry, without applying any social or environmental standards to ensure transparency and meaningful public participation. We are further concerned by the apparent loophole in the Bank's policy framework that allows the Bank to avoid accountability for certain of its activities, regardless of the social and environmental risks they pose. Given your past experience working with communities in Haiti, we trust that you understand how vulnerable the country is to high-risk development plans: Haiti is already environmentally devastated and lacks the institutional capacity necessary to responsibly develop the mining sector absent meaningful and broad consultation and rigorous environmental and social oversight.

The Bank Cannot Avoid Responsibility for its Actions in Haiti

Through an Extractive Industries Technical Advisory Facility ("EI-TAF") trust fund, the World Bank has actively assisted in drafting a new national mining law in Haiti, designed to increase investment in the sector.¹ Despite the Bank's stated intent to support institutional development and public consultation related to mining, to date no capacity building activities or genuinely participatory public dialogues have taken place. Communities affected by mining have been categorically excluded from conversations about the development of the mining sector, and the proposed new mining law was drafted without meaningful public consultation and without any corresponding effort to increase capacity for institutions responsible for regulating mining impacts. The gap between the rapid development of a legal framework for mining and the slow strengthening of government capacity to manage and mitigate the sector's impacts—a problem with which the Bank is all too familiar—creates a dangerous dynamic in which industry advances, the government follows, and the population is left behind.

¹ Revision of Haiti's mining law is key to unlocking the sector, as the current law, which dates from 1976, is so outmoded that mining companies have indicated their unwillingness to proceed with investments absent reforms. See *Haiti: Mining for Economic Growth*, World Bank (Jul. 25, 2013), available at <http://www.worldbank.org/en/news/feature/2013/07/25/haiti-mining-for-economic-growth>; *World Bank Mining Project in Haiti Brief*, provided by Remi Pelon, Senior Mining Specialist (Nov. 17, 2014), available at <http://www.accountabilitycounsel.org/wp-content/uploads/2015/01/Haiti-World-Bank-Project-Brief.pdf>.

Mining-affected communities in Haiti, along with the *Kolektif Jistis Min an Ayiti* (the Haiti Mining Justice Collective), raised these concerns in a recent Request to the Inspection Panel, seeking to hold the Bank accountable for violations of its policies on public consultation and participation in development decisions, as well as other basic rights.² However, the Inspection Panel was unable to register the Request because the Bank chose to fund its activities through a Bank-Executed Trust Fund (“BETF”), to which the Bank’s minimum social and environmental standards do not apply.³ The Panel noted that “Management’s decision to execute a complex [technical assistance project] such as this one under a BETF... automatically excludes it from the application of the Bank’s policies, *even though this decision does not seem to be proportional to the level of environmental and social risks involved.*”⁴

The Panel’s decision emphasized the severity and legitimacy of the concerns raised in the complaint, yet the Bank’s own funding decision has denied the people of Haiti any recourse. The Bank may have avoided applying its safeguard policies to its support for the development of the mining industry in Haiti by exploiting a loophole in its trust fund policy. It cannot, however, escape its responsibility to respect the social and environmental rights of the people of Haiti, especially when acting to promote the development of an inherently high-risk sector like mining.

The Bank Must Apply its Safeguard Policies to All Bank Activities, Without Exception

The Inspection Panel’s decision revealed that the Bank’s Operational Policies do not apply where the Bank chooses to fund an activity through a BETF. In fact, the Panel’s decision reveals that the Bank *prefers* to use BETFs for EI-TAF projects in countries with weak capacity to ensure “rapid implementation.”⁵ This approach denies some of the most vulnerable communities the protections offered by the Bank’s safeguard policies and the possibility of recourse to the Panel. The loophole in the Bank’s policy framework for BETFs creates an unacceptable accountability gap that gives the Bank discretion to avoid the application of minimum social and environmental standards.

² Haiti: Haiti Mining Dialogue Technical Assistance, Request 15/01, *available at* <http://ewebapps.worldbank.org/apps/ip/Pages/ViewCase.aspx?CaseId=105>.

³ The Inspection Panel’s Notice of Non-Registration found that the World Bank’s Operational Policies, including the social and environmental safeguards, do not apply to Bank-Executed Trust Funds (“BETFs”), such as the one used to fund the Bank’s activities in Haiti. It further found that the Bank may fund EI-TAF projects through either Recipient-Executed Trust Funds (“RETFs”), in which case the Bank’s Operational Policies *do* apply, or through BETFs, in which case the Operational Policies do not apply. While the type of assistance provided in Haiti is generally funneled through RETFs or through other financing mechanisms to which the safeguards would apply, the Bank prefers to use BETFs in countries with weak capacity and lack of experience with World Bank procedures. See Notice of Non-Registration, ¶¶ 29-32, *available at* [http://ewebapps.worldbank.org/apps/ip/PanelCases/100-Notice%20of%20Non-Registration\(English\).pdf](http://ewebapps.worldbank.org/apps/ip/PanelCases/100-Notice%20of%20Non-Registration(English).pdf). See also World Bank Operational Policy 14.40 Trust Funds, ¶ 4(ii).

⁴ Notice of Non-Registration at ¶ 29 (emphasis added).

⁵ See *id.* at ¶ 29-32. Using this financing instrument to push through legislation designed to facilitate high-risk activity, such as mining, in countries that lack institutional capacity, contravenes the stated objective of the Bank’s technical assistance: “to build national capacity on a sustainable basis.” World Bank Operational Policy 8.40 Technical Assistance, n.2.

We understand from the Inspection Panel's decision that the World Bank is currently undertaking a review of the policy framework applicable to BETFs. As emphasized in the Panel's decision, it is critical that this policy review involve comprehensive consultations with all relevant stakeholders, including civil society and project-affected people. The policy review must be undertaken with a view to closing the current loopholes in World Bank policies, to ensure that the application of social and environmental standards is mandatory and never left to the discretion of the Bank's project teams or dependent on the particularities of the funding vehicle.

Given serious concerns about the Bank's role in the Haitian mining sector and the accountability gap that this case has brought to light, we call on the World Bank to:

- Respond to the community demands outlined in the recent Inspection Panel complaint, including by working with the Haitian government to:
 - implement a moratorium on mining in Haiti until a meaningful national debate has been held, including publicly circulating the proposed mining law in Kreyòl, holding consultations with affected communities and conducting a full public comment period on the proposed mining law;
 - ensure that the mining law comports with industry best practices, the Haitian Constitution and Haiti's international human rights commitments; and
 - conduct and publicly disclose a sectoral environmental assessment, examining the risks posed by development of the mining sector and identifying the capacity needed to prevent and mitigate adverse effects.⁶
- Undertake a transparent and consultative review of the Bank's policy framework applicable to Bank-Executed Trust Funds, either through the ongoing Safeguards review process or through reviews of the Bank's policy frameworks for advisory services and/or trust funds; and
- Ensure that the Bank's Safeguard Policies apply to *all* of the Bank's advisory services activities, regardless of the financing instrument used or who is responsible for its execution.

Thank you for your attention to these issues. We look forward to further engagement on the Bank's planned actions in Haiti and its efforts to close the accountability gap identified in this case.

Sincerely,

11.11.11- Coalition of the Flemish North-South Movement, Belgium

1804 Institute, USA

Accountability Counsel, USA

⁶ See Request for Inspection, Haiti Mining Dialogue Technical Assistance, 25, available at <http://ewebapps.worldbank.org/apps/ip/PanelCases/100-Request%20for%20Inspection.pdf>.

Action Paysanne contre la Faim (APCF), DRC

Actions pour les Droits, l'Environnement et la Vie (ADEV), DRC

Alyansa Tigil Mina (ATM) - Alliance Against Mining, Philippines

American Federation of Labor – Congress of Industrial Organizations (AFL-CIO), USA

American Jewish World Service, USA

Asociación Ambiente y Sociedad, Colombia

Asociación Interamericana para la Defensa del Ambiente (AIDA), Latin America

Asosyasyon Kiltivatè ak Elvè Pistè (AKEP), Haiti

Asosyasyon Vwazen Solino (AVS), Haiti

Association Guinéenne pour la Transparence (AGT), Republic of Guinea

Bank Information Center (BIC), USA

Batay Ouvriye, Haiti

Both ENDS, the Netherlands

Bretton Woods Project, United Kingdom

Center for International Environmental Law (CIEL), USA

Centre for Research on Multinational Corporations (SOMO), the Netherlands

Centre National de Coopération au Développement (CNCD-11.11.11), Belgium

Chiadzwa Community Development Trust, Zimbabwe

Citizens for Justice (CFJ), Malawi

Commission Episcopale Nationale Justice et Paix (JILAP)

Committee for the Abolition of Third World Debt, Spain

Community Justice Project, Inc., USA

Community Policing Partners for justice, Security and democratic Reforms (COMPPART),

Nigeria

Confederación de Pueblos Indígenas de Bolivia (CIDOB), Bolivia

Defenseurs de Opprimés/Opprimées (DOP), Haiti

Defenseurs Sans Frontières des Droits Humains, Haiti

Due Process of Law Foundation, USA

Earthworks, USA

Ecoa, Brazil

Equitable Cambodia, Cambodia

Fanm Pwogresis Nò, Haiti

Forest Peoples Programme, UK

Foro Ciudadano de Participación por la Justicia y los Derechos Humanos (FOCO), Argentina

Foundation for the Development of Sustainable Policies (FUNDEPS), Argentina

Friend with Environment in Development (FED), Uganda

Fundar, Centro de Análisis e Investigación, Mexico

Gender Action, USA

Global Initiative for Economic, Social and Cultural Rights, USA

Global Justice Clinic, NYU School of Law, USA

GMB, UK

Groupe d'Appui aux Rapatriés et Réfugiés (GARR), Haiti

Gwoup Rechèch ak Apiy pou Devlopman Desantrilizasyon Kolektivité Teritoryal yo (GRAD), Haiti

Human Rights Council, Ethiopia

Inclusive Development International, USA

Indigenous Peoples Links (PIPLinks), United Kingdom

Institute for Justice & Democracy in Haiti, USA

Institute for Policy Studies, Climate Policy Program, USA

Instituto Latinoamericano para una sociedad y un derecho alternativos (ILSA), Colombia

Integrate: Business and Human Rights, Australia

International Accountability Project, USA

International Federation for Human Rights (FIDH), France

International Human Rights Clinic, Western New England University School of Law, USA

Justice & Empowerment Initiatives, Nigeria

La Maison des Mines du Kivu (MMKi), DRC

Le Conseil Régional des Organisations Non Gouvernementales de Développement, DRC

Lumiere Synergie pour le Developpement, Senegal

Medicusmundi Catalunya, Spain

Mennonite Central Committee, Haiti

Mouvman Demokratik Popular (MODEP), Haiti

Movimiento Ciudadano frente al Cambio Climático (MOCICC), Peru

Movimiento Mesoamericano contra el Modelo extractivo Minero (M4), Mesoamerica

National Lawyers Guild International Committee (NLG IC), USA

New Generation Church of the Nazarene in Jessup, Maryland, USA

NGO Forum on ADB, Philippines

Occupy Bergen County, USA

OT Watch, Mongolia

Other Worlds, USA

Otros Mundos AC/Amigos de la Tierra México, Mexico

Plate-forme Haïtiennes des Organisations des Droits Humains (POHDH), Haiti

Platfòm Ayisyen kap Plede pou yon Devlopman Altènatif (PAPDA), Haiti

Public Interest Law (PILC), Chad

Red Mexicana de Afectados por la Minería (REMA), Mexico

Réseau National de Défense des Droits Humains (RNDDH), Haiti

Rivers without Boundaries, Mongolia

Sahmakum Teang Tnaut (STT), Cambodia

Sèk Gramsci, Haiti

Social Justice Connection, Canada

Tèt Kole Ti Peyizan Ayisyen, Haiti

The International Network on Displacement and Resettlement, USA

The Oakland Institute, USA

Ulu Foundation, USA

Urgewald, Germany

Women Thrive Worldwide, USA

Worldview, Gambia

Alejandra Gonza
Director, International Human Rights Clinic
University of Washington School of Law, USA

Sister Joan Brown, Order of Saint Francis, USA

Karen Musalo
Bank of America Foundation Chair in International Law
Professor & Director, Center for Gender & Refugee Studies
UC Hastings College of the Law, USA

Stephanie Farrior
Visiting Fellow, University of Oxford, Kellogg College

Professor of Law and Director, Center for Applied Human Rights
Vermont Law School, USA

William P. Quigley
Professor of Law
Loyola University New Orleans, USA

cc: Board of Directors
Inspection Panel