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# PROPERTY RIGHTS AND ARTISANAL DIAMOND DEVELOPMENT (PRADD) – LIBERIA

A REVIEW OF THE LEGAL, REGULATORY AND POLICY  
FRAMEWORK GOVERNING ARTISANAL DIAMOND MINING  
IN LIBERIA



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**COVER PHOTO:**

Yata Varney at her diamond mine near Lofa Congo, Liberia. Photo courtesy of Bocar Thiam.

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# ACRONYMS AND ABBREVIATIONS

ADM	Artisanal Diamond Mining / Miners
ADR	Alternative Dispute Resolution
ASDM	Artisanal and Small-scale Diamond Mining / Miners
ASM	Artisanal and Small-scale Mining / Miners
BOM	Bureau of Mines
DPD	Department of Planning and Development
EIA	Environmental Impact Assessment
EPA	Environmental Protection Agency
FDA	Forest Development Authority
FOMAL	Federation of Miners' Association of Liberia
FPIC	Free and Prior Informed Consent
GDO	Government Diamond Office
GDP	Gross Domestic Product
GOL	Government of Liberia
IR	Intermediate Result
KPCS	Kimberley Process Certification Scheme
MLME	Ministry of Lands, Mines and Energy
MML	Minerals and Mining Law of 2000, as amended by the New Minerals and Mining Law of 2004
PRADD	Property Rights and Artisanal Diamond Development
RDO	Regional Diamond Office
SDM	Small-scale Diamond Mining
UN	United Nations
UNDP	United Nations Development Program
USAID	United States Agency for International Development
USAID GEMAP	USAID Governance and Economic Assistance Program



# EXECUTIVE SUMMARY

Liberia is emerging from a period of protracted violent armed civil conflict over access to natural resources and social and economic marginalization of a large part of society. The export and international trade in rough diamonds mined in Liberia and Sierra Leone partly funded two Liberian civil wars, which were characterized by grave human rights abuses. In response, the United Nations (UN) imposed sanctions on the export of diamonds from Liberia between 2001 and 2007. The Kimberley Process Certification Scheme (KPCS) was established by the International Community in 2003 to prevent the proliferation of armed conflict funded by the trade in rough diamonds. The purpose is to create a transparent chain of custody for diamonds to ensure that illegally mined and exported diamonds do not enter international trade.

Property Rights Artisanal Diamond Development Liberia (PRADD) was established through a Memorandum of Understanding between the United States Agency for International Development (USAID) and the Government of Liberia (GOL) to assist with improved compliance with the KPCS. PRADD works closely with Liberia's Ministry of Lands, Mines and Energy (MLME) and the Department of Planning and Development (DPD). PRADD's two primary objectives are to: 1) Increase the amount of artisanal diamonds entering the formal chain of custody; and 2) Increase the benefits from diamond mining that accrue to mining communities. To this end, PRADD has employed several methods to identify factors that contribute to informality and non-registration of diamond production, and cause conflict in the Artisanal and Small-scale Diamond Mining (ASDM) sector.

Formalization of the ASDM is key to improving Liberia's compliance with the KPCS. The present legal and regulatory framework for the minerals sector does not address sufficiently the realities of ASDM. By formalizing the sector and improving the legal and regulatory framework, the government can increase the amount of diamonds entering the chain of custody; increase the revenue generated by the ASDM sector; while at the same time addressing the social, environmental, and development needs of artisanal diamond mining communities. This in turn would contribute towards social stability and improved livelihoods for rural communities.

This report proposes Policy, Legal, and Regulatory Interventions to improve the legal framework governing Liberia's ASDM with a view to improve diamond production registration. It is based on an analysis of specific gaps and contradictions between mining laws and policies and customary rights practices. The most pertinent gaps and contradictions identified in this report, to which interventions are proposed, are the following.

The principles in the Mineral Policy of Liberia (2010) are not yet integrated into existing mining laws and regulations, which creates inconsistency and ambivalence in governance of the minerals sector. As an overarching strategy to guide Liberia's mineral development, the Mineral Policy focuses on large-scale mining. It does not create a clear strategy to deal with the unique challenges and characteristics of ASDM. It is recommended that the principles of the Mineral Policy be translated into the Minerals and Mining Law of 2000 (MML) and that a separate Artisanal Diamond Mining Policy be formulated that provides for the unique characteristics and needs of the ASDM sector. Sustainable development and sustainable mining principles should form the foundation for policy formulation and legal integration.

Inconsistencies in the management strategies of different natural resources cause conflict between ASDM and other natural resource users. There are no clearly established land use priorities according to national development needs, nor an objective mechanism to evaluate competing land use options. An integrated system of land use planning should be pursued between different natural resource sectors to guide and coordinate systematic and predictable natural resource development. The recommendation is to integrate the

National Environmental Policy into sector-specific bodies of law, according to a development priority order and to create a mechanism to evaluate competing land use options.

The Minerals and Mining Law of 2000 (MML)<sup>1</sup> calls for regulations. There are no regulations that guide ASDM. Enforcement practices appear to follow Regulations pursuant to the repealed Mining Act of 1979 and the outdated Natural Resources Law of 1956. These practices create legal contradictions and leave significant regulatory gaps. MLME should formulate and adopt general Mining Regulations that address gaps left by the repeal of the Mining Act's Regulations and repealed Natural Resources Law, specifically with regard to the rights and obligations of brokers and dealers, surveying methods, and the roles and authorities of Mining Agents and Patrolmen. MLME must formulate and promulgate specific regulations that provide for Artisanal Diamond Mining/Miners (ADM) licensing processes and licensing terms and conditions.

There are no appropriate legal or regulatory tools, nor enforcement capacity to comply with environmental reclamation requirements. Environmental laws must be amended to provide for realistic and feasible reclamation practices for ASDM. Two suggestions in this regard would be to encourage clustered and programmatic diamond mining in concentrated and properly demarcated areas, and to facilitate compliance through local participation and benefit-sharing.

In the absence of artisanal mining regulations, the terms and conditions that accompany a Class C ADM license are unclear and contradictory in key areas, or have no basis in law. Miners are uncertain about the license application process and find it complicated and expensive to comply. MLME should review Class C ADM licensing terms and conditions, and simplify and clarify the licensing process. The recommendation with regard to the Class C claim size and licensing costs is to reduce the cost in proportion to the claim size, and / or to extend the licensing period. The proposed claim size is 5 acres for one year at US\$40, or 10 acres for two years at US\$75.

Liberian law presently only recognizes formally registered private property rights. All unregistered land is treated as "public land" which GOL can sell or encumber with long-term leases and concessions for natural resource exploitation. In terms of the Constitution, GOL is the owner of all unsevered minerals within Liberia. Rural communities who hold land communally only have use rights. The dual system of statutory and customary rights causes conflict and insecurity of tenure for ADMs, as they have no input in the disposal or appropriation of their land. Consultation and stakeholder consultation should be mandated in all processes affecting rural communities' access to land and use rights. MLME should work closely with the Land Commission of Liberia to clarify and recognize customary land rights.

Rural communities do not gain direct benefit from mineral exploration or mining activities taking place on their communal land, nor are they presently entitled to surface rental. The National Forest Reform Law of 2006 created a benefit-sharing scheme for local communities to share in the revenues from commercial forestry. The National Environmental Policy mandates revenue sharing from mining activities for communities, but there is no mechanism to implement it and it has not yet been extended to local communities where ASDM is taking place. Communities should be entitled to surface rental where their surface and use rights are impacted by mineral development, as well as a share in the royalties paid to GOL. While the Land Commission determines the status of customary land rights, MLME should at least recognize communities' use rights and facilitate administrative justice, which includes the right to compensation for loss or disturbance and/or surface rental. Once the Land Commission reaches a decision about the status of customary land rights, those rights and principles must be incorporated into and harmonized with mining laws and regulations.

There are no mechanisms to resolve disputes between ASDM and customary communities, or ASDMs, brokers, and dealers. As natural resource disputes are particularly prevalent, an easily accessible alternative dispute resolution mechanism should be created that is more accessible and flexible than formal court procedures.

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<sup>1</sup> The Minerals and Mining Law of Liberia, 2000. Chapter 21.

# I.0 INTRODUCTION

Liberia is recovering from 15 years of violent and debilitating civil conflict, to a large extent funded by the trade in rough diamonds. Though not the direct cause of the conflict, it financed the conflict through the procurement of arms, hiring of rebel soldiers, private militias, and mercenaries under the rebel armies and presidencies of Samuel Doe and Charles Taylor. As the result of the egregious human rights violations, diamonds produced and exported with a nexus to conflict became known as “blood diamonds.” In response to this phenomenon of “blood” or “conflict” diamonds in several African countries, the Kimberley Process Certification Scheme (KPCS) was established in 2003. The Scheme aims to prevent illegally mined rough diamonds from entering international trade. Due to its role in fueling the civil wars in Liberia and Sierra Leone, the United Nations (UN) imposed sanctions on the export of Liberian rough diamonds from 2001 to 2007. In 2007, the sanctions were lifted when Liberia could prove to the satisfaction of the international community that a system of internal controls were in place to monitor rough diamonds through a legitimate chain of custody to the point of export.

Liberia is placing heavy reliance on its natural resources to elevate it out of poverty and to jumpstart social and economic development. In the last five years alone, Liberia has attracted more than US\$17 billion in foreign direct investment linked to its natural resources.<sup>2</sup> Given the finite nature of diamond resources, the Government of Liberia (GOL) and mining communities in rural areas need to capitalize on the sustainable development potential of local diamond mining activities, comprising environmental, economic, and social dimensions.

The GOL, specifically the Ministry of Lands, Mines and Energy (MLME) and Department of Planning and Development (DPD) have taken several progressive steps to fulfill its mandate to comply with KPCS monitoring requirements: a Mineral Policy, consistent with international best practice, was adopted in 2010; a Mining Cadastre Information Management System was established in support of a transparent, efficient licensing system; and the capacity of the Inspectorate, Regional Diamond Offices and Mining Agents was improved.

Despite all these newly implemented measures to improve monitoring of diamond production, registration and licensing among Artisanal and Small-Scale Diamond Miners (ASDM) remain very limited. The Poverty Reduction Strategy estimates that there are approximately 100,000 Artisanal and Small-scale Miners (ASM) and up to 500,000 diggers<sup>3</sup> in Liberia, which supports an additional 787,500 to 1,575,000 people indirectly.<sup>4</sup>

Registration of diamond production between 2008 and 2011 vary between 12 percent<sup>5</sup> and 1 percent in 2010. Only 368 ASMs obtained Class C Artisanal Diamond Mining licenses in 2010; 216 in 2011 (to date); and 19 Class B Small-scale Diamond Mining licenses are in effect through 2011.<sup>6</sup> ASDM communities are

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<sup>2</sup> The line-up includes Arcelor Mittal, developing a \$1.5 billion iron project; a Chinese firm, China Union, \$2.6 billion; Sime Darby deal will invest \$800 million; Golden Veroleum, another agri-business, will invest \$1.6 billion; BHP Billiton will invest \$2.7 billion; and Amlib and Africa Aura are investing tens of millions of dollars in Kokoya cestos and Gola Konneh to create Liberia's first industrial deep-rock gold mines. The Liberian biofuel giant, Buchanan Renewables, agreed to invest \$150 million. The government estimates between \$10-\$16 billion of investment attracted to Liberia over the past five years including China Union, Arcelor Mittal, Putu Severstal, BHP Billiton, Vale, Buchanan Renewables, SIFCA, Bob Johnson, Sime Darby, Golden Veroleum, and APM Meask.

<sup>3</sup> International Alert, 2006. <http://www.international-alert.org/resources/publications/current-state-diamond-mining-mano-river-basin-and-use-diamonds-tool-peacebuil>.

<sup>4</sup> USAID Governance and Economic Assistance Program (GEMAP). Recommendations for Class C Mining Regulations and their implementation and future amendments to the Mining and Minerals Act in Liberia. 2010. viii.

<sup>5</sup> USAID GEMAP. 2010. 90; UNDP D4D, 2010. 51.

<sup>6</sup> Mining Cadastre. Sept. 2011.

characterized by extreme poverty, limited skills, and few employment alternatives. Given the close connection between rough diamonds and its potential to threaten peace and security, any attempt to improve registration would have to go beyond policing to address the development needs of miners that are obstacles in the way of licensing.

Formalization of the ASDM sector is key to improving Liberia's compliance with the KPCS. The present legal and regulatory framework for the minerals sector does not address the realities of ASDM sufficiently. A concerted cross-cutting approach towards formalizing the sector and improving the legal and regulatory framework will serve a dual purpose: GOL can increase the amount of diamonds entering the chain of custody and increase revenue generated by the ASDM sector, while at the same time addressing the social, environmental, and development needs of artisanal diamond mining communities. Both these factors would in turn contribute towards social stability and improved livelihoods for rural communities.

Long-standing land disputes and effective management of natural resources feature prominently on the agenda of several post-conflict policy documents. These disputes reflect deep-rooted and complex conflict over identity and citizenship, tenure and ownership, and the reintegration of refugees and ex-combatants into communities.<sup>7</sup> Insecurity of tenure and legal uncertainty over access to natural resources proliferate social and economic volatility with the potential to reignite violent conflict.

Most rural communities in Liberia live according to the rules of a traditional customary system, including a customary system of property rights. Property is held communally by the community, according to unwritten rules and structures of authority to ensure social coherence and compliance with those rules. At present, government policy only recognizes individual property rights which can only be obtained through registration. Rural communities only have use rights on the property they hold and use communally, although they consider it to be ownership rights. This duality is causing conflict, as most rural Liberians rely on access to natural resources to sustain themselves.

The impact of insecurity of tenure on artisanal diamond miners and their communities cannot be divorced from land conflict and development planning. According to estimates, almost 30 percent of the population directly or indirectly relies on the artisanal mining sector for their livelihoods.<sup>8</sup> Furthermore, approximately 70 percent of diamond diggers are ex-combatants and alternative livelihoods are extremely limited. As more refugees and ex-combatants return after the war, and more land gets tied up under concessions, the negative impacts of insecurity of tenure will marginalize artisanal miners and their communities even further.

The recommendations in this report are based on an analysis of two specific aspects:

1. Gaps and contradictions between existing mining laws and policies that are causing conflict for ASDM and their communities with a view to propose solutions to:
  - a) Increase registration of diamond production;
  - b) Improve benefits from diamond mining to diamond mining communities; and
  - c) Improve compliance with environmental reclamation to foster a culture of sustainability.
2. Issues surrounding the clarification of property rights and improved access to mining sites for ASDMs.

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<sup>7</sup> Liberia Poverty Reduction Strategy. 170.

<sup>8</sup> USAID GEMAP. viii.

## THE PRADD PROJECT

Property Rights Artisanal Diamond Development Liberia (PRADD) was established through a Memorandum of Understanding between the United States Agency for International Development (USAID) and the Government of Liberia (GOL) to assist with improved compliance with the Kimberley Process Certification Scheme (KPCS). PRADD works closely with Liberia's Ministry of Lands, Mines and Energy (MLME) and the Department of Planning and Development (DPD).

### **PRADD Liberia is structured around five components or Intermediate Results (IRs):**

- IR1:** Individual and community land and natural resource rights in target areas clarified, recognized, and secured.
- IR2:** Reliability and efficiency of systems monitoring artisanal diamond production and marketing increased.
- IR3:** Benefits of artisanal diamond mining to local communities increased.
- IR4:** Capacity to mitigate environmental impacts of artisanal mining strengthened.
- IR5:** Stakeholder access to information on artisanal diamond mining issues, mining policy, property rights, and best practices increased.

## TERMS OF REFERENCE OF THE CONSULTANCY

Under IR1, PRADD Liberia needs to conduct a formal analysis of the existing laws, policies, and regulations governing statutory property rights systems in mining and its interface with Liberian land, forestry, and water legislation in order to identify gaps and contradictions that either are causing or have the potential to create points of friction with customary rights regimes in the artisanal mining sector.

The development of comprehensive policy recommendations through a strategic policy analysis is critically important to:

- Secure and clarify land tenure rights for artisanal mining communities;
- Reduce smuggling and illicit mining in the artisanal mining sector;
- Increase the registration and marketing of diamonds through the formal chain of custody and in compliance with KPCS;
- Clarify and simplify the steps for obtaining a mining license primarily for artisanal and small-scale miners (Class B and C licenses);
- Promote environmentally friendly mining techniques and environmental regeneration in mined out areas;
- Resolve conflicts at the point of diamond mining and within marketing channels;
- Promote alternative livelihood activities for community development; and
- Promote organizational development and facilitate access to micro-finance opportunities for miners.

To this end, the objectives of this report are to:

- Analyze gaps and contradictions in the current legal framework and mining realities which are barriers to improved compliance with KPCS requirements;
- Suggest new and improved policy options and legal frameworks to increase the amount of diamonds entering the chain of custody;
- Increase the benefits from diamond mining to artisanal diamond mining communities; and
- Suggest options to improve environmental reclamation.

Consultants conducted a desktop literature review (see Bibliography), followed by on-the-ground stakeholder consultations in Liberia. Consultations were aimed at: a) informing the analysis of the gaps and contradictions between customary and statutory rights as it relates to compliance with KPCS requirements; b) soliciting a balanced perspective of the challenges in increasing registration of rough diamond production; c) developing ways to increase benefits from artisanal diamond mining that accrue to communities; and d) developing an understanding of the extent to which there is investment in environmental rehabilitation (see Appendix 1: List of Persons and Institutions Consulted in Liberia).

Consultants concluded their fact-finding mission in Liberia with a presentation and workshop of the issues that were identified with the key stakeholders, including preliminary recommendations on how to address these challenges.

In an attempt to increase the amount of diamonds entering the chain of custody, PRADD has employed several methods to identify factors that contribute to informality and non-registration of diamond production and cause conflict in the ASM sector. This report is the culmination of an analysis of specific gaps and contradictions between policies, laws, and regulations and customary rights practices governing Liberia's ASDM. Some of the key gaps and contradictions that have been identified to which policy, legal, and regulatory reforms are proposed, are the following.

The Mineral Policy of Liberia, 2010 does not create a clear strategy for the artisanal diamond mining sector and is primarily focused on large-scale mining. The principles in the Mineral Policy should be translated into the Minerals and Mining Law of 2000 (MML) and an Artisanal Diamond Mining Policy should be developed to create a long-term vision for this sector.

ASDM is not integrated into a larger national natural resource policy framework that synthesizes the relationship between different natural resources and competing land uses. A mechanism should be created to evaluate competing land uses according to established national development priorities. The principles in the National Environmental Policy must be incorporated into the various natural resource laws to create policy consistency.

The MML calls for Mining Regulations. There are no mining regulations, other than Exploration Regulations which do not apply to ASDM. Regulations specific to the rights, obligations, and conditions of Class C ADM need to be formulated and promulgated. These regulations should clarify the unclear and contradictory terms that presently accompany Class C ADM licenses and the process of license application should be simplified.

The environmental impact of artisanal diamond mining is not managed, monitored, or enforced, leading to unsustainable practices and natural resource degradation. Environmental laws should be amended and regulations promulgated to facilitate realistic measures for environmental rehabilitation. Through benefit sharing, local communities can be incentivized to enforce environmental compliance.

The dual and ambivalent systems of statutory and customary property rights are causing conflict and insecurity of tenure for ASDM. MLME should work with the Land Commission to clarify and secure access rights for ASDM. Consultation should be mandated and compensation should be paid to land users affected by mining activities.

The body of the report is structured around five thematic components according to the different proposed interventions: Sections 2 and 3 look at the legal status of customary property rights and government policies and interpretation of "public land" and superior property rights over lands containing minerals. Section 4 explains the context and importance of increased rough diamond registration; Section 5 deals with proposed policy reforms; Sections 6 deal with proposed legal reforms; and Sections 7 and 8 deal with regulatory and administrative reforms. A list of people and institutions consulted during this exercise is presented in Appendix 1 followed by additional guidelines for formulating artisanal mining policy, law, and supporting regulations in Appendix 2.

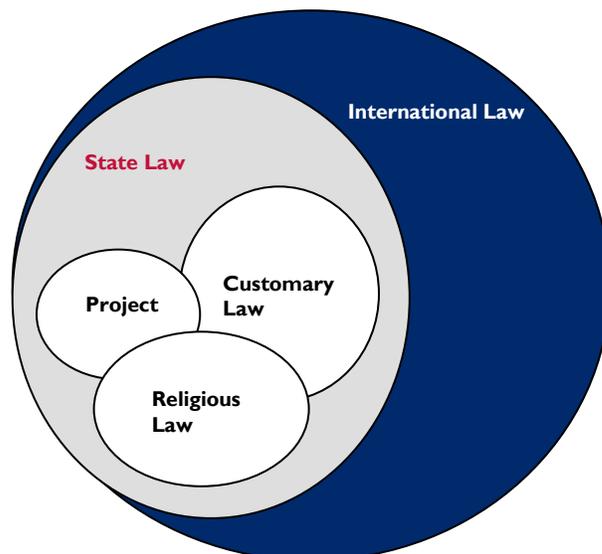
## 2.0 STATUS OF CUSTOMARY PROPERTY RIGHTS AND LEGAL GROUNDS FOR RECOGNITION

This section briefly informs the link between insecurity of tenure and current government policy with regard to the treatment of all unregistered land as “public land,” as well as government’s interpretation and application of its purported superior property rights within the context of Liberian domestic law and international law. It is a brief explanation of the legal principles underlying the dual and ambivalent system of customary and statutory property rights in Liberia.

The phenomenon of the joint existence of statutory and customary legal regimes is called “legal pluralism.” It refers to the co-existence and interaction of different legal systems within a country or region, and is common across Africa. In other parts of the world, such as Norway, New Zealand, Canada, the United States, and Australia, pluralism also exists in the form of recognition of indigenous groups’ traditional or customary way of life. There is usually a cultural, ethnic, and/or religious component to customary law systems.

To determine the legal status of ethnic and rural communities’ communal property rights in Liberia, one needs to consider the general international law position, as well as Liberia’s obligations in terms of international law, Liberian Constitutional provisions, and specific domestic laws. Additionally, policy trends and laws in other sectors also need to be evaluated to measure it for consistency.

### **Legal Pluralism: Illustration of the Interaction and Coexistence of Different Legal Systems**



Liberia is a party to the **United Nations Declaration on the Rights of Indigenous Peoples** which recognizes indigenous people's communal ownership rights to land. The African Commission Working Group of Experts, in accordance with the African Charter and United Nations (UN) do not distinguish between *indigenous* or traditional groups and other customary groups who hold communal property rights according to tradition. Even though the above UN Declaration does not specifically refer to *collective* property rights, it clearly recognizes indigenous people's traditional form of land tenure.<sup>9</sup>

Constitutionally, private property rights do not extend to any unsevered mineral resources. Apart from this restriction in Article 22, there is an express property guarantee that would, together with other constitutionally guaranteed rights, entitle customary communities to assert their rights to own property collectively. (Whether such communal rights ought to be registered or not is a separate matter.)

The Constitution (Article 20.a) provides for a “non-deprivation clause,” which states:

*“No person shall be deprived of life, liberty, security of the person, property, privilege or any other right except as the outcome of a hearing judgment consistent with the provisions laid down in this Constitution and in accordance with **due process of law...**”*

If customary ownership is not recognized, government would also be violating communities' rights to equality, freedom of movement, assembly, and cultural rights. In terms of constitutional rules of interpretation, these are strong kinds of rights, as they are expressly stated, guaranteed, and subject only to a few limitations.

#### Article 26 of the UN Declaration on the Rights of Indigenous Peoples

*Indigenous peoples have the right to own, use, develop and control the lands, territories and resources that they possess by reason of traditional ownership or other traditional occupation or use, as well as those which they have otherwise acquired.*

#### Article 27 of the UN Declaration on the Rights of Indigenous Peoples

*States shall establish and implement, in conjunction with indigenous peoples concerned, a fair, independent, impartial, **open and transparent process**, giving due recognition to indigenous peoples' laws, traditions, customs and land tenure systems, to recognize and adjudicate the rights of indigenous peoples pertaining to their lands, territories and resources, including those which were traditionally owned or otherwise occupied or used. Indigenous peoples shall have the right to participate in this process.*

In terms of the **African Charter**, there is a duty on countries to recognize customary communities' property rights:<sup>10</sup>

*“...dispossession of land and natural resources is a major human rights problem for indigenous people...[...] [The loss of fundamental natural resources is a serious violation of the African Charter which states clearly that all peoples have the right to natural resources, wealth and property. Precisely the same violation is befalling customary communities not recognized as indigenous people....”*

The principle of **Free and Prior Informed Consent (FPIC)** is international best practice to consulting with communities when their property rights are being affected. This principle is evolving because indigenous rural communities are increasingly affected by the sale or alienation of their land, without their knowledge or

<sup>9</sup> Gilbert, J. Indigenous Peoples' Land Rights Under International Law. 98.

<sup>10</sup> African Commission Working Group of Experts on Indigenous Peoples. 2005. <http://pro169.org/res/materials/en/identification/ACHPR%20Report%20on%20indigenous%20populations-communities.pdf>. African Charter on Human and People's Rights, Article 14: “The right to property...may only be encroached upon in the interest of public need or in the general interest of the community and in accordance with the general provisions of appropriate laws.”

consent. In opinions by the African Commission, it is expressly stated that it is a prerequisite to obtain the consent of communities that own land collectively prior to granting mineral or mining rights on their lands.<sup>11</sup>

As far as Liberian domestic law is concerned, the Community Rights Law of 2008 with respect to Forest Lands is a progressive step towards recognition of communities' communal rights to natural resources and land in Liberia. Although it is not suggested that the exact same model be considered for the minerals sector, similar recognition for customary ownership of land where mining is taking place would only be a logical progression. Such a movement would be in keeping with the vision of the Mineral Policy and objectives of the Poverty Reduction Strategy to promote equitable distribution of access to natural resources and broad-based sustainable growth and development.

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<sup>11</sup> African Commission on Human and Peoples' Rights. *Centre for Minority Rights Development (Kenya) and Minority Group International on behalf of Endorois Welfare Council v Kenya African C.H.R.* 2010.



# 3.0 GOVERNMENT'S INTERPRETATION OF SUPERIOR PROPERTY RIGHTS OVER LAND WITH MINERALS

The GOL is treating all unregistered and untitled land as “public land,” and grants mineral and mining rights as well as forest and agricultural concessions over communal property without compulsory consultation and compensation. Where mineral rights or concessions are granted and private owners or customary communities do not want to vacate the land, the government declares it “eminent domain” and expropriates owners or tenants. In this regard, the government’s interpretation of superior property rights over minerals often violates other formal private property rights as well as informal customary rights.

A very recent *Draft Interim Policy on land surface rights where minerals are found*, prepared by the Land Commission of Liberia, states the following:

*“Mineral Rights are separate from land surface rights; severance of these rights is thru constitutional provision. All mineral resources belong to the Republic of Liberia and by extension the citizens of Liberia, to be used for the general good, and therefore access to minerals below the surface shall not be impeded.”*

What creates tension is the interpretation that the government’s right to minerals is superior to any other private property right or communal property rights, especially where “due process” rights—consultation, compensation, and resettlement—are not available to affected communities. That is the case for Liberian rural communities whose property rights are not recognized.

Consideration should be given to three sections of the MML that deal with this issue, which are contradictory:

- **Section 9.2: “Existing Rights** - Mineral Rights are always issued **subject** to existing rights of other Persons in the lands subject to such Mineral Rights.”
- **Section 11.3: “Supremacy of Government’s Right** - Government’s right as owner of Minerals in the Republic of Liberia are absolute and supersede the rights of any Landowners or Occupants of Land in respect of the Exploration or Mining of Minerals, provided that such Landowner or Occupants of Land shall be entitled to just, prompt and adequate compensation for any diminution in the value of Land caused by disturbance, disfigurement or other factors occasioned by the Government’s exercise of its rights.”
- **Section 11.5: “Procedure on Refusal of Land Owner or Occupant to Grant Access to land for Exploration or Mining”** - Petition and hearing procedures.

GOL is presently exercising its authority to condemn and expropriate property as “eminent domain” without much constraint. Both internationally and in democratic national jurisdictions, the act of regulatory takings (expropriation) is considered a serious violation of private property rights that needs to be exercised with constraint, and then only when it serves a legitimate public purpose. The World Bank recognizes “development displacement” as a serious cause of internal displacement, which disrupts social and ethnic structures and influences specifically indigenous people’s way of life and cultural cohesion. Many negative socio-economic consequences are ascribed to development displacement.

It is appropriate to create objective standards to evaluate competing land use claims, specifically for expropriation or eminent domain cases. Some of the standards that are applied in South Africa, which has a similar mineral rights regime and progressive land reform program, include the following:

- Are there two (or more) parties with competing private interests or are the competing interests between an individual and the government, or between an individual and a company?
- What is the current land use?
- What is the proposed land use?
- Would the proposed use be to serve the public interest, including the nation’s commitment to development or land reform?
- How did the current owner or occupier obtain the land?
- What is the market value of the property, and to what extent would the proposed land use impact the value?
- What is the extent of *direct* government investment and subsidy in the property?

This is not a finite category of questions, and the judiciary, legislature, and Land Commission need to determine how best to find an equilibrium between private and public interests, and what the perimeters of “public interest” are.

# 4.0 INCREASING REGISTRATION OF ARTISANAL DIAMOND PRODUCTION

The Kimberley Process Certification Scheme (KPCS) formalizes the international trade in rough diamonds to validate its origin through a legitimate chain of custody. It requires member states to implement transparent and auditable mechanisms to record and monitor diamond production, consisting of five components: 1) **Registration** of production; 2) **Certification** that diamonds are traceable to legitimate production; 3) **Valuation**; 4) **Data-keeping**; and 5) **Monitoring**. The Liberian legislative regime requires all actors in the diamond value chain to register with the central government, conduct transactions only with each other, and record the essential information for each diamond transaction.

There are two categories of diamond mining licenses relevant to this analysis: Class C Artisanal Diamond Mining Licenses (ADM) and Class B Small-scale Diamond Mining Licenses (SDM).

**Figure 1: Class B and C Artisanal and Small-scale Diamond Mining Licenses in Liberia**

License Type	Eligibility	Description	Claim Size	Cost per license	Duration
<b>Class C ADM license</b>	Only Liberians	Alluvial Deposits; Non-mechanized tools	up to 25 acres	US \$150	1 year
<b>Class B SDM license</b>	Liberians & legal residents	Primary Deposits (Kimberlite); Small-scale industrial	100 acres	US \$10,000	5 years

The first entry point into the legitimate chain of custody is the miner’s registration of production at the Regional Diamond Office (RDO). In order to register production at the RDO, ASDMs need to be in possession of a valid Class C ADM license or a Class B SDM license, although the MLME has been encouraging unregistered ASDMs to register their production and obtain licenses thereafter. The RDO issues a receipt and duplicate voucher, which captures the essential information to validate the origin of the diamond(s) and details of the transaction. A copy of the voucher accompanies the diamond(s) during the sale to a broker and subsequently to a dealer. Dealers are also the exporters, who need vouchers for official valuation and certification at the Government Diamond Office (GDO).

Despite the fact that ASM provides livelihoods for almost 30 percent of the rural population, it does not feature prominently in the Mineral Policy of Liberia (2010), or in the Poverty Reduction Strategy or other major development programs. The insignificance ascribed to it might be due to a history of illegality and “under-performance”: before 1990, the minerals sector contributed 65 percent of export earnings and 25 percent of Gross Domestic Product (GDP). Currently, it generates just sufficient government revenue to

cover administrative costs. In 2010, only 368 Class C ADM licenses were issued, and 216 to date in 2011.<sup>12</sup> There are 19 Class B SDM licenses in effect. (Class A licenses are for large industrial operations, but currently there are none.)

There are several opportunities for the chain of custody to be broken and smuggling to occur among diamond diggers, miners, illegal aliens, brokers, dealers, and exporters. This report focuses on improved legal and regulatory measures to increase registration of Class C ADM and, to a lesser extent, Class B SDM, to the exclusion of other actors. This section seeks to identify barriers to registration which could be addressed and clarified through solutions in appropriate laws and regulations.

ASDMs are likely to obtain licenses and register their production if they have the capacity to register and if there are clear benefits to registration. Based on research, consultations, and surveys conducted by MLME, civil society organizations, and development partners, there are several reasons why artisanal miners largely do not obtain valid licenses and thus do not register their production. A few reasons include: a) there are no clear rules perceived by ASDMs; b) enforcement is weak and illegality is the norm; c) the dual system of customary and statutory property rights causes uncertainty and confusion about access rights to mining sites; and d) many miners are uneducated and do not know what they have to do to obtain a license. In addition to this, based on field experience in Lofa Congo, many miners do not know what to expect or how the registration is done when they take their diamond to the RDO for registration.

Internal displacement due to war, influx of foreigners, and uncertainty over natural resource rights cause tenure insecurity, all contributing factors to keeping miners from registering. In many communities, ADM is seen as a legitimate subsistence activity on communal land, subject only to permission from the chief. The licensing process is complicated and involves many steps: licenses are only issued in Monrovia, while diamond mining occurs in remote rural areas; roads are in poor conditions and transport is a problem; and the issuance of a license can take months. Miners operate on a small profit margin, and surveying, prospecting, and mining licenses and ID cards are expensive in comparison to their potential earnings. Moreover, there are many additional costs in the process of obtaining a valid license.

The development needs of artisanal diamond miners are at the root of “conflict diamonds.” The success of a formalized ADMS will depend greatly on the GOL’s ability to engage with miners and the realities mining communities face. As the main stakeholders, it is essential to capture and address the unique challenges of artisanal mining in an appropriate legal and regulatory framework.

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<sup>12</sup> Mining Cadastre, September 2011. All 19 Class B SDM licenses are for secondary deposits.

# 5.0 POLICY REFORMS

## 5.1 DEVELOP AN ARTISANAL DIAMOND MINING POLICY

The Mineral Policy (2010) summarizes the most important international principles to guide mineral development in Liberia, with a strong emphasis on sustainability. However, the focus is mainly on large-scale mining projects. The Cabinet, in collaboration with the MLME and DPD, should develop an Artisanal Diamond Mining Policy that is consistent with the principles of the Mineral Policy, but which addresses the unique challenges and characteristics of ADM realities. There are major differences between large-scale mining operations and ASM. Artisanal miners face multifaceted challenges, and have different rights and obligations from large-scale operations. The Mineral Policy identifies some benefits and challenges of the artisanal sector, but it does not provide solutions to them. As a first step towards formalization of the ADM sector, a long-term policy vision and clear strategy is necessary to guide its development. This strategy has to be captured in an Artisanal Diamond Mining Policy.

“Sustainability” means that limited resources must be managed in a way that will promote long-term growth and well-being for ASDM and their communities, but also to provide for the needs of the next generation.

ASDM can only contribute to the Mineral Policy’s vision as a driver for economic growth and sustainable development if a focused, but integrated approach is followed. The challenge is to integrate economic development with environmental integrity and effective governance to address pressing social and development needs.

Conflict often occurs between ASDMs, their communities, and other larger mining companies or concessionaires. It is also in these companies’ interest that ASDM becomes formalized as several groups compete for resources in the same environment. In response to growing social pressure to consider the broader impact of mining, the international industrial mining sector has created a “sustainability threshold” which is held as a “best practice” model.<sup>13</sup> Some of the steps have direct impact on ASDMs and their rights when they compete for resources, while some can serve to guide GOL in shaping the policy framework for ASDM. It also informs the rest of the discussion and recommendations.

### Mining, Minerals, and Sustainable Development Principles:

- **Engagement:** Are communities part of the negotiation process?
- **People:** Will the well-being of impacted communities be maintained or improved?
- **Environment:** Is the integrity of the environment ensured over the long term?
- **Economic viability:** Is the project or operation economically viable, and will the community be better off as a result of the project in the long term?
- **Traditional and nonmarket activities:** Are livelihood potentials, such as hunting, going to be adequately protected during the course of the project?
- **Institutional arrangements and governance:** Are rules, incentives, programs, and capacities in place to address project or operational consequences?
- **Synthesis and continuous learning:** Does a comprehensive analysis show the net outcome of the project to be positive, and will there be periodic assessments?

<sup>13</sup> Mining, Minerals and Sustainable Development North America. Seven Questions to Sustainability: How to assess the contribution of Mining and Minerals Activities. [http://www.iisd.org/pdf/2002/mmsd\\_sevenquestions.pdf](http://www.iisd.org/pdf/2002/mmsd_sevenquestions.pdf)

Clarifying the status of communal customary property rights is an essential precondition for the successful formulation of an ASDM Policy as it forms the basis of any subsequent rights.

#### Key challenges that need to be addressed in a Framework Policy<sup>14</sup>

- **Appropriate laws and regulations:** There are no clear laws and regulations, or appropriate mechanisms for miners to assert their rights or comply with their obligations. Licensing is expensive and the application process complicated.
- **Access to information:** Artisanal miners have little education and knowledge about their rights and obligations.
- **Representation:** Participation in decision making is limited, and there is no significant representation by a union or federation to promote miners' interests in negotiations with government and other stakeholders on issues which affect them on the regional or national level.
- **Security of tenure:** Claims are often used for small-scale subsistence farming. If security of tenure is uncertain, livelihood is at stake at multiple levels. Inaccurate boundaries lead to disputes and conflict with other competing land users. Uncertainty about the status of customary land rights poses a threat that a mining site will become inaccessible. Because customary land rights are not recognized by GOL, other miners or concessionaires could prevent access to a mining site without miners' knowledge or consent.
- **Geological information and systematic planning:** No access to accurate or verifiable geological information to plan mining activities step by step, or to manage risks and investments. Extraction is inefficient because of rudimentary methods and lack of geological information.
- **Technical needs:** A largely unskilled labor force uses primitive, labor-intensive methods to identify and mine alluvial deposits. Conditions seldom meet minimum health and safety standards. No access to technical assistance or modernizations. Uncertainty about which methods are allowed in license category.
- **Remote natural environment:** Mining locations are remote and scattered. Access roads to claims are non-existent or in poor shape. Informal housing does not provide for basic sanitation or health needs.
- **Informality and Organization:** Small margins of profit and no long-term planning. No formal employment agreements between miners and diggers. Diggers usually work for subsistence (food) and a promised minimal share of any finds. Risk of illegality, contributing to tenure insecurity. No formal organization and representation.
- **Planning, capital, or access to financing:** Lack of business knowledge. Lending practices from supporters, brokers, and dealers proliferate cycle of poverty. Miners often cannot even afford basic tools. No access to financing to scale-up production if profitable ore body is found. Claims are usually on communal property, which cannot be used as collateral to obtain financing. Risk profile is high, so commercial lenders will not assume the risk.
- **Marketing:** Marketing is largely beyond miners' control. Miners rely on brokers and dealers to market their diamonds. Lack of knowledge to negotiate fair prices for their diamonds because they do not know the value.
- **Working conditions:** Poor living conditions, long hours, and lack of proper food, hygiene, and sanitation all contribute to high health and safety risks. Uncertainty about geological potential and small margin of profit means minimum wages cannot be paid.

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<sup>14</sup> Gathered from PRADD field studies and material, stakeholder consultations, Artisanal Mining Policies of other countries, and *Global Report on Artisanal & Small-Scale Mining* <http://pubs.iied.org/pdfs/G00723.pdf>.

## 5.2 INTEGRATE ASDM INTO A BROADER NATURAL RESOURCE MANAGEMENT POLICY

The Environmental Policy aims to achieve a synthesized strategy for natural resource management, but ASDM is not integrated into a larger national natural resource policy framework. As is the case for the Mineral Policy, the principles in the Environmental Policy need to be integrated into intersecting bodies of law to have any force or effect. Principles in the Environmental Policy in many instances are phrased in absolute terms and are contradictory to sector-specific legislation and current enforcement practices, such as the requirement for Environmental Impact Assessments (EIAs).

Regulatory gaps and inconsistencies in the management strategies of different resource sectors cause conflict between ASDM and other natural resource users. The Environmental Protection Agency Act mandates the creation of a National Environmental Action Plan. With a clear strategy and regulatory framework for the ASDM sector, the relationship between ASDM and other land users and uses can be regulated. Section 1.4 of the Environmental Policy states issues that specifically need to be harmonized:

- (a) Water Resources;
- (b) Forestry and Wildlife;
- (c) Land Management/Resources;
- (d) Mining;
- (e) Marine and Coastal Ecosystems;
- (f) Solid and Liquid Waste, and Industrial Waste;
- (g) Human Settlements;
- (h) Hazardous Chemicals;
- (i) Air and Noise Pollution;
- (j) Cultural heritage and Tribal Reserves; and
- (k) Public Education and Awareness

Through proper harmonization and cross-cutting integration, the GOL will create policy consistency and legal certainty, and promote security of tenure for ASDMs<sup>15</sup> (e.g., rules for water allocation and standards for different sectors and uses, ‘no-go’ zones and demarcation of development sites, standardized surveying methods, environmental standards for soil and water).

This recommendation will consist of policy, legal, and regulatory components: a policy component to create a strategy and principles for integration and coordination; a legal component to mandate cooperation and authority and to create rights and responsibilities; and a regulatory component to stipulate procedures. Ideally this process should take place in cooperation with the Land Commission of Liberia.

## 5.3 ESTABLISH CLEAR LAND USE PRIORITIES

In a typical rural Liberian setting, multiple community members utilize the land for various subsistence activities: farmers plant and work their fields of cassava, coca, palm oil, and rice, while others hunt, fish, or rear animals. Mining takes place amid this community, and all of these actors compete for access to land and water resources. Without coordination or regard for subsistence activities, mining and mineral exploration licenses, forest and agricultural concessions are granted on the land. Forty-three (43) percent of land in Liberia is currently subject to concession rights. Gradually, these activities are displacing communities and depriving them of their sources of livelihood.

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<sup>15</sup> The National Environmental Management Act, 107 of 1998 of South Africa could be used as a model to facilitate cooperative governance.

At present there does not appear to be an integrated and consolidated system of long-term land-use planning, according to clear and specific national priorities for resource development and utilization.

In the Mineral Policy,<sup>16</sup> the GOL states one objective to achieve its strategies: “*to put in place a mechanism for the evaluation of competing land use options.*” (Mineral Policy Principles, Section 2.4). It is critically important within the national matrix of competing land uses to create an objective mechanism to evaluate and award competing land uses. As a rule, any holder of a mining or mineral right has preferential access to land, which violates other rights for other citizens.

Should the GOL succeed in creating a mechanism to evaluate competing land uses, it could contribute to the prevention and resolution of land access conflict. To achieve this, there needs to be objective and consistent measures to evaluate the merits of each interested party’s claim, and there needs to be a balancing act of private versus public interests. Many of the same objective principles could be applied to determine whether and in which circumstances it is justified to condemn and expropriate property as “*eminent domain.*”

There are many deserving development goals which affect land use, so it is necessary to establish which of these goals should enjoy preference. If mining always enjoys preference over other land uses, it might have an impact on food security and access to water, for instance.

If clear national priorities are applied to land use planning, security of tenure will improve and ASDM will have more certainty over their rights of access to land.

## **5.4 DESIGN AN INTEGRATED SYSTEM OF LAND USE PLANNING**

Artisanal diamond mining is only one component of a much larger natural resources system that interacts and competes with other resources on various levels. An integrated short-, medium-, and long-term land use management plan needs to be developed for all natural resource sectors with clear, consistent rules for allocation and demarcation, and standardized surveying methods.

## **5.5 ESTABLISH A MECHANISM FOR EVALUATION OF COMPETING LAND USE OPTIONS**

**Contesting land use prioritization arguments to consider in this regard:**

- Are there dedicated artisanal mining zones that will be exploited in phases according to a short-, medium-, and long-term national or regional land use plan, or is all land fair game?<sup>17</sup>
- Does government’s property right over minerals—which it contends is superior to other rights—mean that miners will always enjoy preference over other property and natural resource rights and other land uses?
- What effect will long-term, unplanned, and indiscriminate allocation of mining and mineral rights have on national peace and security?
- Is it fair that other legitimate subsistence activities, such as farming, have to make way for ASDM? For 3 percent royalties for the central government, is it reasonable to deprive one person his/her subsistence activity to allow another his/her subsistence activity?
- Aren’t other government strategies and goals equally deserving of advancement and promotion, such as ensuring food security?

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<sup>16</sup> Section 2.4.

<sup>17</sup> Apart from the exception in Section 10.1 of the MML, which is not sufficiently enforced.

- Is it fair and reasonable that communal resources such as water and soil are contaminated and degraded just because mining is the preferred land use?

As GOL puts in place a mechanism for evaluating competing land use options, private interest must be weighed against public interest. This will prevent and resolve land access conflict as it will create clear and consistent rules of resource allocation rights. As a rule, any holder of a mining or mineral right has preferential access to land, which violates cultural, privacy, and equality rights of other citizens, to name but a few. As noted above, many of the same objective principles could be applied to determine whether and in which cases it is justified to condemn and expropriate property as “eminent domain.”

The Development Facilitation Act of South Africa<sup>18</sup> is a good model to consider in this regard, as it establishes objective and transparent processes that integrate and coordinate various development goals and programs.

If clear national priorities are applied to land use planning, tenure security will improve and ASDM will have more certainty over their access rights to land.

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<sup>18</sup> The Development Facilitation Act 67 of 1995. South Africa.



# 6.0 LEGAL REFORMS

## 6.1 INCORPORATE MINERAL POLICY PRINCIPLES INTO MINERALS AND MINING LAW

Policies are prepared by the executive branch of government. Until it is integrated into legislation, it does not have the force of law, but merely expresses a strategy the government intends to follow. Although only issued in 2010, the Mineral Policy needs to be integrated and synthesized with existing mining laws and regulations. As it is, the Mineral Policy is ahead of the laws in terms of best practices and principles. As an overarching strategy for mineral development, the different dimensions would require inter-sectoral coordination between different levels of government to integrate it into other laws that have an impact on mineral development. This will create consistency between government policies.

## 6.2 REPEAL THE NATURAL RESOURCES LAW

The Natural Resources Law of 1956 that used to govern various natural resource sectors, including mining, was never repealed. With the exception of fisheries, most of the sections that govern other resources have been “replaced” by other more specific laws and authority shifted to other new government bodies. The Law of Mines, Mining Board, and Bureau of Natural Resources and Surveys no longer exist. Although this law is no longer applied, it creates critical legal contradictions for the entire mining sector in terms of content and authority. It should be reviewed to determine which, if any, of the sections that apply to mining are still relevant and whether there are other legal or regulatory measures which replaced those sections. Where gaps and contradictions are identified, the MML should be amended or supplemented, and appropriate issues need to be incorporated into Mining Regulations.

Some gaps and contradictions include mining license categories; number and size of claims (Section 195) and application procedures; mining, broker, and dealer fee structures (Section 191), which contradict the current fee structure<sup>19</sup>; transactions between miners, brokers, and dealers (Sections 179, 201-206); and duties of patrolmen.

## 6.3 AMEND ENVIRONMENTAL LAWS TO ARTISANAL MINING REALITIES

The Environmental Protection Agency Act requires Environmental Impact Assessments (EIAs) for all mining activities,<sup>20</sup> but the MML only mandates an EIA for Class A and Class B licenses (MML, Section 8.4). The impact of artisanal and small-scale diamond mining on the environment is severe, and many of the consequences are interrelated. Environmental impacts include vegetation clearance and biodiversity loss, ecosystem disruption, soil degradation and erosion, and water siltation and contamination.

There are several practical, regulatory, financial, and institutional challenges that make compliance with this requirement unfeasible for individual miners and enforcement authorities. Miners work on a small margin of profit and do not have the technical capabilities to conduct proper social and environmental studies, nor do they have the time within the licensing period to do so.

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<sup>19</sup> Joint Administrative Regulation No. 8.2106-1/MOF/MOLME/R/11 August 2010.

<sup>20</sup> Environmental Agency Act, Annexure I Section 6.

The Environmental Protection Agency (EPA) also faces challenges in monitoring and enforcing compliance because of inadequate human resource capacity, planning restrictions, and data availability:

- Only 17 environmental field officers are responsible for monitoring the entire country's natural resource sectors;
- No baseline data and environmental inventories exist on which to base assessment and monitoring;
- Lack of integrated land use maps, specifically maps of designated Class C diamond mining zones to monitor specific sites or to connect a specific miner to a specific site to enforce compliance; and
- Lack of technical knowledge and capacity to enforce compliance.

It is virtually impossible to rehabilitate abandoned or mined-out sites entirely in the short to medium term. At best the claim size should be decreased and specific zones demarcated for artisanal mining to mitigate the cumulative impacts of environmental damage. Where possible, mining claims should be clustered. To this end, the old Regulations and Natural Resources Law need to be reviewed to re-establish mining areas. If a benefit-sharing scheme is implemented, some of the funds that return to communities could be used to do reclamation in a programmatic way. Experts in the field of environmental reclamation are best placed to advise on appropriate techniques that can address areas of mined-out sites cumulatively. MLME should consider adopting the Simplified Work Plans contained in the Schedules to the recommended Class C Regulations as a way to mitigate environmental impacts. Regulations that provide for environmental reclamation should be consistent with other environmental laws.

## **6.4 INCORPORATE STAKEHOLDER ENGAGEMENT INTO NATURAL RESOURCES LAWS**

Consultation is one of the fundamental principles of the Mineral Policy (S.2.9) as well as the Environmental Policy and a fundamental principle of sustainable development. This important requirement should be incorporated into the MML and other natural resource laws, as any development can potentially affect ADM and their communities.

The principle of **Free and Prior Informed Consent (FPIC)** is international best practice in consulting with communities when their property rights are being affected. This principle is evolving because indigenous rural communities are increasingly affected by the sale or alienation of their land, without their knowledge or consent. In opinions by the African Commission, it is expressly stated that it is a prerequisite to obtain the consent of communities who own land collectively, prior to granting mineral or mining rights on their lands.<sup>21</sup> Whether indigenous communities should have veto rights to refuse development on their land is a contentious issue, and is an issue that needs to be resolved through policy decisions and translated into law.

## **6.5 SECURE AND CLARIFY LAND TENURE RIGHTS IN COLLABORATION WITH THE LAND COMMISSION**

Land tenure is commonly said to be “secure” if it assures owners that their rights will be free from expropriation, encroachment, or forced eviction.<sup>22</sup> PRADD conducted a baseline survey in 826 diamond mining households. One of the important outcomes is the reasons why artisanal miners consider it “very important” to have a license:

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<sup>21</sup> African Commission on Human and Peoples' Rights. *Centre for Minority Rights Development (Kenya) and Minority Group International on behalf of Endorois Welfare Council v Kenya African C.H.R.* (2010)

<sup>22</sup> Food and Agricultural Organisation, 2002.

- Prevents someone from taking my claim: 89.3 percent;
- Protects me from conflicts with other miners or people who want the land: 87.3 percent; and
- I will get a higher price for my diamonds: 78 percent.

This means that artisanal miners will feel more secure about their property rights if they have a valid license and *vice versa*. By clarifying property rights, artisanal miners are likely to register and obtain a license and develop a sense of ownership. In turn, this will foster a culture of stewardship and responsible management of resources.

Communities perceive parcels of land, including mining claims, to be the allotted “property” of a specific person, who is entitled to live, farm, and mine there, and whose children or spouse can inherit it after his death (different rules apply to women). There are different variations among different communities for community members and permitted outsiders to establish their entitlement to a parcel of land, such as planting a life tree or getting permission from the Chief to plant a life tree (outsiders) after the passing of a certain time.

Unsevered minerals are the property of the State, but the ownership of land and the resources on land held communally, is unclear. At present, GOL only recognizes formally registered statutory ownership of property. All untitled communal land is considered to be “public land,” except for land under Tribal Certificates, the status of which is equally uncertain. The property rights of rural communities have been reduced to use rights, with no ownership entitlements and thus open to sale or alienation at the government’s discretion. The right for communities to own land communally should be recognized and enshrined in law. MML should work closely with the Cabinet and the Land Commission to accomplish this in a meaningful way.

There is no definition in law of what exactly “public land” is.<sup>23</sup> For ASDM, it means that anyone can obtain a mining license for the piece of land that was granted to them by the Chief or by inheritance. The fact that customary ownership is not recognized causes conflict and insecurity of tenure for ASDM and diamond mining communities.

The question the Land Commission of Liberia has to consider in the process of land reform is whether there is a legal obligation for GOL to recognize some form of customary ownership in terms of the Constitution, international law, and Liberian law. The question that follows is whether it is lawful for GOL to grant private property rights, mineral rights, or other natural resource rights over communal property *without the communities’ consent*.

The determination of clear national land use priorities will guide the different actors to establish what the ultimate goal of land reform is: to safeguard the interests of industrial entrepreneurs or to allow communities to contribute meaningfully to natural resource management and their own sustainable development?

From a legal point of view, it is important to understand that rights do not just disappear. Rights are created by law, and once rights exist, its golden thread flows through history until it is specifically repealed and the rights expressly extinguished. The 1956 Aborigines Law that governed traditional authority over communally held territories was never repealed, but merely omitted from the 1973 codification of Liberian laws. However, it appears to have been replaced by the Amendments to the Property Laws 1974.<sup>24</sup> In this law, not by express repeal, but by mere omission and the creation of new rights instead, the existence of communal property rights were “legislated away.”

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<sup>23</sup> Property Law (LCR29), Section 8.53(a): ‘Except as otherwise provided in Section 8.44, all unclaimed land shall be deemed to be public land until the contrary is proved’. And Section 8.123: ‘The registration of land as public land...shall enable such land to be disposed of in accordance with the provision...in public land law.’

<sup>24</sup> (1973-1978 Codification) Chapter 8 of the Liberian Property Law: *Registration of land, dealings in land so registered and matters connected therewith*.

As a result of the current legal status of customary use rights, surface users are not protected adequately, unless they have a registered title to prove their ownership. The MLME should work closely with the Land Commission of Liberia to help shape the process of land reform, but also to inform the process of formulating an Artisanal Diamond Mining Policy.

If communal property rights are not recognized, it could have the following implications:

- More diamond miners would mine illegally and encroach on other private properties, or encroach on large concession areas or commercial mining activities;
- This could cause social and economic instability—a deterrent for investment;
- Further internal displacement could lead to violent conflict and destabilization of the regional and national peace and security;
- Displaced communities would be deprived of their source of livelihood, which violates their right to life;
- Social displacement leads to loss of cultural identity and a destabilized society;
- Absent security of tenure, social circumstances could deteriorate even further, proliferating poverty, disease, and human rights violations;
- Without access to livelihood sources, people might resort to more serious crimes; and
- GOL would violate its citizens' constitutional rights and GOL's international obligations.

The Land Commission of Liberia is presently reviewing the status of customary property rights to align policy decisions with the Constitution and Liberia's international obligations.

# 7.0 REGULATORY REFORMS

## 7.1 PROMULGATE ARTISANAL DIAMOND MINING REGULATIONS

The MML calls for Mining Regulations. Apart from Exploration Regulations, which only applies to large-scale mining operations, there are no Mining Regulations in terms of the MML that apply to ASDM. MLME should consider the draft proposals for general Mining Regulations as well as Proposed Regulations specific to Class C ADM licenses and/or Class B SDM licenses, make changes and additions where necessary, and adopt those Regulations. Chapter 21 of the MML stipulates broad guidelines for regulations.

Regulations stipulate procedures pursuant to a *specific law*. If the specific law no longer exists, the regulations cannot survive by itself. If the law that created the Regulations is repealed, it follows automatically that the Regulations in terms of that law are also repealed.

During consultation with the MLME, reference was made to “customary regulations” which is a misnomer. The Mining Regulations that were promulgated in terms of the Mining Act of 1979 still seem to be applied by the MLME, in absence of new regulations. This practice is incorrect and does not have any basis in law, as the Minerals and Mining Law of 2000, as amended, replaced the Mining Act of 1979. Regulations that were promulgated in terms of the Mining Act can no longer be applied.<sup>25</sup>

### Important issues in the old Mining Regulations that need to be replaced:

- The requirements and procedures for mining license applications (although the old regulations did not distinguish between different categories of licenses as it currently exists);
- Terms for “trading and exporters” licenses;
- Surveying and boundary demarcation procedures;
- Authority of mining agents and patrolmen; and
- Dispute resolution for boundary disputes and competing claims.

The terms and conditions for Class C ADM and Class B SDM must be stipulated in new regulations in as much detail as possible. The requirements for licensing terms and conditions must be distributed and presented to miners in a way that is accessible and understandable to them.

MLME should consider creating an intermediate licensing category between Class C and Class B licenses to make it possible for miners to step up artisanal operations if the opportunity arises and the capacity exists. The difference between the two categories is big, and does not provide for conversion to scale-up small operations to medium operations. The practice of granting Class C licenses only for alluvial deposits and Class B licenses only for primary deposits<sup>26</sup> makes it hard for miners who happen to come across primary deposits to mine it efficiently with only hand tools. In Ecuador, the use of portable devices is allowed in an intermediate category. This would make sense in Liberia if the Class C claim size is reduced, and could offer a solution to inefficient extraction.

<sup>25</sup> The version of the Regulations in terms of the Mining Act of 1979 that consultants had at their disposal had the names of the new government agencies inserted, which does not make a difference to the status or lack of legitimacy.

<sup>26</sup> All 19 Class B licenses currently in effect are for secondary deposits.

MLME could further consider allowing informal cooperation between miners, such as allowing five miners to work a 25-acre claim simultaneously, without requiring the need to enter into a formal agreement. By splitting the cost of licensing among them, the revenue is still the same for government. Miners can share resources and determine among themselves whether they each, for instance, want to work an area of 5 acres, or whether they want to work the entire claim simultaneously. In such a case, MLME can reduce the licensing cost for each miner, while concentrating the area of environmental disruption. It could also contribute to more efficient recovery.

There are proposed regulations and schedules in circulation, as well as proposed amendments to the MML to accommodate the recommended changes. Those proposals should be considered in conjunction with the recommendations in this report.

## 7.2 CLARIFY AND SIMPLIFY THE STEPS FOR CLASS C ARTISANAL DIAMOND MINING LICENSE

Application and issuance of licenses only take place in Monrovia, and Class C licenses need to be renewed annually. There are multiple steps involved in the licensing process, involving different government agencies and several procedures. During consultation, miners indicated that the licensing process is complicated, expensive, and can sometimes take up to three to six months. Conditions for Class C license applications need to be simplified, clarified, decentralized (if possible), and captured in ADM Regulations.

The Class C ADM license presently contains the following contradictory or unclear terms and conditions:

- Reference to “Mining Regulations” which do not exist;
- Reference to “surface rent agreement” when customary ownership of land is not recognized;
- Provision for “limited use of mechanized equipment” and “excavations” which contradicts enforcement practices. Only Class B license holders are allowed to use mechanized equipment according to the MML;
- Grants authority to miner to utilize other natural resources on the claim, without having the authority to regulate those resources and without regard for the ownership or use rights of someone else over those resources; and
- Environmental management plan, including rehabilitation, is required as a precondition to issuance, and environmental reclamation is mandated after closing, which is unfeasible. There are no procedures or standards stipulated in law or regulations and these conditions are not enforced.

## 7.3 CREATE INCENTIVES BY REDUCING THE COST OF THE LICENSE AND REVIEWING THE SIZE OF THE CLAIM

A baseline survey conducted by PRADD revealed that up to 95 percent of ADM miners who were surveyed spent up to \$500 on the process of acquiring a license. This could include prospection fee, transportation costs, bribes, lodging, and other expenses incurred while traveling to Monrovia and waiting for the issuance of the license. Although the license itself is only US\$150, compared to US\$450 before 1990, the high transactional cost—costs which are not captured in the price of the license—is a disincentive for registration.

The following costs are fixed in the application process for a Class C license:

Fee type	Cost
Surveying Fee	US\$ 150
ID card and miscellaneous fees	US\$ 30
Licensing fee	US\$ 150
<b>Total:</b>	<b>US\$ 330</b>

Low-cost licensing is key to increase registration, but compared to the cost per size, the licensing fee itself is not unreasonable. In both PRADD community consultations and United Nations Development Program studies,<sup>27</sup> some miners indicated that they would be willing to pay more if there is a way to ensure that benefits return directly to the community. A total of 89 percent of unlicensed miners indicated that a licensing fee below \$100 would be preferable (61 percent are willing to pay \$50-\$100, while 28 percent are willing to pay less than \$50).

The duration of the license is unrealistic in proportion to the size of the claim. PRADD studies show that miners can work a maximum of 10 percent of the 25-acre claim during the one-year license period. It can take a miner up to 10 years to exhaust a claim—some miners have indicated that their families have been mining a single pit for more than 20 years—and still the mineral recovery rate averages between 25-40 percent, which is inefficient.<sup>28</sup> Another consequence of the large claim size is that it forces miners to look for financial support to mine the claim efficiently, which proliferates the poverty cycle. Furthermore, communities indicated that illegal miners from neighboring countries come to Liberia as the claims are much bigger and policing is weak. However, they are not entitled to Class C ADM licenses.

Originally, a claim was awarded over a specific water body. As mining activities increased and moved inland, the claim size was modeled after the American gold claims of 25 acres. Miners are entitled to have up to four claims (MML, Section 6.3.d) of *no more than 25 acres* each. In many instances, and due to surveying methods employed, claims are more than 25 acres. The surveying procedures in the Regulations in terms of the Mining Act of 1979 still appear to be applied. As the Mining Act has been repealed, these practices lack legitimacy and consistency. The methods of using “meets and bounds” and natural boundary markers are not accurate enough to use for integrated land use planning purposes, nor is it adequate to prevent boundary disputes.

The recommendations in this regard, and after considering the cost and ASDM claim sizes in neighboring countries, are as follows: instead of simply reducing the licensing cost for a 25-acre claim alone, rather reduce the claim size and reduce the price proportionately. MML can also consider extending the license period to two years. Specifically, the recommendation is to decrease the size of the claim to 5 acres for a one-year period at \$40 per license, or to 10 acres for two years at \$75. Considering that licensing costs pre-1990 were \$450, this is still in keeping with the licensing cost in neighboring countries and still affordable to miners. Such a fee would yield enough revenue to create a benefit-sharing scheme and reinvest money into environmental reclamation. The baseline survey indicated that licensed miners receive almost 80 percent more for their diamonds if they are licensed, so they would directly benefit from registration.

Before any attempt to reduce the claim size, MML should carefully consider that miners often also farm on mining claims for subsistence, and that claims are often passed down through generations. As long as there is uncertainty over the status and legitimacy of customary tenure, it is likely that a decrease in size without proper consultation with ADMs will provoke violent responses. A programmatic approach should be followed, such as first reducing the size of the second, third, and fourth claims. Miners should be consulted in this regard, to determine what size is feasible in the one-year period, and consideration should be given to the option of extending the licensing period to two years, to limit costs.

## 7.4 EXTEND THE LICENSING PERIOD

Due to the six-month long rainy season in Liberia, miners can only mine effectively for about six months of their license period before they have to return to Liberia to get their licenses renewed. As indicated before with regard to the license terms and conditions, it is recommended that the license period be extended to two years. Depending on whether the claim size and license cost are reduced accordingly, miners are more likely to obtain licenses and to register their production if they can afford to do so. MLME should raise awareness

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<sup>27</sup> Gamaio Wallace, C and Lepol, R.J. 2008. UNDP. 160.

<sup>28</sup> Gamaio Wallace and Lepol. 2008. 38.

among miners that they can obtain higher prices for their diamonds if they register it and sell it to registered brokers and dealers.

## **7.5 DEVELOP BENEFIT-SHARING SCHEME FOR ARTISANAL MINING COMMUNITIES**

The redistribution of benefits gained from natural resource extraction is becoming common in several resource-rich African countries as well as in South America. The National Environmental Policy determines *“that there should be a policy of revenue sharing from all mining activities to support human development and environment programs within areas where mining companies operate.”*<sup>29</sup> Not only big mining operations but other natural resource extraction and ADM as well impact local communities in various ways, yet no benefits return directly to these communities. Their roads are used and eroded; water sources are polluted and diverted; livelihood activities such as farming, forestry, and hunting are disrupted; and traditional areas are encroached upon. In many areas, indigenous communities are becoming small minorities, pushed to the fringes by industrial developments.

Benefit-sharing schemes can take various forms, whether through the redistribution of taxes, royalties, rents, or fees.<sup>30</sup>

In Uganda, royalty sharing is 80 percent for government, 17 percent for local governments (intended to equalize provision of services and infrastructure across district), and 3 percent for owners or lawful occupiers of land subject to mineral rights, to compensate for negative side-effects associated with mining.

In Ghana and Sierra Leone, Community Development Funds are utilized for development projects in mining-impacted communities. Ghana has a Mineral Development Fund that distributes 9 percent of royalties paid by a mining project and is divided between the District Assembly (the local political administrative unit) and the local traditional authorities.

In Sierra Leone, 25 percent of the 3 percent export royalty is returned twice annually to Chiefdom Development Committees, who disburse 15-40 percent to district councils and 5 percent to town councils through the Diamond Area Community Development Fund. This institution is contributing to incentivize miners not only to pay surface rent to traditional authorities, but also to legalize their activities with the central government. Chiefdoms receive returns in proportion to their share of artisanal mining license numbers out of the national total. In 2007, nearly US\$1 million was returned to Chiefdoms.

In the forestry sector in Liberia, there are encouraging signs that benefit-sharing incentivizes communities to accept the presence of commercial resource extraction activities if a share of the benefits accrues to them. Regulation 106 on Benefit Sharing was established pursuant to the National Forest Reform law of 2006 (Chapter 14. Sections 40.2.e, f). It is a good model to follow as it captures the basic prerequisites of long-term sustainability and stakeholder participation through transparent benefit-sharing. The National Beneficiary Trust Board holds in trust, manages, and supervises land rental fee funds that are received for the benefit of affected communities, different institutions and levels of society. The Trust Board receives applications for funds from Community Forestry Development Committees on behalf of affected communities, and disburses these funds for projects that are approved. The distribution is as follows: 30 percent of area fees and land rent goes to the community; 30 percent goes to the counties; and 40 percent goes to central government. Standard rental rates are determined according to size.

Communities can use these funds to promote their well-being through shared decision making. Such a scheme should be considered for the mining sector as a means to promote sustainable management and development. If, for instance, there is a benefit for communities to assist in enforcing mining licensing terms and environmental reclamation, the environmental damage from mining could be mitigated. By creating a clear and transparent means for the return of revenue, communities will also be empowered to determine

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<sup>29</sup> Section 5.9.

<sup>30</sup> USAID PRADD. Oct.2010. Comparative Study: Legal and Fiscal Regimes for Artisanal Diamond Mining. 26-27.

their own development needs and relieve some of the burden from the central government. In some cases, funds are and can be disbursed to local government for general infrastructure, while in other cases, communities should be encouraged to determine and manage their own priorities.

Surface rental is a simple and uncomplicated way to ensure that affected communities benefit from the extraction activities in their environment. There is no reason why revenue should be generated from commercial mining activities but not from ASM, if it impacts the use rights of other surface users and the surrounding community. Local authorities and communities are best placed to determine what reasonable rent would be, and what distribution scheme would most benefit them. Experience from benefit-sharing schemes in several countries shows that such mechanisms are most likely to succeed when broad-based participation takes place through existing social institutions, such as community representatives.



# 8.0 ADMINISTRATIVE REFORMS

## 8.1 ESTABLISH APPROPRIATE PROCESSES FOR RESOLVING DISPUTES OVER LAND AND NATURAL RESOURCES

Eighty percent of court cases currently involve land disputes. The Land Commission of Liberia, which is responsible for Land Reform, receives thousands of requests to dispose of disputes, but it does not have the authority or jurisdiction to preside over cases. Without formal rights, customary tenants cannot go to court. Even if their rights were recognized, formal court proceedings are expensive, time-consuming, and tend to be prolonged, technical decisions on who wins and who loses, which is not an ideal outcome when security of tenure is at stake.

For ASDMs, conflict often occurs about boundaries, but also between miners, brokers, and dealers. Alternative Dispute Resolution (ADR) is generally more appropriate than court proceedings for natural resource disputes. These proceedings are less technical, more collaborative, and the focus is on a negotiated, compromised outcome rather than deciding who is the winner or loser.

The Minister of the Internal Affairs, with support from UN Habitat, is presently in the process of creating an arbitration tribunal that is specifically aimed at resolving land and natural resource disputes. Parties can decide which approach is most appropriate under the circumstances and have greater control over the process. Some or a combination of these alternative dispute resolution methods can be followed: conciliation, mediation, and arbitration. If the parties so choose, rulings can usually be made an order of the court.

## 8.2 DECENTRALIZE LICENSING THROUGH A MOBILE LICENSING UNIT

A practical solution to the logistic obstacles of licensing in Monrovia is for GOL to send a group of representatives from the various government institutions involved to the mining communities. These representatives can help miners complete their applications, process their license and issue it, provided the infrastructure is available. This would save costs for miners and is likely to increase registration of miners and, in turn, production registration. PRADD is currently in the process of assisting GOL to accomplish this.

## 8.3 STRENGTHEN INFORMATION EXCHANGE BETWEEN GOVERNMENT DEPARTMENTS AND NEIGHBORING COUNTRIES

There are five components to this recommendation:

- 1) Connecting miners to specific identifiable claims to track rough diamond production to a specific miner and a specific claim;
- 2) Connecting specific brokers and dealers' transactions with specific miners;
- 3) Consolidating or cross-checking databases of the Mining Cadastre, Regional Diamond Office (RDO), Government Diamond Office (GDO), Ministry of Finance, and Export Authorities / Customs;
- 4) Mandating continued information exchange between government departments that are involved in the whole chain of events governing ASDM; and
- 5) Exchanging information about sales and dealer patterns and exports with neighboring countries, and countries that are known to be prone to smuggling.

There are several government departments and offices involved in governing ASDM, from the process of issuing prospecting and mining licenses, verifying the background and eligibility of miners, zoning and surveying, monitoring compliance (also environmental compliance), registering production, valuation and certification, export and taxing. To improve monitoring and compliance, and to prevent smuggling, it is essential to strengthen information exchange between different government departments.

There is little consistency in production rates registered at RDOs, the number of KP certificates issued by the GDO, and export statistics.<sup>31</sup> To remedy this, the chain of custody should be tightened to connect miners to specific identifiable claims and to follow the rough diamonds all the way from the specific claim through to the point of export. If miners are connected to claims, and the subsequent transactions are recorded and monitored, KPCS certificates and export earning can be cross-checked and traced back.

It is a well-known fact that many rough diamonds are smuggled in and out of Liberia, mainly because of the weak regulatory system and weak enforcement, but also because of Liberia's porous borders. Miners themselves seldom have the capacity to smuggle rough diamonds across national borders or to market them outside of Liberia—it is brokers and dealers that engage in smuggling. According to GDO estimates, only 10 percent out of about 750 previously registered brokers and dealers are currently licensed.<sup>32</sup> This is attributed to high licensing costs and the abundant availability of cheaper illicit diamonds. Unlicensed dealers also escape paying royalties to government.

If the different government bodies that are involved in every step of the process exchange information and databases with each other, the chain of custody will be tightened and governance improved. If neighboring countries progressively implement similar kinds of consolidated data-keeping systems, information about sales patterns and quantities of dealers can be verified to monitor compliance.

## **8.4 CREATE PUBLIC-PRIVATE MICRO-FINANCE CREDIT CORPORATIONS FOR ARTISANAL MINERS**

An issue that emerged in almost every engagement with miners is access to financing. In practice, it is hard for miners to get access to financing. Mining is inherently risky, and credit requires collateral / security. As mining is scattered and the sector informal, with no or limited access to banking institutions, it is virtually impossible for miners to provide formal bankable guarantees. Private property is one of the most common ways to provide collateral, but it is undesirable to encumber communal property—if more than use rights were recognized.

Against this backdrop of high risk and no security, GOL should consider other alternatives to assist ASDM to improve their capacity. Assistance could take the form of credit by means of providing loan guarantees, but also more practical and less risky forms of assistance. If equity (capital) can be obtained through private companies,<sup>33</sup> development partners, revenue from benefit-sharing schemes, the Mineral Development Fund<sup>34</sup> and/or GOL, public-private micro-finance credit corporations and joint ventures can be created. If the geological potential is objectively determined and adequate tools and technical assistance are provided, miners can cooperate with the equity stakeholders and government to share revenue. In micro-finance credit corporations, GOL would take the lead to obtain financing as a development partner, without committing only government funds, but utilizing funds from private investors as well. Ideally, miners should form small cooperatives to reduce the risks for equity stakeholders.

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<sup>31</sup> UN Security Council Panel of Experts on Liberia, S/2009/640. 17.

<sup>32</sup> USAID GEMAP. 2010.18.

<sup>33</sup> Consultants in fact came across investment opportunities in Liberia's ASDM on the internet.

<sup>34</sup> MML, S. 18.3.

To facilitate joint ventures—private investment from outside of Liberia to cooperate with miners—rules and regulations governing cooperation between miners and financiers need to be improved and elaborated in appropriate regulations. The provisions of Section 6.3.e are not sufficient to govern a cooperative enterprise, but care should also be taken not to over-regulate it so that the formalities make it unfeasible.

## **8.5 REWARD CONTINUED REGISTRATION AFTER A CERTAIN PERIOD**

Miners are more likely to obtain and renew their licenses if there are incentives to remain registered. If an ADM miner is licensed for a certain amount of years, or registers a certain amount of production with the RDO within a certain time period, he/she should become eligible to receive some form of reward for continued compliance. These are just a few examples: reduce the license fee for the sixth and subsequent years of uninterrupted registration, or a certain amount of carats registered with the RDO, rewarded by a small return and exclusive “cash back” from either royalty or benefit-sharing. Another option is for MLME to invest in tools and make access to tools available as “reward” for continued compliance.



# 9.0 CONCLUSIONS

This is a review of the policy, legal, and regulatory framework that governs ASDM in Liberia. The report identified and analyzed two specific aspects:

1. Gaps and contradictions between existing mining laws and policies that are causing conflict for ASDM and their communities with a view to propose solutions to:
  - a) Increase registration of diamond production;
  - b) Improve benefits from diamond mining to diamond mining communities; and
  - c) Improve compliance with environmental reclamation to foster a culture of sustainability.
2. Issues surrounding the clarification of property rights and improved access to mining sites for ASDMs.

The most important recommendations in this report can be summarized as follows.

**Incorporate the principles of the Mineral Policy of 2010 into the existing MML and promulgate Mining Regulations consistent with these principles.** Develop an Artisanal Diamond Mining Policy to formulate a long-term strategy for the management and development of this sector. Sustainability should be the bedrock of this policy, comprising social, economic, and environmental dimensions.

**ASDM should be integrated into a larger national natural resource policy framework that synthesizes the relationship between different natural resources and competing land uses.** A mechanism should be created to evaluate competing land uses according to established national development priorities. The principles in the National Environmental Policy must be incorporated into the various natural resource laws to create policy consistency.

**General Mining Regulations should be promulgated pursuant to Chapter 21 of the MML, but specific regulations also need to be promulgated to clarify the unclear and contradictory terms that presently accompany Class C ADM licenses.** The terms of the ASDM regulations should stipulate simplified and understandable procedures to obtain Class C licenses, and must clearly set out the steps a miner needs to follow to obtain a license. The cost of licenses should be reduced in proportion to the size of the claims, which should be reduced to between 5-10 acres, to be renewed annually or biannually.

**Environmental laws should be amended and regulations promulgated to facilitate realistic measures for environmental rehabilitation.** There should be cooperation between the different departments to facilitate this process. Through benefit sharing, local communities can be incentivized to enforce environmental compliance and gain a sense of ownership over their environment.

**The MLME should work with the Land Commission to clarify and secure access rights for ASDM.** The dual and ambivalent systems of statutory and customary property rights should be clarified, and communal property rights should be recognized. At the very least, customary land users affected by mineral development should be consulted and compensated for their loss of use and access rights to land. This should also include the possibility of surface rental.

ASDM can make a meaningful contribution to social and economic development, provided there are clear policy, legal, and regulatory mechanisms that incentivize them and their host communities to develop in a sustainable way.



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# APPENDIX I: INSTITUTIONS AND PERSONS INTERVIEWED AND CONSULTED DURING CONSULTANCY IN LIBERIA

No.	First and last Names	Position and Organization
1	Dr. T.O Brandy	Chairman, Land Commission of Liberia
2	Hon. Carlton Miller	Deputy Minister, KP Focal Point, MLME
3	Hon. Felix Morlu	Assistant Minister, MLME
4	Cooper Pency	Director, Mining Cadastre, MLME
5	Prince V. Mambu	Inspector General of Mines, MLME
6	George Wreh	Assistant Director of Mines, MLME
7	Levi Banney	Ministry of Internal Affairs
8	Lawrence Greene	Forestry Development Authority
9	Garvoie Kardoh	Forestry Development Authority
10	Nathaniel T. Blama, Sr.	Environmental Protection Agency
11	Councillor Amos Batho	Environmental Protection Agency
12	Professor T. Martin	EPA, Mainstreaming SLM
13	Alfred Brownell	Executive Director, Green Advocates
14	Shadrack Y. Wisner	Gold and Diamond Miners Workers Union
15	Ebrahim B. Gappie	Federation of Miners Association of Liberia
16	Thomas S. Cassell	Federation of Miners Association of Liberia
17	James M. Yarsiah	Rights and Rice
18	Peter Kluczny	Resources Governance Program, GIZ
19	Gregory Kitt	Norwegian Refugee Council (NRC)
20	Mevana Mensah-Vatekeh	UNDP
21	James Morumbessi	UNDP
22	R. Fole Sherman	UN Habitat
23	Communities of Lofa Bridge and Lofa Congo	Artisanal diamond mining communities



# APPENDIX 2: ADDITIONAL GUIDELINES FOR FORMULATING ARTISANAL DIAMOND MINING POLICY, LAWS AND REGULATIONS

The basis of these guidelines was largely developed through collaborative initiatives between miners, governments, and civil society organizations in the artisanal mining sector in South America. The draft manual was prepared for the Alliance of Responsible Mining as a working document, and adjusted by consultants to apply in Liberian ADM circumstances.<sup>35</sup>

## 1. Integrate ASDM legalization process with Liberia’s socio-economic development plans

- Consider Liberia’s international commitments towards the implementation of sustainable practices.
- Integrate ASDM policy on different levels with public policy relating to social, environmental, labor, health and safety, economic, organizational, and technical issues. This will create better conditions for ASDM to grow and improve and contribute to long-term stability.
- Coordinate and cooperate with different government agencies, non-governmental institutions, and ASM organizations at all levels.

## 2. Create laws and regulations based on a coordinated legal strategy

- Different disciplines of laws and regulations come together in ASDM: mining licenses, private property rights in land, environmental licenses, evaluation and management of social and environmental impacts, taxation and fees, access to financing and financial support, development of techniques, health and safety issues, marketing (mining law, environmental law, tax law, private property law, commercial law, etc.).

## 3. If all the disciplines follow the same vision and strategy, the sector can grow in a stable environment in a shorter time. **Encourage stakeholders’ participation at every stage and every level**

- All stakeholders that impact on ASDM, particularly miners, should be invited to contribute to the process of development of public policy and a regulatory framework.

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<sup>35</sup> Legalization Guide for Artisanal and Small Scale Mining (ASM). Draft for discussion. ARM Series on Responsible ASM No. 5. March 2011. [www.communitymining.org](http://www.communitymining.org).

- Proper consultation is essential to ensure stability and sustainability.
- Multiple stakeholders with diverse and conflicting interest all have an impact on the ASDM.
- Stakeholders (miners, miners from different subsectors, foresters, landowners, land users, large-scale mining companies, civil society organizations, etc.) should all participate in different aspects to develop realistic laws and regulations.
- Involvement of different stakeholders will create political commitment towards recognizing ASM as a legitimate economic mining activity. This, in turn, would contribute to better political conditions to address issues of resource competition and other economic sectors.

#### **4. Monitor the implementation of an ASDM regulatory framework**

- At present there are several enforcement mechanisms to monitor the flow of rough diamonds, but no specific regulatory framework to guide the sector.
- Monitoring the progressive implementation of a regulatory framework could serve as a proactive evaluation tool to improve it.
- Monitoring can provide prompt responses through clear and regular feedback on the progress of implementation.
- As the regulatory framework ultimately needs to be enforced, monitoring can serve as a tool to prevent unrealistic enforcement standards or practices.
- Unrealistic and inflexible rules, regulations, and standards of enforcement will only drive ASDM back into illegality.
- Monitoring and enforcement should be kept separately to avoid abuse of power.
- Optimally there should be an independent and representative body that monitors progress, comprised of the different stakeholders.
- The diverse composition of such a monitoring group would contribute to the credibility of the evaluation process.

#### **5. Facilitate wide access to information about the legal framework**

- It is critically important to raise awareness of and guarantee access to information regarding laws and administrative decisions relevant to the ASDM sector to miners and representative organizations.
- Disclosure and access to information about the legal framework is as important as the existence of legislation itself.
- The transfer of information should be timely and in a manner that is accessible to the miners. In other words, do not just hand out copies of laws. Make the most important points clear and understandable. This is especially important for the rules and regulations regarding licensing.
- The process of information transfer can serve a dual purpose: government can listen to ASDM to respond to changing needs and realities while transferring knowledge and gaining credibility at the same time.
- This exercise can be used to build capacity, whether through training courses, workshops, or other methods. More complex regulatory issues could be explained to ASDM representatives.
- These methods should be used as incentives to participate actively. If miners and other stakeholders are involved in the process of developing the regulatory framework, it will increase the sense of ownership, which will likely improve compliance.
- This can also help to monitor progress and impacts of the changing regulatory regime.

## **6. Recognize importance of stable ASDM sector for larger economic activities**

- Stability in the ASDM legal framework will create confidence for investors in other larger economic sectors, such as large-scale mining and forestry.
- Regulatory stability will improve social stability, which will contribute to long-term investment in the ASDM and other long-term planning options.
- Stability does not exclude the need for regulatory response to address changing needs. The process of formalization is dynamic.
- A clear long-term strategy in a policy will create stability in approach.

## **7. Respect Human Rights throughout the gradual process of legalization**

- A culture of exclusion from public policy and appropriate regulatory frameworks contribute to informality and poor human rights conditions.
- ASDM are exposed to fluctuations in other economic sectors. The process of legalization needs to create a new business culture, which is a slow and gradual process.
- The development of regulatory responses should be sensitive to the historic, economic, socio-cultural, and environmental context.
- By keeping the contextual realities in mind, short-, medium-, and long-term goals can be set.
- The process of formalization should not be a threat to the interim viability of the ASDM sector, but rather guide it to maturity.
- If a sustainability approach is followed, formalization could actually contribute to development in several other areas, such as human rights protection.
- Rights and obligations, standards, and administrative procedures should be based on an incremental approach, continually keeping basic human rights in mind.

## **8. Establish inter-governmental division to coordinate and guarantee long-term vision for the sector**

- This guideline complements Guidelines 1 and 2.
- This division would serve the following purposes:
  - Coordinate different government institutions that are relevant to ASDM; and
  - Integrate different areas of public policy.
- Raise awareness inside the government about ASDM.
- Ensure continuity of policies and actions that affect ASDM.
- Generate a dialogue between ASDM and other mining and natural resource activities.
- As is already the case between different agencies within the DLME, it is recommended that implementation and enforcement not be carried out by the same body, to prevent a potential conflict of interest.

## **9. Identify similarities and differences between ASDM and other mining sectors**

- This will assist to determine where similar or differentiated legal treatment is justified.
- This would create legal certainty, not only to ASDM but also to other economic sectors.

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