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# ARTISANAL DIAMOND MINING SECTOR ASSESSMENT IN CÔTE D'IVOIRE

## CONSULTANCY REPORT



**OCTOBER 2012**

This publication was produced for review by the United States Agency for International Development. It was prepared by Tetra Tech.

Mission Dates (in Côte d'Ivoire): September 12–29, 2012  
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Prepared for the United States Agency for International Development, USAID Contract Number EPP-I-00-06-00008-00, under the Property Rights and Resource Governance Program (PRRGP) Task Order, under the Prosperity, Livelihoods, and Conserving Ecosystems (PLACE) Indefinite Quantity.

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Cover photo: Women panning for gold outside of Kiego.

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## **DISCLAIMER**

The authors' views expressed in this publication do not necessarily reflect the views of the United States Agency for International Development or the United States Government



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# ACRONYMS AND ABBREVIATIONS

AFD	<i>Groupe Agence Française de Développement</i>
CAR	Central African Republic
CFA	<i>Communauté Financière Africaine franc</i>
COMINE	<i>Commission Minière Interministérielle</i>
DG	Direction of Geology
DM	Direction of Mining
EITI	Extractive Industries Transparency Initiative
EU	European Union
FOCI	Friends of Côte d'Ivoire
GRPIE	Group for Research and Lobbying on Extractive Industries ( <i>Groupe de Recherche et de Plaidoyer sur les Industries Extractives</i> )
GVC	<i>Groupements à Vocation Coopérative</i> (village-based artisanal mining management committee)
JVE	Young Volunteers for the Environment ( <i>Jeunes Volontaires pour l'Environnement</i> )
KP	Kimberley Process
KPCS	Kimberley Process Certification Scheme
MMEP	Ministry of Mines, Energy and Petroleum
NGO	Nongovernmental Organization
NRM	Natural Resource Management
PFR	Land Property Rights Plan ( <i>Plan Foncier Rural</i> )
PNGTER	Rural Equipment Management Project ( <i>Projet National de Gestion des Terroirs et d'Équipement Rural</i> )
PRADD	Property Rights and Artisanal Diamond Development
PRRGP	Property Rights and Resource Governance Program
SODEMI	State Society for Development of the Mining Industry ( <i>Société pour le Développement Minier de la Côte d'Ivoire</i> )
UN	United Nations
UNOCI	United Nations Operation in Côte d'Ivoire
USAID	United States Agency for International Development
USG	United States Government
USGS	United States Geological Survey

# EXECUTIVE SUMMARY

Tetra Tech was tasked to conduct an artisanal diamond-mining sector assessment in Côte d'Ivoire in view of possible future US government (USG)-funded assistance to the country in support of achieving and maintaining compliance with Kimberley Process (KP) requirements. Côte d'Ivoire is currently considered non-compliant regarding KP requirements and remains subject to a United Nations (UN) resolution placing an embargo on import of the country's diamonds into any KP member state.<sup>1</sup> The type of assistance under consideration is in part inspired by USAID initiatives in support of KP requirements based on a property rights approach being implemented in the Central African Republic (CAR) and Liberia. However, the mission's assignment extends only to general identification of programmatic opportunities in Côte d'Ivoire for consideration of decision makers evaluating prospects for a potential assistance program. Actual design of such an assistance program and its activities, in the event that the decision is taken to proceed to a next step, will be conducted subsequent to the present sector assessment. The ambition of the present assessment is to inform any potential future design efforts by providing all pertinent baseline information and analysis regarding the artisanal diamond-mining sector in Côte d'Ivoire.

Diamonds play a relatively minor role in the national economy of Côte d'Ivoire. Even within the mining sector, diamond production does not appear to be a major priority of the government. Nevertheless, serious flaws in current governance of the artisanal diamond-mining sector pose an important security issue for Côte d'Ivoire, particularly given that the country remains subject to a delicate and risky post-conflict environment. The current post-conflict and largely dysfunctional system of internal controls of diamond production and marketing is not in compliance with KP rules. In addition to the security issues raised by non-compliance, poor governance of the artisanal mining sector diminishes economic prospects for specific categories of actors, most notably miners, traders and customary land property rights holders and their communities. However, the situation should not be regarded as overly bleak; in spite of the challenges, realistic opportunities exist to address and improve the lack of transparency from the diamond production and marketing chain, and contribute to the local development and environmental goals of mining communities.

The primary opportunity is to establish an appropriate enabling environment for good governance at the local level. Achievement of good local governance will support both transparency in diamond production and marketing and improved local livelihoods. The enabling environment will be built on a few fundamental elements, including identified and registered artisanal miners, clear and secured land property rights at mining sites, channeled diamond revenues that contribute to local development, reduced negative environmental impact from artisanal mining, and enhanced awareness of miners regarding legislative and policy issues. A useful complement to achievement of better local information would be increased awareness of the national population regarding the artisanal mining sector.

While the components of an appropriate enabling environment for sector-specific good governance in Côte d'Ivoire are similar to those supported by USAID in other artisanal diamond-producing countries, the formula to build each component must be tailored to the unique context of Côte d'Ivoire. At the national level, the fragility of political leadership probably far surpasses the (not-inconsiderable) fragility present in a number of other West and Central African diamond-producing countries. More specific to the artisanal diamond-mining sector, among the most important of the defining features—both negative and positive—in Côte d'Ivoire are a 12-year gap in government oversight of artisanal mining, a geological structure that favors

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<sup>1</sup> The embargo was established by UN resolution 1643 (2005), paragraph 6, which establishes "...measures preventing the importation by any State of all rough diamonds from Cote d'Ivoire." The embargo was extended until April 30, 2013 by UN resolution 2045 (2012). It is anticipated that the justification for the embargo will be reviewed in March 2013 to be followed by a recommendation to lift the embargo or to further extend it.

industrial over artisanal production of diamonds, path-breaking innovation but also politicization of existing rural land tenure legislation, relatively diversified local economies, and availability of a demonstrated organizational and diamond sector management model at the village level that is legitimized based on customary land property rights.

The diverse set of baseline conditions for artisanal diamond mining in Côte d'Ivoire creates both opportunities and challenges for targeting improved artisanal mining sector governance in combination with measures to enhance the livelihoods of miners and mining communities. A list of such opportunities and challenges follows. Activities intended to build on the opportunities listed would require careful attention to challenges during program design and planning, and maintenance of flexibility to adjust as needed. Preliminary thinking on risk mitigation appears below under the label *possible risk adjustment measures*.

#### **TOPIC: RURAL LAND TENURE LEGISLATION AND SECURITY OF LOCAL LAND PROPERTY RIGHTS**

- **Opportunity:** Secure select land rights of customary landholders in artisanal diamond-mining zones.
- **Associated challenge:** The politicized environment of rural land tenure.
- **Possible risk reduction measures:** Focus on select provisions of the law and current priorities of the Ministry of Agriculture (especially rights associated with definition and *possible* demarcation of village *terroir*) to design a pilot activity to formalize collective customary land rights at the village level. This approach is in many ways similar to the approach of the GVC whose history pre-dates the 1998 Rural Land Tenure Law (note: the GVC is the village-based artisanal mining management committee that was in place in a number of villages in the *Société pour le Développement Minier de la Côte d'Ivoire* [SODEMI] permit area prior to 2002).

#### **TOPIC: VILLAGE-LEVEL ORGANIZATION AND MANAGEMENT OF ARTISANAL DIAMOND-MINING**

- **Opportunity:** Build on the GVC model by supporting its improvement and reestablishment (in the SODEMI permit zone) and diffusion (outside of the SODEMI permit zone).
- **Associated challenge:** SODEMI is not interested in establishing or supporting GVCs outside of its permit zone, so it is not clear what options exist for a technical support agency in the long term.
- **Possible risk reduction measures:** Identify and explore options for government long-term institutional linkages and technical support for village-level management and benefits from artisanal mining. Integrate support for village organization building (e.g., GVC) with pilot activities to operationalize the concept of village *terroir*.

#### **TOPIC: LOW LEVEL OF TECHNICAL SKILLS AND KNOWLEDGE OF MINERS TO EFFICIENTLY PRODUCE AND MARKET DIAMONDS AT THE ARTISANAL LEVEL**

- **Opportunity:** Reinforce technical skills and knowledge of miners to quickly increase efficiency of production and marketing, and to increase profitability.
- **Associated challenge:** The future of artisanal diamond mining in Côte d'Ivoire is questionable based on the geological context.
- **Possible risk reduction measures:** Design short-term technical assistance for artisanal miners as a transition activity toward future-oriented diversification of economic activities, as well as to build capacity to negotiate with industrial mining interests. Explore ways to obtain deeper understanding of geological potential and limits to artisanal mining of diamonds in Côte d'Ivoire. Possible resources to lead such exploration include SODEMI and/or the Oil, Gas and Energy Department of the World Bank. In addition, facilitate development of standards for corporate responsibility vis-à-vis local populations in mining zones.

## TOPIC: REESTABLISHING LOCAL GOVERNMENT AUTHORITY OVER THE ARTISANAL MINING SECTOR

- **Opportunity:** A period of renewal presents a window of opportunity to test and improve methodologies for local application of laws. In Séguéla, the Sous Préfet and the Regional Mining Director appear to be particularly committed to engaging and exploiting opportunities for local organization and development in conformity with official policy and laws. Moreover, the Sous Préfet wields considerable local authority based on Ivoirian law.
- **Associated challenge:** Non-official actors in positions of informal authority, and possibly playing roles in the diamond production and marketing chain, appear to remain in place in and around Séguéla. These non-official actors pose a risk of interference or resistance to efforts to reestablish the rule of law in northern Côte d'Ivoire.
- **Possible risk reduction measures:** Work progressively but cautiously toward registration of artisanal miners and recording/collection of production information. Closely monitor the impact of these activities, and be ready for mid-course adjustments, so that unintended effects are avoided.

## TOPIC: ARTISANAL DIAMOND MINERS ARE CURRENTLY UNREGISTERED (AND ILLEGAL)

- **Opportunity:** Increase transparency in the artisanal diamond-mining sector by preparing for eventual registration of miners.
- **Associated challenge:** Because artisanal mining for diamonds and gold in Côte d'Ivoire is illegal, official registration of artisanal miners is not possible at this time. Another complicating factor is that most artisanal mining in Côte d'Ivoire—even in so-called diamond-mining zones, such as outside of Séguéla—is for gold rather than for diamonds. A program initiated to register artisanal miners would need to consider whether and to what extent to target artisanal gold miners.
- **Possible risk reduction measures:** To the extent institutionally and legally possible, conduct preparatory and non-controversial activities accompanied by a strong information diffusion component. Frame activities as preliminary steps toward registration of artisanal miners following legalization of their activities (i.e., lifting of the embargo on export of diamonds). Associate local authorities, especially the Sous Préfet and the Departmental Director of Mines. Package this type of activity with technical support for local organization, formalization of land rights (at the *terroir* level) and activities to improve local livelihoods.

## TOPIC: LOCAL ECONOMIES ARE DIVERSIFIED AND LOCAL ECONOMIC INTEREST GROUPS ARE DYNAMIC

- **Opportunity:** Identification, development and quick local adoption of popular and feasible development and environmentally oriented activities.
- **Associated challenge:** Available resources may be spread too thin if the portfolio of supported activities grows too large.
- **Possible risk reduction measures:** Design a participatory process for identification, prioritization and design of activities targeting enhanced livelihoods and environmental goals. Design and implement effective awareness-raising campaign targeting transparency of the artisanal mining sector and compliance with KP rules, but also promoting diversified economic activities.

## TOPIC: LEGISLATIVE REFORM

- **Opportunity:** Ongoing policy reform and implementation strategizing in the mining and land tenure sectors opens the door for constructive policy dialogue and improved future policies. A specific topic of interest to any KP-supporting program is the degree to which rural actors are able to access legal rights-securing instruments such as mining authorizations and land certificates or titles. Policy

dialogue leading to lower costs and complexity of procedures for obtaining such instruments potentially result in significant benefits to policy implementation.

- **Associated challenge:** The timetable for reform of the mining code will be difficult to take advantage of given the current target for new legislation is early 2013. Any dialogue based on rural land tenure policy will take place in a strained environment and be subject to contentious political debates.
- **Possible risk reduction strategies:** It may be unwise to rush into (at least some aspects of) policy dialogue prior to gaining deeper understanding of technical issues (artisanal mining) and the nature of political minefields (rural land tenure). Nevertheless, implementation of any activities targeting increased transparency in the artisanal mining sector, and select provisions of the rural land law, should be carefully monitored and results analyzed in preparation for eventual participation and/or facilitation of policy dialogue and achievement of meaningful contributions to policy reform. A possible exception to planned delays in initiating a policy dialogue is in regard to the topic of accessibility to rural actors of property securing instruments (artisanal mining authorizations and land titles or certificates).

#### **TOPIC: LOW LEVELS OF INFORMATION ON SPECIFIC THEMES AT LOCAL AND NATIONAL LEVELS**

- **Opportunity:** Design and implement appropriate information and awareness-raising campaigns at the local and national levels. The local campaigns would feature KP principles and rules, as well as national mining and land tenure policies. The national campaign would enhance general understanding of the conditions and issues predominant in the artisanal mining sector.
- **Associated challenge:** This activity is important but needs to be designed taking careful account of sensitivities of certain actors who may have developed distorted views of the motivation and impact of the embargo on diamond exports, or politically influenced views of rural land tenure policy.
- **Possible risk reduction strategies:** Solicit partners and develop networks of civil society organizations that are already active in sponsoring information diffusion on topics related to artisanal diamond mining and rural land tenure.

#### **TOPIC: CONFLICT MANAGEMENT**

A final note is reserved for the topic of conflict management. That land conflict is a significant issue in Côte d'Ivoire is self-evident. Land conflict is both a national and a local issue. Any assistance program implemented in the context of artisanal diamond mining would be committing a serious error if it did not develop a sound strategy for land conflict management. At least in its early stages, such a program should probably be purely local in nature and implemented as a pilot activity. The most likely path to success will result from design of conflict management program with abundant input and collaboration with local populations and customary authorities. Facilitated public debates could clarify appropriate roles for village-based institutions such as the GVC (established to manage local artisanal mining activities) and the village rural land tenure committee (established by the 1998 Rural Land Tenure Law).



# 1.0 REPORT

# INTRODUCTION

## 1.1 MISSION BACKGROUND, OBJECTIVES AND RESEARCH THEMES

Tetra Tech was tasked to conduct an artisanal diamond-mining sector assessment in Côte d'Ivoire in view of possible future US government (USG)-funded assistance to the country in support of achieving and maintaining compliance with Kimberley Process (KP) requirements. Côte d'Ivoire is currently considered non-compliant regarding KP requirements and remains subject to a United Nations (UN) resolution placing an embargo on import of the country's diamonds into any KP member state.<sup>2</sup> The type of assistance under consideration is in part inspired by USAID initiatives in support of KP requirements based on a property rights approach being implemented in the Central African Republic (CAR) and Liberia. However, the mission's assignment extends only to general identification of programmatic opportunities in Côte d'Ivoire for consideration of decision makers evaluating prospects for a potential assistance program. Actual design of such an assistance program and its activities, in the event that the decision is taken to proceed to a next step, will be conducted subsequent to the present sector assessment. The ambition of the present assessment is to inform any potential future design efforts by providing all pertinent baseline information and analysis regarding the artisanal diamond-mining sector in Côte d'Ivoire.

The diamond sector assessment in Côte d'Ivoire was designed to pay particular attention to property rights systems—formal and informal—that are in place and have a role in governing access on the part of artisanal miners to diamond resources. The present diamond sector assessment approach and methodology builds on previous artisanal diamond sector “scoping” missions conducted in the CAR, Guinea, Sierra Leone and Liberia. The primary areas of investigation include:<sup>3</sup>

- Mining and land tenure legislation and policy,
- Government systems in support of the Kimberley Process,
- Informal tenure systems and arrangements for land and minerals,
- Artisanal diamond-mining production and marketing strategies and practices,
- Environmental and development opportunities and constraints,
- Key constraints to implementing the KP in Côte d'Ivoire, and
- Identification of programmatic opportunities to support KP implementation and improvement of tenure security and livelihoods for artisanal mining communities.

Following this introduction, the present report provides a brief description of the context for artisanal diamond mining in Côte d'Ivoire. Subsequent report sections are organized on the basis of the above-noted areas for investigation.

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<sup>2</sup> The embargo was established by UN resolution 1643 (2005), paragraph 6, which establishes “...measures preventing the importation by any State of all rough diamonds from Cote d'Ivoire.” The embargo was extended until April 30, 2013 by UN resolution 2045 (2012). It is anticipated that the justification for the embargo will be reviewed in March 2013 to be followed by a recommendation to lift the embargo or to further extend it.

<sup>3</sup> The list paraphrases and summarizes the research categories and questions listed in the mission scope of work and attached to this report as Annex I.

## 1.2 THE MISSION TEAM

The mission was conducted by Kent Elbow, land tenure and natural resource management (NRM) specialist, and Sebastien Pennes, Chief of Party of the USAID Property Rights and Artisanal Diamond Development (PRADD) Project in the CAR. In Côte d'Ivoire, the team was joined by Hermann Kouakou, General Secretary of the Group for Research and Lobbying on Extractive Industries (*Groupe de Recherche et de Plaidoyer sur les Industries Extractives* [GRPIE]), a nongovernmental organization (NGO). Mr. Kouakou efficiently facilitated logistics and scheduling throughout the mission's sojourn in Côte d'Ivoire, and provided valuable information and insights by virtue of his role as an active KP observer and a Friend<sup>4</sup> of Côte d'Ivoire. The mission also benefited from the part-time participation of Jane Dennison, Mercury Program Officer at the US Department of State, and Dominique Bally Kpokro, Head of Chemistry, Biodiversity and Health at Young Volunteers for the Environment (*Jeunes Volontaires pour l'Environnement* [JVE] Côte d'Ivoire). Ms. Dennison and Mr. Kpokro were in Côte d'Ivoire conducting a reconnaissance mission on potential mercury use in gold extraction, and their participation in portions of the diamond-mining sector assessment added to the richness of collected information and widened the thematic perspective of the mission. Finally, during the week of September 24 of 2012, the mission team overlapped with and benefited from a simultaneous technical visit<sup>5</sup> of the Friends of Côte d'Ivoire (FOCI). The opportunity to piggyback onto the meeting schedule organized by FOCI in Abidjan for September 24-25 was eagerly exploited by the diamond sector assessment team to its great benefit. The September 24 meetings were also attended by Tim Fella, USAID Conflict and Land Tenure Advisor, which afforded yet another valuable opportunity for information exchange as well as USAID guidance of benefit to the mission team.

The mission team also recognizes the significant contribution to mission objectives on the part of the US Embassy in Abidjan. US Embassy staff proved to be extraordinarily proactive in anticipating the logistical and information needs of the mission team, and in paving the way toward successful achievement of objectives. In this regard, the team would like especially to thank William Covin, Political/Economic Assistant and Environmental Analyst, and Glenn Slocum, USAID Development Counselor.

## 1.3 MISSION CALENDAR, ENTITIES INTERVIEWED, AND ACTIVITIES

Dr. Elbow and Mr. Pennes arrived in Abidjan late September 13/early September 14, 2012 and departed Côte d'Ivoire on September 27 (Dr. Elbow) and September 29 (Mr. Pennes). Interviews were conducted in Abidjan September 13-16, followed by a week of site visits and interviews in the diamond-mining zone of Séguéla (September 17-23). Subsequently, Dr. Elbow and Mr. Pennes participated in Abidjan portion of the FOCI schedule of meetings on September 24-25, with Dr. Elbow remaining in Abidjan for additional meetings until departure from country on September 27. Mr. Pennes accompanied the FOCI mission to Séguéla on September 26, returning to Abidjan on September 28, for departure on the following day.

The overall mission calendar, activities, and persons and organizations<sup>6</sup> interviewed are presented in the following table.

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<sup>4</sup> The Friends of the Côte d'Ivoire is an ad hoc committee of the KP Working Group on Monitoring. FOCI has been actively monitoring events in Côte d'Ivoire's diamond sector since 2009.

<sup>5</sup> The inter-linkage and mutual benefits shared between the two missions were further reinforced by Sebastien Pennes' participation as a team member of each of the two missions: both the PRADD mission and the FOCI mission.

<sup>6</sup> The complete list of interviewees is attached to this report as Annex 2.

**TABLE I.I. OVERALL MISSION CALENDAR**

<b>Dates</b>	<b>Team Members</b>	<b>Location</b>	<b>Principal entities interviewed</b>
September 13-16	Elbow, Pennes, Kouakou	Abidjan	<ul style="list-style-type: none"> <li>• US Embassy</li> <li>• Ministry of Mines, Petroleum and Energy (MMEP)</li> <li>• General Direction of Mines</li> <li>• KP focal point</li> <li>• General Direction of Mines</li> <li>• NGOs GRPIE and Union Africaine</li> <li>• Journalists (freelance and Reuters News Service)</li> <li>• Ministry of Agriculture (advisor to Rural Land Tenure)</li> <li>• Sous Préfet de Séguéla</li> </ul>
September 17-23	Elbow, Pennes (returned to Abidjan September 19), Kouakou	Séguéla	<ul style="list-style-type: none"> <li>• Sous Préfecture of Séguéla</li> <li>• Departmental Direction of Mines</li> <li>• Department Service of Water and Forests</li> <li>• Departmental Service of Agriculture (in charge of rural land tenure)</li> <li>• Diamond Buyers Association</li> <li>• SODEMI</li> <li>• Diamond pre-cooperative of Bobi; visit to diamond-mining and washing sites</li> <li>• Visit to diamond-mining site outside of SODEMI permit</li> <li>• Visit to gold mining sites and miners camp at Kiego</li> <li>• Diamond pre-cooperative of Diarabana</li> <li>• Women's associations of Diarabana</li> <li>• Rural Land Tenure Committee of village of Mbolo</li> </ul>
September 24-25	Elbow, Pennes, Kouakou	Abidjan	<ul style="list-style-type: none"> <li>• European Union</li> <li>• FOCl (members of mission to Côte d'Ivoire)</li> <li>• KP focal point in Côte d'Ivoire (also in attendance were representatives of the Ministry of Foreign Affairs [customs], and the Ministry of Economy and Finances)</li> <li>• General Direction of Mines</li> <li>• General Direction of Rural Land Tenure (Ministry of Agriculture)</li> <li>• Ministry of Defense</li> <li>• General Direction of Decentralized Administration</li> <li>• Extractive Industries Transparency Initiative (EITI)</li> <li>• Presidency (advisor on employment to the President)</li> </ul>
September 26-27	Elbow, Kouakou	Abidjan	<ul style="list-style-type: none"> <li>• Private land tenure consultant (ex-EU)</li> <li>• World Bank project to reinforce capacity of MMEP</li> <li>• US Embassy (briefing of DCM and USAID Counselor)</li> </ul>
September 26-28	Pennes	Séguéla	<ul style="list-style-type: none"> <li>• Sous Préfecture of Séguéla</li> <li>• Departmental Direction of Mines</li> <li>• Diamond expert from FOCl group</li> <li>• United Nations Operation in Côte d'Ivoire (UNOCI)</li> <li>• Diamond pre-cooperative of Bobi village; visit to diamond-mining and gravel washing sites</li> <li>• Diamond pre-cooperative of Diarabana village</li> <li>• Departmental chiefs of police and gendarmerie</li> <li>• Panel of local buyers</li> </ul>
September 29	Pennes	Abidjan	<ul style="list-style-type: none"> <li>• Leon Boeksenbojm, international diamond buyer and broker</li> </ul>

# 2.0 THE IVOIRIAN CONTEXT:

## THE ARTISANAL DIAMOND SECTOR WITHIN THE LARGER ECONOMIC, SOCIAL AND POLICY CONTEXTS OF CÔTE D'IVOIRE

During the decades following Côte d'Ivoire's independence in 1960, the country focused on agricultural production, especially cocoa, and the country's success as a major global exporter of agricultural commodities earned characterization as an “economic miracle.” Although relatively neglected during the period of the economic miracle, today the mining sector—even discounting the growing importance of natural gas and petroleum to the country's economy—presents itself as something of an emerging and central plank of the new national economy. The country has become a significant producer of cement, manganese ore and gold, and production of these substances continues to grow. Côte d'Ivoire is also developing production capacity to exploit bauxite, cobalt, copper, nickel and silica sand (Soto-Viruet, 2012).

Côte d'Ivoire is a relatively minor producer of diamonds compared to countries like South Africa, Namibia, Congo and Angola, or in relation to its immediate neighbors (Sierra Leone and Guinea). Nevertheless, production figures are not insignificant: between 1996 and 2001 (prior to onset of prolonged social disruptions in 2002), annual diamond production varied between 275,000 (1998) and 400,000 (1999) carats (based on a compilation of several data sources cited in Chirico and Malpeli, undated draft, Table 1<sup>7</sup>). The immediate pre-crisis figures are somewhat higher than annual production estimates (available for most years beginning in 1954), although estimates for a small number of exceptional years in the early 1960s, early 1970s and early 1990s rival or even surpass the estimates for 1996-2001. Production of diamonds appears never to have entirely ceased throughout the past crisis-ridden decades, and annual production estimates for several of the crisis years at least until 2008—may be roughly equivalent to the pre-crisis years.<sup>8</sup>

Diamond production in Côte d'Ivoire is mostly concentrated into two primary production areas, both located in the northern half of the country: Séguéla (region of Worodougou) and Tortiya (region of Vallée du Bandama). All diamond mining currently taking place in Côte d'Ivoire is artisanal. Given that all previous authorizations to mine diamonds have expired and the government is no longer issuing new authorizations, artisanal diamond mining at this time is illegal. An additional possible complication for artisanal mining in Côte d'Ivoire may result from geological conditions. A recent USGS report (undated draft) suggests that Côte d'Ivoire's known diamond deposits, concentrated in the center-north part of the country, also tend to be concentrated in dykes that are most efficiently exploited using sophisticated industrial extraction technologies that are generally beyond the means of artisanal miners. This suggests that the future of diamond mining in Côte d'Ivoire will be much more of an industrial—as opposed to artisanal—character. Moreover, it may be that a good portion of the alluvial and more dispersed surface-level (alluvial) diamonds have already been depleted by previous artisanal and industrial diamond-mining activities; for instance, in Tortiya it appears that alluvial deposits have been largely mined out.

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<sup>7</sup> All annual diamond production estimates that appear in this paragraph are from the USGS draft study, Table 1.

<sup>8</sup> This statement is based on estimates of the Ministry of Mines quoted in the USGS draft study. A separate production capacity analysis conducted by USGS yields somewhat more modest but still substantial production estimates (Chirico and Malpeli, undated).

**FIGURE I.1. APPROXIMATE LOCATIONS OF THE PRIMARY DIAMOND-PRODUCING AREAS OF CÔTE D'IVOIRE**



In view of both legal and geological challenges, observers note that many former artisanal diamond miners have switched to gold mining. The marketing chain for diamonds has been decisively disrupted by rebel takeover of all significant diamond-producing areas during the civil war, and by the UN-imposed embargo on import of Ivoirian diamonds to other countries (in place since 2005).<sup>9</sup> Former international partners—notably Carnegie Diamonds Plc, in the case of diamonds—were forced to cease operations and leave the country following the outbreak of hostilities in 2002. While at present the government is seeking a return to normalcy and has reestablished its presence in mining zones, current measures remain somewhat tentative in the face of a radically transformed production and marketing chain that may include inherent security risks. Understandably, the government remains preoccupied with priorities of a security nature. But economic considerations within the mining sector may also be influencing the government to focus less on diamonds than on bigger ticket substances such as petroleum products and minerals that lend themselves more decisively to industrial production in collaboration with international investors.

In spite of the relative decline, disorder and modest economic role (in terms of the national economy) of today's artisanal diamond-mining sector, diamond production remains extremely important in providing economic opportunities to some categories of actors in the diamond-producing zones of Séguéla and Tortiya. As noted, in spite of its illegality, a substantial level of diamond production continues—as well as clandestine marketing of diamond production. The Ivoirian government (BICC, 2009, p.50) has estimated that as many as 20,000 artisanal miners remain active.<sup>10</sup> A separate USGS study (Chirico and Malpeli, undated) cites government (Ministry of Mines, Energy and Petroleum [MMEPI]) estimates of between 5,000 and 10,000 miners active in the Séguéla diamond fields, and another 1,000 to 2,000 in the Tortiya diamond fields.<sup>11</sup>

Artisanal mining in Côte d'Ivoire occurs in rural areas that are subject to several bodies of official government regulations, including mining, rural land tenure and environmental laws. A noteworthy Rural Land Tenure Law adopted in 1998 targets formalization of customary land property rights, but has been little applied because of the instability that has reigned in the post-2002 period. Although the 1998 law has received much attention from policymakers and international analysts, its potential applicability and impact in the mining sector does not appear to have been seriously examined. Analysis of the extent, conditions and potential impact of application of the law in artisanal diamond-mining zones will be a necessary element for determining the best way to move forward toward improved governance of this sector. But one must also be sensitive to the fact that the 1998 law has been subject to much politically biased interpretation, and that some interpretations integrate the delicate notion of nationality.

In summary, in the present environment it is likely that current diamond producers are realizing much lower benefits from diamond sales given the illegal and risky environment for marketing diamonds (made even more risky by the potential channeling of illicit funds into diamond mining attracted by opportunities for money laundering). It is also possible that diamond revenues continue to flow into the hands of actors capable of further complicating or destabilizing security issues at both the national and international levels. Although diamond pricing is inherently difficult to assess, the assessment team estimates that miners in Côte d'Ivoire may be realizing only 40-60 percent of what artisanal miners typically capture elsewhere in Africa. While there are no immediate or clear-cut solutions to these challenges, concrete steps toward a community-based model of artisanal mining,<sup>12</sup> along with renewed transparency in mining production and marketing, could provide a significant boost to prospects for local development in artisanal mining zones at the same time that they narrow or eliminate opportunities for diversion of diamond revenues to achieve less than savory ends.

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<sup>9</sup> Côte d'Ivoire had actually beat the UN to the mark by imposing a ban on diamond exports beginning in 2002.

<sup>10</sup> It is unclear how many of the artisanal miners are mining for diamonds as opposed to gold or other substances.

<sup>11</sup> At the same time the USGS study cautions against over-reliance on statistics that are currently available, noting the lack of any official census and resulting presence of data gaps.

<sup>12</sup> A community-based model for artisanal diamond mining has already been piloted in Côte d'Ivoire by SODEMI, a state mining development agency. The SODEMI model is much discussed in the present report.

# 3.0 MINING AND LAND TENURE LEGISLATION AND POLICY IN CÔTE D'IVOIRE

## 3.1 MINING LEGISLATION AND POLICY

- **Legal references for current legislation.** Artisanal diamond mining in Côte d'Ivoire is regulated by the 1995 mining code and its 1996 implementing decree. A number of additional legislative texts apply to specific aspects of mineral production and marketing such as lease, fee and tax rates, conditions for private investment, environmental management and customs regulations. The relevant legal references include:
  - *Loi n°95-553 du 18 juillet 1995 portant Code Minier* (referred to in the present document as “the 1995 mining code.”);
  - *Décret n°96-634 du 09 août 1996 déterminant les modalités d'application de la loi minière* (referred to as “the mining code application decree” or as “existing mining rules and regulations”);
  - *Ordonnance n°96-600 du 09 août 1996 fixant les redevances, les taxes proportionnelles et les droits fixes relatifs aux activités régies par le Code Minier*;
  - *Loi n°95-620 du 03 Août 1995 portant Code des Investissements, et ses textes réglementaires associés*;
  - *Loi n°96-766 du 03 Octobre 1996 portant Code de l'Environnement, et ses textes réglementaires associés*;
  - *Code général des Impôts*; and
  - *Code des Douanes*.
- **Property rights to minerals.** In common with most (perhaps all) mining codes in West and Central Africa, the 1995 mining code unambiguously establishes all mineral resources to be the property of the state (Article 2). The property regime that applies to minerals is distinct from that which applies to land (Article 8).
- **Mining activities covered by the mining code.** Article 3 lists a comprehensive set of mining operations covered by the law—beginning with prospecting and extending through production, processing and transportation of minerals. Article 4 requires that any person or entity engaging in any mining operation first obtain a mining title or authorization as defined in existing mining legislation, and explicitly adds “marketing” (*commercialisation*) to the list of activities requiring an authorization. Article 9 adds that production (extraction) of minerals is equivalent to a marketing activity, reinforcing the addition of marketing of minerals to the list of activities covered by the law.
- **A system of permits and authorizations.** Also in common with African mining codes, the 1995 law puts in place a system of “mining titles” (*titres miniers*) that (on paper) tightly controls access to minerals and conduct of all mining operations. The code distinguishes between “authorizations” (*autorisations*) and

“permits” (*permis*), requiring “authorizations” to engage in prospecting, reconnaissance (limited to surface operations) and artisanal mining, and “permits” to conduct research (sub-surface exploration and trials) and to initiate industrial-scale production of minerals.

- **Permitted miners relations with mining area occupants.** Land property rights holders and “legitimate occupants” of land within the perimeter of a mine or affected by a mine have a right to compensation (Article 68). However, the code does not provide a definition of a land property rights holder or of a legitimate occupant. Interestingly, to provide a firm guarantee of the minerals title-holder, the code imposes a fine of 5,000 to 15,000 CFA on any individual (presumably including the land property rights holder) who interferes with occupation or operations of a mining permit holder (Article 101).
- **Mining registries and databases.** Article 95 states that the mining administration maintains mining registers that record permits and authorizations. Maps illustrating locations of all permitted and authorized mining activities accompany the registers. Article 6 of the application decree further specifies that special mining registers will be maintained for each category of permit and authorization, including authorizations for artisanal and semi-industrial mining. Article 97 requires holders of permits and authorizations to document work progress and mineral production and to furnish the records to the mining administration.
- **Demarcation of mining site boundaries.** Article 10 of the application decree states that the obligation of miners to physically demarcate boundaries of authorized mining activities *may* be imposed (emphasis added), but does not seem to apply systematically to all zones subject to permits or authorizations. Collection of geographical coordinates for artisanal and semi-industrial sites, however, appears to be obligatory: Article 62 of the same decree states that the mining administration will visit the mining site to determine “position points” (assumedly geographical coordinates), and that costs for this will be imposed on the permitted party.
- **Legislative regime for artisanal mining.** Artisanal mining is defined as *...any operation for which activities consist of extracting and collecting mineral substances and recovering marketable products using manual and traditional methods and procedures*<sup>13</sup> (Article 1). Authorization of artisanal mining is combined with authorization to engage in semi-industrial mining, defined as *...any operation for which activities consist of extracting and collecting mineral substances and securing marketable products using simple, mostly non-mechanical methods and procedures*.<sup>14</sup> Chapter III (Articles 42-52) provide a framework for governance of the artisanal and semi-industrial mining sector.

Zones in which artisanal mining is permitted are designated by legal order of a ministerial council on the recommendation of the ministry in charge of mines (Article 42). Such zones may also result from “declassification”—presumably of areas that had previously been included in granting of a mining title. Artisanal mining authorization may be granted to Ivoirian nationals, cooperative organization of exclusively Ivoirian membership or small enterprises of majority ownership of Ivoirian nationals. Authorization is granted for a period of two years and is renewable in two-year increments as long as the beneficiary remains in conformity with existing regulations. The artisanal or semi-industrial authorization applies to a geographically specific area of between 25 and 100 hectares forming a square or a rectangle. An amicable (*à l’amiable*) agreement with the land proprietor must be reached if mining is to take place on agricultural land, or if mining will interfere with irrigation structures. The miner must restore the crop production and irrigation capacity of the land following the completion of mining activities. Any discovery of a sizeable mineral deposit is to be reported to mining authorities. The artisanal mining

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<sup>13</sup> *...toute exploitation dont les activités consistent à extraire et concentrer des substances minérales et à récupérer les produits marchands en utilisant des méthodes et procédés manuels et traditionnels.*

<sup>14</sup> *...toute exploitation dont les activités consistent à extraire et concentrer les substances minérales et à en récupérer les produits marchands par des méthodes et procédés simples et peu mécanisés.*

permit can be revoked at any time for failure to adhere to regulations on the part of the miner, and can be discontinued at the discretion of the mining administration following expiration of the authorization.

Requirements to obtain an authorization for artisanal mining are specified in Article 59 of the application decree and include:

- A cover letter specifying minerals targeted and surface area requested;
- A graphic presentation (extract of a map supplied by the Geographical Institute of Côte d'Ivoire) at a scale of 1/50,000, or if necessary, 1,200,000;
- A work program;
- A description of material and equipment;
- An investment plan;
- A presentation of mine staff (number and qualifications);
- A certificate proving Ivoirian nationality;
- A copy of the charter in case of a small enterprise or pre-cooperative; and
- Proof of payment of fees and taxes.

Article 61 of the application decree identifies requirements for renewal of the authorization upon expiration. (The list of requirements is as long as the one presented above for initial acquisition of the authorization.) Costs for receiving an initial authorization and for its renewal are specified in *Ordonnance* 96-600 (Article 11) as follows: initial authorization, 20,000 CFA; first renewal, 30,000 CFA; second renewal, 40,000; third renewal, 50,000 CFA; all other periods, 60,000 CFA. In addition, a tax based on surface area is imposed (Article 12) equal to 3,000 CFA/hectare initially and 4,000/hectare CFA for each renewal. Finally, artisanal miners must pay a profit tax of three percent determined on the basis of selling price minus expenses (Article 13).

As noted above, determination of position points (geographical coordinates) of the mining site are to be determined by the mining administration at the expense of the artisanal miner (Article 62 of the application decree). Article 64 of the application decree assigns responsibility to monitor and police the mining sites to territorial administration (Préfets and Sous Préfets), which commands local police forces. Sworn agents of the MMEP are responsible for administrative monitoring of the mining sites, as well as provision of technical training and support.

Regarding bookkeeping and documentation, holders of artisanal mining authorizations are required to maintain a registry of work progress, production and labor management (Article 65 of the application decree). Article 97 of the mining code requires that such records be furnished to the mining administration.

Article 77 requires all permit holders and authorizations for exploitation of quarries to prepare and submit to the mining administration for approval an environmental impact and management plan. The wording of this Article suggests that authorizations for artisanal mining are not subject to this requirement.

- **Enforcement of mining regulations.** Title IX of the code (entitled “on administration of mines”) assigns application and enforcement of the mining law to sworn mining agents who possess police powers (Article 93). The application decree of the mining code authorizes holders of permits for mining of diamonds and gold to employ “mining guards” (*gardes miniers*) who must be pre-approved (*préalablement agréés*) by the mining administration (Articles 118-119). These provisions appear under the heading of “mining police” (*police minière*—mentioned but not defined in the mining code, see Article 94) and perhaps are intended to address the lack of a dedicated unit such as a mining brigade to enforce application of mining legislation.
- **Registration of mineral buyers and sellers.** Article 91 of the mining code requires all buyers, sellers, exporters and transporters of mineral substances to declare their activities to the MMEP. Article 86 of

the application decree states that buyers of precious stones and diamonds must be authorized via ministerial order of the MMEP. Article 85 of the same decree states that authorization for possessing, transporting and marketing precious stones and diamonds will be accorded to holders of artisanal miners permits, among others.

- **Institutional framework of government mining administration.** The mining sector of Côte d'Ivoire is under the authority of the MMEP. The principal decision making and technical support actors of the mining sector include:<sup>15</sup>
  - **Inter-Ministerial Mining Commission (*Commission Minière Interministérielle [COMINE]*):** COMINE was established by Law 95-553 of July 18, 1995 (i.e., the current mining code). The commission serves as an advisory body to the government on mining matters. COMINE includes representatives from various ministries and state institutions, and meets based on convocations of the Director of Mines (who serves as secretary of the commission). COMINE advises on a variety of matters including applications for mining titles, requests for exonerations of taxes on import of mining material and equipment, large-scale mining projects, and proposals to modify mining legislation.
  - **Direction of Mines:** This is the administrative agency for the mining sector within the MMEP. The DM is responsible for ongoing management and application of national mining policy. Among other matters, the DM processes applications for mining titles, monitoring of exploration and exploitation mining activities and enforcement of mining regulations throughout the national territory.
  - **Direction of Geology:** The DG is responsible for development and updating of geological and thematic maps of the country.
  - **The State Society for Development of the Mining Industry (SODEMI):** SODEMI was created in 1962 by Decree 62-91 of April 3. SODEMI is partially funded by the government but is also intended to attract private funding for industrial exploration and production in the form of joint partnerships. SODEMI's mission is to provide mineral research services to the government, and to conduct mining operations either directly or in partnership with international and national investment partners. SODEMI holds a mineral exploration permit covering 736 km<sup>2</sup> outside of Séguéla, the principal diamond-mining zone of Côte d'Ivoire. The model established by SODEMI for organizing, providing technical support and working in collaboration with local artisanal diamond miners is presented and discussed later in this report.
- **Revision of the 1995 mining code.** Several officials at the MMEP have indicated that the current mining code is currently under revision. Written documentation—such as descriptions, statements of objectives or actual draft revisions—is not yet available for public review. In exchanges with mining officials, the assessment team heard mostly vague explanations of the reasons and objectives for revisions to the code, including:
  - The legislation is outdated (or “old”),
  - The application decree needs to be adjusted so that the provisions of the code become more applicable,
  - Tax scales need to be adjusted, and
  - Maximum allowable surface areas for certain categories of mining permits are too high in the current code.

A somewhat more specific example of a reason for revising the current mining code noted by the Ministry of Mines' Director of Geology fits under the heading of the second bullet above: the mining code provision for declassification and delimitation of zones to be reserved for artisanal mining needs to be supported by a precise set of procedures. Another specific statement confirmed by the Deputy Chief

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<sup>15</sup> This presentation of the principal actors and agencies of the government in the mining sector follows the presentation of government mining institutions available on the Ministry of Mines, Petroleum and Energy website.

of Staff to the Minister of Mines, Petroleum and Energy is that the new code will provide for a mining brigade to enhance government capacity to enforce mining regulations.

As noted, drafts of the new mining code, presumably retaining at this time a status of internal documents, were not made available to the assessment team. Adoption of the new code is targeted for January 2013, which may be an ambitious goal given that the current unavailability of documentation regarding the initiative to revise the code suggests the process is still in its infancy.

- **Current status of implementation of the 1995 mining code.** This topic is addressed under a separate report section (see Chapter 4, Government Systems in Support of the Kimberley Process).

## 3.2 RURAL LAND TENURE LEGISLATION

### 3.2.1 GENERAL SUMMARY OF LAND TENURE POLICY HISTORY IN CÔTE D'IVOIRE

In contrast to Côte d'Ivoire's somewhat standard platform regarding mining sector legislation and policy, its history of rural land tenure policy and legislation is decidedly unique in Africa, as well as controversial and path-breaking. In very broad terms, the history of land tenure policy can be presented as two contrasting periods: the "land to the tiller" era under the long-standing post-independence President Félix Houphouët-Boigny who died in office in 1993, and the 1993-present recognition and progressive codification of customary land property rights. However, this over-simplified characterization of land tenure policy masks numerous subtleties and important nuances playing themselves out within a context of increasing politicization of land property rights in Côte d'Ivoire, and cooptation by some politicians and rabble-rousers of competing approaches to land property rights in support of contrasting ideals regarding national identity.

All observers of rural land tenure policy in Côte d'Ivoire note the role played by unofficial policies of the administration of Houphouët Boigny as a support to the economic miracle of the 1960s and 1970s. It is well known that the sub-miracle of Côte d'Ivoire's rise to the position of premiere global exporter of cocoa was supported by both internal and international migration to the cocoa-producing regions of western Côte d'Ivoire. A land-to-the-tiller policy (in contrast to either state appropriation of untitled land<sup>16</sup> or formalization of customary land rights) provided some degree of land tenure security to the migrants needed in support of ever-increasing levels of cocoa production. However, the policy was mostly unofficial,<sup>17</sup> and as illustrated through subsequent history, has provided little in the way of long-term tenure security to non-indigenous agricultural producers in the country—particularly those who do not hold Ivoirian nationality.

With World Bank and *Groupe Agence Française de Développement* (AFD) support, Côte d'Ivoire launched a decade of experimentation aimed at development of methodologies to identify and register customary land property rights (the *Plan Foncier Rural* [PFR] program of the 1990s is discussed below). The PFR pilot initiative culminated in adoption of the 1998 Rural Land Tenure Law targeting formalization of land rights based on 1) primary customary land rights; and 2) where customary land rights remain unregistered within a specified timetable, reversion of non-formal property rights to the state. The 1998 law has been little implemented given that its adoption was immediately followed by prolonged violent conflict in Côte d'Ivoire with periods of overt civil war. However, government commitment to the law was recently reaffirmed in the course of a government-wide workshop on urban and rural land tenure conducted in June 2012.

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<sup>16</sup> Although there was an attempt in 1963 to adopt legislation that would have made the state the proprietor of all untitled land, this proposal was eventually rejected (as noted in Stamm [undated], p.6 as well as by many other writers on rural land tenure in Côte d'Ivoire). The policy of unregistered land as the property of the state resurfaced in 1968 in the form of a ministerial order (*arrêté* – a lower order piece of legislation in relation to a law or a decree) issued by the Ministry of the Interior. This ministerial order not only asserted state property rights over unregistered land, but also eliminated customary rights as a basis for formalizing land through its registration. The suppression of customary land rights in 1967 stands in stark contrast to piloting of the PFR approach in the 1990s, and adoption of customary land rights as the basis for the rural land tenure law in 1998.

<sup>17</sup> Some writers on rural land tenure in Côte d'Ivoire (for example, Stamm [undated], p. 6) mention a 1967 decree that codified the land to the tiller policy. However most accounts of land tenure policy in Côte d'Ivoire make no note of such a decree and it is difficult to confirm that the decree ever existed.

### 3.2.2 LAND TENURE POLICY UNTIL 1993

Pre-1993 land legislation consisted mostly of the pre-independence land legislation shared with neighboring ex-French colonies and for which principal legislative acts and their contents follow:

- Legislation in 1900 established unregistered and uncultivated lands as the property of the state.
- A 1932 decree provided for registration of land as private property based on investments for its development (especially investment in agricultural production), and registration of the developing parcel in the land tenure register (*livre foncier*).
- A 1935 decree reinforced the principles of the 1900 legislation, further adding that even cultivated land could be appropriated by the state under specified conditions.
- A 1955 decree reversed many of the earlier restrictions and obstacles to recognition of informal land rights in that it established the principle that customary (informal) land property rights merit legal recognition and protection.

Also in regard to the pre-1993 post-independence era, attention should be drawn to two decrees enacted in 1968 (December 17) and 1971 (February 16) that assigned powerful land tenure management powers to the decentralized level of the Sous Préfet (Chauveau and Bobo, undated). The 1968 decree empowered Sous Préfets to grant land occupancy permits that paved the way to temporary private land titles (in application of the principle of land concessions from the state), while the 1971 decree allowed the temporary titles to become permanent.

A summary conclusion from examination of the above-cited land tenure legislation is that the colonial and pre-1993 post-independence eras of rural land tenure policy were characterized by ambiguity and the unstable coexistence of three principles in opposition with each other: 1) state rights over unregistered land, 2) land rights acquired by virtue of investment in productive activities, and 3) legitimacy of customary land rights. The era was also characterized by increasing prerogatives of local administrative officials—specifically of Sous Préfets—to arbitrate, assign and formalize land property rights.

### 3.2.3 THE PLAN FONCIER RURAL INITIATIVE

Côte d'Ivoire was a leading pioneer of the *Plan Foncier Rural* (land property rights plan) approach that has also been influential in several neighboring countries including Burkina Faso, Guinea and (most recently) Benin. The PFR initiative in Côte d'Ivoire began in 1989 with support from the World Bank and AFD, and extended through the 1990s. It is said that the PFR provided the empirical experience and lessons that resulted in the Rural Land Tenure Law of 1998, although there are important differences between the PFR approach and that embodied in the 1998 law.<sup>18</sup>

The PFR approach is based on exhaustive identification and documentation of all categories of existing land rights, including primary property rights, occupancy, cultivation, tenancy, etc. While various sources report somewhat varying results, Stamm reports that the pilot phase (implemented until 1998) mapped 6,500 hectares, or 3.5 percent of the productive agricultural land in the country. In Stamm's view (which is not shared by all observers who have written on the topic), the program was largely successful in achieving its major objectives, including bridging the gap between customary and modern land rights while avoiding or managing land disputes. Observed shortcomings of the PFR approach as it was implemented in Côte d'Ivoire include under-documentation of women's access and rights to land, a hesitancy on the part of the Ministry of Agriculture to "freeze" land rights based on PFR surveys, survey instruments that simplified the complex nature of local land tenure arrangements, and the absence of local agencies to appropriate and perpetuate land property rights management based on the PFR experience.

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<sup>18</sup> According to the Ministry of Agriculture's Rural Land Tenure website, the PFR era was "officially" terminated in 2002 when the ministry articulated and characterized its rural land tenure approach as titling based on customary land rights, and contractualization of subordinate land rights (per the 1998 rural land tenure law).

Some of the PFR deficiencies noted above were addressed in the 1998 Rural Land Tenure Law that is said to have been developed in consideration of the PFR experience. For example, the 1998 law established village land management commissions to maintain and manage established property rights arrangements. In other respects, the 1998 law is a striking departure from the PFR approach (further discussed below).

The pilot PFR phase was followed by an upscaling and implementation phase initiated in 1998 through the World Bank-funded National Village Territory and Rural Equipment Management Project (*Projet National de Gestion des Terroirs et d'Équipement Rural* [PNGTER]). Following adoption of the 1998 Rural Land Tenure Law, PNGTER was modified to add a component to implement the new law. As earlier noted, the PFR era was officially closed by the Ministry of Agriculture in 2002.

### 3.2.4 THE CONTEMPORARY RURAL LAND TENURE LEGISLATIVE AND POLICY ENVIRONMENT

This report section focuses on and presents current rural land tenure legislation. The reader should keep in mind that the land tenure legislation currently in force has so far been little implemented or tested, which is in part explained by the crisis environment that has predominated in Côte d'Ivoire since 1999. For example, the World Bank-financed PNGTER (noted above) was redesigned (from a focus on the PFR approach) to implement the 1998 Rural Land Tenure Law, but was unable to achieve most of its objectives since its implementation period coincided with national turmoil and civil war in Côte d'Ivoire.<sup>19</sup>

Current rural land tenure legislation is embodied in Law 98-750 of December 1998 relative to the Rural Land Tenure Domain including the amendment to Article 26 (following the Linas-Marcoussis agreement), three application decrees and 15 ministerial orders (see Annex 3 for the complete list of application decrees and ministerial orders). The 1998 Rural Land Tenure Law was developed and negotiated in a context of increasing land disputes between indigenous and migrant populations, particularly in the “forest” regions of western Côte d'Ivoire.<sup>20</sup> The issue of land tenure insecurity of migrants and their descendants remains as the most discussed and controversial aspect of the 1998 law. The well-publicized agreement between several parties negotiated at Linas-Marcoussis in January 2003 included a clause to modify Article 26 of the 1998 law to ensure transmission of formal land rights held by migrants or their descendants.<sup>21</sup>

The 1998 law (Article 1) defines the rural land tenure domain as:

*...consisting of all [rural] lands whether developed or not, and regardless of the nature of development. The rural domain is a national patrimony to which all physical and corporate bodies have a right of access. However, only the State, local governments and individuals of Ivoirian nationality may acquire property rights [to rural land].*

It is significant that the law explicitly assigns a “transient” character to land subject to customary (i.e., informal) rights (Article 3). The logic of transiency becomes clear in subsequent clauses that require registration of customary rights and acquisition of a Rural Land Tenure Certificate (*Certificat Foncier*), and establishment of a three-year time limit to convert the customary rights certificate into a true land title (Article 4). In other words, the law, while it recognizes customary land rights, also serves as the instrument for their

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<sup>19</sup> The authors suggest that additional explanations for the lack of implementation of current rural land tenure policy may also be valid, particularly related to the sheer magnitude of the challenge of implementing a large-scale and comprehensive land policy reform. This opinion, expressed at the end of the present report section, is that the 1998 rural land tenure law, whatever the merits or shortcomings of its contents, is overly ambitious in its setting of implementation timetables.

<sup>20</sup> Chauveau and Bobo (undated) describe the progressive “politicization” of land tenure beginning with the crisis of political succession following the death of Félix Houphouët Boigny in 1993, and the crisis atmosphere as a backdrop to negotiation of the legislation that was eventually adopted in 1998.

<sup>21</sup> Ultimately this specific land agreement will probably have little impact given that it applies to the relatively small percentage of migrant holders of formal land rights. However the introduction of this issues into the Linas-Marcoussis negotiations underlines the highly visible and controversial nature of land property rights in Côte d'Ivoire— particularly the provisions related to national identity as they are integrated into the 1998 law, which restricts land property rights to Ivoirian nationals (with the somewhat contested exception of non-Ivoirians who formalized their land rights prior to the 1998 law).

elimination. Elimination of customary land rights would be further ensured by applying Article 6, which requires that lands subject to customary rights, but that remain unregistered 10 years following publication of the law, will be registered as the property of the state.

Customary property rights are to be identified in the course of official surveys administered by administrative authorities and village advisors (Article 7). Customary rights may be individual or collective, and a land tenure certificate will be delivered to the identified holders of customary rights (Article 8). Land tenure certificates are transferrable (Article 17) subject to the provisions of Article 1 of the law (limiting property rights to Ivoirian nationals).

The law establishes a Rural Land Tenure Domain of Concessionary Lands consisting of lands subject to provisional titles granted before publication of the 1998 law (Article 11). Holders of the temporary titles must complete the land registration process including payment of all associated fees (Article 12). However, unless otherwise decided by the rural land tenure administration, such lands will be registered in the name of the state (Article 13). Once registered in the name of the state, the lands will be sold or rented to the former holder of the temporary land title.

All property rights holders (with the exception of the state) are required to invest in productive development of the titled lands (Article 20). A non-exhaustive list of productive activities is provided in Article 18, including crop production, livestock production, cultivation of forest products, fish cultures, agricultural infrastructures, botanical and zoological gardens, processing equipment and structures for agricultural products.

Lands registered as state property may be leased to third parties (Articles 21-22). Such leases are valid for defined time periods and include specified investment requirements. Leases also require payment of rent, for which the amount is to be determined by the Ministry of Finances (Article 23). Lands subject to titles held by private parties are subject to a land tax (Article 24).

As noted elsewhere, Article 26 recognizes rights acquired prior to publication of the law. Such rights are not subject to the stipulation that only Ivoirian nationals may appropriate land in Côte d'Ivoire (per Article 1). Furthermore, whereas the version of the law adopted in 1998 did not recognize that such rights were inheritable by recognized heirs, the amended version (adopted by Law 2004-412 of August 14, 2004) ensures that these rights are inheritable.

Land tenure management commissions, their composition, functions and responsibilities, are spelled out in Application Decree 99-593 of October 13, 1999 relative to organization and attributes of rural land tenure committees, and Ministerial Order (*Arrêté*) 041 MEMID/MINAGRA of June 12, 2001 relative to establishment of rural land tenure committees. The land tenure committees are to be established in each sub-prefecture and each village. The Sous Préfet presides over the sub-prefectural committee and may not delegate this responsibility (Article 2 of Order 041). The village-level land tenure committees are established by the Sous Préfet (Article 5 of Decree 99-593 and Article 12 of Order 041), and Ministerial Order 041 encourages Sous Préfets to establish the committees as quickly as possible (Article 12). Village-level committees must include local land chiefs as members (Article 5 of Decree 99-593).

The sub-prefectural level rural land tenure committee assumes the following primary functions (Article 3 of Decree 99-593):

- Validation of official survey findings identifying existing customary land property rights,
- Formulation of an opinion on all challenges to conceded land property rights issues (the rural land tenure domain consisting of concessionary lands is defined above),
- Rulings on any unresolved land conflicts identified in the course of conduct of surveys of customary land rights,
- Study of requests for cession of customary land rights to third parties (to be formalized as contracts),
- Consideration of all proposals for forest developments, and

- Consideration of all proposals for urban developments.

The most important function of the village rural land tenure committee is to approve the results from official surveys of customary land property rights at the village level (as described in Section III, Decree 99-594). However, the onus of initiating surveys, administering the process for land certificates, resolving conflicts and generally driving the process falls on the sub-prefectural committees.

### **CONFLICT MANAGEMENT**

The rural land tenure regime appears to assign primary responsibility for conflict resolution to the sub-prefectural-level rural land tenure commission presided by the Sous Préfet (Article 3 of Decree 99-593). The legislation also requires that a list of land conflicts be compiled in the course of customary land rights surveys (Article 7, Decree 99-594). The precise use of the list of conflicts, and more generally, procedures and measures for conflict management, are unspecified or vague in the legislation.

A defined conflict management process is included only in *Decree 99-595 on Procedures to Consolidate Rights of Holders of Temporary Land Concessions within the Rural Land Tenure Domain*. This applies specifically to holders of temporary land titles granted prior to publication of the 1998 Rural Land Tenure Law. The holders of temporary titles may undertake a process to obtain a land title (if Ivorian), or compete the process for registration of the parcel as State property and subsequent grant of a lease (if the applicant is non-Ivoirian). Conflicts encountered in this process are to be submitted to the village land tenure management committee for friendly resolution (Article 8). If a friendly solution is not achieved the case is to be considered by a special commission presided by the Préfet (Article 9). If the ruling goes counter to the temporary land title-holder's request for proprietorship or lease rights, just compensation is to be determined by the village land tenure commission or by the special prefectural level commission (Article 9).

### **COSTS AND PROCEDURAL AND TECHNICAL COMPLEXITY**

Ministerial Order 085 of June 15, 2000 sets out elaborate and sophisticated requirements regarding the geographical measurements of parcels subject to land certificates.<sup>22</sup> Collected coordinates must be in conformity to the Ivoirian Geodetic System. Parcel plans (maps) must be produced at a scale of 1/10,000. At least one physical marker must be constructed on the parcel and appear in the parcel plan. Costs incurred in satisfying these requirements are the responsibility of the land certificate applicant.

The process for formalization of customary land property rights consists of two steps: acquiring a land certificate followed by (within three years) obtaining the land title. A two-step process incurs additional costs, commitment and time and documentation requirements on applicants for land certificates as compared to a (theoretical) one-step process (as described by the NGO Club Union Africaine, p. 30). Moreover, once the land title is obtained, the title-holder is subject to payment of a land tax.

### **3.2.5 SUMMARY OBSERVATIONS REGARDING CURRENT RURAL LAND TENURE LEGISLATION (THE RURAL LAND TENURE LAW OF 1998 AND ASSOCIATED DECREES AND MINISTERIAL ORDERS)**

#### **UNDERLYING INTENTIONS OF THE 1998 RURAL LAND TENURE LAW**

Perhaps the most constructive way to view the 1998 land law is as a well intentioned and carefully considered (and negotiated) approach to resolving—or at least managing—the tensions existing both in previous land tenure legislation, and especially, increasingly expressed in the form of land conflicts and acute competition for securing land access and rights in some parts of the country. The law also clearly seeks to modernize land tenure management through formalization of all property rights to land. On a positive note, the law recognizes and secures customary rights to land. On a more questionable note, implementation of the law

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<sup>22</sup> According to Club Union Africaine (p. 29), there are only 23 licensed surveyors in Côte d'Ivoire available to respond to surveying requirements for registration of over 20 million km<sup>2</sup>. As noted by Club Union Africaine, this presents a potentially severe bottleneck for implementation of the 1998 rural land tenure law.

aims to eliminate all customary land rights by establishing a defined schedule for conversion of customary rights first to land certificates and subsequently to land titles.

### **A STRONG CONTRAST BETWEEN THE 1998 LAW AND THE EARLIER PFR APPROACH**

In comparison to the PFR approach piloted in Côte d'Ivoire during the 1990s, the 1998 Rural Land Tenure Law adopts a severely simplified and limited definition of customary land rights. The 1998 law contains no mention of secondary rights in the customary context (where secondary, or use rights are cited in the law, it is in the context of establishing contracts between formal property rights holders—whether the state or land title holders, and land renters). The 1998 law clearly targets putting in place a formal system of transferrable land titles as quickly as possible. While such a goal is not unreasonable from an economic or institutional standpoint, reduction of legal land property rights to a question of primary proprietorship (i.e., who holds qualifying rights for a title? and who qualifies for a land rental lease with the proprietor?) runs the risk of inadequately accounting for existing customary rights that fall short of proprietorship. Examples of at risk groups include women, youth and livestock producers. Although it is true that all categories of (Ivoirian) actors are equal before the (rural land tenure) law, several categories are at a disadvantage in asserting claims of primary property rights to given parcels, although use or succession rights may be long established. In summary, in Côte d'Ivoire the question of the complex and subtle secondary rights to land and resources that characterize the customary context (as recognized through the PFR approach) appears to have fallen off the legislator's priority list in the face of the contested and pressing issue of resolving primary proprietorship of parcels.

### **AN EXCEEDINGLY AMBITIOUS UNDERTAKING**

Perhaps the most immediately relevant observation regarding the contents of the rural land tenure regime established by the 1998 law and associated decrees and ministerial orders is that it is exceedingly ambitious. Even if application of the law had not been disrupted by 12 years of civil unrest and violence, it is highly doubtful that the timetables established by the law (land certificates to be in place within 10 years; certificates are to be converted into land titles within three years) would have come close to being met. Experience from other countries reminds us that mass implementation of major reforms to land tenure legislation and policy is far from an easy task. In Côte d'Ivoire, an important (and time- and resource-intensive) first step is to inform rural populations of the law and its details, and to establish and train the dense institutional network of sub-prefectural and village-level land tenure management committees required by the new land tenure regime. The law specifies methods and procedures for conduct of complicated surveys to identify customary land property rights, and requires operations that are expensive, intricate and filled with potential for unanticipated pitfalls. Establishment and maintenance of land registries, including maps and parcel plans, will also require significant resources, time and expertise.

Application of the law depends on willingness of customary land property rights holders to participate. The assessment team was told repeatedly that in some areas, customary land rights holders see little need or use for “papers” to justify the rights they were born with. At another level, willingness to register land will be correlated with willingness to pay significant costs in time and financial resources.

One also notes that implementation of new laws that are national in scope often reveals gaps and shortcomings within the law itself, often at the level of procedural or legal details. Based on experiences in other countries, application of the law will almost certainly expose currently unknown gaps and shortcomings within itself. It is likely that hidden deficiencies will require that solutions be found at the same time that the laws are being implemented, further putting at risk any pre-designated timetables such as those specified in the 1998 Rural Land Tenure Law.<sup>23</sup>

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<sup>23</sup> For example, a current and very large-scale program to implement a new rural land tenure law in Burkina Faso ran into the obstacle of requiring additional legislation to establish village-level land conflict conciliation committees that had been noted in the framework law but in the course of implementation was determined to require development of a joint application decree with the Ministry of Justice. This resulted in implementation delays of associated components of the overall implementation program. It seems likely that conflict resolution is precisely one of the under-defined topics of the rural land tenure law of 1998 in Côte d'Ivoire.

## **LITTLE ATTENTION TO CONFLICT MANAGEMENT**

Current rural land tenure legislation pays surprisingly little attention to the topic of land conflict management. Clearly real and potential land conflicts remain a primary issue in Côte d'Ivoire, and one that features significant security risk if inadequately provided for. The Rural Land Tenure Law assigns primary responsibility for conflict resolution to the sub-prefectural-level rural land tenure commission headed by the Sous Préfet but provides little procedural guidance in how conflicts are to be managed. Similarly, use of the list of land conflicts that is to be compiled in the course of customary land rights surveys (Article 7, Decree 99-594) is not clearly stated.

## **APPLICABILITY OF RURAL LAND TENURE LEGISLATION TO THE MINING SECTOR**

Opinions regarding the applicability of the Rural Land Tenure Law in the mining sector seem to vary, but our impression is that this question has not been widely considered. When the question was asked of some actors (the Sous Préfet of Séguéla, the National Director of Rural Land Tenure), the answer was (with some qualifications) answered affirmatively following a brief hesitation. This requires explanation.

The primary context for application of Rural Land Tenure Law to the mining sector would be in the area of mining permits. The obvious example is the 736 km<sup>2</sup> exploration permit held by SODEMI outside of Séguéla. In this setting (the team was told), one must distinguish between the minerals rights held by the permit holder, and the land rights governed by the 1998 law. Land rights could be conferred to customary land property rights holders even where minerals rights are held by another party. In this light, the provisions of the mining code regarding relations with land proprietors (as noted in mining code analysis above) would apply, requiring compensation and/or arrangements to the mutual benefit of all parties.<sup>24</sup>

The easier solution to the question of whether or not the rural land law is applicable within the mining sector (as noted by the National Director of Rural Land Tenure) would be to apply the 1998 land law to all rural zones *prior* to granting a mining permit or designating an area for artisanal mining. This was characterized by the National Director of Rural Land Tenure as the *ideal* solution and answer to the question of applicability of rural law to the mining sector.

## **POLITICAL SENSITIVITIES OF LAND TENURE IN CÔTE D'IVOIRE**

The 1998 Rural Land Tenure Law was developed in a contentious atmosphere featuring debates on the necessary qualifications and rights of Ivoirian nationals. The solution embodied in the 1998 law—to limit land proprietorship rights to Ivoirian nationals, and to allow non-Ivoirians to enter into long-term land leasing contracts with Ivoirian nationals or with the state—is not necessarily a stable solution. Competition to land in Côte d'Ivoire remains keen and intense, and younger rural populations are especially susceptible to curtailed access to land (and perhaps susceptible to reflexive reactions to difficult land access). A large body of literature has been produced to describe and analyze the role of land tenure in contributing to violent conflict (see Annex 4 for a list of documents consulted for this study), with much of the literature referring specifically to contents and challenges for application of the 1998 law within the larger contentious environment. Obviously such a contentious atmosphere holds implications that need to be accounted for in development of assistance packages.

## **PROSPECTS FOR IMPLEMENTATION OF THE 1998 RURAL LAND TENURE LAW**

Although most government officials with whom the mission team met expressed enthusiasm and support for the 1998 law, as well as optimism regarding prospects for its implementation, the team also heard accounts of opposition to some provisions of the 1998 rural land law on the part of some government decision makers. Clearly, some level of political opinion remains split regarding the 1998 law. Nevertheless, the government reconfirmed its commitment to the law at a government seminar focusing on urban and rural land tenure held June 25, 2012 in Yamoussoukro. Several provisions included in the document produced define measures—

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<sup>24</sup> It should be noted that these discussions remain at present somewhat speculative and it is unclear what the outcome would be of a comprehensive legal analysis of this question.

such as massive information campaigns—in support of implementation of the 1998 law. Other seminar suggestions target improvements to the law such as simplification of registration costs and requirements.

Officials of the Rural Land Tenure Service of the Ministry of Agriculture described plans to the assessment team for implementation of a national program to apply the 1998 law. The calendar for implementation of the national program appears to be ambitious. The team was told that 3,000 (of 11,000 villages in the country) have already established a village rural land tenure management committee, and that the remaining 8,000 villages would establish committees within the next two years. Corresponding figures for the sub-prefectural rural land tenure management committees: 150 in existence and 350 that will be put into place in the next two years. Over the coming five years, 5,000 villages are scheduled for delimitation of village territorial limits. By 2015 10,000 hectares<sup>25</sup> of rural agricultural land will be surveyed to determine holders of customary property rights and the parcels to which the rights apply.

These plans and targets regarding the national program to implement the 1998 Rural Land Tenure Law are somewhat illustrative given that the mission team was unable to obtain documentation to confirm the plans and targets. Moreover, suppliers of this information were vague on how the program will be financed. Our suspicion is that the real level of effort that will be required to succeed in implementation of such an ambitious program has probably been somewhat underestimated by the planners at the Ministry of Agriculture. Nevertheless, the staff of the Direction of Rural Land Tenure appear to be truly committed to the 1998 law as well as to its application at a national level in Côte d'Ivoire.

There may also exist cultural obstacles to implementation of the 1998 law. The assessment team visited the village of Mbolo (near Séguéla) to talk with members of the village land tenure commission established by the Sous Préfet on August 25, 2011. Although not all members of the village commission agreed, the committee's secretary explained a cultural bias against delimitation of the village territory—a priority activity of the National Direction of Rural Land Tenure (Ministry of Agriculture). The explanation was couched mostly in cultural terms, but there may also be an economic factor influencing the feelings of villagers in Mbolo, namely, the impression that defined limits will eliminate future growth opportunities for the village. In this context, it is perhaps worth noting that Mbolo is currently in conflict over village limits with the neighboring village of Kiege, which is known for its gold mines. The example of Mbolo illustrates that definition of village limits—integral to the methodology defined by the National Direction for Rural Land Tenure for application of the 1998 law—can be highly specific to local circumstances and highly complex.

Mbolo also illustrates the complications to applying another feature of the 1998 law—the requirement to formalize customary holdings through acquisition of rural land certificates. So far a single application for a rural land certificate has been addressed and approved by the village land committee of Mbolo and is now awaiting final approval by the Sous Préfet. The land to be certified consists of a 50-hectare parcel originally categorized as the customary property of a long-standing family of Mbolo, but for the past year assigned to “strangers” to the community based on customary practices. The applicant for the 50-hectare plot (again,



**The secretary of the Mbolo land tenure committee expresses his view that delimitation of the village boundaries would be a sacrilege.**

<sup>25</sup> Côte d'Ivoire has approximately 23 million hectares of arable land.

approved by the village land committee) is a resident of Séguéla and relatively wealthy. When asked why the established families of Mbolo are not preparing applications to certify their own lands, the response was that such luxuries are well beyond the means of local populations.

#### **SUMMARY OBSERVATIONS REGARDING THE CONTENTS OF THE 1998 RURAL LAND TENURE LAW**

A brief summary of the inherent tensions in the 1998 law is provided by Chauveau (undated, p.13):

- While customary land property rights are recognized, they will be eliminated if customary rights holders do not conform (at considerable expense in time, effort and financial requirements) to the registration requirements established by the law.
- While land registration is voluntary, it is also subject to timetables that impose severe penalties (loss of rights) if not adhered to.
- While the law expresses willingness to adapt legislation to local realities (by recognizing customary rights), it does not provide for recognition of the various forms of secondary rights practiced in the customary and local context.

Beyond Chauveau's observations, a unique set of challenges is posed by the most controversial provision of the 1998 law: the limitation of land proprietorship to Ivoirian nationals (with the limited exceptions of non-Ivoirians who have formalized their land property rights prior to passage of the 1998 law). Non-Ivoirians may enter into long-term leasing contracts either with (Ivoirian) property rights holders or with the state. The law institutionalizes a link between land and one of the core drivers of the recent conflict: definitions and attributes of nationality and citizenship. The resulting political sensitivities that are now locked into the law itself and its application must be strategically accounted for in sorting out property rights at the local level, including in artisanal diamond-mining zones.

In spite of all the challenges, it should also be recognized that very few laws or policies are problem-free. The 1998 law opens the door to local solutions to land tenure management based on established practices and norms. These are the characteristics of the law that may potentially provide the latitude and flexibility to work toward fair, efficient and practical solutions to the challenges of land tenure management in a market economy.

# 4.0 GOVERNMENT SYSTEMS IN SUPPORT OF THE KIMBERLEY PROCESS

As noted in the introduction to this report, a primary objective is to determine whether conditions are propitious for establishment of a Property Rights and Artisanal Diamond Development (PRADD)-style assistance program in Côte d'Ivoire. In this respect, the key KP compliance issue is registration of artisanal miners with the government and monitoring of diamond sales.<sup>26</sup> As noted earlier in this report (see Chapter 3), current mining legislation requires that all miners be registered and that sales be documented. This section provides the impressions of the assessment team regarding current prospects for government enforcement of these provisions. We first note that the overriding context for enforcement of requirements to register artisanal miners remains dominated by the challenge of leaving behind the still-fresh trauma and recent chaos of the past 12 years of civil disturbance and periodic civil war.

On September 20, 2011 the KP Group of Experts on Côte d'Ivoire addressed a letter to the Chair of the Security Council Committee established pursuant to Security Council Resolution 1572 (2004) containing the following observation:

*Although the Government [of Côte d'Ivoire] drafted in 2003 legislative measures to incorporate into law the institutional and technical structures required by the Kimberley Process Certification Scheme (KPCS), it was unable to implement these measures owing to civil unrest and the takeover of the diamond fields by the Forces Nouvelles....*

*The Group [of experts] considers that the restoration of State control and the rule of law in the mining areas, which at present is non-existent (as anyone with the purchasing power to do so can approach miners in the field and procure diamonds), is imperative in order to avoid the risk of further violations of the sanctions regime....*

*The Group [of experts] held meetings with the Minister of Mines and Energy, the Director of Mines, and the Director of Mining Development in Abidjan on 1 September 2011. During these visits, the Ministry emphasized that it lacks the resources to effectively carry out all of its functions, particularly in the north. Ministry officials who were redeployed to the north after the 2011 post-electoral crisis cannot carry out basic duties such as overseeing the activities in the diamond mines, as they lack vehicles to carry out such inspections.*

One year following submission of the above letter to the Special Committee Chair, the situation appears to be slowly improving. The mission met twice with Fatimata Thes, the KP focal point in Côte d'Ivoire. Mme. Thes is also Deputy Chief of Staff to the Minister of Mines, Petroleum and Energy. Mme. Thes confirms the

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<sup>26</sup> A fundamental compliance issue for Côte d'Ivoire is establishment of internal controls that ensure oversight and monitoring of production and marketing of artisanally produced diamonds. Registration of miners is a key component of internal controls. Other compliance issues include updating of mining legislation to integrate KP requirements, and the current initiative to revise mining legislation (see Chapter 3 above) presents a golden opportunity to achieve compliance on that issue. Presumably the Government of Côte d'Ivoire is already planning for revisions to the mining code to reflect KP requirements. Other compliance issues, such as redesign of the Kimberley certificate, are technical matters that are not addressed in this report.

commitment of the government to reestablish rules that require artisanal miners to register with the government.

The immediate next step will be for the MMEP to sponsor an information-sharing event by the end of October 2012 that will take place in Séguéla, the principal diamond-producing area of Côte d'Ivoire. The event will be facilitated by staff at the Departmental Direction of Mines, and by the Sous Préfet. Mme. Thebes anticipates that this event along with other activities planned by MMEP in support of KP compliance will prepare the government for a KP technical compliance review to be requested for January 2013. If successful, this timing of the review would pave the way for lifting of the embargo on export of diamonds from Côte d'Ivoire by the UN Security Council during its meeting in April 2013.

The assessment mission team<sup>27</sup> finds the target for government achievement of compliance by January 2013 to be quite ambitious. Although the government has made progress since the above-cited letter was written a year ago, the situation in the diamond-producing regions of northern Côte d'Ivoire remains far from normal. The presence of mining officials at Séguéla was only recently reestablished, and the departmental staff of the DM is understaffed and under-resourced.<sup>28</sup> Moreover, it was not clear to the assessment team that local mining officials have a realistic understanding of the significant level of effort and resources that will be required to reassert their authority, and to organize and monitor artisanal mining.

At the national level, the MMEP appears to be similarly understaffed and under-resourced. For example, the team was interested in investigating reported plans for development of a mining cadastre,<sup>29</sup> only to be told by the national Director of Mines that it is “theoretical,” presumably indicating that the cadastre is still in the planning/preparatory phases but not yet realized. The mining cadastre is one of a number of projects and plans currently in progress under the MMEP, but for which completion is dependent on additional time and resources, including human resources.

Another example of insufficient human resources for accomplishment of MMEP functions became evident during the team's exchange with the Director of Geology (a department within the MMEP), a long-time key technical support stalwart who is now nearing retirement. The director described how his generation benefited from international educational opportunities that have not since been available to successive generations. He expressed his concern that, as his generation of mining engineers and experts retires, they may not be replaced at a rate and volume that would respond to needs.<sup>30</sup>

A World Bank-sponsored project has been in place since 2010 with the objective of reinforcing the capacity of the mining administration, but its activities were disrupted by the post-election crisis in 2011. The World Bank project was originally scheduled for completion in May 2012 but has been extended to May 2013. In addition to supporting development and staffing of a mining cadastre, the World Bank project is providing technical support for legislative reform and training to local populations to strengthen negotiating skills vis-à-vis mining companies. This appears to be a particularly appropriate strategy given the geological context of

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<sup>27</sup> This opinion seems to be generally shared by several participants in the FOCL mission that was conducted at the same time as the diamond sector assessment presented in this report.

<sup>28</sup> The departmental DM consists of a director and two agents – one technical and one administrative – and a secretary. The administrative agent doubles as a field agent. The department has no vehicles at its disposal and field visits are conducted on personal motorcycles. In spite of these constraints, the field sites visited by the assessment team appeared to be at least semi-regularly visited by departmental mining staff.

<sup>29</sup> The reader is reminded that the current mining code requires that a register be maintained for all categories of mining activities, including authorizations for artisanal mining (see Article 95 of Law 95-553, and Article 6 of Decree 96-634). The assessment team was interested to know whether the mining cadastre will document and map artisanal mining activities as well as industrial mining permits, in effect raising the status of artisanal mining documentation from the category “register” to the category “cadastre.” The remarks of the national director suggest that artisanal mining activities will not be included in the envisioned mining cadastre.

<sup>30</sup> On a more optimistic note, the director did mention that there is a recently established program to fund a small number of candidates for long-term training on technical themes. Presumably these individuals will join the MMEP staff following completion of their training.

Côte d'Ivoire, which favors a future that is likely to feature increasing industrial diamond mining (and waning artisanal diamond mining).

Other than the World Bank project, the mission team uncovered little evidence of convincing movement toward capacity reinforcement of mining administration staff. Yet weak capacity is among the biggest obstacles to achievement KP requirements such as effective registration and monitoring of artisanal miners.

But another obstacle to registration of artisanal miners is undoubtedly that opposing (or at least, countervailing) vested interests have established themselves in artisanal diamond mining over the past 13 years during which there was virtually no effective government presence in the artisanal diamond-mining sector. The scope and strength of these vested interests is little understood by observers, other than to recognize that diamonds continue to be produced (this is easily observable) and almost certainly continue to be marketed.

One consideration is the extent to which carrots are to be favored over sticks, or vice versa. Some DM officials are in favor of sending in a military force to eliminate any currently operating illegal producers and buyers of diamonds, although this approach would be fraught with risks of unanticipated consequences. Another potential “stick”-like approach is the expressed intention of the MMEP to establish a mining brigade in the course of revising the current mining code. While this approach may have some potential benefits, the challenge highlighted above of capacity constraints will need to be resolved.

There are two levels to consider if progress is to be achieved in registration of artisanal diamond miners: 1) inside of the SODEMI permit (in which clear vestiges remain of a diamond production and marketing system that was relatively known and registered with government officials), and 2) outside of the SODEMI permit (including both parts of the diamond-producing areas of Séguéla and all of the diamond-producing zone of Tortiya). While both levels need addressing, the scope and scale of the second level is difficult to gauge. The following graphic illustrates the vast area of Séguéla that must be accounted for by a system of internal controls to achieve KP compliance. The additional (albeit smaller) diamond-producing zone of Tortiya, which must also be accounted for by the system of internal controls does not appear in this graphic. The “level 1” zone of the SODEMI permit—consisting of 736 km<sup>2</sup>—appears in the rectangle that includes large print of the word “Duala” and small print of the words “SODEMI” and “Bobi.” Although it covers a significant surface area and includes at least 20 villages implicated in artisanal diamond mining, SODEMI is a relatively small part of the larger zone that features significant mining activities of varying types, scales and minerals.

**FIGURE 4.1. PRE-2002 INDUSTRIAL MINING PERMITS IN THE SEGUÉLA REGION**  
(Courtesy of departmental direction of mines in Séguéla)



In summary, the best that can be said regarding government reestablishment of an effective system to register artisanal diamond miners and monitor sales of diamonds is that it will require resource commitments that are not evident at present, and that it will take time. But there are also uncertainties and unknowns, including the true scope and scale of the task, and the strength and tenacity of existing counterproductive vested interests. Projects such as the World Bank initiative to strengthen the capacity of the mining administration will help. But the World Bank project is limited in time (to end in May 2013) and targets a broader set of mining activities than those specific to the artisanal diamond-mining sector. Clearly the type of assistance developed in other countries by the PRADD project is of a nature that could make a contribution to development of systems and methodologies for identification and registration of artisanal diamond miners in Côte d'Ivoire. The size of such a contribution in the context of the magnitude of needs remains something of an open question.

# 5.0 INFORMAL TENURE SYSTEMS AND ARRANGEMENTS FOR LAND AND MINERALS

## 5.1 A FORCEFUL ASSERTION OF VILLAGE-BASED CUSTOMARY LAND RIGHTS

The assessment team was struck by the relative strength of customary land property rights at sites visited. This was not a complete surprise given that recognition in Côte d'Ivoire of local, informal property rights is a feature of national legislation such as the national rural land tenure and mining policies presented above. As a reminder, the 1998 Rural Land Tenure Law adopts customary land rights as a starting point toward establishment of a formal land titling system, while current mining legislation requires mining permit holders to recognize existing rights, and to compensate rights holders where local rights are diminished in the face of mining activities. Moreover, land tenure literature from Côte d'Ivoire (much of it based on studies of the conflict-ridden western forest and cocoa-producing regions of the country) uniformly describe a *tutorat* system whereby migrants gain access to land through intermediation of a village-based individual who represents and adheres to the local customary land management authority.

In the villages visited, customary land tenure authorities appear generally to retain a level of recognition as legitimate allocators of land rights. The *tutorat* system is alive and well in the villages of Diarabana and Bobi (within the SODEMI permitted zone) where village notables explained to the assessment team that each legitimate “stranger” miner has a tutor from the village who mediates between village land tenure authorities and the miner. Such a system was also encountered in Gbolo, a village outside of the SODEMI permit but which borders a gold-mining area. During a visit to the gold-mining zone outside of the village of Kiego, the team observed a village-based representative of Kiego’s customary land tenure authorities as he made the rounds of artisanal miners to collect a village-imposed tax imposed on non-indigenous miners (the team was told that the vast majority of gold miners are migrants, with the largest percentage of migrants originating from neighboring countries to Côte d'Ivoire). While the village tax collectors probably presented an ideal version of the management system in place (2,000 CFA/week/miner to be collected each Thursday, the day the team happened to visit the area), the legitimacy of village-imposed fees—apparently equivalent to a “land rental” fee—was clearly recognized by the miners encountered.

While recognition and assertion of village customary land rights was a feature of all villages visited, and may credibly be hypothesized to be a quasi-universal feature of land tenure in Côte d'Ivoire, the most compelling and coherent model of organized customary land property rights observed by the team was in the SODEMI permit area villages of Diarabana and Bobi. As noted above, these villages maintain a functioning *tutorat* system. Moreover, each village maintains a local “police force” that patrols the village territory and directly

confronts, with force if necessary,<sup>31</sup> clandestine miners or other individuals who have bypassed village-based customary land tenure authority.

The Diarabana and Bobi model for local control of land access based on customary land property rights was developed beginning in the mid-1980s when artisanal diamond mining was legalized in Côte d'Ivoire. About that time a state agency known as the Society for Mining Development (SODEMI) obtained a diamond exploration permit to 736 km<sup>2</sup> of land outside of Séguéla that covered territories of about 20 villages, including the villages of Diarabana and Bodi. SODEMI had the choice to either 1) attempt to forbid any artisanal diamond-mining activities (which would have been their legal right), or 2) collaborate with the villages and to channel artisanal diamond mining in a way that did not interfere with the agency's industrial mining ambitions. Wisely, SODEMI chose the second option. SODEMI supported the villages to establish artisanal diamond-mining cooperatives (or perhaps more accurately, pre-cooperatives) known as *Groupements à Vocation Coopérative* (GVCs).

The GVC model is based on local customary land tenure rules. GVC officers represent village land chiefs, and are motivated to uphold land property rights as a way to gain revenues on the basis of a revenue-sharing model between diamond producers (mostly outsiders to the village), the GVC and SODEMI (at a stated revenue distribution formula of 80:12:8 based on the selling price). The SODEMI portion is further subdivided between the agency itself (to cover technical support and organizational services offered to the GVCs) and the national treasury.

With SODEMI's support, the GVCs were structured to include oversight and enforcement capacity. As noted above, local "police" agents, answerable to the GVC, patrol the village territory and report—or directly intervene against—any unauthorized mining activities. In addition, the GVCs direct monitors who observe all gravel processing/washing activities (the stage of diamond mining during which diamonds are identified in batches of diamantiferous gravel). Once diamonds are discovered, GVC officers attend the negotiations between the producer and the buyer. Each of these activities is scheduled to take place on designated days of the week and times of the day.

The precise zones within the village territories in which GVCs oversaw and authorized artisanal diamond mining were determined within the system managed by SODEMI. GVC members and village residents could stake out claims in designated areas as long as they paid an annual fee of 4,000 CFA (this is the claim renewal fee defined in mining legislation). GVC members explained that it was in their interests to regularly review the productivity of claims and to discontinue underperforming claims so that they would no longer be required to pay the fee to SODEMI. The impression given by GVC members is that each year applications for new claims were prepared that also specified discontinued sites, thus suggesting a robust documentation and state (via SODEMI) management of active mining sites. At least, this is presented as the case until 2002 when everything changed. Today GVC members no longer claim to be involved in diamond production. Nevertheless, the assessment team observed GVC oversight of diamondiferous gravel in the "former" diamond mines of Bobi village.

The results of the GVC approach are highly visible in Diarabana and Bobi in the form of large mosques, schools, health centers, youth meeting halls and utilities infrastructure such as water towers. However, all existing infrastructure was mostly financed prior to the deterioration of national security in 2002 and in some cases remains incomplete, and in other cases displays signs of lack of maintenance.

The descriptions by GVC members of how the system worked prior to 2002 are most likely idealized, an impression that is reinforced by at least one knowledgeable actor who operated at the higher levels of the

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<sup>31</sup> The willingness of indigenous village populations to use force to ensure adherence to customary rights occurred a couple of weeks prior to the team's visit to Diarabana. Two clandestine miners working at night attempted to dig for diamonds in an area where the Vice President of the Diarabana GVC had established a cashew plantation. The plantation owner did not hesitate to fire on the intruders wounding each and inflicting wounds that subsequently required medical attention.

diamond marketing chain during the “golden” era of GVC functioning. Some factors to keep in mind include:

- SODEMI’s primary *raison d’être*—which was to realize mining profits—did not provide a clear motivation to devote significant resources to training and management of the GVCs.
- The only villages visited (and apparently recommended for visits by mining authorities) were Diarabana and Bodi, which may not be representative of all of the approximately 20 villages within the SODEMI permit and that reportedly received at least some technical and organizational support from SODEMI based on the GVC model.
- Formulas for distribution of diamond profits are notoriously difficult to rigorously adhere to and maintain in an environment of relatively resource-poor enforcement agencies coupled with nearly inevitable opportunities for non-transparent marketing of small objects with concentrated wealth.

In spite of the possible tendency to idealize the GVC model, exchanges with GVC members in Diarabana and Bodi villages provide evidence that the model had at least some basis in reality. To the extent that this is true, Côte d’Ivoire already presents a level of progress toward organized cooperative management of local artisanal diamond mining that remains mostly theoretical in other PRADD programs such as in the CAR. While PRADD-CAR is supporting the Government of CAR to develop a model of cooperative production and marketing of artisanal diamonds, for the most part these efforts have not enjoyed the seeming head-start that could be anticipated given the opportunity to build on a homegrown model such as the GVC. It is also significant that the GVCs are legitimized by their basis in local customary land tenure authority, a type of land tenure authority that PRADD considers to be much weaker in a country such as the CAR (admittedly such generalizations expressed at a national level regarding the relative strength or weakness of customary land property rights should be treated as hypothesis—albeit a pretty firmly *grounded* hypothesis—as opposed to proven fact).

But it is also important to specify that the context in which the mission team formulated their hypotheses is characterized by artisanal mining of gold in addition to artisanal mining of diamonds. Gold mining is much more extensive in Côte d’Ivoire, both geographically and in terms of numbers of participants. While diamond-mining operations remain under the shadow of the export embargo, and therefore observers must be mindful of distortions in activities observed, gold mining remains a legal activity—although little subject to the active control and management of the government at this time. The assessment team’s visit to the gold-mining zone outside of Kiego village was reminiscent of visits to the CAR diamond-mining zones before the advent of



A departmental mining agent surveys the gold miners outside of the village of Kiego.



Departmental mining officers (center) lecture non-registered miners to adhere to mining regulations – to little avail.

PRADD: a scene dominated by the presence of large numbers of miners, few of whom are known by or registered with the government. On a positive note, the team (accompanied by specialists in extraction and processing of gold) found no evidence of mercury use in gold extraction practices in Kiego. However, this good news must be qualified by the need for vigilance to prevent future use of mercury at this site and other gold-mining sites.

Next door to Kiego is the village of Mbolo, targeted by the assessment team because of the presence of a village land tenure committee—the only such village visited by the team. The land tenure committee was established in Mbolo in August 2011 by the Sous Préfet in accordance to the provisions of the 1998 Rural Land Tenure Law. Mbolo is also attempting to use customary land tenure authority to maintain the integrity of its claimed village territory, perhaps partly to better position itself in case of potential future discoveries of gold within its boundaries. Retaining flexibility in village boundaries appears to be part of Mbolo's strategy in preparing to reap future anticipated benefits from subsoil riches.

Among the lessons identified by the team on the basis of observations of customary tenure management systems and practices in Kiego and Mbolo, is that customs tend to evolve as conditions change, and motivations react to fluctuating combinations of cultural, economic, political and institutional influences. The SODEMI/GVC model appears to demonstrate that customary authority is real, but also that it can be channeled to move toward achievement of objectives such as local development and application of government management rules regulating artisanal mining. Maybe the fundamental conclusion to be drawn from the sum of observations from the villages of Séguéla is that they provide support for the common maxim: all politics are local.

# 6.0 ARTISANAL DIAMOND-MINING PRODUCTION AND MARKETING STRATEGIES AND PRACTICES

## 6.1 PRE-2002 STRATEGIES AND PRACTICES

Any discussion of artisanal diamond production and marketing in Côte d'Ivoire must distinguish between the pre-2002 system and the current system. Until 2002, according to mining officials, the provisions of the mining code that regulate artisanal diamond mining were generally applied. These provisions were presented in detail in Chapter 2 and can briefly be summed up and paraphrased as follows:

- Artisanal diamond miners are required to obtain authorization to engage in diamond production; the authorization process is detailed and rigorous.
- All mineral production is to be recorded and the information is to be supplied to the mining administration.
- Miners are to establish and maintain cordial and collaborative relations with land owners.
- Buyers, sellers and exporters of diamonds must be licensed.

During the assessment, the above regulations were most often discussed in the context of artisanal diamond mining as it was practiced in the SODEMI permit zone.<sup>32</sup> Application of mining code regulations in the SODEMI zone (to the extent that the mining code was indeed effectively applied) was probably reinforced and encouraged by a level of government oversight (via SODEMI) and technical assistance that was significantly stronger than was the case outside of the SODEMI zone. The enhanced support to artisanal diamond mining would tend to encourage both local villagers and miners, many of whom were migrants coming from outside of the SODEMI villages, to adopt and maintain production strategies that conformed to mining code regulations. The unique circumstances of artisanal diamond mining within the SODEMI permit supported a system in which migrants' access to mining sites, and associated production of diamonds, was largely managed by local village populations (via the GVC) with backstopping from SODEMI.

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<sup>32</sup> This is not to say that the provisions of the mining code were necessarily applied in the SODEMI zone to the letter. We noted, however, that mining officials tend to reflexively describe the SODEMI model whenever discussing artisanal diamond mining in Côte d'Ivoire. The SODEMI model also tends to be presented as the dominant context for artisanal diamond mining in official documents, as well as in documentation produced by nongovernment observers of artisanal diamond mining in Côte d'Ivoire. As noted elsewhere in this report, the assessment team lacks the information to express a firm opinion regarding the extent to which the SODEMI model functioned as described throughout the SODEMI zone that includes approximately 20 villages.

Thus the SODEMI model features a strategy of cooperation and respect for local customary authorities on the part of migrant entrepreneurs and workers. In effect, the strategy of the “stranger” diamond miners is to share (based on a fixed formula) diamond revenues with local populations in exchange for facilitated and secure access to diamond mines. Furthermore, the strategy for diamond buyers inherent to this model is to conduct negotiations in an open forum (i.e., in the presence of the diamond producer, the producer’s village-based sponsor and the GVC). The built-in transparency of the model discourages attempts for quick profits clandestinely negotiated between a subset of parties involved in the overall land proprietorship/diamond-producing/diamond-buying triumvirate of interests, and thus decreases likelihood of conflicts among actors or diversion of diamonds from the monitored production and marketing chain.

Regarding artisanal diamond mining that took place outside of the SODEMI zones, successful application of the artisanal authorization system specified in the mining code would ensure transparency in diamond production and marketing, and encourage harmonious relations among actors. The MMEP did indeed grant artisanal diamond authorizations prior to 2002, suggesting that to some extent the system was working as designed.<sup>33</sup>

Until the outbreak of hostilities in 2002, licensed diamond buying and exporting firms were operating out of Abidjan. These companies partnered with locally based diamond buyers (such as the members of the association of diamond buyers based in Séguéla) to provide financing for diamond production. Some local buyers also used their own resources to provide financing to artisanal miners. The standard formula was for the local buyers to maintain exclusive relationships with individual miners in which underwriting of supplies for miners and food for diggers was offered in return for exclusive buying rights of discovered diamonds.<sup>34</sup>

Customary rules governing access to land ensured the addition of a third party with rights to a portion of diamond revenues: the holder of customary land property rights. At least in the SODEMI zone, both corporate (i.e., the village) and individual (i.e., the tutor) were recognized as valid claimants to a share of diamond revenues. As noted above, because miners and diggers often originated from outside of the mining locality, a parallel relationship developed between “stranger” miners and local villagers. This relationship governs access of outsiders to the mining site and is based on the *tutorial*<sup>35</sup> system, in which a local villager sponsors installation of the miner at a specific site. Less is known regarding how customary property rights translated into diamond revenue shares outside of the SODEMI zone, but presumably either or both the village or the tutors reaped some level of benefits from production of diamonds within their territories.

## **6.2 THE MURKY POST-2002 ENVIRONMENT OF DIAMOND SECTOR PRODUCTION AND MARKETING STRATEGIES AND PRACTICES**

The artisanal diamond production and marketing systems and strategies described above—especially the elements based on application of official government mining policy—are recognized by all actors to be a thing of the past. The disruptions of civil war and non-continual presence of mining officials in mining zones has had a predictably destructive impact on pre-2002 production and marketing strategies. Moreover, the current illegal status of actors in the diamond marketing chain encourages non-transparency in transactions and obstacles to conduct of an external analysis.

UN resolution 1643 (2005) forbids Kimberley Process member countries to import diamonds that originate in Côte d’Ivoire. The ban on international trade of Ivorian diamonds has been extended to April 2013 by UN

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<sup>33</sup> Nevertheless, as is noted in the preceding footnote in the context of the SODEMI zone, the assessment team has little basis to evaluate how much or how little of artisanal diamond mining activities occurring outside of the SODEMI zone was conducted in accordance with mining code regulations before 2002.

<sup>34</sup> The topic of the relationship between miners and their financiers, and the various forms it can take, is further discussed below.

<sup>35</sup> See Section 5.1.

resolution 2045 (2012). Although it was repeatedly stated during the assessment that the ban is on diamond exports—and not on production—this statement seemingly has no meaning given that all previously granted artisanal diamond-mining permits have expired and the government is not currently accepting applications for new ones.<sup>36</sup> The logical conclusion is that all diamond production and marketing activities are currently illegal in Côte d'Ivoire.

The mission team observed ongoing diamond production activities in the village of Bobi. The team also heard anecdotes that suggest diamonds continue to be bought, sold and transported, but that increased security risks have made it much less profitable to engage in marketing of diamonds.

A Séguéla-based diamond buyer association continues to exist. Representatives of the buyers association that met with the mission team complained that the Abidjan-based financiers of diamond production all left the country following the disruptive events beginning in 2002. During a first meeting of the assessment team with the diamond buyers were understandably reluctant to engage in discussions speculating on diamond marketing activities.<sup>37</sup> The diamond buyers complained that they no longer have partners to finance diamond production, and appear to ascribe that problem to the ongoing embargo on export of diamonds from Côte d'Ivoire. However, during a subsequent meeting (organized by the FOIC), buyers seemed more relaxed. The buyers appeared in favor of application of KP standards and blamed the government for lack of success in establishing effective internal controls of diamond marketing. The buyers pointed out that the Government of Cameroon was able to become a KP member following a single year of advocacy and policy review. The buyers felt that under a KP-friendly framework, diamonds would be channeled back into the legal chain of custody.

All actors (at least those with whom the assessment team was able to talk) express the desire to leave behind the illegal and murky current environment of diamond production and marketing in Côte d'Ivoire, and return to the system that is presented (perhaps in somewhat idealized terms) as having been in place until 2002. This desire is shared by diamond miners, diamond buyers and the government. In the eyes of most, the first step of a return toward normalcy is lifting the embargo on export of diamonds. To the extent that there exists a strategy for producing and marketing diamonds, convincing the international community to end the embargo is at the top of the list of strategic priorities.

### **6.3 ORGANIZATIONAL, TECHNOLOGICAL, REVENUE SHARING AND PRICING STRATEGIES AND PRACTICES IN ARTISANAL DIAMOND MINING IN CÔTE D'IVOIRE NON-SPECIFIC TO PRE- OR POST-2002 ERAS**

The preceding section highlighted the pre- and post-contexts of artisanal diamond mining in relation to the traumatic events that began in 2002 and lasted almost to the present. The still-present trauma colors exchanges with all categories of actors, and to a significant extent obscures details that might otherwise provide a portrait of existing practices, strategies and relations as they exist in the contemporary artisanal diamond-mining sector. In contrast, this section more neutrally focuses on organizational, technological and market conditions and practices as discussed during the assessment without reference to the distinction between pre- and post-2002. Conduct of discussion without reference to the current embargo and illegal nature of artisanal diamond mining and marketing created a more relaxed forum for frank exchange between the assessment team and various diamond sector actors. The details contained in this section will provide

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<sup>36</sup> The assessment team was shown records indicating that several applications for artisanal diamond mining have recently been submitted to the departmental DM. However the applications have not been forwarded to the national DM for further processing because of the existing policy that no diamond mining authorizations are to be granted until further notice.

<sup>37</sup> The buyers did, however, enthusiastically participate in a discussion of diamond production conditions, technical constraints and practices, in the course of which they displayed a detailed and up-to-date knowledge of the local context for diamond production.

important baseline information in the event a PRADD-style project is eventually implemented in Côte d'Ivoire.

### **6.3.1 WORK ORGANIZATION**

Miners work in small teams of three to seven people and share the profits equitably. There is a team leader but it does not affect the profit sharing. Women are well associated with men. However, women can also provide additional washing labor (in gold mining) and receive either cash (\$2-4/day) or one basket of gravel for every 20 baskets washed (preferred: they can get up to \$10/day this way). This practice is more unlikely in diamond mining, as washing requires more experience. Most miners are foreigners (especially Guineans but also Burkinabès and Malians) in the non-SODEMI areas.

### **6.3.2 DIAMOND PRODUCTION TECHNOLOGY**

Equipment is rudimentary: shovels, which tend to be of a good quality (South African brand imported from Liberia), locally forged picks and artisanal sieves of a poor quality. Liberians introduced artisanal gold planks, which, fed by water pumped from the river, separate gold powder from gravel on a “carpet”.

The preferred extraction method in both gold and diamond mining is small holes opening to underground galleries. Gravel is extracted by pail and transported to the nearest river. Mining authorities vainly try to promote the “trenching” method, which would reduce the workload and the likelihood of accidents, as crumbling galleries are common.

Although the riverbank techniques of dam or deviation canals are known, they are scarcely applied and the vast majority of sites are located in “quarries” far from the water level, indicating a very poor understanding of basic geology. Diamond “indicators” (quartz or other stones indicating the presence of diamond) are not known. Riverbed extraction and diving techniques are not known. Similarly, prospection is extremely poor. Miners tend to mine near areas where gold/diamonds were already found. Not even basic artisanal prospecting techniques (*sonde*) are used and soil-sampling augers are an unheard of tool, even to the most experienced buyers.

### **6.3.3 DISTRIBUTION OF DIAMOND REVENUES**

The profit relations with land chiefs and owners are always informal, even in the SODEMI areas after the GVC gets its 12 percent share. Arrangements are negotiated before extraction starts and can take various forms:

- In a collective ownership (non-SODEMI areas), the village land chief collects a “tax” once a week for every hole (\$0.5-6 depending on production).
- In individual ownership, the land proprietor collects one extra share of the team’s profits (one-sixth if the team is five, etc.). Note that a similar arrangement is found in the SODEMI areas with the so-called “tutor”, although it is not clear whether this tutor represents an individual land proprietor or the initiator of the works, i.e. he who submitted the extraction request to SODEMI.
- In individual ownership, the land proprietor gets a fixed share on the price (e.g., \$2/grams of gold over a total price of \$40/gram).

These arrangements seem to be well respected and no conflict was reported during the visits. Local buyers (collectors or intermediaries) live in the provincial capital city and move from village to village. Sometimes, they provide the equipment and fund the weekly food rations to miners, which they deduct from the sale price. Sometimes, the mining teams provide their own financing.

### **6.3.4 PRICING**

More research is needed on diamond and gold pricing, as this is an important and delicate subject, but general observations show that goods are extremely undervalued.

The price of gold varies from \$36 to \$50 per gram, depending on quality (stone or powder), location and arrangement with the local land chief. As a point of comparison, it is \$56 to \$70 per gram in rural CAR and roughly estimated at \$90 to \$100 per gram in Dubai.

The diamond price quoted by the well-organized GVC of Bobi was \$200 to \$300 for a one-carat select (good clarity, good color) *before embargo*, which amounts to four to six percent of the final retail price of the same stone, cut and polished and inserted into a jewel/ring, at a typical European store. This is much lower than the nine percent average a miner gets in the CAR (PRADD estimate). According to the mining authorities and the Sous-Préfet, the actual price under embargo is even much lower, as local buyers charge a “risk premium” for bribes, concealment, complex transportation and intermediary process, to smuggle the goods out of country.

# 7.0 ENVIRONMENTAL AND DEVELOPMENT OPPORTUNITIES AND CONSTRAINTS

The environmental damage of artisanal mining outside of Séguéla is very visible. River flows are significantly hindered by the presence of heaps of sterile ground caused by gravel residues following washing for diamonds. Trees in the way of mining activities are commonly cut down, causing depletion of fish and game. Dangerously weak surface areas in the vicinity of active or abandoned diamond mines are susceptible to collapse.



**A slowing river flow outside of Séguéla**

**Residues leftover from artisanal diamond mining**

**A collapsing surface adjacent to an artisanal diamond mine**

The preferred extraction type viewed by the assessment team (quarry, hole and galleries) is not conducive to a reconversion of exhausted sites into fishponds (a successful activity in the CAR), but would allow a successful reclamation for establishment of plantations and orchards. Côte d'Ivoire's rich agricultural history would serve this purpose well: cocoa, cashew, palm trees and cola trees<sup>38</sup> are known cultures. Moreover, villages in the SODEMI areas seem to be well disposed toward land and income diversification. Experiments in watercourse regeneration could also be tested.

During a visit to an artisanal gold mining zone outside of Séguéla, the assessment team observed that most miners at this site live in semi-permanent camps close to the extraction areas. These miners, either Ivoirians or foreigners, come to live there for a period of one to six months, and move on. They usually bring their family—wife, children and parents. The movement of miners in and out of the camp continues as long as

<sup>38</sup> Worodougou, the name of the province that includes Séguéla, translates literally as “Cola Land.”

diamonds/gold is found nearby, with continual movements in and out of the camps so that the camps tend to endure for long periods of time.

Local villages seem to tolerate the creation of such camps on their customary land as long as the weekly “taxes” are levied (see above). Allegedly, residents are also allowed to farm the land, even though they focus on mining. This apparent tolerance on property rights seems compounded by the fact that no hut is ever built using hard materials (not even the local mosque) and no tree is ever planted. However, this could be the result of the short period of time the families stay in the camp rather than a reluctance to establish a long-term settlement.

As one would expect, the living conditions in those mining camps are extremely poor. Potable water is available from wells but diarrhea and other waterborne diseases are common. Schooling is not available, and many children are illiterate and start “helping” at the mining sites at 10 years of age. Local and mining populations are extremely ill informed on topics such as the Kimberley Process, the mining code and fundamental geological concepts that would aid in evaluating likely locations of minerals and gems.

As noted in Chapter 6, extraction techniques and tools are rudimentary and characterized by a very low level of technological sophistication. Safety is a challenge given that many mining pits are several meters deep, putting miners at risk of collapsing dirt walls. Child labor at artisanal mining sites appears to be common.



**A typical artisanal gold mining shaft**

**A young girl at a gold mining site outside the village of Kiego**

**An underage boy leaves a diamond- mining site after being chased away by departmental mining agents**

Finally, the assessment team notes that women’s associations may offer a relatively untapped resource for local development. The team met with a variety of women’s organizations in the course of two large meetings in Séguéla and Diarabana. The organizations had obtained, or were in the process of obtaining, legal recognition as cooperatives, associations or *groupements*. Most of the organizations target primarily economic goals, although some include a focus on social objectives such as caring for orphans in a post-civil war environment. Most of the organizations have only very recently been established. Many are pursuing previously unknown pursuits, such as poultry raising and vegetable gardening. A significant advantage of the women’s groups as compared to many other women’s groups encountered by the assessment team’s members in other countries, is that in Séguéla and neighboring villages, there are no constraints to limit women’s access to land for productive activities. The primary constraints expressed by women are lack of financial capital and technical expertise. In contrast, enthusiasm and willingness to work seem to be in generous supply.



The assessment team met with women's groups in Diarabana (pictured) and Séguéla

# 8.0 KEY CONSTRAINTS TO IMPLEMENTING THE KIMBERLEY PROCESS IN CÔTE D'IVOIRE

Constraints to implementing the Kimberley Process in Côte d'Ivoire are identified and described elsewhere in this report (primarily in Chapter 4) and can be summarized as follows:

- Opposing vested interests in the diamond production and marketing chains are present, and were established during periods of chaos and absence of government.
- Independent of vested interests, simple inertia and a tendency to continue to react to signals originating within unofficial, ungoverned production and marketing systems and extra-legal practices currently characterize the artisanal mining sector.
- Government capacity is insufficient, particularly human and financial resources to apply mining regulations and achieve governance of the artisanal mining sector.
- Political will is possibly weak, depending on the unknown extent to which the government is willing to prioritize the artisanal diamond mining sector in general, and achievement of conformity with KP rules in particular.
- Certain provisions in the mining policy are weak, such as the expense and complications for obtaining artisanal authorization, which may limit the willingness of artisanal miners to seek official authorization vs. those who are relatively wealthy or well-connected.
- The international community is apparently unwilling to sponsor robust and long-term technical assistance programs in support of improved implementation of mining legislation and governance of the artisanal mining sector.
- Sector-specific information at the local level is not available, and local awareness of mining policy, KP requirements and reasons for the embargo of diamond exports are insufficient.
- The applicability of rural land legislation in mining zones is confusing, and strategizing on how to use rural land tenure policy to improve governance in artisanal diamond-mining zones is insufficient.

# 9.0 IDENTIFICATION OF PROGRAMMATIC OPPORTUNITIES

## TO SUPPORT KP IMPLEMENTATION AND IMPROVEMENT OF TENURE SECURITY AND LIVELIHOODS FOR ARTISANAL MINING COMMUNITIES

The diverse set of baseline conditions for artisanal diamond mining in Côte d'Ivoire creates both opportunities and challenges for targeting improved artisanal mining sector governance in combination with measures to enhance the livelihoods of miners and mining communities. A list of such opportunities and challenges follows. Activities intended to build on the opportunities listed would require careful attention to challenges during program design and planning, and maintenance of flexibility to adjust as needed.

Preliminary thinking on risk mitigation for each topic appears below under the label *possible risk adjustment measures*.

### TOPIC: RURAL LAND TENURE LEGISLATION AND SECURITY OF LOCAL LAND PROPERTY RIGHTS

- **Opportunity:** Secure select land rights of customary landholders in artisanal diamond-mining zones.

Rural land tenure legislation in Côte d'Ivoire recognizes customary land rights and provides tools for formalization of customary rights. Côte d'Ivoire is among the pioneering countries in West Africa that have adopted legal reforms that provide for formalizing and securing customary land tenure rights in rural settings. The Government of Côte d'Ivoire recently reaffirmed its commitment to implementation of the 1998 rural land law and has designed and launched a national program for this purpose. It is anticipated that some donor funding will be provided by international donors such as the European Union and the World Bank that have previously supported implementation of pilot activities based on the 1998 law.

- **Associated challenge:** The politicized environment of rural land tenure.

Caution is in order: the experience of the past 12 years shows that this law can be used by political opportunists and has the potential to further divide the population. The sensitivity of the law results from the interplay between customary property rights and national identity, a delicate notion that has divided Ivoirian politics and fueled conflict for the past 20 years.

Any model featuring formalization of customary land property rights (even if the formalization is limited to establishment of a GVC-style body whose legitimacy is derived from customary authority) could naturally be interpreted as a measure to apply the 1998 Rural Land Tenure Law. Implementation of the Rural Land Tenure Law in the mining sector appears to be without precedent in Côte d'Ivoire, and would need to be accompanied by an information campaign explaining legal justification. The initiative would also require the local buy-in of administrative officials (especially Sous Préfets). More broadly, an activity associated with implementation of the land tenure law, because of its political sensitivity and treatment of Ivoirian nationality, may be seen by some as politically biased. A delicate balance would need to be

achieved between the focus on reinforcing authority and benefits of local populations in mining zones on the one hand, and application of the Rural Land Tenure Law on the other hand.

- **Possible risk reduction measures:**

Focus on select provisions of the law and current priorities of the Ministry of Agriculture (especially rights associated with definition and *possible* demarcation of village *terroir*) to design a pilot activity to formalize collective customary land rights at the village level. Consider that this approach is in many ways similar to the approach of the GVC whose history pre-dates the 1998 Rural Land Tenure Law (note: the GVC is the village-based artisanal mining management committee that was in place in a number of villages in the SODEMI permit area prior to 2002).

**TOPIC: VILLAGE-LEVEL ORGANIZATION AND MANAGEMENT OF ARTISANAL DIAMOND MINING**

Côte d'Ivoire has developed a progressive and compelling model that addresses both development and artisanal diamond-mining issues. A government structure—SODEMI—provides organizational and technical support to artisanal miners at the local level. The approach adopted by SODEMI serves multiple objectives, including transparency, information flow and promotion of improved mining techniques. SODEMI organizes artisanal miners into village committees designed to evolve toward local cooperatives. With the help of SODEMI, village pre-cooperative committees, known as GVCs, allocate, monitor and police mining sites. In return, the committees receive a portion of diamond revenue and invest the proceeds into local development activities of their own choosing. Customary property rights provide the basis for this structure's authority. It is important to recognize that the GVC are not just a theoretical concept; from the mid-1980s to 2002 the feasibility of this model was convincingly demonstrated in at least some of the SODEMI villages. The government currently seeks to reestablish this approach in the SODEMI zone where it formerly existed. It seems logical and feasible to consider expansion of this model—perhaps with some improvements—into other artisanal diamond-mining areas.

This opportunity context combines several fortuitous policy and practical aspects. Mining law, mining practice (as demonstrated by the SODEMI example) and Rural Land Tenure Law all reinforce the connection between customary land property rights and rights of local populations to the benefits accruing from “stranger” extraction of minerals. The GVC model features revenue sharing between (mostly) migrant miners and the local populations as represented in part by customary land tenure authorities. It could be beneficial to explore refinements to the model that would better prepare villagers for interactions with large-scale industrial mining interests. Improved negotiating skills would be an element of such preparations, but expansion of a model based on customary land rights would also be integral to any such initiative. Exploitation of this opportunity would include elements of implementation of the Rural Land Tenure Law of 1998, which adds to risk (as described above).

- **Opportunity:** Build on the GVC model by supporting its improvement and reestablishment (in the SODEMI permit zone) and diffusion (outside of the SODEMI permit zone).
- **Associated challenge:** There is a lack of clarity regarding whether there was widespread (pre-2002) local buy-in to the GVC model beyond one or two “model” villages within the SODEMI permit zone. It also remains to be confirmed whether the model performed as well as it is described and presented. In other words, it would be prudent to redesign and pilot the model. Finally, there is the challenge of replicating the model beyond the SODEMI permit zone. SODEMI has indicated that it is not interested in supporting implementation of the model beyond the limits of its permit, and there do not appear to be other candidates among government agencies that would be both capable and willing to support implementation and maintenance of such a model.
- **Possible risk reduction measures:**

Identify and explore options for government long-term institutional linkages and technical support for village-level management and benefits from artisanal mining. Integrate support for village organization

building (e.g., GVC) with pilot activities to operationalize the concept of village *terroir*. Consider reassessment or possible redesign of the model from the bottom up (i.e., in collaboration with local administrative and customary authorities).

#### **TOPIC: LOW LEVEL OF TECHNICAL SKILLS AND KNOWLEDGE OF MINERS TO EFFICIENTLY PRODUCE AND MARKET DIAMONDS AT THE ARTISANAL LEVEL**

The low level of technology and technical knowledge of minerals extraction and processing presents opportunities for rapid improvement of current production practices. A targeted technical assistance program featuring outreach, training and enhanced access to more efficient (but inexpensive) tools and equipment could potentially result in quick gains to production.

- **Opportunity:** Reinforce technical skills and knowledge of miners to quickly increase efficiency of production and marketing, and to increase profitability.
- **Associated challenge:** the future of artisanal diamond mining in Côte d'Ivoire is questionable based on the geological context.

Artisanal diamond mining in Côte d'Ivoire appears to be reaching practical limits. Many artisanal diamond-mining sites have been mined out, and remaining concentrations of diamonds are primarily in dykes that require industrial-scale extraction techniques. In summary, the future of diamond mining in Côte d'Ivoire appears to be more industrial than artisanal.

- **Possible risk reduction measures:**

Design short-term technical assistance for artisanal miners as a transition activity toward future-oriented diversification of economic activities, as well as capacity to negotiate with industrial mining interests. Explore ways to obtain deeper understanding of geological potential and limits to artisanal mining of diamonds in Côte d'Ivoire. Possible resources to lead such exploration include SODEMI and/or the Oil, Gas and Energy Department of the World Bank. In addition, facilitate development of standards for corporate responsibility vis-à-vis local populations in mining zones.

#### **TOPIC: REESTABLISHING LOCAL GOVERNMENT AUTHORITY OVER THE ARTISANAL MINING SECTOR**

- **Opportunity:** Decentralized administration (Sous Préfet) and mining service (Departmental Direction of Mining) are currently reestablishing a government presence in Séguéla.

A period of renewal presents a window of opportunity for testing and improving methodologies for local application of laws. In Séguéla, the Sous Préfet and the regional Mining Director appear to be particularly committed to engaging and exploiting opportunities for local organization and development in conformity with official policy and laws. Moreover, the Sous Préfet wields considerable local authority based on Ivoirian law.

- **Associated challenge:** Non-official actors in positions of informal authority, and possibly playing roles in the diamond production and marketing chain, appear to remain in place in and around Séguéla. These non-official actors pose a risk of interference or resistance to efforts to reestablish the rule of law in northern Côte d'Ivoire.

- **Possible risk reduction measures:**

Work progressively but cautiously toward registration of artisanal miners and recording/collection of production information. Closely monitor the impact of these activities, and be ready for mid-course adjustments, so that unintended effects are avoided.

## TOPIC: ARTISANAL DIAMOND MINERS ARE CURRENTLY UNREGISTERED (AND ILLEGAL)

- **Opportunity:** Increase transparency in the artisanal diamond-mining sector by preparing for eventual registration of miners.
- **Associated challenge:** Because artisanal mining for diamonds and gold in Côte d'Ivoire is illegal, official registration of artisanal miners is not possible at this time. Another complicating factor is that most artisanal mining in Côte d'Ivoire, even in so-called diamond-mining zones such as outside of Séguéla, is for gold rather than for diamonds. A program initiated to register artisanal miners would need to consider whether and to what extent to target artisanal gold miners.
- **Possible risk reduction measures:** To the extent institutionally and legally possible, conduct preparatory and non-controversial activities accompanied by a strong information diffusion component. Frame activities as preliminary steps toward registration of artisanal miners following legalization of their activities (i.e., lifting of the embargo on export of diamonds). Associate local authorities, especially the Sous Préfet and the Departmental Director of Mines. Package this type of activity with technical support for local organization, formalization of land rights (at the level of the *terroir*) and activities to improve local livelihoods.

Illustrative activities to increase transparency in the diamond-mining sector:

- Conduct censuses of non-registered artisanal miners.
- Design and support cartographic work and mining information database that identifies artisanal miners and the location of their mines.
- Evaluate and improve existing models for artisanal mining registries, and train mining officials in their use and maintenance.
- Facilitate a mining policy dialogue to improve provisions related to artisanal mining (such as costs and complexity of registration of artisanal miners).
- Facilitate strictly *local* and selective application of the 1998 Rural Land Tenure Law by initiating a policy exchange between the Regional Direction of Rural Land Tenure and the Regional Direction of Mines, and gaining consensus regarding provisions to be applied.
- Promote dialogue and information-sharing with Sous Préfets, who play a key role in application of Rural Land Tenure Laws.

## TOPIC: LOCAL ECONOMIES ARE DIVERSIFIED AND LOCAL ECONOMIC INTEREST GROUPS ARE DYNAMIC

The mining villages visited in Côte d'Ivoire boast relatively diversified local economies (in comparison to the contexts of USAID programs that strengthen KP compliance in the CAR and Liberia). One would anticipate that such diversity will translate into increased openness and receptivity of local populations to adopt new technologies and methodologies, as well as to exploit new revenue-generating opportunities arising outside of the artisanal mining sector, or to conduct activities to recuperate and restore exhausted mining sites if such efforts can be demonstrated to generate revenues. The assessment team was particularly impressed by the interest and enthusiasm shown by women's groups seeking to identify and engage in new activities to further diversify opportunities for revenue generation.

- **Opportunity:** Identification, development and quick local adoption of popular and feasible development and environmentally oriented activities.
- **Associated challenge:** Available resources may be spread too thin if the portfolio of activities being supported grows too large.
- **Possible risk reduction measures:**

Design a participatory process for identification, prioritization and design of activities targeting enhanced livelihoods and environmental goals. Design and implement effective awareness-raising campaigns

targeting transparency of the artisanal mining sector and compliance with KP rules, but also promoting diversified economic activities.

Several activities that address environmental or development constraints may be considered for design and implementation, taking care to maintain thematic coherence by packaging this type of activity with activities to increase transparency and to reinforce internal controls over artisanal diamond mining. Illustrative activities include:

- Design a pilot program, with input from local populations, for recuperation of abandoned mining sites.
- Provide training in diamond valuation.
- Investigate possible models for establishment of material and equipment depots.
- Provide technical assistance to improve mineral extraction and processing techniques.
- Design and implement information campaigns on themes of mining regulations, KP, child labor laws and practices, health and safety issues and organizational models for local populations.
- Build the capacity of local village representatives to negotiate terms of profit sharing and compensation with companies planning to engage in industrial mining in or near their village *terroirs*.

#### **TOPIC: LEGISLATIVE REFORM**

The mining code is currently under revision. While the 1998 Rural Land Tenure Law has recently been reconfirmed by the government, its application is still in the pilot phase and, the team suspects, will be subject to ongoing strategic adjustment.

- **Opportunity:** Ongoing policy reform and implementation strategizing in the mining and land tenure sectors opens the door for constructive policy dialogue and improved future policies. A specific topic of interest to any KP-supporting program is the degree to which rural actors are able to access legal rights-securing instruments such as mining authorizations and land certificates or titles. Policy dialogue leading to lower costs and complexity of procedures for obtaining such instruments potentially result in significant benefits to policy implementation.
- **Associated challenge:** The timetable for reform of the mining code will be difficult to take advantage of given the current target for new legislation is early 2013. Any dialogue based on rural land tenure policy will take place in a strained environment and be subject to contentious political debates.
- **Possible risk reduction strategies:**

It may be unwise to rush into (at least some aspects of) policy dialogue prior to gaining deeper understanding of technical issues (artisanal mining) and the nature of political minefields (rural land tenure). Nevertheless, implementation of any activities targeting increased transparency in the artisanal mining sector, and select provisions of the rural land law, should be carefully monitored and results analyzed in preparation for eventual participation and/or facilitation of policy dialogue and achievement of meaningful contributions to policy reform. A possible exception to planned delays in initiating a policy dialogue is in regard to the topic of accessibility to rural actors of property securing instruments (artisanal mining authorizations and land titles or certificates).

#### **TOPIC: LOW LEVELS OF INFORMATION ON SPECIFIC THEMES AVAILABLE TO LOCAL AND NATIONAL LEVELS**

Local populations in mining communities are ill informed regarding KP principles and rules, as well as national policy (both mining and rural land tenure). It also seems likely that national populations are not well informed regarding artisanal mining issues.

- **Opportunity:** Design and implement appropriate information and awareness-raising campaigns at the local and national levels. The local campaigns would feature KP principles and rules, as well as national mining and land tenure policies. The national campaign would enhance general understanding of the conditions and issues predominant in the artisanal mining sector.

- **Associated challenge:** This activity is important but needs to be designed taking careful account of sensitivities of certain actors who may have developed distorted views of the motivation and impact of the embargo on diamond exports, or politically influenced views of rural land tenure policy.

- **Possible risk reduction strategies:**

Solicit partners and develop networks of civil society organizations that are already active in sponsoring information diffusion on topics related to artisanal diamond mining and rural land tenure.

**TOPIC: CONFLICT MANAGEMENT**

A final note is reserved for the topic of conflict management. That land conflict is a significant issue in Côte d'Ivoire is self-evident. Land conflict is both a national and a local issue. Any assistance program implemented in the context of artisanal diamond mining would be committing a serious error if it did not develop a sound strategy for land conflict management. At least in its early stages, such a program should probably be purely local in nature and implemented as a pilot activity. The most likely path to success will result from the design of a conflict management program with abundant input and collaboration with local populations and customary authorities. Facilitated public debates could clarify appropriate roles for village-based institutions such as the GVC (established to manage local artisanal mining activities) and the village rural land tenure committee (established by the 1998 Rural Land Tenure Law).

# ANNEX 1. RESEARCH QUESTIONS INCLUDED IN MISSION SCOPE OF WORK

## **Legal analysis of tenure issues** (both land and mineral)

- Types of mineral rights, process for securing mineral rights, governing authorities and institutions, etc.
- Any ongoing or planned reforms in both land and mineral rights policy and legislation?
- Donors involved in supporting land and mining policy and legal reforms?

## **Government KP system**

- Assess KP legal framework and the efficacy of systems in place to support KP, including:
  - mining cadastre,
  - mine-to-export traceability system,
  - human and material resources to support the system,
  - licensing procedures and costs, and
  - other donors involved in mining sector.

## **Land and mineral tenure issues** (especially in the two primary diamond-mining zones of Séguéla and Tortiya)

- Who currently has claims to the land where mining is occurring?
- How did/do people gain access to the land and resources and under what conditions?
- What tenure conflicts exist, if any, and how do they get resolved?
- Are claims documented and recorded in any way? If so, where and by whom?

## **Artisanal mining strategies**

- How is artisanal mining occurring in the areas visited?
- Who are the actors in the diamond sector/supply chain and how are they organized (i.e., collectors, buying houses, etc.)?
- What are the main productivity constraints?
- Financing, access to mines, knowledge of deposits, labor, etc.?

## **Environmental and development constraints**

- In general, what the primary environmental impacts from mining in the areas being visited?
- Is mining carried out in the same way as we see in Liberia and the CAR or are the environmental impacts different?
- Deforestation, diverting of water ways, etc.
- Is gold mining also occurring in the same areas?
- If so, is mercury pollution an issue?
- In general, what are the primary development constraints in the areas being visited?

- Physical security, food security, access to roads, etc.?

**Key constraints** to implementing the KP in Côte d'Ivoire.

**Identification of programmatic opportunities** to support KP implementation and improvement of tenure security and livelihoods for artisanal mining communities.

# ANNEX 2. LIST OF PERSONS AND ORGANIZATIONS MET

September 13, 2012

- American Embassy with Bill Covin (Political/Economic Assistant) and Sean Cely, Deputy Chief of Political and Economic Section (Sebastien)
- Ministry of Mines with Mme. Fatimata Thes, Directeur du Cabinet Adjoint et Point Focal du PK (Sebastien and Bill)
- Direction Générale des Mines with M Titipou, DG Adjoint et Directeur du Développement Minier, and 5 ingénieurs des mines (Aimé, Bérangé du cadastre minier, une femme qui s'occupe des dossiers, Eric Yoboué, taxation/redevances, Ada, gère les permis et est spécialiste PK) (Sebastien, Hermann)
- Adolphe Zégbé, Sous Préfet de Séguéla

September 14, 2012

- Traoré Wodjo Fini, Président Club Union Africaine Côte d'Ivoire, Koné, Gwladys, Chargée de Communication, Drissa Soulama, Secrétaire Général Adjoint Chargé des Droits Humains, Ibrahima, Traoré Narcisse (Sebastien, Hermann)
- Glenn Slocum, Development Counselor, US Embassy (USAID), Benjamin Olagboye, Democracy and Governance Specialist
- Ousmane Attai, Freelance Journalist (used to work for Dow Jones, now contributes to Wall Street Journal and Time)

September 15, 2012

- Hermann Kouakou representing NGO Groupement de Recherches et de Plaidoyer des Industries Extractives (GRPIE)
- Gérard Pallat, land tenure expert advisor to the Ministry of Agriculture and private consultant.
- Lukmann Coulibaly, journalist for Reuters News Service

September 17, 2012: travel from Abidjan to Séguéla and meeting upon arrival with Adolphe Zégbé, Sous Préfet of Séguéla and Koko Lobognon, Departmental Director of Mines

September 18, 2012

- Koko Lobognon and departmental mining agents Kwassi Kwassi and Kouaukou Kona
- Capitaine Konaté, Departmental Chief of Water and Forests
- Diamond buyers Sékou Nialadou, Sangaré Mori, Koné Abdoul, Djonandé Drissa (the latter is also Village Chief of Séguéla)

September 19, 2012

- Visit to village of Bobi and meeting with Village Chief, Customary land chief, village Imam, various village notables and about 10 members of the Groupement à Vocation Coopérative (GVC) including the president, general secretary and other officers.
- Jane Dennison, US Department of State and Dominique Bally of NGO Groupement des Volontaires pour l'Environnement (GVE) join the team in Séguéla for the remainder of the visit until return to Abidjan on September 23

September 20, 2012

- Visit to village of Kiégou and interviews with gold miners, village representatives collecting taxes from miners, residents of mining camp including a gold buyer
- Visit to a diamond-mining site outside of the SODEMI permit
- Foissy Sylvain, Mineralogy Section of SODEMI, and Kwamé Kadjo of SODEMI

September 21, 2012

- Kwadjo Koffi, Departmental Chief of Agriculture, Séguéla Office
- Visit to village of Gbolo and meeting with members of the Village Land Tenure Committee (Comité Villageois du Foncier Rural).
- Meeting with representatives from several women's associations and cooperatives organized by association president Mme. Diomandé

September 22, 2012

- Visit to diamond-mining and gravel washing sites of Bobi village
- Visit with women's group and associations in Diarabana, organized by Mme. Azanata Coulibaly
- Visit with Mr. Fofana, President of Diarabana GVC and two other GVC members, various village notables and the president of the agricultural cooperative

September 23, 2012: travel from Séguéla to Abidjan

September 24, 2012 (meetings of September 24-25 were organized and participated in by the Friends of Côte d'Ivoire mission conducting an informal Kimberley Process review during the week of September 24)

- Meeting at European Union HQ in Abidjan to launch and coordinate the FOCI mission
- Mme. Thes, KP focal point at the Ministry of Mines, Energy and Petroleum (MMEP), Kouané Kanga Daniel, MMPE, Bamba Brahim, Ministry of Economy and Finance, Bailly Niagri Guillaume, Ministry of Foreign Affairs
- Dr. Diabaté, General Director of Mines
- Mr. Zalo, General Director of Rural Land Tenure, Ministry of Agriculture

September 25, 2012

- Deputy Chef d'Etat Major, Ministry of Defense
- Mr. Armani, General Director of Decentralized Administration (Administration du Territoire)
- ITIE
- Bernard Salomé, Advisor to the President of Côte d'Ivoire on Employment

September 26, 2012

- Frédéric Varlet, private consultant specializing in land tenure among other fields, former employee of the European Union in Côte d'Ivoire
- Dr. Ya Daouda, Director of Geology for Ministry of Mines, Energy and Petroleum, and Chief of Party of World Bank project to reinforce the capacity of the Ministry of Mines

September 27, 2012

- Cheryl Sim, Deputy Chief of Mission of US Embassy in Abidjan, and Glenn Slocum, USAID Advisor in Abidjan

# ANNEX 3. LIST OF LEGISLATIVE DOCUMENTS CONSTITUTING THE RURAL LAND TENURE REGIME IN CÔTE D'IVOIRE SINCE 1998

1. *Loi n° 98-750 du 23 décembre 1998 relative au Domaine Foncier Rural y compris le texte de l'article 26 amendé*
2. *Décret no 99-593 du 13 octobre 1999 portant organisation et attributions des Comités de Gestion Foncière Rurale*
3. *Décret no 99-594 du 13 octobre 1999 fixant les modalités d'application au Domaine Foncier Rural coutumier de la loi no 98-750 du 23 décembre 1998*
4. *Décret no 99-595 du 13 octobre 1999 fixant la procédure de consolidation des droits des concessionnaires provisoires de terres du Domaine Foncier Rural*
5. *Arrêté no 147/MINAGRA du 9 décembre 1999 portant modèle officiel du formulaire de demande d'enquête en vue de l'établissement d'un Certificat Foncier et précisant la compétence des Sous-Préfets*
6. *Arrêté no 002/MINAGRA du 8 février 1999 portant modèles officiels du Certificat Foncier individuel et du Certificat Foncier collectif*
7. *Arrêté no 85/MINAGRA/MEF du 15 juin 2000 fixant les modalités de réalisation et de présentation des plans des biens fonciers du Domaine Foncier Rural coutumier*
8. *Arrêté no 111/MINAGRA du 6 septembre 2000 définissant le procès-verbal de recensement des droits coutumiers et les documents annexés*
9. *Arrêté no 112/MINAGRA du 6 septembre 2000 définissant le formulaire de constat d'existence continue et paisible de droits coutumiers sur un bien foncier du Domaine Rural*
10. *Arrêté no 139/MINAGRA du 6 septembre 2000 définissant les formulaires de requête d'immatriculation d'un bien foncier rural objet d'un Certificat Foncier*
11. *Arrêté no 140/MINAGRA du 6 septembre 2000 définissant les formulaires de demande de bail emphytéotique sur un bien foncier rural objet d'un Certificat Foncier*
12. *Arrêté no 030/MINAGRA du 15 mai 2001 définissant les formulaires d'approbation et de validation des Enquêtes Foncières Rurales Officielles*
13. *Arrêté no 033/MINAGRA du 28 mai 2001 définissant le formulaire de procès-verbal de clôture de publicité des Enquêtes Foncières Rurales Officielles*
14. *Arrêté no 041/MEMID/MINAGRA du 12 juin 2001 relatif à la constitution et au fonctionnement des Comités de Gestion Foncière Rurale*
15. *Arrêté no 032/MINAGRA/MEF du 04 juillet 2002 instituant un barème de rémunération des opérations de*

*délimitation des biens fonciers du Domaine Foncier Rural et fixant les modalités de son établissement*

16. *Arrêté no 033/MEF/MINAGRA du 04 juillet 2002 établissant les barèmes de timbrage des Certificats Fonciers et des frais d'immatriculation des biens fonciers du Domaine Foncier Rural*
17. *Arrêté no 34 du 04 juillet 2002 fixant les modalités d'inscription sur la liste d'agrément des Opérateurs Techniques pouvant effectuer les opérations de délimitation des biens fonciers du Domaines Foncier Rural*
18. *Arrêté no 55 du 11 juillet 2003 portant organisation de la Commission Foncière Rurale*
19. *Arrêté no 212 du 22 juillet 2005 soumettant les Commissaires Enquêteurs du Ministère chargé de l'Agriculture à l'obligation de prêter serment.*

# ANNEX 4. PARTIAL LIST OF DOCUMENTS AND WEBSITES CONSULTED

## ON CONFLICT IN CÔTE D'IVOIRE

- Andrew, Nancy, Babo, Alfred and Médard, Claire. *Les questions foncières rurales comme facteurs de crise en Afrique subsaharienne: Afrique du Sud, Côte d'Ivoire, Kenya*. Textes faisant suite à un séminaire organisé par le programme “Afrique subsaharienne” de l’Ifri le 17 octobre 2008. December 2009.
- Babo, Alfred. *Conflits fonciers : de l’ethnie à la nation: Rapports interethniques et ivoirité dans le Sud-Ouest de la Côte d’Ivoire*. Université de Bouaké, Côte, d’Ivoire. Paper presented at *Colloque international “Les frontières de la question foncière—At the frontier of land issues”*, Montpellier, 2006.
- Barrière, Cécile and Gray, Patricia. *Cross Border Assessment Between Liberia and Côte d’Ivoire: January and February 2012—Security, Stabilization and Food Security*. United Nations Office for the Coordination of Humanitarian Affairs (OCHA). [ochaonline.un.org/OchaLinkClick.aspx?link=ocha&docId...](http://ochaonline.un.org/OchaLinkClick.aspx?link=ocha&docId...)
- Bøas, Morten. “‘New’ Nationalism and Autochthony—Tales of Origin as Political Cleavage.” *Africa Spectrum* 44, 1, 2009: 19-38.
- Bonn International Center for Conversion (BICC). Brief 40: *Natural Resources in Côte d’Ivoire: Fostering Crisis of Peace? The Cocoa, Diamond, Gold and Oil Sectors*. Produced by Fatal Transactions (Lena Guesnet, Marie Müller, Jolien Schure); Funded by the European Union. November 2009.
- Bonnecase, Vincent. *Les étrangers et la terre en Côte d’Ivoire à l’époque coloniale*. IRD/REFO: Document de l’Unité de Recherche 095, No. 2. August 2001.
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- Gaouli Bi Anicet Paterne. *Tutorat et Conflits Fonciers Ruraux dans L’ouest Ivoirien : le Cas de Fengolo dans la Sous-préfecture de Duekoue*. Consortium for Development Partnerships (CODESRIA). Research Report N5 2008. 2008.
- Global Witness. *Chocolat Chaud: Comment le cacao a alimenté le conflit en Côte d’Ivoire*. Juin 2007.
- Guéhi, Jonas. *Retraits de terres par les « jeunes » autochtones sur les anciens fronts pionniers de Côte d’Ivoire : expression d’une crise de transition intergénérationnelle*. Paper presented at *Colloque international “Les frontières de la question foncière—At the frontier of land issues”*, Montpellier, 2006.

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- International Crisis Group. Côte d'Ivoire: No Peace in Sight. ICG Africa Report #82. Dakar/Brussels. July 12, 2004.
- Marshall-Fratani, Ruth. *The War of "Who Is Who": Autochthony, Nationalism, and Citizenship in the Ivoirian Crisis*. African Studies Review. September 1, 2006.
- Nordås, Ragnhild. *Identity Polarization and Conflict: State building in Côte d'Ivoire and Ghana*. Paper prepared for the conference "Polarization and Conflict." Gaillac. June 7-9, 2007.
- Norwegian Refugee Council (Internal Displacement Monitoring Centre). *Côte d'Ivoire: Land tensions are a major obstacle to durable solutions: A profile of the internal displacement situation*. December 30, 2009.
- Norwegian Refugee Council (Internal Displacement Monitoring Centre). *Whose Land is This? Land Disputes and Forced Displacement in the Western Forest Area of Côte d'Ivoire*. UNDP and FAO. October 2009.
- Ogwang, Tom. *The Root Causes of the Conflict in Ivory Coast*. Africa Portal. No. 5, April 2011.
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#### WEBSITES

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#### ON THE MINING AND DIAMOND SECTORS IN CÔTE D'IVOIRE

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## **NATURAL RESOURCES LEGISLATION IN CÔTE D'IVOIRE**

### **MINES AND MINERALS**

- Loi n°95-553 du 18 juillet 1995 portant Code Minier (referred to in the present document as “ the 1995 mining code.”)
- Décret n°96-634 du 09 août 1996 déterminant les modalités d'application de la loi minière (referred to as “the mining code application decree” or as “existing mining rules and regulations”)
- Ordonnance n°96-600 du 09 août 1996 fixant les redevances, les taxes proportionnelles et les droits fixes relatifs aux activités régies par le Code Minier
- Loi n°95-620 du 03 Août 1995 portant Code des Investissements, et ses textes réglementaires associés
- Loi n°96-766 du 03 Octobre 1996 portant Code de l'Environnement, et ses textes réglementaires associés
- Code général des Impôts
- Code des Douanes

### **RURAL LAND TENURE**

See Annex 3 for a list of legislation regulating rural land tenure in Côte d'Ivoire

### **FOREST CODE AND NATURAL RESOURCES LEGISLATION**

- Loi 65/425 du 20 décembre 1965 portant code forestier
- Décret 1978-231 relatif au domaine forestier
- Loi n°96-766 du 03 Octobre 1996 portant Code de l'Environnement, et ses textes réglementaires associés.



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