



# Land Governance in an Interconnected World

ANNUAL WORLD BANK CONFERENCE ON LAND AND POVERTY  
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## **MANAGING CONFLICT AND FOSTERING COOPERATION BETWEEN THE STATE AND CUSTOMARY LAND OWNERS FOR THE EFFECTIVE FORMALIZATION OF ARTISANAL AND SMALL-SCALE MINING IN WEST AFRICA: THE CASE OF DIAMONDS IN CÔTE D’IVOIRE**

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## Abstract

This paper takes a land tenure lens to policy on formalization of artisanal and small-scale mining (ASM), focusing on the case study of diamonds in Côte d'Ivoire. The central argument is as follows: in rural contexts where customary land tenure is strong, managing conflict and fostering cooperation between the state and customary land owners is an essential precondition and also an effective strategy for ASM formalization. The paper draws upon fieldwork and observations from the Property Rights & Artisanal Diamond Development (PRADD II) project co-financed by USAID and the EU implemented in Côte d'Ivoire between 2013 and 2018. The experiences are of great practical relevance to ASM practitioners elsewhere, as paying explicit attention to property rights arrangements has demonstrably created positive good governance and local development results rarely observed in other ASM contexts.

**Key Words:** artisanal and small-scale mining (ASM), Côte d'Ivoire, customary land rights, formalization



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This paper takes a land tenure lens to policy on formalization of artisanal and small-scale mining (ASM), focusing on the case study of diamonds in Côte d'Ivoire. The central argument is as follows: in rural contexts where customary land tenure is strong, managing conflict and fostering cooperation between the state and customary land owners is an essential precondition and also an effective strategy for ASM formalization. The paper draws upon fieldwork and observations from the Property Rights & Artisanal Diamond Development (PRADD II) project implemented in Côte d'Ivoire between 2013 and 2018. The experiences are of great practical relevance to ASM practitioners elsewhere, as paying explicit attention to property rights arrangements has demonstrably created positive good governance and local development results rarely observed in other ASM contexts.

## 1. What is ASM formalization?

Artisanal and small-scale mining (ASM) refers to mining conducted by individuals or groups, often motivated by poverty or taking place in the context of poverty, using rudimentary or low-tech extraction and ore-processing techniques. Worldwide it is estimated that there are 40 million artisanal miners, with a further 100 million people depending indirectly on the activity for their livelihoods (IGF 2017). ASM continues to grow in scale and economic importance throughout the world, from communities to countries to multi-national supply chains.

ASM has received attention from academics and policy-makers over the decades but this attention has been inconsistent and followed certain trends (Hilson 2014). For example, in the 1980s ASM was viewed as an entrepreneurial activity requiring technical assistance and an enabling policy environment to unlock its economic potential and address its myriad problems. In the 1990s, poverty and rural economics came to the fore, and attention was paid to cyclical relationships between mining and agriculture. In the 2000s the links to conflict and human rights abuses was central, and more recently, ASM has garnered attention through the lens of international supply chains, which has changed the lens and the types of actors who follow ASM issues. Meanwhile governments with ASM have tended to view the phenomenon as a problem to be eradicated or solved, although by the 1990s most had at least officially recognized a place for ASM in their national laws and its poverty-reduction potential.

Policy-makers seeking to minimize problems and maximize benefits from ASM have often framed their perspectives around the concept of formalization. Formalization, like ASM itself, has rarely been clearly defined, but for many the concept is a catch-all for the general objective of policy or programmatic interventions. Formalization as an objective is a response to the “informal” nature of ASM, and is an



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alternative to what was a common policy response in the 1970s and 1980s, mainly, ignoring that ASM exists or repressing it. Indeed, in the same way that governments raze slums (informal settlements) or arrest street hawkers (informal sellers), ASM has been frequently targeted by repressive measures. Beyond applying national laws, various interests have motivated such measures, such as defending the activities of industrial miners who come into conflict with ASM actors.

In this context, formalization is often used interchangeably with the term legalization, meaning that to become formal is to operate within the legal and regulatory framework, and to be informal is to be “extra-legal” or “illegal” (AFD 2015). In countries that accord a place for ASM in their laws and policies, formalization is not about eradicating the practice but rather increasing state control over those actors and thereby increasing the potential for revenue from taxation, licensing, etc. In order to increase legalization, policy-makers focus on adapting legal frameworks to allow a practical pathway to formalization and reducing barriers like high or cumbersome licensing fees.

The legalistic understanding of formalization has been challenged on a number of grounds. First, the focus on legalization creates an impractical objective especially in countries where the legislative frameworks are more “ideals” than actual attainable solutions. For example, despite requirements that artisanal miners become licensed and that production is recorded at the mine site, compliance is dismal. While governments and donors typically call for capacity-building and simply doing better, the disconnect between laws and local realities has created challenges for recent good governance initiatives. For example, the OECD Due Diligence Guidelines, which thanks to EU legislation<sup>1</sup> is now becoming a dominant paradigm for managing supply chain risks, requiring that everyone buys only from legal producers would essentially shut out ASM production. In countries where most production is artisanal, this could essential make the application of such guidelines meaningless and would end up strengthening problematic parallel supply chains. As such the OECD has pushed for a more nuanced (and arguably vague) definition, defining “legitimate” ASM outside of illegality, and instead focusing on context, good faith efforts and lack of human rights abuses (OECD 2016). For many governments, such an approach is difficult to swallow because the law is the law and in their view states must simply enforce the law.

Beyond the practicality of ASM formalization as legalization, the legalistic definition often sidesteps the fundamental question of why the informal sector exists in the first place (Hilson 2017). Is it because of policies that favor large-scale mining and leave no space for artisanal miners in practice? Is it a poor

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<sup>1</sup> See <http://ec.europa.eu/trade/policy/in-focus/conflict-minerals-regulation/regulation-explained/>



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mining code or a poor implementation of the code? Is it because the international supply chain and local financing arrangements make extra-legal ASM the most economically rational outcome? It is only by attempting to answer these types of questions that policy-makers can avoid falling into the trap of assuming a mechanical link between formalization as legalization and all the potential positive outcomes of sustainable development.

As such international practitioners are focusing more on formalization as a policy-making and policy implementation process rather than a fixed binary state. Groups such as the Alliance for Responsible Mining (ARM) put it this way: “‘Success’ is not defined... solely by numbers of miners legalised, but rather by the establishment of a long-term process leading to ASM working under legal titles, and progressively complying with technical, legal, environmental, labour and trading requirements” (Echavarria 2014). As such while legal compliance remains an objective, formalization is viewed as a process of developing a policy, which implies defining principles, objectives and actions that are politically and socially accepted.

Embedded into this is also the notion that the end result should go beyond just a legal status but also a broader transformation of the sector and its impact. Some use the term “professionalization” to describe the ways in which ASM formalization should also seek to build in policies and programs that improve the way the activity is practiced but also its impacts at all levels. As such formalization is also linked to programs and investments, from the government but also the private sector, that seek to improve working conditions, environmental management, labor relations, etc. (Echavarria 2014).

An important question across all definitions of formalization is who benefits. In other words, is formalization there to help the producing states? Miners? Local traders? International multinationals? International diplomats? While formalization discourse assumes a win-win for everyone, mineral supply chains are characterized by a multiplicity of interests, sometimes completely opposed to one another. For example, while from the state’s perspective ASM may be complete anarchy and criminal, in many ASM communities there are complex rules and procedures with respect to authorizations and benefit-sharing. While these may not cohere with the law, they can create positive outcomes with respect to local development and social cohesion. Moreover, applying the law can be a convenient cover for national elites and other interests to wrest away control and benefits from communities and can in fact disempower them. In such cases the state and state actors benefit, but not communities. While the divergences are not only between communities and the state, it is there where they appear most starkly, and there where we see a reflection of the well-studied customary-statutory parallel legal systems in land tenure.



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For the purposes of this paper, we understand formalization beyond following the state's laws and regulations, and also beyond a national policy-making process, but rather as an ongoing process of reconciling legality with legitimacy. By legitimacy we mean mechanisms that allow for competing interests and systems to co-exist and to interact in a structured way. This implies that there is the potential for conflict, but that chances of managing that conflict productively and producing cooperation are increased. Formalization refers in this sense less to the specific outcomes but rather to the structuring of relationships between the state and other actors, and structuring those relationships often in terms of land tenure rights. As we will see, this is not merely a theoretical exercise but one with import for managing ASM.

## **2. Land tenure dynamics in ASM communities in Côte d'Ivoire**

The disconnect between customary and statutory land tenure regimes is a well-known reality in many countries, and Côte d'Ivoire's mining communities are no exception. On the one hand you have the state with its laws and institutions inherited from colonial times and on the other hand you have the customary tenure systems that are based on traditional practices that have evolved in relation to the colonial and post-colonial states. The traditional system is based on the primacy of the land chief who represents the clan that first occupied a piece of land. The territory of a village belongs either exclusively to this clan or is divided between the controlling family and others that arrived later or who acquired access through alliances. Ownership is collective and moreover the land chiefs view themselves as custodians of the ancestral rights to manage the land and not owners per se. Within a clan land can be divided among families who can use the land and transfer to their children, but the distribution decisions are never immutable, and the land chief can always change the way in which the land is distributed or used. Outsiders, defined as either external immigrants or internal migrants, do not have rights to own and transfer land but rather they negotiate usage rights with indigenous family land owners. In exchange, the outside users must give back symbolically and economically to the village and the individual owners. In agricultural contexts this can be a percentage of harvests, part of the field itself, or a fixed annual rent. These arrangements are rarely codified in writing (PRADD II 2014).

The state's objectives and policies have interacted with these customary systems over the centuries, creating varied results region by region. In post-independence Côte d'Ivoire, the principle of "the land belongs to those who put it to use" combined with an open-door policy to immigration led to an influx of migrant labor and the "economic miracle" driven by cacao in the 1970s and 1980s (AFD 2012). At a local level, the migrants entered into agreements with customary land owners for access to land, but as the



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economic power of the outsiders grew, and as the willingness to respect unwritten agreements diminished with new generations, considerable tensions developed in certain parts of the country, especially the West (NRC 2009). As such there is not only a variation in the specific types of customary systems due to different socio-cultural groups, but also variations across regions due to particular economic histories.

With respect to mining the state has always asserted its exclusive right to all mineral resources. The state alone can decide to issue temporary access rights to those resources to companies or individuals. In practice, this system had to accommodate customary systems because one cannot access sub-surface resources without going through the surface, and moreover in customary systems there is no fundamental distinction between the surface and sub-surface. The state was therefore limited in its ability to impose that exclusive right by local realities. In Tortiya, for example, the French diamond mining company SAREMCI agreed to and financed a large animal sacrifice with the village of Natiemboro in the 1940s in order to purge the customary rights and allow the company to take over the land for mining, which continued until the mid-70s (PRADD II 2015). Once the company left, from the state's perspective the zone remained a mining area that it managed, but from the village's perspective the rights reverted to the customary owners, and today Natiemboro benefits from the agricultural rents from land in the old concession area, even though these rents are often contested by neighbors.

Artisanal mining also took place within a context of interaction between the state and customary systems. What began as sub-contracting by semi-industrial companies in the 50s turned into a boom in the early 1960s when the state liberalized the sector just after independence and a huge in-migration took place in the region of Séguéla. In 1962, the state reversed course and banned artisanal mining, leading to a decade of violent repression (USGS 2012). However, this did nothing to stop mining, it just increased the risks. Customary land owners were at once somewhat powerless against this vast in-migration but they also asserted their rights to the land and taxed the outsiders, many of whom moved to the villages, inter-married and to this day live in these communities.

By the 1970s the repressive approach evolved into the period of the "arrangement" or accommodation between state actors, miners and communities with various informal benefit-sharing arrangements taking place. From a certain perspective this was simply corruption: miners would often be forewarned of raids by authorities, and arrested miners were often kept in the sub-prefecture just for show. Meanwhile customary authorities also benefitted by taxing outsider miners and in some cases getting involved in mining themselves. That period which extended into the early 1980s represented a complete failure of the state as its law enforcement was corrupted and co-opted, but from the perspective of communities, nearby



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towns and diamond buyers, it was the golden era of free-flowing money and economic prosperity, and even today is remembered nostalgically as the era where kids instead of getting sweets and coins would get 10,000 CFA bills, and when people were so rich they would take a helicopter 500 kilometers away to get a quality haircut in Bouake.

In the case of mining, the disconnect between the de jure state control and the de facto system on the ground was emblematic of the divide that emerge between the customary and statutory systems. The same divide existed with respect to rural land policy more generally, but from the late 1980s there was increasing recognition of the need to find some way to bridge the divide. A policy-making process culminated in the famous 1998 rural law, which was innovative at the time in that it explicitly recognized the legitimacy of customary institutions all while treating them as transitory. Under the system land would be certified with customary approval and then transition to an individual state-controlled title within 3 years. As such the law while recognizing the existence of customary tenure was still based on an illusory idea that the state would eradicate that system within 13 years.<sup>2</sup> Not surprisingly, the law has proved impossible to implement. Despite attempts to simplify procedures, the fundamental flaw is that the vision of rapidly and forcefully eradicating customary tenure remains its central premise. This arguably serves the state's (self-perceived) interests more than those of communities. This is not to say, of course, that the customary systems are not without their flaws and inequalities, and that the state's vision of a modern formal land system is bad, but rather the law instead of resolving the duality simply reinforces it.

In the case of sub-surface rights, while the de jure system has not evolved much except by giving communities a voice in permitting decisions and the right to compensation and benefit-sharing from industrial concessions, the de facto system in the case of diamonds included a bold experiment in co-management that fully recognized and partnered with customary authority. This experiment began in 1985 and launched 30 years of structuring and formalizing collaboration and conflict between communities, supply chain actors and the state.

### **3. Co-management of ASM diamonds by state and communities**

Côte d'Ivoire's experience with organizing small-scale diamond mining began in 1985, marking an end to the official repressive policy that started in 1962 with the period of *chasse à l'homme*<sup>3</sup> and transitioned in

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<sup>2</sup> The law was supposed to be implemented within 10 years of 1998, and there was a 3 year grace period to transition from land certificates to land titles.

<sup>3</sup> Manhunt



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the 1970s into the period of the *arrangement*<sup>4</sup>. After decades of a failed policy, the state decided to legalize ASM and to introduce a new way to organize the sector. Parastatal *Société pour le Développement Minier en Côte d'Ivoire* (SODEMI) was given mining research permits covering the Seguela diamond mining areas. SODEMI then began organizing *Groupements à vocation coopérative* (GVCs) in each mining village. The idea was derived from the agricultural cooperative model, as well as a similar experience in mining in Akwatia, Ghana. The GVC organization was legally a “pre-cooperative” with the idea that it would eventually convert into a full cooperative. However, this never took place and in reality the GVCs did not function as a cooperative or even a pre-cooperative in any conventional sense.

To begin with, the GVC leadership was composed of and controlled by the village chiefs. In the major mining village of Bobi, for example, a large village meeting was organized and each of the 6 “quartiers” (corresponding to the 6 main indigenous families, led by the Kone family) designated a representative. Even though the vast majority of mining workers and the buyers were foreigners—defined as either non-Ivoirians or Ivoirians from other regions of the country—they were not represented in the GVC leadership structure. As such one cannot talk of the GVCs as miner cooperatives but rather village mining management structures controlled by the customary leadership (DeJong 2013).

The control by customary leaders extended to the mining sites. Under the terms of the formal agreements signed between SODEMI and the GVCs, mining would only be authorized in certain designated parcels. In order to become demarcated, the GVC would formally request that SODEMI open an area for mining. SODEMI would then inspect the zone and if it did not conflict with its own research objectives, which focused on primary kimberlite deposits as opposed to secondary alluvial or colluvium deposits, the parcel would be demarcated and authorized. As part of the agreement, SODEMI would receive on behalf of the state 4,000FCFA per hectare as a surface area tax, as foreseen in national law, and also 8% of the diamond sales value, which was negotiated. The GVC would retain 12%.

Enforcement of the arrangement required the involvement of both the GVCs and SODEMI. SODEMI, representing the state, had a large research camp near Bobi as well as a permanent contingent of paramilitary gendarmes to patrol the permit areas to look for “*clandos*”<sup>5</sup> or illegal miners. In addition, SODEMI created a team of “*encadreurs*”<sup>6</sup> who would demarcate parcels and give pointers on safer mining techniques. The GVCs created two teams of watchmen under the control of a person called the

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<sup>4</sup> Deal-making

<sup>5</sup> Short for “clandestine”

<sup>6</sup> Technical assistants



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*commissaire*. One team of watchmen dubbed “*Eaux et Forêts*”<sup>7</sup> would be in charge of patrolling areas outside authorized parcels to sensitize and punish the *clandos*. The other team were the “*policiers*” who would go to the authorized parcels and assist in organizing the pits and most importantly organizing the washing sites. At the washing sites a *policier* would be assigned to each team washing gravel and when they completed the sorting and arrived at the concentrate, they would dump out the concentrate in front of the *policier*. If any diamonds were found, the *policier* would put them in cigarette foils, show them to the *commissaire* for recording in a notebook, and then put them in an airmail envelope with the name of the team leader, his financial backer and his *tuteur*. The financial backers were the buyers who paid for tools, food, medical expenses and so on for the teams. The *tuteurs* were the representatives of indigenous families who were the individual sponsors of that foreign mining team leader or the individual indigenous land owner for that particular pit (Elbow et al 2012). The *tutorat* system just like for agriculture would involve receiving a portion of revenue. The *tuteur* would receive 1 or 2 portions of the final sales split.

The sales would take place in public at the end of the day. The financial backers (collectors) negotiated with the team leader and if they agreed on a price, the GVC would put aside the 20%. The remainder would be divided among the mining workers and the *tuteurs*. Sometimes the owners of water pumps would also have a portion (called a “*condition*”). Moreover, some GVCs began imposing a 5% additional tax on the total sales value payable by the collector. According to the collectors, this was originally meant to create a social solidarity fund for buyers, but it soon morphed into the pot of funds used to pay the watchmen. These watchmen were all from the indigenous families with a full mandate to represent the village on the mining sites. They would get a fixed salary from half of the watchmen fund, but the other half would be an incentive payment based on the real value of the stones. For example, if the sales price was \$100, \$2.50 would go into the general salary fund and \$2.50 would go to that specific watchmen who recuperated the stones. Moreover, the watchmen would receive half of the full value of stones if they caught someone trying to steal a stone. The system is unique in ASM diamond-producing countries where normally the financial backers (collectors) are the ones watching the washing, and where public sales sessions and official taxes for the village are unheard of.

The model was not easy to put into place, however. In order to convince the villages to accept the model, SODEMI called upon influential outsiders from the villages to mobilize people. In Dona, for example, a national civil servant from the village who worked in Séguéla was instrumental in convincing the

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<sup>7</sup> Water and Forests, a play on the official government ministry of the same name



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villagers. In Bobi, a very strong village chief was originally resistant to the presence of SODEMI. SODEMI had placed its research camp near the village of Bobi on the site of an old American semi-industrial company Waston. The villagers feared that the return of SODEMI would result in the villages no longer benefitting from the artisanal miners in their zone. Moreover, the presence of paramilitary at the camp (gendarmes) who participated in the patrols also made the villages nervous. At one point tensions between SODEMI and the village were so bad that the water supply at the camp was poisoned. In a broader sense, Bobi did not accept the right of SODEMI to control the sub-surface rights, having already dealt with colonial-era companies mining without compensating the villages.

However, after a few years, the villages made a complete turn-around and fully embraced the model. The key factor was realizing the economic boon of collaboration. While in the past villagers and leaders would benefit from some of the mining in their zone, it was difficult to assert control as there were thousands of miners spread out over vast areas, many with their own private security arrangements. As one elder from Bobi explained, “Miners came from everywhere and then left with whatever they earned. It was a loss, for the state and for the village. That’s why they decided to put in place the GVC model.” While the villages insist that the GVC system was externally imposed on them, they eventually ceded and fully accepted SODEMI’s right to control the areas on behalf of the state. With the 12%, there was suddenly a revenue base which allowed multiple infrastructure projects. In Bobi alone, an informal accounting done in 2013 put the total value of funds from diamonds earned by the village’s 12% between 1986 and 2002 at over \$1 million in today’s terms. The villages realized that when their system of watchmen was backed by the state’s repressive power, they were much more likely to recover significant sums of money.

SODEMI also adopted a nativist tone in convincing villages, noting that they were losing money to foreigners, and that the “sons of the village” should benefit. This mirrored one of SODEMI’s role as a parastatal in capturing more revenue from multi-national mining operations for the state. This rhetoric appealed to the right of the villages over their land, combined with the right of SODEMI as representing the state over the land as well. Instead of contesting the state’s right, eventually villages like Bobi came to accept that they were “working inside of SODEMI’s permit.” SODEMI’s agreement with the GVCs and its imposition of the system allowed the villagers to enforce their traditional rights systems as well. When asked why villages imposed the additional taxes by the tuteurs as well as the taxes on the buyers, GVC members note that “the foreigners come destroy our land, so we have to be fairly compensated.” As such



there was a strong appropriation of the system as a natural extension of how the village's had always dealt with outsiders who bring economic benefits but also carry certain costs.

From SODEMI's perspective, the relationship increased the state's control over the region, and in terms of its commercial objectives, it gave the company a social license to pursue research on primary deposits. Because secondary deposits were ample and productive, and because villages and miners were allowed to access those deposits, there was little conflict with miners encroaching on research areas. This created a "win-win" situation in terms of ASM-LSM cohabitation, even though SODEMI never reached the stage with its partner Carnegie to mine these deposits industrially. Indeed, Côte d'Ivoire's decade-long political and military crisis between 2002 and 2011 saw the weakening but not the complete abandonment of the model. SODEMI itself withdrew from the area as *Forces Nouvelles* rebels took control of their research camp. In some instances, the rebels substituted SODEMI by taking their share of GVC profits, and in other cases their involvement was more direct and the GVCs were disallowed from participating in the rent-seeking around the most productive sites, like the Bobi dike. Indeed, this period saw the beginning of widespread mining of hundreds of thousands of carats from the primary deposits like the Bobi dike as documented by satellite images. Earnings by villages dropped precipitously and the system returned to a form of the chaos of the pre-SODEMI days. However, some GVCs like Bobi continued to record production and tax what little they earned even though SODEMI was no longer in the picture, showing to what extent local ownership over the system had succeeded.

#### **4. Conflict and cooperation challenges with SODEMI model**

After the end of the crisis in 2011 with the election and forceful installation of President Alassane Ouattara, backed by the *Forces Nouvelles* rebels that had controlled diamond mining zones, Côte d'Ivoire began a process of becoming compliant with the Kimberley Process Certification Scheme (KPCS). Côte d'Ivoire had been a member of the KP since 2003, but was never declared compliant with the KPCS due to the division of the country and the imposition of a UN embargo on Ivorian diamonds in 2005. With the end of the crisis, becoming compliant with the KPCS through its mechanism of a review mission was a necessary precondition for the lifting of the embargo. During this period the international community assisted Côte d'Ivoire through the Group of Friends, an informal group of diplomats that visited Séguéla in 2012 and organized technical assistance to the Ivorian government co-funded by the US and the EU. As part of the technical assistance, local and national forums were organized to discuss how to adapt the existing mode of organization to the KPCS minimum requirements as well as to the new mining code that



was being drafted at the time. A procedures guide was adopted by a multi-stakeholder group and formed the basis of regulations that were later enacted between 2013 and 2014.

The government opted to revitalize SODEMI's role in the organization of the sector, first by renewing research permits for the Séguéla zone in 2013, and then adding the Tortiya zone in 2014. In addition, a ministerial decree gave SODEMI the mandate to sign agreements with cooperatives like in the pre-crisis years. This was despite the new mining code which prohibited ASM inside of industrial permits. The same percentages were maintained, but instead of GVCs, the government decided to change the legal form to cooperative enterprises under the regional uniform business law (OHADA) that replaced Côte d'Ivoire's existing legislation on cooperatives. As such a process to create cooperative enterprises began, and by 2013, 9 had signed agreements with SODEMI, and by 2018 the number had risen to 15 of the 22 original GVCs.

The KP chain of custody was built upon the old system of the GVCs. The cooperatives were considered to be the claim-holders and as such were responsible for recording production and sales data. Buyers were also registered as either collectors or sub-collectors (coursiers) and they issued sales slips for transactions. As a result of this system, from 2014 onwards, Côte d'Ivoire has managed to capture a remarkable amount of its production in official statistics. Whereas most ASM diamond producers have never gone past 5-10% of exports being registered at the mine-level, in Côte d'Ivoire it has been between 60 and 70% in 2015, 2016 and 2017. From a law enforcement and chain of custody perspective, the co-management approach between the villages and SODEMI was very effective.

The Property Rights and Artisanal Diamond Development (PRADD II) project arrived in Côte d'Ivoire as an extension of joint US and EU technical assistance to the government. The project carried out numerous activities including village boundary demarcation, livelihoods diversification, land use planning and technical trainings and assistance to miners. The project also played a role at numerous points in preventing a complete breakdown in the chain of custody. The first "crisis" took place in 2014 when the Mining Minister decided to not authorize buying houses run by West African (mainly Malian) actors who had been active in the diamond trade before and perhaps during the crisis years. Instead the buying houses (exporters) that were authorized were a Belgian-French house that had attempted and failed to negotiate exclusive rights over a stockpile of diamonds as part of the process of lifting the UN embargo and an Indian buying house with no prior experience in Côte d'Ivoire. Despite the UN embargo being lifted in April 2014, no exports took place until mid-2015, when after a year of intense diplomatic pressure from the KP and others, the Minister decided to authorize two "local" buying houses with partners in Israel and



Belgium. Exports immediately jumped and the chain of custody began to function. The situation illustrated yet again the importance of reconciling national and local realities for a functioning formalization.

A second crisis began in July 2016 when SODEMI and local authorities decided to forcibly close an active mining site near Bobi called Gendarme-camp. The site had been authorized by SODEMI but when miners strayed into a kimberlitic zone, they did not immediately inform SODEMI. During a PRADD II donor visit, SODEMI noticed that the site was kimberlitic and enjoined the cooperative to stop mining. However, when this did not happen, SODEMI decided to send in the gendarmes and close the site by force, confiscating material and diamond-bearing gravel. The action set off a crisis that lasted over a year and nearly resulted in violence and the complete breakdown in the system. Due to the donor visit, intoxication by local authorities and a general perception that PRADD II wielded considerable power given its role in getting the embargo lifted, villages at first assumed that the project ordered or at least supported the closure. This led to considerable risks for the project, including threats against staff and a boycott of all activities in January 2017 that was only sorted out by an intervention by the KP Permanent Secretary in a heated exchange with communities. It did not help that PRADD II was also at the same time assisting village boundary demarcation, and rumors swirled about ulterior motives for assisting the state in officially drawing lines between mining villages.

During the crisis, the Bobi cooperative maintained that SODEMI had not respected the convention which says that SODEMI must find an alternative site if miners discover kimberlite. SODEMI's position was that the village was acting in bad faith by not reporting the kimberlite to SODEMI and in tacitly approving its mining. The overall context was one in which there were few productive alluvial sites, and the Gendarme-camp site was the busiest since the lifting of the embargo. For buyers and the villages, the importance of Gendarme-camp was not so much its productivity per se but the fact that it attracted labor back from gold mining sites. When labor returns they begin prospecting illegally and this inevitably turns up the next profitable site. However, just when this cycle was beginning SODEMI shut down the site and labor dispersed. Moreover, SODEMI wished to demonstrate its power by sending the raid, but this backfired as it was in a weak position. The company's finances overall were near ruin due to a government privatization policy including SODEMI's shares in other industrial mines. This meant that SODEMI could not afford a permanent field presence let alone a robust research component. As such SODEMI was in a poor position to demonstrate its strong return to manage the zone.



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The position of Bobi and then of neighboring Diarabana, which also had a kimberlitic site mined during the crisis years, was that SODEMI should allow the villages to mine the kimberlite, a fundamental change in the terms of agreement between the customary owners and the state. In the words of one Bobi cooperative member, “During the GVC time, we did not think about kimberlites. It was only when diamonds became scarce that we are now paying attention to these resources. In anything you can change the constitution. This isn’t to be taken lightly. We are ready to do whatever it takes.” Indeed, the villages by April 2017, after nearly a year of back-channel negotiations that led nowhere, decided to re-occupy the site in defiance of the state. The state fearing violence decided to do nothing, further weakening its position. This also led to a complete drop-off in official production statistics. The entire system was at stake. “If they don’t let us work, then we’ll just abandon the cooperative system,” said the Bobi elder. Behind this was also a deep malaise in communities about the diminishing deposits and the fact that despite the lifting of the UN embargo, the good times of before had not yet returned.

The government for its part was slow in responding. An internal crisis in SODEMI that pitted a board dominated by one political party against a general director from another party, led to a complete paralysis in decision-making. The Mining Minister fearing political ramifications did not want to take any controversial decision, though he did after a year of urging by diplomats advised by PRADD II approve a modest budget so that SODEMI could pay agents to be in the field. Local politicians also exacerbated tensions leading up to legislative elections. Meanwhile PRADD II indirectly supported SODEMI’s field presence and in maintaining some semblance of trust by assisting in an effort to identify new secondary mining zones for miners using satellite imagery and ground analysis. However, the system while it did not completely collapse remained on tenterhooks. Finally in August 2017 the Minister and the General Director of SODEMI, fearing violence and a complete abandonment of the villagers’ respect of SODEMI’s (and the state’s) right to control the diamond mines, ceded and agreed to open up the Gendarme-camp site for artisanal miners, as well as other kimberlitic sites. This was justified through a creative reading of the mining code with respect of research products in industrial permits. The decision essentially led to a complete renegotiation of the terms between the state and customary leaders, with the customary leaders clearly having the upper hand. At the time of writing the outcome of this new arrangement was yet to be seen as there remains considerable uncertainty on how the new deal would work in practice.

During this period PRADD II had also fostered extensive social dialogue with the cooperatives on their future. The dialogue addressed various issues, including the fact that the new cooperative legal structure



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was incoherent with their current practices. For example, a cooperative has to have elections of the president and management committee, but in the GVC model, it's the unelected traditional leader who is in charge. In addition, a cooperative is structured as a company and is expected to pay taxes and finance an economic activity of its members, whereas the GVC model organizes and taxes but does not engage in any economic activity itself. As a part of this process, about half of the cooperatives decided to begin a pathway to become “real” cooperatives and a series of experiments in self-financing that were made possible through improved prospection and mining techniques. With the others, the project supported a process to develop strategic development plans for the village to look at ways to mobilize non-diamond revenues and to make decision-making more participatory.

Some cooperatives are highly resistant to any change. In Diarabana, for example, the village chief put it succinctly noting that “the law that we impose in the village is sometimes not compatible with the law imposed by the state, and when that happens, we will follow in the footsteps of our ancestors.” The issues point to the fact that while the co-management approach worked well for dealing with certain government and development problems, relying too heavily on customary authorities can also exacerbate non-democratic decision-making and other inequalities affected youth, outsiders and women. Indeed, the Diarabana chief's words are somewhat misleading, as in reality the “ancestors path” is really his own path as the chief, and in reality his decisions are not accepted by everyone and social cohesion in his village is frayed. But he could not have summarized better the challenge of the customary-statutory divide, a divide which if not bridged was instrumental in making the SODEMI model of miner organization feasible.

## **5. Applying model elsewhere: key considerations**

The fundamental premise of this paper is that effective formalization requires a co-management approach between the state and customary land authorities in contexts where such authorities still hold sway. In the case of diamonds – and also gold-mining in similar socio-cultural zones—by associating the state and customary authorities on the same side of the table, one can observe very effective results in terms of supply chain control, risks of human rights abuses and development outcomes. No amount of law enforcement can get anywhere near the results of a system where the state and villagers co-manage their territory and share the financial rewards for doing so. In the case of SODEMI, the state found a way in a pragmatic reading of the mining legislation to do just that, having learned its lessons on the failures of a repressive policy. In other contexts, it does not necessarily need to be SODEMI or a parastatal. It could be another mining company, it could be a village that gets a mining permit to manage artisanal miners on its



territory, it could be an artisanal mining zone with a special status—it could be any number of configurations that leverage social and economic incentives of land owners.

PRADD II has actively encouraged reflections by the state on how to extend and learn from its experiences with diamonds. For example, the project has fostered reflection (as yet unsuccessful) on how to formally authorize artisanal mining inside of research permits under certain conditions, as conflicts between artisanal miners and large-scale operators is an issue that is leading to major losses for companies and the state. Despite making an exception for SODEMI in diamonds, the state is highly resistant to this approach, as they prefer an understanding of formalization as legalization, and legalization as imposing their norms and rights uniformly.

There are of course legitimate concerns with extending such approaches to other minerals or sectors. The stakes and legal issues for fully private industrial operators are not the same as for a parastatal like SODEMI. Moreover, the potential for conflict and associated risks are clearly visible in the case of diamonds, ranging from the poisoning of water when interests were threatened in the 1980s, the tumultuous decisions about when to use force and when to negotiate, and the simple fact that such an approach is expensive and requires long-term engagement with communities and supply chain actors. Many actors – from villages to authorities to companies – may be daunted by such a messy approach, and opt instead for a discourse about applying the law, and turning a blind eye to reality.

However, the danger with the “arrangement” approach is that it strengthens criminal activity, erodes the state’s revenue base, increases the risk of violence and social conflict and is also problematic nowadays for international supply chains where responsible sourcing is a growing concern and obligation. The success with diamonds was due to a pragmatic integration of local rights into the statutory system, followed by creating an active management framework with the GVCs as co-managers of the resource. For the villages, such a model was desirable as they could use the state’s power to strengthen their own control and local benefits. The result whether in the 1990s or after the end of the crisis have been less conflict, considerable local investment in infrastructure for development, and a legal chain of custody for the precious stones.

Could such a model have worked in contexts without relatively coherent and strong traditional leadership? It is true that the model works in Côte d’Ivoire because the traditional land management practices are widely respected. In many ASM contexts traditional authorities have been weakened economically and politically to the point of irrelevance. However, one must remember that customary



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land management is not necessarily the same as traditional land management. The myth of the traditional unbroken land chiefdom is as fictitious as the myth of the omnipotent state. As such, one could imagine ways in which a state could strengthen local land management or even create a new customary system through sensitization and negotiation. Harnessing customary systems is not about creating an agreement between two static institutions but in structuring a dynamic relationship that has the potential to change all entities in the process. In other words, it may take more work in certain contexts, but the underlying principal of local and national co-management based on negotiations over land and mineral rights can be applied to other contexts as well.

For example, in new ASM areas that appear to be a wild west, there may first be a need to create local legitimate structures to work side by side with the state. These could be multi-stakeholder groups, re-empowered land chiefs, NGOs or others. The key is to identify the ways in which usage rights and benefit flows are organized at a local level, and then to create hybrid and coherent mechanism that allows for that mediation and partnership with the state to emerge. This coheres with the trend to take a whole supply chain approach to responsible sourcing. In contexts like ASM gold, where many countries including Côte d'Ivoire are in the middle of major rushes, the notion that the state can impose its legalistic vision of formalization by closing down sites or encouraging hundreds of thousands of miners to apply for permits is delusional. Moreover, without taking into account how customary authorities benefit from the informal economy, how transnational smuggling networks operate and structure the supply chain, and also how state and non-state actors participate in a system of pay-offs, policy solutions will fail. As part of an overall participatory policy-making process, the state should consider how to make these collaborative arrangements between local and national land tenure management structures. It is easier said than done, but 30 years of doing it for diamonds in Côte d'Ivoire shows that it is possible.

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