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Haiti's Gold is a Dangerous Investment

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IN SUMMARY

- As Haiti's economic and humanitarian crisis worsens, local politicians and foreign investors may look to the country's unexploited gold deposits as a road out of poverty. Gold mining in Haiti, however, poses substantial risks to both investors and local communities.
- Communities under mining permits oppose gold mining. They point to evidence indicating that mining is likely to cause serious violations of human rights, create unacceptable risks to the environment, and exacerbate corruption and governance problems.
- Organized local resistance and the lack of state capacity in Haiti poses material risks to extractive investments. These include force majeure / security issues, regulatory change, corruption, and higher capital and operating costs.
- Newmont, the world's largest gold mining company, has held prospection permits[i] over tracts of land in the country's mountainous North since the early 2000s.
- Ultimately, it is highly unlikely that Haiti's gold could be mined in a way that is both profitable and consistent with Newmont's sustainability and human rights commitments.

WHY IS NO ONE MINING IN HAITI?

Haiti's mineral deposits were first documented in the 1970s, but foreign investors were initially deterred by governance risks.[ii] In the early 2000s, buoyed by rising gold prices, relative political stability, and proposals to reform Haiti's tenure and mining laws, several American and Canadian mining companies staked claims over its reserves.[iii] In 2012, the Martelly government further piqued foreign interest by announcing its intent to make mining the engine of Haiti's transition to an emerging economy.[iv] The same year, Haiti's Office of Mines and Energy issued three exploitation permits, which allow companies to proceed to build a mine.[v]

Despite expending millions of dollars on exploration activities and negotiating concessions with the Haitian government, however, no company has yet begun to exploit Haiti's gold deposits.

Several factors make mining in Haiti impracticable. One is the Senate moratorium on mining, passed in 2013 and prompted by concern that Haiti's Office of Mines and Energy had acted irregularly and violated constitutional requirements in issuing the exploitation permits.[vi] Although the Senate moratorium does not have the force of law, it provided space for civil society concerns and community opposition to emerge. The moratorium noted that the Office of Mines and Energy permits were issued unilaterally, without public consultation or Parliamentary approval, and the Senate considered that the Office of Mines and Energy had given insufficient consideration to transparency and the environmental costs of mining.

The moratorium also drew attention to the failings of the existing legal framework around mining. Currently, the principal national legislation relating to mining in Haiti is the 1976 Mining Decree, which does not require transparency or provide concrete protections against environmental harm.[vii] The 1976 Mining Decree has also presented insurmountable hurdles to companies; the Decree requires that companies sign a convention ratified by Haiti's Parliament in order to advance from a prospection to a research permit, which allows more rigorous exploration activities.

In an attempt to modernize the 1976 Decree, the government contracted the World Bank to redraft Haiti's mining law. Despite a lack of public consultation or participation in this drafting process, a new draft (the Draft Mining Law) was submitted to Parliament in 2017.[viii] Communities in mining-affected areas oppose this new framework, arguing that the Draft Mining Law does not meaningfully improve upon the very limited transparency and environmental protections under the 1976 Decree, and fails to protect the rights of affected community members. The Draft Mining Law has yet to be voted or commented on, likely due to years of political turmoil and the frequent dissolution of Parliament: as of April 2023, no elected officials remain in Haiti.[ix]

Second, impacted communities in the North of Haiti are strongly opposed to mining. Previous exploration activity has failed to gain social license. Locals are skeptical about mining companies' promises of economic development and deeply concerned about how mining may affect their ability to farm and their relationship with the land more broadly, as well as corruption arising from extractive activity.

A third factor is ongoing political and regulatory uncertainty. Haiti's political instability and weak rule of law leave investors exposed to changes of government and policy. Growing resource nationalism in Latin America has seen sudden and dramatic changes to mining regulation in a number of jurisdictions,[x] and has likely made companies wary of the impacts to their business. Haiti's bilateral investment treaty with the United States has not entered into force,[xi]

meaning that it does not protect Newmont from expropriation or regulatory changes that impact the value of its investment.

Finally, Haiti's mining sector is uncompetitive. In an analysis of the mining sector, researchers contracted by the Haitian government concluded that the case for mining in Haiti is weak, particularly compared to its nearest neighbors in the Caribbean.[xii] Some features that make Haiti an unattractive destination for capital include force majeure risks and supply chain disruption, state fragility, corruption, political violence, natural disasters, poor transport and logistics infrastructure, and high fuel costs.[xiii] Fuel price volatility has proven a particular risk in other sectors: fuel shortages in September 2022 forced the closure of the Caracol Industrial Park, a large manufacturing facility in the country's northeast.[xiv] In February 2023, the Park laid off about half its remaining workforce.[xv]

Newmont, the world's largest gold mining firm, retains significant interests in Haiti's gold sector. This brief explains why Newmont cannot exploit Haiti's gold while remaining true to its commitment to develop resources in a way that respects human rights, protects livelihoods and safeguards the environment. In Haiti, Newmont faces organized community opposition to mining, a government that cannot protect its investments or the people impacted by mining, and unacceptable risks of corruption. The risks of gold mining in Haiti far outweigh the sector's potential profitability.

NEWMONT: THE BIGGEST INVESTOR IN HAITI'S GOLD INDUSTRY

Newmont's Sustainability Commitments

Newmont has made strong public commitments to environmental, social, and governance (ESG) performance. Its 2019 Sustainability Report states that: "Newmont is committed to developing resources in a way that protects people, respects human rights, catalyzes local economic development and safeguards the environment."[xvi]

Newmont has adopted or gained membership in several international stakeholder initiatives, including the UN Global Compact, the UN Guiding Principles for Business and Human Rights, the Free, Prior and Informed Consent (FPIC) Solutions Dialogue, and The International Council on Mining and Minerals (ICMM) Principles. It also maintains internal policies and standards that guide its operations and reflect its commitments to operate in a manner consistent with human rights.

Despite this, reporting suggests that Newmont's human rights record is mixed. In 2011, members of Ghana's Yayaso indigenous community located near Newmont's Akyem project protested their removal from ancestral land and the relocation of their homes and culturally significant sites.[xvii] In 2016, an independent fact-finding mission commissioned by Newmont found that its majority-owned Peruvian subsidiary had not sufficiently met the requirements of Newmont's own policies or international standards in acquiring land from local community members.[xviii] It was reported that its Board subsequently advised shareholders to vote against a proposed resolution which would have required the company to conduct human rights risk assessments and provide greater transparency over risks in its operations and supply chain.[xix]

Newmont has had a presence in Haiti since 2008, when it joined Eurasian Minerals Inc. (now EMX Royalty Corp.) in a joint venture to explore gold, copper, silver, and other presumed mineral deposits in the Massif du Nord, a mountain range that runs through the north of the country.[xx] At one point, this joint venture held more than 50 prospection permits, covering approximately half the landmass of the Massif du Nord.[xxi] In 2012, it sought to transform its prospection permits into research permits in order to conduct drilling and pre-mine construction.[xxii]

However, following the Senate moratorium, it became clear that Parliament would not ratify a convention between Newmont and the government.[xxiii] In order to proceed, therefore, it may be that Newmont would need to wait for the new law - which does not require Parliamentary ratification of research permits - to pass.[xxiv] Despite this setback, the scale of Newmont's pre-2012 exploration efforts makes it arguably the single biggest investor in Haiti's gold industry.[xxv]

In 2015, Newmont acquired Eurasian's interest in the joint venture along with the (since-expired) exploration permits.[xxvi] In correspondence with the Global Justice Clinic in 2015, Newmont stated that it "remains committed to advancing the mining industry's contribution to Haiti's economic development and looks forward to working with the Government of Haiti in its effort to bring the mining law to current international standards."[xxvii]

References to Newmont's research and exploration activities in Haiti appear to have been removed from the latest versions of its website. However, its recent filings indicate that it retains its Haitian subsidiaries[xxviii] and may continue to employ contractors in the country.[xxix] Newmont should dissolve its Haitian subsidiaries and responsibly disengage from the country, including by cleaning up its encampments.

WHY HAITI'S GOLD IS A BAD INVESTMENT

Local Communities Oppose Mining, Citing Human Rights and Environmental Impacts

Local opposition to mining in Haiti is fervent, longstanding, and well-organized. Communities argue that unavoidable environmental degradation caused by open-pit mining, particularly in communities reliant on small-scale farming with limited water, will cause displacement, destroy livelihoods, and produce food insecurity. They are also concerned that mining will cause human rights impacts and foster corruption. Foreign mining investors cannot expect to gain a social license to operate.

When mining permits were first granted in the early 2000s, local peasant movements raised concerns around lack of transparency, as well as the human rights, environmental, and governance impacts of mining in Haiti. Protests were organized, blocking mining trucks from reaching drilling sites.[xxx] In 2015, Haitian anti-extractives groups testified before the Inter-American Court of Human Rights, challenging the government's lack of transparency over the draft Mining Law and its impacts on affected communities.[xxxi] As recently as 2021, Human Rights Watch noted that "[r]esistance [to mining] is widespread, as communities fear the industry could destroy their farmland and contaminate their water."[xxxii]

Open-pit gold mining has serious environmental impacts which cause long-term health and livelihood problems. Beyond damage due to the physical infrastructure of the mine, mining and processing gold uses vast amounts of water, which is becoming increasingly scarce in Haiti as a result of climate change. Toxic chemicals used in extracting, processing and refining gold, like cyanide, may pollute large tracts of land and spill into waterways or subsurface water reservoirs.[xxxiii] The effects of open-pit mining are long-lasting and extremely costly to remediate.

Haiti's small land mass and dense population may make the potential impacts of mining pollution more severe. People in the country's North rely on subsistence farming for livelihoods and food security and are already suffering water

shortages. This reality motivates community opposition to mining: there will be nowhere for many to go if they are forced from their land by mine development or water pollution.

In addition to environmental damage, communities fear that mining will cause human rights abuses and corruption, as it has done in other countries.[xxxiv] The consistency of opposition suggests that protests are likely if Newmont resumes development. In many parts of the world, crackdowns on anti-mining protests by security services have turned violent, resulting in violations of human rights and local laws.[xxxv]

Haiti's Government Cannot Protect Investors or Communities

The not-yet-passed Draft Mining Law would provide investors with more certainty over royalties and fees, but offers little comfort to local communities: it fails to meet international standards for environmental protection and transparency.[xxxvi] Affected communities were entirely excluded from the drafting process.[xxxvii]

The Law is, moreover, only part of the picture. Legislation is of little use unless the state has capacity to enforce it.

The World Bank, who assisted in drafting the new law, warned that transparency and stronger institutions were critical preconditions to commencing mining in Haiti.[xxxviii] However, there has been little progress on either objective since 2014: the World Bank's most recent 2021 Worldwide Governance Indicators study places Haiti in the bottom percentage for government effectiveness and the bottom 10% for regulatory quality, rule of law, and control of corruption.[xxxix]

The structural weakness of the Haitian state and extreme inequality have produced instability and generalized violence throughout the country. The government does not have the resources to protect investor capital or essential infrastructure from attacks, disruption, or common force majeure events like hurricanes and earthquakes. Nor can it enforce environmental protection laws, remediate pollution and other harms, or relocate impacted communities.

If it pursues its investments in Haiti, Newmont will be solely responsible for securing its capital in a highly unpredictable environment. In order to act consistently with its human rights commitments, Newmont will also bear the costs of compensating and remediating any environmental and social harms related to its operations.

Land Grabbing Is Rife in Northern Haiti. Residents Believe that Mining is Making it Worse.

The prospect of foreign investment may be a cause of opportunistic land grabbing well before ground is broken. Since the central government announced plans for mining concessions in the North, communities have reported an increase in local political and economic interests – often with the assistance of gangs – strong-arming farmers off their land.

The prevalence of land-grabbing in the North places foreign mining investors like Newmont in a difficult situation. They cannot be sure that the rightful owners of the land on which their concession is located were adequately compensated, nor that the chain of title is not affected by force or corruption. Companies may need to mediate or even satisfy claims for further compensation to secure their social license to operate in the community.[xl]

Investors Should be Wary of Corruption

Corruption is rife in Haiti.[xli] The political crisis, which drew international attention following the assassination of President Jovenel Moïse in July of 2021, has eroded state institutions and enabled gangs–many of which have ties to economic and political elites–to flourish. Notably, both the United States and Canada recently imposed sanctions on prominent Haitian officials who provided financial and operational support to armed gangs.[xlii]

Gangs are often responsible for administering territory and even providing social services. An October 2022 report by Global Initiative found that:

> *Gangs have also captured large swathes of Haiti's economy. [...] The gangs largely control the exits and entrances to metropolitan areas, including major roads in and out of Port-au-Prince, which provide access to strategic infrastructure such as ports, oil terminals, the commercial and industrial districts, and Toussaint Louverture International Airport. Public institutions and private sector groups operating in these territories are forced to pay protection money to permit them to operate.*[xliii]

The unfortunate reality is that it is extremely difficult to do business in Haiti without interacting, either directly or through intermediaries, with criminal and corrupt elements. Violent crime is widespread, and company personnel face risks of kidnapping and extortion.[xliv]

Mining has a long history of worsening corruption in the Global South,[xlv] and government regulatory bodies are closely monitoring extractives firms at risk of anti-bribery and sanctions violations. For example, the U.S. Securities and Exchange Commission (SEC) handed down a record $1.1 billion fine to commodities giant Glencore for violations of anti-bribery laws in multiple countries in Africa and Latin America,[xlvi] while the Department of Justice recently brought prosecutions against U.S. investors for bribing Haitian officials.[xlvii]

CONCLUSION

The case for mining in Haiti is poor. The risks facing investors like Newmont – regulatory uncertainty, expropriation, corruption, high costs – likely outweigh the sector's profitability.

Moreover, Newmont has made substantive public commitments to human rights and responsible mining. Given the environmental and social impacts of gold extraction in this area, as well as sustained opposition from affected communities, it is unclear how Newmont could pursue its investments in Haiti consistently with its ESG commitments.

Communities in Haiti's North are not opposed to foreign investment in general. They support proposals for projects, particularly in the agricultural sector, that are environmentally sustainable and transparent, engage with the local population, and strengthen state capacity and basic services. Proposed gold mining developments meet none of these criteria.

FURTHER INFORMATION

A detailed examination of the human rights and environmental risks of mining in Haiti can be found in this 2015 report by the Global Justice Clinic and Haiti Justice Initiative.

About the Authors

The **Global Justice Clinic**[xlviii] (GJC) at New York University School of Law provides high-quality, professional human rights lawyering services to individual clients and nongovernmental and intergovernmental human rights organizations, partnering with groups based in the United States and abroad. Working as legal advisers, counsel, co-counsel, or advocacy partners, GJC students work side by side with human rights activists from around the world. GJC has worked on human rights issues in Haiti since its founding.

The **Kolektif Jistis Min (Mining Justice Collective)** is a movement of Haitian civil society organizations, individuals, and partners who are pushing for transparency, social and environmental justice in the face of renewed international interests in Haiti's mining sector. Formed in 2012, the Collective comprises a network of community educators and mobilizers who are active in the six departments where American and Canadian companies intend to mine. The Collective's aim is to educate affected communities on the consequences of mining in five sectors: the environment, water, work, agriculture and land, as well as to push for national transparency and a debate on mining.

Some of the civil society organizations that form the Collective include: Haitian Advocacy Platform for an Alternative Development (PAPDA), Tèt Kole Ti Peyizan Ayisyen, Democratic Popular Movement (MODEP), Platform of Haitian Human Rights Organizations (POHDH), Batay Ouvriye, and Episcopal Commission-Justice and Peace (CE-JILAP).

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[i] Under Haitian law, prospection permits are the first of four permits granted. They authorize exploration activities. *Décret encourageant la prospection minière sur toute l'étendue du territoire de la République et adaptant les structures juridiques existantes aux réalités de l'industrie minière,* LE MONITEUR VOL. 19 (March 8, 1976), hereinafter 1976 Mining Decree, http://www.bme.gouv.ht/mines/loimin/decminiere.pdf.

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[iv] *Ibid.*

[v] *Ibid,* p. 5.

[vi] *Ibid.*

[vii] *Ibid,* p. 37-41.

[viii] *Ibid,* p. 23.

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[xvi] Newmont, *2019 Sustainability Report – Beyond the Mine*, <https://s24.q4cdn.com/382246808/files/doc_downloads/2019/sustainability/Newmont-2019-sustainability-report.pdf>, p. 16.

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[xviii] Resolve, *Tragadero Grande: Land, human rights, and international standards in the conflict between the Chaupe family and Minera Yanacocha - Report of the Independent Fact Finding Mission*, 28 September 2016, <https://www.resolve.ngo/docs/yiffm-final-report-english.pdf>.

[xix] EarthRights International, *Newmont Mining Advises Shareholders to Reject Human Rights Protections*, <https://earthrights.org/media_release/newmont-mining-advises-shareholders-to-reject-human-rights-protections/>.

[xx] GJC / HJI (2015), p. 66-8.

[xxi] *Ibid.*

[xxii] *Ibid*, p. 67.

[xxiii] *Ibid.*

[xxiv] *Ibid.*

[xxv] *Ibid.*

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[xxviii] Newmont, *Exhibit 21 under 17 CFR § 229.601,* 31 January 2022, <sec.gov/Archives/edgar/data/1164727/000116472722000007/q42021exhibit21.htm>.

[xxix] Newmont, *2019 Sustainability Report – Beyond the Mine*, <https://s24.q4cdn.com/382246808/files/doc_downloads/2019/sustainability/Newmont-2019-sustainability-report.pdf>, p. 176, footnote 4.

[xxx] GJC / HJI, (2015), p. 204.

[xxxi] *Ibid*, pp. 204-5.

[xxxii] Human Rights Watch, *Haiti: Events of 2020,* <https://www.hrw.org/world-report/2021/country-chapters/haiti>.

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[xxxvii] *Ibid*, pP. 204-6.

[xxxviii] World Bank, "Haiti: Mining for Economic Growth", 25 July 2013, <https://www.worldbank.org/en/news/feature/2013/07/25/haiti-mining-for-economic-growth>.

[xxxix] World Bank, *Worldwide Governance Indicators,* <https://info.worldbank.org/governance/wgi/Home/Reports>.

[xl] The Haitian government has a poor record of compensating rights-holders who are evicted from their land for foreign investment projects. The construction of the Caracol Industrial Park in 2011, part-owned by a Korean investor and funded by the United States government and the Inter-American Development Bank (IADB), forced more than 1,000 people off their land without consultation. Compensation provided by the government was manifestly inadequate, leaving many families without food or incomes. After years of campaigning and a year-long negotiation process, the evicted farmers of Caracol reached a settlement with the IADB in 2018 covering land transfers, equipment, environmental and social commitments, and livelihoods.

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[xlviii] This communication does not purport to represent the institutional views, if any, of New York University.