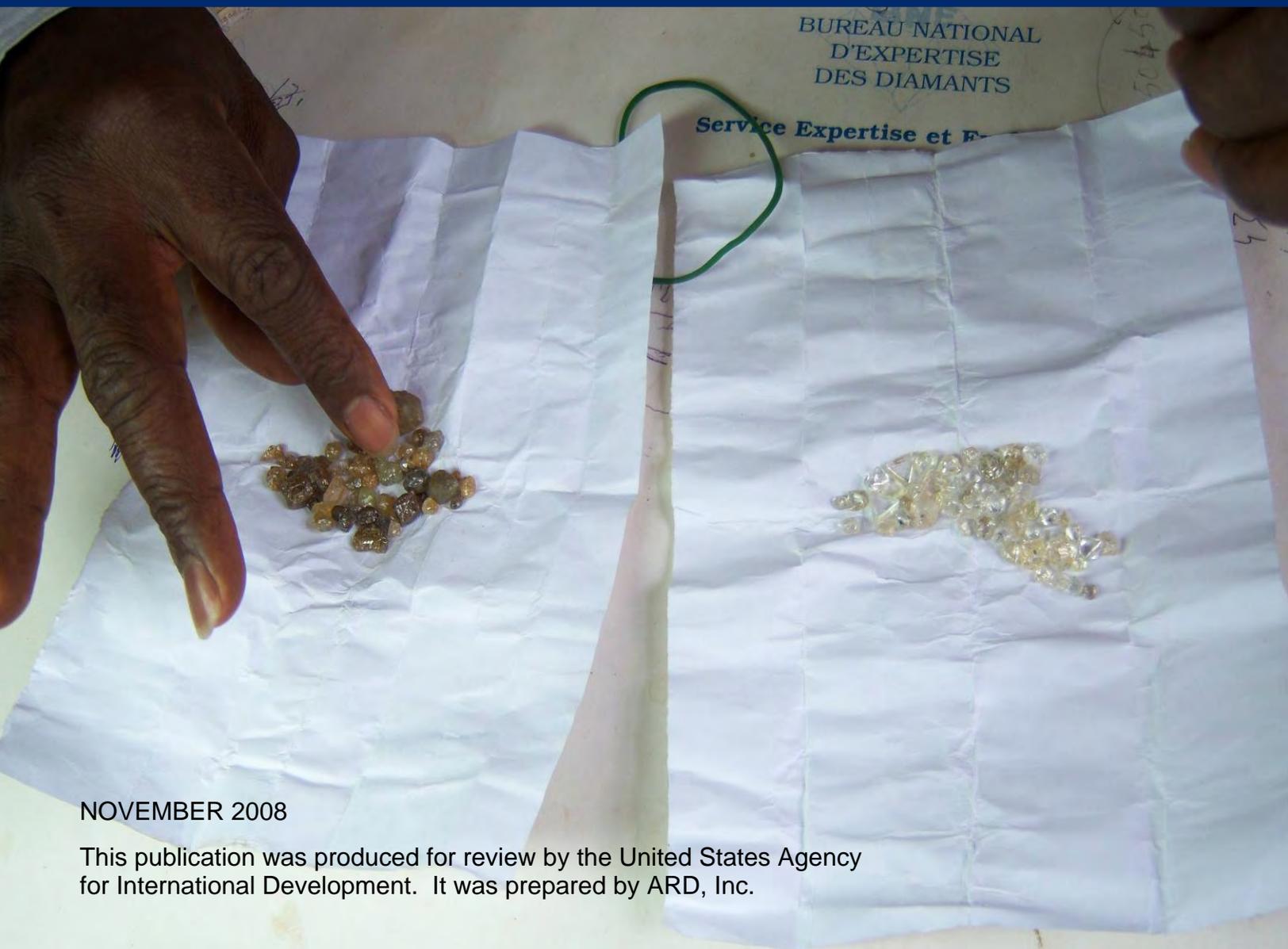




USAID | GUINEA
FROM THE AMERICAN PEOPLE

PROPERTY RIGHTS AND ARTISANAL DIAMOND DEVELOPMENT (PRADD) PILOT PROGRAM

POLICY REVIEW: THE ARTISANAL DIAMOND MINING SECTOR IN THE REPUBLIC OF GUINEA



NOVEMBER 2008

This publication was produced for review by the United States Agency for International Development. It was prepared by ARD, Inc.

Prepared for the United States Agency for International Development, USAID Contract Number EPP-I-00-06-00008-00, Task 5.4, Property Rights for Alluvial Diamond Development in CAR and Guinea, under the Property Rights and Resource Governance Program (PRRGP) Task Order, under the Prosperity, Livelihoods, and Conserving Ecosystems (PLACE) Indefinite Quantity Contract.

Implemented by:

ARD, Inc.
P.O. Box 1397
Burlington, VT 05402

COVER PHOTO:

An artisanal miner prepares a batch of raw diamonds for sale under the supervision of Guinean authorities (BNE). Courtesy of Dr. Kent Elbow.

PROPERTY RIGHTS AND ARTISANAL DIAMOND DEVELOPMENT (PRADD) PILOT PROGRAM

POLICY REVIEW: THE ARTISANAL DIAMOND
MINING SECTOR IN THE REPUBLIC OF GUINEA;
WITH A FOCUS ON INFORMATION COLLECTION
AND MANAGEMENT SYSTEMS AND PROCEDURES

NOVEMBER 2008

DISCLAIMER

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.

TABLE OF CONTENTS

| | |
|---|------------|
| ANNOTATED LIST OF ACRONYMS AND ABBREVIATIONS | iii |
| EXECUTIVE SUMMARY | v |
| 1.0 INTRODUCTION | 1 |
| 2.0 AN OVERVIEW: THE DIAMOND MINING SECTOR AND THE EVOLUTION OF MINING POLICY IN GUINEA | 3 |
| 2.1 INTRODUCTION | 3 |
| 2.2 CONTRASTS BETWEEN THE ARTISANAL DIAMOND SECTORS IN THE CENTRAL AFRICAN REPUBLIC (CAR) AND GUINEA | 4 |
| 2.3 ECONOMIC DIMENSIONS OF THE MINING SECTOR AND DIAMOND PRODUCTION IN GUINEA | 4 |
| 2.3.1 Total Diamond Production In Guinea 2002-2006 (Thousand Carats) | 5 |
| 2.4 LOCATION OF DIAMOND MINING IN GUINEA | 5 |
| 2.5 HISTORY OF INDUSTRIAL AND ARTISANAL DIAMOND MINING AND MINING POLICY IN GUINEA | 6 |
| 2.6 OTHER NOTABLE TENDENCIES IN GUINEA’S ARTISANAL DIAMOND MINING SECTOR | 9 |
| 2.6.1 Reluctance or incapacity to renew artisanal mining permits | 9 |
| 2.6.2 Increasing concentration of holdings | 9 |
| 2.6.3 Clandestine diamond mining in Guinea | 10 |
| 2.7 MINING SECTOR “WATCHDOGS” | 11 |
| 2.8 DIFFICULTIES IN GAINING ACCESS TO INFORMATION | 12 |
| 3.0 CURRENT MINING POLICY IN GUINEA, WITH AN EMPHASIS ON ARTISANAL DIAMOND MINING | 13 |
| 3.1 ONGOING REVISION OF MINING REGULATIONS | 13 |
| 3.2 THE STATUTORY COMPOSITION AND GENERAL CONTENTS OF CURRENT MINING LEGISLATION | 13 |
| 3.3 ARTISANAL DIAMOND MINING CONSIDERED WITHIN THE GENERAL MINING POLICY CONTEXT | 14 |
| 3.4 PROPERTY RIGHTS TO DIAMONDS IN THE GROUND | 14 |
| 3.5 A CLOSED STATUTORY SYSTEM FOR PRODUCTION AND MARKETING OF DIAMONDS | 15 |
| 3.6 PERMITS AND LICENSES | 15 |
| 3.6.1 Reconnaissance permits | 16 |
| 3.6.2 Artisanal operation license | 16 |
| 3.6.3 Mining prospecting permit | 16 |

| | |
|---|-----------|
| 3.6.4 Mining operation permit..... | 16 |
| 3.6.5 Mining concession | 17 |
| 3.7 ENFORCEMENT OF MINING REGULATIONS..... | 17 |
| 3.8 PROMOTION OF ARTISANAL MINERS AND COOPERATIVES | 17 |
| 3.9 MINING ADMINISTRATION | 17 |
| 3.9.1 Bureau National d’Expertise des Diamants et Autres Gemmes..... | 18 |
| 3.9.2 Center for Promotion and Development of Mining (CPDM) | 18 |
| 3.9.3 National Directorate of Mines (DNM)..... | 19 |
| 3.10 ORGANIZATION OF PRIVATE SECTOR STAKEHOLDERS IN ARTISANAL MINING | 20 |
| 3.11 ENVIRONMENTAL PROTECTION | 20 |
| 3.12 RESPECT FOR LOCAL PROPERTY RIGHTS | 20 |
| 3.13 DESIGNATION OF ARTISANAL MINING ZONES | 21 |
| 3.14 RESTRICTED USE OF CHILD LABOR..... | 21 |
| 3.15 COORDINATION WITH NON-MINING LEGISLATION AND NATURAL RESOURCE MANAGEMENT AGENCIES | 21 |
| 4.0 DIAMOND PRODUCTION, MARKETING, AND EXPORT INFORMATION SYSTEMS: OPPORTUNITIES PROVIDED BY MINING POLICIES | 22 |
| 4.1 INTRODUCTION..... | 22 |
| 4.2 CHAIN OF CUSTODY LEVEL 1: ARTISANAL MINERS – PRODUCTION AND FIRST SALES INFORMATION SOURCES IDENTIFIED IN LEGISLATION | 22 |
| 4.3 CHAIN OF CUSTODY LEVEL 2: CERTIFIED DIAMOND COLLECTORS (THE MIDDLEMEN) | 24 |
| 4.4 CHAIN OF CUSTODY LEVEL 3: BUYING AND EXPORTING BUSINESSES UNDER THE DIRECT OVERSIGHT OF BNE..... | 25 |
| ANNEX I: MINING LEGISLATION AND INFORMATION SOURCES..... | 27 |
| PRIMARY STATUTES ON WHICH THIS POLICY REVIEW IS BASED INCLUDE: | 27 |
| ADDITIONAL INFORMATION SOURCES: | 28 |
| ANNEX II: Participant List..... | 29 |
| WORKSHOP ON GUINEAN MINING LEGISLATION PERTINENT TO THE ARTISANAL DIAMOND MINING SECTOR WITH A FOCUS ON INFORMATION SYSTEMS | 29 |

ANNOTATED LIST OF ACRONYMS AND ABBREVIATIONS

| | |
|---------|---|
| AREDOR | <i>Association pour la Recherche et l'Exploitation du Diamant et de l'Or</i> – an industrial mining company currently present in Banankoro although its operations have been suspended since 2004 |
| BCRG | <i>Banque Centrale de la République de Guinée</i> |
| BEKIMA | Beyla Kissidougou Macenta – an association of artisanal miners established in the 1940s; succeeded by SNED prior to the 1980s |
| BNE | <i>Bureau National d'Expertise</i> – Guinean government agency that oversees diamond and precious gem exports |
| CAR | Central African Republic |
| CECIDE | <i>Centre du Commerce International pour le Développement</i> – NGO based in Conakry focusing on defense of economic rights |
| CNTG | <i>Confédération Nationale des Travailleurs de Guinée</i> (National Workers Union) |
| CONADOG | <i>Coordination Nationale des Diamantaires et Orpailleurs de Guinée</i> – a private organization representing diamond producers, buyers and exporters in Guinea |
| CPDM | <i>Centre de Promotion et de Développement Miniers</i> (Center for Promotion and Development of Mining - tracks mining permits, titles, and concessions, provide a solid base with the potential for improving information quality and accessibility) |
| DEA | <i>Division d'Exploitation Artisanale</i> – an agency within the MMG ; contains SEEA |
| DLCC | Control, Legislation, and Cadastre Division |
| DNM | <i>Direction Nationale des Mines</i> |
| DPDDA | <i>Droits de Propriété et Développement du Diamant Artisanal projet pilote</i> – PRADD in English |
| DPESM | Environmental Protection and Mining Security Division |
| EGED | <i>Entreprise Guinéenne d'Exploitation du Diamant</i> – a diamond production enterprise active beginning with Guinean independence in 1960 |
| FG | Guinean Franc |
| GOG | Government of Guinea |

| | |
|----------|---|
| ITIE | <i>Initiative de Transparence dans les Industries Extractives</i> (EITI in English) |
| KKM | Kérouané, Kissidougou, and Macenta – three towns which comprise the corner points of what is often referred to as the “diamond triangle” |
| KP | Kimberley Process – currently implemented by a group of 74 countries representing nearly all major diamond producing and consuming nations of the world formally organized and mandated by the UN General Assembly in support of KPCS |
| KPCS | Kimberley Process Certification Scheme – launched in January 2003 to certify the origin of rough diamonds and that they are from sources free of conflict |
| MAEEEF | <i>Ministère de l’Agriculture, de l’Elevage, de l’Environnement, des Eaux et Forêts</i> (Ministry of Agriculture, Livestock, Water and Forests) |
| MMG | <i>Ministère des Mines et de la Géologie</i> (Ministry of Mines and Geology) |
| NGO | Non-governmental Organization |
| PCQVP | <i>Publiez Ce Que Vous Payez</i> – a global campaign launched in 2002 and supported by a consortium of international NGOs; in Guinea PCQVP exists as a coalition of 15 national NGOs; PCQVP complements the Extractive Industries Transparency Initiative (EITI in English; ITIE in French) |
| PRADD | Property Rights and Artisanal Diamond Development Pilot Program |
| SEEA | <i>Service d’Encadrement de l’Exploitation Artisanale du Diamant et autres Gemmes</i> – part of DEA; replaced SNED in 1993 as the government agency responsible for managing artisanal mining of diamonds |
| SNED | <i>Service National d’Exploitation du Diamant</i> – government agency that oversaw artisanal diamond mining until it was replaced by SEEA in 1993 |
| SOGUINEX | <i>Société Guinéenne de Recherches et d’Exploitation Minière</i> – initiated industrial diamond mining in 1935, at Baradou |
| TSS | <i>Topographie, Sécurité, et Surveillance</i> (Topography, Security, and Monitoring – monitors artisanal diamond mining activities on the ground, notes infractions, and is responsible for the “parceling” of designated artisanal zones) |
| USG | United States Government |
| USGS | United States Geological Survey |
| USTG | <i>Union Syndicale des Travailleurs de Guinée</i> (United Trade Union of Guinea Workers) |

EXECUTIVE SUMMARY

On October 17th, 2008 Property Rights and Artisanal Diamond Development Pilot Program (PRADD)/Guinea conducted a one-day workshop at the Camayenne Hotel in Conakry to present and discuss the draft version of this review of mining policy and artisanal diamond mining information systems. Workshop participants included 18 current and two former agents from the Ministry of Mines and Geology,¹ most of whom are serving, or have served, as departmental directors, deputy directors, or high level technicians. Specifically, the objectives of the workshop were as follows:

- Clarify and assess existing information systems maintained by the Ministry of Mines and Geology designed to monitor production and marketing of mineral products (particularly diamonds);
- Verify and correct as needed the current understanding of the PRADD/Guinea staff regarding artisanal diamond mining policy in Guinea, as reflected in the draft mining policy review;
- Present and debate the analytical framework referred to as the “chain of custody” for artisanal diamonds and achieve consensus regarding its characteristics in Guinea; and
- Consolidate collaboration between PRADD/Guinea and the Ministry of Mines and Geology following the broad staff changes and Government of Guinea institutional restructuring that took place in August 2008.

Successful accomplishment of the above objectives during the workshop assured completion of the present policy review that focuses on artisanal diamond mining in Guinea. The workshop provided an occasion for structured and in-depth analysis and debate that focused on the strengths and weaknesses of artisanal diamond mining policy and its implementation in Guinea. The consensus views from the workshop generally confirmed and added further detail to the main findings of the draft mining policy review on which workshop discussions and group exercises were based. The workshop also served to fill in information gaps, to identify and obtain a number of missing statutes, and subsequently to complete the policy review and to prepare the final version of the review as presented in this report.

The following observations summarize the workshop consensus that is also reflected in the policy review findings regarding artisanal diamond mining policy and its application in Guinea, with a focus on existing information systems in place for monitoring, managing and promoting diamond activities.

- The mining code defines and mandates a system of internal controls targeting a controlled chain of custody, characterized by documented transactions that are strictly limited to certified actors. However, a lack of adequate material, human, and financial resources hinders the proper implementation of the regulations.
- Clandestine artisanal diamond mining takes different forms, is widespread, and largely beyond the effective control and monitoring of the government. An appropriate solution would be to designate additional artisanal diamond mining zones and to register the clandestine miners to bring them into the chain of custody, but resources are lacking to accomplish this.

¹ The workshop participant list is included as Annex 2 to this report.

- Mining policy is incomplete and features numerous and significant gaps. The gaps result from the lack of application decrees needed for increased definition and application of the provisions included in the mining code. For example, *Loi 93/025/CTRN*,² which formerly contained the defining elements of the production and marketing policies pertinent to artisanal diamond mining in Guinea, was at least in part abrogated by the 1995 mining code and has not been replaced. The World Bank is currently providing support to Guinea to revise the 1995 code.
- Several information systems are defined in mining policy to monitor and manage activities such as production, marketing, and export of artisanal diamonds. However, a number of the statutorily designated information systems have yet to be established. Where they do exist, information collection systems and databases maintained by the ministry often suffer from lack of adequate resources and are not always properly maintained. Databases are computerized to varying degrees. The information itself is often somewhat scattered and difficult to access. The capacity to cross-analyze different types of information – for example, to determine production levels of individual registered artisans – is nearly non-existent within the current system that is composed of distinct databases featuring single-theme information categories and distributed across several ministerial agencies. Nevertheless, some information systems, such as the Center for Promotion and Development of Mining (CPDM) mining cadastre that tracks mining permits, titles, and concessions, provide a solid base with the potential for improving information quality and accessibility.
- Customary property rights remain prevalent in alluvial diamond mining zones but benefit only from vague recognition in statutory policies and are relatively unprotected or neglected. There was general, although not necessarily unanimous, agreement among workshop participants that formalization of customary rights and bringing them into the statutory system would be a useful and appropriate strategy toward achieving better monitoring of activities in the artisanal diamond sector in Guinea.

² *Loi 93/025/CTRN Abrogeant et remplaçant la loi 92/004/CTRN du 1er avril 1992 fixant les conditions de l'exploitation artisanale et de la commercialisation des diamants et autres gemmes – 10 juin 1993*. A lengthy debate during the workshop demonstrated that views vary among Ministry of Mines staff regarding the extent to which this law was abrogated (i.e., the number and nature of the provisions of the law that are targeted by the 1995 code for annulment), given that the wording to this effect contained in the mining code is subject to somewhat different interpretations. Because literal annulment of *Loi 93/025* would leave a gaping hole in Guinean mining legislation, this paper, in accordance with what appears to be common practice in Guinea, treats *Loi 93/025* as if it were in fact legally valid. A similar approach is adopted regarding *Arrêté A /93/No 6666/MRNEE/SGG* which also appears to be somewhat in legal limbo.

1.0 INTRODUCTION

The ultimate goal of this mining policy review is to contribute to the achievement of Result 1, identified in the Property Rights and Artisanal Diamond Development (PRADD) pilot project design document: *A System For Reliable Production And Export Information For Diamonds Exists At Pilot Sites*.³ The present document is the final version of the policy review. It has been enriched and completed with results obtained from a national workshop organized by PRADD on October 17th, 2008.

Accurate and transparent information systems are a desirable and fundamental element of any property rights regime. The degree of accessibility of pertinent information plays a key role in determining the efficiency and effectiveness of the entire property rights system. This policy review is a first step toward the development of a knowledge base of existing information systems and strategies to strengthen and ensure their appropriateness and smooth functioning with regard to the artisanal diamond mining sector in Guinea.

The contents and design of information systems are most effective when they take careful account of the context and character of the sector for which the information is collected and maintained. Thus, this review includes not only a discussion of existing information systems, but devotes considerable efforts to the compilation of a historical profile of the diamond mining sector, and the development of an accurate and Guinean-specific “chain of custody” model.

In summary, this policy review aims to “set the stage” for the implementation of key elements of the Property Rights and Artisanal Diamond Development pilot project in Guinea. The availability of this reference document on mining policy, with a focus on information systems, will serve to inform the design of coming PRADD activities targeting improved information quality and availability, and more generally, reinforcement of property rights.

A three-step methodology was adopted to produce this policy review:

- 1) Conduct of a document review of mining policy in Guinea focusing on the artisanal diamond mining sector and with an emphasis on information management;
- 2) Presentation, discussion, and debate of the review at a workshop which included decision-makers and technicians from the Guinean mining administration; and
- 3) Production of a final version of the review, taking account of the conclusions from the workshop.

The workshop provided an occasion for structured and in-depth analysis and debate that focused on the strengths and weaknesses of artisanal diamond mining policy and its implementation in Guinea. The consensus views from the workshop generally confirmed and added further detail to the main findings of the draft mining policy review on which workshop discussions and group exercises were based. The workshop also served to fill in information gaps, to identify and obtain a number of missing statutes, and subsequently to complete the policy review and prepare the final version of the review as presented in this report.

The paper contains three major sections:

³ To avoid confusion, one notes here that a second policy review exercise and workshop were prepared in the same timeframe to address Result 2: *a process to identify and acknowledge land and property rights holders in target areas has been developed*. The two reviews and respective workshops are complementary, although they respond to distinct elements of PRADD's targeted objectives.

- 1) *An Overview: The Diamond Mining Sector and the Evolution of Mining Policy in Guinea.*
- 2) *Current Mining Legislation, with an Emphasis on Artisanal Diamond Mining.*
- 3) *Diamond Production, Marketing and Export Information Systems: Opportunities Provided by Mining Policies.*

2.0 AN OVERVIEW: THE DIAMOND MINING SECTOR AND THE EVOLUTION OF MINING POLICY IN GUINEA

2.1 INTRODUCTION

The mining sector is a significant component of the Guinean economy, and diamonds are among the leading products of the mining sector. The second half of 2008 is an opportune time to review mining policy in Guinea in general – and the artisanal diamond mining sector in particular – given that the country, with the support of the World Bank, is currently in the process of revising its mining code. Another timely development is the ongoing review of all existing mining *concessions* (agreements) ordered by the Ministry of Mines and Geology in the wake of the strikes, popular demonstrations, violence, and subsequent government reshufflings that took place in January/February 2007. In the context of broadening social participation and interest, perhaps the most fundamental issue of relevance to PRADD/Guinea that could fruitfully be debated and resolved regarding mining policy is to precisely define the policy objectives specific to artisanal diamond mining. In other words, what are the social and economic goals to which the artisanal diamond-mining sector might best contribute?

The question could be answered in a number of different ways. Diamonds pose some unique management and oversight problems relative to other important mining products in Guinea, such as bauxite or iron ore. For example, while there is no artisanal production of the raw materials of aluminum and steel, diamonds – as is also true of gold – may be produced either industrially or artisanally. This introduces some important decision-making arenas into government policy making, such as whether to favor numerous local producers or a much smaller number of large-scale and internationally financed operations. While more difficult to monitor and control, artisanal production of diamonds presents immediate opportunities for enterprise development on a large-scale that targets local producers who simultaneously operate as businessmen and women. In contrast, policies that favor industrial production appear to have the advantage of job creation, combined with a relatively manageable system for monitoring and collection of government revenues.

A reading of Guinea's current mining legislation in the context of broader economic development policy and political history leads to a conclusion that is formulated in this paper as a hypothesis: Guinean policies are much less supportive of small-scale artisanal diamond mining than they are of large-scale industrial mining in partnership with international investors. Some explanation of this hypothesis follows.

During most of the first 50 years of its existence, the diamond mining sector in Guinea was nearly exclusively industrial in nature. However, the second half of this period (coinciding with the First Republic – 1958-1984) was marked by the influence of a socialist government with totalitarian

tendencies and a penchant for playing opposing cold war camps against each other. Upon emergence from this tumultuous period, artisanal diamond mining was declared illegal and industrial diamond mining was limited to a small number of international partners. Although artisanal mining was legalized in 1993, it appears to have quickly become overshadowed by the push to liberalize and open the Guinean economy to international investment that had been building since the mid-1980's. New private investment codes were adopted in 1987 and 1998 to improve the investment climate and thus stimulate economic activity. The current mining code, adopted in 1995, is squarely within this trend.

The ostensible conclusion is that artisanal mining in Guinea is viewed as a transitory phase and a stepping-stone to the adoption of more capital-intensive technologies that assume a global focus and international participation. However, this is only a part of the overall strategy for the development of the diamond sector. At the same time that general mining policy favors increased economies of scale, those parts of the policy that specifically address artisanal diamond production and marketing seek to enhance Guinean participation and appropriation of new technologies and investment capital such that in the long-term the sector will be increasingly in the hands of domestic producers and business people. Nevertheless, whether diamond production and marketing is in the hands of international or domestic agents, the pertinent point is that the promotion of small-scale, non-mechanized artisanal production of diamonds does not appear to be among the objectives of current Guinean mining policy.

2.2 CONTRASTS BETWEEN THE ARTISANAL DIAMOND SECTORS IN THE CENTRAL AFRICAN REPUBLIC (CAR) AND GUINEA

Guinea is one of two PRADD pilot countries, the other being the Central African Republic (CAR). PRADD/CAR – now a full year into its implementation program – provides both a useful model and point of contrast to PRADD/Guinea. Three significant contrasts between the artisanal diamond production and marketing sectors of the two countries are:

- The relatively centralized geographical zone of diamond production in Guinea as compared to CAR;
- The much more significant level of statutory “zoning” in diamond producing areas, along with a higher level of pro-active government management of access to diamond producing parcels, in Guinea than in CAR; and
- A policy and institutional environment in CAR that more explicitly promotes small-scale artisanal mining as compared to Guinea.

2.3 ECONOMIC DIMENSIONS OF THE MINING SECTOR AND DIAMOND PRODUCTION IN GUINEA

The mining sector in Guinea contributes around 25% of the country's income, with bauxite production by far the most important contributor.⁴ In 2004 the mining sector accounted for more than 80% of exports, 25 to 30% of government revenues, and 17 to 20% of gross domestic product.⁵ Within the mining sector as a whole, diamond exports are second only to bauxite. In 2005 it was estimated that Guinea was the eleventh largest diamond-producing country in the

⁴ Mbendi mining sector profiles – Guinea, <http://www.mbendi.co.za/indy/ming/af/gu/p0005.htm>.

⁵ US Geological Survey Minerals Yearbook 2004.

world, and the seventh largest in Africa.⁶ The country's diamond resources were estimated to be between 25 and 30 million carats.⁷ The vast majority of diamond production and exports from Guinea is accounted for by the artisanal sector, with industrial production relatively insignificant in recent years.

In view of the above, Guinea appears to be under-performing in recent years compared to its vast potential for significant diamond production. The United States Geologic Survey (USGS) reports the following levels of diamond production and export activities in Guinea in recent years. As noted earlier, the vast majority of diamond production in Guinea is classified as artisanal.

2.3.1 TOTAL DIAMOND PRODUCTION IN GUINEA 2002-2006 (thousand carats)

| | 2002 | 2003 | 2004 | 2005 | 2006 |
|-------------------|------|------|------|------|------|
| Gemstones | 368 | 500 | 555 | 413 | 355 |
| Industrial | 123 | 167 | 185 | 138 | 118 |

Source: U.S. GEOLOGICAL SURVEY MINERALS YEARBOOK—2006 (Diamond, Industrial), November 2007

However, another source reports that artisanal diamond production in Guinea has very recently been experiencing significant increases. Kimberley Process (KP) statistics indicate that in 2007, total diamond production in Guinea reached 1,009,732 carats.⁸ Some sources in Guinea's Ministry of Mines and Geology report that production will be even greater in 2008.

2.4 LOCATION OF DIAMOND MINING IN GUINEA

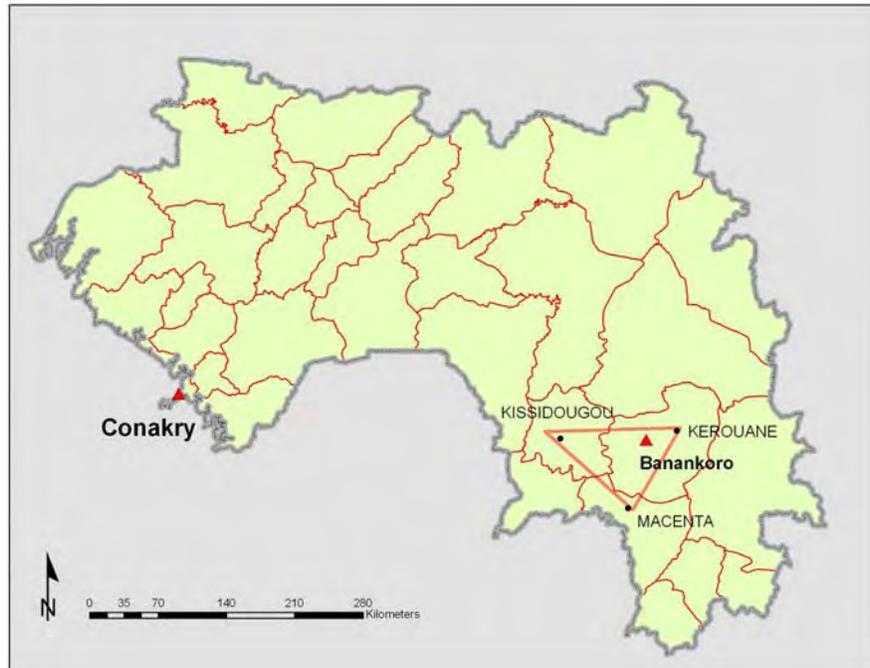
Banankoro sub-prefecture (Kérouané prefecture) is currently the geographical center of Guinea's diamond production, and lies within the general area that has been continuously associated with diamond production since the 1930's.⁹ Banankoro (estimated population of 87,080 in 2007) is the name of the most important of the three major diamond-producing sub-prefectures located within the prefecture of Kérouané, and is also the name of the largest town and capital of the sub-prefecture. The two neighboring sub-prefectures of Soromaya (estimated population of 23,219) and Sibiribaro (estimated population of 24,340) are also important diamond producers. However, Guinea's diamond producing zone extends beyond the boundaries of Kérouané prefecture to include parts of the neighboring prefectures of Macenta and Kissidougou. The approximate area defined by tracing lines on a map to connect the towns of Kérouané, Kissidougou, and Macenta (KKM) is often referred to as the "diamond triangle." Historically, the diamond production area also extends somewhat east of the triangle to Beyla.

⁶ This rough estimate is cited in South African Diamonds Handbook and Operating Mines Directory, 2006 (Department of Minerals and Energy, Government of South Africa). Such estimates are approximate given the difficulties in compiling accurate production information for many diamond producing countries, and the discrepancies between official export figures and records of diamond imports in diamond processing and consuming countries.

⁷ US Geological Survey 2005 Minerals Yearbook (Guinea), November 2006.

⁸ Partnership Africa Canada, "Diamonds and Human Security – Annual Review 2008," page 21.

⁹ This is not to say that diamond mining is completely absent outside of Banankoro. Some limited – although illegal – diamond mining takes place in the prefectures of Kindia and Forécaria. Legal (but also illegal according to some reports) diamond mining also takes place in the prefectures of Macenta and Kissidougou, but this appears to mainly take place in the adjoining areas to Kérouané prefecture, and most particularly adjoining the Banankoro sub-prefecture.



The Kérouané-Kissidougou-Macenta Diamond Triangle

2.5 HISTORY OF INDUSTRIAL AND ARTISANAL DIAMOND MINING AND MINING POLICY IN GUINEA

The history of diamond mining in Guinea is marked by significant and sometimes abrupt shifts between prevailing scales and types of organization of production. The major categories of contending diamond production approaches are industrial, semi-industrial, and artisanal. On the whole, the evolution has been from the complete dominance of industrial production during the early decades of diamond exploitation in Guinea, to the current nearly exclusive prevalence of artisanally-produced diamonds.

Diamonds were discovered in the Macenta area of Guinea in 1932 following the 1930 diamond discoveries in neighboring Sierra Leone.¹⁰ Guinea was then a French colony, and French colonial mineral laws stated that exploitation of minerals could be conducted only by French nationals using French capital.¹¹ Industrial diamond mining was initiated in 1935 at Baradou (Kissidougou) by the *Société Guinéenne de Recherches et d'Exploitation Minière* (SOGUINEX). By 1939 the diamond mining zone of Guinea had become fairly well developed with reasonably adequate roads, maps, and active mines near Baradou, Fenaria, Faradou, and Banankoro.¹²

¹⁰ Much of the information included in this paragraph is provided by an alluvial exploration and mining service that maintains a website at: <http://www.minelinks.com/alluvial/diamondGeology60.html>.

¹¹ Lansana Gberie, *Destabilizing Guinea: Diamonds, Charles Taylor and the Potential for Wider Humanitarian Catastrophe*, Occasional Paper 1 of The Diamonds and Human Security Project, Partnership Africa Canada, October 2001, p.5. The same article notes that this restriction to French nationals and capital was subverted by SOGUINEX, which began as a British-owned company (p.5).

¹² Ibid.

Following a calming of the disruptions of World War II, the Société Minière de Beyla (to the east of Macenta) began mining the Bonodou deposit in 1953. Another company, Beyla Kissidougou Macenta (BEKIMA), mined 1.28 million carats between 1956 and 1960. Following independence (1958), industrial diamond mining was taken over by the newly formed state-owned company, *Entreprise Guinéenne d'Exploitation du Diamant* (EGED) which operated between 1961 and 1973. Some technical support to EGED was provided by the Soviet Union. EGED produced something over 200,000 carats during that period, but failed to achieve sufficient success and was shut down in 1973.¹³

Government efforts to improve the investment climate beginning in the mid-1980's appeared by 1999 to be moderately successful, with 14 international companies holding diamond prospecting permits.¹⁴ Nevertheless, since 2004, industrial production of diamonds in Guinea has been virtually non-existent. The sole industrial diamond concession (mining agreement) in effect today, Association pour la Recherche et l'Exploitation du Diamant et de l'Or (ARETOR), has a rather complicated history. A British company, SOGUINEX, began mining in 1934, and in collaboration with another company, Beyla, mined the area of the current ARETOR concession until 1960, at which time the government-owned EGED took over until its demise in 1973. Following eight years of inactivity, ARETOR Guinea S.A. was established on July 7th, 1981 to develop diamond deposits explored and defined by Simonius Vischer (I.D.C.) Ltd. within or near the former SOGUINEX site of Eastern Guinea. Between 1983 and 1994 ARETOR Guinea S.A. produced 1.25 million carats valued at \$378,000,000. The ARETOR mine closed in 1994 for economic reasons.¹⁵ A new 10-year concession was signed for the ARETOR mine in 1996 with the Canada-based Trivalence Mining Corporation. Subsequently, Trivalence applied for and was granted a 15-year extension to March 27, 2021.¹⁶ The new concession provides mining rights to 1,212 km² (43 km north-south by 37 km east-west) in Kérouané prefecture, of which 200 km² were retroceded by 1998 for artisanal mining in an attempt to manage illegal diamond mining common within the ARETOR mine. Unresolved issues between the ARETOR mining company and GOG resulted in a suspension of the company's mining operations that became effective in 2004 and continues to the present day.¹⁷ A recent report indicates that the Minister of Mines has recommended the cancellation of ARETOR's diamond mining concession;¹⁸ however, sources at the ministry indicate that the cancellation has yet to be made official.

The history of artisanal diamond production in Guinea began in 1956 when illegal miners from Sierra Leone were said to have "invaded" the diamond bearing areas of Guinea.¹⁹ The majority of

¹³ This information is included in an excerpt from a 20-F SEC Filing, filed by [TRIVALENCE MINING CORP](http://sec.edgar-online.com/2005/01/18/0001137171-05-000050/Section4.asp) on 1/18/2005, and reproduced at the website: <http://sec.edgar-online.com/2005/01/18/0001137171-05-000050/Section4.asp>.

¹⁴ Gberie, *Destabilizing Guinea*, p.7.

¹⁵ Among the reasons is the prevalence of illicit mining on the ARETOR concession (<http://sec.edgar-online.com/2005/01/18/0001137171-05-000050/Section4.asp>). Nevertheless, ARETOR S.A. obtained a fresh concession in January 1993: Arrêté 4/93/2362/MNREE/SGG (see, SRK Consulting, *Trivalence Mining Corporation: Review of Mining and Exploration Assets in Guinea, South Africa and Botswana*, November 2003, page 16. This concession changed ownership in 1996 to Trivalence Company (which recently changed its name to Azure Resources Corporation), the current owner of the ARETOR concession. A new concession, including 100km to be retroceded for artisanal mining, was granted in 1996 (Arrêté A96/2861/MMG/SGG). A subsequent retrocession 100 km² was completed in November 1998 (Arrêté A98/8838/MRNE/SGG).

¹⁶ <http://sec.edgar-online.com/2005/01/18/0001137171-05-000050/Section4.asp>

¹⁷ Documentation of this suspension has yet to be located.

¹⁸ Reuters, July 18 and July 20, 2008.

¹⁹ <http://www.minelinks.com/alluvial/diamondGeology60.html>

the invaders were probably Guineans returning to their homeland, following expulsion from Sierra Leone.²⁰ Guinea's first flirtation with legalized artisanal mining resulted from an agreement between SOGUINEX and the government in which the former ceded some territory to the diggers in return for government compensation and a promise to protect the company from attacks.²¹ The agreement broke down in subsequent years as the diggers became more militant and attacks on the company's mining area became more frequent. It is estimated that by 1959 about 41,000 diggers were operating, about half of whom were registered.²²

Artisanal mining was again authorized between 1980 and 1984 and managed by the government through its *Service National d'Exploitation du Diamant* (SNED) for a total production of 160,850 carats during this period. SNED was shut down in 1985, and subsequent artisanal diamond mining was officially prohibited. This once again gave rise to high levels of illegal artisanal diamond mining, as well as something of a diaspora of artisanal producers who in many cases fled to diamond centers in Sierra Leone and the former Zaire.

Legal artisanal diamond mining was reintroduced in late-1992. Since that time, Guinea has progressively designated "artisanal diamond mining zones" that are (at least on paper) circumscribed areas tightly bounded by designated geographical coordinates. The first of the artisanal zones consisted of the former mining concession area of Star Guinée (Sibiribaro sub-prefecture, adjacent to Banankoro sub-prefecture), which ceased mining operations in Guinea in 1992. This initial designation of an artisanal diamond mining zone was followed by retroceded areas within the AREDOR concession that were reclassified as artisanal mining zones in 1996, 1998, and 2005. Following the designation of each new artisanal diamond zone, the government conducted a series of "parceling" operations in which either two-hectare (during the earliest parcels in 1993) or one-hectare (the now typical size) parcels are defined and illustrated on "parcel plans." The parceled areas generally do not coincide exactly with the complete artisanal zone, but seem to constitute a sub-category of each zone. Thus, there apparently exists a reserve of "artisanal diamond zone" areas that remains to be parceled. This observation is reinforced by tallying available government records, indicating that of a total area of 2,746.22 km² have been designated as artisanal diamond mining zones since 1992, only 1,581 km² have been platted and awarded to miners.

At a macro-level, the pendulum appears to be moving slowly away from "artisanal" production and somewhat back in the direction of industrial – or, at least, *semi*-industrial – production. Ministry sources attribute this to the preference of artisanal miners for certain zones and their abandonment of other zones. However, it is possible that this trend is also in part driven by government mining policies in place since the mid-1990's that seek increased international investment through an improved business climate established to promote the country's overall mining sector. The establishment of the CPDM²³ in 1995, described as a "one-stop shop"²⁴ for international investors, is emblematic of the current trend. Although large-scale industrial diamond production continues to be rare in the diamond mining sector, there is no question that international investment in mining is being actively pursued. In addition, one notes that there appears in recent years to be an increasing number of smaller scale internationally-backed

²⁰ Gberie, *Destabilizing Guinea*, p.6.

²¹ *Ibid.* The attacks on Soguinex fields were said to be illicitly supported by the PDG political party that was steadily increasing its political strength and would lead Guinea into a defiant independence the following year (also p.6).

²² *Ibid.*

²³ The *Centre de Promotion et de Développement Miniers* is further presented and discussed below.

²⁴ Mbendi Mining Profiles 2005 – Guinea, <http://www.mbendi.co.za/indy/ming/af/gu/p0005.htm>.

diamond operations in Guinea, some of which are establishing themselves in areas formerly designated as “artisanal” diamond mining zones.

2.6 OTHER NOTABLE TENDENCIES IN GUINEA’S ARTISANAL DIAMOND MINING SECTOR

2.6.1 Reluctance or incapacity to renew artisanal mining permits

Following the establishment of blocks of one-hectare parcels in the designated artisanal diamond mining zones, parcels are distributed to “masters” via a lottery system. In order to be included in the legal order (*arrêté*) that identifies the new holder of a parcel, fees of 1.5 million FG (roughly \$350) are required. It is widely said that the number of available parcels is significantly inferior to demand for parcels; but it is also true that many current holders of parcels are not actively engaged in mining operations, and have allowed their artisanal permits to lapse. Available records indicate that of 1,215 artisanal mining permits issued since 1992, only 348 have been renewed. A pertinent example is the most recent area of Banankoro designated as an artisanal mining zone and subsequently platted into approximately 500 one-hectare artisanal parcels in 2004 (followed by distribution of the parcels by lottery in 2005). Although each permit holder is legally required to renew the permit on an annual basis, only about 110 of the roughly 500 parcels have in fact been renewed since 2005. Therefore, the Minister of Mines addressed a letter on October 30th, 2007 to the nearly 400 title-holders who had failed to renew their titles. The letter from the minister designated a deadline of December 31st, 2007 for renewal. The *Division d’Exploitation Artisanale* (DEA) says that so far they’ve received 13 applications, each including a deposit of one million FG, on the part of existing “masters” seeking award of the non-renewed parcels.

A similar incidence of non-renewal of artisanal permits appears to have long characterized the original artisanal mining zone designated in Sibiribaro in 1993. It is said that most of the original artisanal miners have never renewed their permits, and that today a good portion of the “artisanal” zone has been conceded by the government to small-scale industrial or semi-industrial companies that have at least some international participation. These concessions appear in the mining cadastre maintained by the CPDM.

2.6.2 Increasing concentration of holdings

PRADD findings to date suggest that the “artisanal” diamond mining sector in Guinea may be in the process of consolidation, in which a small number of producers are seeking – and reportedly gaining – access to more surface area within the designated artisanal mining zones. A brief tour of the artisanal zones in Banankoro and Sibiribaro reveals at least three distinct categories of activity:

- industrial – although relatively small-scale – diamond production characterized by earth movers, industrial scale gravel washers, and high-power auxiliary tools;
- small-scale pick and shovel diamond production; and
- numerous parcels displaying no sign of activity whatsoever.

The most commonly cited explanation for the contrasting levels of mining activities is the difference among the categories of actors with access to financial resources. While a relatively small number of “masters” possess substantial resources, a larger number of aspiring artisanal

miners either rely on sweat equity or allow their parcels to remain inactive, or to be exploited by others.

The tendency of Ministry officials and local representatives is to arrange site visits to the most technologically advanced and active production sites, i.e., to sites that are substantially mechanized. PRADD/Guinea has visited several such sites and been impressed by the level of activity, mechanization, and magnitude of commercial transactions (equipment rental, local employment, diamond sales, etc.).

PRADD/Guinea has also visited a number of less-mechanized diamond production sites, including the site of a “master” in Sibiribaro who has been engaging mostly in pick and shovel level diamond mining on a parcel he’s held since 1993. He estimates that he’s mined about one-half of the holding so far, and acknowledges that some years he is more active than other years depending on available resources. In Banankoro we encountered pick and shovel producers who had reached an agreement with a parcel holder to mine a parcel to which they did not hold the title. The arrangement with the title-holder was loose enough that the miners said they were free to sell their production to anyone they chose, and were not required to sell to the parcel holder (although the official parcel holder was generally contacted for an initial round of negotiation that might or might not result in a sale of newly mined diamonds). These miners of the borrowed parcel expressed a desire to gain a parcel of their own, but admitted to a lack of investment resources; while they stated that they have located a desirable site they lacked the resources to apply for title to the parcel.

In general, one observes very significant production activities and resources at choice artisanal mining sites, such as the juncture of the Baoulé and Bomboko rivers. The “masters” of such sites are well known throughout the local area and the diamond production sector. One also notes that when visiting Banankoro, whether exchanging with ministry technical agents, *Coordination Nationale des Diamantaires et Orpailleurs de Guinée* (CONADOG) producers or diamond collectors, a fairly small number of names of “masters” are cited over and over. Also of note is the conversion of some former artisanal mining zones, such as in Sibiribaro, into semi-industrial sites through award of concessions to internationally-backed companies as recommended by the CPDM.

2.6.3 Clandestine diamond mining in Guinea

Guinea has a history of significant – and sometimes militant – clandestine diamond mining. Both colonial-era diamond mining companies such as SOGUINEX, and the independence-era company, AREDOR, have attempted – simultaneously or alternately – various combinations of concessions to illegal diggers and repression of “diamond poaching.” One writer has suggested that (both licit and illicit²⁵) artisanal mining during the period 1957 to 1961 resulted in a higher total production than was achieved by all industrial companies between 1936 and 1961.²⁶ Both SOGUINEX and AREDOR have been forced to significantly alter or cease diamond-mining operations during specific periods as a result of clandestine diamond mining, which at times even escalated into aggressive attacks on company operations.²⁷

²⁵ As was noted above, about half of the estimated 41,000 artisanal miners in 1959 were registered.

²⁶ Gberie, *Destabilizing Guinea*, p.6.

²⁷ It is said that closing of the AREDOR mine in 1994 (ARETOR phase 1) was the result of persistent attacks on the part of militant artisanal miners, *Ibid.*

All actors in the artisanal diamond mining sector with whom we've had the occasion to exchange information acknowledge the occurrence of clandestine diamond mining. Based on the observations of PRADD staff, clandestine mining in Guinea can take the following forms:

- Unauthorized mining within a designated artisanal diamond-mining zone. This category of clandestine mining might take one or two forms: mining that takes place outside of the “parceled” area, yet within the artisanal zone; or mining activities conducted on a parcel by an individual other than the title-holder and without the title-holder’s permission.
- Unauthorized mining that takes place outside of the designated artisanal mining zone and within an industrial or semi-industrial concession (such as the very large AREDOR concession). Documentation regarding either the present or former AREDOR concessions repeatedly notes the prevalence of illicit mining within the concession.
- Mining activities conducted outside of any zone – artisanal or industrial – that has been explicitly designated for diamond mining.

Based on interviews of actors in the alluvial diamond mining sector, it appears that a very significant portion of Banankoro sub-prefecture, and of the neighboring sub-prefectures of Soromaya and Sibiribaro as well, consists either of officially-designated artisanal zones or mining concessions. This suggests that the first two types of clandestine mining are probably more prevalent than the third type.

2.7 MINING SECTOR “WATCHDOGS”

Guinea has a significant “watchdog” capacity dedicated to monitoring the mining sector. *Aurore* is a newspaper dedicated exclusively to mining events and issues in the country. *Aurore* promotes increased transparency in the mining sector. According to its publisher, disputes erupt periodically over the discovery of extremely valuable diamonds, revealing the confusion that surrounds the “ownership” of artisanal parcels and diamonds. Reports from *Aurore* indicate that clandestine diamond mining is widespread and that it has negative consequences for the environment and the economy.

Centre du Commerce International pour le Développement (CECIDE) is an Non-governmental Organization (NGO) created in 2000 with a focus on economic rights and the involvement of citizens in policy development. In 2003, CECIDE organized the first seminar in Guinea on the Kimberley Process. In the framework of the Diamond Development Initiative, CECIDE is currently putting together a KP civil society network to be funded by Global Witness. The NGO has publicly requested the Government explain its decision to suspend artisanal diamond mining in Kindia in western Guinea. Mr. Fofana, the Director of CECIDE, sees commercial rights and tenure rights as intricately related.

Publiez ce que Vous Payez (Publish What You Pay) is a recently-created coalition of 15 Guinean civil society organizations whose purpose is to provide information to the public on the financial commitments of mining companies, and to ensure that required payments to the State enter the public coffers.

The two major Guinean unions, the CNTG and USTG, are participating in a joint government-private sector-civil society committee that has been formed in the wake of the strikes of January-February 2007 to review current mining conventions with the object of clarifying “who pays what, to whom.”

2.8 DIFFICULTIES IN GAINING ACCESS TO INFORMATION

Numerous statutory acts that define property rights (e.g., of mining concessions and awards of artisanal parcels) have been produced in recent years, and the majority of these apparently remain legally valid. Following the events of January-February 2007, popular pressure resulted in a government decision to renegotiate existing mining concessions. This is an ongoing exercise and the eventual results will be instructive. In the meantime, it has proven extremely difficult to gain straightforward access to existing records. In spite of repeated efforts, we have been unable to locate any centralized archives regarding the numerous and varied statutory decrees designating artisanal zones or awarding artisanal parcels or industrial concessions, although PRADD/Guinea has been able to acquire many records in rather piecemeal fashion. The complications arise mainly from a lack of human, financial, and material resources to compile and maintain adequate archives. Many of the records we've been shown, such as lists of artisanal parcel holders or records of diamond production by zone, are hand-written. Others were destroyed during events such as those of January-February 2007. Although a "mining cadastre" exists within the CPDM, permit information regarding individual artisanal miners is not included in the database, and there appear to be problems regarding the geographical accuracy of the data that is included. The inaccessibility of information appears simply to be a question of inadequate resources and technology rather than a deliberate effort to conceal.

In general, Ministry of Mine agents are knowledgeable about the history and current state of industrial, semi-industrial, and artisanal rules, concessions, and (at least generally) boundaries. But each individual's knowledge is based on his or her personal professional experiences, and is therefore selective. In other words, information exists, but it appears to be neither centralized, nor systematically collected and maintained, nor readily accessible. An important conclusion based on PRADD/Guinea findings to date is that development of information management systems that would allow efficient storage and retrieval of statutory property rights information pertaining to the alluvial diamond mining sector is an important first step toward achievement of targeted objectives. It is absolutely essential to gain an in-depth understanding of the statutory standing of all zones that collectively compose the surface area within the KKM diamond producing triangle. In addition, it would constitute an important service to the government of Guinea.

3.0 CURRENT MINING POLICY IN GUINEA, WITH AN EMPHASIS ON ARTISANAL DIAMOND MINING

3.1 ONGOING REVISION OF MINING REGULATIONS

At the time of this writing, Guinea is being supported by the World Bank in an effort to revise its mining code. Current indications are that much of the motivation for revising the code arises from a desire to attract international investment in the Guinean mining sector, particularly regarding bauxite and iron production. A study²⁸ sponsored by the Ministry of Mines and Geology that was presented at an International Forum on the Guinean Mining Sector in October 2004, for example, focuses almost exclusively on an analysis of Guinean “competitiveness” in relation to selected major bauxite producing countries (Australia, Brazil, China, India, and Jamaica).

Another timely development is the ongoing review of all existing mining *concessions* (agreements) ordered by the Ministry of Mines and Geology in the wake of the strikes, popular demonstrations, violence, and subsequent government reshufflings that took place in January-February 2007. This initiative suggests an increasing emphasis on improving the terms of such agreements such that local populations capture an increasing share of the benefits of mining operations in the form of development initiatives, employment increases, and a generally improved outlook for incomes. In view of ongoing reforms, PRADD/Guinea will watch closely for opportunities to contribute to dialogues regarding mining policies that affect the artisanal diamond mining sector.

3.2 THE STATUTORY COMPOSITION AND GENERAL CONTENTS OF CURRENT MINING LEGISLATION

Mining legislation in Guinea is composed of “laws” (*lois*), “decrees” (*décrets*), and “ministerial orders” (*arrêtés*). Each known item included in the body of mining legislation is listed in Annex I. The centerpiece is the “mining code,” officially entitled, *Loi L/95/036/CTRN du 30 juin 1995 portant “Code Minier” de la République de Guinée*. This provides a legislative framework for all other mining legislation; the individual statutes which consist mostly of more detailed regulations regarding sections of the code itself.

²⁸ Ministère des Mines et de la Géologie, *Etude Critique du Code Minier Guinéen: Atouts et Faiblesses*, presented at the Forum International sur le Secteur Minier Guinéen, Conakry 11, 12 et 13 octobre 2004, Hotel Bel Air.

Another level of statutes designates and defines artisanal mining zones and establishes “parcel plans” within those zones. Award of the parcels is legally sanctioned in the form of ministerial orders. PRADD/Guinea has collected a number of these statutes, but it is unknown whether the current availability of artisanal zone and permit information is complete.

Returning to the broadest level of mining legislation, one notes that the current mining code was adopted in 1995 and aims at creating a favorable investment climate for international enterprises.²⁹ Both artisanal diamond mining and marketing are authorized, but both are subject to obtaining the appropriate permits, and thus, in legal terms, very tightly controlled. Details of the code and accompanying legislation follow.

3.3 ARTISANAL DIAMOND MINING CONSIDERED WITHIN THE GENERAL MINING POLICY CONTEXT

An “artisanal operation” is defined in the Guinean mining code³⁰ as “*an activity which consists of small-scale operations using traditional or non-mechanized methods*” (Article 1, definitions). Semi-industrial mining is defined in terms of its “permanence” relative to artisanal mining, as well as its greater scale in terms of reserves, level of investment, production capacity, number of employees, annual added value, and mechanization (Article 1, definitions). Whereas artisanal parcels are one-two hectares, semi-industrial permits may cover an area of up to 16 km², and industrial concessions as much as 500 km² (Article 17 of the mining code). An additional element that defines a part of the distinction between artisanal and semi-industrial mining is *Ministère des Mines et de la Géologie* (MMG) order 93/6666 which limits the number of employees on an artisanal parcel to 50 (Article 6).

3.4 PROPERTY RIGHTS TO DIAMONDS IN THE GROUND

Article 3 of the mining code clearly establishes that minerals in the ground in Guinea are the property of the State. “However, holders of operating titles [explained below] acquire ownership of the substances they extract.” The same article establishes that rights to substances in the ground are distinct from rights to the surface.

The following mining titles (further explained below) are available to mineral prospectors and miners (see Article 10):

- Staking [reconnaissance] permits;
- Artisanal operation license;
- Mining prospecting permit;
- Mining operation permit; and
- Mining concession.

²⁹ Apparently, GOG efforts to achieve a favorable investment climate have satisfied at least some international investors. A Cassidy Gold Corporation glossy brochure entitled “Working in Guinea” touts the business friendly attitude of the country with such statements as, The [Mining] Code is a workable system of reconnaissance, exploration and exploitation permits and mining concessions. Applications for mining licenses are processed quickly and efficiently. The same brochure has the following to say about the Ministry of Mines and Geology: The primary objective of the Ministry is to attract the financial resources necessary for a productive mineral exploration and investment climate, the benefits of which will in turn increase investment in health, education, and general infrastructure, and improve the quality of life for its citizens. The brochure may be viewed at <http://www.cassidygold.com/i/pdf/CDY-Guinea.pdf>.

³⁰ References to the mining code cited in the present document refer to *La Loi L/95/036/CTRN du 30 juin 1995 portant “Code Minier” de la République de Guinée*.

As noted in Article 3, the above-identified permits classified as “operation” permits (including a mining concession) confer on the title-holder the property rights of extracted minerals.

3.5 A CLOSED STATUTORY SYSTEM FOR PRODUCTION AND MARKETING OF DIAMONDS

Guinea’s mining code and related legislation³¹ are clear and unambiguous in that all legal transactions involving diamonds can only take place between certified and registered stakeholders (see Article 96 of the mining code; Articles 5 and 21-23 of Law 93/025; and Articles 17 and 40 of Order 93/6666). An exhaustive list of entities authorized to possess or transport artisanally-produced diamonds is provided by Article 40 of Order 93/6666 and includes:

- Artisanal mining title-holders;
- Registered diamond collectors;
- Importers possessing a valid importation certificate;
- Registered agents of buying and export businesses; and
- Specialized government agents of the *Bureau National d’Expertise des Diamants et Autres Gemmes* (BNE) or *Banque Centrale de la République de Guinée* (BCRG).

Article 6 of Law 93/025 further clarifies that legal possession of artisanally-produced diamonds is restricted to authorized miners, collectors, and buying houses. These elements – further authorized to buy and sell diamonds by the aforementioned Articles 5, 22, and 23 – thus define the legal chain of custody for production and marketing of diamonds in Guinea. This regulated chain of custody is reminiscent of the Kimberley Process Certification Scheme in that certified (or member) actors (or countries) are permitted to trade diamonds *only* among themselves.

Only Guinean nationals may obtain an artisanal mining title (Articles 95 and 103 of the mining code and Article 9 of Law 93/0125) or become an authorized diamond collector (Article 96 of the mining code). Article 22 of Law 93/025 further requires that the collectors maintain a regular residence in Guinea. In addition, Article 96 of the mining code expressly states that Guinean nationals may be authorized to set up a diamond buying and exporting enterprise, and Article 23 of Law 93/025 adds that buying houses must train at least one Guinean national in diamond evaluation. Nevertheless, mining regulations do not exclude non-Guineans from establishing diamond buying and exporting enterprises.

3.6 PERMITS AND LICENSES

Mining “authorizations” – also referred to as “titles,” “licenses,” or “permits” – constitute the heart of the government’s strategy to regulate the mining sector. Permits and licenses are tailored to either industrial or artisanal miners, and fall into the categories of *reconnaissance*, *prospecting*, and *exploitation*. The specific types of permits and *authorizations* allowed by the mining code are as follows (Article 10).

³¹ By “related legislation” we refer most notably to Loi 93/025/CTRN Abrogeant et remplaçant la loi 92/004/CTRN du 1er avril 1992 fixant les conditions de l’exploitation artisanale et de la commercialisation des diamants et autres gemmes – 10 juin 1993; and Arrêté A./93/No 6666/MRNEE/SGG Fixant les modalités d’application de la loi 93/025/CTRN du 1er juin 1993 relative aux conditions de l’exploitation artisanale et de la commercialisation des diamants et autres gemmes – 12 août 1993. These legislative texts will be referred to hereafter as Law (Loi) 93/025 and Order (Arrêté) 93/6666.

3.6.1 Reconnaissance permits

Reconnaissance permits are issued by the *Direction Nationale des Mines* (DNM) following the recommendation of the CPDM. These may be issued either to industrial, semi-industrial, or artisanal miners (see Article 24). The reconnaissance permit allows the holder to search for “one or several mining substances...within the prescribed territory and for the prescribed term” (Article 23). The rights are not exclusive, and may be exercised by more than one party within the same designated zone. Reconnaissance permits are issued for three months, renewable one time for three additional months (Article 25).

3.6.2 Artisanal operation license

Artisanal permits may only be issued to Guinean nationals (Article 95 of the mining code and Article 9 of Law 93/025) and within zones designated for artisanal mining (Articles 94 and 103 of the mining code). An artisanal operating permit confers on its holder “the right to search for and develop substances for which they are issued within the limits of their perimeter and to a depth of 30 meters in cases of operation by pulleys, and 15 meters in case of digging (Article 101). The artisanal area is rectangular (Article 102) and limited to a maximum of two hectares (Article 3 of Order 93/6666). The artisanal permit is granted by order of the Ministry of Mines (Article 11 of 93/025). The artisanal permit is issued for a period of one year, but may be renewed several times for one year each time (Article 104).

3.6.3 Mining prospecting permit

A prospecting permit confers on the holder exclusive rights to prospect within a designated zone (Article 26). The area for which a prospecting permit may be issued cannot exceed 500 km² for industrial prospecting, or 16 km² for semi-industrial prospecting, unless special permission is granted (Article 27). This permit is awarded by the Ministry of Mines on recommendation of the CPDM (Article 28). Prospecting permits are issued for a maximum of three years for industrial prospecting and two years for semi-industrial prospecting (Article 29). An industrial prospecting permit may be renewed twice for a period of two years each (Article 30). A semi-industrial permit may be renewed only once for a period of one year (Article 30). Some investment requirements apply to renewal. Article 33 provides some limited exceptions to the renewal deadlines. Holders of prospecting permits may freely dispose of products extracted in the course of prospecting, provided they declare them to the DNM (Article 32).

3.6.4 Mining operation permit

The operation permit “confers on the holder an exclusive right to search, prospect, develop, and freely dispose of the mineral substances for which it is issued, within the limits of its perimeter and without limitations of depth” (Article 34). The perimeter defined in the operation permit must be wholly contained within the area defined by the preceding prospecting permit (Article 35). The operation permit is “limited to the deposits as designated in the feasibility studies” (Article 35). Operating permits are issued by the Minister of Mines on recommendation of the CPDM (Article 36). Industrial operating permits are issued for a maximum of 10 years, while semi-industrial operating permits are issued for a maximum of six years (Article 38). However, operating permits may be renewed several times, each for a period of five years or more (Article 39).

3.6.5 Mining concession

Concessions are similar to operating permits in that they confer exclusive rights “to carry out all kinds of prospecting and development of deposits of mining substances for which the concession is granted, within the limits of its perimeter and without limits of depth” (Article 41). However, concessions are somewhat more flexible and individually tailored than is the operating permit. In addition, a concession may be issued for up to 25 years (Article 45), and renewed one or more times for a period of 10 years (Article 46).

3.7 ENFORCEMENT OF MINING REGULATIONS

Article 7 of the Law 93/025 establishes a Special Brigade to focus on enforcement of mining regulations. Agents of the Special Brigade are recruited from existing agencies such as police, customs, and military forces, and are under the responsibility of the Ministry of Mines. Article 8 of the same law adds that all such existing enforcement agencies are responsible for enforcement of mining regulations (Article 8). Article 17 authorizes diamond and precious gem miners to hire, at their own expense, “surveillance agents at their mining sites.” The identity of such hired security agents must be provided to the Ministry of Mines and the Special Brigade. Private security agents must also report all mining infractions to the Special Brigade (Article 18). Articles 25-28 specify penalties and sanctions imposed for violations of mining laws.

The Mining Code, established two years after Law 93/025, transforms the term, “Special Brigade” into a “Precious Stones and Anti-Fraud Brigade” (Article 100), although the attributions remain the same. Article 173 of the Code adds that the sworn agents of the DNM “have the power to undertake and exercise public action in instances where offenses are committed under this Code and its ancillary provisions.” In 1996 the Anti-Fraud Brigade was established by order 96/04/MMG/CAB *Portant attribution et organization de la Brigade Anti-Fraude*. The Anti-Fraud Brigade is to maintain permanent posts at airports and in major cities, border areas, and prefectures that are the site of significant diamond marketing, notably, Kérouané, Macenta, Beyla, Kissidougou, Guékédou, N’Zérékoré, Siguiri, Mandiana, Dinguiraye, Kouroussa, and Kankan (articles 6-11). Ministerial Order 95/170/PRG/SGG *Portant Organisation de la Sécurité Minière en République de Guinée* provides many further details on the various aspects noted above regarding enforcement of mining regulations.

3.8 PROMOTION OF ARTISANAL MINERS AND COOPERATIVES

In contrast to CAR, Guinean mining legislation does not explicitly promote *artisanal*³² mining through such measures as support for establishment of artisanal production cooperatives. However, a principal stated function of the Artisanal Production Division (*Division d’Exploitation Artisanale* [DEA]) within the DNM is to provide extension services to artisanal miners.

3.9 MINING ADMINISTRATION

The key government body involved in the regulation of the mining sector is the Ministry of Mines

³² As noted below, establishment of the CPDM is a sign of the government’s commitment to promote more mechanized types of mining than would be understood to apply to artisanal mining – based on the code’s definition of artisanal mining – and to attract international investment.

and Geology, which includes the National Directorate of Mines (DNM). The DNM is responsible for managing and monitoring all aspects related to artisanal diamond mining *production*. Management and control of the *marketing* of artisanal diamonds falls under the responsibility of the *Bureau National d'Expertise* (BNE), which serves as the Guinean precious metal and gem evaluation agency that determines the export value and the tax obligation. A third agency, the CPDM, serves to promote and facilitate international investment in the mining sector in Guinea.

3.9.1 Bureau National d'Expertise des Diamants et Autres Gemmes

The BNE was established in 1993 by Decree 93/175/PRG/SGG *Portant création et statuts du Bureau National d'Expertise des Diamants et Autres Gemmes*. A broad reading of artisanal diamond mining policy in Guinea makes it clear that BNE is responsible for all aspects of diamond marketing from mine to export. For example, Article 22 of 93/025 (the application decree for the mining code) requires that all records of diamonds and precious gem purchases by all collectors be submitted to BNE. Article 23 of this law requires the same regarding all purchases by exporting businesses. Article 21 of Order 93/6666 assigns responsibility to BNE for issuance of diamond collector's identity cards. Article 42 of the same ministerial order assigns responsibility to BNE for verification of the origin of diamonds.

BNE also provides important services in determining and collecting revenues for the Guinean government. Article 2 of 93/175 assigns BNE responsibility for evaluation of all artisanal and semi-industrial production of diamonds and precious gems intended for export. A tax of 3% of the value determined by BNE is to be imposed on the exporting business (Article 4 of Joint Order 012/MEEF-MMG/SGG, January 5, 2007).

The BNE has important information management functions. Article 2 (of 93/175/PRG/SGG) requires that the agency collect and prepare relevant information pertaining to international diamond markets, and to maintain both weight and value statistics of exported diamonds. As noted above, all diamond marketing activity on the part of collectors and exporting houses is to be reported to BNE. In addition, all gems for export must be submitted to BNE for evaluation. These legislative requirements provide a framework for the verification of paper records by reconciling them with the physical receipt of diamonds and precious gems.

BNE also plays a role in enhancing the skills and responsibilities of Guineans active in the diamond mining sector. Article 23 of Law 93/025 requires that all exporting houses employ and train at least one Guinean national in diamond evaluation. The training program is to be approved by the BNE.

3.9.2 Center for Promotion and Development of Mining (CPDM)

The 1995 mining code established an agency within the MMG that is separate from and parallel to the National Direction of Mines. This agency is the Center for Promotion and Development of Mining (CPDM). As noted above, this agency was established as a "one-stop shop" for international investors. Article 14 of Décret No/95/50/PRG/SGG assigns to CPDM the central function of designing and implementing a strategy to attract international investment in the Guinean mining sector. In a meeting with PRADD staff, the Deputy General Director of CPDM confirmed that his agency serves as the unique link between investors and the Guinean mining

sector,³³ in contrast to the central function of the DNM, which is to provide technical support and monitoring of the mining sector.

Of particular interest to PRADD/Guinea is that CPDM maintains the mining cadastre, which includes geographically specific information regarding the permitted mining zones of semi-industrial diamond producers. Although the CPDM database outlines the zones assigned to artisanal diamond mining, it does not include permit – i.e., property rights – information for artisanal diamond miners. A lack of focus on artisanal property rights is to be expected given that an additional aspect of the legal mandate of CPDM, which is to provide assistance to artisanal miners seeking to move to the “next level” of industrial sophistication and scale of production. In other words, one might conclude that the CPDM view of artisanal diamond miners is that they are a temporary category destined to either leave the sector altogether or to “graduate” to the next (semi-industrial) level of diamond mining.

3.9.3 National Directorate of Mines (DNM)

In contrast to BNE, which oversees all diamond-marketing activities, the DNM is more focused on the regulation of production. But the DNM mandate is somewhat broader than this, given its responsibilities to formulate mining policy and generally to enforce the mining code and related texts (article 1 of Order 95/238/MMG/CAB).

The DNM is composed of administrative support services division and technical agencies (Article 4). There are three technical divisions including (Article 6):

- Control, Legislation and Cadastre Division (DLCC);
- Artisanal Exploitation Division (DEA); and
- Environmental Protection and Mining Security Division (DPESM).

The DLCC contains three sub-sections, of which the Legislation and Mining Control Section and the Concession and Cadastre sections are of particular interest. The Legislation and Mining Control Section is responsible for the maintenance of production statistics (Article 10). The Concession and Cadastre Section takes charge of the delimitations of mining concessions on the ground, as well as maintenance and updating of maps of mining concessions and mining titles (Article 12). Presumably, these sections restrict their activities to the industrial and semi-industrial domains. Regarding the artisanal domain, the equivalent functions are assigned to agencies within the DEA.

The DEA also contains three sub-sections of which two are particularly relevant to PRADD objectives (the third focuses on gold mining activities). The Extension and Artisanal Exploitation of Diamonds and Precious Gems Service (*Service d'Encadrement de l'Exploitation Artisanale du Diamant et autres Gemmes* [SEEA]) advises the artisanal mining process, monitors artisanal mining activities, and maintains artisanal diamond production statistics (Article 16). The Topography, Security, and Monitoring (TSS) Section monitors artisanal diamond mining activities on the ground, notes infractions, and is responsible for the “parceling” of designated artisanal zones (Article 17).

³³ See also article 168 of the mining code which states, *[I]nvestors deal with the CPDM, serving as liaison between them and the Administration, in order to ease the administrative formalities and procedures surrounding the issuance of mining titles.*

3.10 ORGANIZATION OF PRIVATE SECTOR STAKEHOLDERS IN ARTISANAL MINING

A private organization of artisanal mining producers, buyers, and exporters was established in 2002 under the name of the National Coordination of Diamond and Gold Actors of Guinea (*Coordination Nationale des Diamantaires et Orpailleurs de Guinée – CONADOG*). This organization claims to work closely with the BNE and the anti-fraud agency in monitoring diamond activities and enforcing current policies. CONADOG does in fact appear to wield significant influence in the artisanal diamond-mining sector in Guinea.

3.11 ENVIRONMENTAL PROTECTION

Article 16 of the mining code states that mining operations “must be carried out in such a way as to ensure environmental protection in accordance with the Environment Code. Enterprises must take all steps necessary to prevent pollution of the environment, to treat wastes, emanations and effluence, and to preserve the forest and water resources.” Article 105 specifically requires that artisanal miners restore the operating site covered by their mining titles. This requirement is repeated in Articles 20 of Law 93/025 and 13 of Order 93/6666. As noted in these same articles, a portion of the fee required to obtain the artisanal mining title is to serve as a “guarantee” that this obligation will be respected. However, it has been noted by observers that the sum collected for environmental restoration is far from adequate to accomplish its intended task.

Article 132 of the mining code further elaborates on environmental requirements:

“When they stop working a deposit where recoverable matter still remains, mine or quarry operators must leave it in a condition which will allow operations to be resumed. If they do not, the *Direction Nationale des Mines* will carry out such work as is needed at their expense. When work is finished on the surface, or in the case of operation by levels when work ends at each level, mine or quarry title holders must restore the sites and premises affected by work and any installations used for operations or prospecting; in particular, sites which were previously useful for agricultural purposes must be restored to the same state and forest land must be reforested, in accordance with a program which has received prior approval from the Minister of Mines. Failure to do so, without prejudice to any other action which may be taken against the title holder, will lead to the *Direction Nationale des Mines* or any other administration so authorized carrying out the restoration work at his expense.”

It is also notable that Order 95/238/MMG/CAB establishes an Environmental Protection sub-section within the DNM to monitor and enforce mining regulations targeting protection of the environment. This section is to work with the National Direction of the Environment to assure that regulations are enforced (articles 18 and 22 of Order 95/238).

3.12 RESPECT FOR LOCAL PROPERTY RIGHTS

The Guinean mining code dedicates Chapter 1 (*Relations with Third Parties*) of Title IV (*Relations of Mining Title Holders with Other Holders, with Third Parties, and with the State*) to definition of the rights of pre-existing and non-mining parties vis-à-vis holders of mining titles. Although the Chapter contains no references to “customary” rights, use of the terms “usufructuaries” and “occupants of the soil” appear to carry a more-or-less equivalent meaning. Article 69 requires that mining title holders compensate such usufructuaries or occupants for any

loss of land resulting from the mining activities. Article 71 allows such occupants to claim compensation for damages suffered; the extent of such claims is to be offset, however, by any advantages gained from the mining operations (assumedly referring to any access to infrastructures constructed as a result of the mining enterprise). A general observation is that customary property rights seem neither to be explicitly acknowledged nor adequately protected by Guinean mining legislation.

3.13 DESIGNATION OF ARTISANAL MINING ZONES

Article 94 states that areas to be reserved for artisanal operations are designated by order of the Minister of Mines. The same article adds a confusing clause, which is; “[w]here mine or quarry titles have been issued for industrial or semi-industrial operations, a subsequent decision to classify part or all of the zones as areas reserved for artisanal operations will not affect either the extent or the terms for exercising rights under such titles.” It is unclear just how the designation as a zone to be reserved for artisanal mining of all or part of areas included under an industrial or semi-industrial mining title would not affect the extent or terms of such titles. Nevertheless, this provision appears to favor the rights of semi-industrial operators over those of artisanal miners.

As earlier stated, the Topographic and Cadastre section within the Artisanal Exploitation Division of the DNM is responsible for “parceling” the area within the designated artisanal mining zone. The artisanal parcels are to be rectangular and not to exceed a total area of two hectares.

3.14 RESTRICTED USE OF CHILD LABOR

Article 135: Provisions respecting children under 16

No child under the age of sixteen (16) may be employed other than as an assistant in a mine or quarry, whether underground, on the surface, on machines for lifting or moving objects, on winding gear for elevators or dynamiting.

3.15 COORDINATION WITH NON-MINING LEGISLATION AND NATURAL RESOURCE MANAGEMENT AGENCIES

There are at least two joint ministerial decrees issued by the MMG and a collaborating ministry to coordinate regulation of natural resources affected by mining operations. These address forest resource use³⁴ (collaborating ministry is the Ministry of Agriculture, Livestock, Water and Forests - MAEEEF) and water³⁵ (collaborating ministry is the Ministry of Water Resources and Energy). *Arrêté conjoint no. 624* requires the two ministries work together to enforce their respective regulations in overlapping zones, and specifically requires the MAEEEF to analyze and approve all operations applied for by mining title holders that involve use of trees and bushes.

³⁴ See, *Arrêté conjoint no. 624 portant harmonization de la Loi no. 95/036/CTRN du 30 juin 1995 portant code minier, avec l'Ordonnance no. 081/0RG/SGG/89 du 20 décembre portant code forestier.*

³⁵ *Arrêté conjoint n°1647/MMGE/MHE du 24 avril 2001 portant harmonisation du code minier avec le code de l'eau*

4.0 DIAMOND PRODUCTION, MARKETING, AND EXPORT INFORMATION SYSTEMS: OPPORTUNITIES PROVIDED BY MINING POLICIES

4.1 INTRODUCTION

This report section identifies potential opportunities for strengthening diamond production and marketing information systems in Guinea based on existing legislation. These statutory opportunities were confirmed by workshop participants as appropriate topics for further investigation in the objective of building on and/or reinforcing existing information sources as an approach to achieving PRADD/Guinea Result 1 (*A system for reliable production and export information for diamonds exists at pilot sites*).

Information opportunities exist at each of the three primary levels of the artisanal diamond chain of custody in Guinea:

- Level 1: artisanal miners (production and “first sales” information);
- Level 2: certified diamond collectors (the middlemen); and
- Level 3: buying and exporting businesses under the direct oversight of BNE.

For each chain of custody level, the information possibilities identified in current mining policy that appear to be pertinent to PRADD Result 1 are identified below. The agencies responsible for management of the noted information sources include the National Direction of Mines, CPDM, and BNE. Workshop participants representing each of these three agencies confirmed their availability for exchanges in coming months to explore and evaluate the existing information systems in view of PRADD goals, and possibilities for identifying ways to strengthen them.

4.2 CHAIN OF CUSTODY LEVEL 1: ARTISANAL MINERS – PRODUCTION AND FIRST SALES INFORMATION SOURCES IDENTIFIED IN LEGISLATION

From the Mining Code: (Loi L/95/036/CTRN du 30 juin 1995 portant “Code Minier” de la République de Guinée)

Article 54: Reports of mining title holders

Holders of mining titles are required to submit reports in duplicate to the CPDM, one copy of which is addressed to the Direction. The content and frequency of such reports are prescribed in the ancillary provisions of this Code.

Article 127: Collection and storage of mining documentation and titles

Mining engineers and other civil servants and agents acting under order of the Geological Information and Documentation Service have the task of drawing up, updating, preserving, and distributing documentation concerning mineral or fossil substances. They also see to the preservation of mining and quarry titles, and for such purposes keep registers and maps as specified by regulation. Details of the information that must be kept on such registers and maps are determined by order of the Minister of Mines.

From mining application decree: *Loi 93/025/CTRN Abrogeant et remplaçant la loi 92/004/CTRN du 1er avril 1992 fixant les conditions de l'exploitation artisanale et de la commercialisation des diamants et autres gemmes*

Article 15:

Artisanal miners are required to maintain at each mining site a registry containing information regarding production and sales of raw diamonds for each month.

Article 19:

The Special Brigade is to record all infractions relative to possession, exchange, marketing, and transport of diamonds and other gems.

From mining application decree: *Arrêté No. 95/238/MMG/CAB Portant attributions et organisation de la Direction Nationale des Mines*

Article 8:

The Control, Legislative, and Cadastre Division of the National Direction of Mines is responsible for establishing monthly mining statistics.

Article 12:

The department in charge of Mining Concessions and the Cadastre is responsible for the following tasks:

- To delimit and physically mark (borner) attributed concessions (in collaboration with Section Mines et Carrières and Préfectures); and
- To maintain and update maps of mining concessions and titles.

Article 16:

The Diamond and Precious Gem department must maintain production statistics.

Article 17:

The Topographic, Security, and Surveillance division must compile topographic information and define "parcels" for assigned artisanal zones.

From mining application decree: *Arrêté A./93/No 6666/MRNEE/SGG Fixant les modalités d'application de la loi 93/025/CTRN du 1 juin 1993 relative aux conditions de l'exploitation artisanale et de la commercialisation des diamants et autres gemmes*

Article 6:

No more than 50 persons may work in an assigned parcel. All individuals working within a given parcel should appear in a registry maintained by the title-holder that includes names, and reference numbers of artisanal miner identity cards.

Article 8:

Technical and security support are assured by a Service de Coordination Technique des Travaux that contains the following structure:

- *A Mining Control and Statistics section that is responsible for maintaining production statistics, verifying payment of royalties, monitoring the respect of technical requirements and restoration of mining sites.*

Article 23:

All transactions must be recorded in a bordereau d'achat of which the stub must be retained by the collector and the original by the seller.

Article 30:

Each purchase by the buying house is recorded in a "bordereau spécial" of which the model is attached as an annex to this arrêté. This information includes weight and price information. These records are established in triplicate, with copies being provided to the seller and the BNE.

From mining application decree: Décret No./95/50/PRG/SGG Fixant attributions et organisation du Centre de Promotion et de Développement Miniers

Article 10:

The geological and mining information division (of CPDM) is responsible for design and maintenance of hand-written and computerized geological and mining data in the objective of constituting a bibliographic database complete with graphics

Article 12:

The Information and Documentation section (of CPDM) is responsible for identification of available zones that are of potential mining interest, and to keep updated maps of mining permits in collaboration with the National Direction of Mines.

Article 17: *The Investment Records Management section is responsible for registration of mining applications, as well as their analysis and evaluation and monitoring up until the granting of a permit.*

4.3 CHAIN OF CUSTODY LEVEL 2: CERTIFIED DIAMOND COLLECTORS (THE MIDDLEMEN)

From mining application decree: Loi 93/025/CTRN Abrogeant et remplaçant la loi 92/004/CTRN du 1er avril 1992 fixant les conditions de l'exploitation artisanale et de la commercialisation des diamants et autres gemmes

Article 19:

The Special Brigade is to record all infractions relative to possession, exchange, marketing, and transport of diamonds and other gems.

Article 22 (on collectors; several points are listed in the legislation but only one – Point 6 – is reproduced here):

6. *Each collector must maintain a registry of purchases and sales of diamonds and other precious gems including a numbered "bordereau" for each purchase or sale that will be reported to BNE*

From mining application decree: Arrêté A./93/No 6666/MRNEE/SGG Fixant les modalités d'application de la loi 93/025/CTRN du 1 juin 1993 relative aux conditions de l'exploitation artisanale et de la commercialisation des diamants et autres gemmes

Article 23:

All transactions must be recorded in a “bordereau d'achat” of which the stub must be retained by the collector and the original by the seller.

Article 30:

Each purchase by the buying house is recorded in a “bordereau spécial” of which the model is attached as an annex to this arrêté. This information includes weight and price information. These records are established in triplicate, with copies being provided to the seller and the BNE.

4.4 CHAIN OF CUSTODY LEVEL 3: BUYING AND EXPORTING BUSINESSES UNDER THE DIRECT OVERSIGHT OF BNE

From mining application decree: Arrêté A./93/No 6666/MRNEE/SGG Fixant les modalités d'application de la loi 93/025/CTRN du 1 juin 1993 relative aux conditions de l'exploitation artisanale et de la commercialisation des diamants et autres gemmes

Article 23 (on comptoirs d'achat – or diamond buying companies – several points are listed in the legislation but only two – Points 5 and 10 – are reproduced here):

5. Diamond buying companies must establish a list of buying agents and provide this list to the Ministry of Mines. A tax will be required for each such agent.
10. All purchased products must be recorded on a “bordereau d'achat” that is numbered and registered in special books validated and notarized by the BNE

From mining application decree: Décret No 93/175/PRG/SGG Portant Création et Statuts du Bureau National d'Expertise des Diamants et Autres Gemmes

Article 2:

...among the duties of the BNE is to keep statistics regarding marketing in weight and value, and to exploit these statistics.

From mining application decree: Arrêté A./93/No 6666/MRNEE/SGG Fixant les modalités d'application de la loi 93/025/CTRN du 1 juin 1993 relative aux conditions de l'exploitation artisanale et de la commercialisation des diamants et autres gemmes

Article 30:

Each purchase by the buying house is recorded in a “bordereau spécial” of which the model is attached as an annex to this arrêté. This information includes weight and price information. These records are established in triplicate, with copies being provided to the seller and the BNE.

As is clear from the above legislative citations, several information systems are defined in mining policy to monitor and manage activities such as production, marketing, and export of artisanal diamonds. However, during the workshop it was revealed that a number of the statutorily designated information systems have yet to be established. Where they do exist, information collection systems and databases maintained by the ministry often suffer from a lack of adequate resources and are not always properly maintained. Databases are computerized only to varying degrees. The information itself is often somewhat scattered and difficult to access. The capacity to cross-analyze different types of information – for example, to determine production levels of individual registered artisans – is nearly non-existent within the current system that is composed

of distinct databases featuring single-theme information categories and distributed across several ministerial agencies. Nevertheless, some information systems, such as the CPDM mining cadastre that tracks mining permits, titles and concessions, provide a solid base with potential for improving information quality and accessibility.

The workshop was not designed, nor of sufficient duration, to evaluate the capacity and quality of each of the different information systems mandated by mining legislation and identified above. At the time of this writing, PRADD/Guinea has begun, but not completed, investigations of a number of the MMG information systems maintained by CPDM and the *Division d'Encadrement Artisanal* (DEA) of the National Direction of Mines. This work will continue in the coming months and will be extended to additional agencies such as the BNE. Clearly, among the most significant potential contributions of PRADD/Guinea would be to provide assistance to the government of Guinea in the goal of reinforcing the accessibility and quality of information that would assure more effective tracking of artisanal diamond production and marketing in Guinea from mine to export.

ANNEX I: MINING LEGISLATION AND INFORMATION SOURCES

PRIMARY STATUTES ON WHICH THIS POLICY REVIEW IS BASED INCLUDE:

- The Mining Code: La Loi L/95/036/CTRN du 30 juin 1995 portant “Code Minier” de la République de Guinée
- Artisanal diamond mining and marketing Policy : Loi 93/025/CTRN Abrogeant et remplaçant la loi 92/004/CTRN du 1er avril 1992 fixant les conditions de l’exploitation artisanale et de la commercialisation des diamants et autres gemmes – 10 juin 1993¹
- Establishment of the National Office for Diamond Evaluation: Décret No 93/175/PRG/SGG Portant Création et Statuts du Bureau National d’Expertise des Diamants et Autres Gemmes – 13 septembre 1993
- Security measures in the mining sector: Décret No. 95/170/PRG/SGG *Portant organisation de la sécurité minière en République de Guinée* – 5 juin 1995
- Establishment of the Anti-Fraud Brigade: Arrêté No. 96/04/MMG/CAB Portant attribution et organisation de la Brigade Anti-Fraude – 10 juin 1996 – 10 juin 1996
- Export and marketing taxes for diamonds: Arrêté Conjoint No. 012/MEEF-MMG/SGG Fixant le montant des droits, redevances et taxes applicables à la commercialisation du diamant – 5 janvier 2007
- Responsibilities and Agencies of the National Directorate of Mines: Arrêté No. 95/238/MMG/CAB Portant attributions et organisation de la Direction Nationale des Mines – 24 mai 1995
- Attributions of the Center for Mining Promotion and Development: Décret No. 95/50/PRG/SGG Fixant attributions et organisation du Centre de Promotion et de Développement Miniers – 30 mai 1995
- Structure of the Center for Mining Promotion and Development: Arrêté conjoint No. 95/4606/PRG/SGG Fixant le cadre organique du Centre de Promotion et de Développement Minier du Ministère des Mines et Géologie – 21 septembre 1995
- Application decree for regulating production and marketing of artisanal diamonds: Arrêté A./93/No 6666/MRNEE/SGG Fixant les modalités d’application de la loi 93/025/CTRN du 1

¹ Although this piece of legislation continues to be included as part of the artisanal diamond mining policy “canon,” and appears to influence implementers of diamond sector policy, it was officially abrogated upon passage of the current mining code in 1995.

juin 1993 relative aux conditions de l'exploitation artisanale et de la commercialisation des diamants et autres gemmes – 12 août 1993²

- Joint law harmonizing mining and forest laws: Arrêté conjoint No 624 Portant harmonisation de la Loi No 95/036/CTRN du 30 juin 1995 Portant code minier, avec l'ordonnance No 081/ORG/SGG/89 du 20 décembre, Portant code forestier

ADDITIONAL INFORMATION SOURCES:

- Interviews conducted during the “Scoping” phase travel to Guinea during the final week of November 2006
- Follow-up mission targeting renewal of contacts and reintroduction of PRADD in Guinea, November 5-19, 2007
- PRADD Pilot Project national-level launch in February 2008 (Conakry)
- PRADD Pilot Project local-level (Banankoro) launch, field visits and follow-up in Conakry, conducted May 14-30, 2008
- Discussions during a national workshop on the theme, *Guinean Mining Legislation Pertinent to the Artisanal Diamond Mining Sector with a Focus on Information Systems*, Hotel Camayenne, October 17, 2008
- Internet-based searches throughout the project design and launch period (most of the documentation referred to in footnotes throughout this policy review was obtained through internet searches)

² The observation made in footnote 4 above appears also to be applicable to Arrêté A./93/No 6666/MRNEE/SGG.

ANNEX II: PARTICIPANT LIST

WORKSHOP ON GUINEAN MINING LEGISLATION PERTINENT TO THE ARTISANAL DIAMOND MINING SECTOR WITH A FOCUS ON INFORMATION SYSTEMS

Hotel Camayenne, October 17, 2008

| No. | Name | Title | Agency |
|-----|------------------------|----------------------------------|--|
| 1 | Alkaly Yamoussa SOUMAH | Division Chief | National Direction of Mines, Artisanal Exploitation Division |
| 2 | Mamadou DIALLO | Computer Expert | CPDM |
| 3 | Aissatou Damba DIALLO | Section Chief (Cadastre) | National Direction of Mines |
| 4 | Marie Celine Ajaven | Director of Studies | CPDM |
| 5 | DIALLO Thierno Amadou | General Director | Anti-Fraud Brigade |
| 6 | Sadamoudou KOUROUMA | Director of Studies | National Direction of Mines |
| 7 | Mamadou Alpha DIALLO | Agent | National Direction of Mines |
| 8 | Alhassane CAMARA | Associate Director | CPDM |
| 9 | Soriba BANGOURA | Deputy Director | CPDM |
| 10 | Noumory DIAWARA | Regional Director | National Direction of Mines, Kankan |
| 11 | Dr. Lamine BANGOURA | Agent | CPDM, Development and Strategy section |
| 12 | Mohmoud DIALLO | Deputy Director | BNE |
| 13 | Mariama Ciré SQUARE | Agent | CPDM |
| 14 | Dr Sid Mohamed NABE | Agent | Guinean Mines Office |
| 15 | Arafan CISSE | Mining Legislation Section Chief | National Direction of Mines |
| 16 | Foulématou CISSE | Director of Studies | CPDM |
| 17 | Elhadj Dr. Aliou CISSE | Director | National Direction of Geology |

| No. | Name | Title | Agency |
|-----|---------------------|--|-------------------------------|
| 18 | Sory KOUROUMA | Former Director | National Direction of Mines |
| 19 | Lancei TRAORE | Consultant, former Director | National Direction of Mines |
| 20 | Yaya BAH | Legal Counsel | Ministry of Mines and Geology |
| 21 | Kent ELBOW | Consultant | ARD, Inc. |
| 22 | James A. SHYNE | Chef d'Equipe, PRADD | ARD Guinée |
| 23 | Apollinaire KOLIE | Program Coordinator, PRADD | ARD Guinée |
| 24 | Yomba SANOH | Coordinator of External Relations and Local Development, PRADD | ARD Guinée |
| 25 | Elhadj Mahmoud SANO | Resident Advisor, PRADD | ARD Guinée |