Haiti's New Mining Law

Haiti's Council of Ministers has purported to adopt a new law governing mineral mining in the country. On Monday March 30, 2026, Le Moniteur published the *Décret Régissant Les Activités Minières* ("2026 Mining Decree"). This law, which will go into effect 6 months from its date of publication, on September 2026,[1] transforms the legal framework governing mineral mining,[2] coal mining ("solid fossil fuel"), and quarry mining (defined as "construction materials commonly used in Haiti, excluding marble and other materials for which the primary market is international").[3]

The 2026 Mining Decree is very similar to the *Projet Loi*, drafted by Haitian government officials in 2015 with technical support from the World Bank. Haitian civil society, international human rights lawyers, and even the World Bank itself criticized the *Projet Loi* for its contents and the way it was advanced–in the complete absence of Haitian civil society input or community consultation. The *projet loi* was developed in consultation with private mining companies, but without the participation of the Haitian people, despite the fact that the Haitian Constitution declares mineral resources to be part of the public domain.[4] The *Projet Loi* – and the 2026 Mining Decree – fail to protect Haiti's fragile environment, leave Haitian communities vulnerable to expropriation and rights violations, violate Haiti's Constitution, and promote corporate and government secrecy over transparency of information in the public interest.

In Haiti's current context, mining poses an additional grave risk: funding and in turn, building the power of armed groups. Armed groups wield more power in Haiti than the State. Armed groups control an estimated 90% of Port-au-Prince and hold strategic control over other regions of the country. Armed groups possess weapon arsenals superior to that of Haiti's National Police and control national roads, ports, hospitals, and often control access to food and fuel.[5] Armed groups are well placed to profit

[1] *See* DECRET REGISSANT LES ACTIVITES MINIERES, 181 Année Special No 16, Le Moniteur (March 30, 2026). Herein after "2026 Mining Decree."

[2] Art. 6.50 defines mineral substances as "including any naturally occurring solid material whose value depends primarily on its mineral composition, whether metallic or non-metallic;"

[3] Art. 6.47 – 4.50, 2026 Mining Decree

[4] See, e.g., Management's Discussion and Analysis for Three and Nine Months Ended September 30, 2014, at 7, Eurasian Minerals Inc. (Nov. 15, 2014), available at http://www.eurasianminerals.com/i/pdf/fs/2014-09- 30 EMX MDA.pdf. The involvement of mining companies in the mining law reform process was confirmed during meetings conducted by the Clinic with the Ministry of Economy and Finance and the Council on Economic and Social Development in November 2014, and with the Office of Energy and Mines in November 2013. See also *Byen Konte Mal Kalkile* page 41 (https://static1.squarespace.com/static/5fc7ae09382bec7399f8fb0c/t/60722154719d61444996ffc6/1618092377936/byen_konte_mal_kalkile_human_rights_and_environmental_risks_of_gold_mining_in_haiti.pdf).

[5] See, i.e., Rep. of the U.N. Panel of Experts on Haiti to the Security Council U.N. Doc. S/2025/597 (2025); see also Institute for Justice & Democracy in Haiti, Human Rights and the Rule of Law in Haiti: Key Recent Developments, July 2025 through February 2026

off of mining through land grabs and identifying the sector as one ripe for extortion. Currently, armed groups kidnap, extort, and participate in the illicit trades of arms, drugs, and elvers (baby eels) to generate revenue.[6] This analysis of 2026 Mining Decree is preliminary–it does not include a detailed investigation of the risks that mining may enhance and embolden criminal control in Haiti.

The 2026 Mining Decree was published *anba chal* – "under the shall," secretly, by Haiti's unelected government. The Decree is signed by the 18 Council of Ministers (Cabinet) of Prime Minister Fils Aimé, who became the de facto head of state in February of 2026. Haiti has had no president since the assassination of President Moïse in 2021, and no parliament since, due to the executive's failure to organize elections, Parliament lost quorum in January of 2020. Prime Minister Fils Aimé appointed 12 of the 18 ministers in March of 2026. Haitian civil society learned of the new decree during the first week of May, one full month after its publication. In an interview with *Le Nouvelliste* on May 14th, Haiti's Prime Minister Alix Didier Fils-Aimé confirmed the publication of the decree. Also on May 14th, twenty Haitian civil society organizations published a letter denouncing the passage of the Mining Decree. The organizations decried that the defacto government advanced this law during a period of national crisis, noting that it violates Haiti's Constitution, leaves *peyizan* "without defense" to interface directly with multinational companies more powerful than the state, and concluding that metal mining cannot respond to fundamental needs and will keep Haiti trapped in a system of colonial exploitation.

The Global Justice Clinic (GJC) at NYU School of Law has monitored gold mining and the prospect of gold and other metal mining in Haiti since 2013. GJC worked closely with *Kolektif Jistis Min* (KJM) and subsequently with grassroots organizations based in the North, Northeast, and Northwest of Haiti to support communities to know and advocate for their rights in relation to mineral exploration and the prospect of industrial metal mining in Haiti. GJC posted this analysis of the 2026 Mining Decree and will continue to post other updates related to mining in Haiti to the campaign website, AyitiKanpeMin (Mining Free Haiti). Ayiti Kanpe Min is a repository of analysis, publications, and community voices related to mining in Haiti that GJC published with the input of Kolektif Jistis Min in 2022. The website includes the 2016 report, *Byen Konte, Mal Kalkile: Environmental and Human Rights Risks of Gold Mining in Haiti*, which provides an in-depth analysis of Haiti's mining sector, and the experience of Haitian communities with exploration activity between 2006 and 2013. Chapter V presents a detailed analysis the *projet loi*.

Analysis of the 2026 Mining Decree

This Brief analyzes the 2026 Decree, showing how the law fails to protect Haiti's environment, fails to protect Haitian communities, and champions secrecy over transparency. The Brief notes some of the ways that the Mining Decree violates Haiti's 1987 Constitution. As noted above, the 2026 Mining Decree is very similar to the 2015 *projet loi*. Before analyzing its contents, we note a few key differences between the *projet loi* and this Decree:

- The *projet loi* specified that the term of a mining agreement may not exceed 15 years. The 2026 Mining Decree does not provide a maximum number of years (See Articles 64 and 65).
- The 2026 Mining Decree provides slightly stronger language against expropriation of land for use by a mining company. Article 165 requires the mining title holder to provide proof of why expropriation is necessary, and that the National Mining Authority (NMA) must evaluate a request for expropriation. As noted below, however, concern remains that the Decree fails to protect the rights of communities, including the displaced.

(https://www.ijdh.org/wp-content/uploads/March-2026-Human-Rights-and-the-Rule-of-Law-in-Haiti-Key-Recent-Developments.pdf).

[6] Rep. of the U.N. Panel of Experts on Haiti to the Security Council, at 25-33, U.N. Doc. S/2025/597 (2025).

- The 2026 Mining Decree establishes the same fiscal regime for mining as the *projet loi*. However, the 2026 Mining Decree includes a new clause, Article 229.1, which notes that royalties may be amended, as necessary and upon recommendation by the NMA, by a Decree issued by the Council of Ministers.
- The 2026 Mining Decree does not establish the "Fund for the Promotion and Development of Mineral Resources," established by the *projet loi*. The *projet loi* required the government of Haiti to place 10% of all fees, royalties and taxes specific to the mining sector in the fund, with the intention to finance activities promoting the country's mineral resources and overseeing mining operations.

The 2026 Mining Decree Restricts Parliamentary Oversight and Lacks Essential Details

The 2026 Mining Decree creates a new governmental institution charged with regulating the mining industry, the National Mining Authority (NMA).[7] The NMA is responsible for granting mining permits, overseeing company compliance, and implementing regulations addressing an array of important issues, including water and air pollution control standards, mine design and land use criteria, and environmental remediation requirements. The 2026 Mining Decree no longer requires parliamentary involvement or approval of the issuance of exploitation permits, as the 1976 Decree required. This is in contrast to the 1976 Decree governing mining, which required a company to negotiate the terms of a Mining Convention approved by Parliament in order to advance from a prospection permit to a research permit.

The 2026 Mining Decree leaves many crucial details regarding environmental and social requirements to be addressed through implementing regulations, but does not specify who is responsible for drafting those regulations. During his May 14th interview, Prime Minister Fils-Aimé conceded that Haiti needed to establish appropriate regulations prior to launching the extractive industry sector. This is true. It is also concerning, considering that the 2026 Mining Decree converts mining permits issued under the 1976 Mining Decree into current, valid permits which may enable mining companies to proceed with exploration and even exploitation activities before regulations are put in place.

The Draft Law Favors Secrecy Over Transparency

Article 115 of the 2026 Mining Decree 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, unless the mining permit holder discloses them or authorizes their disclosure. This broad language could be read to require that documents of public interest, such as those related to the environmental and social impacts of a mining project and proposed measures for avoiding and mitigating harm, be kept confidential. Keeping such information confidential will prevent affected communities from engaging in meaningful consultation about mining projects and could foreclose the possibility of any genuine public debate about the short- and long-term impacts of mining. Furthermore, the text of the Decree does not require mining companies to disclose the revenues they earn or amounts they pay to the Haitian State.[8]

The 2026 Mining Decree Lacks Sufficient Detail to Adequately Protect the Environment

The 2026 Mining Decree will fail to protect Haiti's fragile environment. It lacks essential details on process, fails to sufficiently define key terms, omits important safeguards, provides insufficient review time to the Ministry of the Environment, and fails to protect Haiti's water resources.

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[7] *See* 2062 Mining Law, Art. 4.

[8] Article 231 provides that the NMA and the Fiscal Administration are to publish revenues from the mining sector each December. But the 2026 Mining Decree does not specify which kinds of revenues are included in this reporting requirement, nor does it require the government to publish how it allocates or spends those revenues. And it imposes no duties on companies to open their books.

Lacks Details

Although the 2026 Mining Decree requires all holders of exploration permits to produce an environmental analysis, and all holders of exploitation permits to produce an Environmental and Social Impact Assessment (ESIA, or ESIS in French), it neither specifies the required components of those studies nor references any existing law that sets forth such requirements.[9] The 2026 Mining Decree is silent on the process by which such studies are to be carried out, including whether there will be any opportunity for public consultation or input. Similarly, Article 183 of the 2026 Mining Decree tasks the NMA and the Ministry of the Environment (MOE) with issuing an "environmental discharge" (*"le quitus environnementale"*) to certify that a company has performed the required environmental rehabilitation before it withdraws from or renounces an exploration permit, or before the permit expires. However, the 2026 Mining Decree does not specify what that environmental discharge analysis entails bringing into doubt the question of what, if any, rehabilitation will be required.

Omits Key Safeguards

The 2026 Mining Decree identifies No Go Zones (Articles 170–174), yet the list is insufficient.[10] The 2026 Mining Decree fails to consider the need to protect key ecosystems related to provision of water and food and does not name the risks presented by natural disasters, including hurricanes, and earthquakes.

Insufficient Time for Effective Environmental Review

Article 35 of the 2026 Mining Decree gives the NMA just 30 days to complete its technical appraisal of an application for an exploration permit and Article 51 grants just 90 days for similar review of an exploitation permit application. Article 179 affords the NMA only 30 days to review the environmental analysis and mitigation plan produced by the permit holder at the exploration phase. Article 185 allows the NMA only 45 days to review an ESIA submitted as part of an exploitation permit holder's application for authorization to operate, before transmitting it to the MOE for evaluation. In the context of the Haitian government's likely capabilities, these deadlines are wholly unrealistic. They not only restrict the government's ability to thoroughly study the documentation, but also limit the opportunity for public participation or comment.

Presumption of ESIA Approval

Although the 2026 Mining Decree requires companies to produce an ESIA for review by the Ministry of the Environment, the Decree does not require affirmative approval of that study. Rather, Article 186 requires that a company obtain a statement of "non-objection" prior to receiving authorization to begin mining operations. The Ministry of the Environment (MOE) has 180 days to issue a statement or request changes to the documents.[11] Article 187 states that if the MOE does not respond within that period, a statement of non-objection will be presumed and the project may go forth. Considering the lack of resources that the Ministry of the Environment faces, it is all the more careless to equate failure to act in a timely manner with approval. The absence of specific compliance standards or requirements of affirmative approval from the MOE, coupled with the deferral of important regulatory details to the discretionary judgment of the NMA, threatens the integrity and efficacy of the environmental review system itself.

Failure to Protect Haiti's Water Resources

Gold mining typically uses large quantities of water and can have significant, lasting adverse impacts on water quality. In the North of Haiti where water resources are especially scarce and where the companies

[9] 2026 Mining Decree, Arts. 7, 178, 184.
[10] 2026 Mining Decree, Arts. 170-174.
[11] Draft Mining Law, Art. 188.

holding mining permits have confirmed that mineral deposits contain significant concentrations of various sulfides,[12] the risks posed by mining are particularly acute. Improperly regulated gold mining has the potential to render nearby villages and farmland unsuitable for human habitation and agricultural production.

Despite these recognized risks and heightened vulnerabilities in Haiti, the 2026 Mining Decree does not include adequate safeguards to protect water resources or Haitians' right to water. Article 257 grants sweeping permission to mining license holders to use resources (*"les matériaux et éléments"*) found within their permit areas, without requiring that they document the baseline quality and quantity of those resources (including surface and groundwater resources, as well as access to such sources by residents in the affected areas), obtain prior approval for such use, or monitor impacts of that use over time. Although Article 116 generally requires the NMA to ensure that companies redress harms to water sources, the 2026 Mining Decree neither establishes a framework for assessing and preventing potential adverse impacts on the country's water resources, nor specifies water quality standards governing waste and chemical pollutants common at mining sites.

Communities in Haiti have long sung the refrain, *water is more valuable than gold*. In 2018, hydrologists, Haitian community organizations, and the Global Justice Clinic completed the first community-owned baseline study on water conditions in an area *before* mining commenced. Through the organizing of Kolektif Jistis Min and the support of activists and advocates from communities in other parts of the world under mining permit and with technical support from the Global Justice Clinic and other allies, Haitian communities are well informed that mining poses serious, often irreversible risks to water resources.

The 2026 Mining Decree Fails to Adequately Protect Communities

The 2026 Mining Decree includes language that may facilitate, rather than limit, expropriation of community land. It also fails to provide sufficient definitions or the required processes related to community consultation or Community Development Protocols.

Risks of Expropriation–and Silence on the Rights of the Displaced

Article 3 states that mining is an activity of "public utility," which may facilitate compulsory acquisition of land through eminent domain. Article 165 likewise gives companies the right to seek expropriation of privately held land to conduct mining activities. Together, these articles may make it easier for mining companies to legally seize land from community members without adequate negotiation, consultation or compensation.

Perhaps more strikingly, the 2026 Mining Decree is entirely silent on the rights and treatment of individuals and communities physically or economically displaced by mining activities. Due to Haiti's population density and the predominance of subsistence farming in the areas where mining permits are located, it is nearly inevitable that mineral extraction will result in the physical or economic displacement of those who reside on and live off of the land within permit areas.

Articles 200–204 require mining companies to establish and implement a program of consultation and a Community Development Protocol with local community representatives. The articles fail to provide any details regarding the timing or manner in which community consultation must be carried out or how

[12] *See* Eurasian Minerals, *Haiti Overview* (2014), *available at* http://www.eurasianminerals.com/s/Haiti.asp; Majescor Resources, *Douvray Porphyry Copper Deposit Mineral Resource Estimate: SOMINE Project, Northeast Mineral District, Republic of Haiti* (2013), *available at* http://www.majescor.com/uploads/43-101%20douvray%20majescor%2020130228%20(2013-03-01)-1.pdf; VCS Mining, *Projects: Morne Bossa* (2012), *available at* http://vcsmining.com/flagship-property.html.

community "representatives" are to be defined and identified. The lack of detail regarding the planning, timing, or execution of such consultation programs undermines the ability of communities to enforce the consultation obligation or to ensure that decisions affecting their lives are not taken without their knowledge or input. The vague definition of Community Development Protocols is contrary to the international norm concerning free, prior, and informed consent.

The 2026 Mining Decree Falls Short of Guarantees in the 1987 Constitution of Haiti

The 2026 Mining Decree Does Not Adequately Respect the Right to Property

Article 36 of the Haitian Constitution guarantees the right to property. Article 36-5 declares that the "right to own property does not extend to the coasts, springs, rivers, water courses, mines and quarries. They are part of the State's public domain." The Constitution thus creates a "split estate" in which landholders neither own nor possess the right to extract the minerals that lie beneath their lands. Article 36-6 goes on to state that mining laws shall "ensure the surface owners, concessionaires, and the Haitian State an equitable share of the profits from the value of these natural resources." The fiscal regime established in the 2026 Mining Decree, which includes a four percent royalty rate for gold and a modest per-ton fee to be paid to affected local territories, does not guarantee that surface owners enjoy a fair share of the benefits of mining. Moreover, the absence of a clear regime regarding compensation rates to be paid to land owners and occupants for the use of, or damage to, their land as a result of mining further calls into question the constitutionality of the proposed mining regime.[13]

The 2026 Mining Decree Violates the Right to Information and the Right to Participation

The right to information is guaranteed by the Haitian Constitution, both in the preamble and in Article 40, which requires the government to publish all information that affects the public life, apart from that which is kept secret to protect national security. Haiti has also ratified numerous international treaties that protect the right to information.[14] As discussed above, Article 115 of the 2026 Mining Decree imposes a sweeping confidentiality requirement. In addition, the short timeframes for environmental review and the lack of detail regarding the processes by which environmental and social studies are to be carried out and regulations are to be enacted also (indirectly) undermines the right to information, as it leaves little room for public access to and influence on key documents and decisions.

The 2026 Mining Decree Purports to Abrogate Other Legal Obligations

Article 276-2 of the Haitian Constitution provides that all lawfully approved treaties and international agreements "become part of the legislation of the country and abrogate any laws in conflict with them." Yet Article 306 of the 2026 Mining Decree states that the law abrogates any legal provisions contrary to it. This too would be unconstitutional.

Mining is Not an Appropriate Economic Activity in Haiti: The Time is Not Now

Haiti is, by most any measure, the most environmentally degraded country in the hemisphere. It is one of the most densely populated. It sits on fault lines that have caused three major earthquakes in the past 17 years. The Mining Decree is coming into force during a total absence of representative government and increasing territorial takeover by armed groups. Ten years ago, civil society organizations and outside observers advanced valid concerns related to Haiti's ability to govern an industry vulnerable to corruption and that requires diligent environmental and social oversight. There is reasonable debate about whether metal mining could ever be an appropriate economic activity in Haiti. Today, Haiti is far from the

[13] *See* 2026 Mining Decree, Art. 158-162.

[14] International Covenant on Civil and Political Rights Art. 19. The International Covenant on Economic and Cultural Rights has been interpreted to include the right to access to information in relation to specific substantive rights (e.g., the right to health, Art. 12, CESCR, General Comment 1, para. 11; the right to water, CESR, General Comment 15, para. 48).

minimum governance abilities required to pursue such a risky industry. The experiences of Western and Central African countries pursuing mining during times of conflict suggest that resource revenues may weaken and [further] corrupt governments. Further, extractive industry activity risks providing an additional stream of financing to armed groups. No reasonable person would argue that now–or anything close to Haiti's current country conditions–is an appropriate time to encourage investment in its mining industry.

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