



# RECOMMENDATIONS FOR CLASS C MINING REGULATIONS AND THEIR IMPLEMENTATION AND FUTURE AMENDMENTS TO THE MINING AND MINERALS ACT IN LIBERIA

USAID GOVERNANCE AND ECONOMIC ASSISTANCE PROGRAM (GEMAP)

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## ACRONYMS

ASM	Artisanal and small scale mining
BOM	Bureau of Mines
CDA	Cooperative Development Authority
CSR	Corporate Social Responsibility
EIA	Environmental Impact Assessment
EMP	Environmental Management Plan
EPA	Environmental Protection Agency
EITI	Extractive Industries Transparency Initiative
FDA	Forest Development Authority
GDO	Government Diamond Office
GEMAP	Governance and Economic Assistance Management Programme
GDP	Gross Domestic Product
GOL	Government of Liberia
MCIMS	Mining Cadastre Information Management System
MDA	Mineral Development Agreement
MLME	Ministry of Lands, Mines and Energy
MML	Minerals and Mining Law (2000)
PRS	Poverty Reduction Strategy
UNDP	United Nations Development Programme



## EXECUTIVE SUMMARY

A preponderant proportion of Liberians rely on the “informal” or “extralegal” economy and the majority of those engaged in artisanal and small scale mining (ASM) are no exception. The informal economy is commonly viewed as a reasonable response to formal systems that are inaccessible, impractical and even dysfunctional. Despite this, informality continues to be both a catalyst and consequence of poverty<sup>1</sup>. Acute poverty and lack of viable livelihood options coupled with marginal skills allow for easy entry to the ASM subsector and are central factors driving the rural poor into mining. Unpredictable incomes and limited capacity to work within the formal system coupled with an overwhelming emphasis on punitive measures for failure to comply with unachievable legal requirements are easily used to exploit or further marginalize miners, thereby widening the gap between government and miners.

Liberia’s Poverty Reduction Strategy (PRS, 2008) attributes one of the root causes of the nations conflict to “*significant portions of society (who) were systematically excluded and marginalized from institutions of political governance and access to key economic assets*”. In Liberia, the PRS and MLME estimate that 100,000 people are engaged in ASM as mine operators and those involved in digging, hauling, loading, panning and other labourious activities. If these women and men lack the capacity or finances to obtain and maintain a license, their only recourse is to abandon ASM (perhaps impoverishing their families even more) or, more likely, to become “illicit”, “illegal” or a “criminal”. In either case, the risks to sustained peace and stability are much higher than if security of tenure can be obtained through the formal system. In Liberia, these challenges are likely to escalate given anticipated growth of ASM due to high gold prices and increased livelihood demands of returned refugees and the rural poor displaced as agricultural plantations, protected areas and large mine developments are established.

The “business case” for governments is clear. Countries that create a legal and economic environment that supports integration of extralegal enterprises almost invariably prosper more quickly than those that do not<sup>1</sup>. Furthermore, costs of imposing top-down authority over the extralegal economy are prohibitive, particularly when existing informal systems are viewed as legitimate at the grassroots level<sup>2</sup>. With livelihoods at stake, the common result is either conflict or deep entrenchment of exploitative, corrupt practices. From Brazil to Indonesia, Tanzania to Laos PDR, Ghana to Colombia, governments often ultimately lose these battles with financial and reputational costs far outweighing the administrative costs of implementing appropriate, incentive-based legislation and institutional support<sup>3</sup>.

Despite its oft-cited negative socio-environmental consequences, a formalized ASM subsector holds promise in terms of rural poverty reduction and wealth creation. Crude estimates of the invisible contributions of ASM in Liberia provide a glimpse of this potential<sup>2</sup>:

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<sup>1</sup> Hinton, J., 2009, *National Strategy for the Advancement of Artisanal and Small Scale Mining in Uganda*, Unpublished Report to Ministry of Energy and Mineral Development, Kampala, Uganda, 142p.

<sup>2</sup> The sources of these estimates are described in Section 1.1.

- Employment estimates place the number of artisanal miners engaged in diamond and gold production at 50,000 and 100,000<sup>4</sup> women and men. This direct labour, coupled with conservative estimates of indirect and induced labour and household dependency ratios, suggests that 787,500 to 1,575,000 women, men and children are directly and indirectly reliant on ASM.
- Based on estimated annual incomes of miners and mine workers, if *only* half of incomes are spent on local goods and services, more than \$13.5 million USD may be injected annually into local economies, creating markets for locally grown or supplied products and increasing the cash component of household incomes. Local formal and informal businesses, as a consequence of ASM-injected capital, may contribute an additional \$33.75 million USD to local economies.
- With estimated combined export values of \$28.7 million USD per annum, formal ASM would cumulatively make a significant contribution to foreign exchange earnings. Furthermore, the average miner, if working through formal channels, would contribute \$383 USD to GDP, double the national average of \$190 USD.
- Approximately 48% of rural Liberians are living in *extreme* poverty (below \$242 USD/a) while an additional 20% are living below the poverty line of 357 USD/a. Although clearly living in poverty, UNDP has estimated incomes of miners and diggers at almost \$800 and \$300 USD/a, respectively, a notable increase over median incomes. In many Liberian ASM areas, mine workers are also engaged in agriculture to supplement needs or mitigate seasonal vulnerability and, in many other countries, ASM has been recognized as an important local catalyst for the agriculture sector and other small and medium enterprises (SME).

Recognizing this potential, the Ministry of Lands, Mines and Energy (MLME) has instituted a number of complimentary, progressive measures in order to fulfill its mandate to advance ASM. Among these include: a Mineral Policy (2010) whose objectives are consistent with international best practice; legislation and implementation of efforts to spearhead and support the Kimberley Process Certification Scheme (KPCS); clarification of Procedures for Obtaining a Mining License (POML); establishment of a modern Mining Cadastre Information Management System (MCIMS) in support of a transparent, efficient licensing system; preliminary training of the Mines Inspectorate; establishment of Regional Diamond Offices, fielding of 49 Mining Agents and retention of more than 50 Mines Inspectors.

Building upon these efforts, an ASM Expert was contracted by USAID GEMAP to draft a Liberian ASM Regime in 2009. The assessment included recommendations for reform of the Mineral and Mining Law (MML), draft Class “C” Regulations for licensing of the ASM subsector and related institutional changes. Amendment of Law can easily take 4-5 years to finalize and, as the Draft Class “C” Regulations (2009) are contingent on amendments to the MML, they cannot legally be instituted in the short-term.

The primary purpose of this report is to present findings of a diagnostic assessment of the Class C Regulations proposed in 2009 and, based on these findings, draft Class C Regulations that legally adhere to the current MML. The ultimate objective of this work is to ensure legislation aids in optimization of the contribution of ASM to growth, development and poverty alleviation while minimizing negative social, economic and

environmental outcomes<sup>3</sup>. In light of this, recommendations for future legal and regulatory reforms and a plan for implementation have also been put forward.

The diagnostic assessment (Section 3) indicates that legal and institutional constraints, indeed, pose challenges to establishment of an ASM appropriate licensing, regulation and support system in the short-term. A number of legal entry points nevertheless exist and these, together with a basic analysis of the present reality facing ASM and MLME, provide the foundation for MML-compliant recommendations for Interim Class C Regulations.

Key provisions in the proposed Interim Class C Regulations relate to:

- Licensing costs more in-line with miners' capacity and submission of a simplified work plan form (schedule) used to describe the method of work and outline generalized environmental and health and safety provisions based on the methods and circumstances.
- Conditions related to the right to receive Advisory Support from MLME in the completion of forms and schedules and satisfying legal requirements.
- Conditions related to inspection, monitoring and responses to non-compliance.
- Payment of Royalties by licensed mineral dealers (as collection from miners more costly than benefits from royalties) and in avoidance of double taxation. Maintenance of a Class C license would be directly contingent on demonstrated sales to licensed dealers or brokers.

Recommendations for *future* legal and regulatory reform are inclusive of, but not limited to (Section 4.2):

- **Definition of Institutional Roles and Functions in the amended MML:** Legal provisions defining specific roles, functions and responsibilities of MLME departments, units and offices would afford a clear, legal mandate, serve to reduce discretionary powers and would hold management, departments and their officers accountable to fulfill legally defined mandates. Associated mechanisms can help reduce ad hoc planning/execution of work programmes, increase transparency and provide a clear basis for performance monitoring.
- **Alternatives in Class C Licensing Terms, Conditions and Administration:** Aspects include substantial decrease in license sizes, local registration and permitting models, and clear provisions concerning rights and obligations of both license holders and authorities (e.g. MLME, EPA etc).
- **Amendments to Class B Licenses:** A step-up from non-mechanized ASM is needed to account for micro-enterprise miners positioned to take activities to the next level. Amendment of Class B will further aid appropriate regulation of those who abuse the current Class C system. Two sub-classes of mechanized small and medium scale licenses, or a separate category for small mechanized miners, are called for. In any event, increased rights must directly correlate with increased obligations.

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<sup>3</sup> The complete Terms of Reference for this work is provided in Annex Three.

- **Co-existence of ASM with Exploration and Large Scale Mining Activities:** Given the inevitable interaction between exploration and mining companies with artisanal miners active on their licenses, appropriate responses (by all parties, inclusive of authorities) should be explored and ideally articulated in Law. Alternative models worthy of evaluation include: non-competition clauses, relinquishment protocols and conditional permitting systems.

Success of these measures depends on critical needs being met to improve institutional performance and establish an enabling environment. The Implementation Roadmap (Section 5) specifies urgent requirements to put Interim Class “C” Regulations into practice as well as short- to mid-term actions needed to progressively develop vital institutional capacity and ensure subsequent legal and institutional reforms support GOL’s national development objectives.

Urgent responses to imperative needs will determine success. These include:

- Establishment of a functioning Mines Inspectorate
- Development and institution of clear procedures, protocols and monitoring mechanisms for Mining Agents, Mines Inspectors, GDO Officers and other field officers with increased focus on technical and advisory rather than policing functions.
- Responsiveness to critical capacity gaps to ensure successful implementation of the Revised Class C Regulations.
- Harmonization with the mining cadastre (MCIMS). Viable procedures will rely in large part on implementation of aforementioned activities.

Mid-term activities essential to finalization of amended legislation include:

- Formation and formalization of an ASM Support Unit in MLME.
- A detailed institutional assessment, modernization of the institutional framework (inclusive of formalization of an ASM Support Unit) and its enshrinement in Law.
- Development of a National ASM Strategy that outlines practical strategies and a concrete action plan supported by a performance monitoring and evaluation system.
- Implementation of pilot activities critical to informing legal amendments a filling crucial capacity gaps. These would relate to testing of local registration and permitting systems and introduction of best practices technologies and methods for ASM.

Given GOL’s financial and human resource constraints, the Implementation Roadmap calls for increased coordination between MLME and its allies. MLME must increase commitments in order to fulfill its ASM related mandate, yet some components are necessarily contingent on external support. This assistance will provide a crucial platform with a view towards establishing workable measures for long-term sustainability. Streamlined functions and procedures, optimization of strengthened human and financial resources and systematic adherence to mechanisms for increased transparency and accountability shall ultimately determine institutional performance and, therefore, outcomes at local and national levels.

## 1. INTRODUCTION

In support of the Liberian Development and Reconstruction Program and the Poverty Reduction Program of the Government of Liberia (GOL), USAID has provided directed assistance to improve economic governance and financial management through the Governance and Economic Management Assistance Program (USAID GEMAP). Under USAID GEMAP, technical assistance is provided to GOL institutions including: General Services Administration (GSA), Ministry of Planning and Economic Affairs (MPEA), the Ministry of Finance (MOF), National Port Authority (NPA), Ministry of Public Works (MPW), Monrovia City Corporation (MCC), Liberian Institute for Public Administration (LIPA) and the Ministry of Lands, Mines, and Energy (MLME).

With respect to MLME, activities ultimately seek to advance the Mineral Policy (2010) vision of “equitable and optimal exploitation of Liberia’s mineral resources to underpin broad-based sustainable growth and socio-economic development”. Given this, and the significance of job creation to stability and development to the success of Liberia’s Poverty Reduction Strategy (PRS), a critical component of GEMAP efforts relates to drafting of appropriate legislation conducive to regularization of the artisanal and small scale mining (ASM) subsector.

Earlier assessments affirm that ASM in Liberia is plagued by exploitative labour arrangements, dire occupational and community health risks, environmentally damaging practices that compromise both ecosystem integrity and the viability of agricultural livelihoods, pervasive gender inequalities, limited literacy, numeracy and savings culture as well as lack of access to training, appropriate technology, fair markets and financing.

Further cause for concern is presented by lack of recognition of cultural land rights and existing informal systems (particularly if viewed as legitimate at the grassroots levels), racial and tribal tensions within mining areas and a current licensing system that largely excludes most active miners. An estimated 70% of diggers are ex-combatants and viable livelihood alternatives for the rural poor are severely limited<sup>5</sup>. An imbalanced emphasis on punitive measures in the absence of clear benefits and capacity to participate in the formal system poses the risk of further marginalizing miners, mine workers and their families, driving them deeper into the forest or increasing the likelihood that corruption shall be systematically and more profoundly embedded in common practice.

Regularization and advancement of ASM is by no means a small challenge and a pragmatic approach is essential, both in terms of the reality of ASM on the ground and the authorities responsible for its improvement. The Government of Liberia (GOL) is primarily responsible for ensuring that the country’s mineral endowments are utilized to promote local and national development within the broader context of sustainable natural resource use. As the institution charged with responsible mineral development, the role of MLME is of paramount importance.

### 1.1. THE DEVELOPMENT POTENTIAL OF ASM IN LIBERIA

With estimates of between 50,000 to 100,000 women and men engaged in ASM throughout the Liberia<sup>6</sup>, it is irrefutably a significant private sector player in the Liberian Minerals Sector. Even in economies with pronounced and well-developed large scale

mining activities, such as Peru or Tanzania, ASM typically employs between 2 and 180 times more people than their large scale counterparts. According to “*Liberia’s Vision for Accelerating Economic Growth*” prepared by the Ministry of Planning and Economic Affairs, wealth creation strategies founded on job creation are more likely to stimulate a middle class and alleviate poverty than a disproportionate focus on redistribution of resource rents.

It is believed that the current economic contributions and future development potential of ASM in Liberia may be substantially higher than previously thought. Although baseline data is marginal, crude estimates provide some insight into this potential:

- Employment estimates place the number of artisanal miners engaged in diamond and gold production at 50,000 and 100,000<sup>4</sup> women and men. This direct labour, coupled with conservative estimates of indirect and induced labour and household dependency ratios, suggests that 787,500 to 1,575,000 women, men and children are directly and indirectly reliant on ASM.<sup>5</sup>
- With net incomes<sup>6</sup> averaging \$25 per month per digger and \$66 per month per miner, if *only half* of incomes are spent on local goods and services (an extremely conservative estimate), more than \$13.5 million USD may be injected into local economies annually, creating markets for locally grown or supplied products and increasing the cash component of household incomes. Local formal and informal businesses, as a consequence of ASM-injected capital, may contribute an additional \$33.75 million USD to local economies<sup>7</sup>.
- Assuming 75,000 diamonds producers (perhaps 10,000 of which are also extracting gold) and combined export values of \$28.7 million USD per annum<sup>8</sup>, even using current, inefficient methods, formal ASM could cumulatively make a significant contribution to foreign exchange earnings if smuggling were curbed.
- Furthermore, the average miner, if working through formal channels, would contribute \$383 USD to GDP, double the national average of \$190 USD.
- Approximately 48% of rural Liberians are living in *extreme* poverty (below \$242 USD/a) while an additional 20% are living below the poverty line of 357 USD/a. Although clearly living in poverty, UNDP estimates incomes of miners and diggers at

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<sup>4</sup> Estimated workforce derived from MLME, 2009 and PRS, 2008.

<sup>5</sup> Due to lack of reliable data, commonly used multipliers of 2.5 and 2 for indirect and induced labour (Hinton, 2009), respectively, were *substantially* reduced to 0.5. Average number of household dependents in ASM areas (7) was taken from UNDP, 2008.

<sup>6</sup> Source of Incomes: UNDP, 2008. Reportedly, some remittances are sent to Monrovia and outside of the country, however it is probable that the bulk of expenditures are local to sustain day-to-day living requirements. Thus, the extent of local economic contributions are more likely to be underestimated than overestimated.

<sup>7</sup> Based on multipliers of economic stimulus of contribution in ASM areas of 2.5 calculated in other countries (Priester, 2010).

<sup>8</sup> Concurrent or independent production of gold is reported in multiple regions (e.g. Grand Cape Mount, Bomi and Grand Kru) and number of gold producers may be significantly higher. Production value of diamonds estimated at 19.5 million USD (UNDP, 2008) while international estimates for alluvial gold production is 0.2 g/p/d (Veiga, 2008) while conservative estimates for seasonally (6 mo/year minus 20% lost to illness and injury) have been used (After Hinton, 2009).

almost \$800 and \$300 USD/a, respectively, a notable increase over median incomes. In many Liberian ASM areas, mine workers are also engaged in agriculture as a supplement or means of mitigating seasonal vulnerability and, in many other countries, ASM has been recognized as an important catalyst for the agriculture sector and other small and medium enterprises (SME).

Equally attractive alternative livelihoods are largely absent in Liberia and a pragmatic approach to institutional and legal reforms is urgently needed in order to redress exclusionary licensing practices and curb practices exploiting the illegality of ASM. Pragmatic legislation and commitment to good governance are critical to the improved economic, environmental and social performance of ASM.

## 1.2. GUIDING PRINCIPLES

Formalization is widely recognized as the crucial foundation for the regularization of ASM. With consideration of the overarching need for protection of human rights and elimination of exploitative practices, formalization is the process of *integrating* rather than *controlling* extralegal enterprises by recognizing local arrangements in legislation, reducing barriers to legalization and creating clear benefits from participation in the formal system<sup>7</sup>. Based on this fundamental principle, the overwhelming foundation for ASM best practices must be to bring miners into the fold where steps can be taken to improve their performance.

This work is further guided by the following best practice principles:

- 1. Definitions of “artisanal” and “small scale” mining suitable to the Liberian context must be clarified at the outset.** Recent dialogue and earlier work indicates that definitional distinctions are needed between (i) artisanal miners using manual extraction methods who can benefit significantly from improvements in processing (calling for some level of mechanization); and (ii) small scale miners engaged in mechanized extraction, requiring much larger areas and having significantly greater economic, social and environmental impacts. Given that increased rights require increased obligations, this distinction calls for different licensing terms and conditions.
- 2. Benefits of legalization must outweigh the costs for artisanal and small scale miners and other actors in the ASM production and marketing chain.** Artisanal and small scale miners will choose to work within a legal framework only if (a) they have the capacity; and (b) it is obviously advantageous to do so. A simple, low cost system coupled with practical, feasible incentive based support is more likely to achieve success while more bureaucratic and costly approaches are likely to only benefit a marginal proportion of operators, most of whom are likely based in Monrovia, and can easily serve to exacerbate corruption and exploitative arrangements, curb local benefits and aggravate tensions amongst actors.
- 3. Artisanal miners are unlikely to license and improve upon their activities in the absence of sustained institutional incentive-based support.** Frustration of those miners who recently obtained Class C Licenses and have since yielded no evident benefit emphasize the need for reciprocity in commitment. The needs of miners have been explicitly identified during earlier profiling activities by UNDP and others. Formalization, legalization and improved economic, technical, social and environmental performance is directly tied to action taken by, and collaboration

between, government, multi-lateral organizations, NGOs and civil society organizations (CSOs) in response to expressed and identified needs. MLME's demonstrated commitment is paramount.

- 4. Mining Laws, Regulations and related institutional approaches must reflect the financial and technical capacity of artisanal and small scale miners as well as authorities responsible for its advancement.** Legislative and institutional mandates that exceed the financial and human resources of both miners and authorities are unlikely to achieve goals and objectives set-out in the Mineral Policy (2010). From a government perspective, costs of imposing top-down authority over the extralegal economy are prohibitive, particularly when existing informal systems are viewed as legitimate at the grassroots level. Similarly, comprehensive extension services programs are clearly needed however these can also disappoint and discourage both government officers and intended beneficiaries if budget and human resource constraints result in empty promises.

From a miners' perspective, costly, time consuming centralized licensing is likely to restrict access largely to "new claimants" based in Monrovia and funded by brokers and dealers rather than those miners already active on the ground. The tens of thousands of quasi-independent diggers face even more acute barriers.

- 5. Building on complimentary mandates and capacities within MLME and other agencies and organizations will be crucial to implementation and outcomes.** The needs of ASM typically extend beyond the skill set and mandate of traditional mining institutions. Institutional approaches should realistically reflect the short- and long-term resources of the MLME and provide a platform for sustained progress vis-à-vis coordination and collaboration with partners in central and local government, donors and international organizations, NGOs, civil society organizations (CSOs) and the private sector. Weak governance at local levels, in particular, is a critical concern.
- 6. Revised regulations must be cognizant of entry points and constraints in current legislation with a view towards informing future reforms.** Although the Mineral and Mining Law (MML) and recently adopted policy and regulations clearly specify Ministerial powers in implementation, this legislation fails to provide a legal mandate of MLME departments, units and offices. Although far from an ideal situation, this lack of clarity also creates an entry point for introduction of much needed institutional and legal measures in the short-term as a platform for longer-term Law reforms. Definitional ambiguity in the MML and favourable objectives under the Mining Policy (2010) present additional entry points for ASM.

A major barrier to appropriate ASM framework development in numerous jurisdictions relates to drafting of exploration and large scale mining legislation in isolation of that specific to ASM. Potential points of contention have been identified in recently enshrined Mineral Development Agreement (MDA) and Exploration Regulations and, while revisions to Class C Regulations shall be harmonized with this accepted legislation, many provisions should necessarily be taken as interim measures with a view towards developing recommendations for integrated reforms to the Law and Regulations in the long-term.

- 7. Legal, institutional and regulatory reforms must consider the significance to local, regional and national development of ASM in conjunction with other economic activities.** The need for co-existence between ASM together and large and medium scale mining companies, exploration companies as well as the ASM value chain and lateral, upstream and downstream actors cannot overshadow integrated, multi-sectoral development planning processes currently underway in Liberia. Institutional and legal provisions for ASM must further build upon strategies outlined in the PRS (2008) and Liberia’s Vision for Accelerating Economic Growth (2010), while explicitly recognizing the importance of environmental protection measures, particularly in protected areas.
- 8. Formalization and legalization of ASM is a vital opportunity to support sustained peace and stability and contribute to a consistent, conducive investment environment for exploration and mining companies in Liberia.** Countless examples exist wherein inappropriate legal and institutional measures compete with well-established extralegal systems often at great financial and reputational cost and to the detriment of peace and security. Issues such as the absence of comparably attractive and viable livelihoods, discord between miners and customary land owners and occupiers (whose rights are largely unrecognized), the role of foreigners in the ASM workforce, a high proportion of ex-combatants in the subsector, ethnic/racial discord in ASM areas, potential to exacerbate gender inequities and further contribute to the feminization of poverty coupled with risks of heightened tensions associated with increased exploration and mine development must be kept in the forefront.

### **1.3. OBJECTIVES**

The primary objective of this Assignment is to establish a *foundation* for formalization, legalization and sustained performance improvements in ASM and its governance through development of:

- Firm recommendations for Interim Class C Mining Regulations in adherence with the current MML.
- Specific recommendations for reform to the MML and amendments to Class C Regulations based on the context-specific characteristics of the minerals sector in Liberia and international best practice.
- A roadmap for implementation of Interim Class C Regulations inclusive of identified institutional needs of MLME, changes to the institutional model and potential inter-sectoral and inter-agency partnerships and collaborations needed to implement action items.

It must be strongly affirmed that a comprehensive review of the institutional model should be undertaken prior to any reforms to the MML. In any event, a preliminary assessment of substantive issues in institutional roles, responsibilities, procedures and protocols is urgently needed to inform amendments to legislation proposed in this Report.



## 2. METHODOLOGY

The work was undertaken through four main activities:

### 1. Detailed literature review of the ASM Sector in Liberia, inclusive of:

- *Baseline Studies, Assessments and Strategy Frameworks: UNDP PSIA and Strategy Formulation for Alluvial Diamond Mining Reform, Green Advocates Assessment of Alluvial Mining in Liberia, USAID-PRADD Pre-scoping Study; UNDP Regional Harmonization Strategy.*
- *Relevant Policy, Legislation and Procedures: Mineral Policy (2010), Minerals and Mining Law (2000), Public Procurement and Concessions Act (2005); Exploration Regulations (2010), Model Mineral Development Agreements (2010), Procedures for Obtaining Mining Rights (POMR), Community Rights Law on Forest Lands (2009), National Land Policy MOU, Environmental Protection and Management Law (2002), Draft EIA Guidelines for Mining.*
- *Related Literature: Liberia PRS, World Bank Land Tenure Assessment, MLME Consultative Workshop Reports (Mineral Policy and Regulation development), development research reports on ASM in the region (e.g. Sierra Leone, Guinea), OECD Liberia Gender Assessment, MDG and Human Development Reports for Liberia (2009), EITI Submissions (2007/2008/09).*

### 2. Diagnostic review of the draft Class C Mining Regulations;

- *Preliminary review of previously conducted work, concurrent with review of existing mining legislation. Specific points of contention identified.*
- *Secondary detailed review concurrent with development of specific recommendations in accordance with findings of this work.*

### 3. Consultative meetings and participatory dialogues:

- *Available MLME Leadership; Technical Units and Officers (Bureau of Mines, Mining Cadastre Office, Government Diamond Office, Geological Survey, Bureau of Economic Forecast and Planning)*
- *Private Sector and its Associations (Gold and Diamond Miners and Workers Union, Federation of Miners, Miners and Brokers Union, selected exploration companies)*
- *Potential Partner and Key Informant Organizations (UNMIL, USAID, World Bank, Edgemont Institute) and the Diamond Development Initiative Task Force.*

These engagement processes did not replicate earlier work but sought to fill data gaps, confirm stakeholder views and priorities, validate country specific approaches and obtain a sense of ownership in the final product.

### 4. Development of Recommendations Report

Findings from initial activities coupled with international best practice were used to develop recommendations for Interim Class C Regulations, proposed amendments to the MML, Class C regulations and institutional framework and an implementation

roadmap articulating specific short- to mid-term action items and support structures critical to follow up work.

## **2.1. METHODOLOGICAL APPROACH**

The time available precluded in-depth assessment of the ASM subsector, the institutional model and the various, interconnected agencies and organizations with mandates vital to sustained improvements to ASM. The methodological approach built upon existing information through identification and focused analysis of substantive issues and obtaining stakeholder views and priorities with respect to these issues.

Key components of the approach included semi-structured key informant interviews in order to better understand ASM within Liberia and elicit perspectives and recommendations concerning both suitable responses to ASM and entry points for their formalization within MLME and potential partners. Further input was acquired during participation in two Diamond Task Force Technical Committee meetings.

In order to build shared understanding and optimize time, a participatory dialogue was held with 24 Mines Inspectors, Mining Agents, GDO Regional Officers and Surveyors on Thursday, April 8<sup>th</sup>. The dialogue was designed in the format of a participatory workshop-forum (based on the philosophy of “one-part presentation, seven parts participation”) and sought to identify specific issues and conditions in the field and identify needs and priorities.

Substantive issues that were explored via the different meetings, interviews and dialogues related to:

- Definitions of “artisanal” and “small scale” miners, role of foreign actors engaged in various facets of the ASM production and marketing chain, intended beneficiaries of amendments and risks of marginalization of certain actors (e.g. returnees, diggers) given certain legislative and institutional approaches, ways in which Class C areas are proposed to be apportioned;
- Interaction between ASM and exploration and mining companies (including clarification on exploration regulations and mineral development agreements) and proposed approaches for prevention and mitigation of tensions and support for co-existence;
- Relations between ASM and other customary, formally recognized and non-indigenous land users and ecologically sensitive areas and likely effects of proposed approaches on these interactions;
- Traditional and formal local government structures and constraints and opportunities to local management of some functions;
- Institutional structures, processes and procedures (formal and informal; theory versus practice), needs, opportunities and recommendations for formalized government support and regulation with consideration of possible transparency and accountability mechanisms; and
- Main factors with potential to increase tensions and create instability.
- Perceptions and applications of “best practice” in the Liberian context.

### 3. DIAGNOSTIC ASSESSMENT OF PROPOSED REGULATIONS

Supplemented by detailed review of the Mining and Minerals Law (MML) and other applicable legislation as well as baseline assessments, strategic frameworks and consultative meetings, the diagnostic assessment of Draft Class “C” Regulations that were proposed in 2009 yielded two critical considerations:

- There is clearly an urgency to enshrine Class C Regulations in accordance with existing legislation. The Proposed Class “C” Regulations (2009) are conditional on amendments to the current Law and therefore cannot legally be instituted in the short-term.
- The financial and technical capacity of artisanal and small scale miners *as well as* GOL in administering, monitoring and enforcing the Class C Regulations must receive prominent attention. Clearly, the regulations will be largely ineffective if they create an environment where licenses are unattainable, compliance is unachievable and enforcement is impracticable.

Pertinent issues are detailed below. It is important to recognize that, given existing legal and institutional constraints, ASM “best practice” *per se* is unlikely at present. Specifically, *Interim* Class C Regulations are proposed in accordance with current legislation yet reforms to legal and institutional frameworks and critical gaps must be addressed before the ASM subsector is likely to be adequately accounted for. Recommendation for core requirements of interim regulations and future amendments are outlined in Section 4 while supporting actions are put forth in Section 5.

#### 3.1. URGENCY TO ENSHRINE CLASS C REGULATIONS

Reform of the Mining and Minerals Law (MML) is a crucial to the formalization and progressive advancement of ASM in Liberia. However, enactment of an amended Law is a complex process that can easily take 4-5 years and promulgation of Class C Regulations under the existing MML is imperative. Mining activities in Liberia are further bound by other cross-sectoral legislation, most significant of which relates to the Public Procurement and Concessions Act (PPCA, 2005) and Environmental Protection and Management Act (2002) as well as that which relates to land, forest and labour laws and statutes. Consistency with the recently adopted Mineral Policy (2010), Exploration Regulations (2010) and Model Mineral Development Agreements (2010) is also needed<sup>9</sup>.

Because the Proposed Class C Regulations (2009) were drafted within the context of a *reformed* MML, they included a number of provisions that are discordant with existing legislation. Other issues include overlapping roles or mandates (e.g. between MLME and EPA), the need for clarification of certain key concepts and, in some cases, requirements that are out of line with the capacity challenges of ASM and MLME. The most significant issues are outlined below.

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<sup>9</sup> These issues have been well recognized by MLME and efforts are currently underway to undertake reviews and propose reforms to the MML and PPCA.

### 3.1.1. Legal Terms and Conditions of a Class C Mining License

The Proposed Draft C Regulations (2009) contradict a number of terms and conditions put forth in the MML (2000) and MML amended in 2004 (Chapter 40: Providing for Controls on the Export, Import and Transit of Rough Diamonds). Selected major issues are outlined in Table One.

The concerns presented are addressed in recommendations for Interim Class C Regulations (Section 4.1) as well as a number of additional legal terms and conditions that are notably absent from the Proposed Class C Regulations (2009). These include provisions for<sup>10</sup>: (a) Transferability; (b) Suspension of Work; (c) Termination of a License; (d) Payment of Royalties; (e) Restrictions in Areas of Operation; (f) Force Majeure; and (g) Sale of Minerals.

### 3.1.2. Public Procurement and Concessions Act (PPCA)

The PPCA usurps all granting of concessions “*of whatever form in all sectors including but not limited to... mining and mineral exploration*” and provides clear terms of procurement and awarding through competitive bidding with some provisions for restricted bidding and sole source selection. Section 141(2) of the PPCA explicitly refers to the MML (2000) and applies to *all* mineral rights holders and, under Section 141(2)(i), requires that the power of the Minister to authorize and issue regulations “*shall only be exercised in consultation with the Commission and any regulation issued by the Minister referred to in that Act in respect of concessions shall, to the extent of any inconsistency with this Act be void.*”

Although PPCA Section 102 hints at some flexibility in instances other than competitive bidding via express prior approval of the Commission, little recourse for licensing of ASM activities seems evident. Specifically, promulgation of regulations (inclusive of those developed for Class C Mining) that address granting of mining licenses risk directly contravening the PPCA. This presents a *substantial* barrier to promulgation of effective and urgently needed Class C Regulations, particularly as terms and conditions of the current application process are major constraints to legalization<sup>11</sup>.

Support from the Minister, MLME, and legal expertise is imperative in order to identify a viable course of action (including possible definitional ambiguities in the PPCA or MML that may disqualify Class C Mining from a certificate of concessions or mechanisms for receiving provisional agreement from the PPC Commission). PPCA likely constrains other sectors seeking to advance subsistence activities to a microenterprise level (e.g. small scale commercial agriculture, fishing or import/exports) and opportunities for garnering multi-sectoral support may exist. In any event, amendment of the PPCA based on the reality of subsistence mining will undoubtedly be required.

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<sup>10</sup> These gaps, and some of the other issues discussed herein, were identified as part of a preliminary diagnostic by an ISLP Expert, Mr. J. Wood. The contribution of his legal expertise through this analysis made a notable contribution.

<sup>11</sup> The MLME is currently engaged in efforts to harmonize provisions of the PPCA and MML. Due to constraints imposed by the PPCA, these efforts are strongly endorsed.

**Table One: Significant Legal Points of Contention in Proposed Class C Regulations (2009)**

MML (2000) and Amended MML (2004)	Proposed Draft C Regulations (2009)	Comments
<p><b>Section 1.3 Definition of Terms</b> Small Scale Operation shall mean a mining operation other than an Industrial Operation</p> <p>Note: Industrial Operation not defined thus definition open-ended.</p>	<p><b>Section 1.1 Definitions</b> Class C Mining means mining at a lower level than small-scale or large-scale mining, using basic means of ore extraction and processing and minimum financial input.</p> <p><b>Section 3.4(i)</b> Conduct a mining at a small-scale with limited use of mechanized equipment.</p>	<p>The expressed intent of MLME is to prohibit use of heavy, earth moving machinery under Class C Licenses.</p> <p>The degree of mechanization is very vague in proposed regulations (2009) and can easily be subject to a range of interpretations.</p> <p>Some mechanized mineral processing equipment <i>would</i> significantly improve operations without causing the environmental impacts and reduced workforce of heavy machinery while still conforming to the MML.</p>
<p><b>MML(2000)</b> <b>Section 1.3 Definition of Terms</b> <i>Cooperative</i> shall mean an Association of citizens of Liberia who are eligible to hold any Mineral Right.</p> <p><b>Ch. 40 MML (2004)</b> <b>Section 40.4 Definitions</b> <i>Cooperative</i> means a collective of freely organized artisanal miners, each holding a proper and valid mining license that has its own organizational structure and by-laws offering technical assistance to its members and organizing collective sales of the rough diamonds produced</p>	<p><b>Section 1.1 Definitions</b> <i>Cooperative</i> means a business jointly owned by all of its members who run it and share equally its profits and registered in Liberia.</p> <p><b>Section 3.7</b> Application for Authorization to Apply for a Class C Mining Right (in a Cooperative).</p> <p><i>Under this provision, cooperatives must register with the Director, Bureau of Mines.</i></p>	<p>Strict requirements to form cooperatives (especially with reference to profit-sharing) can, in actuality, create an unattainable barrier for some (most obviously, gold miners, given Ch.40 Definition of Amended MML).</p> <p>Although somewhat vague, the definition put forth in MML (2000) is more in-line with the flexibility needed to establish a range of formal work structures that are likely more viable under different circumstances.</p> <p>MML Ch.40 Amendment (2004) unfortunately supersedes the earlier definition, creating a constraint for miners of other minerals, but also the establishment of viable cooperatives.</p> <p>Furthermore, the Director, Bureau of Mines is likely not mandated or well-placed to register and evaluate cooperatives.</p>
<p><b>Section 6.3(c)</b> The size of the Production Area covered by a Class C Mining License shall not be more than 25 acres.</p>	<p><b>Section 3.1(b)</b> The size of the claim granted under a Class C license shall not be more than 4 hectares.</p>	<p>Obvious acreage contradiction. Adoption of metric units should be considered in subsequent legal reform.</p> <p>The size (4ha) is nevertheless too large for the majority of artisanal miners within a one-year time frame.</p>
<p><b>Section 6.7(d). Surface Rights</b> Unless otherwise specified the Mineral Development Agreement, the grant of a Mining License shall carry the following surface rights: (1) Erection of habitations, office buildings, mill bldgs, engine houses, stores; (2) Building of dumps, ditches for drainage, roads within production area; (3) Making trenches and open cuts, constructed / necessary for Mining Optn; (4) Cutting of timber as necessary to clear for buildings and such works and in use in construction of the mining sites and (5) Use of water and other resources necessary for execution of the work.</p>	<p><b>Section 3.4(b) Rights of Licensee</b> ... Class C Mining License shall come with the following rights: iv. Use of water and other resources such as timber, sand and stone necessary to carry out mining work. v. Clearing of land to perform activities related to mining operation. vi. Put up buildings for living, officers and to house plant and machinery. vii. Making trenches and open pits. viii. Building of roads, dumps, drainage ditches within the boundary limits of the production area. ix. Right to use public infrastructure for comm'n and transport relating to the mining operation.</p>	<p>Although the provisions are fairly comparable, Proposed Regulations <i>further</i> stipulate the need for a Surface Rental Agreement in Section 3.13 which contravenes MML Section 6.7.</p> <p>The spirit of this provision is likely to ensure local land owners/ occupiers are consulted prior to commencement and compensated for damages to surface rights (which is a reasonable provision, particularly given conflicts arising to damage of crops etc).</p> <p>Perhaps this should be viewed in respect of Compensation for Disturbance of Surface Rights in conformity to MML Section 11.3 which refers to land owners and occupants being entitled to <i>just, prompt and adequate compensation for the diminution in the value of Land cause by disturbance, disfigurement or other factors.</i></p> <p>Notably, compensation provisions in the MML are inadequate and silent on resettlement and consultation.</p>

The course of action followed in response to PPCA conflicts involves drafting and promulgation of Class C Regulations pertaining *only* to the operational aspect of ASM and *not* the application and granting of licenses. This will *not* resolve current barriers in application/approval procedures that may hinder legalization.

As comprehensive Class C Regulations are ultimately and urgently needed, Interim Regulations follow the model put forth by the Exploration Regulations (2010) and refer to submission requirements but not the application process itself.

The legality of MLME to grant *any* Class C, Class B or Exploration licenses prior to resolution of this issue, presents immediate cause for concern. Voiding of licenses granted thus far and promotion of license acquisition would substantially exacerbate any mistrust towards MLME and hinder investment in the minerals sector.

### **3.1.3. Environmental Protection Measures**

Draft EIA Guidelines for Mining have been prepared by the Environmental Protection Agency (EPA); however these are exclusive of ASM. Although the EPA has expressed interest in drafting ASM specific guidelines through an Inter-Governmental Forum with MML and others<sup>8</sup>, in the interim Class C Licenses are bound by requirements laid out in MML Chapter 8: Environmental Protection.

Proposed Class C Regulations (2009) requires submission and approval of a formal Environmental Management Plan including an assessment of impacts and implementation, monitoring and closure plans. Given the nature of ASM, these requirements are far too complex and costly in terms of licensing and reporting (for miners) and compliance monitoring (for MLME/EPA). This is discussed further in Section 3.2.3: Entry Points given Technical and Financial Constraints.

The MML fortunately includes quite reasonable and general provisions in Chapter 8. These have been incorporated as simplified requirements in the Interim Class C Regulations. Given the current capacity of MLME Field Officers with respect to assessment of environmental impacts and identification of suitable mitigation measures, these simplified requirements also intend to be in line with Mines Inspectors abilities and increase the likelihood of effective monitoring.

### **3.1.4. Exploration Regulations & Mineral Development Agreements**

No major inconsistencies exist in the Proposed Class C Regulations (2009) with the exception of a number of definitions that should be harmonized in accordance with the MML and Exploration Regulations (2010).

It is important to nevertheless note that, in *numerous* jurisdictions, a major barrier to establishment of a conducive ASM framework has related to lack of an overarching national vision for co-advancement of exploration and large scale mining together with ASM. Specifically, drafting of exploration and large scale mining legislation in isolation of that specific to ASM can serve to exclude potential options (e.g. non-competition clauses, local registration and permitting) that can pragmatically address the challenges faced by exploration and large mining companies as well as artisanal miners. Potential points of contention have been identified in the recently enshrined Model Mineral Development Agreement (MDA) and Exploration Regulations (2010). While Interim Class C Regulations shall be harmonized with existing legislation, many provisions

should clearly be taken as *interim* measures with a view towards integrated reforms to the Law and Regulations in the long-term.

As these issues are not relevant to drafting of *Interim* Class C Regulations, they are discussed in the context of recommendations outlined in Section 4.2: Future Amendments of the Minerals Mining Law.

### **3.1.5. Entry Points under Existing Legislation**

Interim Class “C” Regulations are proposed that legally adhere to the current MML (2000) while creating a reasonable platform for future best practice MML reforms. The constraints put forth in the MML, indeed, present barriers to ASM-appropriate Interim Class “C” Regulations, however, a number of entry points nevertheless exist in terms of both legislation and the institutional model:

#### **i. Lack of Legally Defined Institutional Mandate:**

Although the MML and recently adopted policy, laws and regulations specify Ministerial powers in implementation and delegation, the MML lacks a clear legal mandate of MLME departments, units and offices.

Specification of institutional roles, functions and responsibilities is typically a useful component of mining law, not only for the purpose of clarity, but as it can grant powers and specify functions while reducing discretionary powers and ad hoc planning/execution of work programmes while specifying mechanisms for increased accountability and transparency. This is primarily accomplished through provisions that hold departments and offices responsible for fulfilling legally defined mandates and their officers accountable to undertake and satisfy certain functions. This can further provide a platform for a clear performance monitoring and evaluation framework and recourse for deviation from the rule of law.

Although this is a constraint in the mid- to long-term, this lack of clarity also creates an entry point for introduction of much needed institutional measures in the short-term. Among other responsibilities, an “advisory support” function of MLME has been created in the regulations. Practical and essential institutional approaches, particularly related to the Mining Cadastre, Mines Inspectorate, Bureau of Mines (BoM) and Government Diamond Office (GDO), are further outlined in Section 5: Implementation Roadmap.

#### **ii. Amenable Definition of “Cooperatives”:**

Cooperatives are often misconstrued as a panacea for “appropriate” ASM licensing systems, however, if measures are not in place to support organization formation and strengthening, then requirements to form cooperatives can, in actuality, create an unattainable hindrance to licensing of ASM. A high degree of trust, cooperation, shared objectives and decision making, and clear roles and responsibilities in addition to formal structures (constitutions, executives, work plans and objectives) are required of any viable association and a true “cooperative” further suggest equal sharing of profits amongst members. Most ASM work arrangements and the current ways in which the subsector functions (formally or informally) are in stark contradiction. In many cases, such as the Tapajos Region of Brazil where more than 100,000 gold miners are active, cooperatives evolved into a mafia of license holders (usually the elite) and have served only to marginalize the majority of mine workers<sup>9</sup>.

The “equitable profit-sharing” aspect of cooperatives seems unlikely given that: (i) diamond discovery may require several months of costly digging at one site while a neighbouring site may be productive in less than a month; (ii) as many as 4 out of 10 pits can be barren in some sites with much higher yields at others; and (iii) diamond prices can yield selling prices between 5 and 10,000 USD or much, much more<sup>10</sup>.

An alternative cooperative structure is working quite effectively in Coromandel, Brazil, wherein ~400 miners are members of the COPEMG. Miners work independently in arrangements similar to Liberia wherein financiers support the operation (in Brazil’s case, they charge a brokering fee or a percentage of the revenue from the diamonds) and diggers divide sales with miners. Miners pay a small fee to join the cooperative then a smaller monthly fee, as well as a small percentage of any revenue from the diamonds they find for administration costs. I.e. profits are *not* divided equally as required in the Proposed Class C Regulations (2009). The COPEMG administration helps with licensing and plays an advocacy role for members.

Many miners and some MLME Officers have called for support for cooperatives suggesting that it will enable equipment sharing and centralized processing and management. This could be workable in some situations (where high levels of trust exist or can be established between miners and sites are in close proximity), however, in terms of logistics, *manual* ore production rates may not be sufficient to justify hauling ore (most likely via lorry) to a central processing area.

Particularly when external technical assistance and financing is provided, cooperative operation of central processing centers *has* been successful in some cases (e.g. Santa Filomena, Peru). Most failures (Shamva Mining Center, Zimbabwe and others in Ghana, Venezuela and elsewhere) are attributed to inadequate attention to management and organizational issues (include breaches of trust, poor financial management). Particularly in the absence of sufficient advisory support, privately operated contract services tend to have greater success. The USAID Property Rights and Artisanal Diamond Development Project (PRADD) will undoubtedly lend considerable insight (Section 5).

Miners and some MLME Officers are intensely supportive of cooperatives and they can and should be promoted *together with* intensive sensitization on what is needed to make an Association viable. If an Association forms and then fails, its members may feel skepticism towards each other and/or Government promoters in the longer-term. A pragmatic approach must also leave room for alternative individual work structures (sole proprietorships, partnerships, small companies), which may be more appropriate for some.

The MML allows for this space, defining cooperatives as “an Association of individual citizens of Liberia who are eligible to hold a Mineral Right”. This is in accordance with MML Section 20.5: Fundamental Rights which states that “Each and Every Holder of Mineral Rights is... guaranteed the following freedoms” inclusive of “the right to organize their businesses as they wish to.”

Unfortunately, this appears to be superseded by the Ch. 40 Amendment to the MML (2004), which limits cooperatives to diamonds only with their definition: “a *collective of freely organized artisanal miners, each holding a proper and valid mining license that has its own organizational structure and by-laws offering technical assistance to its*

*members and organizing collective sales of the rough diamonds produced.”* As discussed above, collective sales will likely provide a constraint to many.

Although the 2009 Draft Regulations require registration of cooperatives with the Director, Bureau of Mines, this is outside the mandate of MLME. Registration processes seem to not yet exist however this may be viable in the near future through the Cooperative Development Authority (CDA), which is currently being strengthened as cooperative laws are updated.

### **iii. Procedures for License Acquisition and Associated Fees.**

The bureaucratic, centralized procedures, high costs of obtaining a license (given current fees, transport, costs of staying in Monrovia, fees for assistance) and seasonal access constraints are prohibitive for most unlicensed miners given the reality of ASM in Liberia (Section 3.2.1).

The Minister (MML) possesses Authority to Delegate with respect to MLME functions, suggesting decentralization of selected functions is possible. In many cases, a core component of many ASM support strategies increasingly includes a measure of decentralization, particularly with respect to registration, permitting and some aspects of monitoring (Section 5.2). Considering the delays and costs of applying, this seems a far more practical approach and decentralization of some procedural functions to authorized MLME Officers may be viable in the future. Clear procedures and mechanisms will be critical to ensure powers are not misused.

Given socio-environmental risks of ASM, some degree of local government approval is usually incorporated in legislation. However, decentralized government structures are reportedly very weak at present and highly variable across Liberia. Traditional institutions and local governance holds promise for some roles and functions in future, however, dedicated work is needed to engage these institutions in reform and build related capacity.

Assessment of local management potential prior to MML amendment and inclusion of appropriate institutionalized structures in legislation is clearly needed and has been identified as an action item in the Implementation Roadmap<sup>12</sup>. **Decentralization must be a mid-term objective for MML reforms and institutional strengthening of the Mines Inspectorate and Regional Mining Offices.** As local governance improves (and the MML amendment processes is finalized), centralized management of Class C Licenses is, unfortunately, a necessity in the short-term.

Licensing costs and fees are, fortunately, amenable to improvement in the regulations and reduction/streamlining of some costs is proposed (Table 2).

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<sup>12</sup> Decentralization of some key functions is still viewed by the author as a viable and, as shown for Local Gemstone Permitting in Madagascar, a more effective mechanism. Nevertheless, it is important to note that the role of tribal chiefs who are formally engaged in local management of mineral resources has been extremely problematic in neighbouring Sierra Leone. The reasons for this, inclusive of institutional and legal constraints, should be well understood prior to instituting a similar model in Liberia.

#### iv. Prospecting License Requirements:

The MML and Class C Regulations clearly should - as many jurisdictions are increasingly doing—forego requirements for a Prospecting License for artisanal miners. This is largely because:

- Realistically, most Class C license areas are identified on the basis of known illegal ASM activity (much like many exploration companies identify prospective areas in early phases of work).
- The primary intent of many governments is to bring *existing* unlicensed miners into the fold rather than creating provisions conducive to recruiting new ones from outside areas (often cities). Displacement or exploitation of unlicensed miners by “new” license holders is likely to cause more problems than the benefits yielded from formalizing existing, active miners on the ground.
- If miners have been known to be active in an area and the preference is to license *those* miners (thereby reducing “illicit” mining), then active miners are likely to already know the desired area of intended work (i.e. they have already conducted some form of prospecting).
- First-come, first-serve principles are still observed however some practitioners are now suggesting a right-of-first-refusal should be afforded to miners already active in an area. Surveys of active miners and/or a means of using local authorities to formally recognize presence would be crucial to implementation of such as system.

It is important to note that, if prospecting licenses are not well explained or understood, they can give miners a false right to mine. Alternately, they can be easily abused in communities where residents don't know the law (like unauthorized mining undertaken by a small proportion of exploration license holders in many countries).

MML Section 4.2: Prospecting Licenses states that an eligible applicant for a Class C Mining License *may* apply for a prospecting license. Provisions in the MML nowhere state that a Prospecting License is obligatory prior to obtaining a Class C License. Although this creates an entry point to bypass Prospecting Licenses, the *intent* of policy makers (as affirmed by MLME Officers) is that a Prospecting License should be required to determine knowledge of the area of interest.

Regional Mining Agents *could* play a role in granting Prospecting Licenses, however, surveyors (at a cost) are needed to delineate 100 acre areas (particularly given the variable effectiveness of GPS in densely forested areas). A prospecting report is also required by MLME. Given the capacity of miners, this report would likely be contracted out at a fee and may not even be understood by him or her (creating an additional financial and bureaucratic barrier to legalization). Clearly, requirements for Prospecting Licenses should be waived.

It is strongly agreed that the applicant *should* at least have prior knowledge of their area of interest; however, it is far more practical and inexpensive to affirm this during (i) the Clearance Process undertaken by Mining Agents (which formally or informally includes verification that discussions have been held with land owners/occupiers, if present) and (ii) in the Application itself.

### *Other Amenable Provisions:*

Other conducive aspects of note in the MML and related legislation include:

- Provisions of MML Chapter 8: Environmental Protection, which are conducive to general and simplified environmental requirements.
- MML Chapter 16: Inspection and Safety is adaptable to ASM scenarios with the exception of MML Sections 16.4, 16.5 and 16.6, as addressed further below.

## **3.2. FINANCIAL AND HUMAN CAPACITY: ASM AND GOVERNMENT**

Capacity of (i) artisanal miners to access and comply with legislation and (ii) MLME authorities to implement legislation are the foundation for workable laws and regulations.

This section outlines critical capacity issues, The Interim Class C Regulations, wherever possible, seek to address these current challenges. Alternative models to address these constraints are outlined in Table Two while Section 4.2 Future Amendments to the Mining Legislation and Chapter 5: Implementation Roadmap further describe what needs to be done to build necessary capacity to support best practice in ASM.

### **3.2.1. Artisanal and Small Scale Miners**

Informed by previous work by UNDP and stakeholder discussions, the challenges of artisanal and small scale miners are summarized as follows:

- The mineral trading chain consists of:
  - *“Diggers” who are labourers who undertake production (digging, hauling, loading, panning etc) yet, despite constituting the majority of ASM workforce and their role in production, they are rarely called “miners”. They receive half the profits from diamond finds (although unfair sharing is reported), ~500 grams of rice per day and, in some cases, a small allowance. Incomes average ~25 USD per month.*

*Diggers may be women, men, children, adults or elderly, they represent the most vulnerable people in the trading chain, take on the highest risks and are most likely to be undereducated, illiterate and living in abject poverty. Many originate from neighbouring countries. In some areas, a high percentage of diggers are women who, due to socio-economic gender disparities, are likely to yield fewer benefits and be more negatively impacts by ASM.*
  - *“Mine Agents” work on-site and are most likely to be appointed as “Mine Managers” in a licensing system<sup>13</sup>. They are largely responsible for overseeing the work of diggers, dealing with security (“watchers”), ensuring product turnover and preventing theft and likely deal with local authorities, formally or informally.*
  - *“Miners” may or may not work or live in the mining area. Many hold more than one claim and work to ensure operating costs. They are generally responsible for securing financing (e.g. from brokers or other supporters), funding operating*

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<sup>13</sup> “Mine Agents” are those agents working for the Licensee and not “Mining Agents” who are official officers of the MLME. The term “Mine Agent” is reportedly widely used by miners in Liberia and is referred to in multiple sector assessments to describe the organizational structure/production chain of ASM.

*costs (tools, food) and deal with local buyers. Many are also undereducated. Incomes average ~75 USD per month. Few miners are reportedly women.*

- *“**Brokers**” buy diamonds and gold from miners, sometimes provide financing, and, if legal, deal with bureaucratic requirements of the Kimberley Process (KP). Most are unlicensed and likely to be of foreign origin, including Lebanese.*
- *“**Dealers**” buy from brokers and export to international markets. If licensed, they also deal with bureaucratic requirements of the KP (including payment of taxes). Many dealers report frustration and hesitate to renew their license due to its costs and the fact that illicit diamonds are less expensive and more abundant. The GDO estimates that out of more than 750 brokers and dealers who had previously been licensed, only about 10% renewed their licenses.*
- The savings culture is extremely poor. Given their relative abject poverty, diggers are likely to live hand-to-mouth at a subsistence level, while miners reportedly often “spend their incomes with the expectation and brokers will continue to finance their digging<sup>11</sup>.”
- Little information on health and safety conditions but ASM is one of the most hazardous activities in the World and, based on the technical conditions at ASM sites in Liberia, fatalities from pit wall or tunnel failures and accidents causing injury are likely to be high.
- ASM sites are often remote, difficult to access and often lack means of electronic communication. During the rainy season, they may be completely cut off for extended periods of time.
- It is assumed that quasi-mafias may exist in major ASM areas, likely comprised of brokers, some miners and local formal and informal leaders. This system may create additional barriers for licensing and compliance of most vulnerable miners and diggers.

The focus of much previous work has been on diamonds and licensing of miners. Increased attention to gold mining (which will likely escalate with international prices and decreased diamond demand) while increased attention to the vast majority (diggers and labourers) is needed to help the majority step-up and out of poverty. Simplified licensing is essential, however, measures are needed to prevent licenses areas being dominated by those at higher levels in the trading chain.

Despite hindrances of the current MML and institutional constraints (below), each factor described above has, wherever possible, been considered in drafting Interim Class C Regulations while Proposed Future Amendments and the Implementation Roadmap seek to fully account for this reality.

### 3.2.2. ASM Authorities

Important considerations in the current system include the following:

- Mining Agents and Mines Inspectors are paid \$60 USD per month (before taxes) and are given *no* funds or allowances for execution of their duties. In addition to relocation costs (which would ideally include a mobilization allowance), costs borne out of their own pockets include travel between Monrovia and their appointed regions of office, in-region transport (to ASM sites), and administrative costs (communications, photocopying etc). Most do not have an office.
- Due to lack of transport, field officers can walk up to 9 or 10 hours to reach ASM sites. Particularly in remote forest areas, the only means of accommodation and food may be the artisanal miners themselves. Although receipt of these provisions represents a form of “bribe” or compromising of the officers position, unless these working conditions are addressed (e.g. through provision of motorcycles and a monthly fuel stipend), they MLME may have little option.
- Although accompanied by a Patrolman, MLME Officers carrying out their duties are frequently confronted and outnumbered by groups of illegal miners who may be threatened with loss of livelihoods. Telephone networks are poor or absent in many areas and MLME Officers are often completely isolated from any form of outside support. In reality, taking a hard-line authoritarian stance (which is promoted by some) is impractical and can place MLME Officers at great risk in terms of injury or loss of life.
- Given the high number of illegal miners, low pay of MLME Officers, risks to personal safety and comparable benefits of working “informally”, the potential is high for activities such as extorting funds for infractions, providing un-registered claims, overlooking license infractions in exchange for payment, involvement in mineral buying, and collusion with outside (foreign or Monrovia based) parties is likely.

Most field officers (with the exception of those under the GDO) have marginal training and, in some cases, limited education. Fortunately, most MLME senior management and officials are extremely well trained. An increased priority on training of junior officers is warranted. Furthermore, although provisions exist in MLME for payment of field allowances, the operations budget is virtually absent.

Given these conditions, morale and loyalty to MLME of many junior officers is likely to be low and, especially for those who reside and work up-country, relationships and commitments to local community are likely much stronger. Building ownership, accountability and commitment to legalization of ASM therefore represents a singular challenge.

Although the Interim Class C Regulations proposed herein seek to account for these constraints, progress towards best practice shall be determined by commitment to institutional strengthening (particularly to the extent that decentralization of many functions will be possible) and consideration of alternative institutional structures (e.g. external, independent functioning of the Mines Inspectorate). Section 4.2: Proposed Future Amendments and Section 5: Implementation Roadmap seek to provide useful direction.

### 3.2.3. Entry Points given Current Capacity Constraints

Interim Class C Regulations account for critical concerns with the Class C Regulations proposed in 2009 and the reality of ASM and ASM Authorities as outlined in Table Two.

**TABLE TWO: ADAPTING SELECTED PROVISIONS TO THE REALITY OF ASM AND MLME**

Proposed Draft C Regulations (2009)	Comments	Alternatives Approaches for Class C Regulations
<p><b>Section 3.9. Mining Work Plan</b> requires:</p> <ul style="list-style-type: none"> <li>• Details of the mineral deposit</li> <li>• Mining and mineral processing method and equipment to be used.</li> <li>• Details of how the mineral will be marketed.</li> <li>• Scheduling of the different phases of mining.</li> <li>• Details of how the operation will be financed.</li> <li>• Number of employees and/or diggers and use of a mine manager.</li> <li>• Environmental and social impact assessment and environmental management plan.</li> <li>• Health and safety risk assessment and mitigation plan.</li> </ul>	<p>Most miners are illiterate, do not have access to computers and will need to pay extra (most likely to an MLME Officer) to prepare a work plan they are unlikely to fully understand.</p> <p>Detailed description of the mineral deposit implies at least a basic delineation of orebody boundaries, grade, etc. Miners can be trained to do this in a simplified form but unlikely at present. Similarly, scheduling of mine development requires detail on the deposit.</p> <p>ESIA, EMP and OSH risk assessments are far beyond the capacity of most miners. These issues can be captured in a simple way in application and reporting forms.</p> <p>MLME Field Officers have limited understanding of these issues also, making their compliance monitoring a challenge.</p>	<p>A Mine Plan in the form of a Simple Mine Layout is more practical (I.e. basic site sketch of pit location, stockpiles, processing area, settling pond, where water is extracted/ diverted/ contained, proximity to river etc). Although the real plan (locations) will likely be slightly different as the site develops, it ensures the Miner understands basic planning/ enviro requirements which can be easily verified by Mines Inspectors. Simple mine lay-outs appended to the license will be the basis of supervised compliance by small-scale mine operators</p> <p>Check box system with descriptions is more practical than detailed descriptions for mineral deposit (type of deposit), methods and equipment, source of financing, identified buyers (if known), and specific environmental, social and OSH criteria.</p> <p>More simplified expectations are far more conducive to actual compliance monitoring by Mines Inspectors.</p>
<p><b>Section 3.12. Demonstration of Financial and Technical Capacity to Operate a Class C Mining Operation</b> requires:</p> <ul style="list-style-type: none"> <li>• Documentary proof of technical capacity in the form of a mining work plan.</li> <li>• Documentary proof of financial capacity in the form of a budget, loan agreement or resolution from financier or other scheme.</li> </ul>	<p>Most miners are illiterate, do not have access to computers and will need to pay extra (most likely to an MLME Officer) to prepare a work plan.</p> <p>Given the status of the banking system in Liberia and presumed literacy/numeracy constraints, most miners likely don't have a bank account, let alone a bank statement or capacity to obtain a guarantee letter.</p> <p>Bank statement amounts required are prohibitive given Miners' incomes and generally poor savings practices. This immediately limits licenses to a</p>	<p>Although a budget does not establish financial capacity, a <i>simplified</i> template would be useful in another section of the regulations I.e. it would demonstrate (and assist) the miner in identifying financial planning/investment needs.</p> <p>Some form of an agreement with mine workers is needed and could be incorporated in reporting requirements. At commencement, the miner may not yet have hired all workers and, realistically, these arrangements tend <i>not</i> to be fixed.</p> <p>Technical capacity can be demonstrated through other application requirements while financial</p>

Proposed Draft C Regulations (2009)	Comments	Alternatives Approaches for Class C Regulations
<ul style="list-style-type: none"> <li>• Contracts with mine workers</li> <li>• Bank statements (Bank balance of 5,000 USD for cooperatives and 2,000 USD individuals)</li> <li>• Guarantee Letter.</li> </ul>	<p>few elite applicants.</p>	<p>commitment should be limited to payment of licensing fees. Non-compliance/non-work can be determined through reporting/compliance monitoring.</p> <p>To avoid a “license grab” by Monrovia based miners, preference should be given to those already active on the ground. They are currently illegal but presumably MLME seeks to legalize them and not drive them to other areas. The capacity to develop a simple mine layout (Section 3.9 above) with landmarks should demonstrate knowledge of the area.</p>
<p><b>Section 3.13. Surface Rental Agreement</b> requires:</p> <ul style="list-style-type: none"> <li>• Advance negotiation with lawful land owner or occupier.</li> <li>• Location of the land to which the application relates.</li> <li>• Details of compensation and payment terms to the rightful owner or occupier of the land to which the application relates.</li> </ul>	<p>This provision is likely to ensure local land owners/ occupiers are consulted prior to commencement and compensated for damages to surface rights (which is a reasonable provision, particularly given conflicts arising to damage of crops etc). Informally, these agreements and compensation (or profit-sharing) terms are already made in most cases (usually in conjunction with the local Chief, if present).</p> <p>Of note, compensation provisions in the MML are inadequate in comparison to legislation in other jurisdictions while the MML is altogether silent on resettlement and need for <i>real</i> consultation processes.</p> <p>In many cases, the Land Owner is GOL and provisions should be adapted accordingly.</p>	<p>Recognizing local arrangements and mitigating social and environmental impacts should be a priority however institutional capacity and weak local governance presents a major constraint to local committees. Increased local engagement should be a mid-term objective for upcoming reforms.</p> <p>Lack of established compensation rates is usually a contentious point for any scale of mining. Many jurisdiction have rates for different counties or districts. MLME could work towards (in the mid-term) inclusion of procedures to verify that an agreement has been made with the land occupier or owner during Clearance from Mining Agents.</p> <p>This can more appropriately be viewed in respect of “Compensation for Disturbance of Surface Rights” in conformity to MML Section 11.3 which refers to land owners and occupants being entitled to <i>just, prompt and adequate compensation for the diminution in the value of Land cause by disturbance, disfigurement or other factors.</i></p>
<p><b>Section 5 Environmental Protection and Management</b> requires:</p> <p><b>5.1 Environmental Management Plan</b> inclusive of descriptions of land to be impacted, potential impacts and their significance, and mitigation/management measures as well as an</p>	<p>The financial and technical capacity implications of EMP requirements to miners are obvious.</p> <p>However, institutional constraints are equally significant. Given a comparatively large number of applicants the review and approval process implicit in an EMP are substantial and likely</p>	<p>As decentralized structures are in place, locally managed environmental funds may be a viable option in the future, however is unworkable at present given the MML and weak local governance</p> <p>The Regulations outline basic, easy-to-understand environmental requirements and obligations under the Work Plan (checkbox, fill-in-the-blank format) which shall be verified through</p>

Proposed Draft C Regulations (2009)	Comments	Alternatives Approaches for Class C Regulations
<p>implementation, monitoring and closure plans.</p> <p><b>5.2 Financial Provisions for Environmental Mitigation</b> require that a rehabilitation fee (\$50 USD/ha) be paid upon issuance of the license and this fee does not absolve the licensee from the obligations in the Act.</p>	<p>cross over into the mandate of the EPA.</p> <p>Furthermore, MLME has no mechanism in place to hold rehabilitation fees in trust and then undertake follow-up clean-up work, which is unlikely to be done given financial and technical constraints and no legal mandate to do so.</p>	<p>compliance monitoring.</p> <p>Failure to comply can lead to cancellation of a license or prohibition on re-issuing subsequent licenses. This is a bit complicated to enforce (given the potential for the use of “front men” or “front women”) however, currently (particularly weak local governance and marginal organization levels at present), it is the most viable option.</p>
<p><b>Section 8 Fees</b> requires:</p> <p><b>8.1 Mining License Fee</b> payable on issuance of the Class C License. The amount is 50 USD plus 50 USD/ha.</p> <p><b>8.2 Survey Fee</b> to accompany the application in the amount of 150USD.</p> <p><b>8.3 Renewal Fee</b> which is same as the License Fee.</p> <p><b>8.4 Rehabilitation Fee</b> on issuance of the license in the amount of 50USD/ha.</p> <p><b>8.5 Cooperative Registration Fee</b> on issuance of the license in the amount of 60 USD.</p> <p><b>8.6 Mine Manager Registration Fee</b> to accompany the application in the amount of 20 USD/ha.</p> <p><b>Authorization of a Cooperative to Use Mechanized Equipment</b> on approval from the Director in the amount of 60 USD.</p>	<p>The logic behind some of the fees is presumably to (i) reduce license area based on capacity and (ii) mitigate some costs borne by MLME.</p> <p>Assuming a 4 ha license, initial fees amount to 620 USD for an individual miner and 680 USD for a “non-mechanized” cooperative. This is exclusive of transport costs, accommodation and daily costs in Monrovia, “informal” fees for assistance in filling documents, obtaining the requisite are map and</p> <p>Given that breaking bonds between Miners and Financiers should be a long-term objective (and is viable if support is given to improve methods and develop a savings culture) and given it is more practical to bring illegal miners into the fold and then take steps to improve operations, these costs are prohibitive.</p>	<p>Although an application fee is needed to assure intent, with verification measures in place (based on application requirements) a non-refundable fee of 20 USD with application submission is reasonable.</p> <p>Upon granting of the license, a fee of 50USD plus 5 USD/acre is more reasonable. Surveying costs should be included in the fee (on a practical level, it makes more sense to train Mining Agents to take the requisite 4 coordinates using a GPS then sending a surveyor from Monrovia on a piecemeal basis. However, environmental conditions (interfering with GPS operation) preclude this.</p> <p>There is no reason why mine managers and cooperatives should pay additional fees as their identification/formation should be encouraged</p> <p>The proposed fee structure in Interim Class C Regulations seeks to provide more reasonable and attractive costs given the constraints faced by real miners.</p>

## 4. PROPOSED LEGAL AND REGULATORY AMENDMENTS

Lack of success in achieving formalization and legalization of ASM throughout the World can largely be attributed to (*after* Hinton, 2009)<sup>12</sup>:

- **Copy-and-paste approaches to legislation that does not reflect country- or context-specific reality.** Factors often overlooked can include: the financial and technical capacity of local or central government to regulate and support ASM; amenability for formal organization compared to individual women or men miners; the diverse, dispersed or concentrated nature of ASM; local culture and customary traditions, particularly related to land rights; and gender roles and relations, among others. Wherever possible given current institutional and legal constraints, the proposed Interim Class C Regulations sought to account for the Liberian reality.

Lack of proper consultation with women and men miners and other ASM stakeholders (i.e. sole reliance on top down approaches) can easily lead to failures. Peru's Law 27651 "*Formalization and Promotion of Small Scale and Artisanal Mining*" is a noteworthy example where formal proposals for reforms of both laws and regulations were received from ASM associations and largely enshrined in legislation.

Given the nature of this assignment, this level of engagement was not possible. Future reform processes should allocate sufficient resources to ensure *informed* input (which will require training and sensitization to a degree that stakeholders genuinely understand proposed reforms) in order to ensure provisions of future legislation are suitable to the Liberian context.

- **Lack of political will to develop and implement enabling legislation.** Some governments view ASM as a deterrent to investments by foreign exploration companies or multi-nationals. In other cases, informality may be supported by governments, particularly if benefits are being derived at higher levels, or a belief exists that it is easier to kick-off illegal "criminals" than to work with them. In any event, it is naive to believe that the informal economy will simply go away.

Ironically, many large companies have lost millions of dollars in work stoppages due to conflicts with communities (often inclusive of illegal miners) and spent millions more in trying to work with artisans. Experienced exploration companies have far fewer resources than mining companies but many adopt a "live and let live" approach given different interests. A "low conflict risk" is often seen as an added advantage to exploration prospects. Both exploration and mining companies derive greater net benefit from a formal, moderately organized and sensitized ASM subsector than a dispersed group of unlicensed individuals and often call for Government intervention.

Alternative modes of co-existence are presented in Section 4.2: Future Amendments to Mining Legislation for review and consideration by MLME. An overall vision of the minerals sector framed on much needed co-existence is recommended.

- **Lack of financial and technical resources to effectively regulate and support ASM.** Inadequate financing of work programmes creates a major barrier to MLME in terms of fulfilling its mandate, with ASM likely being comparatively low on the list of priorities (Section 3.2). Limited resources can lead to ad hoc execution of regulatory

and technical support responsibilities, a situation exacerbated by the absence of clearly defined institutional roles in the MML.

Countless examples exist wherein inappropriate legal and institutional measures compete with well-established extralegal systems often at great financial and reputational cost and to the detriment of peace and security. Models for integrating systems which are functioning at a grassroots levels with legal and institutional frameworks are described herein.

The Interim Class C Regulations seek to mitigate these risks, while working within the current institutional and legal constraints. Proposed future amendments to legislation attempt to more comprehensively integrate international best practice with what seems workable and practical in the Liberian context. If followed, the Implementation Roadmap will undoubtedly yield greater insight into what is most appropriate and sustainable in the long term.

#### 4.1. INTERIM CLASS C MINING REGULATIONS

Substantive recommendations for Draft Interim Class C Mining Regulations are outlined in Table Three and detailed in Section 4.1.1 and Annex One.

Justifications for potentially contentious issues have been provided throughout this report. These include:

Issue	Refer to Justification in this Report in:
Renewability.	Section 3.2.1. Licenses cover huge areas and completion of all possible work unlikely within one year, particularly given seasonal constraints to work.
Transferability	Section 3.2.1. Option to transfer to other eligible Persons, cooperatives, exploration or mining companies.
Waive Prospecting License	Section 3.1.5 (iv). Not legally required under MML. Costly, cumbersome, likely to serve alternative objectives.
Financial Capacity	Section 3.2.1 Assumes that objective is to legalize artisanal miners, the majority of which have poor savings capacity – an area where a supportive framework can transform the subsector. Section 3.2.3 Table 2 (Item 3.12 Comments)
Technical Capacity	Section 3.2.1 Assumes that objective is to legalize artisanal miners. Bringing them into the fold so their capacity can be built is a Mineral Policy priority. Section 3.2.3 Table 2. (Item 3.9 Comments)
Fees	Section 3.2.1 More realistic given average incomes of miners active on the ground.
Royalties	Section 3.2.3. To be paid by licensed dealer upon export in avoidance of double taxation and prohibitive administrative (collection) costs.

Issue	Refer to Justification in this Report in:
Increased responsibility of Regional Officers	Section 3.1.5 and 3.2.2. Some expansion of roles (e.g. advisory role), clear procedures and protocols and options for recourse in the event of misuse of office needed.
Inspections	Section 3.2.2 Specifies authorized roles and functions of Mining Agents and Inspectors. Recognizes significance of advisory role in compliance. See Section 5.
Grievance Mechanism	Section 3.2.2 Prevents misuse of office. Needs more detailed inclusion in subsequent MML.

Details of various aspects are outlined below.

#### 4.1.1. Essential Requirements

The most critical aspects of the recommended provisions include:

##### 1. Omission of Provisions Pertaining to the Application Process:

In order to address constraints imposed by the PPCA, the Regulations necessarily omit provisions for the Application Process and, following the lead of Exploration Regulations, proposed Class C Regulations instead require Submission of a Work Program (Annex One: Schedule One) following Clearance by Mining Agents. In reality, this Work Program is a simple two-page form that can accompany a one-page Application Form that contains details to meet MCIMS requirements (Annex Two).

The License Applicant is necessarily described as a “Licensee” throughout the regulations although Work cannot commence prior to approval of the Work Program. Similarly, a Renewal of a License is necessarily defined as an extension of a License Term.

Furthermore, as a license cannot be granted prior to clearance by Mining Agents (and its size is determined during clearance), provisions related to clearance are necessarily excluded. (recommended procedures to ensure harmonization with the MCIMS are nevertheless outlined in Section 5.1.5). Legal advice on this approach is needed to ensure PPCA compliance.

##### 2. Basic Working Obligations:

General environmental, occupational safety and health and reporting requirements are needed to ensure reasonable measures are taken for basic protection of health, safety and environment. Most miners will face difficulty in achieving even simple requirements in the absence of advisory support and/or technical assistance.

Every operation is different and Miners, Mine Workers (and even Mines Inspectors) do not always fully comprehend the requirements set out in regulations (or have access to the regulations).

**TABLE THREE: PROPOSED MAIN COMPONENTS OF INTERIM CLASS C REGULATIONS**

Component	Condition	Comments
<b>Eligibility</b>	Liberians Only	As specified in the MML.
<b>Area Restrictions</b>	25 acres	As specified in the MML.
<b>Number of Claims Permitted</b>	Up to four (4)	As specified in the MML.
<b>License Validity</b>	1 year	As specified in the MML.
<b>Renewability</b>	Yes. Each year for an indefinite number of times.	Renewal based on evidence of work and productivity as well as general compliance.
<b>Transferability</b>	Yes.	Can be transferred to eligible applicants (as per MML Ch. 4 and 9.17) with approval of Application for Transfer of Class C Mining License.
<b>Prospecting License</b>	No.	Proof of knowledge of site integrated with clearance procedure and Application for Class C License. See Section 3.2.3 above.
<b>Mining Restrictions</b>	May not involve <i>“mining employing large scale, heavy duty or earth moving equipment”</i>	In accordance with policy intent of MLME. Mechanized small scale mineral processing equipment permitted. Potential to upgrade to Class B.
<b>Environmental Requirements</b>	Specific conditions based on the nature of the Work Program.	In accordance with MML Ch.8. The Work Program (Annex Two) includes basic measures and meets requirements for an Environmental Management Plan (MML Ch 8.5).
<b>Health and Safety Requirements</b>	Specific conditions based on the nature of the Work Program.	In accordance with MML Ch.16. Includes basic safety provisions, basic sanitation and hygiene, accident reporting as laid out in the Work Program (Annex Two).
<b>Social Requirements</b>	Consult with land owner/occupier if not GOL.	Verified during Clearance Phase. Grievance mechanism should be in place.
<b>Demonstration of Financial Capacity</b>	Payment of all fees, identification of financier, if present	See explanation Section 3.2.3.
<b>Demonstration of Technical Capacity</b>	Through clearance and application	Verification during clearance and completion of work plan requirements in Application Form See explanation Section 3.2.3.
<b>Reporting</b>	Quarterly Reports Annual Report on or before Sept 30 <sup>th</sup> .	Form X plus copies of financial transactions and accident records. MML Ch. 6.7g specified annual report requirements..
<b>Fees</b>	<i>WorkPlan Review</i> 10 USD <i>License Fee</i> 50 USD	Survey Fees paid independently on a negotiated basis with qualified Surveyors registered with MLME.

Component	Condition	Comments
	plus 10 USD/acre 50 USD plus 10 USD/acre	Other fees include Mine Manager Identity Card (10 USD) and Transfers of License (10 USD)
<b>Royalties</b>	To be paid by Licensed Dealer upon Export.	Collection costs likely preclude benefits of increased participation in the formal system. Avoids illegal double taxation. Maintenance of license directly contingent on sales to licensed brokers or dealers. See MML Ch. 17.4.
<b>Inspections</b>	Mine Manager receives a copy of inspection form. 3-90 days for response to Infractions dependent on their nature.	Mines Inspectors shall be allowed on-site for purposes of inspection without prior notice Need to report back results on site with License Holder or Mine Manager identifying infractions and outlining mitigation measures. Response time defined based on infraction.
<b>Grievance Mechanisms</b>	Yes.	Mechanism to report infractions by MMLE Officers related to inaccurate reporting & misuse of office.

These provisions are specified in the Work Program appropriate to an operation using a check box or fill-in-the-blank system with small descriptions where warranted (Annex Two). The form requires basic measures to protect human health, the environment and respect labour rights (as per the MML) and MLME Officers can easily be trained to conduct related inspections and provide clear guidance on its content in a relatively short period of time (Section 5.1.2). Cognizant of literacy and comprehension constraints, the Licensee should have the right to receive assistance from Authorized MLME Officers in working through and completing the Work Plan and both sign off on it prior to submission. This promotes understanding and provides a simple format to use as a basis for subsequent compliance monitoring.

A similar model has been enshrined in State regulations now being instituted in ASM areas in Rio Grande do Sul State, Brazil, where an applicant has the right to receive technical assistance in completing the Work Plan and Applicants as well as Mining Officials and Local Government sign off on its contents<sup>13</sup>.

### 3. Right to Receive Advisory Support:

Achievement of Mineral Policy (2010) objectives that seek to “...regularize and improve artisanal and small scale mining activities in order to enhance the potential to create employment, generate income and help reduce poverty in the rural areas...” is contingent on provision of this advisory or technical support.

The Regulations should hold both miners and MLME responsible for fulfilling their obligations and provides some reasonable recourse if, due to capacity constraints on either parties, these obligations are not always fulfilled to their fullest extent.

Some laws explicitly refer to “light-handed application of the Law” in the case of ASM. In the absence of such a provision in the MML, viable recourse is explicit inclusion of the right of a Licensee to seek and receive Advisory Support from a Mining Agent or other

Person Authorized by the Minister to complete any forms (schedules) and from a Mines Inspector or other Authorized Person (i.e. ideally an ASM Support Unit Technical Officer) with respect to advice on how to fulfill of working obligations and mitigate non-compliance. Any reporting procedures of these officers should be very specific on the nature of advice given and can be used as a basis for their performance evaluation.

For example, any Inspection should conclude with a review of results with the Licensee or Mine Manager and explicit review of suitable mitigation/response measures. The Inspection Form should be signed by both parties to affirm that adequate advisory support was provided or, alternately, the “case” can be referred to a sufficiently qualified person, such as an ASM Support Unit Technical Officer. Building capacity of these MLME Officers is a major challenge but is fundamental if Mineral Policy objectives are to be met.

Miners should not only receive advice on how to comply, but should have a reasonable amount of time (90 days) to institute measures where infractions are non-life threatening nature (e.g. blocking of rivers, lack of pit latrines) while more serious infractions (e.g. child labour, impending pit wall failures) should be addressed within 10 days and serious violations (e.g. work in protected areas) should require immediate response.

Similarly, processing and approval/disapproval of work programs, renewals, suspension of work etc should also be time-bound, but these are often contingent on verification that working obligations have been or are being fulfilled (and Mines Inspections may or may not occur within the set time frame). As in the Exploration Regulations, these submissions should be taken as approved within a specific amount of time (depending on the nature of the request) if just cause for delays is not provided.

#### **4. Decentralization of Some Functions:**

The distance, costs of travel and stays in Monrovia and seasonal cut-offs due to heavy rainfalls resulting in virtually impassable roads makes centralized processing of all documentation impractical, particularly given expected growth in number of licenses.

Protocols and procedures should therefore include provisions that specify:

- Submission of Schedules and Forms to the Minister or the Office of the Regional Mining Agent or other Authorized Person receiving on behalf of the Minister.
- Immediate provision of a dated Receipt to the Licensee or his/her representative upon submission of documents, a copy of which should be appended to the documents (See Section 5.1.2).

An MLME Grievance Mechanism is needed so that applicants or licensees have some recourse in the event that documentation is not routed from Regional Offices or any other negligence or misuse of office.

Whether payment of fees should be undertaken through Mining Agents is a contentious question as risks exist for misuse (and further undermined trust of GOL). Although the provisions below suggests this as a course of action, **MLME must ensure procedures are in place to establish reasonable confidence that appropriate protocols will be followed** (Section 5.1.2).

### 4.1.2. Provisions of the Class C Regulations

Proposed Interim Class C Regulations and its schedules are presented in Annexes One and Two. They are not written in such a way to be legally binding yet in some cases are necessarily detailed to avoid misinterpretation. These provide a basis for final drafting of the full legal text which, pending final input from MLME stakeholders, should be finalized by a qualified lawyer with extensive experience in Mining Law and, in particular, ASM Law.

It is extremely important to note that legislation is written in complex legal jargon and is difficult for most (even some MLME Officers) to fully comprehend. As discussed in Section 5.1.2, a Layperson's Guide (or "*Class C License Guidelines*") of the MML and Regulations must be developed and should be distributed freely to potential applicants and current License holders and appended to Class C License Certificates, with explicit recognition that it is not a legal document. All MLME Officers undertaking functions relevant to Class C Licenses should have copies of both the official Law and Regulations and the Layperson's Guide at all times during the course of their work.

### 4.2. FUTURE AMENDMENTS TO THE MINING LEGISLATION

Urgent activities to ensure successful implementation are described in Chapter 5: Implementation Roadmap. A template for Schedule One: Class C License Work Program and key information to include in other Schedules of the Regulations is provided in Annex Two.

In terms of future amendments to legislation, one principle should be paramount: "*the benefits of formalization and legalization must outweigh the costs to both artisanal miners and government*" (Hinton, 2005; Hinton, 2009). In terms of costs and benefits:

- For artisanal miners, the benefits derived from technical and advisory support and improved performance from participation in the formal system *must* outweigh the costs of licensing, bureaucracy, paperwork and compliance and be less cumbersome than dealing with informal fees and constraints associated with illegality.
- For GOL, benefits to local and national development, environmental integrity and advancement of other facets of the minerals sector (e.g. exploration, large scale mining) who invariably interact with and are impacted by ASM *must* outweigh the costs of administration, monitoring and provision of support.

Future amendments must be cognizant of known and predicted capacities of both parties and be in-line with broader development goals of the Nation.

#### 4.2.1. Essential Requirements

Many of the recommended changes to the legislation rely on execution of complimentary activities within the next three years (Section 5). An appropriate legal framework should nevertheless include:

- 1. Clear Definition of Institutional Roles and Functions in the Amended MML:**  
Although Ministerial powers in implementation and delegation are clearly stated within the current MML, specification of *institutional* roles, functions and responsibilities is typically a useful component of mining policy and law and affords a

clear, legal mandate to MLME departments, units and offices. This clarity can serve to reduce discretionary powers and ad hoc planning/execution of work programmes, hold management, departments and their officers accountable to fulfill legally defined mandates, increase transparency and provide a clear basis for performance monitoring.

This should be preceded activities to assess and recommend restructuring of the Institutional Model of MLME, some ASM-specific recommendations for which are put forth in Section 5<sup>14</sup>.

**2. Amendments to Class B Licenses:** A step-up from non-mechanized ASM is needed to account for those micro-enterprise miners who are able to take activities to the next level. However, issues and needs of this level of these mechanized small scale miners are quite different from the medium scale miners now under Class B.

Amendment of Class B terms is also critical for appropriate regulation of those who abuse the current Class C system. Two sub-categories of mechanized small and medium scale licenses defining suitable terms and conditions for each are called for. In any event, increased rights must directly correlate with increased obligations.

**3. Revisions to Class C Provisions and Related Definitions:** Specifically, the following recommendations should receive examination in future:

- (a) **Reduction in the Size of License Area.** Most genuine artisanal miners would take years to work a 25 acre area and this easily attracts “fake” artisanal miners eager to exploit the more basic provisions of Class C using heavy machinery. A 5 acre license is more reasonable given capacities of artisanal miners and would hinder interests of should-be Class B Miners.
- (b) **Extension of License Term for Validity.** Even given a 5 acre license, a two year license plus two years for subsequent renewals is generally considered the norm and is more realistic given the seasonal and substantial disruptions (i.e. heavy rainfalls) in Liberia. If license sizes are maintained, a longer term renewal (10 years) may be more suitable if demonstration of work and satisfaction of working obligations are proven.
- (c) **Allowances for Disruptions of Work.** Given annual work disruptions due to heavy rains, provisions requiring work to continue in order to maintain license validity through these times pose a serious threat to human life. Times of heavy rainfall are known and decreases in productivity should be expected. The Amended MML should explicitly state this as just cause for reduced activity and may be included in Quarterly Reports and even Work Programs.
- (d) **Decentralization of Selected Functions.** Both access (during the rainy season) and costs to await processing licenses and documents in Monrovia can be prohibitive. As described in Section 5.3.2, Regional Offices would be well positioned to receive applications, schedules and payments, while pilot projects can ascertain the viability of increased engagement of Local

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<sup>14</sup> The MLME is planning to undertake this much needed institutional assessment.

Government (who ideally would verify the local presence of prospective Licensees during Clearance) as well as the role of communities. MML will require amendment pending results of this work.

- (e) **Recognition of Local Permitting and Registration Systems.** In conjunction with decentralization and framed on the livelihood rights of pre-existing miners, this may present an opportunity, through local permitting and registration systems, to ensure Exploration and Mining Companies continue to have access to minerals, address liability issues and acknowledge pre-existence (e.g. via compensation if displacement is likely) while affording tenure to miners and creating a vehicle for delivery of training and support. Right-of-first-refusal to pre-existing miners may also address being overtaken by sector players who are better equipped to obtain a Class C License.
- (f) **Redefinition of Cooperatives.** The MML (2000) provided a flexible definition of cooperatives which was superseded by amendments in 2004 that required collective sales and excluded miners of gold and other minerals. A non-exclusive definition and provisions allowing for alternative structures (e.g. partnerships or small-companies) are better suited to the reality of many miners. Current efforts to reform and strengthen the Cooperative Development Authority (CDA) should be followed to see how provisions for registration of cooperatives (if viable), can be aligned with policies and legislation under CDA.
- (g) **Redefinition of Small Scale Operations.** The MML (2000) defines Small Scale Operations as “*a mining operation other than an Industrial Operation*” while an industrial operation remains undefined. The reformed MML needs clarity, potentially based on level of capital investment (e.g. less than 10,000 USD) and/or limited to those not using heavy machinery (at least above a certain small size) for artisanal mining and an entirely new category suitable for small scale miners (that are currently pushed into untenable Class B).

A reasonable step-up license *must* exist for miners able to achieve a degree of mechanization (i.e. via a subclass of Class B).

- (h) **Explicit Definition of Roles of MLME Officers:** Regional MLME Mining Agents, Mines Inspectors and Government Diamond Offices are theoretically best positioned to provide much needed technical and advisory support to ASM. However, under current conditions, they have no explicit mandate to do so and are more likely to use their positions for personal financial gain and/or to mitigate threats to their health and welfare.

In conjunction with institutional reforms, an amended MML should reflect mid-term restructuring and strengthening of these essential MLME Officers as is necessary to achieve longer term visions of decentralization.

- 4. **Recognition of ASM in Exploration, Class A and Class B Legislation:** A major barrier to establishment of a conducive ASM framework relates to drafting of exploration, medium scale and large scale mining legislation (law and regulations) in isolation of that specific to ASM. An overall vision for co-existence and co-development is needed. Throughout the World, many

companies recognize risks associated with a dispersed, disenfranchised ASM workforce and the benefits of positive relationships in communities where they work.

This reality calls for specific provisions that outline clear roles, obligations and objectives for both companies *and* GOL. Given lack of comparable alternatives, low incomes and high levels of unemployment throughout Liberia, the following alternatives should be evaluated:

- (a) ***Inclusion of Artisanal Miners in ESIA:*** A survey of, and consultation with, existing artisanal miners during the Environmental and Social Impact Assessment (ESIA)<sup>15</sup> is useful to companies as it forms a foundation for mutually beneficially co-existence arrangements, with emphasis on existing local miners. This would further serve to mitigate misperceptions and expectations.
- (b) ***Non-competition Clauses.*** Most genuine artisanal miners would take years to work a 25 acre area and this easily attracts “fake” artisanal miners eager to exploit the more basic provisions of Class C using heavy machinery. A 5 acre license is more reasonable given capacities of artisanal miners and would hinder interests of should-be Class B Miners.
- (c) ***Recognition of Formal Agreements.*** Companies should be protected from liability and excessive incursions while fulfilling their commitments to Corporate Social Responsibility (CSR) and need for distribution of benefits to local communities. Recognition of a quasi-Memorandum of Understanding with artisanal miners, particularly those founded on mutual benefits and clear terms, may be a viable mechanism of benefit to all parties.
- (d) ***Recognition of Local Permitting and Registration Systems.*** Explicit efforts to recognize pre-existing miners through conditional registration systems, engagement of companies in identifying areas suitable for ASM and supporting relinquishment of these areas and/or creation of buffer zones (e.g. around rivers and in active areas) should also be explored.

Of note, it is the expressed intent of some senior MLME officials that, with recognition that most active ASM areas are likely to be already covered (or will be in the near future) by exploration areas, a solution is proposed to re-settle miners to relinquished portions as they become available. This may be feasible in some situations; however, some caution on over-reliance on this as a catch-all solution is needed. Prior to large scale mine development, exploration areas can change hands several times and savvy companies are astonishingly quick to pick up relinquished areas. With respect to the nation’s development, MLME should be further cognizant that internationally, only 1 of 5,000 exploration licenses becomes a large scale mine<sup>14</sup>.

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<sup>15</sup> At present, the EPA requires an EIA which typically has a social component. Many African countries are increasingly moving towards more explicit recognition of this via ESIA.

5. **Recognition of MLME as a Lead Agency:** Although this recommendation extends beyond the reach of MLME's power and is less relevant in terms of ASM, many countries' environmental protection agencies appoint sectoral Lead Agencies for environmental oversight.

Although in Liberia, EPA must clearly play a central role in final reviews of EIA, it is unlikely they are well equipped to comprehend the nature of the minerals sector with respect to exploration and mining at any scale. Furthermore, EPA priorities may be diluted by other sectors (particularly as they are more likely to be trained in, and focus on, sectors such as forestry and agriculture). Such a mechanism may further serve to reduce review time and streamline processing<sup>16</sup>.

Follow-up legal and institutional reform processes should also be mindful of the status of reforms in related legislation and institutions, inclusive of that related to decentralization, immigration and naturalization, micro-finance, gender, labour, customs and environmental protection, among others.

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<sup>16</sup> The MLME is currently planning efforts to review and revise Model Mineral Agreements to mitigate these and many other issues.



## 5. IMPLEMENTATION ROADMAP

As in many other countries, it is expected that Liberian women and men engaged in ASM, including the most vulnerable diggers and labourers, would prefer to legalize and improve their activities and do not deliberately choose to evade taxes, fees and licenses<sup>15</sup>. As better prices are reportedly offered from illegal brokers than legal ones and no significant or obvious benefits are derived from working legally, there is little incentive.

In any event, given the dispersed nature of ASM and its likely disconnect with Government, many miners may feel legitimized if they are paying fees to local leaders and land owners and it is likely that many are not even aware that mining laws exist, let alone have the capacity to comply<sup>16</sup>.

The Implementation Roadmap may require a shift in the institutional mindset of MLME and its partners. This requires explicit recognition that:

- 1. Firm, transparent and accountable regulatory and enforcement measures must be tempered with incentives and support.** A disproportionate emphasis on punitive measures will likely only drive miners and mine workers deeper into the forest, widening the gap between Government and the subsector. As demonstrated in countless countries over the past three decades, this imbalanced approach is more likely to exacerbate illegality than reduce it.
- 2. Even the most ideal legal framework is unlikely to succeed if not coupled with efforts to raise awareness of, and build capacity of miners to fulfill legal obligations.** Similarly, enshrining regulations to improve environmental impacts, health and safety are unlikely to have impact without support for improved technical and financial performance.
- 3. Even with increased funding of MLME and a conducive institutional and legal framework, any outside support, reforms and intervention must consider what is sustainable for Government *in the long-term*** with respect to costs of administration (licensing, taxation, monitoring) and training and advisory support. Given that grassroots support and regulation of ASM is the most effective means to promote change, and long-term funding of field activities is one of the highest and often under-allocated costs in mining institutions, a system that optimizes human and financial resources (and increases accountability in their use) is called for.
- 4. Although a formal ASM Support Unit is a fundamental need, optimization of human and financial resources** in the long-term likely requires a pragmatic expansion of roles of field officers to include an advisory and training function. Capacity development of these officers to effectively support and regulate ASM requires building knowledge, skills *and* transforming attitudes.

Key activities outlined in the Implementation Roadmap are detailed in the following sections.

## 5.1. URGENT ACTIVITIES FOR IMPLEMENTATION OF CLASS C REGULATIONS

Within the next twelve months, a number of critical steps must be taken to effectively implement the Class C Regulations. Priority activities are:

- Promulgation of Class C Regulations
- Development of Clear Guidelines and Procedures
- Establishment of a Functioning Mines Inspectorate
- Responding to Critical Capacity Gaps
- Harmonization with the MCIMS

### 5.1.1. Promulgation of the Class C Regulations

This shall require the following:

1. **Review of recommendations** provided herein by key stakeholders and incorporation of substantive contributions. Particularly given the nature of measures provided, this would ideally include a broad spectrum of stakeholders (inclusive of actual miners physically working at ASM sites), however, given the urgency of regulations, likely this will be limited to MLME stakeholders.
2. **Final drafting of the Class C Regulations.** In accordance with the scope of this Report, *substantial* revisions to Class C Regulations proposed in 2009 have been recommended and, pending stakeholder input, finalization of the text is needed by a Lawyer with extensive experience in Mining Law.
3. **Approval by the Minister.**

### 5.1.2. Development of Guidelines and Procedures

Functioning institutional support and increased comprehension shall require:

1. **Class C License Guidelines:** A simple layperson's version of the regulations should be developed and distributed to potential applicants, Mining Agents, GDO Officers and Mines Inspectors.

For the Work Program in particular, a step-by-step basic technical guidance section based on Schedule One is needed for use by both miners and MLME Officers. Pictorial content is critical (particularly for technical aspects). This Guideline can subsequently be used to aid in training of MLME Officers and, ideally miners and mine workers. Completed examples of the Schedules would also be useful.

2. **Procedures for Mining Agents.** Authorized Mining Agents will need explicit procedures for (i) obtaining clearance and assisting in initial processing of applications (ii) step-by-step protocols for responding to illicit ASM and smuggling activities. Increased and explicit attention to their advisory role is needed. Harmonized procedures with MCIMS are proposed in Section 5.1.5.

3. **Procedures for Mines Inspectors.** Authorized Mines Inspectors will need explicit procedures for (i) conducting mines inspections; (ii) reporting; (iii) protocols for responses to non-compliance; and (iv) step-by-step protocols for responding to illicit ASM and smuggling activities. Increased and explicit attention to their advisory role is needed.
4. **Procedures for GDO Regional Coordinators and Evaluators.** Officers already have clear procedures related to the Kimberley Process. They are reasonably well equipped to provide *basic* advice on diamond evaluation and pricing yet are primarily engaged in issuing vouchers and documentation. Furthermore, they are positioned to play some role with respect to gold and other minerals. Procedures should be developed for (i) Provision of advisory support related to diamonds, gold and other minerals; and (ii) step-by-step protocols for responding to illicit ASM and smuggling activities. Increased and explicit attention to their advisory role is needed.
5. **Templates for Reports for Mines Inspections,** as described below, these should initially be framed around Schedule One: Work Program, provided in Annex Two, and presented in a similarly basic format.

### 5.1.3. Establishment of a Functioning Mines Inspectorate

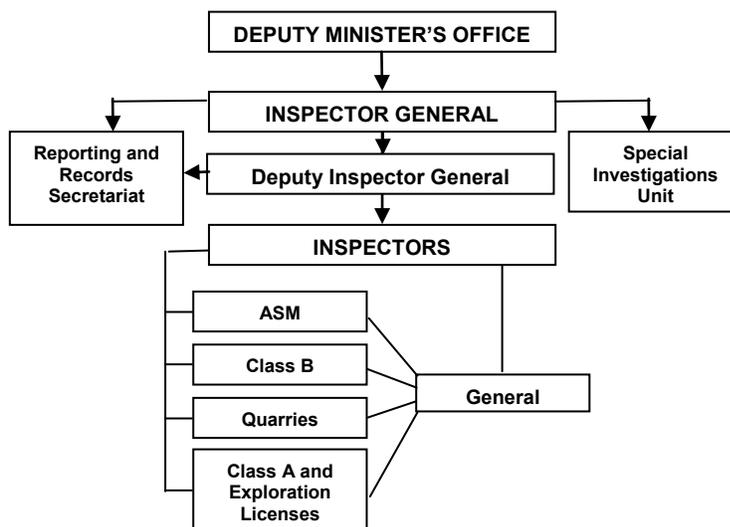
The MLME Mines Inspectorate is inactive, at present, although widespread informal inspection activities have been suggested. The numbers of Mines Inspectors are substantial (70+), their general effectiveness is in question and risks of misuse of office extremely high. Poor systems and practices are likely to be deeply embedded.

A pilot project for the Mines Inspectorate is urgently needed in order to establish a functioning unit in reasonably short period of time such that Class C Regulations can be properly implemented.

Phased development of the Inspectorate is therefore proposed as follows:

1. **Formalization of an independent inspectorate.** In the short-term, an independent unit (kept at arm's length from other units engaged in licensing, in particular) is proposed under the responsibility of an MLME Deputy Minister. This would be comprised of (Fig. 1):
  - **The Inspector General's Office**
  - **Deputy Inspector,** who would be responsible for overseeing the Inspectors fielding and performance.
  - **Reports and Records Secretariat,** who would primarily be responsible for ensuring proper procedures in document control and editing inspection reports filed by Inspectors.
  - **A Special Investigations Unit,** possible consisting of 1-2 officers who would ideally receive special training from UNMIL in order to effectively respond to reported suspicions of illegal or illicit behaviour in the minerals trade. Capacity development areas include investigation skills and building a case sufficient to be presented and held up in court.

- **The Inspectors**, who may, in the *long-term*, be divided into units based on specializations, as discussed further below.



**Figure One: Proposed Structure of the Mines Inspectorate**

- 2. Development of Criteria for Selection of “Pilot” Inspectors.** Specific criteria should be developed in order to select and recruit ten (10) promising Mines Inspectors. Minimum education levels, ideally in a field related to mining, geology or engineering, are suggested. Some field experience would be ideal if such persons are available. A more equitable gender balance in composition would further aid in effectiveness of outreach/advisory roles, particularly given the composition of the ASM workforce in some areas (particularly women in gold mining).
- 3. Implementation of General Training of Mines Inspectors.** The ten pilot recruits should receive 3-4 week training (inclusive of at least 10 days of hands-on training in the field). Curriculum should include:
  - **The Liberian Minerals Sector and its Laws.** An introduction to the basic structure of the international minerals sector shall also be needed (i.e. phases of mining: prospecting, exploration, mining and differences between artisanal-, small-, medium- and large-scale mining) before introducing Liberia-specific issues.
  - **Technical Aspects** related to basic geologic concepts, introduction to mining and mineral processing methods and their potential impacts, environmental and health and safety risks and measures to mitigate them; labour and social issues in mining.
  - **Procedural Aspects** related to: how to conduct an inspection; how to complete and submit an Inspection Report; procedures for addressing infractions and non-compliance; procedures for reporting smuggling and other illicit behaviour.
  - **Training and Advisory Methods:** A training-of-trainers approach is proposed framed on adult learning principles. This necessitates explicit attention to building

knowledge and skills *as well as* transforming attitudes requiring mixed and participatory training methods. Mines Inspectors should be trained to a level where they can provide basic advice to artisanal miners at a grassroots level and build a solid business case for improved practices. Given the nature of women's engagement in ASM, particularly in the most vulnerable roles at the mine site, a gender-in-training component and mainstreaming throughout shall be necessary to promote equitable benefits at a community and mine site level.

Although knowledge of all players in the minerals sector should be built, curriculum should be focused on ASM, Class B and Class C Licenses, which will inevitably comprise the bulk to their workload in early phases. The Schedule One: Work Program proposed in Annex Two provides some insight into specific technical areas where general training should focus.

4. **Establishment of a Grievance Mechanism.** Building upon the “Diamond Hotline” located in the GDO, steps for reporting misuse of office by Mines Inspectors and any MLME Officer are needed. This should be located outside of the Inspectorate and Bureau of Mines and allow alternative means of filing grievances (e.g. written, in person).
5. **Deployment of Pilot Mines Inspectors.** Preceded by development of a clear performance monitoring framework, Pilot Mines Inspectors should be deployed to specific regions to evaluate capacity and performance (and adapt measures accordingly). Procedures and even personnel may require adaptation over time.

Mid-term objectives for development of the Mines Inspectorate would include:

- **Secondment of Experienced Mentors:** Many well established Mines Inspectorates from other countries may be positioned to release Senior Inspectors for a period of up to a year. Working day to day with assigned Pilot Mines Inspectors, they would provide an invaluable role of progressive development of capacity and embedding good practice.
- **Advanced Training of Identified “High Performers”:** Next phases would seek to build more specialized capacities of identified persons, who would be positioned to manage smaller units based on the specific complexities of Class C, Class B, Class A, Exploration and Quarry Licenses.
- **Evaluation of Human Resource Needs.** Deployment of Pilot Mines Inspectors shall provide insight into the number of inspectors needed. With functioning, transparent and accountable systems in place, recruits brought into the fold are more likely to follow the already established good practices. Induction training, at its most basic level similar to that outlined in the pilot, will be required.

#### **5.1.4. Response to Critical Capacity Gaps in MLME**

Element of capacity that should be urgently built relate to financial, human and logistical capacity as follows:

- **Fielding of only Authorized MLME Officers.** The daunting number of Mining Agents and Mines Inspectors as well as patrolmen (many of whom do not hold contracts) and General Mining Chairmen (who are unpaid and on some occasions

appointed by Mining Agents) who, in the absence of clear procedures and institutionalized recourse for poor practices, can easily serve to impede formalization of ASM.

MLME should evaluate the efficacy of these persons and potentially revisit their contracts (if they exist), develop specific criteria for their deployment and select and authorize only viable performers to undertake specific roles and functions.

Selected persons should be designated as Authorized Persons, as appointed by the Minister, to engage only in specific roles and functions. These persons should carry photo identify cards (with respective functions explicitly stated on the reverse side) and a communication strategy should be undertaken in order to ensure the general public, inclusive of artisanal miners, are aware of the extents and limitations of this authority.

- **Logistical and Financial Gaps.** Mining Agents earn \$60 USD per month, receive no provisions for communication or transport from their duty station to Monrovia or ASM sites in the field (some of which are located up to 9 hours walk away), while *any and all* field officers may encounter situations that put their personal safety at risk. The outcomes of this scenario are easily predictable.

Main needs relate to:

- i) Provision of transport (motorcycles) and a fuel stipend to Mining Agents;
  - ii) Provision of a means of communication (potential sat-phones) for efficiency, productivity and safety purposes;
  - iii) Provision of a GPS and related training;
  - iv) Provision of copies of the Mineral Policy, Law, Regulations and procedures and guidelines outlined in Section 5.1.2.
  - v) Application of existing stipends outlined in MLME, considerate of the fact that field officers duty station is not Monrovia; and
  - vi) Development of a performance monitoring and evaluation framework for all field officers, with clear recourse for non-performance (including for those responsible for and failing to mobilize and disburse resources, misuse or poor accountability of funds, and poor performance outcomes).
- **General Training of Authorized Mining Agents and Regional GDO Officers:** In conjunction or independent from the “Generalized Training” required of Mines Inspectors, other field officers similarly should have increased accountability to advise artisanal miners and effectively utilize policies and procedures in accordance with their respective functions.

Human productivity is partly a function of motivation levels and further relies on knowledge, skills *and* attitudes. If well designed and implemented, such training would meet a critical human capacity gap and improve performance outcomes.

### 5.1.5. Harmonization with the MCIMS

Although due to the PPCA, Class C Regulations do not explicitly include the application and clearing process, harmonization with the Mining Cadastre Information Management System (MCIMS) – which shall invariably be vital to management and regulation of the minerals sector – is needed.

Given the small number of surveyors (8) in the Bureau of Mines and probable delays in fielding them in a timely manner, streamlined application procedures and requirements are recommended as follows:

1. A prospective licensee lodges a request with an Authorized Mining Agent concerning the area of interest.
2. The Mining Agent, trained and equipped with a GPS and cognizant of the difficulties in taking readings in some areas, takes preliminary coordinates of at least four waypoints, wherever possible at corner points and worst case scenario within the area of interest<sup>17</sup> and cites them on the Preliminary Clearance Form.
3. The Mining Agent contacts the MLME Mining Cadastre Department to verify that coordinates do not fall within an areas of interest and ascertain proximity to other licensed areas.
4. If risk of overlap is high and adequate readings impossible, the Mining Agent refers the prospective licensee to a Registered Land Surveyor as certified by MLME, who is required to verify (non-preliminary) coordinates<sup>18</sup>.
5. The Mining Agent aids the prospective licensee, if needed, in completing the Application Form which, following the model of the existing MCIMS form, shall contain:
  - (i) License Application Type (in this case Class C)
  - (ii) Mineral (s)
  - (iii) Applicant Type: (Natural Person or Cooperative)
  - (iv) Applicant Details (Name; Nationality; Address and Contact Details; Contact Telephone number and name of telephone owner if not the applicant; Email address if available);
  - (v) Preliminary License Coordinates (as per the Clearance Form);
  - (vi) Description of License Location (County, County Code, District, Mining District, Mining Zone, Mining Agency).

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<sup>17</sup> Given the expansive size of current Class C Licenses, it is assumed that the *real* area of a prospective Licensee's interest is far smaller than that provided. Acquisition of at least four waypoints surrounding this area is a viable starting point for clearance.

<sup>18</sup> Under the current circumstances, the costs of surveying shall have to be borne by the applicant. A list of MLME Registered Land Surveyors should be provided to applicants and included as an Annex in Class C License Guidelines (Section 5.1.2) .

The applicant is informed that he/she will be required to attach a photocopy of proof of citizenship (ID card, Passport, other) and a receipt for payment of fees).

6. The Mining Agent aids the prospective licensee, if needed, to complete and comprehend the Schedule One: Work Program and other provisions of the Regulations as per Section 4.1.1 of this report.
7. The Preliminary Clearance Form, Application Form and Work Plan are (ideally scanned and faxed) or – worse case scenario - taken to MLME in Monrovia where the Mining Cadastre office scans and enters applications into their Flexicadastre system.
8. A payment form is generated and faxed to the Mining Agents Office (or handed to the Applicant in person). Up-country banks in regional centers are a more viable location for payment where a Treasury Receipt would be issued upon payment.
9. The receipt is copied, faxed and original is mailed sent or (if in Monrovia) delivered to the Mining Cadastre Office.

Specific actions needed to formalize this process include:

- **Logistical Needs:** Provision of motorcycles, GPS and training of Authorized Mining Agents in their use and provision of a satellite phone or other lower-cost system that enables communication even in remote areas<sup>19</sup>.
- Suitable office space in Local Government offices or Regional GDO offices should be obtained. Mining Agents will need a combined scanner/fax machine to ensure streamlined clearance and license procedures while internet access is not likely in the short term, it should be explored for sustained improvements in the long-term.
- **Preparation of a Class C License Flow Sheet:** Based on approved Class C Regulations, a highly visual, easy to follow flow sheet is needed with step-by step instructions including explicit statements concerning fee amounts and payment procedures.
- **Development of a Form: Class C License Rights and Obligations:** A basic list of rights and obligations of License applicants, which shall be reviewed and signed by both the Authorized MLME Officer and Applicant. Although this form can provide an Annex of Class C License Procedures, stand-alone forms are needed for day-to-day functions.

Among other issues, this should include: the rights of persons to receive advisory support from Authorized MLME Officers, the rights and need of persons to make copies of clearance, application and work program forms; the right to view and copy the particulars of an Authorized MLME Officers identification; and the right to file a grievance concerning an MLME Officer via the MLME Hotline.

Responding to critical capacity gaps (Section 5.1.4) plays an obvious role in efficacy of harmonization efforts.

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<sup>19</sup> This is also a critical need given its usefulness in reporting accidents, smugglers and illicit behaviour and safety risks that may be experienced by Mining Agents.

## 5.2. TOWARDS ASM BEST PRACTICES

As Liberia moves towards reform of the mining legislation, a number of mid-term measures should be undertaken to buttress these efforts:

- Development of a National ASM Strategy
- Formation and Formalization of an ASM Support Unit in MLME
- Provision of a Clear Institutional Mandate in Legislation
- Piloting Models for Best Practices in ASM in Liberia
- Strategies for Progressive Capacity Development
- Amendment of the Minerals and Mining Law

### 5.2.1. Formation and Formalization of an ASM Support Unit

Informality begets informality. If grassroots action targeting ASM is provided in a piecemeal, ad hoc manner with an imbalanced emphasis on punitive measures then formalization of the subsector shall be virtually unattainable in Liberia<sup>17</sup>.

Advisory support strategies based on optimization of existing human resources, particularly those MLME Officers active in the field, have been put forth in Section 5.1. Given the numbers of artisanal miners in Liberia and risks and opportunities associated with their activities, a more systematic and focused approach is warranted.

At a minimum, the initial ASM Support Unit, potentially best placed in the Bureau of Mines, would consist of:

- A supervising technical officer, responsible for developing work programs and budgets, performance monitoring and reporting, and overseeing activities of the unit.
- Two technical officers, one of whom would have a background in geology or engineering, and the other with a background in social sciences, development, environmental science or a related field.

Design and implementation of hands-on and gender-responsive training and technical support programs at a grassroots level should target mine workers (diggers, labourers etc) as well as miners to support step-up improvements and increased opportunities for advancement for all. This may further extend to local government officers (e.g. environment, health and development officers) as decentralized structures become established.

As performance of the ASM Support Unit is ascertained, subsequent expansion of the Unit may be easily justified by increased licenses, royalties, improved environmental and safety practices and increased development at local levels.

### 5.2.2. Development of a National ASM Strategy

The Mineral Policy represents a long-term vision for the minerals sector and, while best practice legislation would provide the platform for an enabling legal and institutional environment, a systematic framework is needed to identify, plan and implement *practical* steps towards achievement of Mineral Policy goals and objectives.

A brief outline of important measures is contained herein, however, a more profound and specific action-oriented framework is warranted. A National ASM Strategy would extend beyond diamonds to include gold and industrial minerals (e.g. stone, sand, clay), where large numbers of artisanal miners are reportedly active.

This would be comprised of:

- An assessment of ASM subsector needs and response strategies in order to build a strong case for formalization, likely based on:
  - Legal and institutional needs, inclusive of an assessment of alternative approaches;
  - Technical training, ASM appropriate equipment, tools and methods;
  - Improved basic business skills and sources of financing for micro-enterprises;
  - Market development through value addition and market linkages;
  - Building co-existence models for ASM and larger companies; and
  - Essential partnerships at central and local government levels for community health and development.
- An assessment of Institutional needs with respect to ASM and strategies to build political and institutional commitment.
- An Implementation Framework inclusive of:
  - Institutional and coordination arrangements, identifying specific roles and responsibilities;
  - Action plan, potentially with budgeted work plans;
  - Performance Monitoring and Evaluation Framework, framed upon time-bound targets and goals and inclusive of both output (implementation) and outcome indicators.
- Sustainability mechanisms founded on strengths, weaknesses, opportunities and threats; financing strategies and building institutional will and commitment.

To build ownership and commitment, officers from the ASM Support Unit, Mines Inspectorate, and other MLME key persons should play central roles in the articulation of the Strategy.

### **5.2.3. Piloting Models of Best Practices in ASM in Liberia**

A range of alternative, best practice licensing models was put forth in Section 4.2.1, most of which build on existing systems at the grassroots level. Feasibility of practical implementation and modes of inclusion in law cannot be fully ascertained without testing such approaches at a grassroots level.

Furthermore, the primary incentive for formalization involves increased incomes. Best practices ASM technology and methods exist, many of which are easily mainstreamed

with an environmental and health protection business case. However, these intermediate and appropriate technologies are largely unknown in Liberia.

Ascertaining exactly “*what is best practice for Liberia?*” should be evidenced based, with a minimum needed body of evidence generated through Pilot Projects on:

- **Local Registration and Permitting Systems.** Although this could be designed to basically adhere to Class C Regulations proposed herein (vis-à-vis quasi-cooperatives), this will yield tremendous insight into the practicability of a conducive ASM licensing system, substantially informing subsequent legal reforms.

Use of miners’ census tools, a local registration and permitting system, coupled with strengthening of local associations in up to 3 pilot areas is recommended. The USAID Property Rights and Artisanal Diamond Development Project (PRADD) is planning to institute such a pilot and should receive full support for MLME and other partners in doing so.

- **Best Practice in ASM Technology, Methods and Management.** This technical assistance pilot project (ideally in PRADD pilot areas) would introduce appropriate, intermediate processing technologies coupled with basic training in prospecting, environmental management, health and safety and other critical topics. Best practice sites could be used as subsequent training or demonstration sites for other miners and mine workers around the country.

In both cases, an emphasis on mine workers (diggers, labourers) is needed to maximize their benefit and create opportunities to escape poverty for those most vulnerable in the mineral production and supply chain. Gender responsiveness of approaches is strongly recommended.

These projects would represent a remarkable opportunity to further strengthen ASM capacity and commitment of MLME. Specifically, representatives from the ASM Support Unit, Mining Agents and Mines Inspectors to these projects should be seconded to these projects throughout their duration.

#### **5.2.4. Provision of a Clear Institutional Mandate in Legislation**

To create a conducive environment for all players in the minerals sector and maximize benefits to the nation’s development, modernization of the institutional model of MLME in an imperative.

Specification of *institutional* roles, functions and responsibilities is a common component of mining policy and law as it provides a clear, legal mandate to mining ministries’ departments, units and offices. This clarity can serve to reduce discretionary powers and ad hoc planning/execution of work programmes, hold management, departments and their officers accountable to fulfill legally defined mandates, increase transparency and provide the foundation for establishment and use of a performance monitoring and evaluation framework.

Developed through consultative processes and based on international ASM best practice adapted to the reality of Liberia, a revised institutional model would include assessment of and proposals for:

- MLME mandates, responsibilities and macro-organizational structure considerate of inherent needs and challenges of ASM.
- Functions and structures of departments and units, including new functions that should be added, including ASM support functions, and those that should be changed or discontinued. Work programs, staffing, logistical and operational needs of each should be articulated with clear procedures.
- Modes of management and operational structures and procedures.
- Policies related to human resources and training.
- Implementation requirements, inclusive of legislative amendments needed to provide a legal mandate for specific departments and units.

Formalization of an ASM Support Unit and establishment of a functioning Mines Inspectorate will necessarily be critical components to this reform. Clear terms, procedures and monitoring systems for use of the MLME Mineral Development Fund will be of vital importance to sustainability.

### **5.2.5. Drafting of Amendments to Minerals and Mining Law**

Recommendations for legal amendment (and subsequent regulations) have been outlined in Section 4.2 with the explicit recommendation that reforms be significantly informed via activities described throughout the Implementation Roadmap.

Amendments to ASM-appropriate law and its regulations should further be cognizant of the following principles:

- Viable legislation should be founded on the reality of those to whom it applies and those authorities who will apply it.
- Legitimate legislation should be developed via consultation processes that are founded on *sincere* engagement and *informed* participation at all levels (from the diggers up to the top). Some measure of concurrent capacity development in consultation processes will be needed to obtain genuine input.
- Workable legislation should be harmonized with that of other sectors. The needs and issues facing ASM span multiple sectors with overlapping and complimentary mandates. MLME must keep abreast of activities undertaken by agencies responsible for decentralization, health services, labour, forestry, environment, gender equality and welfare as well as cooperatives, microfinance, immigration, customs, revenue and others.

Implementation of urgent and mid-term activities outlined herein and commitment to basic principles for best practice legislation shall be critical to turning the Mineral Policy vision into a reality.

## 6. CONCLUSIONS

The majority of real miners in Liberia—inclusive of mine workers, diggers and labourers—live in abject poverty, are largely illiterate and under-educated and are marginalized from the mainstream. Authorities charged with realizing the vision of the Mineral Policy (2010) are largely under-funded and—with the exception of persons at Senior Levels—many are under-trained, yet crucial steps have nevertheless been taken to emerge from deeply embedded systems that inadequately serve national development objectives.

Pragmatic approaches call for step-wise improvements for both parties. Founded on international best practice adapted to the reality of Liberia, recommendations for legal and institutional reforms and support measures been put forward for essential short- and mid-term actions.

Clearly, partners and allies—such as USAID, World Bank, BGR, DFID and many others—will be essential to achievement of best practice in ASM formalization. However, sustained progress shall ultimately be determined by political and institutional will and commitment.



# ANNEX ONE: INTERIM CLASS C REGULATIONS

REGULATIONS GOVERNING MINING  
UNDER A CLASS C MINING LICENSE  
OF THE REPUBLIC OF LIBERIA<sup>20</sup>  
[As proposed on 20 April 2010]

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<sup>20</sup> Finalization of the legal text, pending final review by key stakeholders, should be undertaken by a Lawyer with extensive experience in Mining Law.

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## 1 SECTION ONE: DEFINITIONS, INTERPRETATIONS AND APPLICABILITY

### 1.1 Definitions

Unless the context otherwise clearly requires, the terms listed below have for the purposes of these regulations the meanings set forth below:

**Advisory Support:** means recommendations for appropriate technical, financial, social or procedural action provided in verbal, pictorial or written form. Advisory Support may pertain to technical practices described in the Work Program; procedures, working requirements and obligations set forth in these regulations; the Law or any other regulations under the Law.

**Authorized Person:** Any Person that is authorized by the Minister to act in capacities of Mining Agent, Mines Inspector, Regional Coordinator, Regional Officer or any function specified by the Minister and holds written proof indicating such authorization.

**Cooperative:** Cooperative means a collective of freely organized artisanal miners, each holding a proper and valid mining license that has its own organizational structure and by-laws offering technical assistance to its members and organizing collective sales of the rough diamonds produced<sup>21</sup>.

**Financier:** means a Person who has been identified in the Work Program as such and who shall provide financing for the operation of the Licensed Class C operation.

**GDO Technical Officer:** means the Government Diamond Office Manager, Chief Valuator, Valuators, Data Specialist or Regional Coordinators and any other Person that is authorized by the Minister to act in any of those capacities.

**Law:** means the Minerals and Mining Law of 2000, appearing as Part 1 of Title 23 of the Liberian Code of Law Revised, as from time to time amended, supplemented or modified, and unless the context otherwise requires, any regulations issued pursuant thereto other than these regulations.

**Licensee:** means the Person to whom a Class C License is issued by the Republic. The term "Licensee" includes the successors and assigns of such Person permitted by these regulations.

**Licensed Broker:** means a Person who holds a valid Broker's License pursuant to Section 15.2 of the Mining Law.

**Licensed Dealer:** means a Person who holds a valid Dealer's License pursuant to Section 15.3 of the Mining Law.

**Mine Manager:** means a Person who is designated by the Licensee as identified on the Class C License Certificate and further verified by a Photo Identify Card to supervise and manage all Work under the license and designate a representative in his or her absence from the site during hours of operation.

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<sup>21</sup> As discussed in Section 4.3, this unfortunate description must adhere to MML Amendment (2004).

**Mine Worker:** means a Person above 16 years of age who is engaged in digging, hauling, mineral processing or other providers of direct inputs required by the operation or other Work under the Class C License.

**Mines Inspector:** means the Inspector General, Deputy Inspector General, Mines Inspectors each of whom shall hold a Photo Identity Card identifying such position and any other Person that is authorized by the Minister to act in any of those capacities.

**Mining Agent:** means a Mining Agent who holds a Photo Identity Card identifying such position and any Person authorized by the Minister to act in any of those capacities.

**Mining Law:** means the Minerals and Mining Law of 2000, appearing as Part 1 of Title 23 of the Liberian Code of Law Revised, as from time to time amended, supplemented or modified, and unless the context otherwise requires, any regulations issued pursuant thereto other than these regulations.

**Renewal:** means extension of the License Term for a period of 12 months in accordance with Section 3.4.

**Work:** means all activities undertaken by or on behalf of a Licensee under its Class C License, including the preparation for Mining, the conduct of Mining, the shutdown and demobilization of Mining, all post-Mining environmental and other restoration and remediation and all administrative and financial requirements as required in this Regulation.

## **1.2 *Principles of Interpretation***

All references to these regulations or to Law are to these regulations or to Law from time to time in effect. References to a “Section” or a “Schedule,” without other specification, are references to Sections of or Schedules to these regulations.

A Person may concurrently hold up to four (4) Class C Licenses. If a Person holds more than one License, these regulations apply separately to each License held by such Person, the License Area under such License and the License Term under such License unless these regulations clearly require otherwise.

### **1.3 Applicability**

These regulations apply to a License when issued. They do not apply to the process of applying for or obtaining a License.

## **2 SECTION TWO: CLASS C MINING RIGHTS**

### **2.1 Grant of Class C Mining Rights:**

- (a) A License grants to the Licensee for the License Term the exclusive right to Work in the License Area on the terms and conditions set forth in these regulations for such Minerals as may be specified in the License.
- (b) The right to Work does not grant to the Licensee to conduct mining or exploration outside of the License Area, or to conduct mining in any portion of the License Area after the Class C License has been surrendered or deemed surrendered pursuant to the relevant provisions of these regulations or after the License Term has expired or otherwise been terminated as provided in these regulations.
- (c) A License grants the right to a Licensee, Mine Manager or Mine Worker under the License to receive Advisory Support from any Person Authorized by the Minister within two months of submission of a written request to the Minister, at the conclusion of a site inspection by an Inspector of Mines pursuant to Section 6.6 and promptly at any time during personal visits to Regional or Central Offices of the MLME Inspectors of Mines, GDO Officers or any other Person authorized by the Minister. Advisory Support shall be provided in accordance with the functions and job descriptions of aforementioned officers and shall be provided in good faith in accordance with competence levels.
- (d) A Licensee has the right to be verbally informed upon receipt of any documentation pertaining to these Regulations, inclusive of related Schedules, of his or her right to receive Advisory Support from Authorized Persons at no fee with respect to the Law, the completion of Schedules and adherence to provisions of these Regulations.

### **2.2 Limitations on the Right of a Licensee to Conduct Mining**

- (a) Approval of the Work Program must be obtained from the Minister prior to commencement of Work and Work shall be undertaken only in accordance with that specified in the Work Plan.
- (b) The Licensee is prohibited from use of large scale, heavy duty or earth moving or dredging equipment in its operations.

### **2.3 License Area, Restricted Areas**

- (a) The Licensee is prohibited from working outside the License Area or within the area if it has expired, been terminated, transferred or suspended.
- (b) Work is restricted to License Area defined in the License but is prohibited in a Protected Zone as per Section 10.1 of the Mining Law if it falls within the license area.

### **3 SECTION THREE: TERM OF LICENSES**

#### **3.1 *In General.***

- (a) The term is for twelve months starting on the Effective Date and ending on the anniversary of the effective date.

#### **3.2 *Right to Surrender***

- (a) Intent to surrender a license in its entirety shall be lodged by the Licensee by submission to the Minister completed Schedule Two: Intent to Surrender.
- (b) While acceptance of surrender depends on whether working obligations for closure have been followed in accordance with the Work Program, if this hasn't been verified by a Mines Inspector within 60 days and the Licensee has, in good faith, sought to fulfill them, the surrender will be deemed to be accepted.

#### **3.3 *End of Term***

- (a) Each License automatically expires at the end of the Initial Term or Renewal Term (if it is a renewed License).
- (b) Following this, a Licensee has 3 months to fulfill working obligations for closure (and has the right to receive Advisory Support on how to do so).

#### **3.4 *Extension of the License Term***

- (a) A Licensee can apply for a Renewal to extend the License Term for an additional period of twelve (12) months by submission of Schedule Three and new Work Program to the Minister or the Office of the Regional Mining Agent on behalf of the Minister no more than 60 days prior to Expiration. The Licensee has the right to apply for a Renewal to extend the License Term an indefinite number of times.
- (b) The Minister will approve the Extension if it satisfies the requirements of the new Work Program (Section 4), Schedule Three and working obligations have been fulfilled. Fulfillment of working obligations shall be verified by an Inspector of Mines within 30 days of submission or in the 30 days prior to expiration of the License.
- (c) If the Licensee has satisfied submission requirements for Schedule Three and thereafter has in good faith sought diligently to fulfill working obligations then the Extension of License Term will be deemed to have been approved by the Minister within 60 days of the date stamped receipt of Schedule Three.
- (d) The License will terminate if the Licensee has not commenced Work within 90 days of the Effective Date of the extension.

## **4 SECTION FOUR: SUBMISSION OF SCHEDULE ONE: WORK PROGRAM**

### **4.1 *In General***

- (a) The Licensee must submit a Work Program satisfying requirements of Schedule One together with one copy of the Clearance provided by the Authorized Mining Agent.
- (b) Following expiration, a Licensee has 3 months to conduct any environmental restoration and remediation work and decommissioning of any equipment or facilities and may seek Advisory Support from Authorized MLME Officers on necessary measures at any time.

### **4.2 *Content of Work Program***

A Licensee's Work Program shall satisfy the requirements of Schedule One (See Annex Two, Schedule One).

### **4.3 *Approval or Disapproval of a Work Program***

- (a) The Minister will approve a proposed Work Program if it satisfies the requirements of Schedule One and Clearance.
- (b) Any disapproval of a proposed Work Program by the Minister must be in writing and must summarize reasons for disapproval. The Licensee may seek Advisory Support from Ministry Staff for an explanation in more detail. If disapproved, the Licensee can submit a revised work program within 30 days (during which time others cannot apply for the same License Area).

### **4.4 *Response to Approval Delays***

- (a) If the Licensee is not notified within 30 business days, then approval is assumed and work can commence with an effective date 30 days past the date of the submission Receipt.
- (b) The License will terminate if the Licensee has not commenced Work within 90 days of the Effective Date.

## **5 SECTION FIVE: LAND AND FACILITIES**

### **5.1 *Limitation on Right to Enter Land***

A License does not entitle the Licensee to enter upon Land in the License Area held by a Landowner or an Occupant other than the Republic without making prior arrangements with such Person for compensation from a Licensee for any damage to the Land or any improvements thereon caused by or resulting from the activities of a Licensee including any long term loss in value of such Land.

### **5.2 *Manner of Obtaining Access***

The Licensee can petition the Ministry to intervene if mutually acceptable terms for access cannot be agreed upon with the Land Owner or Occupant refuses access. All costs are to be met by the Licensee.

### **5.3 Use of Resources from the Land**

The Licensee may from within the License Area utilize water, gravel, sand, clay, stone and timber (except for protected species) solely to the extent reasonable necessary for Mining and in accordance with working obligations for environmental protection provided in the Work Program and provided that:

- (a) The exploitation rights for the gravel, sand, clay and stone are not held by a third party currently extracting such material, unless on terms that are satisfactory to such third party;
- (b) The Licensee does not sell or transfer such material to an Affiliate or any third party; and
- (c) The Licensee does not deprive any Person of a constant and reasonable supply of water.

## **6 SECTION SIX: OBLIGATIONS OF A LICENSEE**

### **6.1 Commencement of Work**

A Licensee must commence Work on the License within 90 days of the Effective Date of its License.

### **6.2 Duty to Work During License Term**

- (a) A Licensee must diligently carry on Work throughout the License Term in accordance with the substantive provisions of its approved Work Program, these Regulations, the Mining Law and other applicable Law.
- (b) Justification for temporary delays of Work shall be provided in Schedule Four: Quarterly Reports, and cause deemed reasonable and beyond the control of the Licensee, such as restricted and safe access as a consequence of heavy rains and inclusive of Force Majeure, shall not be taken as non-compliance with the aforementioned provision.

### **6.3 Conduct of Work**

- (a) The Licensee, Mine Manager or an appointed designee of the Mine Manager must be present at all times to supervise and ensure compliance with Obligations of the Licensee.
- (b) The Mine Manager must keep his or her Photo Identity Card on his or her Person at all times during hours of operation.
- (c) A Licensee must employ measures for protection of the environment, human health and labour rights in accordance with the Work Program. A copy of the Work Program must be kept in good condition and in such a location that it can be promptly produced on request.
- (d) A Licensee has the right to seek and is obligated to receive Advisory Support from any Person Authorized by the Minister to provide such Advisory Support in the event that obligations provided in Section 6 cannot be reasonably fulfilled.

#### **6.4 Sale of Minerals**

- (a) A Licensee must sell only to a Licensed Broker or a Licensed Dealer.
- (b) Royalties on mineral production shall be paid prior to export and payment is the responsibility of the Licensed Dealer.

#### **6.5 Record Keeping and Reporting**

- (a) In the case of diamonds, the Licensee or Mine Manager shall report diamond production to the Regional Diamond Office and obtain a voucher from the Regional Diamond Office prior to sale.
- (b) In the case of diamonds, one voucher shall be provided to the Licensed Broker or Dealer and one copy shall be retained by the Licensee or Mine Manager together with a receipt obtained from the Licensed Broker or Dealer.
- (c) The Mine Manager shall keep record of all minerals sales indicating the date of sale, sale price, Licensed Dealer's or Licensed Broker's Name and their License number. The Mine Manager may seek and receive Advisory Support from an Authorized Person on how to keep these records.
- (d) The Mine Manager shall keep a register with the list of Mine Workers to be updated on the first of every month.
- (e) The Mine Manager shall keep a register listing any accidents causing injury, the date of their occurrence and response measure taken.
- (f) In the event of a major accident, The Mine Manager shall follow emergency procedures outlined in the Work Program and shall report the incident by telephone or in Person to the nearest Authorized Person.
- (g) The Mine Manager shall submit Schedule Four: Quarterly Reporting Requirements to the Minister on a quarterly basis commencing from the Effective Date and at the conclusion of the License Term.
- (h) The Licensee and Mine Manager has the right to seek to receive Advisory Support from any Person Authorized by the Minister to provide such Advisory Support in completion of Schedule Four: Quarterly Reporting Requirements.

### **7 SECTION SEVEN: COMPLIANCE MONITORING AND RESPONSE TO NON-COMPLIANCE**

#### **7.1 Inspections**

- (a) A Mines Inspector may, without prior notice but at reasonable times of day and during work days and without materially interfering with the normal conduct of a Licensee's operations, visit and inspect any facilities or operations of a Licensee in Liberia.
- (b) The failure of MLME or other authorized Agency to make any such inspection or ascertain in any such inspection the existence of any breach by the Licensee of any of its obligations will not affect the ability of the Government to require compliance by the Licensee with such obligations.

- (c) As a condition to permitting any such inspection, a Licensee is entitled to insist upon (i) receipt of a copy of written instructions to conduct such inspection from an official senior to the official purporting to conduct the inspection, manually and legibly signed, and (ii) viewing and copying the photo identification of the persons claiming the right to conduct such inspection.
- (d) A Licensee or Mine Manager is further entitled to verbally review and visually inspect the Mines Inspection Report Form together with the Mines Inspector at the conclusion of the inspection and, if infractions are identified, the Licensee or Mine Manager shall receive Advisory Support on appropriate mitigation measures, time conditions imposed to rectify the infraction as indicated in the Report and consequences of non-compliance. Both parties must sign the report at the conclusion of the review.
- (e) In the event no work or activity is taking place on the site, the Mines Inspector shall undertake the inspection and indicate as such on the Mines Inspection Report Form.
- (f) The Licensee has the right to seek and receive further Advisory Support concerning the infractions and shall rectify reported infractions within the following time frames:
  - (i) Within a maximum of 90 days from the Inspection Date for infractions that are not immediately life threatening inclusive of, but not limited to: inadequate functioning of, or failure to construct, a sedimentation basin; gold amalgamation using mercury without the use of a retort; inadequate distance of ore and overburden stockpiles from water bodies and open pit walls; absence of pit latrines or toilets and hand-washing stations on site when more than 10 Mine Workers are active; inadequate personal protective equipment (PPE) for Mine Workers; inability of Mine Workers to verbally state the terms agreed with the Licensee or Mine Manager ; upon absence of a photo identification of a Mine Manager; absence of, or inadequate use of, a waste disposal site for rubbish; and lack of, or inadequate record keeping or reporting.
  - (ii) Within a maximum of 10 days from the Inspection Date for immediately life-threatening infractions or those that represent a violation of basic rights, inclusive of, but not limited to: signs of impending failure of an open pit wall or underground shaft or tunnel; absence of a Mine Manager or designee on site during hours of Work; deprivation of food or a cash equivalent to Mine Workers; deprivation of reasonable medical care in response to an accident causing injury to Mine Workers; and children under the age of 16 years engaged in any Work.
  - (iii) An immediate Termination of Work as provided in Section 7.2 and, within a maximum of 3 days from the Inspection Date, conclusion of decommissioning of all equipment and tools, for infractions that

contravene the prohibitions on: use of large scale, heavy duty or earth moving or dredging equipment; and Work undertaken in Protected Zones.

- (g) In the event that subsequent inspections or Schedule Four: Quarterly Reports indicate that mitigation measures have not been employed to satisfy provisions of Section 6 within the identified time frames in Section 7.1, then the Licensee is in non-compliance and the Minister may give notice for License Termination as provided in Section 7.2.

## **7.2 Termination of the License**

- (a) The Minister or Person Authorized by the Minister may give notice of termination of a License (“a Termination Notice”) at any time that a the Class C License as provided in Section 9.14(c) of the Mining Law due to:
  - (i) Violation of the provisions put forth in these Regulations following notice of a Mines Inspector as evidenced by a copy of the Mines Inspection Report signed by the Mine Manager and subsequent failure to cure any such material violation within the time conditions put forth in Section 7.1. In this case, the Termination Notice shall be effective two months after the Termination Notice is sent to the Licensee.
  - (ii) Contravention of prohibitions on the use of large scale, heavy duty or earth moving or dredging equipment; and Work undertaken in Protected Zones. In this case, the Termination Notice shall be effective once the Termination Notice is sent to the Licensee.
  - (iii) Failure to pay fees as put forth in Schedule Six of these Regulations. In this case, the Termination Notice shall be effective two months after the Termination Notice is sent to the Licensee.
- (b) The Termination Notice must provide a summary in reasonable detail of the facts relied upon to establish the occurrence and continuation of a License Termination Event. Such notice must include a statement of the right of the Licensee to request reconsideration of the termination within the time period provided.

## **7.3 Requests for Reconsideration of Termination of the License**

- (a) If the Licensee exercises the option to request reconsideration of the termination, the Licensee shall submit a written response to the Minister within the time periods provided in Section 7.1. The Minister shall have 15 days to review the response and determine if grounds for revocation of the Termination Notice exist.
- (b) If a Licensee wishes to challenge the determination of the Minister that a License Termination Event has occurred and is continuing, or the issuance of an order to stop Work, it shall give notice requesting a hearing to the Minister and the Minister of Justice within 30 days of receipt of the Minister’s determination. The notice must contain a summary in reasonable detail of the facts expected to be relied upon to

establish that a License Termination Event has not occurred or the order to stop Work is not justified under these Regulations.

## **8 SECTION EIGHT: TRANSFER OF A LICENSE**

### **8.1 Request and Approval of Transfer**

- (a) Except as provided in this Section 8, (a) no sale, assignment, pledge or other transfer of the rights of a Licensee under its License, by operation of law or otherwise, and (b) no direct or indirect transfer of Management Rights with respect to a License, or of the right to share in profits of a Licensee, by operation of law or otherwise, is valid unless it has received the prior written consent of the Minister.
- (b) A Licensee may apply for the right to transfer the Class C License by completing and submitting to the Minister a Schedule Five: Application to Transfer a Class C License.
- (c) Approval of a Request to Transfer a Class C License shall be on the basis of eligibility as provided in Section 4 of the Mining Law.

## **9 SECTION NINE: FINANCIAL PROVISIONS**

### **9.1 Fees**

The Licensee shall pay fees provided in Schedule 6 as follows:

- (a) Fee for the Review of the Work Plan in the amount of 10 USD (ten United States Dollars) prior to its submission. Proof of payment shall accompany the Work Plan.
- (b) Fee for the Certificate of Work Plan Approval in the amount of 50 USD (fifty United States Dollars) plus 5 USD (five United States Dollars). Proof of payment shall be required prior to release of the Certificate.
- (c) Fee for the Extension of a Work Plan in the amount of 50 USD (fifty United States Dollars) plus 5 USD (five United States Dollars). Proof of payment shall be required prior to release of the renewed Certificate.
- (d) Fee for the Preparation of a Mine Managers Photo Identity Card in the amount of 10 USD (ten United States Dollars). Proof of payment shall be required prior to release of the Certificate of Work Plan Approval and Photo Identify Card.
- (e) Fee for the Transfer of a License in the amount of 20 USD (twenty United States Dollars). Proof of payment shall be required prior to release of the Approval of the Transfer.

### **9.2 Procedures for Payment of Fees**

Fees may be paid to the Minister *or* other Authorized Person receiving on behalf of the Minister. An official receipt shall be immediately issued upon payment and shall be retained by the Licensee as proof of payment.

## **10 SECTION TEN: MISCELLANEOUS**

### **10.1 *Force Majeure***

- (a) If a Licensee is rendered unable, in whole or in part, by force majeure to carry out any obligation imposed on it by these regulations, the Licensee's obligation to perform such obligations is suspended to the extent provided in the Mining Law.
- (b) For the purposes of these regulations, "force majeure" has the meaning set forth in Section 9.21 of the Mining Law.



## ANNEX TWO: SCHEDULES TO INTERIM CLASS C REGULATIONS

Contents of Recommended Schedules for Interim Class C Regulations should be developed using basic language and simple formats to aid applicants, licensees and others in using them. Lists of options with check boxes (with options for “other”) and space for descriptions will be useful. This is also an opportunity to monitor performance of MLME Officers, who should “sign off” at the bottom of each form if they provided assistance in their completion.

The list of proposed schedules and their contents include:

Schedule	Purpose	Main Contents
<b>Schedule One: Class C Work Program</b>	<ul style="list-style-type: none"> <li>▪ Meet MML EMP Requirements.</li> <li>▪ Outline and promote comprehension of working obligations.</li> <li>▪ Provide a simple-to-follow guide for Compliance Monitoring.</li> </ul>	<ol style="list-style-type: none"> <li>a. Particulars of Licensee</li> <li>b. Site Details</li> <li>c. Mining Methods</li> <li>d. Processing Methods</li> <li>e. Environmental Management Plan</li> <li>f. Health, Safety and Labour Provisions</li> <li>g. Signature of Commitment</li> <li>h. Signature of MLME Officer.</li> </ol> <p><i>See Attached Example.</i></p>
<b>Schedule Two: Application to Surrender a License</b>	<ul style="list-style-type: none"> <li>▪ Provides a simple fill-in-the-box template to apply for surrender of a License</li> </ul>	<p>A simple statement requiring filling in the blanks and a dated signature by the Licensee and Mine Manager. For example:</p> <p><i>I <u>  [name]  </u> holding Class C License No. <u>  [lic. #]  </u> hereby express my intent to surrender this license as of <u>  [date]  </u>.</i></p>
<b>Schedule Three: Application to Extend a License Term</b>	<ul style="list-style-type: none"> <li>▪ Enables Renewal of a License (which implies re-granting of a concession) but does not contravene PPCA.</li> <li>▪ Provides a simple fill-in-the-box template to apply for Renewal.</li> <li>▪ Requires resubmission of a new Work Program (<i>Note: this may change very little, but supports re-review of obligations by Licensee</i>).</li> </ul>	<ol style="list-style-type: none"> <li>a. Particulars of License.</li> <li>b. Have any Inspections been conducted on your License within the past 12 months? (Y/N). If yes:</li> <li>c. When and who did the inspection (leave option for “don’t know”) <ul style="list-style-type: none"> <li>▪ If yes, check any infractions below that apply to you and how they were mitigated. Indicate if you had difficulty mitigating some infractions and why. (<i>Include list of options to check Y/N and space for description if needed</i>)</li> <li>▪ If yes, did you receive advice from an MLME Officer on how to mitigate these infractions? (Y/N). If yes, was this assistance not useful, somewhat useful, useful or very useful. (<i>allow for comments</i>)</li> </ul> </li> <li>d. Have all Working Obligations of Section 6 of the Regulations and the Previous Work Program been met? (<i>Include list of options to check Y/N and space for description</i>).</li> <li>e. Have you attached a new Work Program? (Y/N)</li> <li>f. What are main differences between your previous and new Work Program? (<i>List check box options and leave space for “other” and “comments”</i>)</li> <li>g. Did you receive assistance in completing this form? (Y/N). (<i>If yes leave space for name and signature.</i>)</li> <li>h. Name and Dated signature of Licensee or Mine Manager</li> </ol>

Schedule	Purpose	Main Contents
<b>Schedule Four: Quarterly Reporting Requirements</b>	(j) Monitor status of work, assess performance of Licensee and MLME and aid in compilation of national and local ASM statistics.	<p>a. Particulars of License.</p> <p>b. Reported Production in the Quarter.</p> <p>c. Number of workers active in Month 1, 2 and 3. (each by male/female).</p> <p>d. Number of active pits ____ and/or underground tunnels ____ at time of reporting.</p> <p>e. Number of inactive pits ____ and/or underground tunnels ____ at time of reporting.</p> <p>f. Have steps been taken to safely close inactive pits and or tunnels? (Y/N). Brief outline of what has been done (if measures not yet started, should include description of what will be done and when).</p> <p>g. Number of accidents causing death: ____ [<i>Describe with response measures taken</i>].</p> <p>h. Number of accidents causing injury: ____ [<i>Describe with response measures taken</i>].</p> <p>i. Have you received any advice, training or assistance in completing any forms from an MLME Officer in the past 12 months? (Y/N). If yes:</p> <ul style="list-style-type: none"> <li>▪ Who provided the advice (<i>leave option for “don’t know”</i>)</li> <li>▪ What type of advice/training/assistance was provided. (<i>Include list of options to check Y/N and space for description</i>)? <i>Have a parallel column for each indicating (circle one) not useful, somewhat useful, useful or very useful.</i></li> <li>▪ Any other related comments.</li> </ul> <p>j. Do you intend to change or have you changed any of the mining and processing methods described in your work program? (Y/N) (<i>If yes please explain. Significant changes may require a Revised Work Program</i>)</p> <p>k. Did you receive assistance in completing this form? (Y/N). (<i>If yes leave space for name and signature.</i>)</p> <p>l. Name and Dated signature of Licensee or Mine Manager</p>
<b>Schedule Six: Fees</b>	<ul style="list-style-type: none"> <li>▪ To ensure costs associated with licensing are reasonable and accessible given the constraints facing the majority of Liberian miners and mine workers.</li> </ul>	<p>Note: As Fees for Application cannot be specifically prescribed and the Work Program shall accompany the application, no “application fee” exists, per se, according to the Regulations.</p> <p>a. Work Program Review and Processing = 10 USD</p> <p>b. Certificate of Work Program Approval = 50 USD + 5 USD/acre</p> <p>c. 1-year Extension of Work Program = 50 USD + 5USD/acre</p> <p>d. Preparation of Mine Managers Identify Card = 10 USD</p> <p>e. Transfer of a License = 20 USD</p>

A sample for Schedule One: Work Program follows.

## Schedule One: Class C Work Program

### Note to Licensees and Mine Managers:

1. You have the right to receive assistance in completing this form from an Officer of the Ministry of Lands, Mines and Energy authorized by the Minister to do so. Also see the Class C License Guidelines for step-by-step assistance.
2. Any information provided on this Schedule may be verified by Mines Inspectors or other Authorized MLME Officers at any time while the license is valid. If the information provided herein is proven to be untrue, the Licensee may be held in non-compliance which may result in cancellation of the License.
3. Sections A and B are used to ensure that issues identified in Sections C, D and E are appropriate to your site. In some cases, your Work Program may change as mining progresses and should be indicated on Quarterly Reporting Forms.

<b>Class C License No.:</b>	<b>Official Reference No.:</b> <i>(To be filled by MLME)</i>		
<b>Name of Licensee:</b>	<b>Name of Mine Manager:</b>		
Telephone No. <i>(if available):</i>	Telephone No. <i>(if available):</i>		
Is this a Cooperative? <input type="checkbox"/> Yes <input type="checkbox"/> No If Yes, provide name of authorized representative:	Number of years experience in mining: <input type="checkbox"/> Years	Number of years experience in the License Area: <input type="checkbox"/> Years	
Telephone No. <i>(if available):</i>			
<b>Address:</b>	<b>General Description of License Location:</b> <i>(E.g. distance to nearest village, rivers, forests, highways or other landmarks near to or within the License Area)</i>		
<b>District:</b>			
<b>County:</b>			
<i>(Leave blank if not known. Will be filled by the MLME Officer reviewing your Work Program)</i>			
<b>Mining District::</b>	<b>Mining Zone:</b>	<b>Mining Agency:</b>	
<b>Mineral of Interest</b> <i>(circle all that apply):</i>	Diamonds	Gold	Other <i>(please specify):</i>
<hr/>			
<b>Section A: General Information about Land Owners and Occupants of the License Area:</b>			
1. Are villages, houses, farms or crops located within your license area?	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Possible
2. Will your mining activities disturb any homes, houses, land or crops?	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Possible
3. If yes, have you come to agreement with all land owners (if not GOL) or land occupiers whose houses, land or crops may be disturbed about terms of compensation? If no or not yet, explain why:	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Not Yet

**Section B: Mining (Ore Extraction) Activities**

*(Note: The Law prohibits “mining employing large scale, heavy duty or earth moving equipment” on a Class C License. Use of this equipment shall result in Termination of the License).*

1. Will your operation be (circle one):	Open Pit	Underground	Both
2. Where will extraction activities take place? (check all that may apply)	<input type="checkbox"/> In a river, stream or lake. <input type="checkbox"/> Next to a river, stream or lake. <input type="checkbox"/> On land	<input type="checkbox"/> In a forest. Please provide name of forest(s): _____	
3. What type of tools and equipment will be used for extraction? (check all that may apply)	<input type="checkbox"/> Sledgehammers <input type="checkbox"/> Iron bars or pry bars. <input type="checkbox"/> Shovels/spades <input type="checkbox"/> Jackhammers or concrete breakers <input type="checkbox"/> Other (please specify):	<input type="checkbox"/> Water pumps <input type="checkbox"/> Wheelbarrows. <input type="checkbox"/> Buckets and basins <input type="checkbox"/> Pulleys and winches	

**Section B: Mining (Ore Extraction) Activities**

*(Note to Reviewers of this Report: although most ASM activities are limited to alluvial or colluvial materials at present, particularly if interest in gold mining increases, artisanal miners may begin to recover coarse gold associated with quartz, even in highly weathered material. Thus, this section necessarily leaves the door open for some crushing and grinding).*

1. What type of equipment will the operation use to process and recover your mineral(s) of interest? (check all that may apply)	<input type="checkbox"/> Small hammers <input type="checkbox"/> Grinding stones <input type="checkbox"/> Manual Jigs <input type="checkbox"/> Mechanized Jigs. <input type="checkbox"/> Sluice boxes. <input type="checkbox"/> Grease Tables <input type="checkbox"/> Crushing and grinding machines (please specify type and size):  <input type="checkbox"/> Other (please specify):	<input type="checkbox"/> Basins, pans or bateas <input type="checkbox"/> Shaking Tables <input type="checkbox"/> Amalgamation of gold with mercury <input type="checkbox"/> Retorts (gold mining only) <input type="checkbox"/> Water pumps. <input type="checkbox"/> A Generator
2. Where will mineral processing activities be located in working areas on your License? (check one option from each column)	<b>Distance to the nearest river, stream or lake:</b> <input type="checkbox"/> In the water or on the shore. <input type="checkbox"/> 0 – 5 metres away <input type="checkbox"/> 6 – 10 metres away <input type="checkbox"/> More than 11 metres away	<b>Distance to open pit or underground workings:</b> <input type="checkbox"/> In the pit or underground. <input type="checkbox"/> 0 – 5 metres away <input type="checkbox"/> 6 – 10 metres away <input type="checkbox"/> More than 11 metres away

## Section C: Environmental Management Programs

### 1. Water and Tailings Management

(a) Indicate the source of water the operation intends to use for mineral processing: *(check all that may apply)*

River, stream or lake.       Spring water.  
 Borehole       Other (please specify):  
 Rainwater collection

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(b) Will the operation divert water from a river, stream or lake using a dug channel or trench?       Yes     No     Maybe

---

(c) Will the operation include construction of a water impoundment or basin to contain water?       Yes     No     Maybe

---

(d) After processing, where will tailings (fine sand and waste material) and process water be discharged? *(check all that may apply)*

Back to the river, stream or lake.       In an abandoned or un-used pit.  
 Into a dug basin or natural depression on land       Other (please specify):  
 Onto open land

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(e) Based on responses above, indicate commitment to fulfill the following obligations: *(check only those that apply)*. Use general criteria in the Class C Guidelines and/or in consultation with an MLME Officer to help you fill in blanks and respond. The Licensee shall ensure:

(i) Any water is not taken from a river, stream or lake for use in the operation in quantities that will deprive downstream water users of sufficient supply of water.

(ii) A river or stream is never completely dammed or blocked.

(iii) Tailings and process water are discharged to a simple sedimentation pond with an opening on the downstream side to release excess water. This shall be a dug basin or natural depression with dimensions of \_\_\_ metres deep, \_\_\_ metres wide; and \_\_\_ metres long with a water outlet located on the downstream side. If the level of tailings reaches within \_\_\_ metres of top of the embankment, an additional pond will need to be dug. If full, no additional tailings should be discharged to the pond as it may break the embankment.

(iv) In the case of gold mining and if mercury is used, amalgamation is never conducted within a natural water body, all Mine Workers use a retort and gloves during amalgam burning and waste containing mercury is kept in a separate location such that it cannot enter any natural water body.

(v) If work has ceased in a given area of a License or if the License is terminated, suspended or has expired:

- Any blockages placed in water bodies for the purpose of redirecting water are removed and the point where water enters a diversion channel or trench is blocked to a degree that stops the natural water from entering the trench using stable materials (rocks, packed soil) of no less than 0.5 metres and to an adequate thickness such that it is unlikely to be later eroded, even in the rainy season.
- If diversion trenches exceed 0.5 metre deep, trench walls are pushed in and diversion trenches or channels are backfilled with waste rock (if available) followed by overburden/soil so that trench depth does not exceed 0.3 m.
- The point where water or waste discharges to a river, stream or lake is closed off using stable materials (rocks, packed soil) and to a sufficient extent that it is unlikely to be later eroded, even in the rainy season.

## 2. Overburden, Waste Rock and Ore Management

(a) Will overburden be excavated in the course of mining?  Yes  No  Maybe

(b) Will waste rock be excavated in the course of mining?  Yes  No  Maybe

(c) Will ore need to be stockpiled before processing in the course of mining?  Yes  No  Maybe

(d) Based on responses above, then indicate commitment to fulfill the following obligations: (*check only those that apply*). Use general criteria in the Class C Guidelines and/or in consultation with an MLME Officer to help you fill in blanks and respond to questions. The Licensee shall ensure:

- (i) All large bushes and trees overlying the area of intended excavation are removed before digging commences.
- (ii) Overburden, soils and vegetation are stockpiled separately from waste rock and ore stockpiles.
- (iii) If work has ceased in a given area of a License or if the License is terminated, suspended or has expired:
  - Waste rock, if available, is backfilled into the bottoms of open pits and/or trenches, followed by backfilling of overburden to promote vegetation regrowth. This shall be done in conjunction with provisions in Section D.
  - Level any remaining stockpiles to a reasonable extent and so their height is a maximum of 3 metres.

## Section D: Health, Safety and Labour

### 1. Safety of Open Pits and Underground Workings

(a) Based on whether the operation will be based on open pit or underground mining or both, then indicate commitment to fulfill the following obligations: (*check only those that apply*). Use general criteria in the Class C Guidelines and/or in consultation with an MLME Officer to help you fill in blanks and respond. The Licensee shall ensure:

- (i) Work is halted and affected excavations are evacuated immediately in the event of rapid water inflow or signs of ground movement until the excavation is drained and/or stabilized.
- (ii) In the case of open pit excavations, once an excavation depth reaches \_\_\_\_ metres, benches of \_\_\_\_ metres wide and \_\_\_\_ metres high are dug into the walls of the pit.
- (iii) In the case of open pit excavations, overburden is stripped at least 3 metres back from the edge of the open pit wall.
- (iv) In the case of open pit excavations, overburden is never undercut.
- (v) In the case of open pit excavations, stockpiles of ore and/or stockpiles of overburden and vegetation are located *no less than* 10 metres from the edge of the open pit wall and the river, stream and lake and with maximum stockpile heights not exceeding 5 metres.
- (vi) In the case of underground excavations, in areas where rock or soil is weak, supports comprised of timber or other competent materials must be used to stabilize walls and roofs of shafts and tunnels.
- (vii) In the case of underground excavations, collars of timber, sand bags or other competent materials are constructed around all openings/entrances.
- (viii) In the case of underground excavations, a shade is constructed to direct water away from the entrance.

## 2. General Safety and Health

(a) Indicate commitment to fulfill the following obligations (*check only those that apply*). Use general criteria in the Class C Guidelines and/or in consultation with an MLME Officer to help you fill in blanks and respond. The Licensee shall ensure:

- (i) A Mine Manager holding a valid photo identification card or his/her designee are on-site and within the areas of active Work at all times during working hours.
- (ii) All Mine Workers are provided with and use reasonable personal protective equipment (PPE) appropriate to their tasks and functions.
- (iii) Children under the age of 16 years are prohibited from Work at the operation.
- (iv) In the case of gold mining and if mercury is used, women of childbearing age and children are prohibited from handling mercury or being within 10 metres of any area where and while amalgam burning is taking place.
- (v) In the case where more than 10 Mine Workers are active in a given site for a duration of more than 30 days, a minimum of one pit latrine or toilet and basic handwashing station (jerrycan or bucket) is installed.
- (vi) In the case of an accident causing injury on the work site, Mine Workers are provided with adequate and prompt medical treatment at the cost of the Licensee.
- (vii) In the case of a major accident, inclusive of a tunnel or shaft collapse, pit wall failure or other event that poses an imminent risk to human life, the affected area is immediately evacuated until the situation is rectified, with the exception of any reasonable and safe measures undertaken to rescue affected Persons.
- (viii) Any fatality of a Mine Worker or other Person that occurs in the course of, or as a consequence of, mining activities and infrastructure of the mine (open pits, equipment etc) are immediately reported to the nearest Authorized MLME Officer.

## 3. Labour

(a) Indicate commitment to fulfill the following obligations: (*check only those that apply*). Use general criteria in the Class C Guidelines and/or in consultation with an MLME Officer to help you fill in blanks and respond. The Licensee shall ensure:

- (i) Terms of work and payment are clearly agreed between the Licensee/Mine Manager and every Mine Worker prior to commencement of their work on the License Area and every Mine Worker should be able to expressly state these terms at any given time and terms are complied with throughout the License term.
- (ii) Women and men engaged in the same functions receive equal treatment with respect to negotiated terms of employment.
- (iii) Verbal and physical abuse in the work place is prohibited. In the event that the Mine Manager is a perpetrator of verbal and physical abuse, Mine Worker(s) should be free to report incidences to Licensee without repercussions to the Mine Worker(s).
- (iv) Drugs and alcohol are prohibited from the work site(s) and any Mine Manager or Mine Worker under the influence of drugs and alcohol is immediately sent away from the site until the following day.
- (v) Any Mine Worker is free to resign at any time, provided notice is given in accordance with agreed upon terms.
- (vi) The contents of the Work Program are reviewed with all Mine Workers, including within the first 3 days of commencement of work on a License Area and again on a quarterly basis.

I, \_\_\_\_\_, hereby affirm that all information provided herein has been  
*Name of Licensee or Cooperative Representative*  
provided to the best of my knowledge and shall ensure all commitments shall be fulfilled as indicated  
herein.

\_\_\_\_\_  
*Signature*

\_\_\_\_\_  
*Date*

Did any MLME Officer provide you with assistance in preparation of this Work Program?  
If yes, the officer should complete the section below:

\_\_\_\_\_  
*Name of MLME Officer*

\_\_\_\_\_  
*Signature*

\_\_\_\_\_  
*Date*

The Licensee shall submit the completed Work Program to the Minister for review together with:

1. One copy of the Clearance Form provided by the Mining Agent responsible for its completion.
2. One copy of the Application for Class C License.
3. Two Passport Sized Photos of the Mine Manager.

A copy of this Work Program should be retained by the Licensee and Mine Manager and produced in the event the License Area is subject to inspection by an Authorized MLME Officer.

# ANNEX THREE: TERMS OF REFERENCE

## ARTISANAL AND SMALL-SCALE MINING EXPERT MINISTRY OF LANDS, MINES, AND ENERGY

### 1. Background

The United States Government has been making major contributions to Liberia's security, governance, reconstruction and development endeavours within the policies proclaimed by the Government of Liberia's Liberian Development and Reconstruction Program and the Government's Poverty Reduction Program. In particular, USAID is assisting the Government of Liberia (GOL) in improving economic governance and financial management by contracting IBI International (IBI) to implement the Governance and Economic Management Assistance Program (USAID GEMAP).

USAID GEMAP is in its final year of a four year project that is scheduled for completion on September 30, 2010. USAID GEMAP provides technical assistance to the following Government of Liberia institutions: General Services Administration (GSA), the Ministry of Lands, Mines, and Energy (MLME), the Ministry of Planning and Economic Affairs (MPEA), the Ministry of Finance (MOF), the National Port Authority (NPA), the Ministry of Public Works (MPW), the Monrovia City Corporation (MCC), and the Liberian Institute for Public Administration (LIPA), in collaboration with which USAID GEMAP conducts a financial management and IT capacity building program. USAID GEMAP long term and short term advisors work in close collaboration with assigned counterparts on a daily basis, which has been a major factor in achievements to date.

### 2. Rationale

The Republic of Liberia has a significant known mineral resource endowment that could make an important contribution to the reconstruction of the country, and sustainable growth and development. This can only occur if the resources are well-managed through the establishment of a minerals governance regime that optimizes the developmental economic linkages.

Within the minerals sector, the Minerals and Mining Law, MMA, and the Environmental Protection Agency, EPA, provide an important first step in building a minerals governance regime that facilitates sustainable broad-based growth and development. However, these instruments require to be supported by regulations and an adequate institutional capacity as well as a properly deployed human capital base for effective implementation and efficient administration.

The draft Mineral Policy of Liberia states the following vision, "*Equitable and optimal exploitation of Liberia's mineral resources to underpin broad-based sustainable growth and socio-economic development*". One of the aims of this Mineral Policy is to achieve, "a sustainable and well-governed mining sector... that is safe, healthy, gender & ethnically inclusive, environmentally friendly, socially responsible and appreciated by surrounding communities". The Government objective that is particularly relevant to artisanal and small-scale mining states, "...regularize and improve artisanal and small scale mining activities in order to enhance the potential to create employment, generate income and help reduce poverty in the rural areas...".

There is a sizeable ASM sector in Liberia. The commodities exploited at this scale include diamonds, gold and industrial minerals. The framework that currently governs the mining sector in Liberia includes a special license targeting ASM. The history of the sector is marred by association with years of civil strife in Liberia itself and also other Mano River States. This association with civil strife is particularly true for artisanal diamond mining. The ASM sector also has great challenges including environmental degradation, unhealthy and unsafe practices, gender discrimination, use of child labor, unviable operations due to lack of capacity, illegality etc. In addition the interface of artisanal mining activities with large-scale mining companies is often a source of conflict.

In order to address the above issues and achieve its goal of, "...development of sustainable ASM operations and communities..." the Government of Liberia has been working on developing an appropriate ASM regime. The premise of this regime is that an ASM sector that is well regulated and supported has the potential to provide livelihoods to many rural communities. An integrated approach will be required to address issues related to viability and sustainability such as access to, finance technology & equipment, technical expertise and capacity building through organization for advocacy and skills transfer.

In 2009, USAID GEMAP fielded an ASM consultant to develop an ASM regulatory framework for Liberia. The consultant produced a draft of Class C (ASM) Mining Regulations. Subsequent to the completion of this assignment, two important changes have occurred. One is the establishment of a functioning Mining Cadastre Information Management System (MCIMS), and the second is the finalization of the National Mineral Policy, currently awaiting cabinet approval. Neither of these was present in 2009 at the time the consultant completed the assignment, and both of these are important factors affecting the ASM regulatory framework. Given the important economic and social significance of the ASM sector, there is a need to update the work that the ASM consultant performed in 2009, in light of the recent developments in the sector. The ASM Expert proposed in this TOR will be expected to make recommendations not only on the adequacy of the proposed Regulations to meet the Liberian ASM objectives and strategies but also to make firm recommendations on how they can be modified for improved and sustainable implementation.

### **3. Objectives**

To review the draft Class C Mining Regulations against their appropriateness as instruments for meeting the following objectives:

- Optimize the contribution of the ASM sector to growth, broad-based development and poverty alleviation
- Minimise negative social, economic and environmental outcomes, through the development of an appropriate ASM Regime for Liberia

### **4. Supervision and Coordination**

USAID GEMAP Chief of Party will be the ASM Expert supervisor. The Expert will be under the technical supervision of the USAID GEMAP Minerals Concession Expert (MCE).

### **5. Scope of Work**

The Expert will review the existing ASM framework in Liberia which will assist in reviewing the recommendations for the proposed ASM regulatory framework. This review will be accomplished in coordination with the USAID GEMAP MCE, the technical staff of the MLME, Geological Survey Department, and others as needed. The Expert will be guided in his/her work by the USAID GEMAP MCE and representatives of the MLME. More specifically, the Expert will perform the tasks outlined below.

#### Tasks:

Review existing literature on the ASM sector in Liberia, including the regulations and recommendations proposed by the previous assessments conducted by the ASM consultant USAID GEMAP fielded in 2009

- Review existing mining policies, laws and regulations, with a particular focus on ASM, including policies and laws such as the Kimberley Process Certification which directly or indirectly impact on ASM
- Conduct a diagnostic review of the draft Class C Mining Regulations and propose any necessary amendments
- Prepare a report of the revised Class C Mining Regulations for Liberia detailing the recommended changes to the draft regulations and their implementation and any other support structures required for sector

Deliverables:

A Final Report including:

- (a) Recommendations based on best practice for the revised Class C Mining Regulations
- (b) Proposed amendments to the Draft Class C Mining Regulations that were prepared in 2009 for the ASM sector in Liberia
- (c) Proposed amendments to the Minerals and Mining Act to ensure that the proposed Class C Mining Regulations are within the purview of the governing mining law
- (d) Steps required to implement the revised Class C Mining Regulations

The Deliverables shall be submitted to USAID GEMAP MCE using MS Office XP (electronic copies are acceptable) and shall be approved by the MCE and his MLME counterpart.

**6. Contracting Authority**

IBI International is the contractor implementing the USAID GEMAP, funded by USAID.

IBI International Home Office:

2101 Wilson Blvd. Suite 1110  
Arlington, VA. 22201

IBI International GEMAP Field Office:

UN Drive, Next to La Pointe Restaurant, Monrovia, Liberia

**7. Level of Effort**

A maximum total level of effort of 19 workdays, including travel days, is allocated for the completion of the tasks described.

**8. Location Of Assignment**

The Expert will be based at the MLME offices and the USAID GEMAP offices in Monrovia, Liberia, and travel upcountry as necessary.

**9. Qualifications**

- Advanced degree in geology or mineral sciences/engineering with adequate background and experience in artisanal and small-scale mining
- Eight to ten years international professional experience in the development and management of ASM sector
- Experience with similar assignments notably in fragile states
- Excellent analytical skills
- Fluent in English, computer literacy, and excellent reading, writing, and communication skills

## REFERENCES

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- <sup>1</sup> Siegel, S., 2008, *The Needs of Miners: Political Ethics, Mercury Abatement, and Intervention in Artisanal Gold Mining Communities*, PhD Dissertation, University of British Columbia, 226p.
- <sup>2</sup> Hinton, 2009, *National Strategy for the Advancement of Artisanal and Small Scale Mining*, Unpublished Report to Ministry of Energy and Mineral Development, Kampala, Uganda, 142p.
- <sup>3</sup> Ibid.
- <sup>4</sup> MLME, 2009, *Strategy for Eradication of Illicit Miners*, Unpubl. draft report. and Government of Liberia, 2008, *Poverty Reduction Strategy*, 190p.
- <sup>5</sup> Gamiao Wallace, C. and Lepol, R.J., 2008, *Poverty and Social Impact Assessment and Strategy Formulation on Artisanal Diamond Mining Reform in Liberia: Diamonds for Development Program*, Report to UNDP, 160p.
- <sup>6</sup> Director, MLME Personal Communication and UNDP, 2003
- <sup>7</sup> Pelon, R., 2005, *Guidance Note: Formalizing Artisanal and Small Scale Mining Activities, Global review and comparative analysis of mining codes and policy approaches towards ASM, BRGM*, 71p.
- <sup>8</sup> Mutemeri, N., 2009, *Liberia Artisanal and Small Scale Mining Regime: A Report*, Report to the Republic of Liberia, Ministry of Lands, Mines and Energy, 40p.
- <sup>9</sup> Hinton, J., 2002, *Organization and Institutionalization of Artisanal Miners: The Case of Itaituba, Brazil*, Unpubl. Report to IDRC/CETEM, 51p.
- <sup>10</sup> Gamiao Wallace, C. and Lepol, R.J., 2008, *Poverty and Social Impact Assessment and Strategy Formulation on Artisanal Diamond Mining Reform in Liberia: Diamonds for Development Program*, Report to UNDP, 160p
- <sup>11</sup> Ibid. p. 21.
- <sup>12</sup> Hinton, J., 2009, *National Strategy for the Advancement of Artisanal and Small Scale Mining in Uganda*, Unpublished Report to Ministry of Energy and Mineral Development, Kampala, Uganda, 142p.
- <sup>13</sup> Priester, M., 2010, Personal Communication
- <sup>14</sup> International Mining Journal.
- <sup>15</sup> Hinton, J., 2009, *National Strategy for the Advancement of Artisanal and Small Scale Mining in Uganda*, Unpublished Report to Ministry of Energy and Mineral Development, Kampala, Uganda, 142p.
- <sup>16</sup> Ibid.
- <sup>17</sup> Ibid.

## **DISCLAIMER**

- This report contains detailed recommendations for revised Class C Regulations and seeks to provide guidance on viable future legal and institutional reforms. Whilst reasonable precautions have been undertaken to verify the information contained herein, all estimates have been developed based on what is believed to be the best information available and this report is submitted to IBI International Ltd. and MLME with no expressed or implied warranty.
- The views expressed herein do not necessarily represent the stated policy or decisions of USAID, IBI International Ltd. and MLME and this report therefore does not constitute a position statement or commitment to its implementation.



For more information, please visit  
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