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# PROPERTY RIGHTS AND ARTISANAL DIAMOND DEVELOPMENT PILOT PROGRAM

CONSULTANT REPORT ON NATIONAL WORKSHOP ON  
PROPERTY RIGHTS IN MINING AREAS AND ALLUVIAL  
DIAMOND CHAIN OF CUSTODY : CENTRAL AFRICAN  
REPUBLIC

**JULY 2-3, 2007**

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



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# ACRONYMS AND ABBREVIATIONS

BECDOR	<i>Bureau d'Expertise Centre-Africaine en Diamond et d'Or</i>
CAR	Central African Republic
DAPM	National Direction for Promotion of Mining Production
DCIFM	National Direction for Commercialization, Industry, and Mining Records
DPER	National Direction for Programming, Studies, and Research
GoCAR	Government of Central African Republic
EU	European Union
KP	Kimberley Process
KPSC	Kimberley Process Certification Scheme
NRM	Natural Resource Management
PRA	Participatory Rural Appraisal
PRADD	Property Rights and Artisanal Diamond Development Pilot Program
RAISE	Rural and Agricultural Incomes with a Sustainable Environment
USAID	United States Agency for International Development

# PREFACE

The Kimberley Process (KP) and its supporting certification system (KPCS) came into effect in January 2003. The effort aims to control the flow of rough diamonds into and within international markets. While generally deemed successful by the industry and cooperating countries, the KPCS has failed to come to grips with a huge proportion of diamond mining in alluvial producer countries. The small-scale and itinerant character of alluvial diamond mining makes it particularly difficult for governments to exercise effective monitoring and regulation of this sector, or to improve conditions in an often chaotic environment. Thus a significant portion of alluvial diamond mining activity remains unregulated and unregistered.

The core problem regarding alluvial diamond production and marketing in many African countries is best viewed as two dimensional:

1. Institutional capacity is insufficient to monitor the industry and to compile reliable information—and thus to ensure the integrity of KPCS.
2. The social and economic conditions of artisanal mining industry actors—particularly those at or near the mining sites—are poor; miners typically have little tenure security and, as a result of their dependence on middle men for financing and marketing, capture only a small portion of the value of the diamonds they produce.

The Property Rights and Artisanal Diamond Development (PRADD) pilot program is addressing both dimensions of the core problem by building a model to demonstrate that by strengthening *property rights*: 1) alluvial diamonds will be brought into the formal chain of custody, and 2) local benefits from production and marketing of alluvial diamonds will increase.

PRADD is being implemented by ARD, Inc.

The PRADD initiative is the result of a special collaboration between the United States Agency for International Development (USAID) and the US Department of State. Dr. Gregory Myers, Senior Land Tenure and Property Rights Specialist, EGAT/Natural Resources Management/Land Resources Management Team, USAID, coordinates communications between ARD's PRADD project implementing team and US government officials in Washington, the USAID missions, and US embassies in the pilot countries. Carol Trimble, International Economist at the US Department of State, played the central role in ensuring that property rights become a focus in the context of KP problem analyses and solutions. Sue Saarnio, Special Advisor for Conflict Diamonds at the US Department of State, provided key support to developing a property rights approach.





# 1.0 INTRODUCTION

The Property Rights and Artisanal Diamond Development (PRADD) pilot project in the Central African Republic (CAR) was launched in April 2007. The project aims to identify and test methods for achieving clear, secure and publicly acknowledged rights to property, including mineral resources, at specific sites in CAR that are confirmed in publicly accessible records. Establishment of clear, fair and secure property rights at mining sites is a fundamental element of an institutional landscape that will reduce the risk of conflict, improve revenue distribution in favor of local populations and miners, mitigate environmental impacts by promoting longer-term investments on the part of local populations, provide a basis for monitoring of diamond production and trade, and more generally, channel diamond revenue more effectively into poverty alleviation and the national economy.

In an effort to define the baseline situation in CAR, one of PRADD's first activities was to undertake reviews of mining policy and of the legislation that regulates property rights to land and natural resources (forests, water) in diamond mining areas.

On July 2-3, 2007 PRADD organized a two-day workshop in Bangui to discuss and debate the preliminary results of the policy reviews with a view to facilitating identification by project partners of opportunities and constraints to strengthen the property rights of artisanal miners and improve alluvial diamond chain-of-custody information availability and management. Workshop themes were as follows:

- Day 1: *Property rights to land and natural resources in the mining areas of CAR*
- Day 2: *Issues in the alluvial diamond chain of custody in CAR*

The primary participants<sup>1</sup> at the workshop were agents representing all national directions of the General Direction of Mines, including all three national directors; the national land cadastre; the national ministry that includes the forest service; the *Brigade Minière*; and PRADD project staff. The Deputy Chief of Party of a forestry project (PARPAF) also attended. The resident representative of the European Union was invited but was unable to participate during the first day, although he participated in part of the morning session the following day. The US Embassy was also invited to attend the workshop, but elected to receive a private briefing on the event following its completion (the briefing was provided late on July 3) in lieu of sending a participant to the workshop.

Advance preparations for the workshop included:

- Preparation of three PowerPoint presentations:
  1. Introduction to property rights theory, concepts and model;
  2. Statutory policy and property rights to natural resources in CAR (based on the policy review noted above); and
  3. Statutory policy (mining code) defining and regulating the alluvial diamond mining chain of custody in CAR.
- A visit to BECDOR conducted on June 29, 2007 to collect information on government monitoring of the alluvial diamond chain of custody in CAR.

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<sup>1</sup> See Annex 1 for the complete list of workshop participants.

It should be noted that the policy review on statutory property rights to land and natural resources prepared prior to the workshop was considered to be incomplete pending presentation and discussion during the workshop. The policy review is now being completed on the basis of information collected during the workshop, including participant observations and corrections in response to a presentation of the policy review. The final review will also incorporate information from some policy documents previously unavailable or unknown to the consultant but provided by workshop participants including the final version of the Water Code of CAR, and an advanced draft version of a soon-to-be-adopted Forest Code. The policy review will be circulated under a separate cover from that of the present report.

## 2.0 WORKSHOP DAY 1: PROPERTY RIGHTS

The morning sessions focused on property rights theory, concepts and models. The “bundle of rights” concept was presented as part of a PowerPoint presentation and illustrated with examples from both African and Western societies. Property regimes—e.g., private, common, public and open access—were also presented and illustrated. Contrasts, similarities, overlaps and potential competition between customary and statutory property regimes were also explored. Small group work following the presentation provided an opportunity for exploration of the property rights themes from within the context of the mining sector of CAR.

The afternoon sessions moved away from property rights theory and focused on current CAR policy regarding property rights to land, trees, minerals and water. All of these resources are characterized by strong degrees of GoCAR ownership and management (although, as described in the workshop preparatory policy paper on property rights to natural resources, a process exists for the privatization of land, and property rights to minerals and trees may be awarded for specific periods to private entrepreneurs through licenses, permits and concessions). Customary use rights are also recognized in most of the natural resource legislation.

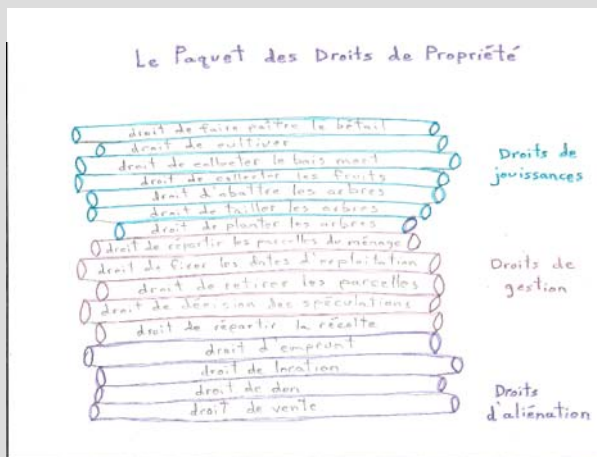
Small work group sessions were organized to provide the opportunity for participants to consider the property rights concepts and model within the policy- and field-level contexts of the mining sector in CAR. Participation in the small group work was lively and instructive, and remained so during the plenary sessions during which the small groups presented their work.

Among the most consistent and striking of the findings was the strong preference of workshop participants to prioritize exclusively statutory solutions to problems that currently plague the mining sector, including the perceived lack of effective management control over actors and the lack of viable information. The strong degree of state control and appropriation of natural resources expressed in land and natural resource legislation in CAR was strongly supported by workshop participants. While participants concurred that customary tenure and property rights systems remain dominant in the rural areas of CAR, they do not believe that this presents opportunities for progressing toward a system that more effectively manages and develops the mining sector. The principal reason provided for this preference was that statutory law is more standardized at the national level than are the disparate and regionally based customary systems.<sup>2</sup> Participants expressed considerably less interest in provisions contained in the various pieces of legislation that recognize specific use rights based on customary rules and systems than they did in the legal appropriation by the state of most land and forests, and all mineral and water, resources—the latter policy heartily condoned.

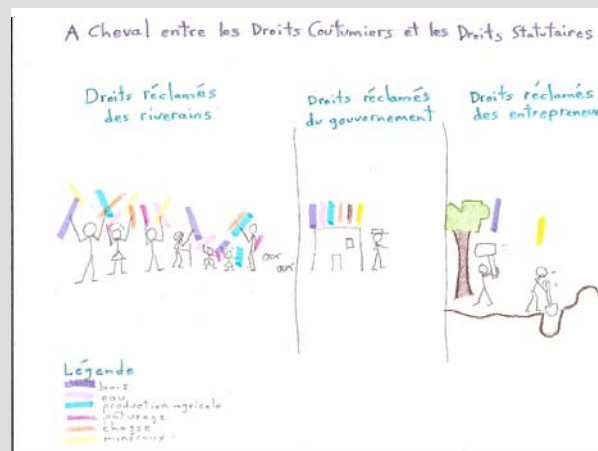
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<sup>2</sup> Interestingly, the enthusiastic support expressed by workshop participants regarding statutory property systems—to the detriment of customary systems—to some degree anticipated the weakness of the customary property rights system in the diamond mining zones of Bossoui village, as discovered during the participatory rural appraisal exercises described later in this report.

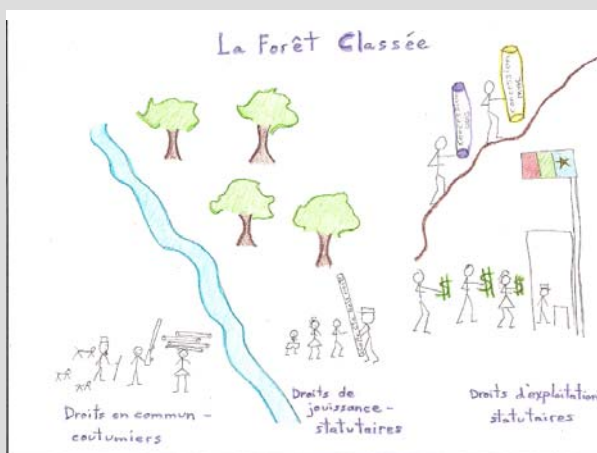
**FIGURE 1. SOME IMAGES INCLUDED IN THE PRESENTATION OF PROPERTY RIGHTS THEORY, CONCEPTS AND MODELS DURING THE “PROPERTY RIGHTS” SESSIONS OF THE NATIONAL WORKSHOP**



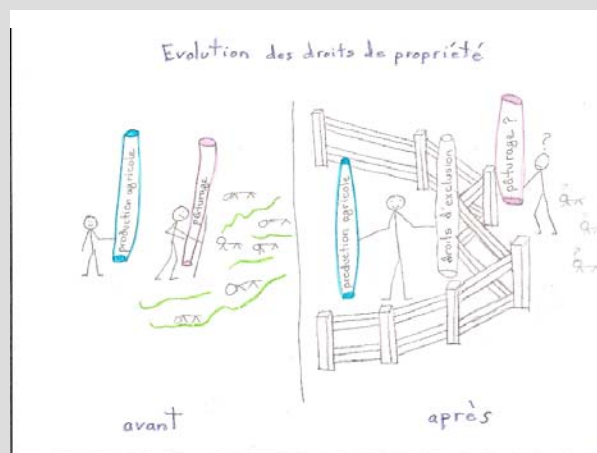
Panel 1



Panel 2



Panel 3



Panel 4

These images illustrate concepts such as: (Panel 1) the concept of a *bundle* of property rights; (Panel 2) the parallel—and sometimes competing—systems of customary and statutory rights in the context of Central Africa; (Panel 3) the juxtaposition of communal customary rights, statutorily recognized use rights and the fee-based licensing system for private forest and mineral exploitation in the context of a classified forest and its environs; and (Panel 4) the evolving nature of both customary and statutory property rights and property rights systems.

Although the property rights approach adopted by the PRADD pilot project had been puzzling to some project partners, by the end of the first day of the workshop it was clear that the property rights approach had become clearer. In particular, the problems associated with succumbing to a system of “open access” —or *non-property*—were clearly, in the eyes of workshop participants, something to be avoided in the interest of achieving effective development of the resource as well as its sustainable use. It was agreed that a system of clear property rights, defined as a system that effectively controls access and use of a resource—is both a laudable and useful goal. The debate thus turned to the relative merits of private, public and common property systems, with the consensus view (as earlier noted) being the superiority of the second of these three choices. Several of the participants at the property rights workshop—including some key agents within the General Direction of Mines—subsequently participated in the participatory rural appraisal (PRA) exercises conducted in one of the PRADD pilot sites. Through the implementation of PRA discussions and exercises, PRADD partners became increasingly familiar and conversant with the property rights approach, and clearly began to adopt it as a framework for their own thinking and analysis.

## 3.0 WORKSHOP DAY 2: CHAIN OF CUSTODY ISSUES

The second day of the workshop focused on chain-of-custody issues. This theme was treated in a similar manner to the property rights theme of the previous day: a presentation was given (by the PRADD program coordinator) of the mining code regulations regarding the monitoring system for diamonds from the production site (the mine) to point of export (BECDOR), followed by small group sessions and subsequent presentation during a wrapup plenary session.

In preparation for the policy review workshop, the PRADD team had collected key background material during a visit the previous week to the government agency, BECDOR, which controls the export of diamonds from CAR and is responsible for applying Kimberley Process regulations. During the visit, BECDOR's chief diamond evaluator, Bienvenu Ngaissona, had explained diamond export procedures in detail. A diamond export shipment being prepared on the same day had provided a useful case study. Among the findings of the visit:

- Once the diamonds have arrived at the level of BECDOR, security and control measures are stringent and apparently strictly adhered to. The diamonds being prepared for shipment had been wax sealed inside of a specially marked envelope and signed by BECDOR (for GoCAR), the KP representative (currently the national director of DCIFM), Air France and the *Brigade Minière*.
- The documentation provided by the diamond-buying houses (*maisons d'achat*) to BECDOR extends no farther back (in terms of the chain of custody) than to the most recent transaction, i.e., the transaction consisting of purchase of the diamonds by the buying house from the collector, artisan or cooperative.
- Records of the transactions completed by *diamond collectors* are submitted separately to BECDOR and on a different timetable. These records often arrive very late compared to the records provided by the buying houses. In theory, the records provided by diamond collectors trace the diamond to the production site, since the collector either purchased the diamonds at a specific production site, or purchased the diamonds from an intermediary (such as another collector) who should have provided the purchasing collector with bills-of-sale from earlier transactions. However, it was explained that diamonds are generally sold in batches and that with each successive transaction, the diamonds are re-sorted and mixed into new batches. Consequently it is usually impossible to accurately trace specific diamonds that have arrived at the point of export all the way back to the point of production.
- It is legally required that artisanal miners obtain and complete a *cahier de production* (production log), but these documents are not submitted to BECDOR, or to any other government agency. Instead, the production logs, conforming to the official model provided by the *Brigade Minière*, must be available at the site of production for inspection by the *Brigade Minière* as needed.
- It was said that there is a general and chronic problem of inadequate information sharing and coordination among DPER (mining licenses), DCIFM (mining records such as the dossiers of industrial mining companies as well as of artisanal miners) and BECDOR (export regulators). There

is currently no institutionalized methodology or system for coordinating the information managed by each of these national mining *Directions*—all within the General Direction of Mines within the Ministry of Energy, Mines and Hydraulics.

- In spite of the variation in their respective reporting cycles, the statistician for BECDOR reported that a comparison of records provided by collectors and exporting houses reveals a close correlation in the total amounts and values of diamonds produced.

Workshop discussions and small work group sessions confirmed the validity of the information obtained from BECDOR. In particular, they concurred that there is no effective system in place that would allow the tracing of the movements of diamonds between the mine and BECDOR. Reasons for this situation, as identified by the small work groups at the workshop, included a general lack of government resources to facilitate effective implementation of mining policies, and the failure of the *Brigade Minière* to play its assigned role. Solutions suggested by workshop participants included:

- Establishment of a specially trained agency—*la police minière*—to enforce mining policies;
- Provision of a higher level of financial and material resources to the Ministry of Mines; and
- Creation of a viable model for the collection of information that applies to all stages of the chain of custody.



**The PRADD program coordinator facilitates a working session on chain-of-custody issues in the alluvial diamond mining sector of CAR.**

## 4.0 AN ONGOING LAND CONFLICT IN A MINING ZONE

The workshop's discussion of issues in the alluvial diamond chain of custody gave rise to a debate regarding a current conflict that has unfolded near a PRADD pilot site<sup>3</sup> and that remains a hot topic among Ministry of Mines' officials. This anecdote is included here not only to illustrate the considerable challenges faced by the government in achieving effective application of existing mining policies, but an additional important observation regards the good faith efforts of the workshop participants—many of whom hold responsible positions within the General Direction of Mines—to analyze a current problem and to arrive at a statutorily valid conclusion.

The conflict pits a national mining company, GTRADE, against an artisanal mining cooperative, *Coopéramines*. Discussion and analysis of this conflict by workshop participants provided an opportunity to deepen understanding of how mining policy is interpreted and applied in CAR. This conflict, which opposes claimants of statutory rights, is particularly illuminating considering that the permit and license system implemented by GoCAR constitutes the leading tool for statutory award and recognition of the (defined-term) property rights of both artisanal and industrial actors to diamond mining sites in CAR.

Both the company and the cooperative claim mining rights near the hamlet of Bokoumba, located less than 20 kilometers from Bossoui along the Lobaye River. The ARD team, accompanied by the president of *Coopéramines*, had visited the site in March 2007.<sup>4</sup> At that time, *Coopéramines* showed PRADD staff an artisanal mining license (*Autorisation d'exploitation artisanale*) that apparently authorized mining operations in two 500m x 500m parcels: one along a branch of the river and the other away from the river in a “dry” zone. Also at that time, the cooperative maintained a team of artisanal miners and diggers in the field and was actively conducting mining operations. Some paperwork shared with PRADD staff members indicated that a modest number of moderately valuable rough diamonds from the site had been sold by the cooperative over the preceding two or three months.

The statutory claims to mining rights by GTRADE are reportedly based on acquisition of a prospecting permit to a wide area that includes the mining site of *Coopéramines*. Though GTRADE's mining operations are currently in a state of suspension imposed by the Government of CAR, in May 2007 the company, relying on private means, succeeded in forcefully removing *Coopéramines* from the area. Following this private eviction, the company proceeded to equip the site with a bulldozer, generators, water pumps, off-road vehicles and an armed guard (see *PRADD Sensitization at Pilot Sites: Summary Report for Activities Conducted June 5-8, 2007*, pp 4-5).

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<sup>3</sup> The specific site hosting this conflict, located approximately 20 kilometers from Bossoui, had previously been included within the PRADD pilot site area. When the conflict was discovered, PRADD elected, in consultation with USAID, to exclude the site from the pilot project.

<sup>4</sup> An earlier stage of this conflict was briefly described in a previous PRADD report: “PRADD Project Design Validation and Start-up Trip Report” (March 17-April 1, 2007), pp 32-33. See also, “PRADD Sensitization at Pilot Sites: Summary Report for Activities Conducted June 5-8, 2007,” pp 4-5).



The consensus view among the ministry agents participating in the workshop was that GTRADE had been actively engaged in *mining* operations, although the company had so far only obtained a *prospecting* permit—which does not legally permit the company to conduct mining operations (beyond the collection of “samples”). So GTRADE was rightfully (in the view of workshop participants) ordered to cease operations. Furthermore, the prospecting permit held by GTRADE was nonexclusive, meaning it had no right to forcibly evict any other individual or agency (such as *Coopéramines*) from the site. It was therefore widely agreed among workshop participants that GTRADE had no legal basis for evicting *Coopéramines* from the site, especially since the cooperative possessed the required mining permit.<sup>5</sup>

In spite of the consensus view expressed by workshop participants, firm conclusions regarding this land conflict remain elusive. Somewhat different interpretations of the conflict have been expressed in other settings (see footnote 5). The anecdote is included here as an example of the type of preoccupation of the moment that can, for a period of time, dominate the discourse of Ministry of Mines officials. This particular preoccupation dominated discussions for a lengthy period during Day 2 of the PRADD national workshop focusing on issues in the alluvial diamond chain of custody. The discussion illustrates the difficulties faced by the technical agents of the Ministry of Mines in their efforts to effectively implement existing mining policy—and in particular, the limited means at their disposal to do so.<sup>6</sup> But perhaps most importantly, this workshop debate illustrated the striking degree to which mining officials are willing to earnestly and enthusiastically debate the issues related to mining policy enforcement based on the knowledge available to them. The desire expressed at the workshop—to identify and apply a decisive conclusion based on statutory policy—was clearly evident.

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<sup>5</sup> One notes, however, that outside of the workshop discussions cited above, the conflict between GTRADE and *Coopéramines* appears to be less clear cut. For example, a reason other than the company’s failure to obtain a mining license is said by some to explain the company’s suspension. According to a highly placed source who was not present at the PRADD workshop, the suspension was placed on GTRADE and several other mining companies as part of a crackdown on companies that failed to submit quarterly reports in violation of current mining policies. It is also of interest that the same source expressed the opinion that the DPER, the department within the General Direction of Mines responsible for issuing mining permits and licenses, had made an error by issuing a license to *Coopéramines* in light of the fact that GTRADE had already an established “protocol” with the Ministry of Mines at the time the license was issued.

<sup>6</sup> Following eviction of *Coopéramines*, GTRADE successfully barred entry to the site to all outsiders—an interdiction that extended even to officials of the Ministry of Mines (some of whom were present at the workshop).

# ANNEX 1. LIST OF PARTICIPANTS AT THE PRADD NATIONAL WORKSHOP OF JULY 2-3, 2007

	NAME	TITLE	AGENCY	SUB-AGENCY	July 2	July 3
1	NGOBOKOTO François Alain	Mining Engineer	Ministry of Mines	General Direction of Mines		X
2	BANGOTO Richard Ricardo	Mining Engineer	Ministry of Mines	General Direction of Mines	X	X
3	FAVRY Elie	Domaine minier	Ministry of Mines	DCIFM	X	X
4	BENGBA Marie- Thérèse	Directrice	Ministry of Mines	DAPM	X	X
5	DOTHE Arnaud	Chef d Service de la Protection de l'Environnement	Ministry of Mines	DAPM	X	X
6	MAINDE Mathias	Mining Engineer	Ministry of Mines	DPER	X	X
7	MISSIGOR Jules	Expert Evaluator	Ministry of Mines	BECDOR	X	X
8	POIZONE Philippe	Expert Evaluator	Ministry of Mines	BECDOR	X	X
9	BEANGAI Nathan		Ministry of Mines	DPER	X	X
10	YOUANE Dominique	Secretary of the Kimberley Process/ Director of DCIFM	Ministry of Mines	DCIFM	X	X
11	GAHORO-DEALI Blandine Paulette	Chief of Service of Environmental Studies	Ministry of Water, Forests, Hunting, Fishing and the Environment	Environmental Studies	X	X
12	BABADI- YANGAKOLA Omer	Central Inspector	Ministry of Reconstruction of Public Edifices, Urbanism and Housing	Central Inspection / Land Cadastre	X	X
13	BINGABE Eugène	Chief of Service	Ministry of Reconstruction of Public Edifices, Urbanism and Housing	Central Inspection / Land Cadastre	X	X
14	MAIDOU Hervé- Martial	Deputy Chief of Project	PARPAF		X	X

	<b>NAME</b>	<b>TITLE</b>	<b>AGENCY</b>	<b>SUB-AGENCY</b>	<b>July 2</b>	<b>July 3</b>
15	NAMBEAM Isaac	Gendarme First Class	Brigade Minière		X	
16	MALIZOKAMA Jean-René	President	Coopéramines		X	X
17	KONLAYOUM Ismaila	Advisor to the President	CMBDM Cooperative	UNCMCA (member)	X	X
18	MILKO Van Gool	Advisor (Local Representative)	European Union			X
19	MACKET Parfait	Socio-economist	ARD		X	X
20	NDEROUMTATE Jeannot	Consultant / Program Coordinator	ARD		X	X
21	ELBOW Kent	Consultant	ARD		X	X
22	MULLEY Brad	Chief of Party	ARD		X	X

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