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The need for case-by-case solutions: lessons learned from land tenure regularization and land tenure certification programs in countries with characteristics similar to Haiti

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Land Tenure and Property Rights Issues and Best Practices Workshop

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First – what do we mean by “Countries with characteristics similar to Haiti”?

Shared characteristics:

- Poverty
- Political and social instability
- Weak land governance
- Informal customary land tenure rights and management
- Smallholder agriculture
- Challenging migration patterns
- Demographic pressure and increasing scarcity of agricultural land

But there are also key differences:

- Land tenure policies and laws
- Social and political histories
- Regional influences
- Economies
- Traumatic events (natural disasters, wars, coups d'état...)
- Demographic patterns



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An example from Central African Republic

Targeting transparency and improved property rights
governance in the artisanal diamond mining sector:
Property Rights and Artisanal Diamond Development*
(PRADD) Project

***Financed and implemented by USAID**



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Targeting transparency and improved property rights governance in the artisanal diamond mining sector:

The Property Rights and Artisanal Diamond Development (PRADD) project targets local development while extending and consolidating implementation of the Kimberley Process – particularly by achieving transparency in the diamond marketing chain from mine to export

The Kimberley Process (KP) is a joint governments, industry and civil society initiative to stem the flow of conflict diamonds – rough diamonds used by rebel movements to finance wars against legitimate governments (from KP website).



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PRADD BASELINE QUESTIONS:

Who are these people?





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Do they have the right to dig for diamonds?





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Does the government receive revenues from their diamond sales?





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Is it known how many diamonds are produced? Who buys the diamonds? For how much?





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What are the environmental costs?



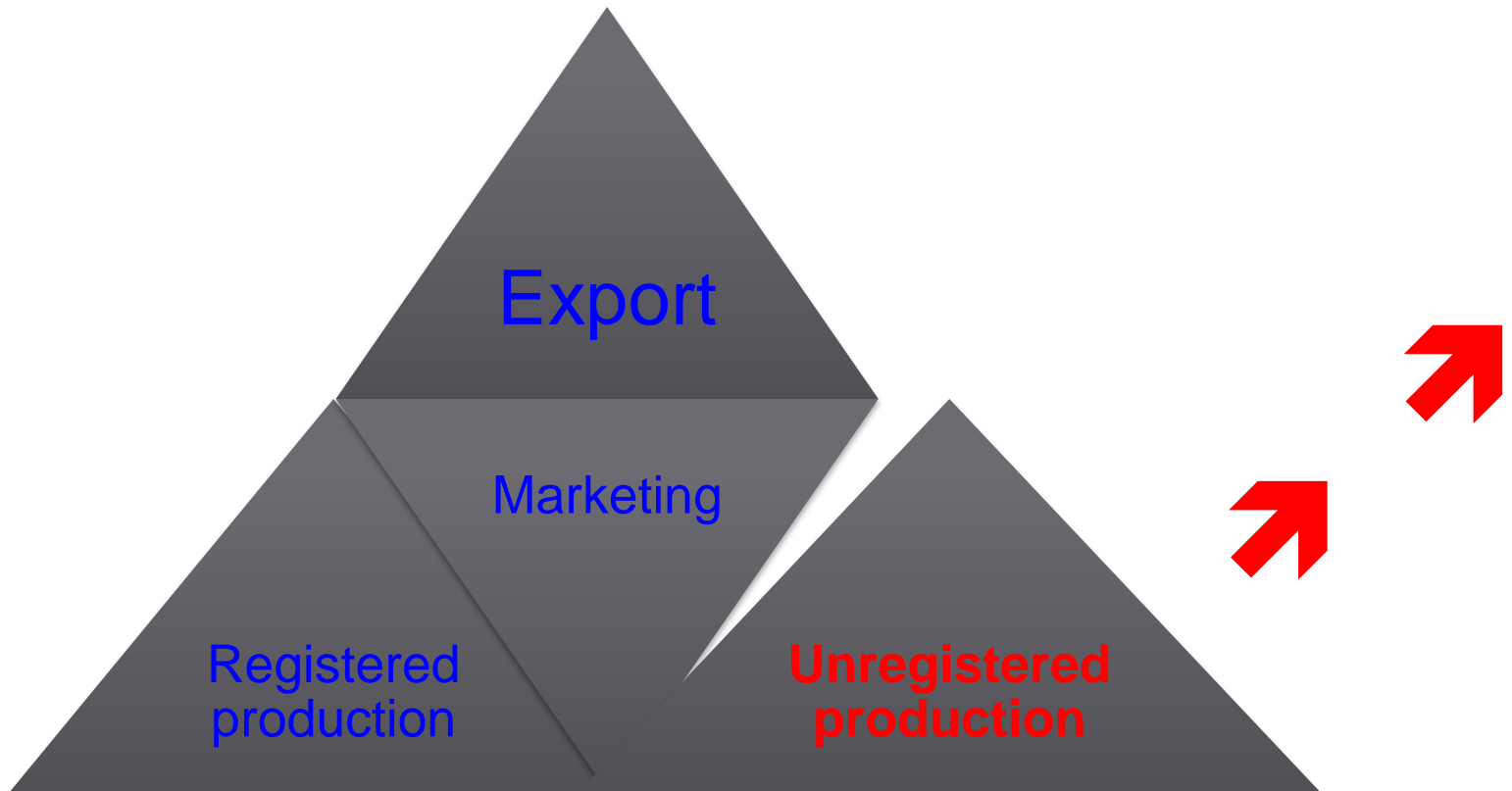


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BASELINE HYPOTHESES AND APPROACH:

Formalization of land rights encourages registration of diamonds and reduces opportunities for illicit transactions





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Customary Rights

Legal Regime

**FORMALISATION OF
LEGITIMATE PROPERTY
RIGHTS**

Transparency and Security

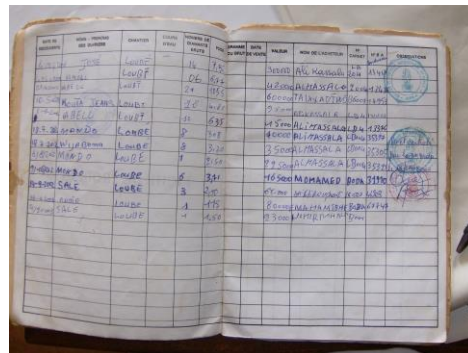
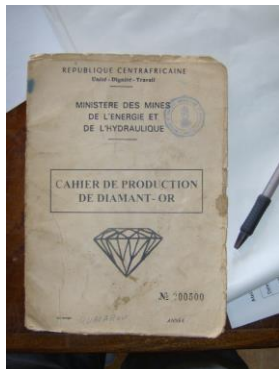


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The Mining Code Presents Opportunities for Securing and *Formalizing* Legitimate Claims

- Mining licenses and permits
- Production notebook



Name	Location of mine	Production
Name 1	X,Y	carats
Name 2	X,Y	carats
Name 3	X,Y	carats
Name 4	X,Y	carats
Name 5	X,Y	carats
Name 6	X,Y	carats

But must reconcile property rights claims of stakeholders:

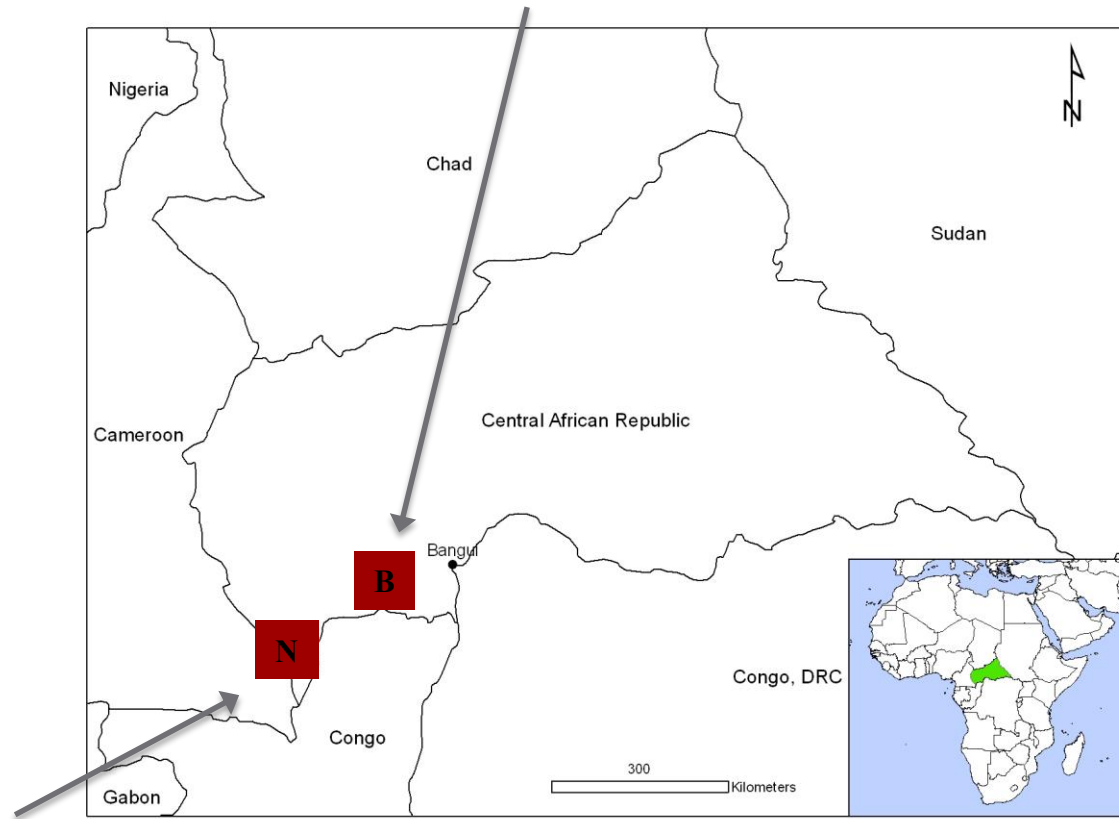
- Local and migrant miners
- Industrial mining companies
- Customary tenure authorities
- Statutory laws



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PROJECT IMPLEMENTATION: PRADD program in Boda beginning May 2007



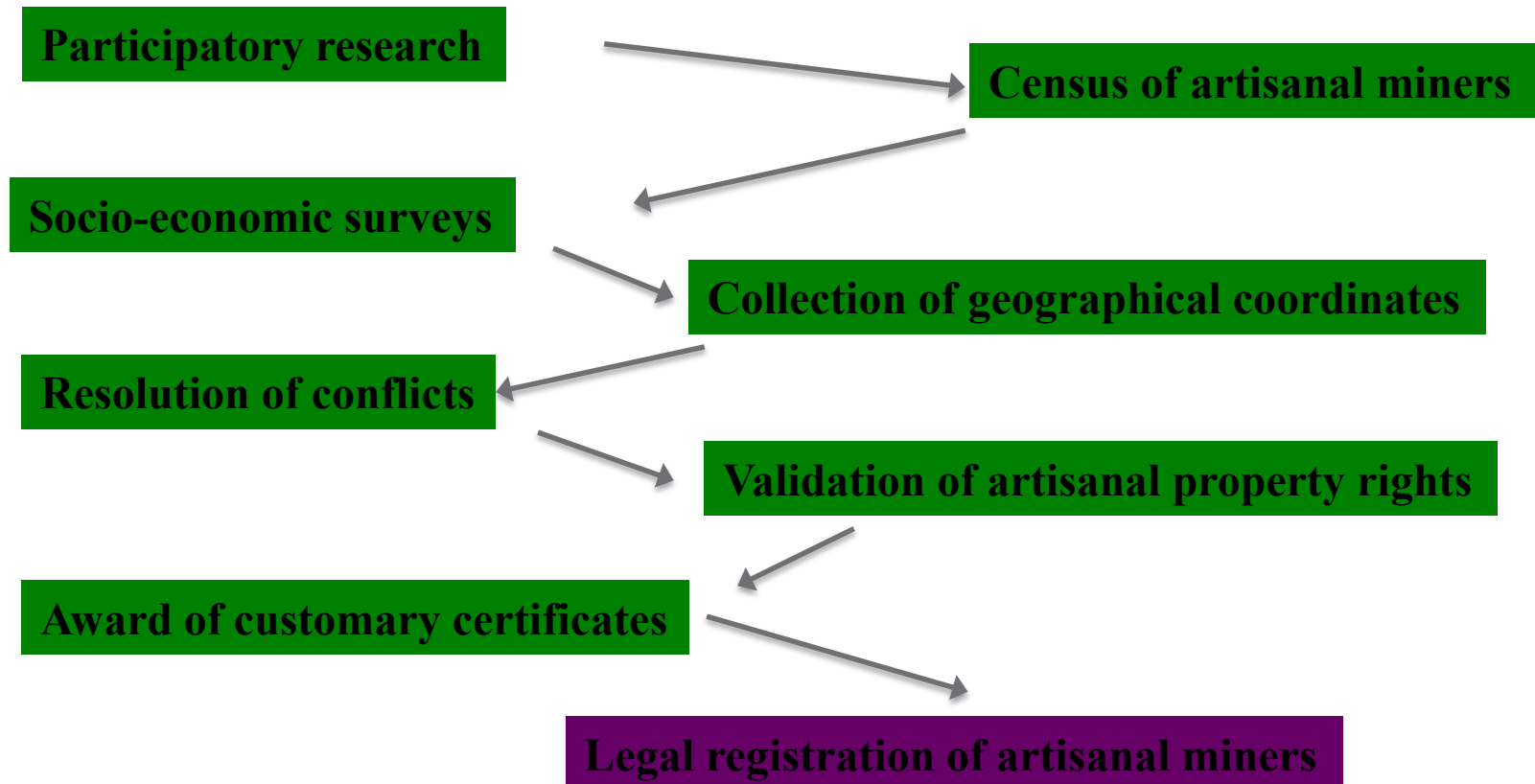
In Nola beginning January 2010



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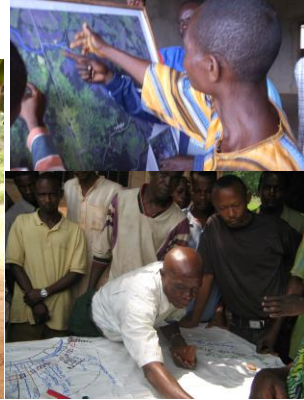


Steps to formalize the property rights of artisanal miners



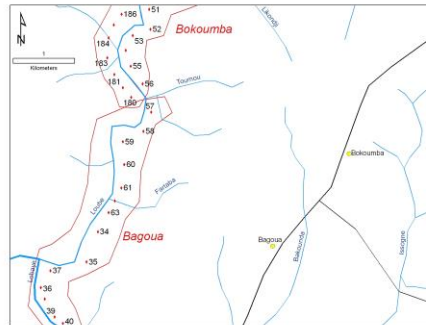


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← Determining the baseline, identifying and debating diverse land uses, customs and rights

Resolving conflicts locally →



← Collecting coordinates and mapping

Community validation of property rights →





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The experience of PRADD CAR suggests that transparent formalization of *legitimate* property rights in mining zones can result in a variety of benefits such as:

- Increased property rights security
- Greater investment
- Enhanced transparency
- Reduced disputes
- More complete and reliable production information
- Exploration of alternative land use options





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Additional observations regarding PRADD experience in conflict-prone CAR

- Living with the risk that piloted reforms will be lost to future social conflict and instability:
 - PRADD start-up in early-2007 followed on the heels of re-establishment of US Consulate following coup of March 2003
 - Another civil war began late-2012 (PRADD-CAR already suspended) followed by a coup d'état in March 2013 and unrest continuing to present
- PRADD successes:
 - Piloting and significant up-scaling of property rights inventory methodology
 - Increased transparency of mineral and land rights and marketing of diamonds
 - Hard-won buy-in from Ministry of Mines and other government agencies
- Retrospective question: in interest of targeting future gains once the time is right – should a higher priority have been placed on land tenure policy reform (existing land tenure legislation from early-1960s is little applied) and legal adoption of the customary property rights certificate?



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Burkina Faso: an ambitious agenda and a long-term approach to land tenure policy reform

Baseline situation:

- Centralized land rights and management authority (1984 RAF established land as state property)
- Little capacity to implement land policy
- Pervasive and increasing land conflict with multiple triggers (growing populations, changing livestock routes with drought, return of refugees from Côte d'Ivoire, increasing cotton production, resettlement in former river blindness areas...)

Long-term calendar:

- 2000-2007 – diagnostics and consensus building on national scale
- 2007 – new rural land tenure policy
- 2009 new rural land tenure law introducing sweeping new tools, policies and institutions (emphasis on decentralized land tenure management)
- 2010-2014 – implementation of national MCC/MCA Rural Land Governance* national land project (\$60m)



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Burkina Faso: an ambitious agenda and a long-term approach to land tenure policy reform (2)

- The Rural Land Governance Project* targeted implementation of new and innovative land law at a national scale
- General status of implementation of Law 034 on rural land tenure adopted June 2009 at end of MCC compact (July 2014):
 - SFR (decentralized land services) established in 47 Communes (of 351 total Communes)
 - First APFRs (new use rights certificates) have been delivered
 - 13 land charters developed and adopted
 - Completion of mass communications and education campaigns
 - Further legislative reform in support of rural land law
- Many challenges remain, but a variety of donors are eager to fund continuing implementation of the 2009 rural land law



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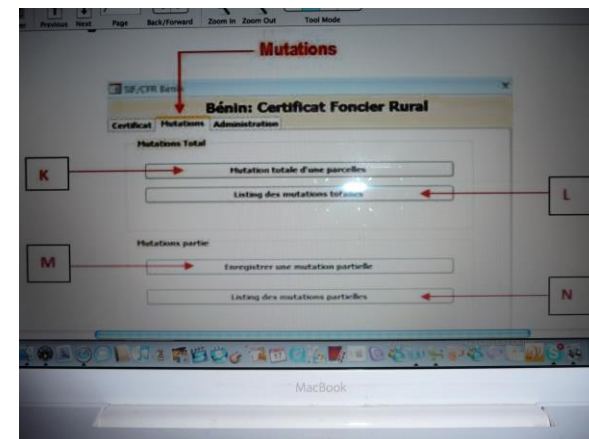


Benin Access to Land Project*: The challenge of accounting for secondary land rights

- \$34m to secure land rights in rural and urban areas
- Rural component targeted 300 PFRs consisting of:
 - Inventories of primary and secondary property rights
 - Parcels surveyed and mapped
 - Land information systems established in 40 communes



PFR



LIS

***Financed by MCC, 2006-2011**



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Benin Access to Land Project*: The challenge of accounting for secondary land rights (2)

- Reluctance for secondary property rights holders to publically declare their property rights
- But anecdotal accounts of benefits from transparency and awareness-raising:
 - Social pressure for historically powerful to negotiate
 - Encouragement for historically disadvantaged to press their case



Women's group negotiating secondary rights with customary proprietor



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Post conflict Burundi: insurmountable challenges?

Challenges:

- Waves of post-war refugees continue to return to lands occupied following their departure from Burundi
- Severe rural population density that shows few signs of slowing down (currently less than 0.5 ha/family)
- Preoccupied and under-resourced central government
- Significant government lands that are little managed, have unclear allocation histories and often lack defined boundaries

Response:

- A new government coordinating unit established to develop and implement a national land tenure program
- Significant donor funded piloting and expansion of decentralized land services
- Experimental approaches to land rights inventorying
- A new national land commission
- A wide variety of willing donors



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Summary of lessons learned from select countries with characteristics “similar to Haiti”

- Site-specific knowledge of customary land tenure practices and authority systems is a prerequisite to achieving land tenure security and good land governance.
- Assist national and local governments to apply existing land tenure policy and legislation (where appropriate) while accounting for local practices.
 - Although policy reform may be needed, in many cases appropriate legislative principles and tools are already in place but have not been adequately implemented.
 - However, balance must be struck between national policy and local customary institutions and practices to ensure that land rights targeted for formalization are viewed as *legitimate*.
- Local participation and transparency contribute to more than good land governance, but can also contribute to socially acceptable distribution of development project benefits and thus sustainability.
- It is both a necessity and challenge to account for “secondary” land property rights when inventorying land rights.
- Improving land governance is a long-term project that most often exceeds the timeframe of development projects.
- Sustainability and up-scaling remain as urgent challenges.