

12 January 2017

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Director, Independent Consultation and Investigation Mechanism
Inter-American Development Bank
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Dear Ms. Márquez Mees,

We are members of the Kolektif Peyizan Viktim Tè Chabè (“the Kolektif”), a collective of victim families who were displaced from the land we cultivated in Chabert for decades to make way for the Caracol Industrial Park (“CIP”) in Northeast Haiti.¹ Our land was taken from us without adequate notice, consultation or compensation. The real costs to us were not taken into account, let alone mitigated, when the CIP site was chosen. We continue to suffer significant harm due to that loss of our land. We also fear the cumulative environmental and social impacts from the construction and operation of the CIP and its associated facilities.

The Inter-American Development Bank (“IDB”) financed the CIP from its earliest stages and has continued to invest in this project at regular intervals. In doing so, IDB has violated its policies regarding Involuntary Resettlement (OP-710), Gender Equality (OP-761), Environmental and Safeguards Compliance (OP-703) and Access to Information (OP-102). We therefore submit this complaint to the Independent Consultation and Investigation Mechanism (“MICI”). We first seek the opportunity to resolve these issues with IDB and the implementing agency, the Technical Execution Unit (“UTE”) of the Haitian Ministry of Economy and Finance (“MEF”), without further delay, within the framework of MICI’s Consultation Phase.

Despite the harm suffered to date, we believe that our full compensation and rehabilitation, in fulfillment of IDB’s obligations, remains possible through constructive dialogue between us, our representatives, IDB and UTE. As part of any dialogue, we wish to discuss the following solutions, described in more detail below, that the Kolektif has designed in collaboration with approximately 210 individual victims:

- Fair financial compensation;
- A compensation verification and complaint mechanism
- Revision of the vulnerable people criteria and list;
- Fair non-financial compensation to rehabilitate livelihoods; and
- Support to victims’ families’ education projects.

¹ For a detailed description of the *Kolektif Peyizan Viktim Tè Chabè* and its partner organizations, together with contact details, *please see* Annex 1. As explained in Annex 1, Kolektif has requested that Accountability Counsel and ActionAid Haiti act as its representatives during the MICI complaint process. Formal representative authorization is attached in Annex 2.

Additionally, the Kolektif requests a new, meaningful, consultation process, explaining the current environmental and social risks and impacts and facilitating the affected communities' input into how those will be managed.

If the parties are not able to agree on a solution, we request that the complaint proceed to Compliance Review. We do not request confidentiality.

This complaint is expanded under five headings:

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I. Overview of this complaint

The CIP is a 250-hectare (“ha”) export-oriented industrial park, made up of a series of industrial and administrative buildings, solid and water waste storage and treatment facilities, a 10MW power plant and associated infrastructure. It is located on what was the most fertile agricultural land in the area, approximately four kilometers inland from Caracol Bay, a sensitive coastal mangrove, sea grass, bay, and coral reef ecosystem that extends from Cap Haitien to Lagon aux Bœuf and onwards into the Dominican Republic.² The Trou-du-Nord River runs through the site.

The project was fast-tracked after the devastating January 2010 Haiti earthquake.³ José Agustín Aguerre, IDB’s Haiti Country Department Manager, has been quoted as stating that the “urgency of the project” required some shortcuts. “If one ha[d] to do this in the normal process of planning and then funding and then decision-making, and only then start looking for clients and only then start construction, we would have gone 10 years without having an industrial park.”⁴ In this haste to produce export-related economic benefits, the environmental and social impacts of the project were grossly overlooked and undermanaged at the expense of our communities.

The CIP site was chosen in late 2010 following a pre-feasibility assessment of 18 potential sites funded by IDB.⁵ However, this assessment did not include full environmental and social analysis⁶ and wrongly described the CIP site as “devoid of habitation and intensive cultivation”.⁷ In fact, the CIP site was on excellent agricultural land, cultivated in plots by at least 442 farmers and

² This ecosystem is biologically significant and an important community resource. See section IV.A.ii below.

³ In Dec. 2010, the post-earthquake Interim Haiti Recovery Commission (“IHRC”) approved funding for the Northern Industrial Park, which became the CIP after the Caracol site was selected. See Henri-Claude Müller-Poitevien “Haiti’s Battle to Shake off a Poor Reputation (Huffington Post, 7 Sept. 2012) <http://huff.to/2atUb9p>.

⁴ Deborah Sontag “Earthquake Relief Where Haiti Wasn’t Broken” (NY Times, 5 Jul. 2012) <http://nyti.ms/1KUfV8T>.

⁵ Project ref: HA-T1074 (approved 13 Aug. 2009). See further the list of relevant IDB projects in Annex 3.

⁶ Koios Associates, *Final Report: Development of the Industrial Park Model to Improve Trade Opportunities for Haiti* (20 Sept. 2010), pp. v, 37, 81 <http://bit.ly/2aLI4oU> [“Koios (2010)”].

⁷ *Id.*, pp. 55-57.

their families, totaling approximately 3,500 people.⁸ An Environmental and Social Impact Assessment (“ESIA”), hastily produced in 2011 after displacement took place, records that public consultation disclosed:⁹

“... the ground of the chosen site is the most fertile in the whole area, even in dry periods. It is also the source of income for many occupants who have no other activity than cultivating this land. Entire families depend on these plots to feed their children and pay school fees, health care costs and reimburse debts. ... Culturally, some families have occupied this land for several generations. These occupants have developed natural ties with the land, some nutrition habits. Almost every day and all year long, they draw leaves or vegetables that contribute to their diet.”

Our families were displaced¹⁰ from the project site, with no more than five days’ notice, on or around 4 - 14 January 2011, when land was marked out and fenced in preparation for the construction of the CIP.¹¹ This displacement occurred prior to the development of a Resettlement Action Plan (“RAP”) and all other due diligence and consultation steps required by IDB’s Operational Policy on Involuntary Resettlement.

IDB consultants together with UTE later developed a RAP and compensation packages. That process, however, was marked by inadequate community consultation, inadequate due diligence and significant delays. As explained in section III below:

- Consultation and negotiation was primarily carried out with an association of “natural leaders,” selected by IDB consultants in June 2011, who were not elected by, or truly representative of, us as victims. Information about the project and the RAP has never been made available to us in an appropriate format (taking into account low literacy rates) or language (Creole).
- The compensation options presented to us were based on inaccurate and inadequate due diligence. Among other issues, IDB and UTE: failed to accurately identify at an early

⁸ The IDB and UTE’s quantification of those displaced has ranged from 366 families to 442 families, with an average of eight members per family: for more detail, see section III.B.iii below.

⁹ Koios Associates, *Study of the Environmental and Social Impacts of the Industrial Park in the Region of Northern Haiti* (13 May 2011), Annex 2, p. 8 <http://bit.ly/2aLHVBU> [“ESIA”]. The ESIA independently accepted that the land is “very fertile” (p.27), that “economic activities on and around the project site can be characterized by subsistence farming ... [with estimates that] 50% of products are commercially sold and 50% is consumed” (p. 96), and that these communities “could be very vulnerable to external social changes” (*id.*).

¹⁰ We use the term “displaced” to refer to our economic displacement. We were not displaced from shelter, but we lost a core source of income and food security when we lost this cultivated land. We understand that the IDB’s concept of “displacement” includes economic displacement, and we take the same approach in this complaint.

¹¹ ActionAid USA *Building Back Better? The Caracol Industrial Park and post-earthquake aid to Haiti* (Jan. 2015) <http://bit.ly/2j8b4MA> [“ActionAid (2015)”]; Gender Action *Caracol Industrial Park: Social and Gender Impacts of Year One of Haiti’s newest IFI-funded Industrial Park* (2013) <http://bit.ly/2axULXQ> [“Gender Action CIP”]. The RAP and Baseline both acknowledge the “provisional closure” of the site. The RAP explains: “The project officially started on January 4, 2011. To date [Sept. 2011]: the installation of the temporary fence delineating the 246 hectares has been completed ...” (p. 14) and “[s]ince the establishment of the provisional closure and the recent arrival of security officers on site, free movement is now limited” (p. 24); *Plan d’action pour la compensation et le rétablissement des moyens d’existence des personnes affectées*, (Sept. 2011) <http://bit.ly/2aDnZPR> [“RAP (2011)”]. See also Erice AZ *Ligne de base socioéconomique* (dated Aug. 2011), pp. 14, 18, 24-25, 39 [“Baseline”], at Annex 1 of RAP (2011). The Baseline calculated our lost income from January 2011: p. 39.

stage the number of those displaced; failed to accurately quantify our losses; and failed to properly determine the availability of alternative land. The latter error led IDB and UTE to abandon the original agreement to provide replacement land, instead providing an inferior package of cash compensation almost three years after our displacement.

- IDB and UTE failed to properly identify and mitigate the significant risk of impoverishment arising from our individual circumstances in combination with general characteristics including the manner of our displacement and the difficult conditions faced by rural agricultural communities in Haiti.
- IDB and UTE failed to properly investigate and mitigate the different and disproportionate impacts on women.
- Many of the victims suffered excessive delay in receiving their compensation, with some still waiting six years later. During this period, the area in and around Caracol has experienced sharp increases in the cost of living and demand for food, shelter and land, further reducing the value of our compensation.

These, and other, procedural flaws resulted in an inferior compensation package that has proved inadequate to achieve our socio-economic rehabilitation.

“I’ve farmed my land for 21 years and was then forced to leave for the construction of this park. I grew black beans, cassava, corn, peanuts and bananas on my land and raise all of my children because of that land. I would hire 100 seasonal workers during our planting seasons. I paid them 150 gourdes a day and two meals. If we had the support we needed to farm our land, we would be doing well. Now that I’ve lost my land, I don’t have a penny.”

Elie Josué, who had a plot of 4.5 ha. Here he is holding a ledger containing the names of the people who worked for him.



Credit: Marilia Leti/ActionAid

As explained in more detail in section III, the vast majority of victims are in a worse socio-economic position than prior to displacement and are facing financial and food insecurity. During in-depth interviews we conducted in May 2016,¹² 54 out of 58 interviewees report that they are now in an unstable economic situation, with 48 out of 58 being forced to incur debts regularly. Six of the 58 report having no source of income at all.¹³

Although the harm caused by the loss of our land is the Kolektif's primary concern, we are also concerned by the lack of information and consultation about potentially serious environmental and social risks and impacts associated with the construction and operation of the CIP and its associated facilities. As discussed in section IV below, we have heard reports of:

- Harm and potential harm to the Trou du Nord river and to Caracol Bay;
- Pollution and reduced availability of groundwater;
- Potential air and soil pollution from the CIP and the power plant, and from the increase in population associated with these developments;
- Very poor employment conditions at the CIP; and
- Social risks and impacts related to the increase in population in the area.

Without informed consultation on these issues, we lack information about: how likely and how serious these risks and impacts are; how they might affect us now or in the future; and how successfully they are being managed. We ought to have input into decisions that affect our livelihoods, our communities and our natural environment.

For these reasons, we established the Kolektif. Our coordinator, Jocelyn Prével, explains:

"We had land that we had either received from our parents or that we had bought. With that land we could live. It represented all the little details that we need to live. That land was responsible for the education of our children, and ourselves. To pursue our studies we relied on our land.

In 2011, we heard that they would kick us out of the land we had. That the Haitian State, along with the IDB, would take our land without any agreement with us. They invaded us to take the land we had. So they chose the natural leaders, and ADTC, who said it's not possible to take our land without compensations to help us live. And that's how the Haitian State chose to give a little amount of money, which did not represent the land they took from us. In 2011, they gave us money for food security and for lost harvests. In 2012, they did the same, but they did not take inflation or the real cost of living into account, when the cost of living had increased.

They offered us land, but to give it to us, they had to take that land from other farmers who lived there. The farmers from Fond Blanc said, 'Yes, we don't have any problem with that, we can give the land, but we need that all the land is improved so that it can benefit everyone.' They (UTE and IDB) said they were not able to improve the land, that farmers had to do it themselves. So the farmers of Fond Blanc said, 'No, you can't take our land to put other people on it like that, there needs to be a negotiation so they can come on our land in a way that benefits all.' When they saw that, they (UTE and

¹² With the support of our partners ActionAid Haiti and AREDE.

¹³ See Annex 6, summary of interview results.

BID) decided to give us money, not land.

We asked for final compensations, some asked 15 years of compensations, some 20, some 25. They (UTE and IDB) chose to give us 5 years of compensation. And they took out the food security compensation, they only gave us lost harvest compensations. And that represented nothing for us. Land represented life for us. The little money they gave us was gone in one month, two months. The land helped us pay education for our kids and food to live. And after they took our land, we saw the price of food rise, because our land in Chabert was the most fertile, especially to produce peas, maize, bananas. Fertile land was 95% of the land in Chabert.

When we saw that, how life had changed for us, we had a meeting in 2014. We as farmers. We looked at how our children are living now, we said this industrial park should help us, but our living conditions are worse. This park, instead of helping us moving forward, it made our life worse. There's more people, the costs are higher, there is no hospital, there is no school. They did not help with reforestation or new road, while we can't breathe well because of the dust.

So we decided to create the Kolektif Peyizan Viktim Tè Chabè, we gathered, we voted for change, we said we can't stand like that, we need to speak out to claim our rights and our duties. We created the Komite which was chosen by the victims, to get fairer compensations. We struggled since 2014.”

Jocelyn Prévil, 9 July 2016

II. IDB is a major, ongoing investor in the CIP and shares responsibility for its shortcomings and impacts

IDB financed the CIP from its earliest stages, and continues to fund it, through five loans totaling approximately US\$242 million and through multiple awards of technical cooperation.¹⁴ The implementing entity is the Haitian Government's MEF, through its agencies UTE and more recently the Société Nationale des Parcs Industriels (“SONAPI”).¹⁵

IDB Board of Directors approved an initial loan of US\$55m on 25 July 2011. This loan had multiple components, although its primary goal was the construction of new infrastructure, including the CIP, designed to turn Northern Haiti into a population and commerce hub. In relation to the CIP, IDB committed to finance: infrastructure works, including industrial and administrative buildings, waste disposal and water treatment facilities; new housing in the area; resettlement compensation; and socio-environmental evaluation, mitigation and supervision.¹⁶

¹⁴ See Annex 3, list of IDB projects.

¹⁵ Responsibility for the management of the CIP partly transferred to SONAPI in May 2014. We understand that UTE remains responsible for all CIP construction activities, including supervision of the permanent wastewater treatment plant (“WWTP”), while SONAPI is in charge of all other CIP operations and management. Damningly, the IDB has said that “SONAPI took over the management authority on May 1, 2014 without sufficient capacity to manage environmental and social aspects of the [CIP]”: HA-L1091 Environmental and Social Strategy, ¶¶1.5, 4.11 [“HA-L1091 ESS”], at Annex 3 to HA-L1091 Project Profile (undated) <http://bit.ly/2aAyC8b>.

¹⁶ HA-L1055 Grant Proposal (undated), pp. 6-7 <http://bit.ly/2anWzRE>.

A number of other investors developed associated facilities of the CIP. The United States Agency for International Development (“USAID”) committed to finance up to 4,000 houses,¹⁷ a new 10MW power plant¹⁸ and port improvements.¹⁹ The European Commission agreed to finance road works.²⁰

The CIP project “was classified as category A in view of the potentially significant social and environmental impacts of the park’s operation, which could extend over a broad geographic area and be permanent or long-lasting.”²¹ However, even by IDB’s own admission, the early environmental and social due diligence for the CIP was inadequate.²² As discussed in section III, we were displaced without prior warning, let alone consultation and proper avoidance and mitigation of resettlement risks and impacts. IDB has itself described the ESIA as “incomplete” due to inadequate program details and baseline information.²³ A baseline assessment of those displaced was not finalized until August 2011 at the earliest, and even then it failed to accurately identify those displaced and to quantify our losses. The Board approved the project in July 2011 despite those inadequacies.²⁴

The CIP began construction in 2011 and has been operational since March 2012. Expansion continues with some of the envisaged services and infrastructure significantly delayed and still not available.²⁵ To continue this expansion, IDB provided four additional loans (all classified as Category A).²⁶ In total, therefore, IDB provided the following core loans for this project:

HA-L1055: Infrastructure Program, approved on 25 July 2011;
HA-L1076: Productive Infrastructure Program, approved on 13 September 2012;
HA-L1081: Productive Infrastructure Program II, approved on 16 December 2013;
HA-L1091: Productive Infrastructure Program III, approved on 11 December 2014;
HA-L1101: Productive Infrastructure Program IV, approved on 14 December 2015.²⁷

These subsequent loans and expansion activities have also been plagued by inadequacies in the management of environmental and social risks.²⁸ In November 2015, IDB admitted that the CIP

¹⁷ USAID initially intended to prepare 15,000 plots of land for housing construction and to build houses on up to 4,000 of those plots. As of Sept. 2014, the planned number of plots were reduced by 87% to 2,013, with 906 of the houses to be built by USAID (a reduction of 77%): Government Accountability Office *Haiti Reconstruction: USAID Has Achieved Mixed Results and Should Enhance Sustainability Planning* (Jun. 2015), p. 18 [“GAO (2015)”].

¹⁸ HA-L1055 Grant Proposal, ¶1.11(d). The power plant is an associated facility: see HA-L1101 Environmental and Social Strategy, ¶3.7 [“HA-L1101 ESS”], at Annex 3 to HA-L1101 Project Profile (undated) <http://bit.ly/2aUm6BE>.

¹⁹ *Id.* We understand that the port project has been delayed and its current status is uncertain.

²⁰ HA-L1055 Grant Proposal, ¶1.11(d).

²¹ *Id.*, ¶2.3. Other rehabilitation works under the loan were expected to be classified as B, apparently leading to the description of the loan as category B in some documents and category A in others.

²² Koios, the consultants who produced the ESIA, may not disagree with this description. They concede that the ESIA was produced to a level appropriate for a Category B project (a lesser standard than a Category A project): ESIA, pp. ii, iii. Koios also refers to tight deadlines for completing its analysis: ESIA, p. vi.

²³ See HA-L1081 Environmental and Social Management Report (Nov. 18, 2013), ¶3.21 <http://bit.ly/2aAMqma> [“2013 ESMR”]; and HA-L1101 ESS, ¶3.4.

²⁴ We understand that the US Executive Director abstained on this vote, potentially due to the inadequate due diligence. See “Earthquake Relief Where Haiti Wasn’t Broken” (NY Times, 5 Jul. 2012) <http://nyti.ms/1KUfV8T>.

²⁵ See HA-L1101 ESMR (Nov. 2015), ¶2.5 <http://bit.ly/2aEhyij> [“2015 ESMR”].

²⁶ See further Annex 3, list of relevant IDB projects.

²⁷ This loan apparently concludes the Bank’s direct investments in the CIP, with an expected completion date of 2020.

²⁸ See further the discussion of environmental and social impacts in section IV.A below.

remained out of compliance with a number of requirements, including by: failing to comply with Haitian Labor Law; failing to establish workers' and community grievance mechanisms; failing to provide adequate food and potable water to employees; and failing to establish and maintain an adequate environmental health and safety management system.²⁹ The CIP would have been out of compliance with the Bank's effluent discharge standards, if the Board had not waived that requirement in 2013 due to the park's ongoing inability to comply.³⁰ IDB has also acknowledged that the project was (and likely still is) out of compliance with its Involuntary Resettlement Policy, due to delays in providing final compensation.³¹ Although IDB identified these shortcomings in the assessment of previous loans and included specific requirements in the legal documents, inadequacies persisted.³² In November 2015, IDB explained that "there are several [issues] where the lack of progress in the previous operations raises doubts as to whether the project will indeed meet compliance requirements."³³

Essentially, IDB continued to fund and expand this project, despite growing evidence of the inadequate management of negative environmental and social risks and impacts. It seems that there was 'no going back,' despite the growing financial, environmental and social cost.³⁴

This series of loans has been supplemented by a range of technical cooperation projects financing studies, institutional capacity-building and civil works to try to mitigate the social and environmental impacts of the CIP. One such project supported the establishment of the Three Bay Protected Area ("PN3B"),³⁵ a project that was motivated, at least in part, by concerns about the impacts of the CIP on the critical Caracol Bay ecosystem.³⁶ IDB admits that the close proximity of the CIP to the proposed PN3B "initially raised international concern about negative impacts" of the CIP and that "[t]he assurances made by the IDB that the necessary mitigation measures would be taken to protect the marine protected area will be significantly tested during the operation of the park in the next 5-10 years."³⁷

Although the CIP has brought some positive development to Northern Haiti, it has so far failed to live up to its asserted development potential. Despite initial projections that the CIP would

²⁹ 2015 ESMR, ¶1.13, footnote 2. *See also* 2015 ESMR, ¶¶1.9, 3.5, 4.10, 5.5 and Table 3.1.

³⁰ *See* section IV.A.i below.

³¹ 2015 ESMR, ¶3.5.

³² *See* HA-L1091 ESS, ¶1.4.

³³ 2015 ESMR, ¶1.13.

³⁴ This is supported, to an extent, by IDB's own assessment of the development effectiveness of these projects. *See* the Office of Evaluation and Oversight *IDB-9 Evaluation of IDB's Commitments to Haiti* (Mar. 2013) at p. iii <http://bit.ly/2aUSxjj>: "The OVE evaluation identified specific challenges [to the success of the new strategy of developing an industrial hub in the northern portion of the country]. These were validated by consultations conducted during the mission in the country, and many of the challenges were included in Management's observations in the Development Effectiveness Matrix (DEM) of the approved operations. They include: ... (iii) the enormous productive and social infrastructure deficits associated with the development of the CIP; (iv) the fact that the need to address social and environmental externalities increases the investment costs of the project"

³⁵ The Three Bays National Park ("PN3B") is a conservation effort to protect and restore marine wildlife in northern Haiti. The Government of Haiti officially announced the Park on October 9, 2013.

³⁶ HA-L1101 ESS, ¶2.5; TC Abstract *HA-T1180: Mitigating the Environmental Impacts of the PIC in the Caracol Bay* (2014) <http://bit.ly/2aW42Zx>.

³⁷ 2015 ESMR, ¶1.3.

employ 18,000 people by 2014,³⁸ and up to 37,000 by 2020,³⁹ the CIP's July 2016 report indicates that it only employed 9,266 people.⁴⁰ We note that employment at the park is not an option for many of the victims, as the park primarily employs young women.⁴¹ Further, as discussed in section IV, we understand that employment conditions at the CIP are very poor with numerous wage, health and safety violations, including reports of sexual harassment of female employees. While the associated power plant has increased the availability of electricity, many of our members – and other families in the area – either still cannot access it or cannot afford to purchase it.⁴² Despite IDB's investment in improving the technical capacity of the Haitian government, IDB's own assessment of the long-term sustainability of the CIP is bleak:

“The experience over the past five years indicate that even basic environmental and social management requirements consistent with not only IDB policies but also industry standards are a struggle to implement due to limited capacity, competing priorities, and resource constraints. ...

Taking into consideration the totality of the potential medium and long-term impacts and risks described in this document and the [CIP]'s environmental and social track record to date, overall the [CIP], and in particular this last operation, poses a high reputational risk to the IDB. Of particular importance is the limited (or lack of) SONAPI's capacity to ensure the [CIP]'s long-term sustainability, including that the [CIP] implements an adequate EHS management system so that its operation does not cause negative effects on the neighboring communities and the PN3B and the Trou-du-Nord River”⁴³

III. We were displaced without warning, without adequate due diligence and without adequate compensation

A. Additional factual background

In early January 2011, approximately 442⁴⁴ farmers and their families, including the families of the Kolektif, were cultivating plots of land in Caracol-Chabert that would soon become the site of the CIP. Our land was very fertile, supporting mango, papaya, grapefruit, peppers, beans, cassava, corn, peanuts and bananas, among other crops.⁴⁵ Some families also grazed cattle.⁴⁶ This produce and livestock was both an important source of income, sold at local markets, and of food for our

³⁸ American Institute of Architects and others *Cumulative Impact Assessment for Regional Development in the Cap-Haïtien to Ouanaminthe Urban Corridor* (26 Aug. 2012), p. 17 <http://bit.ly/2aGFWgl> [“CIA (2012)”].

³⁹ See IDB “Fact sheet: The IDB and Haiti's Caracol Industrial Park” (6 Jul. 2012) <http://bit.ly/2aALWku>.

⁴⁰ SONAPI, *Q2 2016 Update - Parc Industriel de Caracol* (20 Jul. 2016), p. 6, <http://bit.ly/2allhSI>.

⁴¹ As of 2015, 67% of CIP employees were female, many of them under age 30 (Nicola Luksic, Tom Howell “Haiti shows how wealthy countries 'continue to cause disaster'” (CBC News, 15 Sept. 2015) <http://bit.ly/1KdJPpE>) or, as the IDB has described them, “women of childbearing age” (HA-L1101 ESS, ¶4.35; 2015 ESMR, ¶4.32).

⁴² Jason Beaubien “Will 'Made In Haiti' Factories Improve Life in Haiti?” (NPR, 14 Feb. 2013) <http://n.pr/2aDodGo>.

⁴³ 2015 ESMR, ¶¶1.3 and 4.55.

⁴⁴ IDB and UTE's estimates have ranged from 366 to 442 families: for more detail, refer section III.B.iii below.

⁴⁵ The Baseline estimated that the land produced 1,400 metric tons of fruit and vegetables per year, in addition to sustaining cattle grazing. See the summary in RAP (2011), p. 29; Baseline, p. 2, ¶4.

⁴⁶ Baseline, p. 2, ¶4.

families.⁴⁷ Some of the larger plots supported a range of agricultural workers in addition to the farm owners.⁴⁸ Some families had farmed the land for generations.⁴⁹

“I had half a carreau [1.6 acres] where I planted all kinds of fruits. I had grapefruit, sweet oranges, mangoes – everything – I had all kinds of fruit there. In fact, it was pigeon beans that I harvest and sold in Okap (Cap-Haitien) so I could send my children to school.”

Pierre Vincent.

Despite the prominence of agriculture as a means of living in Northern Haiti, such fertile, productive land is difficult to find. Agriculture is an important source of food and livelihood, but not an easy one. In rural areas, 75% of economic activity comes from agriculture. Yet these communities are among the poorest in Haiti, with 75% living under the poverty line.⁵⁰ Haiti is constantly on the brink of a food crisis.⁵¹ Women are particularly vulnerable as they are primarily responsible for feeding their families.⁵² These issues are exacerbated by long-standing land tenure insecurity: most land in Haiti is held informally,⁵³ and there is a history of state-sanctioned land confiscation, including at the Caracol-Chabert site.⁵⁴

Unbeknown to us, our valuable land had been selected as the site of the CIP. In late 2010, a pre-feasibility assessment of 18 potential sites funded by IDB identified three preferred sites, of which the CIP site was one,⁵⁵ and four acceptable sites. However, that study, by its own admission, did not involve any comprehensive environmental and social analysis.⁵⁶ It described the CIP site as “state-owned”: a bold assertion given the author’s failure to official verify the statement⁵⁷ and considering that approximately 95% of land in Haiti is governed customarily or informally (and even the government is unsure of its holdings).⁵⁸ Even more damningly, the assessment wrongly described the CIP site as “devoid of habitation and intensive cultivation”⁵⁹ when the opposite was

⁴⁷ The RAP acknowledged that, for almost 80% of victims, agriculture and animal husbandry were the main source of income. Small retail businesses and the sale of other services contributed only marginal income: RAP (2011), pp. 28 and 30. The Baseline estimated that 30% of the produce grown was self-consumed: Baseline, p. 2, ¶4.

⁴⁸ ActionAid (2015), p. 4 and Elie Josué’s story above.

⁴⁹ ActionAid (2015), pp. 4-6. Our connection to the land stretches even further: see footnote 54.

⁵⁰ ActionAid (2015), pp. 10-11.

⁵¹ See footnote 191 below. The CIA (2012) notes that the North East was importing 55% of its food needs: p. 20.

⁵² ActionAid (2015), p. 10. See also the discussion of gender concerns in section III.B.iv below.

⁵³ See footnote 58 below.

⁵⁴ Accordingly to the oral history of our community, the land at Caracol-Chabert was originally granted to a General de Plaisance for his service during Haiti’s war of independence (~1804). A number of Haitian owners succeeded the General, who used the land to service a debt. In the 1920s, 35,000 hectares of land were appropriated by the Government of Haiti and given to different companies for large-scale production of first sisal and then sugar-cane (with grave negative impacts on the local communities). In 1986, the departure of Dictator Jean-Claude Duvalier provided the opportunity for communities to return and cultivate the land: see ActionAid (2015), p.5; Baseline, ¶3.1.

⁵⁵ Described as the Madrasse, near Chambert site (#15), see Koios (2010), <http://bit.ly/2aLI4oU> pp. 56-57.

⁵⁶ *Id.*, pp. v, 37, 81.

⁵⁷ *Id.*, p. 57.

⁵⁸ ActionAid (2015), p. 5. Registration and obtaining legal ownership is a highly problematic process, encouraging the customary practices used by the majority of Haitians. See GAO USAID Infrastructure Projects Have Had Mixed Results and Face Sustainability Challenge (13 Jun. 2013), p. 33 <http://bit.ly/2aOMwU9>; Baseline, p. 28, ¶¶3.2-3.3; RAP, p. 26.

⁵⁹ Koios (2010), pp. 55-57.

plainly visible. The Caracol-Chabert site was ultimately chosen as the site for the CIP, in large part because of its superior water resources.⁶⁰ the same water resources that made the land so productive and valuable when cultivated.

Approximately 3,500 people,⁶¹ including us and our families, were displaced⁶² from this land between 4 and 14 January 2011, when it was demarcated and fenced for the CIP. Our crops were destroyed. Three families lost houses; equipment was destroyed or rendered useless; and a local church was later demolished.⁶³ Some families had a few days' notice, when they heard plans for the CIP on the radio or from a visiting official. Others had no notice at all.⁶⁴ Displacement occurred before any of IDB's due diligence requirements were fulfilled. There was no RAP, no ESIA, and no meaningful community consultation or participation.

Between January and June 2011, an ESIA for the project was hastily undertaken. Apart from one meeting on 27 January with more than 250 "occupants" of the site,⁶⁵ no substantive consultations appear to have been held with directly affected community members until late June 2011 at the earliest – by which point the ESIA appears to have been finalized – despite a range of meetings being held earlier with local and national authorities.⁶⁶

The lack of community consultation is reflected in inaccuracies contained in the ESIA. While the ESIA recognized that the CIP site was an agricultural area that provided the main livelihood for a number of families, it wrongly estimated those affected as totaling 1,000,⁶⁷ when the actual number was more than triple: approximately 3,500. Further, the ESIA continued to maintain that the land was state-owned, without qualification⁶⁸ when, as IDB would later recognize, our families had a range of formal and customary rights regarding the land.

This ESIA also asserted that Caracol-Chabert remained the preferred site, despite the associated environmental and social risks and impacts.⁶⁹ Its brief alternatives analysis was woefully inadequate. It understated the project's impacts and was plainly influenced by the fact that the site had already been chosen. The key barrier to a location change was "the risk of delays" associated with acquiring land.⁷⁰ There was no detailed reconsideration of the other "preferred" or "acceptable" sites that had been identified by the pre-feasibility assessment, taking into account the resettlement impacts of the Caracol site.⁷¹ Instead, it emphasized: "Haiti is currently receiving the

⁶⁰ ESIA, pp. 16-17.

⁶¹ UTE and IDB have not provided full details of the number of people affected. However their estimates refer to an average of eight people per family, and we understand that at least 442 families were affected: *see* section III.B.iii below.

⁶² As explained in footnote 10, we use the term "displaced" to refer to our economic displacement.

⁶³ RAP (2011), p. 24.

⁶⁴ *See*, for example, ActionAid (2015), p. 4; Gender Action *CIP*, p. 22.

⁶⁵ ESIA, Annex II, p. 7.

⁶⁶ *See* section III.B.iii below.

⁶⁷ ESIA, p. 16.

⁶⁸ *Id.*, pp. 16-17.

⁶⁹ *Id.*, pp. 17-18.

⁷⁰ *Id.*, p. 17.

⁷¹ There was some brief discussion of the two other preferred sites, not in the alternatives analysis but in a section explaining the logic behind the choice of the Caracol site. This discussion simply recounted the earlier site decision-making process: it clearly does not engage in any reconsideration of that decision: *Id.*, p. 16.

attention of the international community ... Such commitments are rare, often limited in time and soon forgotten. ... it's now or never to start this project...⁷²

As previously mentioned, this ESIA would later be described by IDB as “incomplete” and supplemented by a range of other environmental and social impact studies.⁷³ The Board nonetheless approved the project on 25 July 2011, before those inadequacies were addressed.

The first comprehensive study of resettlement impacts was the Baseline study, conducted by IDB consultants, Erice AZ,⁷⁴ and apparently finalized together with the RAP in September 2011, eight months after we were displaced from our land. The study found that 366 families had been displaced, of which three had formal legal titles to the land, 72 were “fermiers de l’etat” with legal rights to use the land, and those remaining had a variety of customary land rights.⁷⁵ It estimated that more than 75% of those families lived below the poverty line.⁷⁶ Yet it only characterized 51 households as especially vulnerable to impoverishment.⁷⁷

Although the Baseline was a marked improvement from earlier IDB-commissioned reports, it also suffered from significant flaws.⁷⁸ It was developed and finalized in an inappropriately short time, based on an insufficient number of collective and individual interviews and consultations. As a result, it failed to identify 76 displaced households – nearly 20% of those displaced by the CIP – who were therefore excluded from the concurrent consultation processes, and most of whom appear to have been excluded from the initial compensation awards agreed and issued in 2011.⁷⁹ It also failed to accurately quantify the losses sustained by the families. Additionally, the study failed to: identify gender-differentiated risks or propose gender risk mitigation measures;⁸⁰ or include gender as a vulnerability factor, despite the RAP suggesting that it was a relevant criterion.⁸¹ In the end, while four households where women acted as the heads of household were identified as vulnerable, another 28 female-headed households identified by the Baseline were not.⁸²

⁷² *Id.*, p. 18.

⁷³ See 2013 ESMR, ¶3.21; HA-L1101 ESS, ¶3.4.

⁷⁴ Erice AZ was of questionable independence, for the purpose of these assessments. The Head of Erice AZ (Palème Mathurin) at the time was also the President of the CTMO-HOPE commission (Tripartite Presidential Commission on the Implementation of the HOPE legislation, which established preferential access to U.S. imports of Haitian apparel), in charge of attracting apparel industry investment (among other tasks) until at least April 2011: Gender Action CIP, p. 8, note 39.

⁷⁵ RAP (2011), pp. 22-23 and ¶3.2.

⁷⁶ Living off less than US\$1 per person per day: Baseline, p. 2, ¶6.

⁷⁷ See RAP (2011), p. 25, Annexes 10 and 11; section 0 below; and Annex 10 of this document.

⁷⁸ See note 74 above.

⁷⁹ We were advised by IDB and UTE that the food security compensations disbursed in Sept. 2011 were disbursed to 382 families: see Annex 4, meeting notes; Annex 5, Aide Memoire. IDB was still referring to only 382 displaced families in late 2013: see section III.B.iii below.

⁸⁰ As a result, the RAP does not identify any gender-specific risks or mitigation measures: RAP (2011), pp. 50-52.

⁸¹ *Id.*, pp. 34, 36 and Annex 10. In any event, the consideration of gender should not have been limited to heads of household.

⁸² Compare RAP (2011), Annex 11 (identifying four female-headed households) or Annex 10 of this document with the 32 female-headed households identified in Baseline, p. 1, ¶2 and pp. 15-16. There were potentially more, as the Baseline is not complete.

The Baseline recommended compensation for the following categories of loss, discussed in more detail below.⁸³

- **Lost harvests:** In order to compensate families for the loss of their crop income for the 2011 year (from January 2011⁸⁴ due to the “provisional closure”⁸⁵ of the site), the Baseline recommended that each family receive US\$1,450 dollars per ha, the average net income produced per year by the lost land.⁸⁶ If agricultural activities were not restored in time, the same amount should be paid again the following year.⁸⁷
- **Lost food security:** The lost land was an important source of food security, in addition to income, with approximately 30% of the produce being self-consumed.⁸⁸ As a result of the lost income, combined with the lost produce, families faced severe food shortages.⁸⁹ Accordingly, the Baseline recommended that the families receive additional financial support to pay for food for a number of months, calculated based on the number of people in each family and their needs.⁹⁰ It estimated that families consumed on average the equivalent of US\$1,000 for food per ha.⁹¹
- **Property damage:** the Baseline noted that some compensation had already been paid, in the form of monetary compensation for the destruction of fences during the closure of the site. Payments totaling \$75,000 were apparently made in July 2011.⁹²
- **Transitional livelihoods support:** financial support for non-agricultural activities (trade, salt, transport, hospitality etc.) to provide an alternative and transitional source of income pending replacement agricultural land.⁹³
- **Replacement agricultural land** “as soon as possible,”⁹⁴ together with ongoing support for the development of that land in the form of investments in irrigation, drainage, mechanization, optimal crop type and density.⁹⁵
- **Housing:** given the advanced age of some operators of the site (for whom it will be difficult to reestablish a source income) and the situation of extreme vulnerability in which some families lived, many of which depended on income from the site, some families should receive housing as a livelihood recovery alternative. This housing can be partly rented out and partly inhabited to provide a regular flow of income.⁹⁶

⁸³ Baseline, pp. 44-45. Neither the Baseline nor the RAP recommended any compensation for the 720 agricultural workers who worked the land in return for wages: *see* Baseline, ¶¶4.7-4.8; RAP (2011), pp. 40-41.

⁸⁴ Baseline, p. 39.

⁸⁵ *See* the references to “provisional closure” in Baseline, pp. 14, 18, 24-25, 39.

⁸⁶ *Id.*, pp. 4 ¶7, 39-40, 44-45.

⁸⁷ *Id.*, p. 4 ¶7.

⁸⁸ *Id.*, p. 2, ¶4.

⁸⁹ *Id.*, pp. 40-41.

⁹⁰ *Id.*, p. 3 ¶7.

⁹¹ *Id.*, p. 41. *See also* p. 45.

⁹² *Id.*, p. 39.

⁹³ *Id.*, p. 4 ¶7. *See also* pp. 44-45.

⁹⁴ *Id.*, p. 45.

⁹⁵ *Id.*, p. 4 ¶7.

⁹⁶ *Id.*, pp. 4 ¶7, 45.

- **Support for cattle grazing:** as the land sustained cattle grazing, as well as cultivation, authorities should mitigate the loss of this grazing land by improving other pasture and providing access to silage and hay.⁹⁷

Concurrently with preparing the Baseline, the same consultants (Erice AZ) developed the RAP and negotiated compensation agreements.

Consultation and negotiation principally took place with an “Association of the Natural Leaders of Caracol” (“ALENAC”), selected and confirmed by Erice AZ in two meetings on 18 and 19 June 2011.⁹⁸ The natural leaders were described by Erice as “relatively simple” to identify: those “that have consolidated their ascendancy over the network through their expertise and/or empathy and/or level of selflessness in managing relations between communities and families ... those that everyone asks for advice in time of difficulty.”⁹⁹

The 41 “natural leaders” were neither elected nor confirmed by a majority of the victims. Only 58 and 76 people attended the two meetings during which the leaders were selected, and it is not clear from the records how many of those attendees were victims themselves.¹⁰⁰

Nor were other steps taken to ensure that the “natural leaders” were representative of the victims. Many of the “natural leaders” were not victims. Only 22 members of ALENAC are clearly identifiable as victims from the lists included in the Baseline and provided by UTE in June 2016¹⁰¹ (although these lists, as discussed below, are not comprehensive).¹⁰² UTE and IDB have admitted, in a meeting with representatives of the Kolektif, that in the rush to develop the compensation plan “it was not possible to assess whether they were legitimate or not.”¹⁰³

Nor did the 18-19 June meetings constitute consultation meetings. The participants were not provided with any detailed information about the project, its potential risks and impacts, nor proposed mitigation measures.

Exacerbating this limited and non-representative approach to formal consultations, IDB and UTE failed to ensure that information about the project, the proposed RAP and the compensation packages were made available to us – the wider group of victims – in an appropriate format (taking into account low literacy rates) and language (Creole). Creole is the sole language of the overwhelming majority of the victims. Yet, no published project documents nor the 2011 compensation agreements were produced in this language. Even if they had been, further, detailed

⁹⁷ *Id.*, p. 4 ¶7, p. 43-44.

⁹⁸ RAP (2011), Annex 2, p. 121. Erice AZ described ALENAC as “a platform representing the community interests of those affected directly and indirectly by the project. This is the most direct interface with the PAPs” The meeting dates are identified at p. 129.

⁹⁹ Baseline, ¶2.9.

¹⁰⁰ RAP (2011), Annex 2, p. 129.

¹⁰¹ Annex 13, UTE Liste des personnes compensées définitivement (Compensation monétaire) + Montants définitifs payés.

¹⁰² Annex 7, comparison between ALENAC and Baseline/June 2016 lists of victims. Three further members of ALENAC have names similar but not identical to those listed as victims. 16 members of ALENAC are definitely not listed as victims.

¹⁰³ Annex 4, meeting notes. The description of ALENAC in the RAP – as the product of self-organization by the victims – is not accurate: RAP (2011), p. 18.

oral explanation would have been required – at multiple stages throughout the consultation and negotiation process – due to low literacy rates.¹⁰⁴

The RAP was finalized in September 2011, and the general compensation framework was the subject of a Protocol Agreement signed by UTE and ALENAC on 9 September 2011.¹⁰⁵ Heads of households (representing between 366 and 382 households) subsequently signed individual compensation agreements in September and October 2011.

Based on our review,¹⁰⁶ the following table is an overview of agreed compensation compared against the corresponding recommendations in the Baseline and RAP. This table highlights a number of our specific concerns about compensation calculations, including where the agreed compensation appears to differ from that recommended by the Baseline and/or RAP and where the Baseline/RAP recommendations were themselves problematic. These specific concerns are in addition to our more general concerns discussed below.

i. Table 1: 2011 compensation

Recommendations of the Baseline & RAP	2011 Compensation Agreements ¹⁰⁷
<p>Lost 2011 harvests: The RAP and Baseline both recommended US\$1,450 per ha per year, estimated as the average net margin produced on agricultural land in the area.¹⁰⁸</p> <p>However, this approach failed to account for differences between plots (due to different crops, irrigation and/or frequency of harvest). It significantly under-compensated a large number of farmers whose land produced net margins of approximately US\$3,120 per ha per year.¹⁰⁹</p>	<p>From the 49 agreements we have reviewed, most households received US\$1,449 per ha, but one family received \$0 and others ranged between \$1,385 and \$1,469 per ha.¹¹⁰</p> <p>It is not clear why one family did not receive this compensation, nor why there are discrepancies between the amounts per ha given to different farmer families.</p>
<p>Lost 2011 food security: The Baseline initially recognized that the food security figure should reflect the needs of our families,¹¹¹ before suggesting that a payment of US\$1,000 per ha would be appropriate.¹¹² The Baseline estimated</p>	<p>From the 49 agreements we have reviewed, compensation ranged between \$0 and \$1,440 per household (averaging \$814 per ha).¹¹⁸ IDB and UTE officials advised the Kolektif that this compensation was quantified by allocating a</p>

¹⁰⁴ The Baseline records that 33.3% of the 366 (then-identified) heads of displaced households were illiterate, while 49% had an education level of primary school or less: Baseline, p. 18.

¹⁰⁵ RAP (2011), Annex 3.

¹⁰⁶ We have reviewed 49 lost harvest and food security agreements and three destroyed property agreements. *See* Annex 11.

¹⁰⁷ *See* sample compensation agreement in Annex 8.

¹⁰⁸ Baseline, pp. 40 and 44; RAP (2011), p. 40 and Annex 8.

¹⁰⁹ The Baseline admitted that net margins on 48 irrigated ha were in the range of \$3,118.75 per ha per year: p. 39.

¹¹⁰ *See* Annex 11. As explained in that annex, we have reached the US\$ figure at a conversion rate of US\$1 – 40 gourdes, based on an approximation of the exchange rate at the time.

¹¹¹ Baseline, p. 3 ¶7.

¹¹² *Id.*, pp. 41, 45.

<p>that 30% of the land production was self-consumed,¹¹³ and apparently equated this with US\$1,000 per ha.¹¹⁴ The RAP agreed that food security compensation should be paid and adopted the figure of US\$1,000 per ha.¹¹⁵</p> <p>This approach was not based on a proper quantification of the families' food security needs. According to the National Council for Food Security, the nominal cost of a food basket was 907.9 gourdes (\$22.70) per month in January 2011, being 10,895 gourdes (\$272.37) per year.¹¹⁶ The Baseline makes no reference to the food security provided by animal products from livestock supported by this land.¹¹⁷</p>	<p>sum of \$246,000 (\$1,000 per ha) and dividing it by the number of families identified at the time (382, already an increase from the 366 families identified in the Baseline, despite the Baseline being finalized within a few weeks of this compensation round) and an estimate of the average number of people per family (8),¹¹⁹ being \$80 per person per year, or \$0.22 per person per day.</p> <p>Again it is unclear why three families that cultivated land and had relied on that land for their food security received no compensation.¹²⁰</p>
<p>Destroyed property: The Baseline observed that compensation had been paid separately, in July 2011, for destroyed property, which it described as destroyed fences, totaling US\$66,000.¹²¹ The RAP recommended further compensation to owners of “two and a half” houses (one being under construction) that were demolished and construction of a new church,¹²² totaling US\$61,000.¹²³ The RAP does not provide any</p>	<p>These agreements were reached separately and do not explain how the compensation was calculated. We have viewed two compensation agreements signed in July 2011, which provided approximately US\$1,122 and \$310 each for destroyed property.¹²⁴ A further compensation agreement, signed in September 2011, provided approximately US\$1,125.¹²⁵ Although UTE advised ActionAid Haiti that</p>

¹¹⁸ See Annex 11.

¹¹³ *Id.*, p. 2, ¶4.

¹¹⁴ *Id.*, pp. 41, 45.

¹¹⁵ RAP (2011), p. 40 and Annex 8 (\$246,000 allocated in total).

¹¹⁶ Coordination Nationale de la Sécurité Alimentaire [“CNSA”] *Bulletin #1: Le Panier Alimentaire en Haïti* (Jun. 2012), p. 1 <http://bit.ly/2b8M9VY>. We have used the nominal cost of food security in 2011, rather than the “real cost”. The “real cost” takes into account inflation, including increases in income. Where incomes have increased, the “real cost” is lower than the nominal cost (the actual food price), to reflect the increased purchasing power. In this case, it would not make sense to deduct from actual food prices a supposed income increase, when that income did not exist due to our displacement. The food security figure grants 1,870 calories per person per day.

¹¹⁷ See, for example, the story of Vigenise Bien Aime below.

¹¹⁹ Annex 4, meeting notes. See also 2013 ESMR, ¶3.58 (“The annual payments comprised ... \$80 per family member for loss of subsistence crops”).

¹²⁰ It is possible that two of the three families did not receive food security compensation because they had two plots of land and received food security compensation for one plot but not the other. Based on the information we have collected to date, this explanation is not available for the third family: see Annex 11. In any event, neither UTE nor IDB has formally confirmed to us why this discrepancy exists.

¹²¹ Baseline, p. 39.

¹²² RAP (2011), p. 45. The Baseline did not specifically recommend this form of compensation.

¹²³ RAP (2011), Annex 8. The RAP (2011) also acknowledges that compensation is payable for equipment installed by the farmers on the site: see RAP (2011), p. 40.

¹²⁴ See Annex 11.

¹²⁵ *Id.*

<p>detailed breakdown or indication regarding how this was calculated.</p>	<p>\$88,893 was distributed for destroyed property,¹²⁶ this figure is not easily reconcilable with the different categories of destroyed property and the figures referred to in the Baseline and the RAP, and the individual amounts and recipients of those payments have not been disclosed. As a result, we have not been able to assess whether all of the affected farmers have been fairly compensated for destroyed property.</p>
<p>Transitional support: Both the Baseline and the RAP emphasized that victims required training and support to obtain employment to restore their food security and their incomes.¹²⁷ However, their proposals lacked detail, and the RAP only allocated \$76,000 to this initiative: a trivial sum to reestablish the livelihoods of 360+ families.¹²⁸</p>	<p>The Protocol Agreement records that UTE agreed to provide transitional training and support for the victims in preparation for potential employment during the construction of the CIP.¹²⁹ As discussed further below, almost none of the victims benefited from this support.¹³⁰</p>
<p>In relation to the final compensation, the RAP¹³¹ recommended that non-vulnerable victims have the choice of:</p> <ul style="list-style-type: none"> • Small business development: training, technical and financial support (between \$3,000 and \$8,400) to establish a small business,¹³² with a total of \$180,000 budgeted for this purpose;¹³³ • Replacement land: replacement land at Terrier Rouge/Fond Blanc to be acquired by UTE, improved to increase its productivity, and distributed to the victim families in plots of 0.5 – 4 ha.¹³⁴ The cost was estimated at \$6,000 per ha.¹³⁵ 	<p>The 2011 individual compensation agreements did not specify final compensation. However, article 2 of the Protocol Agreement signed by UTE and ALENAC acknowledged that long term compensation would be provided in the form of: land for land, support for entrepreneurship, and other facilities for the most vulnerable families.¹³⁷ Article 6 added that, if the replacement agricultural land was not ready by the end of November 2011, income would be provided for the 2011-2012 season, or if another of compensation measures mentioned in Article 2 was not initiated by June 2012, UTE would pay an extra year of</p>

¹²⁶ Information provided in December 2014. Further details available on request.

¹²⁷ Baseline, p. 2, ¶6; RAP (2011), pp. 11, 14, 41.

¹²⁸ RAP (2011), Annex 8. Based on the 366 families identified by the Baseline, this amounts to \$207 per family.

¹²⁹ *Id.*, Annex 3, art 2.

¹³⁰ *See* table 2 below.

¹³¹ The RAP added the choice of small business development. The Baseline recommended replacement land or housing for vulnerable families.

¹³² RAP (2011), pp. 33-34, 42-44. To be eligible for this form of compensation, the displaced person had to meet at least three additional criteria relating to experience, “intellectual qualification,” age and financial skills.

¹³³ *Id.*, Annex 8, based on an initial voucher of \$3,000, and the opportunity to participate in IDB's micro-enterprise program (an additional maximum value of \$5,400 per person).

¹³⁴ *Id.*, pp. 42-43.

¹³⁵ *Id.*, Annex 8.

365 of the 366 households identified at the time of the Baseline chose replacement land as their preferred form of final compensation. ¹³⁶	harvest and food shortage losses to those affected.
In relation to the final compensation , the RAP recommended that vulnerable families should receive housing , through vouchers to buy and rent (at least part of a) house to earn an alternative livelihood. ¹³⁸ The RAP budgeted \$120,000 for this proposal, based on 40 vouchers of \$3,000. ¹³⁹ It was not explained why only 40 vouchers were proposed, when 51 households were assessed as vulnerable.	<i>See above.</i>

In summary, the interim and transitional compensation provided in 2011 did not fairly compensate us for our losses. Some of the flaws originated in the recommendations of the Baseline and the RAP themselves, which did not accurately quantify our lost harvests or our lost food security at an individual and household level, and which did not establish a comprehensive plan to rehabilitate our livelihoods. Other flaws resulted from the apparently inconsistent, incoherent application of the Baseline and RAP recommendations, resulting in different families receiving different amounts of compensation – some less than they were entitled to under the RAP – without any adequate explanation. There are also gaps in our knowledge, due to a lack of accurate information about the compensation provided.

In relation to the final compensation, there were significant delays. Ultimately, IDB and UTE abandoned the replacement land option.

Other communities were in fact cultivating the alternative land in Terrier Rouge, identified by UTE, under customary practices. Victims asked UTE to make arrangements with those communities, to allow the land to be shared without conflict, or to find alternative, uncontested land. The farmers using the land at Terrier Rouge were willing to share the land, but only on certain conditions.¹⁴⁰ That option was abandoned because UTE and the people living there could not come to an agreement on the implementation. At this point, UTE and IDB unilaterally abandoned the alternative land compensation option in favor of cash compensation (with the exception of some vulnerable households).

Many details of this decision – to abandon the agreement to provide alternative land – remain unclear to us, despite our requests to UTE and IDB to provide further information.¹⁴¹ A

¹³⁷ RAP (2011), Annex 3.

¹³⁶ The other one chose business development support.

¹³⁸ *Id.*, p. 44.

¹³⁹ *Id.*, Annex 8.

¹⁴⁰ Acte d’Engagement between UTE and L’Association des Petits Planteurs du Nord Est (23 Aug. 2012), attached in Annex 14. *Contrast* the 2013 ESMR which says that “strong opposition from stakeholders who claimed to be using the area that had originally been identified for the land-for-land resettlement in Fond Blanc/Glaudine” and that “the Association of Small Farmers of the North East threatened the affected families, and claimed that they were using the land for agriculture and grazing”: ¶3.58. Our memory does not support this version of events.

¹⁴¹ *See* section V and Annex 12, regarding our efforts to resolve the issues.

memorandum sent by UTE and IDB to the Kolektif simply mentions “field difficulties”¹⁴² and an accompanying report mentions “the lack of willingness of the squatters from Association of Small Farmers of the North East.”¹⁴³

Although we understand that the IDB will assert that a majority of the victims approved the decision to abandon “land for land” compensation,¹⁴⁴ many victims we have spoken to felt that they had no choice but to accept cash compensation at that point, as they feared receiving nothing.¹⁴⁵ Some have even said that they were “forced to sign” the final compensation agreements, and that they were told that if they did not sign them, they would not receive any money.¹⁴⁶ The RAP also explains that some victims’ preferences for cash, from the outset, were motivated by a concern that the Government would fail to deliver non-monetary compensation, as had been experienced in other problematic resettlement processes in the area.¹⁴⁷ In any event, in-depth interviews carried out by the Kolektif with 58 victims show that 20 (34%) said they were still in favor of the “land for land” option in 2013, a choice that was not respected.¹⁴⁸

Due to the delays, further compensation was issued in 2012 and 2013, as detailed in Table 2.

ii. Table 2: 2012 and 2013 compensation

2012 and 2013 compensation	Additional comments
<p>2012 and 2013 lost harvest and lost food security: We understand that most (if not all) families received additional compensation payments, to account for the delay in receiving their final compensation.¹⁴⁹ Although we requested a full list of compensation awards (at a household level) from IDB and UTE, we did not receive this information.¹⁵⁰ We were advised during a meeting with IDB and UTE in May 2016 that the 2012 and 2013 lost harvest and food security compensation amounts were the same as those in 2011 and were not</p>	<p>As well as replicating earlier flaws in the calculation of 2011 compensation, this round of compensation failed to take into account the sharp increases in the cost of living, food and produce in Caracol since 2011 (discussed further below).</p> <p>Given the changes in the number of those identified as displaced, from 366 households to 442, in different documents between 2011 and 2015,¹⁵² it is imperative that IDB and UTE disclose an accurate list of those who received this compensation and provide a mechanism</p>

¹⁴² Annex 5, Aide Memoire, ¶III(F).

¹⁴³ Alix Innocent, Chargé de Coordination du PAR *Rapport: Rencontre de Discussions Pour La Mise En Ceuvre d’un Cadre de Négociation entre L’UTE et Les Agriculteurs de Chabert* (19 Aug. 2013), p. 1 attached in Annex 13.

¹⁴⁴ 2013 ESMR, ¶3.60.

¹⁴⁵ See, for example, interviews with Dieudonné Florvil, Inna St Jean, Louis Tirène, Marie Suze Zephirin, Vigenise Bien Aime, and Rémi Augustin all dated 11 July 2016 (available on request, excerpts reproduced below), together with the story of Marie Marthe Rocksaint.

¹⁴⁶ Interviews with Dieudonné Florvil, Inna St Jean, Louis Tirène, Vigenise Bien Aime, and Rémi Augustin dated 11 July 2016 (available on request, excerpts reproduced below).

¹⁴⁷ RAP (2011), p. 38.

¹⁴⁸ Annex 6, summary of interviews.

¹⁴⁹ Annex 4, meeting notes; Annex 5, IDB and UTE Aide Memoire.

¹⁵⁰ See section V and Annex 12.

adjusted for increases in the cost of living since 2011. ¹⁵¹	for grievances to be resolved.
Final cash compensation was issued in late 2013, except for 35/36 vulnerable households (discussed below). ¹⁵³ According to IDB and UTE, the final cash compensation was calculated based on five years of lost harvests (\$1,450 per year) with an increase taking into account the increase of the cost of living (1.1725 index). ¹⁵⁴	This calculation completely fails to accurately quantify the value of the lost land or the cost of replacement land. As discussed below, it has proved insufficient to rehabilitate the livelihoods of those displaced.
35/36¹⁵⁵ vulnerable households were offered housing, pension payments or a letter of credit to obtain new leasehold land. <ul style="list-style-type: none"> • 10/11 families chose to receive housing; • 14 people over 65 chose to receive a state pension of 8,000 gourdes per month (approximately US\$120 per month); • 11 people chose to receive letters of credit to obtain land.¹⁵⁶ 	Many of these families experienced additional delay in receiving that compensation. Nine of the 14 families that requested pension payments were still waiting in early 2015, and one was still waiting in November 2015. ¹⁵⁷ Of the 10/11 families that requested housing, 10 were still waiting for that housing in May 2016 and may still be waiting. ¹⁵⁸
Transitional livelihoods support/training: Based on the list provided by IDB and UTE, only seven affected heads of households identified in the baseline (i.e. less than 2%) benefitted from the trainings that Institut National de Formation Professionnelle (“INFP”) gave to 210 people. ¹⁵⁹ Of the 58 victims we interviewed, none had received training and only one had had a sibling benefit from a training. ¹⁶⁰	It seems that the trainings run by INFP were not meant to compensate the loss of land or rehabilitate livelihoods, but to provide “human resources (...) necessary for qualified manpower in the short and medium terms” ¹⁶¹ in the CIP, without any priority given to the victim families.

¹⁵² See the full explanation in section III.B.iii below.

¹⁵¹ Annex 4, meeting notes.

¹⁵³ See Annex 9, example 2013 final compensation agreement. We have reviewed 190 agreements.

¹⁵⁴ Annex 4, meeting notes; Annex 5, IDB and UTE Aide Memoire.

¹⁵⁵ The IDB and UTE both advised that 35 households were treated as “vulnerable” however documents provided by UTE in June 2016 identified 36 such households: see Annex 13, *Plan de compensation: Choix d’options d’accompagnement par les personnes vulnérables* and *Cotisations à payer pour les agriculteurs délocalisés dans le cadre du programme PIC*.

¹⁵⁶ We understand that this letter of credit system resulted in UTE purchasing a lease-hold title for plots identified by affected farmers after reviewing the status of the land: see 2015 ESMR, ¶4.33. We do not know if or how the beneficiary received support from UTE or other state services to find the land and negotiate the price.

¹⁵⁷ HA-L1101 ESS, ¶3.15; 2015 ESMR, ¶4.34.

¹⁵⁸ As a result of delays at the IDB housing site located in Terrier Rouge. An attempt to place these 10 families at a USAID housing site was also unsuccessful: 2015 ESMR, ¶4.34.

¹⁵⁹ Formation UTE/INFP (Caracol) *Liste des participants* (x4, undated), attached in Annex 13.

¹⁶⁰ Annex 6, summary of interviews.

¹⁶¹ INFP *Rapport d’exécution du Programme de formation professionnelle lié à l’implantation du Parc Industriel de Caracol* (Oct. 2012), p. 1 attached in Annex 13.

These compensation “agreements” were not fairly negotiated. We had insufficient information and opportunities to properly understand and assess the compensation packages and faced a significant imbalance of power, especially given that our land had already been lost. As mentioned above, by August/September 2013, many of us feared receiving nothing. Many still wanted replacement land, but were denied this option. And for those victims who wanted cash compensation, they requested a sum equaling approximately 15 years of lost harvest, not five years, as the amount they believed was required to compensate their loss and to fully restore their livelihoods.¹⁶² There was no real negotiation, and we suffered as a result.

“I had farmed my land for twenty-two years, but was made to leave without any compensation. Afterwards, the government sent investigators who were asking for all kinds of information from us but they never told us how much compensation they were going to give us. There were no negotiations, we were told to accept the compensation that they were going to give us. We thought the park was going to benefit us. First they promised us land, then housing, then all we got was a small amount of compensation.”

Marie Marthe Rocksaint is a smallholder farmer and mother of two.



Credit: Marilia Leti/ActionAid

The inadequacies in the compensation were compounded by the sharp increases in the cost of living in Caracol since 2011. Official inflation in Haiti was 8.4% in 2011 and 6.3% in 2012.¹⁶³ Market prices of the crops that victims were producing in Chabert underwent an even greater increase in the same period. The price of a pound of black peas rose from 25 gourdes in January 2011 to up to 50 gourdes in January 2013 in Cap Haïtien markets, a 100% increase (and 60% in

¹⁶² Annex 13, *Rapport: Rencontre de Discussions*, p. 2; interviews with Ilna St Jean and Vigenise Bien Aime dated 11 July 2016 (available on request).

¹⁶³ Transformation Index BTI 2016 *Haiti Country Report* (2016), p. 16 <http://bit.ly/2aTvpBZ>.

Ouanaminthe).¹⁶⁴ The victims, had they continued cultivating their lands in 2012 and 2013 and in the following years, would have sold their produce at significantly higher prices.

The cost of housing has also risen dramatically. ActionAid Haiti found that, in some communities, homes that had been rented for \$32-\$55 a month were renting for \$215 a month in 2014.¹⁶⁵ The 2015 update to the Cumulative Impact Assessment confirms that Terrier-Rouge experienced an increase in the cost of housing and increased food demand.¹⁶⁶ The rent in Trou-du-Nord has similarly increased, nearly doubling.¹⁶⁷

The additional lost revenue – and increase in the cost of food – was not taken into account in the lost harvest and lost food security compensation for 2012 and 2013. Although the final compensation figure took account of some inflation (a 1.1725 index): this adjustment was modest compared to the real and specific increases experienced in the Caracol area.

As a result, the final compensation has proved inadequate to secure for the victims an equivalent standard of living.

“I asked for a house and for land, but they didn't give neither house nor land. They only gave us a little bit of money. ... I took the money anyhow, because otherwise I wouldn't have had anything so I signed and took the money. ... I couldn't buy land. But today everything is hard to buy. And it was harder to pay for school for children.”

Marie Suze Zephirin.

There were also issues with the identification of vulnerable households. Between 2011 and 2013, the number of households identified as vulnerable – and the assessment of specific households as vulnerable or not – changed dramatically.

- As already mentioned, in 2011, 51 households were considered especially vulnerable, including only four of the households headed by women.¹⁶⁸ At this point, only 366 affected families had even been identified. Despite UTE stating that persons aged 75 or above were treated as vulnerable,¹⁶⁹ we have identified at least two people aged over 75 who were not listed as a vulnerable person in the 2011 RAP.¹⁷⁰
- In 2013, a new list was established and, despite the increase in the number of affected families seemingly now recognized by UTE and IDB, this new list reduced the number of vulnerable households to 35. We have identified at least one female among this list,

¹⁶⁴ CNSA *Fiches de collecte de prix de marché* (3 Jan. 2011) and (16 Jan. 2013), <http://bit.ly/2aH85sP>.

¹⁶⁵ ActionAid Haiti (2015), p. 13.

¹⁶⁶ UTE & Golder Associates *Mise À Jour de L'évaluation de L'impact Cumulatif Sur L'environnement du Projet D'aménagement du Parc Industriel de Caracol: Étude d'impact environnemental cumulative* (13 Nov. 2015), p. 77 <http://bit.ly/2b054T5> [“CIA Update (2015)”].

¹⁶⁷ *Id.*, pp. 77-78.

¹⁶⁸ RAP (2011), Annex 11, pp. 155 and 156.

¹⁶⁹ *Id.*, Annex 10.

¹⁷⁰ *See* Annex 11.

however our information is incomplete, as neither IDB nor UTE have provided a complete gender breakdown for these vulnerable households.¹⁷¹

- Only eight victims, including six over 65 years old, who were listed as vulnerable in 2011 were also included in the 2013 list.

Despite our requests, neither IDB nor UTE provided a clear list of the criteria used in 2013 nor any explanation for the dramatic change between the two lists.¹⁷²

A report provided by IDB and UTE in June 2016 says that vulnerable heads of households in 2013 were those “owning less than 1 hectare” and earning less than 8,000 gourdes (US\$200) per month, *or* those who were over 65 years old.¹⁷³ It makes sense for age above 65 years to be a distinct, and sufficient, criterion for vulnerability because above that age it is very difficult for a person to establish a replacement source of income. However, this set of criteria is otherwise inappropriately limited, failing to acknowledge gender, health, housing (in)security, household structure, relative cost of living and other relevant vulnerability indicators.

The IDB’s and UTE’s assertion that these criteria established the 2013 vulnerable person list is also inconsistent with the findings of the Baseline and the information we have collected. Among other issues:

- The Baseline says that 68 heads of household were aged over 65 in 2011 (this was out of only 351 households that had been identified as displaced in this part of the Baseline), yet only 35 households (in total) were listed as vulnerable in 2013.¹⁷⁴
- Of the 58 heads of household we interviewed in May 2016, nine people interviewed were over 65 in 2013.¹⁷⁵ All of those nine received cash compensation, and therefore were not treated as vulnerable. Based on our document review, we have identified at least 32 people who were over 65 in 2013, but who were not treated as vulnerable.¹⁷⁶ Anne Leroy, whose story is discussed in section 0, is an example of someone who received cash compensation despite being aged over 65 in 2013.

Without further information about the criteria and the process used to determine the 2013 vulnerability list, it is difficult to draw firm conclusions about the validity of that list. However, based on information contained in the Baseline, and information we have collected, it appears that the 35 households identified in 2013 do not constitute a comprehensive list of those who should have qualified, even under the IDB and UTE’s own, overly limited criteria.

¹⁷¹ See our comparison of the two lists in Annex 10. We have collated this information from multiple sources within documents provided by IDB and UTE in June 2016, as they failed to provide a complete list. We have counted one extra person – 36 in total – rather than the 35 cited by IDB and UTE: Annex 13, UTE *Plan de compensation: Choix d’options d’accompagnement par les personnes vulnérables* and *Cotisations à payer pour les agriculteurs délocalisés dans le cadre du programme PIC*.

¹⁷² See sections 0, V and Annex 12.

¹⁷³ *Rapport: Rencontre de Discussions*, p. 2, attached in Annex 13.

¹⁷⁴ Baseline, pp. 11-13. 21 of those were aged over 75.

¹⁷⁵ Annex 6, summary of interviews.

¹⁷⁶ Annex 11, compensation table.

Given the lack of information and consultation, the delays and the broken promises we have suffered throughout this process, it was almost inevitable that the compensation offered would be inadequate to achieve our socio-economic rehabilitation. And so it has been. The vast majority of victims report that they are in a worse socio-economic position than prior to displacement, facing financial and food insecurity. Of the 58 heads of victim families we interviewed in May 2016, we found that:¹⁷⁷

- 54 report that they are now in an unstable economic situation, with 48 being forced to incur debts regularly;
- 46 report being in a worse situation than before they lost their land, 11 said their situation is neither better nor worse, and only one said to be in a better situation;
- Four said they have not received all the compensation reported in the compensation agreements, and two said they have received no compensation at all;
- The children of eight victims migrated to the Dominican Republic due to a lack of economic opportunities. Others report that the decline in income and the delays in receiving compensation prevented families from financing their children's education;
- The victims mainly used their financial compensation for immediate and unavoidable expenses that they had previously paid with the cash they obtained from crops from their land: food (49), school fees (47), and debt repayment (37);
- For a majority, their revenues today come from agricultural activity (growing crops or livestock) on lower quality land they lease or that they owned in other areas, or as agricultural workers (33). Eleven generate revenues by selling coal, ten through small businesses, five by harvesting salt, three as masons, three as fisherfolk;
- None of the victims interviewed had access to transitional livelihoods training and only one reports that a family member received a training; and
- Six report having no source of income at all, post-displacement.

"I had half a hectare of land. I had peppers; I had papaya; I had mango trees. I had all kinds of things there. I had a lot of things growing on my land: corn, manioc, black beans, etc. When [the representative of the Government] came here, he came to all the farmers and made them believe a bunch of things about their land. He said we would receive a sum of money that even when our children had children, it would be more than they needed. That's what he said. They pressured us too. We gave the land because they required us to give it, but said we would make a profit. Now for my half a hectare, they gave me 47,630 gourdes (\$1,190)."

Philomise Pierre.

¹⁷⁷ Annex 6, summary of interview results.

“They [UTE and IDB] said they couldn't get land and they would thus give us money so we could buy land. Then they gave us a little bit of money, we couldn't buy land, it's so expensive! We couldn't buy land. The amount of money they should have given us, they didn't give us. ... if they had given me enough money I would have bought land. But they didn't give me enough money.”

“I even have a little house I had started I had to stop building it because I cannot do anything about it. I cannot buy concrete.”

“When they consulted us, we asked for houses, small businesses, we asked them to take good care of our families. Then they said, ‘Well, you asked for houses we can't do that, we're going to give you money.’ ... I didn't want to sign! I didn't want to sign! They decided to have a meeting with us, and they said, ‘We're giving you money.’ I didn't want to sign, I said, ‘That's not the money you said you would give us so we could buy land, with which we can work, so we can help our kids.’ At that moment, they forced us to sign, they said, ‘But everyone else signed, if you don't sign, you have to sign.’ I was forced to sign to get a bit of money. But that doesn't get you far! Everything is so expensive! School for the children: I have 5 kids.”

Rémi Augustin.

“It was very fertile soil. I was able to grow corn, peanuts and black beans, and got two harvests a year. Now I have to buy food imported from the Dominican Republic which is much more expensive. Before corn was 4-5 gourdes per kilo, now it's 100.”

Etienne Robert is a 72-year-old father of four. He owned a plot of land that was divided in half by the walls of the CIP.



Credit: Marilia Leti/ActionAid

B. The IDB violated its operational policies on Involuntary Resettlement, Gender Equality and Environmental and Safeguards Compliance

i. Displaced without safeguards

The most obvious and grave violation of IDB policy was the initial displacement of at least 442 farmers and their families (approximately 3,500 people) from the project site between 4 and 14 January 2011, prior to the preparation of a RAP and other necessary due diligence and consultation steps. This violation was ongoing when the Board approved this project.¹⁷⁸

The preparation of a RAP is a fundamental obligation under the IDB's Operational Policy on Involuntary Resettlement, designed to ensure that resettled people receive fair and adequate compensation.¹⁷⁹ Once the IDB and UTE decided that the CIP site was the most desirable site to achieve project objectives, a full RAP was required.¹⁸⁰ That RAP was required to be developed, based on accurate baseline data¹⁸¹ and following meaningful community consultation and participation,¹⁸² before the Board approved the project.¹⁸³

The Background Paper to the Involuntary Resettlement Policy explains the importance of completing the RAP early in the project cycle:

*“Early assessment of the magnitude and nature of resettlement is needed to allow examination of project alternatives so that resettlement can be avoided whenever possible. The development of the resettlement plan must therefore be tied to the stages of preparation of the main project, so that the viability of the resettlement program can be appraised as part of the overall project, with the evaluation covering the cost and benefit streams of all the components. ... the resettlement plan must be ready for appraisal at the same time as all the other components of the project”*¹⁸⁴

Early preparation of the RAP also “facilitates the selection and acquisition of relocation sites or of the land and dwellings needed for in-kind replacement ...”¹⁸⁵

Nonetheless, a RAP was only finalized and disclosed months after our families were displaced from the CIP site and two months after the IDB Board approved its first loan to the project. The failure to comply with the obligation to complete a RAP, and all other necessary due diligence and consultation steps, caused profound harm to us. The project appraisal and site selection processes took no account of the grave impact on our lives. There was no attempt to avoid

¹⁷⁸ In further violation of IDB Operational Policy on Involuntary Resettlement (Oct. 1998, OP-710), ¶V(6) [“RP”].

¹⁷⁹ *Id.*, ¶III(2).

¹⁸⁰ *Id.*, ¶V. None of the exceptions in RP, ¶IV apply.

¹⁸¹ *Id.*, ¶V(1).

¹⁸² *Id.*, ¶V(2).

¹⁸³ *Id.*, ¶V(6).

¹⁸⁴ Involuntary Resettlement Background Paper (Oct. 1998), p. 32 <http://bit.ly/2aBa8f9>. See also the Eighth Replenishment Document, which requires that: “When a project has a resettlement component, the resettlement plan will be prepared at the earliest stages of project design and available at the time the project is presented to the Board. This resettlement plan is provided in environmental summaries and environmental impact assessments”: cited in Involuntary Resettlement in IDB Projects: Principles and Guidelines, pp. 6-7 <http://bit.ly/2b08sNC>.

¹⁸⁵ Involuntary Resettlement Background Paper, p. 33.

or minimize this harm before it happened. Without warning, we lost an important source of income and food security. We had no opportunity to plan for the transition, nor did we receive adequate transitional support. The availability of replacement, alternative land was not secured, prior to our displacement. By the time these steps were attempted, it was too late to prevent the harm.

ii. Premature site selection and lack of a thorough alternatives analysis

Relatedly, the premature site selection – prior to any comprehensive environmental, social and resettlement impact analysis – violated requirements to conduct a thorough alternatives analysis and to take steps to avoid or minimize involuntary resettlement.

The overarching objective of the Resettlement Policy is to “minimize the disruption of the livelihood of people living in the project’s area of influence, [including] by avoiding or minimizing the need for physical displacement ...”.¹⁸⁶ To this end, the Resettlement Policy explicitly requires that “[e]very effort will be made to avoid or minimize the need for involuntary resettlement ...”.¹⁸⁷ This includes requirements to:¹⁸⁸

- Carry out a thorough analysis of project alternatives in order to identify solutions that are economically and technically feasible while eliminating or minimizing the need for involuntary resettlement;
- Have a reasonable estimate of the numbers of people likely to be affected and an estimate of the costs of resettlement, when examining the trade-offs between alternatives;
- Pay particular attention to socio-cultural considerations, including the vulnerability of the affected population and the availability of in-kind replacement for assets; and
- When a large number of people or a significant portion of the affected community would be subject to relocation and/or impacts affect assets and values that are difficult to quantify and to compensate, after all other options have been explored, give serious consideration to the alternative of not going ahead with the project.

The IDB and UTE failed to satisfy any of these requirements prior to the selection of the CIP site and the displacement of the victims.¹⁸⁹

An obvious alternative that should have been seriously explored was an alternative location for the project. As previously discussed, the CIP site was located on the most fertile land in the area,

¹⁸⁶ RP, ¶II.

¹⁸⁷ *Id.*, ¶III(1).

¹⁸⁸ *Id.* The Environmental and Safeguards Compliance Policy (Jan. 2006, OP-703) also requires an examination of project alternatives including a no project scenario: ¶4.19 <http://bit.ly/2au4FpV> [“Safeguards Policy”].

¹⁸⁹ The Resettlement Policy does not distinguish between the IDB and its client when setting out these obligations. Here, the IDB failed to ensure that the obligations were met, by itself or by its client, in circumstances where those failures were obvious.

which produced on average 1,400 metric tons of food per year,¹⁹⁰ in a region and a country that suffers regular food shortages.¹⁹¹

“Where they have chosen to place the park is almost criminal. They’ve prioritized what the United States needs, but not what Haitians need to produce and feed themselves.”

Doudou Pierre Festil, Community Leader, Executive Director of Mouvement Peyizan Acul and Je Nan Je

As already mentioned, the CIP site was selected based on inadequate and inaccurate information about its environmental and social risks and impacts. The pre-feasibility assessment – which identified the CIP site at Caracol-Chabert as one of three “preferred” sites – did not include any comprehensive environmental and social analysis. It also wrongly described the land as “devoid” of intensive cultivation, when the opposite was visible, demonstrating the woefully inadequate due diligence process. As a result, resettlement impacts did not even feature as part of its site recommendation.¹⁹²

These errors were not corrected prior to the site selection, nor prior to the Board approval of the project. Even the subsequent IDB-commissioned Cumulative Impact Assessment was critical of the site selection process.¹⁹³ It recommended that future site assessments should consider both environmental (including social) and fiscal impacts.¹⁹⁴

This violation continued throughout the resettlement process. Although the ESIA contained a brief alternatives analysis,¹⁹⁵ this analysis does not satisfy the requirements of the IDB’s Resettlement Policy, ¶III(1) because:

- It was not based on a reasonable estimate of the number of people displaced. It estimated that 1,000 were displaced when the actual number was more than triple: approximately 3,500;¹⁹⁶
- It failed to include any real estimate of the cost of resettlement, including by understating our families’ rights to the land: maintaining that it was state-owned without qualification, when we had a range of legal and customary rights;
- It failed to assess the availability of replacement land;

¹⁹⁰ RAP (2011), p. 29; Baseline, p. 2, ¶4.

¹⁹¹ See, for example, LA Times “Drought compounds food crisis in Haiti (Feb. 11, 2016) <http://bit.ly/2aTvpBZ>. According to a recent report of the United Nations World Food Programme, 1.5 million Haitians are considered “severely food insecure”: *Haiti Emergency Food Security Assessment* (Feb. 2016), p. 1, <http://bit.ly/2aR2LCD>.

¹⁹² Koios (2010), pp. 55-57.

¹⁹³ CIA (2012), p. 2.

¹⁹⁴ *Id.*, p. 6.

¹⁹⁵ ESIA, pp. 17-19.

¹⁹⁶ The IDB’s Principles and Guidelines on Involuntary Resettlement, p. 28 explains: “There is a tendency to underestimate the number of affected people in the initial feasibility studies (see case studies in Annex I), and this often leads to an underestimation of the resettlement costs. This has often lead to cost overruns, a scarcity of resources to complete the components of the resettlement plan and further impoverishment of the affected population.”

- It failed to give serious consideration to other locations, given that the Koios pre-feasibility assessment identified *seven* sites that were acceptable or preferred. The ESIA simply recounted the original reasoning for choosing the Caracol site, compared to the other two preferred sites, without questioning that decision based on the new information about its environmental and social impacts, and without seriously offering alternatives (such as the other four acceptable sites); and
- It did not give sufficiently serious consideration to a no-project option, as was required given that a large number of people required to be relocated in an area where replacement land was difficult to obtain. On the contrary, the ESIA simply reasoned that the reputational risk was too high: that the project had already had a lot of visibility and that, if the opportunity of international investment was not taken at this time, “it is far from certain that it will present again in the future.”¹⁹⁷ This cannot be adequate to justify continuing with a project that displaced approximately 3,500 people from the land that provided their livelihood and food security, with no clear option for resettlement.

The flawed site selection process and the lack of any thorough alternatives analysis caused grave harm to our families. We were displaced, without the full costs of displacement nor the availability of alternative land being properly considered. The IDB imposed the harms of resettlement on us without ever properly considering less harmful alternatives.

iii. Failure to collect adequate and accurate information about the victims and their losses

The Resettlement Policy requires, at multiple points, that the IDB base its decisions on adequate, accurate information about the impacts of displacement and the characteristics of those affected. In this case, the rushed, inadequate due diligence –carried out only after displacement took place – made this impossible, in violation of IDB policy.

Accurate baseline data is essential to a robust and fair resettlement process. The Resettlement Policy requires that accurate baseline information be compiled as early as possible, including “information on the number of people to be resettled, and on their socioeconomic and cultural characteristics, including disaggregation by gender.”¹⁹⁸ In addition, the policy requires that the design of the compensation packages, as well as the community consultation and decision making processes, take into account “the characteristics of the resettled population as identified in the disaggregated baseline data with respect to gender, ethnicity, age, and any other factors pointing to special needs and/or vulnerability.”¹⁹⁹ The IDB is also obliged to ensure that victims receive fair compensation for the full range of losses and receive the necessary support to reconstruct their lives.²⁰⁰

The IDB failed to meet these requirements – and others – at multiple, critical times.

¹⁹⁷ ESIA, p. 19.

¹⁹⁸ RP, ¶V(1).

¹⁹⁹ *Id.*, ¶V(3).

²⁰⁰ *Id.*, ¶V(3).

For example, the ESIA wrongly estimated that only 1,000 people were displaced by the project, when the real number was closer to 3,500.²⁰¹ This breached IDB requirements to provide a reasonable estimate of the numbers of people likely to be affected by displacement, as part of its alternatives analysis and as part of the preliminary RAP that is meant to be attached to the ESIA.²⁰² The ESIA also failed to include any estimation of the costs of resettlement, required as part of its alternatives analysis.²⁰³ Finally, it asserted, without sufficient investigation or qualification, that the CIP-site was state-owned, despite the fact that – as the IDB would eventually recognize – the families had a range of formal and customary rights regarding the land.

Compounding these violations, and in breach of the requirement that the RAP be available prior to Board consideration,²⁰⁴ the ESIA was the only document available to the Board at the time of its approval of the project. The result of these failures is that the project was approved and moved forward without proper consideration of the resettlement risks and impacts.

The Baseline and the RAP also underestimated the number of affected families, in breach of requirements that the RAP (both preliminary and final) include a reasonably accurate estimate of the number of people that will receive a compensation option.²⁰⁵ The Baseline and RAP stated that 366 families were displaced, although at times the Baseline only records information about 351 of those families.²⁰⁶ The same month that the RAP was finalized – September 2011 – IDB and UTE apparently realized that an additional 16 families were affected, using the new total of 382 to calculate food security compensation.²⁰⁷ The estimate continued to vary, as the November 2013 ESMR referred to 382/383 families²⁰⁸ and the November 2014 and 2015 ESMRs referred to 442 families²⁰⁹ (although the 2015 ESMR inexplicably referred to 383 families at another point²¹⁰). IDB and UTE confirmed in a recent meeting with Kolektif representatives that the final number is 442,²¹¹ although various documents continue to reference different numbers of households.²¹²

These persistent errors in accounting for the number of families being displaced should have been apparent to IDB, which did not take appropriate steps to correct them in a timely manner. As

²⁰¹ Based on the Baseline’s estimate that the families had an average of eight members: p.11, ¶2.1. This estimate may be conservative. The Kolektif’s interviews of 58 victims found that households averaged 9.4 members: Annex 6, summary of interview results.

²⁰² RP, ¶¶III(1), V(6).

²⁰³ *Id.*, ¶III(1).

²⁰⁴ *Id.*, ¶V(6).

²⁰⁵ *Id.*, ¶V(6). *See* footnote 196 above for explanation of the importance of this estimate.

²⁰⁶ Baseline, pp. 14 and 16.

²⁰⁷ *See* Table 1 in section III.A above.

²⁰⁸ 2013 ESMR, ¶¶1.8 and 3.59.

²⁰⁹ 2014 ESMR, ¶4.36; 2015 ESMR, ¶4.33.

²¹⁰ 2015 ESMR, Table 3.1, p. 24.

²¹¹ Annex 4, meeting notes.

²¹² When asked to provide a comprehensive list of those families, UTE responded with a list of 367 heads of households: the list of 366 from the Baseline plus one extra name: *see* section V, Annexes 12 and 13 (*Liste des personnes compensées définitivement (Compensation monétaire) + Montants définitifs payés*). That list of 367 households was described by UTE as “definitive,” yet it failed to include names and households identifiable from other UTE documents: *see* Annex 11, where we have combined UTE’s list (the first 367 names) together with information available from other sources. The Aide Memoire distributed by IDB and UTE after the meeting with the Kolektif representatives, refers only to 382 families, when this is plainly contrary to comments made during the meeting: Annex 5, IDB and UTE Aide Memoire.

previously discussed, IDB was aware that the ESIA was incomplete. Then, almost immediately after the Baseline, which specified that 366 families were displaced, was finalized, IDB and UTE apparently compensated up to 382 households for lost food security: a clear indication that the Baseline was also incomplete.²¹³

The errors are not trivial. They had two serious impacts. First, they meant that the impacts and costs of the project were understated when important decisions (including Board approval) were made to proceed with the project. Second, they meant that a significant number of displaced families were excluded from early consultation and compensation processes: 16 families appear to have been excluded until sometime in September 2011,²¹⁴ while an additional 60 families appear to have been excluded until sometime in 2013.²¹⁵

Further, the Baseline significantly underestimated the costs suffered by victims and the resources necessary to rehabilitate their livelihoods and food security, in breach of requirements to collect accurate baseline information about socio-economic characteristics and to provide fair compensation for losses.²¹⁶ For example, the Baseline failed to identify the value of destroyed property of individual families. It failed to properly quantify the families' food security needs, resulting in an arbitrary "per hectare" compensation figure that bore no relation to families' actual nutritional needs. It understated the value of lost harvests, especially for those families whose land produced more than the average net margin. And it failed to properly quantify the resources that the families would need to re-establish their livelihoods and their food security. While it acknowledged that "re-establishing food production for vulnerable families is a necessity in addition to compensations" and that "offering the opportunity to earn agricultural and non-agricultural revenues is imperative,"²¹⁷ it failed to conduct any specific evaluation of the families to determine what resources would be necessary to achieve those outcomes. Overall, IDB and UTE appear to have focused on making the compensation package as simple and as generalized as possible, for their own ease, rather than seeking to genuinely compensate the victims' different losses.

Finally, in order to fulfill the requirement to design the compensation packages based on reasonably accurate baseline information, IDB should have updated the Baseline information, as necessary, as time passed and as circumstances changed. In violation of this requirement, IDB and UTE failed to assess and take into account increases in cost of living after 2011, before finalizing the 2012 and 2013 lost harvest and food security compensation.²¹⁸ IDB and UTE also failed to undertake a new evaluation of the resources necessary (and allocate those resources) to achieve the victims' socio-economic rehabilitation, in circumstances where replacement land was no longer being offered and two years had passed since the RAP was finalized.

Inevitably, the compensation packages that were developed, based on this inadequate and inaccurate information, proved unable to compensate and rehabilitate the livelihoods and food security of the victims.

²¹³ See footnote 79 above.

²¹⁴ When the ESIA, Baseline, RAP and compensation agreements were finalized. While we understand that food security compensation was distributed to 382 families, they were not identified in any documents prior to this point.

²¹⁵ Based on the fact that the Nov. 2013 ESMR continued to refer to 382/383 families: 2013 ESMR, ¶¶1.8, 3.59.

²¹⁶ RP, ¶V(3).

²¹⁷ Baseline, p. 2, ¶6.

²¹⁸ See above in section III.A and below in section III.B.ix.

iv. Failure to consider and to mitigate gender risks

As part of this information gap, IDB also breached its obligation to identify, analyze and mitigate gender-differentiated risks and impacts associated with resettlement.²¹⁹ The Resettlement Policy specifically requires that baseline information be “disaggregated by gender.”²²⁰ The resettlement packages must also take into account gender differences.²²¹ IDB’s Operational Policy on Gender Equality in Development (“Gender Equality Policy”) also contains relevant obligations, including requirements to:

- Take into account the diversity of household structures, in particular, female-headed households: ¶4.11(b);
- Take into account gender differences, including those relating to differences in the use of time: ¶4.11(c);
- Take into account gender inequalities in decision-making power and capacity, and to seek the equitable participation of women and men in public consultation processes: ¶4.11(g), ¶4.6;
- Pay particular attention to the vulnerabilities of poor, indigenous, and Afro-descendant women: ¶4.4;
- Require an analysis of the relevance of gender issues during preparation of its operations, so as to identify and address adverse risks and impacts: ¶¶4.13(a), 4.13(b), 4.19. Such risks may include: failing to take account of the right of women to inherit/own land; introducing unpaid work unevenly; introducing conditions that restrict the participation of women; denying benefits based on maternity leave or pregnancy; and increasing the risk of gender-based violence: ¶4.15;
- Introduce measures to prevent, avoid, or mitigate any adverse impacts and/or risks of gender-based exclusion: ¶¶4.13(a), 4.13(b), 4.15; and
- Establish indicators to measure the Bank’s implementation of this Policy, including project monitoring reports that include specific gender-related results: ¶5.1, Annex 1.

IDB’s Involuntary Resettlement Background Paper identifies two gender-specific risks that are particularly relevant in the context of displacement:²²²

- First, it is important to ensure that women producers and workers receive compensation and/or rehabilitation programs to cover the loss of their personal assets, productive activities and common property resources. It should not be assumed that cash compensation would be distributed equally within the household; and
- Second, resettlement planning must take into account the views of the women who are affected by resettlement and should reflect their priorities, which may differ considerably from those of the men.

²¹⁹ RP, ¶¶V(1) and V(3) and Operational Policy on Gender Equality in Development (OP-270) (2010) [“Gender Equality Policy”] <http://bit.ly/2b21aqD>.

²²⁰ RP, ¶V(1).

²²¹ *Id.*, ¶V(3).

²²² Involuntary Resettlement Background Paper, p. 28.

Both observations are relevant to this case.

It is well known that women have a significant income-gaining role in Haiti's agricultural sector.²²³ This role needed to be recognized by the compensation packages. It should not have been assumed that compensation provided to the heads of household (mostly men) would be distributed to the female members of the household.

In addition, due to gender differences in the employment opportunities and preferences of men and women in the area, the rehabilitation of women's livelihoods was likely to require different resources, training and financial support.²²⁴ This was especially the case once the decision was taken to not offer replacement land by way of compensation, requiring women to undertake other activities for income. Reports indicate that in Haiti, rural women have a harder time accessing formal work opportunities and education resources.²²⁵ Based on interviews we have conducted, we have found that more women have established small businesses compared to men, who have found more agricultural and other manual work, either out of necessity or preference.²²⁶ As a result, women would have significantly benefitted from business development support as opposed to, for example, retraining in manual skills. Although a few female victims have taken employment at the CIP, this work carries concerns about labor violations and poor work conditions, including a heightened risk of sexual harassment (discussed further in section IV).

Further, women headed a significant number of the households: 32 according to the Baseline.²²⁷ Rural Haitian women tend to have reduced access to healthcare,²²⁸ more financial instability and troubles securing necessary resources to feed their families.²²⁹ Yet, as has been discussed previously, only four of these female-headed households were treated as "vulnerable" for the purpose of the 2011 compensation packages, and documents to date only clearly identify one female-headed household treated as "vulnerable" for the 2013 compensation round.²³⁰ The others received cash compensation only and, based on the information that we have collected to date, those female heads of household received on average US\$1,000 less final cash compensation than their male counterparts, exacerbating the obstacles already faced by those households in achieving financial and food security.²³¹ During in-depth interviews with 16 female heads of household in May 2016:²³²

²²³ ESIA, p. 98. See also the Baseline, p. 15; Gender Action *Building Back by Half? Gender Issues in IFI Investments in Post-Earthquake Haiti* (2013), p. 11 <http://bit.ly/2aBIVNf> ["Gender Action *Building Back by Half?*"]; and the story of Marie Marthe Rocksaint above.

²²⁴ See the CIA (2012), p. 27. Table 9 records that, based on a study in Caracol in 2007, far more men reported that their income came from fishing and agriculture/livestock (98% and 95% of respondents were men) while far more women reported that their income came from commercial activities (90% of respondents were women).

²²⁵ Bureau des Avocats Internationaux and others *Gender Issues Facing Women and Girls: Review of Haiti's Report under the Convention on the Elimination of All Forms of Discrimination against Women* (22 Jan. 2016), p. 8 <http://bit.ly/1QJo6XC>; Gender Action *Building Back by Half*, p. 12.

²²⁶ Annex 6, summary of interviews.

²²⁷ The Baseline is not a comprehensive list as it fails to identify 76 households.

²²⁸ *Gender Issues Facing Women and Girls*, p. 8.

²²⁹ Gender Action *Building Back by Half*, p. 12.

²³⁰ See section 0. We have incomplete information about the gender of vulnerable heads of household in 2013.

²³¹ See Annex 11.

²³² Annex 6, summary of interview results.

- Two out of the 16 (12.5%) reported that they had no income-generating activity (compared to three out of 36 male heads of household (8%));
- None reported satisfaction with their living conditions, compared to three male heads of household reporting satisfaction; and
- All reported that their incomes are unstable, compared to three male heads of household reporting incomes that are “somewhat stable” and one as “stable.”

Finally, women, including female children, are likely to have been disproportionately impacted by certain inadequacies of the compensation and rehabilitation packages – and better inclusion of their views may have avoided these negative outcomes. Within Haitian society, women have the primary responsibility for feeding the family, and therefore are particularly impacted by lost food security.²³³ They also play an important role in supporting the education of their children. Post-displacement, victims have found it difficult to finance their children’s education as a result of the loss of income.²³⁴ Unfortunately, as a result of these financial difficulties, it is likely that female children suffered disproportionately a loss of education: victims are likely to have prioritized their male children for education, with female children expected to take on tasks at home.²³⁵ Better inclusion of the views of women would likely have raised the priority of food security and educational programs, as part of a comprehensive compensation package.

Gender issues, however, were not discussed seriously at any point in the resettlement process.²³⁶ At no point did the RAP or the Baseline explicitly address gender risks or impacts, in breach of the requirements of the Resettlement Policy and the Gender Equality Policy.²³⁷ Neither the Baseline nor the RAP paid sufficient attention to the increased vulnerability of women, in terms of food security and income generation, nor to the increased vulnerability of female children in terms of loss of access to education.²³⁸ When directly asked by the Kolektif and its representatives, IDB and UTE could not describe any gender-specific planning.²³⁹

²³³ ActionAid (2015), p. 10; Gender Action *CIP*, p. 1.

²³⁴ Annex 6, summary of interview results; additional interviews with Dieudonné and Judith Florvil dated 11 July 2016 (available on request).

²³⁵ See Gender Action *Building Back by Half*, p. 12; Equality Now and others *The Haiti Gender Shadow Report* (2010), p. 19 <http://bit.ly/2ayIn9I>. “Due to stereotypical gender roles, the cost of a private school education and an unequal division of labor, low-income girls and women often have fewer opportunities to receive a quality education. This gender inequity in education is further exacerbated by the devastation caused by the January 12 earthquake as low income families now have even less resources to send their children to school....”

²³⁶ The IDB’s Haiti Social Impact Assessment (Feb. 2012) <http://bit.ly/2aEZsfM> makes gender-specific recommendations about employment conditions at the CIP, and the CIA (2012) makes gender-specific findings about environmental risks, but neither document addresses gender risks or impacts relating to displacement. While the ESIA noted women’s significant income-gaining agricultural role, this is not sufficient analysis of the resettlement-gender nexus: p. 98.

²³⁷ In breach of RP, ¶¶V(1), V(3); Gender Equality Policy, ¶¶ 4.4, 4.11(b) and (c), 4.13 (a) and (b), 4.15, 4.19. This is unfortunately common among development projects, including those in Haiti post-earthquake: Gender Action *Building Back by Half*, p. v, 30-31.

²³⁸ *Id.*

²³⁹ Annex 4, meeting notes.

“When they gave [the compensation] they didn't ask us, they said what we have is what we give you. ... They said, ‘If you don't want to take that compensation, you're going to lose everything. You're forced to take it if you don't want to lose everything. You take what we're giving you.’ I said, ‘I don't agree,’ but they said, ‘if you don't want this compensation, you're going to lose it all.’”

“I couldn't buy land. The money wasn't much at all. With the money they gave us, I could just pay some small things for the kids, reimburse small debts I had, pay for health expenses. I didn't have money to do anything else. Today I am still sick.”

“If I could have found land to buy with the money they gave, I would have bought it.”

“We even had to sell our cattle because we didn't have anywhere to put them. The money was not even enough to buy cattle.”

“Today I struggle a lot. ... I have more and more debts.”

Vigenise Bien Aime.



Credit: Antoine Bouhey/ActionAid

Nor were the views of women adequately collected and taken into account during consultation processes.²⁴⁰ Only seven women victims were members of ALENAC (together with 10 women who were not victims). Further, IDB and UTE did not ensure that the broader community of victims had sufficient information and opportunities to be consulted on and meaningfully participate

²⁴⁰ In breach of Gender Equality Policy, ¶¶4.6, 4.11(g) and general consultation obligations (see section III.B.vii).

in the development of the compensation packages.²⁴¹ Given the obstacles to equal female participation in decision-making in Haiti,²⁴² IDB and UTE needed to ensure that specific meetings, focus groups and individual interviews were held with female victims, to ensure their proper consultation, participation and ultimate agreement.

As a result, the compensation packages failed to include specific measures to mitigate gender impacts, to ensure the compensation of women's losses or to ensure the socio-economic rehabilitation of their livelihoods to the detriment of female victims and their families.

v. *Inadequate and inconsistent assessment of impoverishment risk*

Its Resettlement Policy required IDB, “at the earliest opportunity,” to conduct “[a] detailed analysis ... in order to determine the risks [of impoverishment] and design preventive measures to minimize them.”²⁴³ When the baseline information indicates that a significant number of the persons to be resettled belong to marginal or low-income groups, special consideration must be given to the risks of impoverishment to which they may be exposed as a result of resettlement.²⁴⁴ Where impoverishment risks are present, cash compensation should only be offered as an option if the circumstances of those displaced, the market conditions and the available services ensure that it can be invested in a way that will restore their standard of living.²⁴⁵ This latter obligation is the result of a wealth of development experience demonstrating that cash payments are not appropriate as a sole means of compensation,²⁴⁶ especially when the recipients are already vulnerable to impoverishment.

These obligations plainly applied in this case. The Baseline records that over 75% of victim families were living below the poverty line,²⁴⁷ and the vast majority of us relied heavily on our land for food security and well as income.²⁴⁸ The rehabilitation of our land and food security was always going to be incredibly challenging: both food and land are scarce in Northern Haiti, and we have faced sharp increases in the cost of living since 2011. Land scarcity is exacerbated by a highly informal land tenure system: even the USAID has experienced intense difficulties in securing title to land. IDB's own project documents acknowledged that we were extremely vulnerable to external changes,²⁴⁹ and that, despite some compensation, we could be left more impoverished as a result of our displacement.²⁵⁰

²⁴¹ For more detail, see the discussion of consultation issues in section III.B.vii below.

²⁴² See *The Haiti Gender Shadow Report*, p. 9; *Gender Issues Facing Women and Girls*, pp. 3-4.

²⁴³ RP, ¶IV(3).

²⁴⁴ *Id.* Impoverishment can occur through any of the following six means: (i) loss of housing, land, access to common property or other rights to real property due to lack of clear title, economic pressure or other factors; (ii) loss of employment; (iii) loss of access to means of production; (iv) food insecurity, increased morbidity and mortality; (v) disarticulation of social networks; and (vi) loss of access to education. *Id.* Several of these factors are clearly relevant in this case.

²⁴⁵ *Id.*

²⁴⁶ See, *Involuntary Resettlement Background Paper*, pp. 21, 24, 30.

²⁴⁷ 284 families out of 366 identified at that time: Baseline, p. 2, ¶6.

²⁴⁸ See footnote 47 above.

²⁴⁹ ESIA, p. 96.

²⁵⁰ CIA (2012), p. 5, which recognized the risk that “despite some compensation, the process of displacing rural farmers and ranchers could worsen rural poverty.”

As described in detail above, this risk of impoverishment has eventuated. In the absence of adequate support from IDB or UTE, we have not obtained replacement land of equivalent quality and have instead turned to other income-generating activities that do not offer equivalent income or food security.²⁵¹ Some families have no income at all.²⁵² The cash compensation was mostly spent on immediate needs – needs that would normally have been satisfied by the income and production from our land – and we have been left worse off than before.²⁵³

The IDB breached its obligation to conduct a thorough impoverishment risk analysis – and take appropriate mitigation steps – prior to displacement taking place. Moreover, the “vulnerability”²⁵⁴ analysis that was (belatedly) completed in the 2011 Baseline, and updated in 2013, suffered major flaws. As a result, these analyses failed to meet the requirements for a “detailed” impoverishment risk analysis, as required by the Resettlement Policy, ¶IV(3). Among other issues:

- While the Baseline recognized that over 75% of families were living below the poverty line, only 51 households were treated as vulnerable in 2011 and only 35 in 2013.²⁵⁵
- Of the 51 households identified as vulnerable in 2011, only eight appear to have been treated as vulnerable in 2013.²⁵⁶ We have not seen, or received, any explanation of the criteria used for the 2013 vulnerability assessment nor of why this assessment had such different results.²⁵⁷
- Gender should have been expressly recognized, particularly, but not exclusively, in relation to female-headed households. Despite the heightened risks of financial insecurity to female-headed households, only four out of 32 such households were treated as vulnerable in 2011,²⁵⁸ and documents to date only clearly identify one female-headed household treated as vulnerable in 2013.²⁵⁹
- Age above 65 years, after which point rehabilitating one’s livelihood becomes incredibly difficult, should have been included as a criterion from the outset.²⁶⁰ Although we were advised by IDB and UTE that age above 65 years was included within the 2013 analysis, the results indicate otherwise: the Baseline identified 68 heads of household over 65 in 2011 (out of only 351 households identified at this point),²⁶¹ yet only 35/36 households

²⁵¹ Annex 6, summary of interview results.

²⁵² *Id.*

²⁵³ *Id.*

²⁵⁴ This is how the analysis was described in the Baseline and RAP (2011). We use the same term for consistency.

²⁵⁵ See the list of those identified as vulnerable in 2011 and 2013 in Annex 10.

²⁵⁶ *Id.*

²⁵⁷ Despite requesting that information from IDB and UTE. See section V and Annex 12.

²⁵⁸ Compare RAP (2011), Annex 11 (identifying four female-headed households) or Annex 10 of this complaint, with the 32 such households identified in Baseline, p. 1, ¶2 and pp. 15-16. There were potentially more such households, given that the Baseline is not comprehensive.

²⁵⁹ See our comparison of the two lists in Annex 10 and footnote 171 above.

²⁶⁰ Only age above 75 years was treated a vulnerability criterion in 2011: see RAP (2011), Annex 10. We have not received any clear written confirmation of the 2013 criteria.

²⁶¹ With 21 being over the age of 75, the age-related criterion for vulnerability in 2011.

were identified as vulnerable *in total* in 2013. We have identified at least 32 people that were over 65 in 2013, but not treated as vulnerable.²⁶²

The situation of Anne Leroy exemplifies both the challenges faced by, and the inadequate and inconsistent treatment of, particularly vulnerable households. Anne is female, heads her household and possessed a small, but productive plot of land (~ 0.5ha) at the CIP site. She was 69 years old in 2013. Despite those vulnerability indicators, Anne received a lump sum payment of cash by way of final compensation (approx. US\$3,502). She has not been able to establish a sustainable income. Although Anne was a member of ALENAC, she still expressed dissatisfaction with the compensation and the consultation process. In an interview on 11 July 2016, she told us:

“Today I can't do anything to earn money, it's my children who help me, when I need to buy water, anything. Some have small businesses, I can't even have one because I don't have enough money.”

“The compensation was not good for us. Before our land would give us a lot of things, a lot a lot a lot. We would plant a lot of fruits and vegetables, we would produce a lot of peas, maize, you see? Well, now we don't have enough money, when we go to the market, it's already hard to buy food for kids, if you want to buy oils, spices, meat, you need money, and today we don't have money. Before we had tomatoes, peas, when we went to the market we would make money and could buy food. Today I can't buy.”

“I didn't get enough to buy land! ... what they gave us, today I can't even buy water! I have a child who had an accident in Santo Domingo, I used the money for him, but then I don't have any more money. ... They promised houses, land, businesses. Nothing of that! They gave us a little money, and then they left. They didn't give us what they promised. I don't understand why they didn't keep their promises In the end the little money we received was not enough for people to live.”

Anne Leroy.

More generally, the vulnerability criteria failed to take account of the broader circumstances in which we lived:

- Our dependence on agriculture for livelihoods and food security;
- Food and land scarcity in Northern Haiti, with increasing pressure on both from the influx of population into the area;
- Long-standing land tenure insecurity, including a history of land confiscation in the area targeting poor farmers;
- The marginal socio-economic status and other inequalities experienced by Afro-descendants in the region;²⁶³

²⁶² Annex 11, compensation table. *See also* Annex 6, summary of interviews: nine of the 58 heads of household we interviewed in May 2016 were over 65 in 2013, and all of them received cash compensation and therefore were not treated as vulnerable.

- The extremely vulnerable position that we were placed in when we lost our land and our crops without compensation and had to wait upwards of three years before receiving any final compensation.

In these broader circumstances, we consider that most if not all of the victims faced significant risks of impoverishment. Yet the IDB and UTE failed to identify these risks and provided cash compensation packages to many victims despite these risks, in violation of the Resettlement Policy, ¶IV(3). Had a detailed risk analysis been conducted, IDB and UTE would have been forced to consider the social and economic conditions necessary to ensure that the money could be invested in a manner that would restore our standard of living.²⁶⁴ Given the land scarcity and tenure insecurity in Northern Haiti, our limited financial knowledge and the immediate financial pressures caused by the loss of our land, those conditions did not exist, at least not without complementary services to support financial planning and investment.

The failure of IDB and UTE to conduct a comprehensive impoverishment risk analysis and mitigate those risks appropriately has contributed to the poverty and other harms that we have experienced and continue to face.

vi. Inadequate due diligence regarding the availability of alternative land

A major flaw in the compensation process was IDB’s and UTE’s decision to renege on the agreement to provide replacement land. As previously discussed, there are many aspects of this decision that remain unclear to the victims. However, it is apparent that a major factor in the decision to abandon this form of compensation was the difficulty of locating enough replacement land of equivalent productive quality in the area.

IDB is required to investigate the availability of “in-kind” replacement assets as part of its due diligence: in its alternatives analysis,²⁶⁵ through host community consultation²⁶⁶ and in a host community impact analysis.²⁶⁷ Information gleaned from that due diligence should have informed IDB’s decisions about project location, cost, approval and design, including the resources needed to compensate the victims. However, this due diligence did not take place sufficiently early nor to a high enough standard and was not properly incorporated into IDB decision-making.

The ESIA, the only project document analyzing the impact and costs of resettlement that was available to the Board before it approved this project, does not include any assessment of the availability of replacement land.

²⁶³ IDB recognizes that Afro-descendants face economic, social, cultural and political inequalities in the region: *see* <http://bit.ly/2asO7fj>. Its Gender Equality Policy expressly requires that the Bank pay attention to Afro-descendant women: ¶4.4. It is not correct to assume that similar inequalities do not exist in Haiti simply because Afro-descendants form the large majority of the Haitian population (95%). The World Bank notes that most of the country’s political and economic power is concentrated in a small, wealthy elite that has lighter skin: World Bank *Haiti - Social resilience and state fragility in Haiti: a country social analysis* (27 Apr. 2006).

²⁶⁴ RP, ¶IV(3).

²⁶⁵ *Id.*, ¶III(1).

²⁶⁶ Host community consultation is expressly required by RP, ¶V(2). While we understand that some consultation took place, it failed to provide accurate, *early* information about the availability of replacement land.

²⁶⁷ RP, ¶V(5).

“I didn't get enough money to buy other land! The land we had we had inherited it. ... when they came, they asked us ‘What do you want?’ We said, ‘It's land we need!’ When we said we wanted land, they went to give us land from somewhere else, we did not accept! Because the land they wanted to give us they would have taken from someone else to give it to us. When they did not find land, they said, ‘It's money we're going to give you.’ ... they made us sign. They told us, ‘Sign! Now you must sign.’ ... we did not agree! But when they said, ‘We're going to pay,’ then we agreed and signed.”

Louis Tirène.



Credit: Antoine Bouhey/ActionAid

Once displacement had already occurred and the project already approved by the IDB Board, the RAP did acknowledge that there would be difficulties obtaining replacement land of an equivalent quality. It described:

“The investigation and initial discussions with local people revealed that there is no other land equivalent to those they currently occupy in terms of area, water supply, proximity to their homes, and their fertility. As one farmer said during a community meeting in Fort Liberté: ‘ ... we already had the best lands of the region - there is nowhere to go’.”²⁶⁸

However, the RAP maintained that an alternative site at Fond Blanc (Terrier Rouge), identified by UTE, could be developed to provide replacement land for the 365 families that requested this form

²⁶⁸ RAP (2011), p. 9.

of compensation.²⁶⁹ The RAP failed to acknowledge that other communities were already occupying and cultivating that land and failed to determine whether we could be accommodated together with those families. This analysis did not meet replacement asset due diligence requirements under the Resettlement Policy.²⁷⁰

In addition, it remains unclear to us whether other opportunities for replacement land – at Terrier Rouge and at other potential sites – were *fully* investigated. As previously mentioned, we understand that it is possible that the victims could have been accommodated at Terrier Rouge, however this option was rejected by IDB and UTE due to the cost of certain conditions demanded by those already cultivating the land.²⁷¹ Once the Terrier Rouge site was abandoned, we are not aware of any other sites being adequately investigated.

As a result, we waited almost three years for replacement land that never eventuated. We ultimately received an inferior package of cash compensation once the proposal to obtain replacement land was abandoned in late 2013.

vii. Lack of meaningful consultation and participation

The due diligence failures in this case were exacerbated by a lack of consultation. IDB’s Resettlement Policy and its Environment and Safeguards Compliance Policy both require meaningful consultation with and participation of affected people, from an early stage and throughout the compensation and project planning process.

First, in relation to the resettlement process, the Resettlement Policy requires:

- Community participation with consultations carried out in a timely and socio-culturally appropriate manner and including a representative cross-section of the displaced and host communities. Consultations must take place during the design phase and must continue throughout the execution and monitoring of the plan. The most vulnerable subgroups must be identified and their interests adequately represented: ¶V(2).
- A preliminary resettlement plan must be prepared as part of the ESIA. It must undergo a process of meaningful consultation with the affected population and must be available as part of the ESIA, prior to the analysis mission. The ESIA/preliminary RAP must include evidence of consultation with the affected populations: ¶V(6).

Additionally, the Principles and Guidelines on Involuntary Resettlement note that “project plans, policies, compensation procedures and legal entitlements ... should be made available in a form accessible to all the affected population, if necessary in local languages, using radio or TV to reach those people who have little or no formal education.”²⁷²

Second, in relation to project documents more generally, the Environment and Safeguards Compliance Policy (“Safeguards Policy”) requires:

²⁶⁹ *Id.* This would require: significant investments in developing, securing, expanding access to infrastructure and irrigation, and technical supervision “to restore a satisfactory productive atmosphere.”

²⁷⁰ RP, ¶III(1), V(2) and V(5).

²⁷¹ See section III.A.i, especially pp. 18.

²⁷² Involuntary Resettlement in IDB Projects: Principles and Guidelines, p. 21.

- Timely and adequate consultation and information during the ESIA process: ¶4.19.
- Both Category “A” and “B” operations require consultations with affected parties and consideration of their views as part of the environmental assessment process. Category “A” operations specifically require at least two consultations during project preparation: one during the scoping phase of the environmental assessment or due diligence processes and one during the review of the assessment reports: ¶4.20.²⁷³
- For consultation purposes, appropriate information must be provided in location(s), format(s) and language(s) to allow for affected parties to be meaningfully consulted, to form an opinion and to comment on the proposed course of action: ¶4.20.
- During execution, affected parties should be kept informed of the environmental and associated social mitigation measures affecting them, as defined in the Environmental and Social Management Plan (“ESMP”): ¶4.20.
- IDB review of the ESIA and the ESMP prior to the approval of the project to ensure compliance with IDB standards, and take into account the quality of the documentation in its project approval process: ¶4.19.

In addition, the Bank’s Access to Information Policy – together with the Resettlement and Safeguards Policies – creates a presumption of disclosure of all environmental and social assessments relating to public sector projects: such disclosure being necessary to facilitate community engagement in the project development and monitoring process. For example, the ESIA must be prepared with its ESMP and disclosed to the public prior to the Bank’s analysis mission.²⁷⁴ Other relevant environmental analyses must also be made public.

Once again, the gravest breach of these requirements was the fact that displacement occurred before any consultation took place at all. However, even the belated public consultation that occurred during development of the RAP and the ESIA failed to meet the IDB’s requirements.

In relation to the development of the RAP specifically:

- Consultation was delayed and did not begin until shortly before the Board’s approval of the project. Apart from an early meeting in January 2011, the first substantive community meetings providing detailed information about the resettlement process to a broad group of victims appears to have taken place on 25 June 2011:²⁷⁵ around the same time that the ESIA was finalized,²⁷⁶ and one month before Board approval of the project.
- From mid-June 2011, consultation primarily took place through ALENAC. However, ALENAC was not a representative cross-section of the victims and reliance on this association was not socio-culturally appropriate. As previously discussed, its members were not elected by, or even the subject of consultation with, a majority of the victims. Only 22 of its members – barely more than half – are clearly identifiable as victims of

²⁷³ See also Implementation Guidelines for the Safeguards Policy, pp. 34-35 <http://bit.ly/2b07Vwx>: the second consultation during the review of the impact assessment is important in order to inform, gather comments about and adjust the assessment and the corresponding Environmental and Social Management Plan (“ESMP”).

²⁷⁴ Safeguards Policy, ¶4.19.

²⁷⁵ Contrast earlier meetings (Jan. and May) with local authorities. See RAP (2011), Annex 2, pp. 128-129.

²⁷⁶ As noted above, the ESIA should have included the preliminary RAP: RP, ¶V(6).

displacement.²⁷⁷ No attempt was made by IDB or UTE to verify that a majority of the victims considered ALENAC to be legitimate representatives.²⁷⁸

- Neither the RAP, nor the 2011 compensation agreements themselves, were produced in Creole, the sole language of the overwhelming majority of the victims.
- Information about the RAP was not disseminated for comment among the broader group of victims in an appropriate format,²⁷⁹ given low levels of literacy.²⁸⁰ Although the RAP was explained briefly in consultations, neither IDB, UTE nor their consultants took the time required to explain this relatively complex arrangement in detail to each victim.
- The RAP, together with its Baseline, does not appear to have been available on IDB's website prior to March 2012.²⁸¹ An updated RAP, apparently produced once it became apparent that the housing planned for ten of the most vulnerable families would not be available,²⁸² remains unavailable on IDB's website.
- Despite multiple requests for a complete list of those who received compensation, we have received only an incomplete list of 367 heads of household.²⁸³ This list, like other documents produced by IDB and UTE, fails to include key information such as victims' age, gender, household size, and land quality and size, preventing us from analyzing whether compensation entitlements and vulnerability criteria were respected. This information is vital given that we have strong reasons to believe that the development and implementation of the Baseline, RAP and compensation agreements suffered serious errors.

²⁷⁷ See Annex 7, ALENAC comparison to Baseline/June 2016 lists of victims. See also section III.A above.

²⁷⁸ See Annex 4, meeting notes.

²⁷⁹ Such as through well-attended group meetings, focus groups, individual meetings, and specific meetings designed to facilitate the consultation and participation of women.

²⁸⁰ The Baseline records that 33.3% of the 366 (then-identified) heads of displaced households were illiterate, while 49% had an education level of primary school or less: Baseline, p. 18.

²⁸¹ The publication date for this document, listed on IDB's website, is 26 Mar. 2012.

²⁸² 2015 ESMR, ¶4.34: "The UTE prepared an alternative resettlement plan for the remaining 10 people and will start implementing it in the coming weeks."

²⁸³ In June 2016, we were provided with a list of 367 victim families (the 366 identified in the Baseline plus Eliane Clerjuste, who was added at the request of the ALENAC and who had apparently not been taken into account in 2011 due to her absence), rather than the 442 families we understand to have been displaced. The list includes total payments of compensation, but without specifying to whom those payments were made and for what: UTE *Liste des personnes compensées définitivement (compensation monétaire) + montants définitifs payés*, attached in Annex 13. See also section V and Annex 12. UTE described the list as "definitive" despite additional compensation recipients being identified by other UTE documents provided in the same bundle.

“When they came to take the land they said they would give us other land. Then they said they wouldn't give us land and they said they would give us money, not land. ... they did not ask us what we wanted ... Today it's more difficult to buy everything. We can't work. We can't even go out to buy food. We don't have anywhere to plant and we have kids. Everything is expensive in the market.”

Philomène Jean.



Credit: Antoine Bouhey/ActionAid Haiti

Compounding these specific violations, was the lack of information and consultation about the project and its impacts more generally:²⁸⁴

- As discussed, there was only one community meeting with us, prior to the ESIA and ESMP being finalized,²⁸⁵ rather than the minimum of two consultations required by the Safeguards Policy. Although further meetings were held through September, these meetings took place after Board approval and after the ESIA and ESMP were finalized.²⁸⁶
- At no point during the process were any major project documents made available to the victims in an appropriate format and language. We have not seen a single project document in Creole, other than the 2013 compensation agreements. The large group meetings held between September and December 2011 were not designed to explain and obtain feedback on environmental and social issues in a meaningful and accessible way. Nor were specific meetings held to obtain the views of women, who faced distinct and disproportionate environmental and social risks.

²⁸⁴ See further section IV.B below.

²⁸⁵ ESIA, Annex 2. The other meetings referred to were held with local authorities.

²⁸⁶ RAP (2011), Annex 2, p. 129; List of Major Consultations, <http://bit.ly/2aVUskN> cited in HA-L1076 Project Profile <http://bit.ly/2aTraFg>.

- The ESIA itself was incomplete and was eventually supplemented by additional studies,²⁸⁷ as a result of which the ESMP was also updated.²⁸⁸ However, we are not aware of any consultations on the outcomes of these later studies and ESMPs.²⁸⁹
- IDB failed to ensure compliance with its standards, in circumstances where the lack of consultation was obvious from the project documents themselves, in breach of the Safeguards Policy, ¶¶4.19 and 4.20.

Without key project information, and without opportunities to meaningfully engage in the development of the RAP, we do not consider that we have been “treated equitably,” as required by the Resettlement Policy.²⁹⁰ By the time we were presented with the compensation agreements, there was little option but to accept what was being offered. As discussed below, there is still no grievance mechanism to which we can take questions or complaints about the resettlement process and our individual entitlements. We feel like we have been shut out of a process that has radically impacted our lives.

viii. Delay

Since the displacement, the victims have suffered serious unnecessary delays in receiving compensation. Some of the victims are still waiting, six years after their land was taken. The delayed compensation has had particularly harsh impacts on our children, as families have struggled to pay for food, health and education since their displacement.²⁹¹

IDB’s Resettlement Policy requires *timely* compensation.²⁹² Yet, after displacement in January 2011, final cash compensation was not received until late 2013. IDB’s and UTE’s inadequate due diligence on the availability of replacement land was partially responsible for the delay. While we were prepared to wait for replacement land, IDB and UTE failed to anticipate the delay (because of their poor due diligence) and failed to ensure that appropriate transitional arrangements were in place. Interim compensation – in the form of the lost harvest and lost food security payments – did not enable us to move on with our lives. It helped to pay for some immediate necessities, but did not provide ongoing food security or allow us to reestablish our livelihoods.

Additionally, ten of the most vulnerable families that chose the housing option had not received that housing in May 2016, and are potentially still waiting.²⁹³ Those who chose a pension plan also experienced substantial delays.²⁹⁴ In our recent interviews with 58 victims, four reported

²⁸⁷ See footnote 390 below.

²⁸⁸ Including the Environmental, Social and Health and Safety Management Plans (2012), p. 18 <http://bit.ly/2b6GcXO> [“2012 ESMP”]; and the wastewater management plan (Dec. 2014).

²⁸⁹ While some focus group meetings related to the CIA (2012) may have included directly affected community members, we are not aware of any broader, open meetings on the outcome of that report and any subsequent changes to the ESMP: see the IDB’s list of major consultations, at footnote 286; CIA (2012), p. 9. The authors of the CIA Update (2015) consulted project representatives and “a sample of municipal representatives,” but not directly affected community members: CIA Update (2015), pp. 6-7.

²⁹⁰ RP, ¶II.

²⁹¹ *Id.*

²⁹² *Id.*, ¶¶V(2) and V(3).

²⁹³ 2015 ESMR, ¶4.34.

²⁹⁴ HA-L1101 ESS, ¶3.15; 2015 ESMR, ¶4.34.

having not received all the compensation reported in the compensation agreements, and two said they had received no compensation at all.²⁹⁵

This violation is ongoing, as we have not yet received sufficient compensation for our socio-economic rehabilitation, as explained below.

ix. Inadequate compensation

All of the above due diligence and consultation failures have contributed to the ultimate harm we have experienced: the lack of adequate compensation for the loss of our land and the failure to achieve our socio-economic rehabilitation.

The Resettlement Policy expressly requires “fair and adequate” compensation and rehabilitation that will compensate us for our losses and return us to a standard of living at least equivalent to pre-displacement levels.²⁹⁶ On the contrary, the vast majority of victims report that they are in a worse socio-economic position than prior to displacement, facing financial and food insecurity.²⁹⁷

“My family is worse off. Everyone is worse off today. The cost of living went up, everything is more expensive. ... They didn't sit with the people, they didn't sit with us to know our needs.”

“I didn't have enough, enough money, what they gave us wasn't enough.”

“Whether we wanted or not, they said we had to sign and the people who didn't sign wouldn't get any money. They didn't even give us time to read the document.”

Dieudonné Florvil, a victim who now rents land to grow crops, but says that the land is smaller in size and worse quality than his land at Caracol-Chabert. He used to grow manioc, among other things, on his old land, but can't grow manioc on his new land because there is not enough water. He wanted to buy replacement land with his compensation, but couldn't afford to.

Judith Florvil, wife of Dieudonné, explains that when she purchases fruits, vegetables and firewood for her family, they are more expensive than before and she cannot afford to buy enough. She explains that life is more difficult because *“we couldn't produce as much food, no manioc, and even bananas we don't have much anymore ... even cheap and small cattle we can't buy.”* She also described difficulties sending her children to school *“because we now often pay late.”*

This outcome is tragic, but not surprising, given IDB's due diligence failures. As explained in more detail above:

²⁹⁵ Annex 6, summary interview results.

²⁹⁶ RP, ¶III(2).

²⁹⁷ See section III.A.ii, especially pp. 23-24 summarizing results of in-depth interviews with 58 heads of victim families in May 2016; see also Annex 6, summary of interview results.

- Our displacement prior to the fulfillment of any safeguards left us especially vulnerable to impoverishment and heightened the pre-existing imbalance of power during compensation negotiations;
- The monetary value of our lost harvests and lost food security were underestimated in 2011, and these flaws continued throughout the compensation process;²⁹⁸
- The compensation packages failed to take into account the sharp increases in the cost of living in Caracol;²⁹⁹
- IDB's and UTE's inadequate due diligence on availability of replacement land³⁰⁰ resulted in a situation where they could not provide the replacement land that the RAP required, leaving us with no choice but to accept an inferior cash compensation package;
- We have received little to no alternative livelihoods support, to assist our transition to new sources of income;³⁰¹ and
- The compensation package failed to take account of the significant risks of impoverishment faced by most, if not all of the victims. Cash compensation, *as a sole*

²⁹⁸ The food security payments were essentially determined by dividing an arbitrary, total figure by the number of families eligible for compensation, and the number of people in each family (approximately \$80 per person): Table 1; Annex 4, meeting notes; 2013 ESMR, ¶3.58 (“The annual payments comprised ... \$80 per family member for loss of subsistence crops”). This figure bears no resemblance to the actual, minimum cost of food security in 2011: approximately \$270 per person: Table 1; CNSA *Bulletin #1: Le Panier Alimentaire en Haiti* (Jun. 2012), p. 1 <http://bit.ly/2b8M9VY>. Lost harvest income was also undercounted for a significant number of victim families due to the inappropriate decision to estimate the average income of all plots (per hectare) when in reality there was significant variation due to type of crops, harvest frequency and use of irrigation: Table 1. Even by the Baseline's own admission, the 48 irrigated hectares of land had a net margin of more than twice (\$3,118) the compensation figure (\$1,450): Baseline, p. 39.

²⁹⁹ See Table 2 and the subsequent discussion relating to cost of living. In 2011 – when the monetary amounts for lost harvest and lost food security were first quantified – the IDB had not yet conducted any comprehensive social impact assessment, including detailed projections of population growth and associated risks of increased demand for food, employment, shelter and land, and therefore did not take those into account. Even once those increases became fact, IDB and UTE inexplicably failed to take into account the increased cost of living and increased income lost, when lost harvest and lost food security payments were repeated in 2012 and 2013: *Id*; Annex 4, meeting notes. We also understand that the final cash compensation was calculated based on an estimation of five years of lost harvests, with a modest increase for inflation: *Id*. As discussed previously, that formula fails to quantify the sum necessary to purchase replacement land, and it failed to take full account of the increases in the cost of living in the Northeast specifically, as well as the increased income that we would have received had our land not been taken.

³⁰⁰ See section III.B.vi above.

³⁰¹ Based on the list of trainings beneficiaries provided by UTE and IDB (*see* footnote 159 and Annex 13), only seven affected heads of households identified in the Baseline (i.e. less than 2% of victims) benefitted from professional training. Of the 58 heads of victim families interviewed by the Kolektif, none had received training and only one had had a sibling benefitting from a training: Annex 6, summary of interview results. This is despite the Baseline's recognition that: “re-establishing food production for vulnerable families is a necessity in addition to compensations” and “offering the opportunity to earn agricultural and non-agricultural revenues is imperative.” Baseline, p. 2, ¶6 (Notwithstanding these sentiments, the Baseline's transitional livelihoods proposal is undeveloped, simply recommending that \$76,000 be allocated for this purpose. Based on the 366 families identified by the baseline, this only amounts to \$207 per family.).

means of compensation, was inappropriate and insufficient in the circumstances of this case.³⁰²

The development of a sustainable compensation package would have required greater consultation and evaluation of our specific needs. We needed, and still need, a process that:

- Is gender-sensitive, given the gender differences in employment opportunities and the heightened risk of financial insecurity faced by Haitian women;
- Respects the different losses and rehabilitation needs of different households;
- Respects the specific risks of impoverishment faced by many households – more than just the 35 households categorized as vulnerable in 2013 – and supports those households to obtain replacement land, housing or establish a small business that can provide a source of income, in accordance with their preferences; and
- Includes support for a community savings mechanism to ensure that any cash compensation that is paid can be invested and utilized in a sustainable way.

Our desired outcome of this process is explained in more detail in subsection C, below.

x. Failure to properly monitor, supervise and evaluate resettlement impacts

IDB has also failed to monitor and evaluate the resettlement process in a timely manner. Had it done so, many of the issues described above could have been identified and rectified much earlier.

The Resettlement Policy requires that the RAP contain provisions for monitoring and evaluation.³⁰³ The monitoring activities must focus on the social and economic conditions achieved or maintained in the resettled and host communities, using qualitative and quantitative indicators. The final evaluation must be scheduled at a target date on which it is expected that the living standards the plan was designed to provide will have been achieved.³⁰⁴

³⁰² IDB's own Background Paper on Involuntary Resettlement acknowledges "the inappropriateness of cash payments as the sole means of compensation" (Involuntary Resettlement Background Paper, p. 21. *See also* the Involuntary Resettlement Principles and Guidelines, pp. 22, 25) and further explains that:

"In many cases, the equation of compensation with cash payments is problematic. Displacement may severely affect certain sectors of the population, particularly the poor, in ways that go beyond the monetary value of the property that is lost. Relocation may deprive people of their main source of income and, in some instances, may threaten their social peace and cultural identity. ...

The experience of the World Bank and the IDB with resettlement shows that payment of cash alone is rarely an adequate strategy. The main reasons for this are: (a) cash compensation is often insufficient to replace lost assets with ones of equivalent value; and (b) the displaced often lack the opportunities or know-how to use their payments to replace lost assets and opportunities. In addition, pressure to resolve immediate needs, such as food, temporary housing, health care or the repayment of debts, often results in compensation being spent before it can be invested in housing or productive assets. This is particularly so for low-income groups and may lead to their permanent impoverishment. Consideration should, therefore, be given to helping the displaced find alternative homes, land or employment. This is especially important when they are dependent on the land for their livelihood."

Involuntary Resettlement Background Paper, p. 30.

³⁰³ RP, ¶¶V(6) and V(7).

³⁰⁴ *Id.*, ¶V(7).

The RAP, in this case, stated that a mid-term evaluation would take place after 15 months of implementation and a final evaluation after 30 months.³⁰⁵ We understand that IDB and UTE believe that this timeframe runs from the date of the final compensation (Sept. 2013), rather than the first implementation of the RAP (Sept. 2011).³⁰⁶ We believe that this approach is wrong: by their reasoning, the monitoring and evaluation requirements could be avoided indefinitely by simply failing to provide final compensation. The approach also contradicts IDB's Involuntary Resettlement Principles and Guidelines, which explain that monitoring during implementation of the RAP should cover the *impact* of the resettlement plan on those displaced, as well as its physical progress.³⁰⁷ Moreover, even if their approach is right, the evaluations have not happened in a timely manner. There have been no evaluations (mid-term or final) completed as of the date of this complaint, now 40 months since September 2013. While IDB may respond that they have been actively involved with UTE/SONAPI during this period, they have not consulted with ALENAC, the Kolektif or the victims more generally, and we have not seen any real benefits from whatever engagement with UTE/SONAPI they may have been having. In any event, this involvement is no substitute for a detailed socio-economic evaluation of the *impacts* of resettlement, as required by the Resettlement Policy, ¶V(7).

IDB should also have been requiring detailed and effective action plans for resolving non-compliance with the Resettlement Policy, prior to Board approval of each of the subsequent CIP-related investments. The Safeguards Policy expressly requires that IDB only finance existing operations if the borrower can demonstrate that the operation complies with all relevant provisions of the Policy. If, as part of IDB's due-diligence, non-compliance is identified, then an action plan must be submitted to the Bank prior to Board approval of the operation.³⁰⁸ The fact that a number of families are apparently *still* waiting to receive their agreed compensation³⁰⁹ raises serious questions about the adequacy of any action plans created regarding this project, as well as the ability of IDB to be satisfied that the operation will achieve compliance.³¹⁰

Finally, we note that there is currently no independent, project-level grievance mechanism to which we can take our queries or complaints about the resettlement process. The Resettlement Policy explicitly requires that the RAP contain "a mechanism for the settlement of disputes regarding land, compensation and any other aspects of the plan."³¹¹ Although the RAP recommends that, during the implementation of the RAP, an independent and respected entity (like an Ombudsman) is set up to ensure fair treatment of all cases,³¹² we are not aware of any such mechanism being established in this case.

These violations are inexcusable, given the number and extent of the flaws we have experienced. They contribute to the ongoing harm we are suffering.

³⁰⁵ RAP (2011), p. 49.

³⁰⁶ See UTE's letter dated 26 Jul. 2016, attached in Annex 12.

³⁰⁷ Involuntary Resettlement Principles and Guidelines, p. 28.

³⁰⁸ Safeguards Policy, ¶4.29.

³⁰⁹ See section III.B.viii above.

³¹⁰ See also the compliance and sustainability concerns expressed by the IDB itself in section II above.

³¹¹ RP, V(6).

³¹² RAP (2011), pp. 47-48.

C. What the Kolektif wants from this process

Despite the harm suffered to date, we believe that our full compensation and rehabilitation, in fulfillment of IDB's obligations, remains possible through constructive dialogue between us, our representatives, IDB and UTE. As part of any dialogue, we wish to discuss the following solutions that the Kolektif has designed in collaboration with approximately 210 individual victims.³¹³

i. Fair financial compensation

We request that all financial compensation be reassessed taking into account the real cost of the loss of land, based in particular on:

- The specificities (irrigation, crops) of victims' plots of land;
- The real cost of loss harvests, based on the market prices of the cultivated crops;
- The real cost of food security in the area;
- The cost of land transactions in the area;
- The increase in the cost of living;
- The specific needs of each family;
- The cumulative environmental and social impacts of the CIP; and
- Delays accumulated before obtaining fair compensation.

ii. A compensation verification and complaint mechanism

We also request the creation of an independent body to verify that each victim has received the compensation that they were and will be entitled to and to resolve the complaints of victims who believe that they have not received that compensation. The mechanism should receive and respond to complaints in a fair and transparent manner consistent with best practice for such grievance mechanisms. Such a mechanism was recommended by the RAP, but never established.

As noted above, several heads of victim households said during interviews with us that they have not received the full amount of compensation provided for in the compensation agreements they signed. Moreover, given that the number of affected households recognized by the project documents frequently changed (between 351 and 442), it is possible that subsequently-identified families missed out on compensation they would have been entitled to, had they been properly identified by the Baseline. Despite requests for this information, UTE and IDB have failed to provide a comprehensive, detailed list of compensation distributed to each of the 442 households. Without such list, it is not possible to ensure that each household received the full compensation entitlements agreed to date.

³¹³ These demands were discussed during: meetings with the Kolektif's coordination committee in March, April and May; the Kolektif's general meetings (150-200 people attending on average); consultations with local community-based organizations; individual interviews; and an open answer final debate with 210 victims. During the general debate, it was agreed that the cash option and the complaint mechanism for people who had not received their full compensation would form part of the demands. Then, using an "Ohio-caucus" voting system, people were asked to group according to their preferred options, amongst: i) land or housing for rent, ii) local and collective development plan, iii) education for children, and iv) jobs in the industrial park. These groups were then asked to pick a 2nd option between the three remaining options. This showed a relatively equal support to the first option options, while only five people were interested by jobs in the industrial park as a second option (and none as a preferred option). That latter demand was thus dropped from the final list of demands.

As the largest active collective of victims, we should be consulted and given the opportunity to participate during the development of this grievance mechanism, and all victims should be informed about its creation and procedures to process complaints. This process must supplement – but not replace – the reconsideration of the compensation package requested above.

iii. Revision of the vulnerable people criteria and list

The vulnerability criteria applied by IDB and UTE in 2011 and 2013 were both too narrow and incorrectly applied, with the result that very few families were identified as vulnerable to impoverishment and benefited from measures designed to mitigate this risk. We consider that most if not all of the victims faced significant risks of impoverishment, given: (i) the socio-economic circumstances of the victims; (ii) the high rates of poverty and dependence on agricultural livelihoods and food insecurity among Haiti’s rural population; and (iii) the pressures on land and cost of living from 2011 onwards in Caracol.

We therefore request a transparent revision of the vulnerability criteria and the application of those criteria to the victims.

iv. Fair non-financial compensation to rehabilitate livelihoods

Fair compensation must be based on a genuine choice between options that effectively rehabilitate the victims’ livelihoods. Financial compensation, without more, was not able to achieve that in this case.

We therefore request a new compensation and rehabilitation phase, in which victims are offered the choice between access to land via a “voucher” system, access to housing for regular rental income or adequate financial compensation taking into account the real cost of replacement land. This new compensation and rehabilitation package should be developed as part of an individual and collective development plan, including:

- **Individual support for each family:** *All* victims should be supported through an individualized support plan that includes the strengthening and monitoring of each family's economic activities. Such individualized support would involve identifying opportunities and factors that generate revenue through such activities, with appropriate technical and management trainings provided by relevant organizations and institutions. This support would be undertaken in collaboration with relevant community-based organizations (including farmers and fishermen organizations) and local institutions (such as the Fond d’Assistance Economique et Sociale and the Conseils d’Administration de Section Communale).
- **Support for relevant local organizations:** To ensure coherence between these individual projects and adequate support from local organizations, the compensation package should include strengthening of community-based organizations in which the victims are members and support to their projects.
- **Supporting the creation of a collective structure to manage compensation funds:** A collective structure should be created to manage compensation funds, through savings and credit mechanisms capable of sustainably supporting the victims’ activities (including financial evaluation, coaching, training and planning).

- **Genuinely taking women’s rights and specific needs into account:** The rights and specific needs of women victims and women in victims’ families must be genuinely taken into account, through an ambitious and detailed plan. In addition, female victims and members of victim families should be involved in the plan's design, which was not the case with the initial action plan.

v. Support to victims’ families’ education projects

Finally, due to delays in the implementation of a fair compensation and rehabilitation plan, we consider it is necessary to support the children of affected households in their educational projects. The decline in family incomes since the loss of our lands, and the anticipated time to implement a new compensation plan, have prevented many families from sufficiently financing their children's education. Yet, the sustainability of long-term living standards for families and communities neighboring the CIP demands an increase in the level of education of these children. We therefore request specific support to victims’ educational projects for children, to improve their education through specific training or access to higher education.

“With what they gave us, you can't buy land. Even my old house, I couldn't finish building it with the money they gave us. I couldn't finish it because I don't have the money for that. ... Before I could grow much things to eat. Corn, Peas, Potatoes, Peanuts, Manioc. I had one hectare. I can't make money today. ... We're worse than before. ... They gave us what they wanted to give us, they didn't ask us how we saw things, how we evaluated what we needed. ... They said you have to sign, if you don't sign you won't receive the final compensation. That is why we signed.”

Ilna St Jean.



Credit: Antoine Bouhey/ActionAid Haiti

IV. Our broader environmental and social concerns

IDB’s project documents, as well as reports from other organizations, identify a range of potentially serious environmental and social risks and harms from the construction and operation of the CIP and its associated facilities, including the power plant. IDB itself says that “the environmental and social long term and indirect negative impacts of the PIC are much broader than

the actual project site and extend throughout the Northeastern Corridor [of Haiti].”³¹⁴ As explained below, we have not received sufficient information about these risks and impacts, or the management of them, in an appropriate format or language, in breach of the requirements of IDB’s Environment and Safeguards Compliance Policy (OP-703).

A. Additional factual background

We understand that the risks and impacts of the CIP and its associated facilities include:

i. Harm to the Trou-du-Nord River

IDB has recognized a risk of pollution of the Trou-du-Nord River by solid and liquid waste, including sewage, both during the CIP’s construction³¹⁵ and its operation,³¹⁶ and from the power plant.³¹⁷ In 2011, workers clearing the land for construction failed to maintain a 20 meter vegetated buffer zone near the Trou-du-Nord River bank, exacerbating risks to the health of the river.³¹⁸ There are also concerns about increased erosion,³¹⁹ flooding³²⁰ and that the amount of groundwater consumed by the CIP could severely deplete the river during dry periods.³²¹ Women who wash clothes in surface water sources like the Trou-du-Nord River are especially vulnerable to water-borne diseases should the water become contaminated.³²² Animals are also at risk.

We understand that some of these harms have already begun to occur. A permanent wastewater treatment plant (“WWTP”) was originally scheduled to be completed in 2012, but was delayed by nearly two years. During that delay, a temporary WWTP was constructed, but it did not operate correctly and exceeded its operational capacity, with the result that untreated effluent was released into the environment.³²³ UTE also constructed a septic system that failed to meet IDB’s standards for wastewater effluent. These failures led the IDB Board to grant an exception to Directive B.11 of its Environmental and Safeguards Policy in 2013, until the permanent WWTP was completed and effluent discharge standards were achieved.³²⁴ Although the permanent WWTP is now operational, and the CIP is discharging only treated wastewater into the Trou du-Nord river,

³¹⁴ 2015 ESMR, ¶4.4.

³¹⁵ Environmental and Social Management Plan (5 Aug. 2011), pp. 26-27 <http://bit.ly/2aMe4Yv> [“2011 ESMP”].

³¹⁶ CIA Update (2015), p. 127; Environmental and Social Management Report (Nov. 2014), pp. 27-28 <http://bit.ly/2aEpEUe> [“2014 ESMR”].

³¹⁷ The power plant also poses an additional risk to polluting the Trou-du-Nord River: it could decrease the river’s water quality if fuel from the plant leaks into the environment or if petroleum products and other toxins are not properly handled and disposed of: 2011 USAID EA p. 49.

³¹⁸ USAID *Environmental Assessment of the USAID/Haiti North Park Power Project* (Jun. 2011), p. 48 [“Power Plant ESIA”] <http://bit.ly/2b6USIm>. This vegetated area is designed to provide protection from the impacts of nearby land and can be significant in maintaining the river’s water quality and nutrients for the wildlife in the river.

³¹⁹ 2011 ESMP, p. 25-26.

³²⁰ *Id.*, p. 26. While the CIP was built on a floodplain, the CIP and areas downstream could experience increased flooding if the waterways become congested with solid waste from the CIP: CIA Update (2015), p. 127.

³²¹ CIA Update (2015), p. 141.

³²² CIA (2012) p. 3.

³²³ HA-L1091 ESS, ¶¶1.3, 3.12-3.13.

³²⁴ *Id.* See also 2013 ESMR, ¶¶1.9, 3.43-3.45; 2015 ESMR, ¶4.15. We understand that the IDB Board approved the exception at the time HA-L1081 was approved (16 Dec. 2013): 2015 ESMR, ¶1.8.

levels of bacteria and color of the water still fail to meet IDB standards.³²⁵ Full compliance with IDB's standards was not expected until August 2016.³²⁶

There is *“a lot of waste in the water, the water going out of the park, you can't even breathe it, it smells a lot, when the wind blows in particular. There was a woman who went to bathe in the river and after she had scratches.”*

Louis Tirène.

“It's not every time you go to the river that you can see it's directly polluted. They will throw stuff in the river at specific moments. One day you may come and you see the river quite clean, and then if you come back the next day, the water smells really bad and is completely green.”

Renan Carries.

ii. Harm to Caracol Bay

IDB has also recognized a risk of damage to Caracol Bay and its marine wildlife from pollutants, chemicals and elevated water temperatures.³²⁷ This puts important community resources, including mangroves, salt basins, mollusks, and fish, at risk. Caracol Bay is also home to endangered species, such as manatees and turtles,³²⁸ and a vulnerable coral reef that could be harmed by an increase in metals and organic compounds in the water from the CIP.³²⁹

An influx in population near the CIP could also harm the Bay.³³⁰ An increase in fishing activities could “accelerate the decline in fish stocks and fisheries or harm recovery efforts.”³³¹ The mangrove population could be similarly depleted, due to harvesting for wood.³³² While population increases to date have not been as high as initially projected, the CIP is ultimately expected to employ around 37,000 people,³³³ up from 9,266 in July 2016.³³⁴ Together with the tenants' decision to stop providing priority employment to local communities, this projected increase indicates that the risk of a population influx remains significant.³³⁵

³²⁵ 2015 ESMR, ¶1.8. The WWTP became operational on 24 Jul. 2014, but only started discharging into the environment on 23 Sept. 2015.

³²⁶ *Id.*, ¶1.8, footnote 1.

³²⁷ 2011 ESMP, p. 27; CIA Update (2015), pp. 127-128; 2015 ESMR ¶¶1.3, 4.49; HA-1091 ESS, ¶4.4; HA-L1101 ESS, ¶3.9; 2014 ESMR, ¶¶4.39-4.41.

³²⁸ 2015 ESMR ¶2.8; Nature Conservancy *Baseline Ecological Inventory for Three Bays National Park, Haiti* (Oct. 2016, commissioned by IDB), <http://bit.ly/2ilFibq>.

³²⁹ CIA Update (2015), p. 127-128; *Ecological Inventory for Three Bays National Park*, pp. 86 and 115.

³³⁰ Prior to the CIP, there were concerns of overfishing and exploitation of the mangroves in Caracol Bay: CIA Update (2015), p. 137. An increase in population near the CIP could further exacerbate these concerns.

³³¹ CIA Update (2015), p. 138.

³³² *Id.*

³³³ See IDB “Fact sheet: The IDB and Haiti's Caracol Industrial Park” (6 Jul. 2012) <http://bit.ly/2aALWku>.

³³⁴ SONAPI, *Q2 2016 Update - Parc Industriel de Caracol* (20 Jul. 2016), p. 6, <http://bit.ly/2alhSI>.

³³⁵ 2015 ESMR, ¶¶4.25, 4.41, 4.5. The Local Employment Plan helped mitigate an increase in population by hiring only at kiosks near the park and offering preferential hiring standards for local community members. S&H Global stopped implementing this policy, with the result that migration will be “increasingly difficult to control.”

Although the Three Bays National Park aims to protect vulnerable marine resources and increase biodiversity in Caracol Bay, as of 2015, there were no concrete guidelines or measures implemented to protect the area.³³⁶ IDB recently warned that “[t]he assurances made by the IDB that the necessary mitigation measures would be taken to protect the marine protected area will be significantly tested during the operation of the park in the next 5-10 years.”³³⁷

iii. Reduced availability and pollution of groundwater

IDB recognized that the construction and operation of the CIP could reduce the availability of groundwater in the area, both due to consumption and pollution.³³⁸ Members of our community have reported that less groundwater is available since the CIP began operating and are concerned that the park consumes too much water given Northern Haiti’s drought conditions.³³⁹ The CIP’s own water supply, including its main well (which connects to the main aquifer for this region³⁴⁰), has already suffered pollution and bacterial contamination.³⁴¹

In 2015, IDB reported that the CIP was operating “without adequate oversight and management of water resources, without a piped supply of potable water, [and with] inadequate monitoring of groundwater abstraction,”³⁴² increasing the risk that groundwater resources will become less available to nearby communities as the CIP continues to operate and expand.

iv. Air pollution from the CIP and the power plant, including dust

Industrial activities taking place in the CIP emit dust and potentially chemical contaminants and vapors.³⁴³ The increase in population near the CIP could also cause more fuel, dust and other air pollution, leading to public health harms.³⁴⁴ Community members report that increased, heavy traffic on unpaved roads near the CIP is already causing large amounts of dust.³⁴⁵

³³⁶ CIA Update (2015), p. 58. There is also a risk that illegal fishing and harvesting activities will persist, despite the conservation efforts: *Id.*, p. 139.

³³⁷ 2015 ESMR ¶1.3.

³³⁸ 2011 ESMP, p. 26; CIA Update (2015), pp. 127, 139; 2014 ESMR ¶¶4.13, 4.39 and 4.42; HA-L1101 ESS, ¶¶4.1, 4.4, 4.16; ESIA, p. 67. The Massacre Transboundary Aquifer (“MTA”), a crucial source of groundwater for communities in Northeast Haiti, underlies the CIP. While it is believed that the CIP should have an adequate supply of water for the initial park tenants’ activities, data on the ability of the MTA to continue supplying sufficient water to the park is unknown. HA-T1179 is meant to assess water availability, quality, and an integrated water resources management in Northern Haiti: HA-L1101 ESS ¶¶2.7-2.8, 4.16-4.17.

³³⁹ ActionAid (2015), p. 13: “residents complained that too much water was being captured in the park in light of the 2014 drought.” In an interview, Ilna St Jean reported that a nearby well has run dry and that there is less water in the Trou-du-Nord river, impacting fish (11 July 2016, available on request).

³⁴⁰ See footnote 338.

³⁴¹ “[I]nadequate disposal and treatment of domestic sewage was identified as the probable source of contamination” (2015 ESMR, ¶4.8 and footnote 14), signaling either “inadequate disinfection or contamination... through breaks in the pipes” (2014 ESMR, p. 22). Additionally, the CIP’s fire station was built in the “immediate vicinity of the main productive well,” violating international standards and posing an additional pollution risk to the CIP’s water system: 2014 ESMR, ¶4.14.

³⁴² 2015 ESMR, ¶4.10.

³⁴³ CIA Update (2015), p. 127.

³⁴⁴ *Id.*, pp. 5, 127, 147-149.

³⁴⁵ Interviews with Dieudonné Florvil, Ilna St Jean and Anne Leroy dated 11 July 2016 (available on request).

The power plant, an associated facility of the CIP, uses heavy fuel oil and diesel. While this may replace “more polluting sources, such as small inefficient generators” to some degree,³⁴⁶ the power plant nonetheless produces pollution and greenhouse gases³⁴⁷ that leak into our air and could affect human health.³⁴⁸

v. Soil and land pollution from the CIP and the power plant

IDB recognized the possibility of soil contamination near the CIP site during its construction and operation,³⁴⁹ including from the accumulation and inadequate disposal of waste in and around the CIP.³⁵⁰ The CIP created a temporary solid waste facility to dispose of solid waste while a permanent landfill was constructed.³⁵¹ However, the temporary facility began deteriorating and waste accumulated near the CIP.³⁵² The capacity of the temporary facility was expected to be exceeded in 2016.³⁵³ There are plans to mitigate pollution and soil contamination by establishing an integrated management center for solid waste,³⁵⁴ but it is unclear to us whether these will be sufficient and implemented in time to prevent further waste build-up and pollution.

Waste accumulation is also an issue outside of the CIP, potentially due, in part, to the increase in population associated with this development.³⁵⁵ By 2030, if the population of communities in the northeast corridor of Haiti doubles or triples as expected, the generation of waste could increase anywhere from 1 to 1.4 million tons per year.³⁵⁶

In addition to solid waste, the CIP also produces hazardous waste for which Haiti lacks a proper treatment and disposal facility.³⁵⁷ Project documents indicate that a proper disposal facility should have been constructed within the CIP by the end of 2016,³⁵⁸ but we are unsure of the status of the facility and fear that hazardous waste may not be properly managed.

USAID also noted additional risks of soil and land pollution resulting specifically from the power plant.³⁵⁹

³⁴⁶ CIA Update (2015), p. 127.

³⁴⁷ *Id.*, pp. 147-148.

³⁴⁸ Power Plant ESIA, p. 85. USAID notes that “alternative energy sources should also be explored for use in future expansion phases of the power plant” to mitigate environmental concerns: Power Plant ESIA, p. 85.

³⁴⁹ 2011 ESMP, pp. 25-26; CIA Update (2015), p. 127.

³⁵⁰ 2014 ESMR, ¶¶4.25-4.26; 2015 ESMR, ¶4.17.

³⁵¹ *Id.*

³⁵² *Id.*; interviews with Louis Tirène and Ina St Jean dated 11 July 2016 (available on request).

³⁵³ CIA Update (2015), p. 61.

³⁵⁴ *Id.*

³⁵⁵ *Id.*, pp. 150-151; 2015 ESMR, ¶2.18.

³⁵⁶ CIA Update (2015), p. 150; CIA (2012), p. 28-29.

³⁵⁷ 2015 ESMR, ¶4.18.

³⁵⁸ *Id.*

³⁵⁹ Power Plant ESIA, p. 47-48. Improper disposal of toxic waste and petroleum could decrease vegetation in the areas near the power plant: 2011 USAID EA p. 48. Abandoned cement or gravel near the power plant facility could change the soil’s structure and increase soil erosion: Power Plant ESIA, p. 47.

vi. Poor employment conditions at the CIP

IDB recognized the potential for labor violations at the CIP³⁶⁰ and has since documented Sae-A's noncompliance with several labor codes and best practices, including proper compensation, overtime pay, occupational health and safety, lack of childcare and adequate maternity leave.³⁶¹ Women are disproportionately impacted by these violations, as the CIP is currently employing three times more women than men.³⁶²

It is reported that the wages at the CIP are low and often insufficient to provide basic living necessities.³⁶³ Female seamstresses who work at the CIP have reported “strong verbal pressure bordering on abuse” from supervisors to achieve high rates of production,³⁶⁴ and one pregnant employee said her supervisor physically struck her.³⁶⁵ Sexual harassment is an acknowledged risk within the textile industry in Haiti,³⁶⁶ and has reportedly been suffered by workers at the CIP.³⁶⁷ Additionally, the transportation system for workers to and from the CIP includes unsafe boarding practices and overcrowding, and the drivers often speed.³⁶⁸ An inadequate transportation system puts female employees' safety particularly at risk.³⁶⁹

While Better Work Haiti³⁷⁰ (“BWH”) and the Haitian Government have begun trying to improve the CIP's compliance with labor codes, the Tenth BWH Compliance Report documented “repeated failures” to comply with minimum wage obligations, health services and first aid, chemical and hazardous substances, and emergency preparedness.³⁷¹ While BWH trained more than 150 senior employees on labor compliance,³⁷² employees remain at risk of poor employment conditions until labor code compliance is monitored and fully implemented.

Two of Ilna St Jean's family members work at the CIP, and she worries about the employment conditions: “... [t]hey work a lot! If they want to pee, they can't even go out to the toilets. The chief stays there so they don't go out. There are people who are not feeling well, it's only when they fall that they let them out. ... I have a cousin whose fingers were cut like that [she shows three fingers cut]. They still haven't given him money ... a lot of them have eye sicknesses, heart sicknesses ... They hit workers often. They push them, they hit them ...”.

³⁶⁰ HA-L1101 ESS, ¶4.9.

³⁶¹ 2013 EMSR p. 15-16, 27; HA-L1101 ESS ¶3.18; HA-L1091 ESS, ¶3.16; 2015 ESMR, ¶4.32. *See also* Worker Rights Consortium *Stealing from the Poor: Wage Theft in the Haitian Apparel Industry* (15 Oct. 2013), pp. 6-7, 34 <http://bit.ly/2aTEkAo>.

³⁶² 2015 ESMR, ¶4.32.

³⁶³ *Stealing from the Poor*, p. 32.

³⁶⁴ Gender Action *CIP*, pp. 14, 16.

³⁶⁵ *Id.*, p. 16.

³⁶⁶ Social Impact Assessment (2012), p. 13; Gender Action *CIP*, p. 3.

³⁶⁷ Community interviews (details withheld to avoid identification/retaliation). We have not investigated these reports.

³⁶⁸ 2015 ESMR ¶4.26; HA-L1101 ESS, ¶4.31.

³⁶⁹ *Id.*

³⁷⁰ Better Work Haiti is a partnership effort between the International Finance Corporation and the International Labour Organization. It provides assessment, advisory and training services to companies, including S&H Global.

³⁷¹ 2015 ESMR ¶4.22. During a July 2015 analysis mission, IDB also discovered an absence of fire sprinklers in several buildings and a “lack of dedicated firewater storage”: *Id.*, ¶4.20.

³⁷² *Id.*, ¶4.31.

Members of our community report concerns about sexual harassment of women employed at the CIP, among other serious issues: “... *Everyday we hear about that, sometimes they fire women workers because of that.*”

vii. Other social impacts from the influx in population

As already indicated, the present and prospective increase in population associated with the development of the CIP and its associated facilities carries a number of risks. 18,000 workers are projected to work in the CIP by 2018,³⁷³ and the population of several Northeast Haiti communities, such as Limonade, Caracol, Trou du Nord and Fort Liberte, could double or triple by 2030.³⁷⁴ The demand on our resources and social services, which are already inadequate or inaccessible for some, will increase, including demands on potable water, health care, wastewater treatment, solid waste disposal, security and affordable housing.³⁷⁵ If this increase in population is not properly managed, we could experience an increase in crime, slum/shanty-town housing,³⁷⁶ public health crises,³⁷⁷ and tension between and within our communities.³⁷⁸ Local women are particularly vulnerable to any increase in violence.³⁷⁹

While the CIP has brought some job opportunities and strengthened some communities’ infrastructure,³⁸⁰ the towns of Limonade, Terrier-Rouge, and Trou-du-Nord have already reported that their limited resources are being strained.³⁸¹ Terrier-Rouge has seen an increase in the volume of waste and crime.³⁸² As already discussed, the broader area has experienced a sharp increase in the cost of living.³⁸³ Community members report that poor roads near the CIP are not coping with the increased heavy traffic, causing large amounts of dust and an increase in traffic accidents.³⁸⁴

³⁷³ *Id.*, ¶1.4.

³⁷⁴ CIA Update (2015), pp. 150-151. While only 2% of foreign workers were hired for construction work (*id.*, p. 46), as the CIP expands more foreign workers may be hired to work in the factories.

³⁷⁵ *Id.*, pp. 1, 135; 2015 ESMR, ¶¶4.4, 4.41, 4.45; 2014 ESMR, ¶¶4.42, 4.45; HA-L1101 ESS ¶4.9.

³⁷⁶ ESIA, pp. 102-103; Social Impact Assessment (2012), p. 6. As at May 2013, bidonvilles, or shantytowns, were already beginning to develop immediately outside of the CIP: Mitigating the Social Impacts of the Caracol Industrial Park (HA-T1181): Terms of Reference, ¶1.6 <http://bit.ly/2bkTyCS>.

³⁷⁷ Health risks include the spread of diseases like STDs, HIV/AIDS, cholera, and water-borne illnesses like typhoid and hepatitis: HA-L1076 Environmental and Social Strategy, ¶5.16 [HA-L1076 ESS] available at Annex 3 to HA-L1076 Project Profile; HA-L1101 ESS, ¶4.18). The increase in population could also increase waste accumulation, creating conditions conducive to diseases spread via rodents, birds, or insects: 2011 ESMP, p. 48.

³⁷⁸ 2015 ESMR, ¶¶4.25, 4.41; 2014 ESMR, ¶4.42. We note that some tension has already occurred, with protests over a lack of energy and demands from some local communities, including Fort Liberte and Ouanaminthel, to be connected to the CIP power plant grid. A protest appears to have tragically resulted in the death of at least four people, including an infant and a 16 year-old boy: see Kim Ives “Nationwide Uprising Gains Strength in Haiti” (Global Research, 3 Dec. 2014) <http://bit.ly/1wecLrH>.

³⁷⁹ 2015 ESMR, ¶4.25; 2011 ESMP, p. 49; CIA Update (2015), p. 42. Including in the context of sex work as, unfortunately, sex trafficking, exploitation of prostitution and child prostitution are prevalent in Haiti, with little regulation of prostitution and little police protection: see Bureau des Avocats Internationaux and others *Violence against Women, Trafficking, Prostitution, and Exploitation by UN Peacekeepers* (22 Jan. 2016), <http://bit.ly/1R402Oy>.

³⁸⁰ CIA Update (2015), pp. 75-78.

³⁸¹ *Id.*, pp. 76-78.

³⁸² *Id.*, p. 77.

³⁸³ See Table 2 and the subsequent discussion; and section III.B.ix.

³⁸⁴ Interviews with Dieudonné Florvil, Ina St Jean and Louis Tirène dated 11 July 2016 (available on request).

These strains will only be exacerbated as the CIP continues to attract more people to our communities. IDB and other stakeholders in this project should have ensured that adequate public services were in place before increasing the demand on them.

B. IDB failed to properly inform us about these environmental and social risks and their management

The environmental and social risks and impacts listed above have not been properly explained to us nor to other communities living in the affected areas. We do not have sufficient information, in an appropriate format or language, to understand: how likely and how serious these risks and impacts are; how they might affect us now or in the future; and how successfully they are being managed. As a result, we believe that IDB has failed to ensure meaningful community consultation about environmental and social risks and impacts and their management.

As previously discussed, the IDB Environmental and Safeguards Compliance Policy requires timely and adequate consultation and information during the environmental assessment process.³⁸⁵ Category “A” operations require consultations at least twice during project preparation, during the scoping phase of the environmental assessment or due diligence processes, and during the review of the assessment reports. The ESIA must be prepared with its ESMP and disclosed to the public prior to IDB’s analysis mission. For consultation purposes, appropriate information must be provided in location(s), format(s) and language(s) to allow for affected parties to be meaningfully consulted, to form opinions and to comment on the proposed course of action. During execution, affected parties should be kept informed of project-related environmental and social mitigation measures affecting them.³⁸⁶

As discussed above in section III.B.vii, there was a grave lack of meaningful community consultation generally, including on the environmental and social impacts of this project, in breach of the Safeguards Policy, ¶¶4.19 and 4.20:

- There was no meaningful consultation on the content or findings of the ESIA, nor the proposed ESMP, prior to the finalization of those documents and the Board’s approval of the project. The only community consultation meeting referred to in the ESIA was held on 27 January 2011, however this primarily concerned the resettlement impacts of the CIP.³⁸⁷ Other meetings relating to resettlement were held in June 2011, but to our knowledge the broader social and environmental impacts of the project were not discussed.³⁸⁸ The first meeting, identified by IDB documents, that specifically covered the ESIA and ESMP was on 15 September 2011,³⁸⁹ after the finalization of the ESIA and after the IDB Board had approved the project, despite meetings being held much earlier with national and local officials.

³⁸⁵ Safeguards Policy, ¶¶4.19 and 4.20.

³⁸⁶ *Id.*, ¶4.20.

³⁸⁷ See the results of this meeting summarized in ESIA, Annex 2, pp. 8-9. Other meetings were held with local and national authorities and business interests, but cannot be described as community consultations.

³⁸⁸ RAP (2011), Annex 2, p. 129.

³⁸⁹ IDB’s List of Major Consultations. See footnote 286 above. Further meetings were held through Dec. 2011.

- The ESIA itself was incomplete, by IDB’s own admission, and was eventually supplemented by additional studies,³⁹⁰ as a result of which the ESMP was also updated.³⁹¹ However, we are not aware of any later consultations on the outcomes of these studies or on the development of updated management plans.³⁹²
- At no point were any major project documents or information made available to the victims in an appropriate format and language. We have not seen a single project document in Creole, other than the 2013 compensation agreements. Nor was information about the ESIA disseminated for comment in an appropriate format, given low levels of literacy.³⁹³ The large group meetings held between September and December 2011 did not facilitate *meaningful* engagement with the affected community.
- We are not aware of any specific meetings held to facilitate consultation with women, who faced distinct and disproportionate environmental and social risks.

Finally, we do not feel that we have been adequately consulted as further loans have been approved and as circumstances have changed, in breach of the consultation requirements as they applied to the subsequent loans. For example, an updated Cumulative Impact Assessment was conducted in 2015. The authors of that study consulted project representatives and “a sample of municipal representatives,” but not directly affected community members.³⁹⁴ Given the project’s frequent failures to comply with IDB environmental and social directives, as admitted by IDB,³⁹⁵ the affected community should have been meaningfully consulted on the environmental assessments, environmental and social management plans and reports, and the action plans for resolving non-compliance with relevant safeguards,³⁹⁶ developed for subsequent loans.

While the preparation of the ESIA and the ESMP is the responsibility of the borrower, those products must be submitted to IDB for review prior to the approval of the project. IDB must ensure compliance with its standards, and take into account the quality of the documentation in its project approval process.³⁹⁷ In this case, IDB failed to ensure compliance, in circumstances where the lack of consultation is obvious from the project documents themselves, in breach of the Safeguards Policy, ¶¶4.19 and 4.20.

As a result of IDB’s failure, we have not been given meaningful opportunities to understand the actual and potential impacts of the CIP on our communities, or to provide input on the management of those risks and impacts.

³⁹⁰ Including the Social Impact Assessment (Feb. 2012), the solid and hazardous waste management study (Mar. 2012), the Cumulative Impact Studies (Aug. 2012), the rapid ecological baseline (Oct. 2013), the Temporary Sewage Treatment System Environmental Assessment (Jan. 2014); among others.

³⁹¹ Including the 2012 ESMP and the waste water management plan (Dec. 2014).

³⁹² While some focus group meetings related to the CIA (2012) may have included directly affected community members, we are not aware of any broader, open meetings on the outcome of that report and any subsequent changes to the ESMP: *see* the IDB’s list of major consultations, at footnote 286; CIA (2012), p. 9.

³⁹³ For further details, *see* section III.B.vii.

³⁹⁴ CIA Update (2015), pp. 6-7.

³⁹⁵ *See* section II.

³⁹⁶ Safeguards Policy, ¶4.29.

³⁹⁷ *Id.*, ¶4.19.

C. What the Kolektif wants from this process

Accordingly, the Kolektif requests a new, meaningful, consultation process, explaining the current environmental and social risks and impacts and facilitating the affected communities' input into how those will be managed. This process must be designed to ensure that these complex issues are well-understood by the affected communities, with specific, smaller group meetings designed to facilitate the consultation and participation of relevant sections of our communities, including women, fisherfolk, etc.

V. Our attempts to resolve these issues have been unsuccessful

We and our partners³⁹⁸ have tried to engage constructively with IDB and UTE to resolve these issues. We had hoped to collaborate on an evaluation of our socio-economic circumstances and a subsequent reevaluation and redesign of the compensation packages. Although IDB's and UTE's initial reaction in appeared positive, since then we have only received delays, unfulfilled commitments, and, in some instances, refusals to engage.³⁹⁹

The Kolektif formed in April 2014. Both before and after that date,⁴⁰⁰ our partner organizations communicated with UTE on behalf of our communities (in close collaboration with now members of the Kolektif) regarding a range of matters relating to the displacement and resettlement process.

The Kolektif initiated direct contact with UTE Director, Mikael de Landsheer, and IDB Director in Haiti, Mr. Gilles Damais, with a letter dated 3 April 2016 (sent 15 April 2016) signed by 225 individual victims of displacement. This initial letter requested detailed information on the resettlement and compensation processes,⁴⁰¹ and proposed a meeting to take place by 29 April. Met with silence, the Director of ActionAid Haiti ("AAH"), Yvette Etienne, attempted to reach IDB and UTE Directors between 22-29 April through a series of texts and emails. IDB and UTE finally acknowledged our letter on 28 April and agreed to meet with us on 5 May 2016.

Initially, the tone of the meeting seemed constructive.⁴⁰² Although IDB and UTE were only able to provide partial answers to our requests for information at the meeting, they committed to providing more detailed answers by 13 May 2016. Further, IDB said that it would conduct an evaluation of our socio-economic circumstances and provide its conclusions by the end of the year. IDB indicated that the Kolektif would be consulted during the evaluation and that a new phase of compensation and rehabilitation *may* be initiated depending on the results of the evaluation.⁴⁰³

³⁹⁸ See Annex 1.

³⁹⁹ A detailed timeline of our communication is attached in Annex 12.

⁴⁰⁰ Between 2013 and 2015.

⁴⁰¹ Our letter specifically requested information on how the compensation was calculated, the number of affected families, the "land for land" option, and the selection of natural leaders representing the victim families.

⁴⁰² See Annex 4, our meeting notes; and Annex 5, an Aide Memoire circulated by IDB and UTE after the meeting. Although it is not reflected in Annex 5, IDB confirmed during the May meeting that the compensation plan was hastily completed and that there were issues with the selection process for natural leaders, the consideration of gender issues and delays in completing certain steps.

⁴⁰³ See Annex 4, meeting notes.

IDB and UTE, however, largely failed to follow through on their commitments. The 13 May deadline passed, and we did not receive the promised information. The AAH Director, yet again, sent several emails and texts to UTE and IDB Directors requesting that they honor their commitment to provide detailed answers to our questions. Three weeks later than promised, and eight weeks after our initial correspondence, UTE sent the Kolektif written answers and supporting documents. These answers, however, contained inaccuracies⁴⁰⁴ and were incomplete with: no details on how women's needs were specifically considered; no complete list of victim families and how much compensation was received;⁴⁰⁵ no explanation for why the list of vulnerable people changed; no details on how natural leaders were selected; and almost no details on the critical decision to abandon the "land for land" compensation option.

Since receiving this inadequate response, we have reached out to IDB and UTE numerous times, to little avail. On 29 June 2016, we sent a letter to IDB and UTE explaining our specific concerns, requesting more information about the proposed socio-economic evaluation and proposing to meet on 8 July. Again, we received no response until the AAH Director sent follow-up texts and emails to IDB and UTE leadership. On 6 July, UTE and IDB responded with a refusal to meet, stating that they were moving the evaluation forward. UTE and IDB did not offer to meet again until after the evaluation's conclusions are finalized.

Most recently, we sent follow-up letters to UTE and IDB dated 10 July 2016 (sent 13 July). These follow-up letters raised concerns about the lack of consultation and participation of victims in the evaluation process. We are concerned that IDB's and UTE's actions risk repeating the same errors of earlier due diligence and consultation processes. In particular:

- In the absence of any commitment to ensure meaningful community consultation and participation in the design and development of the evaluation, the evaluation risks failing to properly understand the situation of those displaced; and
- The lack of any proposed deadline could result in further, unnecessary delay to the process of compensating and rehabilitating the livelihoods of those displaced.

Accordingly, we requested that, before the evaluation starts, UTE and IDB:

- Meet with us to discuss the proposed evaluation;
- Provide us, in advance, a copy of the terms of reference of the evaluation and a commitment that our comments on these terms of reference will be considered;
- Commit to involving the Kolektif during the evaluation process, including through an opportunity to review and comment on any versions and recommendations, with a clear and precise schedule of engagement; and
- Commit that the evaluation will take into account the citizens' assessment (the in-depth interviews and other research) conducted by the Kolektif.

⁴⁰⁴ For example, the answers state that all women heads of households were considered vulnerable, which we understand to be incorrect: *see* section III.B.iv above.

⁴⁰⁵ The supporting documents only include a partial list of 367 victim families and a list of total payments, without specifying to whom those payments were made and for what: Annex 13, UTE *Liste des personnes compensées définitivement (compensation monétaire) + montants définitifs payés*.

We received a response from UTE on 26 July 2016. Although the response attempted to assure us that the evaluation process would be participatory, it provided no details or timeframe for consulting with the victims or the Kolektif. The response failed to address any of our specific concerns or requests; it merely stated that all concerns would be addressed “in one form or another.” Additionally, the response dismissively suggested that the July 10 letter was not signed by victims, and only by civil society organizations, which it implied to be “troublemaking.”⁴⁰⁶

Although on 2 September, we reiterated our desire to work constructively with IDB and UTE, given UTE’s dismissive tone in its 26 July letter, we lack confidence that our concerns are being taken seriously at this time. We have seen no evidence that the promised evaluation is underway.

Nonetheless, we remain optimistic that a constructive dialogue between the Kolektif, its representatives, IDB and UTE is possible.⁴⁰⁷ Given the delays that we have experienced to date, and

⁴⁰⁶ The July 10 letter was clearly signed by the Kolektif, which, as previously discussed, represents approximately 225 victims and victim families. UTE had previously engaged with our partner organizations and is aware of their close collaboration with us.

⁴⁰⁷ We are hopeful that Sae-A, the major tenant of (and potentially investor in) the CIP will also join this dialogue.

IDB's and UTE's poor record of consulting the victims on actions that directly affect their lives, we request the support of MICI's Consultation Phase to provide a framework for more structured engagement. Without MICI providing a framework for this dialogue, we fear that IDB and UTE will continue to dismiss and ignore our voices and concerns. If dialogue is not possible, or fails to resolve the issues, we request that the complaint proceed to Compliance Review.

Please do not hesitate to contact us and our representatives with any questions you may have regarding this complaint, in accordance with the contact details set out in Annex 1. We look forward to hearing from you about this important matter.

Sincerely,

Pou

Kolektif Pèyizan Viktim tè chabè'

[Signature]

Kòdonatè: Pèvi Jocelyn

[Signature]
PROSPÈR ZORY
sèkretè

Pou: APV

[Signature]

Menard Wilson
sèkretè

Pou

Tèt Kole Teyizan Ayisyen

[Signature]

Jacques Charles

Pou
Action Pour la Reconstitution et la Defense de l'Environnement (AREDE)

[Signature]
Coord. Milogène



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Annex 8 – Sample 2011 Food security and lost harvest agreement (translation)

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Annex 11 – Table of compensation (collated by the Kolektif and its partners)

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- Alix Innocent, Chargé de Coordination du PAR *Rapport: Rencontre de Discussions Pour La Mise En Ceuvre d'un Cadre de Négociation entre L'UTE et Les Agriculteurs de Chabert* (19 Aug. 2013)
- INFP Rapport d'exécution du Programme de formation professionnelle lié à l'implantation du Parc Industriel de Caracol (Oct. 2012)
 - Annex: Formation UTE/INFP (Caracol) Liste des participants (x4)
- UTE *Plan de compensation: Choix d'options d'accompagnement par les personnes vulnérables*
- UTE *Cotisations a payer pour les agriculteurs délocalisés dans le cadre du programme PIC*
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Annex 14 – Acte d'Engagement between UTE and L'Association des Petits Planteurs du Nord Est