

THE FAILURE OF GOOD INTENTIONS



Fraud, Theft and Murder
in the Brazilian Diamond Industry

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The Kimberley Process

The Kimberley Process began in 2000 as an attempt to end wars in Africa that were fuelled by “conflict diamonds”. A series of intergovernmental meetings in which NGOs and industry played a key role led to the creation of the Kimberley Process Certification Scheme (KPCS) for rough diamonds, starting in January 2003. The KPCS is legally binding in more than 40 diamond producing and processing countries, plus all those represented by the European Union. Essentially, no rough diamonds can be traded among or between these countries unless they are accompanied by a government-issued Kimberley Certificate stating that the diamonds are clean. The certificate is backed by a system of internal controls in each country, designed to give each certificate meaning. In many cases, however, internal controls remain weak.

Cover Photo: Federal Police agents search mining equipment for diamonds during a raid at a diamond mine near the Roosevelt Indian Reserve in Brazil's western state of Rondônia.

LAWS FOR THE ENGLISH TO SEE

“Para inglês ver” – a Brazilian expression still in common usage – dates back to 1830, when Brazil, under pressure from England, began to pass laws against trafficking in slaves. Everyone knew the laws would not be enforced. It was said then, that the laws were only “para inglês ver”, just for the English to see¹.

One of the oldest diamond exporters on earth, Brazil remains a country rich in diamond deposits, nearly all of them shallow, alluvial, and difficult to control. Production is mostly in the hands of unlicensed, unregistered *garimpeiros* or hand miners. Faced with the task of bringing order to such chaos, Brazilian authorities delayed passing the enabling legislation for Brazil’s entry into the Kimberley Process Certification Scheme (KPCS) until August 1, 2003, the day after other Kimberley signatories suspended Brazilian diamond imports.

On paper, the system that was eventually put in place looks rigorous, systematic and comprehensive. In practice, it’s anything but. It’s a system fraught with systematic leaks and failures in oversight, a system that encourages smuggling and contraband, and conspires to hide the source of Brazil’s diamonds – 90 per cent of which are produced by *garimpeiros* – inside the production of a few recently legalized *garimpeiro* operations and those of a few larger producers. The real purpose of the system is not to track Brazil’s diamonds from their source, but to provide Brazil’s diamond exports with the legal covering of a piece of paper.

In short, Brazil’s Kimberley certification system is very much a modern day equivalent of the dead-letter slave laws of the 1830s. It is a system made largely for international consumption, a law “for the English to see.”

About this Report

This report is a detective story. It is about fraud and theft and murder, and good intentions gone wrong. The study was undertaken for several reasons. First, Brazil has a long history of diamond production, and is the largest diamond producing country in South America. Very little, however, has been published – at least in English – about Brazilian diamonds. As in Angola, the Democratic Republic of the Congo and Sierra Leone, Brazil’s diamonds are alluvial in nature, and there is a large population of artisanal miners. Brazilian diamonds have attracted a wide variety of exploration and mining firms, as well as the usual complement of international buyers and soldiers of fortune. Finally, the massacre of 29 diamond diggers on the Roosevelt Indian Reserve in the remote Rondônia rainforest in 2004 attracted international media attention and demonstrated that conflict diamonds are by no means restricted to Africa.

In order to unpack the Brazilian diamond story, Partnership Africa Canada researchers visited Rio de Janeiro, Brasília, Belo Horizonte, Coromandel, Diamantina, Cuiabá, Juína and the Roosevelt Indian Reserve between January and March 2005. What they found is disturbing. This is a PAC report, but it could not have been written without the assistance of many government officials, diamond buyers, exporters and *garimpeiros* who took the time to explain the diamond business to us. We are very grateful, and remind readers that any errors or omissions are ours alone.

¹ Prof. Eduardo Fernandes Paes, UFRJ; <http://intervox.nce.ufrj.br/~edpaes/origem1.htm>

The History of Diamonds in Brazil



Diamonds were discovered in Brazil around 1725, by miners working the newly discovered alluvial goldfields in what is now the state of Minas Gerais (“General Mines”). The colony quickly became the world’s major source of diamonds, exporting tens and then hundreds of thousands of carats per year to markets in Europe.

The discovery had a profound effect on Brazilian history. Lured by gold and diamonds, some 600,000 settlers flooded the Brazilian interior, shifting the colony’s economic focus southwards and precipitating the transfer, in 1763, of Brazil’s colonial capital from Salvador to Rio de Janeiro.

The Portuguese crown took direct control of Brazil’s diamond fields, parcelling out concessions only to those who could put up a substantial deposit of gold as a pledge against the 20 per cent tax (the “Royal Fifth”) the crown levied on mineral production. Unwilling or unable to work within these constraints, numerous miners took to working clandestine diamond deposits in the hills around Diamantina. *Grimpas das Serras* was the name given to these unlicensed, unregulated miners in a royal proclamation of 1731. The name has come down to this day as *garimpeiro*², as has the conflict

between the minority with the capital and connections to mine legally, and the majority who mine without sanction or permission.

For a century and a half Brazil remained the chief source of diamonds worldwide. Production in the four decades from 1730 to 1770 rose from 20,000 carats per year to an average of 50,000 carats per year, even as the European price for the now overabundant stones plunged by as much as 75 per cent. In the 1840s and 1850s output rose again to about 150,000 carats a year with the discovery of new diamond areas in the highlands of Bahia. The late 1800s saw another increase, up to 190,000 carats annually, though by this time Brazilian diamonds were little noticed in the flood of three million carats a year pouring out of South Africa. Though with ups and downs, Brazil maintained production around 250,000 cts/year for most of the 20th century.

² Portuguese is blessed with two very specific words to describe miners and mining activity. *Garimpeiros* are artisanal hand-miners, who traditionally work the earth with only a shovel and diamond pan. The small surface pits they dig are called *garimpos*. Highly capitalized, mechanized mining is known as *mineração*, the practitioners (or more often owners) are known as *mineradoras*; the mining site – be it open-pit or deep-shaft, is called a *mina*.

Diamonds in Brazil Today

Diamonds – all alluvial – are found across Brazil’s continent-sized landmass - in the central states of Minas Gerais and Goiás, in the northern rainforest state of Roraima, in the highlands of Bahia and along a fault-line extending more than a thousand kilometres through the states of Mato Grosso and Rondônia.

In Diamantina, Brazil’s original diamond field, diggings began within what is now the city centre, then moved northwards along the banks of the Rio Jequitinhonha. Though *garimpeiros* are still active in the area, nearly three centuries of exploitation have greatly reduced ore concentrations. *Garimpeiros* in Diamantina are pleased to get 0.2 ct/m³. The dredging operations run by Rio Novo Mineração on the Alto Jequitinhonha reportedly work with even lower ore quality, on the order of 0.05 ct/m³, and make a profit only by processing huge volumes of ore. Diamantina diamonds are of good colour and clarity, but generally small, on the order of four carats or less. In the local market, these gem quality diamonds command about US\$250/ct.

In the west of the Minas Gerais, in an area called the Mineiro Triangle, diamonds are found in sedimentary deposits near the city of Coromandel, as well as in and around the Rivers Paranaíba, São Francisco and Abaeté. The Rio Abaeté in particular is known for “raft mining” – divers armed with dredging hoses descend up to eight metres and suck up material from the river bed.

Diamond concentrations in the Triângulo Mineiro are not high – rough estimates put yields at 0.3 ct/m³ – but the quality of the stones can be very high indeed. In 1938, *garimpeiros* working the Rio Santo Antônio do Bonito near Coromandel found the 726.6 carat Presidente Vargas diamond, still the 6th largest stone ever found. In 2002, a raft crew working the Rio Abaeté pulled up a 79 carat pink diamond, which was later sold in Hong Kong for a reported US\$12 million. Other large pink diamonds have been found in the Abaeté since then.

Mineralized kimberlites have been found in Rondônia and Mato Grosso. They extend along the Presidente Hermes fault that runs southeast for hundreds of kilometres from Espigão do Oeste in Rondônia, through the Roosevelt Indian Reserve and other tribal lands of the Cinta Larga people to the Mato Grosso city of Juina. To date, none of these kimberlites have yielded economically viable concentrations of diamonds.

The mining that does take place in these areas is alluvial. Around Juina, diamonds are generally industrial-quality browns and yellows, worth on the order of US\$20/ct. Yields vary from 0.2-0.5ct/m³. About five per cent of production consists of larger, clearer, gem-quality diamonds.

The richest vein of diamonds currently being exploited in Brazil lies just north of Juina in the Roosevelt Indian Reserve, tribal home of the Cinta Larga people. Mining in the reserve is officially illegal, but the diamonds from the Roosevelt are of such high quality – large, round and spring-water clear – that buyers and *garimpeiros* continue to seek them out, notwithstanding the substantial dangers involved. Yields in the Roosevelt are very roughly calculated at about 1.4 ct/m³. The smaller stones (under four carats) are sold by the *garimpeiros* and Cinta Larga who work the Roosevelt reserve for about US\$300/ct. Larger stones command considerably more.

In 2004, Brazil’s first full year as a participant in the Kimberley Process, the country exported nearly 248,000 carats. This is consistent with export figures from the decade or so before Brazil joined Kimberley, though it should be kept in mind that Brazil’s export figures pre-Kimberley are estimates only; 90 per cent of the Brazil’s diamond exports in this period left the country undocumented.

Forecasts of Brazil’s potential future production are equally problematic. Press reports quoting officials from Brazil’s Ministry of Mines have put Brazil’s estimated

diamond reserves at anywhere from 15-50 million carats, but these numbers are guestimates at best. No nationwide survey of diamond reserves has ever been undertaken by any government agency in Brazil, nor has the government ever attempted to synthesize the information contained in the many decades of exploration reports filed by private exploration companies. The fact is, when it comes to diamond reserves in Brazil, no one knows.

That uncertainty is what continues to fuel exploration efforts in Brazil. According to an August 23, 2004 article in London's *Financial Times*, strong rough diamond prices, rising demand from new consumers in India and China and a belief that production has peaked in southern Africa and Canada have helped to fuel a mini exploration boom.

The Exploration Companies

Diamond giant De Beers (www.debeersgroup.com) actively explored Brazil from 1972 until the mid-90s, but never located any mineralized kimberlites rich enough to be worth exploiting. In the years since, the company has been quietly selling off most of its Brazilian properties and exploration data sets. Australian giant Rio Tinto (www.riotinto.com) is also gone, after exploring southern Rondônia for much of the 1990s.

With the retreat of the two giants, diamond exploration in Brazil has in essence become a Canadian game, dominated by a bevy of small-cap companies listed on the Toronto (TSE) or Canadian Ventures (CDNX) stock exchanges and incorporated in Vancouver, Toronto and Montreal. Canadian juniors active in Brazil include Diagem International Resource Corporation (www.diagem.com), Brazilian Diamonds Ltd (formerly Black Swan Resources) (www.braziliandiamonds.com), Vaaldiam Resources Ltd. (www.vaaldiam.com), Bontan Diamond Corporation (www.bontancorporation.com), and Majescor Resources Inc. (www.majescor.com). As always with Canadian-listed juniors, the mix includes

companies genuinely seeking diamonds and others simply seeking stock market wealth on the upward movement of shares.

Diagem has an active exploration program in the Juina area of Mato Grosso, where the company also exploits alluvial diamonds under an exploration license. For much of 2004, Diagem's operations in Juina were partially paralysed as a result of a dispute with Brazil's Federal Environment Agency, IBAMA.

Brazilian Diamonds has a website, plus a number of properties in Minas Gerais. At its Paranaíba River site the company installed a jig and dug up a great deal of gravel. After disappointing results in 2002 (209 carats in 25,000m³ of gravel, or 0.008ct/m³) the property and associated equipment were left abandoned. The site currently awaits environmental remediation. The company now says it is concentrating on its Serra de Canastra property, located adjacent to the environmentally sensitive Serra de Canastra National Park.

Toronto-based Vaaldiam has bought claims to some 175,000 hectares in Southern Rondônia, where the company's own magnetic sensing transects and data sets bought from De Beers lead company geologists to believe there are potentially mineralized kimberlites of exploitable concentrations. Vaaldiam's presence in the vicinity of the Roosevelt Reserve has led to accusations from Brazil's Federal Police (the Brazilian equivalent of America's FBI) that the company may be serving as

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a front for the illegal export of Cinta Larga diamonds. According to a report published November 15, 2004 in the *Folha de São Paulo* newspaper, the Federal Police have an ongoing investigation into Vaaldiam subsidiary Mineração Paraguaçu, which in 2004 transferred its headquarters to Espigão do Oeste, a town near the border of the Cinta Larga territory. The company has denied the charge, and to date the Federal Police has been unable to present any hard evidence backing up its allegations.

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Bontan Corporation, as of January 1, 2005, had officially given up exploration activities, citing conflict with *garimpeiros* as one of the main reasons for its decision to abandon Brazil.

Exporters and Mining Companies

There are at present no international firms with active diamond mining operations in Brazil. Domestic-owned mining operations are small scale. The largest may be Mineração Rio Novo Ltda., a subsidiary of the Andrade Gutierrez group (www.agsa.com.br), which for years operated a pair of dredging barges on the upper Rio Jequitinhonha above Diamantina in Minas Gerais. One of the barges ceased operation in 2003; the company plans to keep the second barge operational for several more years. Rio Novo produces less than 50,000 carats per year, and sells its diamonds through the export firms located in the state capital, Belo Horizonte.

Any firm wanting to import or export products from Brazil has to be registered with Brazil's Secretary of Foreign Trade (www.portaldosexportador.gov.br). The requirements are no different for a firm exporting diamonds.

Firms that exclusively export their own production are quite rare. The vast majority of diamonds produced in Brazil are dug out of the ground by *garimpeiros*. Most export firms, even those with an associated mining division, make a living buying *garimpeiro* production and marketing it overseas.

Before Kimberley came into force in Brazil there were two general types of exporters – “pure” exporters, with no production of their own, who bought all of their diamonds from *garimpeiros*; and “mixed” exporters, those with some production capability, who also bought diamonds from *garimpeiros*. With the advent of the Kimberley system – and its requirement that exporters be able to show some legitimate source for exported diamonds – most of the pure exporters have moved to acquire some kind of in-house production.

Several export firms are based in Belo Horizonte. GAR Mineração Comércio Importação e Exportação Ltda. is a mixed exporter. While the company maintains about ten small mines (or large *garimpos*) in the states of Minas Gerais and Goiás, GAR also buys from *garimpeiros*. GAR's current president Francisco Ribeiro is in the process of setting up a diamond bourse in Belo Horizonte.

Primeira Gema Comércio Importação E Exportação Ltda. was founded in 1999 by Hassan Ahmad, a recently arrived Sierra Leone national of Lebanese descent. For most of its life Primeira Gema has been a “pure” export firm. However, in October 2004, the company was the subject of an exposé in a Belo Horizonte daily, the *Estado de Minas*, which suggested that Primeira Gema was being investigated for smuggling West African diamonds through Brazil. At that point Primeira Gema ceased exports, and according to sources within the Department of National Mineral Production (DNPM), plans to resume activities only after it has acquired a functioning mining operation. (For more on Primeira Gema see *Anatomy of a Kimberley Fraud*, below.)

Other exporters based in Belo Horizonte include Viviane Santos Classificação de Pedras Ltda. (likewise a pure export operation, with no production capability) and CIMPEX Comércio Importação e Exportação Ltda.

Located further west in the Mineiro Triangle, Giacampós Diamond Ltda. is the mining and export company of ex-*garimpeiro* Gilmar Campos. Gilmar became something of a legend in Brazilian diamond circles for his purchase and later unorthodox re-sale of a 79-carat pink diamond, found in the mud of the Rio Abaeté. Giacampós maintains a couple of dozen *garimpo* sites, but also buys from *garimpeiros*.

Two more exporting companies are located in the Mato Grosso city of Juína. Traven Comércio Importação e Exportação Ltda., controlled by Juína native Paulo Traven, is a mixed firm, exporting diamonds purchased from *garimpeiros* as well as the production of two Traven subsidiaries, SL Mineradora Ltda. and Mineração Juína Mirim Ltda. Canadian-owned Diagem do Brasil exports diamonds dug up in the course of its exploration activities, as well as diamonds purchased from *garimpeiros* working claims to which Diagem recently ceded title. Other active exporters include CIDAMA Comércio e Exportação Ltda., of Diamantina, and Raj Exportação de Diamantes Ltda., of Juína.

Garimpeiros

Garimpeiros remain the most vital, dynamic presence on the Brazilian diamond mining scene. According to both exporters and *garimpeiro* leaders, *garimpeiros* account for somewhere between 80 and 90 per cent of Brazil's diamond production. Accurate numbers, however, are impossible to find simply because so much *garimpeiro* production either leaves the country as contraband or gets hidden inside the production figures of mining companies with legal claims.

An accurate count of the number of *garimpeiros* active in Brazil is equally problematic; there has been no real census of *garimpeiros* for more than 15 years. The head of the União Nacional dos Garimpeiros e Mineradores do Brasil, one of the national *garimpeiro* unions, puts the figure at 500,000, about half of them involved with diamonds.

Many of the *garimpeiros* currently working in Brazil took up the occupation during the years of Brazil's



A worker sifts through stones on the Roosevelt River near the Roosevelt Indian Reserve.

military dictatorship (1964-1985). This was actually a good time for *garimpeiros*, thanks to the dictatorship's policies designed to encourage settlement of Brazil's frontier. A *garimpeiro* certificate was easier to obtain than a driver's license, and once registered, a *garimpeiro* had an unfettered right to practice his trade anywhere in the country. As many as a million *garimpeiros* scooped and dug their way across the landscape in this period.

The restoration of civilian rule brought an end to the days of the free roaming *garimpeiro*. Passed in 1989, Law No. 7805 extinguished the registered *garimpeiro* system and instead required *garimpeiros* to work within a *garimpeiro* claim or *Permissão de Lavra Garimpeira* (PLG), a 50-hectare block registered and administered by the Department of National Mineral Production (DNPM).

The system has never worked well. Much of the best land had already been claimed by corporations. On top of that, regulatory glitches delayed the system from getting up and running until the mid-1990s. In any case, the expense and difficulty of taking out a claim were enough to keep the vast majority of *garimpeiros* – illiterate or poorly educated and for the most part deeply suspicious of authority – from even trying for a PLG. Not more than 600 *garimpeiro* claims have ever been granted for diamonds.

The vast majority of *garimpeiros* have simply carried on working as before. Periodically, DNPM officials working to enforce mining claims would close *garimpeiros* down here and there. In recent years, state and federal environmental regulators have been much more effective in controlling and sometimes closing *garimpeiro* sites.

The traditional persecution by authority, according to academic studies of Brazil's *garimpeiros*, is one of the elements that has long fostered cooperation among *garimpeiros*. The other element is a chronic lack of capital.

Even the most basic hand miner is usually involved in some sort of partnership that provides financing and spreads the risk inherent in mining. One hand miner working a small *garimpo* about 20km outside of Coromandel, for example, gives a 25 per cent cut of his earnings to the man with the backhoe and truck who digs out and deposits his gravel ore. (This use of mechanized earth moving is fairly typical for Brazilian *garimpeiros*. Some, far from civilization, still move earth with nothing but a shovel and wheelbarrow, but they are a vanishing minority.) This hand miner pays a further 15 per cent to the landowner, plus five per cent for the gasoline-driven pump that supplies his water. The remaining 55 per cent he divides equally with a backer who supplies his food and pays him a monthly wage of about R\$300 (US\$113).

In the two years he has worked this area he has uncovered 27 diamonds, worth about R\$40,000 (US\$15,000). Deducting everyone's percentages, his take over this period works out to about another R\$250 per month (US\$94), the equivalent of a Brazilian monthly minimum wage.

At two minimum wages per month (about R\$550), his salary is about what it was at his city job. His hours are also comparable. He works from 7-11am, takes a break for lunch and then works again from around noon until 4 or 5pm. The advantage to being a *garimpeiro*, in addition to the lack of direct supervision, is the hope of someday striking it rich. He has no wife or children, just a dog and a transistor radio

for company. His *garimpo* site is close enough to Coromandel that he can drive his Volkswagen Beetle into town on weekends.

Garimpeiros with more mechanization also work in partnerships. Mechanized *garimpeiros* in the Coromandel region use a jig, or *jigue* to give it its Portuguese spelling. Capital cost of a jig is around R\$20,000, while the monthly operating costs come in at about R\$2000. One or two workers wash the gravel down into the jig, another two operate the jig and pumps. Each of the four *garimpeiros* working the jig receives R\$20/day, plus a three per cent share of the take. The landowner gets 15 per cent; the trucker who brings in the ore gets ten per cent. That leaves 67 per cent. The jig owner may bring in a further partner to cover monthly operating costs such as food and fuel, or if he has funds enough he may opt to keep that percentage for himself. The work schedule on a jig is typically Monday to Friday 7am-5pm, with a one-hour break for lunch.

As many as a million *garimpeiros* scooped and dug their way across the landscape in this period.

In contrast to Coromandel, where *garimpeiros* are mostly locals with a long tradition in the trade, the raft *garimpeiros* on the Rio Abaeté are mostly transient. There are over 100 rafts on the river. Working conditions are brutal. Divers work eight metres down on the river bottom, sucking river sludge up through a hose. Visibility is next to nil; air quality is poor. Typically, divers work a two-hour shift on the bottom, twice a day. The four divers on each raft share 35 per cent of whatever is found (i.e. 8.5 per cent each). Other partners supply food and fuel in return for a percentage of the takings. At times, rafts remain not working while the owner scrounges around for a partner willing to take a chance on paying for supplies for some period of time.



A worker sifts through stones at a diamond mine on the Roosevelt River in Brazil's western state of Rondônia.

In both Diamantina and Juina, the prevalent technology for *garimpeiros* is a system of pumps and separators. Capital costs are about the same as for a jig – about R\$15,000 for a pair of separators and the associated pump motors and tubing. Fuel costs are higher, and the system is somewhat more labour intensive, both of which are reflected in the percentages. As elsewhere, the landowner gets between 10-15 per cent, and the remainder is divided equally between the equipment owner, the fuel supplier (the system uses about 100 liters of diesel per day in the dry season, up to 200 l/day in the wet season), the food supplier and the workers.

A garimpeiro certificate was easier to obtain than a driver's license...

In all parts of Brazil, *garimpeiros* who strike it rich often spend the money quickly and foolishly, and are back working a claim again within weeks or months. *Calça de veludo ou bunda de fora* is the Portuguese expression, “in velvet underwear or with your ass hanging out”. Violence and drug use among raft *garimpeiros* is fairly common.

Access to capital is a serious problem. Some *garimpo* sites have had to shut down for lack of backers. In other cases *garimpeiros* have been forced to give unfairly high

percentages, just to find a backer willing to finance food and supplies. Access to capital, however, is a problem throughout the Brazilian economy, where real interest rates hover around 12 per cent per year.

Garimpeiros also complain about the poor prices paid by local diamond buyers. Competition between more established buyers and newcomers has increased prices in places in the Triangulo Mineiro such as Coromandel and the Rio Abaeté. *Garimpeiros* have also become much more skilled in evaluating the worth of their own diamonds, at least those smaller than ten carats. Larger diamonds are harder to evaluate, and this is where buyers gain and *garimpeiros* lose out. In Minas Gerais, local diamond buyers are said to pay a premium for smaller diamonds so that *garimpeiros* will bring them their larger finds.

Theoretically, *garimpeiros* unsatisfied with local prices could seek out a better deal elsewhere. In practice, *garimpeiros* are often reluctant to take diamonds to the city because of the danger of theft. In any case, the number one concern of *garimpeiros* in all areas of Brazil is not prices, but access to land. The roadblocks are normally either environmental regulations, or the existence of large corporate claims on the available diamond fields. It is on the issue of access that cooperatives have been most active.

Unions and Mining Cooperatives

There are two national organizations that attempt to represent *garimpeiro* concerns in Brasilia: the Sindicato Nacional dos Garimpeiros, and the União Nacional dos Garimpeiros e Mineradores do Brasil. Neither is terribly effective, nor even especially representative. Most *garimpeiros* in the field have never heard of either one. Cooperatives and unions at the local level have actually been much more effective.

Article 174 of Brazil's 1988 federal constitution explicitly encourages the formation of *garimpeiro* cooperatives, promising such organizations preferential access to the country's mineral resources. In practice, preferential access to land appears to be a constitutional dead letter. Only very recently, as part of the implementation of the Kimberley Process, has the federal government shown any inclination to help *garimpeiro* cooperatives gain access to land.

Diamantina

Diamantina is where diamond mining began in Brazil. Diamantina is also where the government in 1989 first tried to enforce the new ban on unlicensed *garimpeiros*. Thousands of newly unemployed miners flooded into the town square in a protest that lasted weeks.

One of the positive results of that protest was the formation of COOPERGADI, the Cooperativa Regional dos Garimpeiros de Diamantina. In the aftermath of the protest (an agreement negotiated largely by the then-mayor of Diamantina enabled *garimpeiros* to go back to work) COOPERGADI set out to establish legal *garimpeiro* claims of its own.

As in other areas, corporations already had all the prime areas tied up, but COOPERGADI was fortunate in that Mineração Rio Novo was interested in relinquishing title to a segment of its claim. The co-op took over three areas totalling nearly 500 hectares from Rio Novo, which the co-op has since turned into three PLGs. (Rio Novo was not acting out of altruism. Yields had simply fallen

below levels at which the company could make money. With lower capital and labour costs, *garimpeiros* are still able to exploit these areas at a profit. On those areas it inherited, COOPERGADI still pays Rio Novo a 2.5 per cent royalty). The co-op also recently established a fourth mineral license on the Rio Peixe. Total cost for that process was around R\$70,000 (US\$26,400), including all geological and environmental studies. The co-op has 75 members, who split all costs evenly between themselves. There are no other royalties or monthly fees associated with membership.

Given that each of the 75 co-op members likely employs another four *garimpeiros*, total legal *garimpeiros* covered in some way by the co-op may reach as high as 300. However, as there are some 1500 *garimpeiros* in the area, this represents at best 20 per cent of Diamantina's *garimpeiro* population.

Coromandel

There are some 5000 *garimpeiros* living and working in and around Coromandel. Many have deep roots in the community – fathers and grandfathers who were also *garimpeiros*. “If you see someone unemployed in Coromandel, he's not from Coromandel,” locals are fond of saying. “When someone here is out of a job, he goes out to the *garimpo*.”

In Coromandel, the local *garimpeiro* union and cooperative share offices and staff. Some 1500 of the local miners belong to the *garimpeiros* union, the Sindicato dos Garimpeiros de Coromandel e Região. Another 72 are members of the COOPERGAC, the Cooperativa dos Garimpeiros de Coromandel e Região. The latter are the elite of local *garimpeiros*, the men with the money and know-how to set up mechanized *garimpeiro* operations.

In 2003 and 2004, the union and co-op negotiated a series of formal agreements with the local public prosecutor that helped keep legal *garimpo* going in Coromandel. Essentially, the public prosecutor agreed

not to prosecute for lack of an environmental licence, as long as *garimpeiros* abided by a written code of conduct. As part of the deal, the co-op also agreed to organize labour battalions to help clean up the mess left by old *garimpo* sites. The “code of conduct” system is in place for a number of *garimpo* sites in the area, though not as many as local *garimpeiros* would like.

Co-op members pay dues that vary depending on the amount of earth they move. The problem in Coromandel, as in other parts of Brazil, is that despite the clauses in the Federal Constitution giving priority to *garimpeiros* and cooperatives, most of the land has already been claimed by corporations. Some 36,000 hectares are in the hands of Canadian company Brazilian Diamonds. Another 1,300 hectares are held by the Brazilian firm Triângulo Mineração Ltda.

With the advent of Kimberley in Brazil, it became government policy to provide *garimpeiros* with at least some legal mining claims in each of the diamond producing areas of Brazil.

With the advent of Kimberley in Brazil, it became government policy to provide *garimpeiros* with at least some legal mining claims in each of the diamond producing areas of Brazil. In 2004, the Brazilian National Department of Mineral Production (DNPM) brokered a deal between COOPERGAC and Triângulo Mineração. Triângulo ceded some 250 hectares to COOPERGAC, which the co-op is transforming into three PLGs. In return, the co-op pledged to ensure Triângulo’s right of access to their remaining claims. That is, the co-op pledged to restrain local *garimpeiros* from destroying company property or preventing company employees from carrying on with their work.

The cooperative directors are pleased with this deal, but regard it as just a beginning. Their eventual goal is ten per cent of all local diamond lands. This will likely

put them into conflict with both the DNPM and local mineral companies, who regard the 250 hectares given up as the end of the deal.

Juina

COOPRODIL, the Cooperativa de Produtores de Diamantes de Juina, is a much more artificial creature, created largely by the DNPM as a way of ensuring some Kimberley-acceptable source for the *garimpeiro* diamonds in the region.

In Juina, as in other parts of Brazil, legal mining claims were all in the hands of a small number of corporate entities, in this case Diagem do Brasil and SL Mineradora Ltda. *Garimpeiros*, however, had been in the area for more than two decades. In some cases, to secure their *garimpo* sites, they had even purchased the land where they were mining, not realizing that mineral rights do not come with land ownership.

Using the Coromandel negotiations as a model, the DNPM decided to force the large local claimholders to relinquish some of their areas to local *garimpeiros*. In these sorts of negotiations, it is DNPM policy to work only with *garimpeiro* cooperatives. In Juina there was no cooperative. So while the DNPM was leaning on Diagem to relinquish some of its mineral claims, it was also leaning on locals – *garimpeiros* and anyone else it could round up – to put together a cooperative.

The results were mixed. In other areas, the cooperatives are largely made up of the more educated, more successful *garimpeiros*. In Juina, only two co-op members are full-time *garimpeiros*. The rest are mostly well-to-do local businessmen who dabble in *garimpo*. One could argue that having a board with more respected members of local business community will give the co-op a level of access it would not otherwise have had. Or one could argue that as an association of hobbyists, the co-op will never truly press *garimpeiro* concerns. The next few years will tell the tale.

Since its creation, the Juina co-op has managed to win eight PLGs for its members. It expects to have 14 in total. Unlike in Coromandel, the PLGs are not owned

by the co-op, but are held privately in the names of individual co-op members. Co-op members with active mining sites pay the co-op R\$500 fee, plus one per cent of their production. In return, members are allowed to make use of the co-op's geologist and lawyer, thus reducing the cost of getting all the necessary permits for a PLG down to around R\$6,000 (US\$2,300).

The co-op's handling of the environmental issue has so far been less than impressive, particularly when compared to the work of co-ops in Minas Gerais. In Coromandel, the co-op has taken a lead in ensuring that its members understand and apply mitigation and remediation measures. In Juina the co-op's environment committee is moribund, and its model *garimpo* site is an environmental disaster. In Coromandel, the co-op fostered volunteer labour battalions to help clean up abandoned *garimpo* sites. In Juina, the president of the co-op talks lamely of getting money from the UN or the G8 nations to clean up the mess left by local *garimpeiros*.

In part, the different approaches reflect regional differences in Brazil. Coromandel is in the old Brazilian heartland, where environmental concerns are now taken seriously. Juina is on Brazil's agricultural frontier, where the environment comes last on everybody's list. Still, COOPRADIL's poor performance on this front does not inspire confidence.

That said, all cooperatives have their flaws. Chief among these is the tendency of cooperative officers to confuse the good of the co-op with their own personal welfare. In Coromandel, for example, when Canadian company Brazilian Diamonds (under pressure from the DNPM) agreed to surrender land for three PLGs, it somehow worked out that the land for all three just happened to be owned by the president of the co-op. He has since been voted out of office, but the damage caused by that sort of activity is one of the reasons co-ops and unions often lack legitimacy among rank and file *garimpeiros*.

The cooperatives in both Coromandel and Diamantina have also long thought of trying to get into buying and selling diamonds, with the hope of by-passing local middlemen and so improving prices. Unfortunately,

...all cooperatives have their flaws. Chief among these is the tendency of cooperative officers to confuse the good of the co-op with their own personal welfare.

in both these areas (and in Juina as well) the local diamond buying middlemen also sit on the board of directors of the cooperative. This innate conflict of interest has always managed to stymie co-op efforts to market their own diamonds (even supposing they could overcome the lack of capital).

Faults aside, the Brazilian government has decided cooperatives are the key to legalizing Brazil's diamond fields. Over the next two years, according to Deputy Secretary Cláudio Scliar of the Ministry of Mines and Energy, the focus will be on formalization of *garimpeiros* through cooperatives. According to Scliar, the ministry has earmarked R\$6 million (US\$2.26 million) for this project.

The Legal Environment and the Kimberley Process

The DNPM

All subsoil rights pertain exclusively to Brazil's federal government. The federal government agency in charge of administering this patrimony is the National Department of Mineral Production (DNPM; www.dnpm.gov.br). In the bureaucratic scheme of things the DNPM is subordinate to the Ministry of Mines and Energy (MME, www.mme.gov.br)

The DNPM has an excellent reputation for honesty. Mining company employees and *garimpeiros* in both Minas Gerais and Mato Grosso uniformly praise the

integrity of the DNPM officials working in their areas. They have less praise for the organization's efficiency and responsiveness. DNPM officials acknowledge the problem, but put it down to a lack of staff. New civil service exams have been scheduled for 2005, however, after which the DNPM plans to hire between 300 to 500 new staff.

The 2002 change in government affected the agency's posture towards *garimpeiros*. (Changes in government often affect the tone of the bureaucracy in Brazil, where bureaucratic institutions are strongly politicized. In the case of the DNPM, the national head of the organization is a political appointment, as are the directorships of the each of the DNPM branches in the state capitals). *Garimpeiro* leaders say that in the previous regime, *garimpeiros* were considered *persona non grata* in the DNPM. Since the change in government, officials in the DNPM and MME have been much more willing to meet with *garimpeiro* leaders and listen to their concerns. Dr. Cláudio Scliar of the MME and Drs. João Cesar and Walter Arcoverde of the DNPM were singled out by *garimpeiro* leaders as being particularly open to dialogue.

Mining Permits

Obtaining a mining permit in Brazil is a complicated multi-stage process involving the DNPM and one or more state or federal environmental agencies.

The first step in the process is to file a mining claim, called a *Requerimento de Autorização de Pesquisa* (usually known simply as a *requerimento* or *requerimento de pesquisa*) with the DNPM. Claims can be filed by Brazilian citizens or by companies (foreign or domestically owned) incorporated in Brazil. A *requerimento* must describe the mineral being sought, the precise location of the claim, and include a relatively brief research plan including a timeline and research budget. The area description and research plan must be prepared and signed by a registered geologist or mining engineer.

Claims are first-come, first-served. One claim cannot overlap another. There is no limit on the number of claims any one person or company may make, but there

is a yearly fee of between R\$1.5-R\$2.5 (US\$0.50-\$1) per hectare, which in practice tends to limit claim size. Still, in older states such as Minas Gerais, there is little land that has not yet been claimed. Newcomers usually purchase claims – or more often the corporate entity that owns the claim – from more established players.

Mining company employees and *garimpeiros* in both Minas Gerais and Mato Grosso uniformly praise the integrity of the DNPM officials working in their areas. They have less praise for the organization's efficiency and responsiveness.

Once the claim is filed, the DNPM performs a fairly rudimentary analysis. Generally, if there are no overlapping claims and the area of interest does not fall within an Indian reserve, national park or protected area, the claim is approved and the DNPM issues a research permit or *Alvará de Pesquisa*. The minimum cost to the miner for this stage is around R\$10,000 (US\$3,800).

In theory, a research permit is good for three years, renewable for another three, and the DNPM can cancel a claim if it is unsatisfied with the pace of research. In practice, claims are almost never cancelled, and are quite often extended for indefinite lengths of time.

During the research phase, the claim holder is allowed to pursue mining on a small scale under the terms of a *Guia de Utilização* or utilization guide. Originally, the utilization guide was intended to allow diamond prospectors to effectively determine ore concentrations through test mining, as well as allow them to defray their research costs by selling off small lots of diamonds. In practice, the *Alvará com Guia* regime has evolved into a short-cut licensing method for small-scale diamond mining.

The requirements from the DNPM are fairly minimal – permission of the land owner and a mining plan of less than ten pages outlining how and where the mining will take place, as well as permission of the relevant environmental agency. This is where things get complicated.

Environmental protection is a state responsibility, so the requirements and degree of enforcement vary from state to state. In Minas Gerais, mining is regulated through the state environment agency FEAM. Before approving a test mine, FEAM demands an Environmental Impact Study (EIA) and an Environmental Mitigation Report (RIMA). The EIA contains a description of the area's flora and fauna, together with an analysis of possible environmental impacts. The RIMA concentrates more on measures to mitigate these impacts. Together the reports are known as the Report on Environmental Control (PCA).

In addition, if the miner wants to cut down trees, the permission of the state forestry agency is required. If the mining will require water (as diamond mining always does) permission of the state water agency is required. If any federal protected areas or federal watercourses (generally rivers that move across state lines) will be affected, the miner also has to seek permission of the federal environmental agency IBAMA.

All in all, the prospective miner is looking at a series of reports about 500 pages long, with a minimum price tag of R\$50,000 (US\$19,000). If all is in order, FEAM gives its permission and the DNPM issues a license. Under the Guia Utilização regime, a maximum of 30,000 m³ of ore can be processed each year.

With diamonds, most firms do their mining under the terms of such an *Alvará com Guia de Utilização*, or research permit with utilization guide. Afterwards, at the end of the research phase, the permit holder is required to submit a detailed report on the results of the research. The report is supposed to contain technical and economic data, and an economic evaluation of the potential for full-scale mining. If the research results look good, the final step is to seek permission for a mining permit,

called a *Concessão de Lavra* or *Portaria de Lavra* (DNPM officials use the two terms interchangeably).

The application process for this kind of permit involves large (100 pages or more) detailed reports to the DNPM and any of several environmental agencies. Processing time for such an application is at least 10 months, and can take two to three years. Costs run into the hundreds of thousands of reals.

The Garimpeiro Licence – Permissão de Lavra Garimpeira

For *garimpeiros*, there is a somewhat simplified *garimpeiro* permit or *Permissão de Lavra Garimpeira* (usually referred to as a PLG). The PLG was created in 1988 after the free-roaming registered *garimpeiro* regime was brought to an end. Initially, PLGs were to be created only within designated *garimpeiro* areas. However, by 1995 no *garimpeiro* areas had ever been designated, so the DNPM changed to rules to allow free-standing PLGs anywhere in the country. The PLG is supposed to be a simplified, relatively easy-to-obtain permit for small scale surface mining. In practice, there are a number of obstacles that put the PLG beyond the reach of the average *garimpeiro*.



Environmental damage resulting from diamond mining, Juína area, Mato Grosso



Garimpeiro mining

In contrast to a mining permit, PLGs are small – 50 hectares for an individual, 200 hectares for a cooperative. The application is similar to that of a mining claim. The prospective *garimpeiro* must describe the mineral being sought and the precise location of the claim, and provide a very short mining plan. The area description and mining plan must be prepared and signed by a registered geologist or mining engineer. A registered professional will charge a minimum of R\$1,500 (US\$570) for such a plan.

The prospective *garimpeiro* must also obtain the permission of the relevant environmental agency. This involves presenting an Environmental Impact Study (EIA) and an Environmental Mitigation Report (RIMA), documents similar to those presented by a company looking to do test mining under a *Guia de Utilização*. If the *garimpeiro* plans any deforestation or water usage, permission of the relevant agency must also be sought. The cost of this work runs from R\$5,000-R\$8,000, putting the minimum total cost of a PLG application at around R\$10,000 (US\$3,800). Many PLGs cost much more, from R\$50,000-R\$70,000. To put this in perspective, even the most basic PLG application costs as much as the total capital costs of setting up a small mining jig, or about a year and half worth of revenue for a hand-mining *garimpeiro*.

In any case, in Minas Gerais the state environmental agency FEAM almost never approves PLG applications – some 90 per cent of applications are rejected, according to the DNPM. Some of these applications are improperly prepared, or else are situated in river bank protection zones (off limits everywhere in Brazil). But even well prepared applications can be rejected. Within FEAM there is a deep reluctance in to grant a license to an individual *garimpeiro*.

Partly, this is a matter of semantics. To FEAM, a *garimpeiro* is someone who works with a shovel and mining pan. A *garimpeiro* who wants to use machines is not a *garimpeiro*, but a *mineradora*, subject to all the rules and regulations that apply to big mining companies, and additionally tainted with the suspicion that in the event of an environmental disaster, the feckless *garimpeiro* will simply disappear, leaving the state with the environmental damage. To be fair, *garimpeiros* have done just this in the past, but then so have large mining companies.

Garimpeiros in various parts of the state have worked out ways to bypass FEAM's seeming intransigence. Some sneak PLGs through the DNPM without bothering to win FEAM approval. *Garimpeiros* in Diamantina and Coromandel have worked out a *modus vivendi* with the local public prosecutor (responsible for laying

charges in cases of environmental crimes), through something called an *Termo de Ajustamento de Conduta*. Essentially, the *garimpeiro* agrees in writing to adhere to accepted environmental practices in return for an exemption from prosecution. The landowner where the *garimpo* takes place usually stands as guarantor of such agreements, which are normally renewed yearly. *Garimpeiros* like the system and would like to sign more, but public prosecutors are reluctant to enter into too many such agreements.

Recognizing that the environmental licensing system was not working, the state government has recently reformed the way in which FEAM oversees mining applications. New categories of small- and medium-sized miners have been created (depending on the volume of ore processed) with different environmental requirements for each. In addition, the decisions of the FEAM bureaucracy will henceforth be subject to review by seven regional councils called COPOM, each made up three civil servants and three representatives of civil society. The COPOM councils have the authority to override decisions of FEAM staff.

In addition to environmental legislation, the other and perhaps even larger obstacle facing *garimpeiros* attempting to establish a legal PLG is simply the lack of unencumbered land. Both in Minas Gerais and Mato Grosso, most of the diamond-bearing land has already been claimed by a corporation.

Kimberley Certificates

Understanding how mining titles work is important, because in implementing the Kimberley system, Brazilian authorities decided to tie the legal export of rough diamonds to possession of a legitimate mining claim.

A registered export company wishing to export diamonds submits a completed form to the office of the DNPM. The exporter lists the weight, type and value of the diamonds, and the number of the DNPM mining

permit identifying where the diamonds were extracted.

There are three possible types of mining permits:

1. The *Portaria de Lavra*, or full Mining Concession, granted to a company that has gone through a rigorous multi-step permitting phase involving both the DNPM and one or more state or federal environmental agencies;
2. The *Alvará de Pesquisa*, or Research Permit, which allows companies conducting field research to sell diamonds they encounter during the research phase;
3. The *Permissão de Lavra Garimpeiro (PLG)* or *garimpeiro* Permit, granted to either an individual or coop.

The exporting company also has to provide copies of receipts showing chain of ownership back to the person, co-op or company that holds the mining license (except when the exporting and mining company are the same).

The applicant must also provide a receipt for the processing fee (currently R\$158), as well as a receipt showing that the tax on the declared value of the diamonds has been paid. Brazil's mineral tax, CFEM (*Compensação Financeira pela Exploração de Recursos Minerais*) is currently set at an absurdly low 0.2 per cent for diamonds³. The applicant must also provide a name and address of the diamonds' foreign purchaser.

A DNPM employee first verifies that the taxes and processing fee have been paid. The DNPM employee then uses the DNPM's publicly accessible claims website (www.dnpm.gov.br/sicom) to verify the existence of the mineral claim indicated on the form. If these elements are in order, the form is faxed to the DNPM headquarters in Brasilia together with a recommendation that the certificate be issued. Brasilia responds by sending a certificate, signed by the head of the DNPM, back to the DNPM state headquarters. The certificate expires

³ CFEM is distributed as follows: 12 per cent to the federal government, split equally between the DNPM and IBAMA, 23 per cent to the state government, 65 per cent to the municipality where the minerals are located.

after three months, and requires the signature of the DNPM state director to become valid.

A team from the local DNPM then weighs and inspects the diamonds. (This is normally done at a secure location designated by the exporter, though it can be done at the DNPM offices as well). Some basic diagnostic tests are performed. Often the lots are also photographed. The diamonds are then sealed inside a tamper-proof plastic container, together with the Kimberley certificate, counter-signed by the state director of the DNPM.

Total processing time from application varies from two to four weeks. Upon export, Brazilian customs have the right to open, inspect and re-seal packages if they have doubts about the contents. To date, this has not been an issue. According to Brazilian authorities, this verification and inspection process is stringent enough to prevent or apprehend the export of stones from non-licensed areas, from conflict areas such as the Cinta Larga reserve, and from countries outside of Brazil. In reality, it's inadequate for all three tasks (see *Anatomy of a Kimberley Fraud*, below).

The Impact of the Kimberley Process

Before Kimberley, Brazil was a country with large and widely spread deposits of alluvial diamonds, the vast majority of which were being worked by *garimpeiros*, the vast majority of whom, in turn, were working illegally. Some of this *garimpeiro* production was sold directly to foreign buyers. More often, *garimpeiros* would sell their diamonds in the nearest city to buyers representing mid-size exporting firms, often located in the state capital or another sizable city. Either way, the majority of Brazil's production left the country undocumented.

Within the offices of the Ministry of Mines and the DNPM, it was decided to use Kimberley as a hammer to pound the mining landscape into line. There were valid bureaucratic reasons for taking this course.

Within the offices of the Ministry of Mines and the DNPM, it was decided to use Kimberley as a hammer to pound the mining landscape into line.

For decades the DNPM had been largely unable to enforce its writ in the Brazilian countryside. Diamonds, however, were an issue important enough to allow the DNPM to win the cooperation of other government agencies such as the Brazilian Federal Police. There was also some desire, in the wake of the 2002 election of left-of-centre president Lula da Silva, to re-balance things in favour of *garimpeiros*. Kimberley was seen as instrument for achieving this.

Whatever the good intentions, the result has likely done more harm than good – to *garimpeiros*, to the Brazilian diamond industry, and to the security of international diamonds routes.

Garimpeiros have won a score of new legalized *garimpeiro* licences (PLGs). These gains are important and should not be minimized. In return, however, *garimpeiros* now face much more intense enforcement of existing mineral claims (which overwhelmingly favour corporations), decreased legal title to the diamonds they do produce, and sometimes decreased revenue due to the need to smuggle their production through a legal mineral license.

Further up in the chain, buyers and exporters are now forced to create false paper trails in order to provide legal provenance for the diamonds they export. So far, this has not, in fact, proved to be difficult. But creating systems that inherently require corruption on the part of participants is not good public policy. While these smuggling systems may very well have been created for relatively benign reasons, once they are up and running there is no saying how they may be used.

Nearly two years after the implementation of the KPCS in Brazil, most production still comes from *garimpeiros*, most of whom still work illegally. Most of their diamonds still get sold to local buyers, who sell to Brazilian exporters, who now hide the production, either inside their own legal claims, by “renting” the use of legal PLGs, or by using fake PLGs created solely for the purpose of whitewashing diamonds. The case studies that follow detail how these various schemes work.

Diamond Smuggling From Brazil

The advent of Kimberley in Brazil seems to have coincided with a drop in the number of foreign buyers operating in the country. While it would be nice to believe this is because of the need to show a Kimberley certificate at sales points in Europe, that would be an overly hasty conclusion.

Diamonds and diamond smuggling became a greater priority for Brazil’s Federal Police during this same period, due to the domestic media coverage of the massacre in the Roosevelt Reserve (see below), and to international allegations of African diamonds being smuggled through Brazil. The disappearance of foreigners could thus just as easily be due to fear of being caught by the Federal Police.

Even so, contraband diamonds are not hard to encounter in Brazil. Indeed, lawmakers in Brasilia looking to discover whether diamond smuggling still exists in their country needn’t go far. The coffee shop of the Hotel Nacional – beloved of visiting congressmen and senators – is one of the places diamond buyers and sellers hook up. Another equally upscale hotel in the capital’s North Wing is also a focus of diamond buying activity.

It took PAC researchers exactly two days of part-time effort to locate three different diamond sellers in Brasilia, with parcels of rough diamonds for ranging from 100 to 600 carats. That is in addition to the half-dozen other gem sellers offering cut stones. In all three cases PAC verified the existence of the stones. The vendor of the

largest lot even offered to supply a valid *nota fiscal* or official receipt, the essential precursor to obtaining a Kimberley certificate. Unfortunately, a lack of time and resources precluded a more in-depth investigation of the capital’s contraband networks.

...a presumption that the neighbour’s foundation is rotten seems an odd rock upon which to build one’s own church.

Later, in Mato Grosso and Rondônia, PAC was able to locate Brazilians actively engaged in selling rough diamonds to European buyers. Some were also involved in smuggling the diamonds directly to Europe. The size of the lots varied from 100 carats to 5000 carats. In Mato Grosso, PAC also encountered rough diamond exporters with links to international diamond trafficking networks.

The continued existence of contraband diamonds sales in Brasilia, Mato Grosso and Rondônia implies that international diamond trafficking networks are still able to move stones from one continent to another, and to find buyers for undocumented rough diamonds overseas.

African Diamonds In Brazil?

PAC found no direct evidence of African diamonds being exported through Brazil. Brazilian export statistics have remained relatively stable since Kimberley came into place. On the other hand, PAC found nothing in the Brazilian system that would hinder the whitewashing of African conflict diamonds, were anyone interested in trying.

In an series of articles in October, 2004 the *Estado de Minas* newspaper reported allegations that diamonds from Sierra Leone were being brought to Brazil and then re-exported with Brazilian Kimberley certificates. However, the newspaper presented no hard proof.

In Mato Grosso, PAC encountered two independent networks of rough diamond traders – both run by Israelis – that claimed to be exporting diamonds from both Africa and Brazil. One of the Israeli exporters also said he was actively exporting diamonds from the Republic of Congo (Brazzaville), a country which, since its suspension from the Kimberley Process in 2004, has had no legal diamond exports. PAC could find no evidence that either network was bringing diamonds from Africa to Brazil, but with a network of people and contacts in place, it would be a relatively simple matter for either of these networks to take that final step and begin washing stones through Brazil.

For Brazilian officials, the main bulwark against African diamonds entering Brazil is seemingly not the rigour of their own system, but presumed flaws in the Kimberley controls in Africa. “You don’t think they have holes in the system over there too?” asked one DNPM director, speaking of Africa. “Why would they bother to bring diamonds here when it’s so much easier to do it there?”

That may be true. But as controls improve in Africa, diamond smugglers will likely look to export through whatever country seems to have the weakest system. In any case, a presumption that the neighbour’s foundation is rotten seems an odd rock upon which to build one’s own church.

Kimberley Compliance

There are numerous holes in Brazil’s Kimberley process. At its most profound level, the problem lies with the basic tenet of the system in Brazil – the possession of legal mineral title. However, even accepting the DNPM’s decision to use mineral title as the basis for Kimberley compliance, there are also numerous problems with the way the Kimberley certificate applications are processed.

DNPM technical staff in charge of processing the applications generally only verify the existence of the

mineral license from which the diamonds supposedly originated. They generally make no effort to determine whether that mineral property has the capability of producing the volume of diamonds being exported. They generally do not verify that the volume being exported falls within limits allowed under the relevant license. Only rarely will they visit the mineral claim to verify that it is even producing diamonds.

These gaps in the system have created numerous opportunities to defraud the system, creating a mockery of Brazil’s claim to have established control of its diamond exports.

Anatomy of a Kimberley Fraud

Brazilian Kimberley Certificate #64 is a fraud – a legitimate government document based on completely false information. Issued August 19, 2004, the certificate covers the export of 6876.92 carats of rough diamonds – destination Dubai, origin a complete unknown. The diamonds may have come from the Roosevelt Indian Reserve, or they may have come from Africa. There is no way of knowing. What is certain is that they did not come from the mineral licences listed in the application – a pair of *garimpeiro* claims outside Diamantina in the north of Minas Gerais.

What is almost as certain is that there are more such fraudulent exports. Brazil’s Kimberley certificate scheme is based on a paper trail tracking the diamonds back to their source, backed up by the ability of the DNPM’s diamond experts to spot the origin of diamonds based on a visual inspection. It’s a system full of holes. Far from being an aberration, Certificate #64 is more likely par for the course.

The application for a Kimberley certificate was filed August 12, 2004. The application listed a buyer in Dubai, a selling price of R\$431.77 (US\$162.92) per carat, and a chain of receipts leading back to a pair of *garimpeiro* licenses (PLGs) near Diamantina. The company filing the application was Primeira Gema Comércio

Importação e Exportação Ltda. Primeira Gema is owned and operated by Hassan Ahmad, a Sierra Leone national only recently arrived in Brazil. Primeira Gema has links with Primo Gem in the Democratic Republic of the Congo.

The application was processed in the DNPM office in Belo Horizonte. The DNPM geologist in charge of processing the claim gave the file a number (process 930.603/04), verified that the mineral taxes and processing fee had all been paid, then checked the PLG process numbers in the DNPM database. The *garimpeiro* claims were in the database. As far as the processing geologist could see, all was in order. There were legal mineral claims and a series of receipts showing chain of custody. The geologist sent a fax to Brasilia recommending the certificate be issued.

On August 19, the certificate arrived in Belo Horizonte. A DNPM team was dispatched to the offices of Primeira Gema in order to inspect and package up the diamonds. The team included the geologist who had processed the claim, the regional head of the DNPM Emanuel Martins, and the DNPM's in-house diamond expert. The team inspected, weighed and packaged all 6876.92 carats. In the eyes of the DNPM, all was in order. The local head of the DNPM signed the Kimberley Certificate. Shortly afterwards, the diamonds left the country.

The list of things the DNPM overlooked in processing certificate #64 is quite remarkable.

The *garimpeiro* claims (PLGs) cited in the application had been filed just a few months after Kimberley came into effect in Brazil, on December 31, 2003. They covered 100 hectares of the headwaters of a small creek that drains into the Rio Jequitinhonha, about 30km north of Diamantina. Geologically, it's an area with a vanishingly small chance of having diamonds, according to the president of Diamantina's *garimpeiro* co-op, Alberto Pinho. Pinho himself is a trained

geologist, with more than 20 years experience in the region, but he says that anyone with any knowledge of Diamantina would know immediately that such a rich load of diamonds could never come from such an unpromising area.

The DNPM geologist processing the certificate had no field knowledge of Diamantina.

The PLGs were granted on June 30, 2004⁴. This is the point at which, legally, mining in the areas could begin. Seven days later, on July 7, 2004, the titular holder of the PLGs sold 6876.92 carats, in three lots (average price per carat R\$115.55 or US\$43.60) to a Minas Gerais company named Morgan Mineração Indústria e Comércio Ltda. Three weeks later on July 30, 2004, Morgan Mineração sold the three lots on to Primeira Gema Comércio Importação e Exportação Ltda., a Belo Horizonte-based diamond export firm (average price per carat on this sale R\$434.63, or US\$164 – a 376 per cent markup).

... the claims had never been worked, for any mineral, at any time in history.

The geologist processing the application did not notice the curious speed with which the diamonds had been mined in such an unpromising area: 6876.92 carats in seven days. In the Roosevelt Reserve, likely the richest alluvial deposit in Brazil, a fully-mechanized *garimpeiro* team working flat out for 24 hours a day would take three months to amass 6,800 carats worth of diamonds.

According to Emanuel Martins, head of the DNPM in Minas Gerais at the time Certificate #64 was processed, the processing technicians “have thousands of files to deal with. They don't have time to get into all the little details and dates.”

⁴ Mysteries remain here as well. According to the DNPM in Belo Horizonte, a PLG cannot be issued without the approval of the state environmental agency FEAM. FEAM has no record whatever of these PLGs, or the geologists who filed them. And yet somehow the PLGs were issued.

Nor does the DNPM seemingly have time to verify whether or not a PLG is even producing diamonds. In February, 2005, a PAC researcher went to examine the two PLGs from which the 6876.92 carats of diamonds described by Certificate #64 ostensibly originated. Diamantina map and topography consultant Gustavo Marcio Botelho was hired to precisely identify the location of the claim. Diamantina co-op president Alberto Pinho went along to inspect the geology. Both came away 100 per cent certain that the claims had never been worked, for any mineral, at any time in history.

But the DNPM in Minas Gerais does not perform site visits. To this point, then, the DNPM had missed the unlikely source of the diamonds, and the amazing speed with which they left that unlikely ground. The DNPM technician never left the office, and so had no idea that the claims had never been worked. But there was, supposedly, still one obstacle to an illegal lot of diamonds receiving the blessing of a Kimberley certificate.

In early interviews with DNPM officials, PAC was told that one of the major checks on the whitewashing of illegal diamonds through Brazil was the ability of the DNPM's two diamond experts (one based in Belo Horizonte, the other in Cuiabá) to recognize the stones local to their areas. Attempts to export stones from the Roosevelt Reserve, or worse, from Africa, would be spotted by the diamond expert, who would recognize the diamonds as being markedly different from the diamonds produced in that area.

Certificate #64 provided the perfect test of this assertion. The one thing that can be said with certainty about the diamonds described in this application is that they did not come from a pair of *garimpeiro* claims some 30 km north of Diamantina. But when the DNPM's diamond expert inspected the diamonds just before export, he never once raised a qualm about where the diamonds had come from.

Confronted in February 2005 with the evidence of this rather extraordinary lapse, Emanuel Martins of the

DNPM had a new evaluation of the efficacy of the DNPM's diamond expert, and of the ability of visual inspections to stop contraband. It's impossible, Martins now says, for any expert to say with certainty where a diamond comes from. Even if the DNPM did have suspicions, Martins added, by the time the process reaches the inspection stage, it's simply too late to do anything. Certainly the DNPM could never seize a diamond based solely on doubts about its appearance.

In the case of the Primeira Gema export, says Martins, now that the diamonds have left the country, there's really not much the DNPM can do about it. Nor does Martins expect the DNPM will make any changes in the way it processes Kimberley applications. If another similar application were presented to his office today, Martins admits, it would very likely make it through the system. Even so, says Martins, Brazil's Kimberley system should be seen as an improvement. Before Kimberley, diamonds used to leave Brazil as contraband. Now at least they leave legally, with full documentation. Even if that documentation is based on false information.

Hassan Ahmad of Primeira Gema did not show up for a scheduled interview with PAC. Requests to re-schedule the interview were denied. Further calls were not returned.

Coromandel

On a street corner by a park in the centre of Coromandel there's a small luncheonette with the name of the owner emblazoned on a small overhead sign. Staff work the lunch counter inside. The owner presides over the sidewalk outside. Any *garimpeiro* in the area with diamonds to sell comes first to this café. The owner doesn't buy, but he knows who is buying, and puts buyer and seller together in a way that generates the best price. As is only fair, the owner then takes a small commission.

Coromandel lies in the heart of the Triangulo Mineiro, a blade-shaped salient on the Minas Gerais border that juts westward deep into the guts of Goiás. It's an area

rich in diamonds. It was here in 1938 that *garimpeiros* found the 742 carat Presidente Vargas diamond. In more recent years, raft miners on the Rio Abaeté have pulled up pink diamonds of 26 and 79 carats.

The diamonds of Coromandel, at least according to the owner, “are like the girl with the green eyes”, the most beautiful specimens to be seen. Like the elusive green-eyed maid, they are also hard to find. *Garimpeiros* in the area don’t routinely even bother to calculate yield. Instead, they live in dreams of finding that elusive beautiful stone.

Despite the recent grants of *garimpeiro* licences, the vast majority of Coromandel’s *garimpeiros* still work clandestinely, on land to which they have no mineral title. Two years into the Kimberley Process, however, this has not proved much of an impediment to either *garimpeiros* or buyers. According to both, there is no premium on diamonds from a legal source. Buyers pay the same price either way.

The state’s major diamond exporters – Gar Mineração, Primeira Gema, Viviane Santos, all based in Belo Horizonte, and Giacampcos, the Patos de Minas firm of Gilmar Campos – all have a representative buyer in Coromandel. The name for these small-time buyers varies from region to region in Brazil. In Juina, they are called *picaretas*, little picks. In Coromandel, the word is *capangueiro*.

Capangueiros are not employees. Rather they have a long-standing business relationship with a particular firm, and often finance purchases using that firm’s money. They are usually well known members of the community. In Coromandel, as in other mining centres, one or two *capangueiros* serve as officers of the *garimpeiro* co-op.

The Belo Horizonte exporters, it should be noted, have never actually admitted that a majority of their exports come from *garimpeiros*. Some deny it, some dance

around the question. But the café owner has no doubts. What percentage of Coromandel’s diamonds go to international buyers, the owner was asked, and what percent go to Belo Horizonte? “10 per cent internationally,” the owner replied. “90 per cent to Belo Horizonte.”

The diamonds of Coromandel, “are like the girl with the green eyes”

To disguise the true source of the diamonds, buyers sometimes “rent” the use of a legal mineral title. More often, the eventual exporters simply claim the stones came from their own in-house mineral claims. The DNPM only rarely check production figures.

Both methods involve some finessing of the financial system. For this reason, *garimpeiros* in Coromandel also sometimes “rent” their bank accounts to facilitate large movements of money. Spending the afternoon at the café, PAC researchers encountered two *garimpeiros* who had made their accounts available to a buyer who needed a way to move amounts in excess of R\$50,000 (the limit that normally draws the attention of Brazil’s Federal Police.) According to these *garimpeiros*, after such a large transaction the account remains flagged for a period of four years; any large money transfers in this period will bring the attention of the Federal Police. After four years, the account is ready to be rented once again⁵.

All of this is illegal, of course, but it’s also the only logical response to the system set up by the DNPM. One of the Belo Horizonte exporters, Francisco Ribeiro of Gar Mineração, has actually come up with a plan to reform the way diamonds are bought and sold in Brazil. Ribeiro plans to open a diamond bourse near Belo Horizonte’s industrial airport some time in 2005. The bourse would function as a kind of limited-access auction house.

⁵ A buyer with access to eight accounts could thus do a large transaction every six months. With 16 accounts, he could execute large transaction every three months.

Through their networks of *capangueiros*, the big exporters would bring diamonds to the bourse, where they would be auctioned off to international buyers. In Ribeiro's scheme, it would be the *capangueiros* – and not DNPM mineral title – who would attest to the diamonds' origins.

The president of Coromandel's *garimpeiro* co-op Dario Rocha actually supports the idea of the bourse, provided the co-op is given access. He thinks it would be a way for *garimpeiros* to bypass local buyers altogether and get straight to the international market. But he has a different idea on how to certify the diamonds. The balance of power is already tipped too far in favour of the buyers, Rocha believes. Certification should be the task of the co-op.

The co-operative already knows who is working in its local area, Rocha argues. The co-op could refuse to certify diamonds that come from outside the area, and even diamonds produced on sites with no environmental controls. True, he admits, this opens up the possibility of corruption, of the co-op certifying Roosevelt or even African diamonds in return for a cut. In practice, he believes the co-op's democratic structure, its open decision making process, and the desire to protect the co-op's name and reputation would all act as a powerful check on corruption.

The co-op, he argues, would certainly be less open to corruption than the private dealings of a company or *capangueiro*. In any case, it would certainly be an improvement over the system currently in place. "As it stands," says Rocha "you can't say the process has any credibility."

Diamantina

Diamonds have a long history in Diamantina. It was here in the 1720s that diamond mining began in Brazil. Over the course of the 18th century, those early miners and merchants built a city so striking that UNESCO recently declared Diamantina, its cobblestone streets, cathedral, and pretty public square a World Heritage

Site. And it was in Diamantina, in 1989, that *garimpeiros* filled that same pretty public square protesting their instant and unlooked-for unemployment with the end of the registered *garimpeiro* system.

José Wilson Coelho watched the protests from his office-window overlooking the square. When local politicians brokered a deal allowing *garimpeiros* to go back to work, Wilson returned to his trade as a diamond buyer. *Garimpeiros* like dealing with Wilson. He's known as a local, as someone who reinvests in the town. He's also known as someone who doesn't ask questions. Many *garimpeiros* are so suspicious of authority that they will walk out on a sale if Wilson so much as mentions the word "receipt".

Kimberley has complicated Wilson's business, adding another layer of what he calls pointless government bureaucracy. In addition to buying and selling, Wilson now has to find a legal source for all of the diamonds that make their way up his staircase. It's not an easy task. There are at most ten legal *garimpos* in the Diamantina area; in the dry season, Diamantina is home to about 1500 *garimpeiros*.

Wilson pulls out a paper envelope and spills out a hundred carats or so onto his desk. They are diamonds for which he has no papers.

The standard method used by buyers in the area is to bump up the numbers on every legal receipt. Say a *garimpeiro* has 500 carats for sale. Buyer and seller agree on a price of R\$200/ct, or R\$100,000 total. But then the buyer asks the *garimpeiro* to put down 600 carats on the receipt. The per carat values drops to R\$180, but the total value of the sale remains R\$100,000. The buyer, the seller and the tax man all remain unaffected. But the buyer now has documentation for 100 extra carats.



A diamond from the Roosevelt Indian Reserve. While most Indians live in poverty, Brazil's Mines and Energy Ministry estimates \$2 billion worth of diamonds have been mined on the 6.7 million-acre reservation since 1999, making it South America's largest diamond mine.

The other method is to “rent” the use of a PLG. Under this scheme, a legalized *garimpeiro* makes his mineral title available to another *garimpeiro*, who pays a commission of three to five per cent plus all taxes and other transaction costs. Wilson hasn't used this method himself. It's complicated and it costs extra. But he may have to consider it soon.

Reaching into a big steel floor safe, Wilson pulls out a paper envelope and spills out a hundred carats or so onto his desk. They are diamonds for which he has no papers. In 2004, Brazil's Federal Police raided his shop looking for contraband African diamonds. Under Brazil's Kimberley law, the police could have seized his stock of paper-less stones. Instead, after a few words with Wilson, they took their leave.

“They asked me if I had any diamonds,” explains Wilson. “I said I did. They asked me if I had papers for them. I said I didn't. But for every diamond in that safe, I told them, I can take you out and show you the *garimpeiro* who dug it up and the piece of earth he dug it from.”

“And I could, too,” he says, gathering the stones back up and returning them to the safe. He just can't sell them, until he figures out how to create documents for them.

Juina and Mato Grosso

The road to Juina is anything but paved. It meanders, an all but impassable track of sand and mud, 724 km from the paved federal highway to the city. It was along this road in the 1980s that De Beers discovered diamonds. Hearing of the discovery, *garimpeiros* flooded the city. The Juina diamond rush was on.

Flush with expectation, an Israeli entrepreneur even opened a gem-cutting factory on the city's main square, giving it the rather grand name of Bolsa de Diamantes. In recent years, the Juina Bolsa de Diamantes has featured prominently in media reports of diamond smuggling, particularly diamonds from the Roosevelt Reserve, located less than 100 km north of Juina. In reality, reports of the Bolsa de Diamantes as a thriving diamond casbah seem to have been based mostly on its name. Certainly, the gem cutting scheme never worked, and few diamonds of any kind seem ever to have passed through the Bolsa's doors.

Not that it's not hard to find Roosevelt diamonds in Juina. On a street just off the city's main square there's a long narrow bar with a room at the back where *garimpeiros* go to sell their wares. Most of the merchandise on offer is of poor quality, deep brown industrial diamonds typical of the Juina area. Often enough, however, Juina gives up clearer, rounder stones of two to six carats, difficult to distinguish from the diamonds found on the Roosevelt reserve.

Of Roosevelt stones themselves, *garimpeiros* in the bar are able to offer only cut stones. A temporary halt to mining within the reserve has dried up the supply of rough Roosevelt diamonds. A month previously there were plenty, *garimpeiros* say. When the Indians resume mining again, the *garimpeiros* promise there'll be plenty once again.

Back in the Mato Grosso state capital of Cuiabá, the local head of the DNPM Jocy Gonçalo de Miranda is adamant that none of these stones have left Brazil – or at least his office – with a Kimberley certificate. Official interest in controlling the flow of Roosevelt diamonds has been intense ever since June, 2004, when members of the Cinta Larga Indian nation killed 29 *garimpeiros* who had entered their territory without permission. Senior DNPM managers have called Jocy repeatedly to look into this topic. So too have senior investigators with the Brazilian Federal Police.

In response, Jocy has conducted the type of oversight seen nowhere else in Brazil. In 2004, the DNPM managed – in negotiations with Diagem – one of the two larger diamond miners in the Juina area – to liberate land enough for eight *garimpeiro* licences (PLGs). Jocy has visited every one of these PLGs as well as the mining sites of two major companies operating in region. Unlike in Minas Gerais, a fake PLG will not serve as an export source here.

Under pressure from superiors and police, Jocy also prepared a report in which he totalled all the diamond exports from all the various mineral properties in the area, then compared those totals to the production limits of the relevant licenses. Jocy refused to share this report with PAC, but he says it showed nothing amiss. Furthermore, says Jocy, all the diamond shipments were scrutinized by the DNPM's Cuiabá diamond expert. According to Jocy, this work demonstrates that no Roosevelt stone has ever exited his office with a Kimberley certificate.

The effort is admirable. Nonetheless, his assertions do not stand up to scrutiny.

As seen in the Primeira Gema export, the DNPM's claims to be able to “tell” the origin of diamonds should be taken with more than a carat of salt. Even the best of the DNPM's experts cannot truly say where in Brazil a diamond comes from. True, the majority of diamonds encountered in Juina are industrial grade browns, but larger, perfectly clear stones do turn up at regular intervals. These large clear stones are difficult to

differentiate from the diamonds found inside the Roosevelt Reserve. It would be a brave bureaucrat indeed who attempted to seize a diamond based solely on the hunch of his in-house expert.

... the DNPM's claims to be able to “tell” the origin of the diamonds should be taken with more than a carat of salt.

That leaves the other check on diamond contraband, the comparison between export figures and the production levels allowed under a particular mineral license.

The two larger mineral companies in the area are Diagem do Brasil, the Brazilian subsidiary of Montreal-based Diagem, and SL Mineração, owned by Juina resident Paulo Traven. In terms of mineral licenses, both have research licenses (*Alvará de Pesquisa com Guia Utilização*), which allow for a maximum of 30,000m³ of ore to be processed per year for each licence.

Here is where room for error enters the system. The concentration of that ore is just what the company says it is – neither more nor less. The DNPM never contests the value, nor has it ever checked on the yield of any diamond property in Mato Grosso. In Juina, the differences between declared yields are intriguing to say the least.

The two large mineral companies have their properties adjacent to each other in identical geological terrain along the margins of the same river. In interviews in Juina with the managers of the two companies, the one company reported ore concentrations of 0.2-0.5 ct/m³. The other company reported average ore concentrations of 1.4 ct/m³ up to an astonishing 5 ct/m³.

The majority of these diamonds are brown industrial grade stones, but larger, gem quality diamonds also make up part of the mix. The one company reports that on average about five per cent of its production consists

of gem quality diamonds. The other company says gems make up from 10 to 20 per cent of its production.

The contrast is striking. Over the course of one year's production, the difference between the two comes to a minimum of 27,000 carats, using the high value for company one and the lowball value for company two.

Of course, there are other differences between the two companies. In the *garimpeiro* bars of Juina, the one company is said to be a heavy buyer of un-sourced *garimpeiro* stones. The other company is not. In an interview in the Roosevelt Reserve with one of the mining chiefs of the Cinta Larga people, the owner of the one company was named as a frequent customer, as well as one of the chief's personal friends. The chief had never heard of the other firm.

It's possible, of course, that the one firm is simply lucky. Consistently lucky. Or it's possible that it is buying up local *garimpeiro* production and washing it through its own mineral license. Without close supervision of the company's production, including periodic tests of the company's ore concentrations, there is simply no way to tell.

Roosevelt: Brazil's Conflict Diamonds

In 1999, a lone prospector emerged from the jungle, his back a wriggling mass of fly larvae, his hands grasping a diamond the size of an ice cube. The stone had come from the Roosevelt Indian Reserve, 230,000 hectares of Amazonian rainforest, intact only because, legally, it belongs to the 1,200 members of the Cinta Larga Indian tribe.

Named for the broad fibre belts they traditionally wore (*cinta larga* means "broad belt" in Portuguese), the tribe first came into contact with the Western world some time in the late 1950s. At the time, their population was about 5,000. Over the next two decades, disease, displacement, massacres by rubber tappers and encroaching settlers reduced their numbers to just over 1,000. The tribe got recognized title

to their ancestral lands in 1979 – four reserves totalling 2.7 million hectares, which includes the Roosevelt Reserve.

With the discovery of diamonds, miners poured across the Roosevelt River into Cinta Larga territory. Mining is illegal on Indian land in Brazil, by both whites and Indians, but then the law in Brazil is often honoured in the breach. The Indians, at first, attempted to profit from the boom, charging miners a R\$10,000 (US\$3,800) entrance fee, plus ten percent of their take. By 2002, the Roosevelt Reserve was home to a mining colony 5,000 strong, complete with bars, brothels, wild-west gunfights, and miners with little inclination for paying fees or commissions to Indians.

The Indians asked the Brazilian Indian Agency, FUNAI, to remove the miners from their land. FUNAI complied, and by January 2003 most had been removed. The Indians then took up mining on their own, churning out an estimated US\$25 million worth of gems each month, sold illegally into the international market. Lured by the easy riches, miners began filtering back into the reserve. The Indians removed them again. The miners went back in. Tempers began to fray. In early April 2004, miners fled the reserve, speaking of an attack by the Cinta Larga; of dozens, maybe hundreds, dead.

Within days, the Brazilian government had called in the army and federal police, encircling the reserve and putting the Cinta Larga into a state of siege. The head of FUNAI said the Cinta Larga were simply defending themselves. The governor of Rondônia put the blame squarely on FUNAI. The Indians said little, making themselves scarce, and shutting down mining operations. When the federal police finally dug up all the miners, the final count came to twenty-nine.

For months the situation remained tense. The armed forces were able to withdraw, but combined units of federal, state and forest police were stationed permanently at the entrances to the reserve. Cinta Larga who ventured into town were shot at. Miners who tried to sneak back to the *garimpo* were captured, taken to the reserve border and turned over to police.

In early November, 2004, three Cinta Larga chiefs were charged with instigating the massacre. Seven more warriors were charged with carrying out the killings. At about the same time, the governor of Rondônia was called before Brazil's supreme court to answer charges that he had attempted to profit personally from mining ventures in Cinta Larga territory. Both the governor and the chiefs were left at liberty while they responded to the charges. Legal proceedings in both cases are likely to take years, with little hope of convictions in either.

In the meantime, the government and the Indians were left with a stand-off. The Indians wanted to mine. The constitution and the government said they couldn't. Earlier, in August, 2004, Cinta Larga leaders had travelled to Brasilia to present their case to the minister of justice, or indeed any other cabinet member who cared to meet with them. None would. The Indians returned to the reserve, and once again took up mining.

In late November, 2004 the government passed a decree allowing the Cinta Larga to sell their remaining stock of diamonds through a government-sponsored auction. In preparation for the auction, a task force with personnel from the Federal Police, FUNAI and the DNPM was sent to the reserve to put a stop to further mining and collect up any and all mining equipment from the mine site.

The DNPM's director of enforcement, Walter Arcoverde, formed part of the team. In Brasilia, after the operation was completed, Arcoverde showed PAC photos of the equipment that had been seized: dozens of separators, miles of tubing, a backhoe, and a stack of motors piled one atop the other. According to Arcoverde, the seizures showed that mining in the reserve had been shut down tight.

The pile of equipment was impressive. But it seemed best to double-check on the ground. Launch point for any investigation of Roosevelt diamonds is the city of Cacoal, located some 500km from the state capital on Rondônia's one paved federal highway, and about 80km on a four-by-four dirt road from the Roosevelt Reserve.

The first step was to determine if the flow of illegal diamonds from the Cinta Larga lands really had been dried up. Certainly, the market in Cacoal is much more circumspect than in Coromandel or even Juina. Diamond sales do not take place in offices or bars. Instead, buyers meet with sellers only inside houses, only after the gate has been padlocked, and usually after going through several intermediaries, at least one of whom can vouch that the prospective buyer is not a member of the Federal Police.

In this investigation, a PAC researcher had to pass through two intermediaries before being brought to the house of a man with some 250 carats of Cinta Larga diamonds for sale. He had sold another 500 carats, he said, just the day before. The diamonds he had for sale were not top quality – most were under two carats, and though clear in colour, many were heavily flecked with carbon deposits.

Mining in the reserve had apparently been shut down ever since the task force arrived to prepare for the diamond auction. Good quality merchandise would not be available until mining began again, sometime within the next couple of weeks. The exact date, however, depended on the Indians.

On a previous visit to the area, PAC attempted without success to meet with the Cinta Larga leadership to discuss their mining plans. On this visit, the PAC researcher decided to go undercover. Posing as a potential investor, the researcher was able to make contact with a *garimpeiro* who had run a fairly large mining operation inside the



Diamonds from the Roosevelt Indian Reserve are auctioned at an auditorium in Rio de Janeiro in February 2005

reserve during the height of the diamond rush. He had been away from the area for more than a year, but was looking to get back into the business.

The *garimpeiro* claimed he had all the requisite mining equipment – motors, pumps, separators, tubing, even a backhoe – safely stored inside the reserve with one of the Cinta Larga chiefs. All he needed was an investor to pay for food, fuel, and the “licensing fee” demanded by the chief. The PAC researcher pretended to be interested, subject to two conditions: a meeting with the chief, and inspection of the equipment.

Setting up the meeting with the chief required nothing more than making a phone call and driving over to his house, located in one of the nicer parts of Cacoal. The chief confirmed the offer set out earlier by the *garimpeiro*: a 90-day loan of R\$100,000 (US\$38,000), for which we would receive 15 per cent of the diamonds produced on the site, plus the right of first purchase on the rest. The loan would be paid back out of proceeds from the diamond sale. In three months worth of work, the *garimpeiro* expected to extract a minimum of 6,000 carats, an amount he valued conservatively as being worth US\$2 million.

Entering the reserve to view the mining equipment turned out to be somewhat more difficult. Flights to the reserve are problematic – the landing strip is short, and the weather often bad. After spending two days grounded on the airstrip, it was decided to travel in by 4x4.

The long trip by 4x4 did provide an opportunity to find out what the chief thought of the government-sponsored auction, which had then just ended in Rio de Janeiro. “Fixed,” said the chief. He believed the government had conspired with bidders to keep price low. At the auction, the 665 carats of Cinta Larga diamonds sold for R\$716,920 (US\$270,000), including R\$257,000 for the largest 28.4 carat stone. Neither he nor any other Cinta Larga will participate in such an auction again. Instead, the chief plans to extend his contacts with foreign buyers, and to begin buying and selling Cinta Larga diamonds himself.

At the chief’s village, the mining equipment was all there as advertised – two backhoes, eight separators (with

three more buried in the forest close to the *garimpo*, according to the chief), 15 or 20 pumps and motors, lots and lots of tubing – all safely stored in a shed by the chief’s house in the reserve. According to the chief, the impressive pile of equipment seized by the government had all been apprehended outside the reserve. The Indians still had all of their equipment.

Upon leaving the reserve, the chief gave his cell phone number. “Call when you have the money,” he said. “We plan to begin mining again soon.” PAC, alas, was forced to back out of the deal. Through contacts in the area, however, it was learned the chief had already found another investor.

Conclusions and Recommendations

Brazil’s DNPM opted to use Kimberley as a lever to force *garimpeiros* into some semblance of legality. While understandable, such a mission was beyond the requirements of the Kimberley scheme.

There have been some benefits to *garimpeiros* from this approach. In Coromandel and Juina a dozen or so new *garimpeiro* claims have been established. However, the new *garimpeiro* licences are perhaps a tenth of what would be required to accommodate all *garimpeiros* in these areas. And having accommodated some *garimpeiros* with legal title, the DNPM is now more rigorously enforcing the existing mineral rights (mostly held by corporations) in the areas that remain.

Even worse, tying Kimberley to legal mineral title has only spurred the development of a whole new layer of illegality. Since Brazil’s Kimberley scheme was put in place in the final quarter of 2003, Brazil’s *garimpeiros* and diamond exporters have developed an array of techniques for washing irregularly sourced diamonds through the Kimberley Certificate system. The vast majority of these stones are from Brazil itself. However, the existence of these contraband routes makes them liable for exploitation by other less benign sources of diamonds.

In place of a system based on mineral title, the DNPM should move to a system based on regional origin. Disputes between *garimpeiros* and mining companies over mineral title should be solved independently of the Kimberley Process. Some recommendations follow.

1. Tougher Measures in the Diamond Markets of Europe and other Buying Countries

The ease with which diamonds can be purchased in Brasilia, the access of the Cinta Larga mining chiefs to high-volume buyers, the extensive smuggling by small-time players in Cacoal, and the disturbing presence of seemingly sophisticated international trafficking networks in several of Brazil's diamond producing areas — all of these point to the continued existence of markets for undocumented rough diamonds in Europe and elsewhere. (In many cases, the destination named was Belgium).

Understanding how these international diamond trafficking networks function will be an important first step in eventually closing them down. Equally importantly, diamond importing nations should re-evaluate the extent to which diamond buyers in their countries are aware of and enforcing the requirements for rough diamond certification.

2. Review All Past Certificates

Given the results of this investigation (see *Anatomy of a Kimberley Fraud*) it can be concluded that there is no reliable information on the volume and origin of diamonds exported from Brazil. PAC had the opportunity to examine in detail exactly two Kimberley Process files. One turned out to be fraudulent. Without a full investigation, there is no way to tell how many more of Brazil's Kimberley certificates mask fraudulent exports.

The forthcoming Kimberley Process review team visit to Brazil must do more than review DNPM processes. It must track past certificates back to the mines from which the diamonds were said to originate. The DNPM should open its Kimberley files to full oversight by the Review team, and subsequently to qualified auditors that are independent of the DNPM.

3. In Future, the DNPM Must Visit Mining Sites

In order to give the Brazilian Kimberley certificate credibility, it is important that the DNPM make random visits to a reasonable percentage of mining sites, in order to verify the information provided by those seeking a KP certificate. During these site visits DNPM personnel should not only verify that diamond mining is taking place, they should also test diamond concentrations in the ore being processed and check it against the ore concentration claimed on the mining licence.

4. Give *Garimpeiro* Cooperatives the Right to Issue Certificates of Local Origin

The DNPM's effort to tie the export of diamonds to the legal possession of a mining title has largely failed. *Garimpeiros* have continued mining, and Brazil's diamond buyers and international exporters now routinely invent ways to wash paperless stones into the Kimberley documented system.

The DNPM should therefore move away from a system based upon legal mining claim, and towards a system based on certifying the regional origin of diamonds.

Instead of a paper trail stating that a parcel of diamonds was produced on a particular PLG or *Alvará de Pesquisa*, all that need be certified is that the stones originated in, for example, the Juina area, or the Diamantina region.

The DNPM should devolve the task of certifying regional origin to the local *garimpeiro* cooperatives. The co-ops know their area, its diamonds, and who is working where. A *garimpeiro* who has produced diamonds could bring them to the cooperative, where a two or three member panel could see the stones, verify their local origin, and issue a certificate of regional origin.

Such a system is not immune to corruption. However, the panel's decisions would be open to scrutiny by cooperative members and the DNPM. Mandatory bi-annual elections ensure that even a corrupt executive could not remain in place forever. In practice, the

desire to consolidate and strengthen their newly won legitimacy, and the desire to preserve the good name of the cooperative, will likely act as a powerful check on “certificate selling”.⁶

The DNPM should retain the ability to revoke the certifying power of any co-op in which irregularities are suspected. This would shut off certification in the local area. The fear of losing certification – and thus putting *garimpeiros* out of work – should act as a powerful disincentive against corruption.

5. Give Shallow Surface Rights to *Garimpeiros*

Kimberley was never intended as a tool to enforce the mineral claims of large exploration firms. Using it as such distorts Kimberley’s original purpose and intent. If the DNPM wishes to ensure total compliance with existing mineral claims, it already has the tools to do so – site visits by DNPM personnel, followed up with action by the DNPM and Federal Police. It need not conscript Kimberley in the effort.

It would be better for the DNPM to establish a legal separation between surface mineral claims – easily exploitable by *garimpeiros* – and those of greater depth and complexity. The justification for reserving mineral rights for larger companies is that it is only with more sophisticated techniques and greater capital investment that the resource can be found and exploited. In the case of alluvial diamond deposits, this clearly is not true.

Mineral rights of up to say, five metres in depth could be reserved for *garimpeiros* (or *garimpeiro* cooperatives), who have shown that they can successfully find and exploit diamond deposits with as much success and care for the environment as larger companies. Mineral rights below this depth – which do require greater capital investments and more sophisticated exploration programmes – could be reserved for mineral companies.

6. Establish a *Garimpeiro* Department within the DNPM

The DNPM and Ministry of Mines have tentative plans for a *Garimpeiro* department. They should put these plans into action. The *Garimpeiro* department should work to educate *garimpeiros* on the necessity and benefits of legality. At the same time, the department should develop programs to make it easier for *garimpeiros* to establish claims, and to reduce or defray the costs of the often expensive environmental requirements. Where state environmental agencies have concerns about the willingness and ability of *garimpeiros* to meet environmental standards, the DNPM *Garimpeiro* department should act as a mediator, finding ways to ensure that *garimpeiros* do meet environmental standards, while perhaps dispensing with the expensive bureaucratic requirements.

7. Create a Brazilian Diamond Prices Newsletter

Complaints about prices are chronic in Brazil, everywhere diamonds are bought and sold. There exists only one cure for this disease – the truth. The DNPM should develop the in-house expertise to compile a weekly newsletter – similar to that produced by *Rapaport News* – listing prices paid internationally for the various types of diamonds produced in Brazil. The newsletter should be made available free of charge via the Internet to anyone wishing to subscribe.

8. Encourage the Formation of a Diamond Bourse

The diamond bourse currently being developed by GAR Mineração in Belo Horizonte represents – potentially – an excellent opportunity to bring some clarity and openness to the way diamonds are bought and sold in Brazil. To ensure the proposed bourse meets the needs of both buyers and producers, the DNPM should facilitate a meeting or meetings between GAR Mineração and representatives of the *garimpeiro* cooperatives of Minas Gerais.

⁶The cooperative in Diamantina in fact already turned down a very lucrative offer to wash a large lot of diamonds, simply because of a desire to preserve the good name of the cooperative.

9. Legalize Cinta Larga Mining

The biggest source of contraband stones in Brazil was and remains the Roosevelt Indian Reserve, the home of the Cinta Larga people. The Cinta Larga leadership has made it clear in any number of statements that they want the right to exploit the diamonds on their lands, themselves, in whatever way they see fit.

According to Brazil's 1988 constitution, only the Brazilian congress can authorize mining on Indian lands. The only bill currently under consideration is a sweeping and rather ill-considered proposal that would open up all Indian reserves to mineral exploitation, not by the Indians

themselves but by outside corporations. In the case of the Roosevelt Reserve, while there may be technical and environmental advantages to having the mining done by an outside company, such a proposal suffers from one fatal flaw: it's not what the Cinta Larga want.

The appropriate Brazilian government agencies (FUNAI, Ministry of Mines and others) should begin negotiations with the Cinta Larga leadership with a view to legalizing mining in a way the Cinta Larga find acceptable. Negotiations should start with the premise that the Cinta Larga collectively own both the surface and the subsurface of their tribal lands.

the Diamonds and Human Security Project

Partnership Africa Canada

THE FAILURE OF GOOD INTENTIONS FRAUD, THEFT AND MURDER IN THE BRAZILIAN DIAMOND INDUSTRY

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