

The Kimberley Process: Too Important to Fail, Too Important for Pretense

By all indications, and from the evidence gathered for this year's *Diamonds and Human Security Annual Review*, the Kimberley Process (KP), designed to halt and prevent the return of "conflict diamonds", is failing. The cost of a collapse would be disastrous for an industry that benefits so many countries, and for the millions of people in developing countries who depend, directly and indirectly on it. A criminalized diamond economy would re-emerge and conflict diamonds could soon follow. The problems can and must be fixed.

Accountability is the primary issue. There is no KP central authority. The "chair" rotates annually and has virtually no responsibility beyond a convening function. Problems are shifted from one "working group" to another; debates on vital issues extend for years. "Consensus" in the KP means that everyone must agree; a single dissenter can block forward movement. Nobody takes responsibility for action or inaction, failure or success; the Kimberley Process has no core body apart from its annual "plenary meeting" and thus nobody is held responsible for anything.

The Kimberley Process Certification Scheme (KPCS) has a peer review mechanism which reviews each member's compliance roughly once every three years. Some reviews are thorough and recommendations are heeded. In many cases, however, recommendations are ignored, and there is little or no follow-up this has been the case in the past with DRC and Angola. And, as this Annual Review notes, some reviews are completely bogus. In 2008, a bloated, nine-member team visited Guinea, a country beset by corruption, weak diamond controls, and almost certain smuggling. The team spent less than two hours outside the capital and its report remained unfinished for almost 11 months. A team visited Venezuela in 2008 but its makeup, agenda and itinerary were dictated entirely by the Venezuelan government. NGOs were barred and there were

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Series Editor: Ian Smillie Managing Editor: Josée Létourneau no visits to mining areas or border towns. Zimbabwe, rife with smuggling and gross diamond-related human rights abuse, consumed months of ineffectual internal KP debate. In the end, the KP agreed on a review mission, but only after being publicly shamed into action by NGO and media reports. The result is a lowest-common-denominator "consensus" and continuing inaction.

Other cases of flagrant non compliance have been ignored until they became media scandals: fraud and corruption in Brazil; Ivoirian conflict diamonds smuggled through neighbouring countries; 100% of Venezuela's diamonds smuggled out of the country. In two of Africa's largest diamond producers — Angola and DRC — internal controls are so weak that nobody can be certain where exported diamonds really come from. In addition, production and trade statistics from Lebanon, Guinea and the Republic of Congo (Brazzaville) raise serious guestions. In most cases problems are detected by NGOs or UN expert panels because the KP has no central capacity for study and research. Procrastination is the default position.

Elaborate measures were taken in 2008 to allow Venezuela to remain a KP participant — despite its flagrant non-compliance — on the understanding that it would suspend exports and imports until it had regained control of its diamond industry. This effectively endorsed a situation in which all diamonds were being smuggled out of the country. This *Annual Review*

describes a second Partnership Africa Canada investigation in May 2009, which found that Venezuelan diamonds are still being openly mined and smuggled. The KP continues, however, to accept the official Venezuelan position. As a result, for more than four years, the KP has implicitly sanctioned Venezuelan diamond smuggling.

The Kimberley Process and the KPCS were created to watchdog the diamond industry. Instead, the KP has become a talk shop, with civil society acting as watchdog of the industry and the Kimberley Process itself. Industry leaders are largely supportive of positions taken by civil society, and several governments are as frustrated as NGOs with the lack of gravitas and urgency in the KP. But industry does not lead, and few governments push hard for serious reform.

The Consequences of Failure

Before 2003, about 25% of the world's diamond trade was in some way illicit. Diamonds, completely unregulated, were used for money laundering and tax evasion, for drug running, gun running, sanctions-busting and terrorist financing. Many diamond producing countries earned no revenue from diamonds, and for others diamonds were only a source of strife and war

The Kimberley Process was created to change this, and it has made a difference. Today, conflict

diamonds represent a tiny part of world trade. Hitherto underground diamond economies have come into the light. Sierra Leone, which exported less than \$2 million worth of diamonds legally in 2000, now exports between \$100 and \$150 million annually, earning the concomitant tax revenues. There have been similar positive changes in other countries.

All of this will quickly wither if the KPCS fails. A return to the freebooting diamond economy of the 1990s will reopen the door to a criminalized diamond trade and to conflict diamonds in the same fragile countries where they have already destroyed countless lives.

The KPCS is too important to fail, and it is too important to too many countries, companies and people to be a sham. It does not need to be redesigned; its provisions need to be enforced. But it requires an *independent*, proactive, effective and efficient core body of expertise that can analyze problems and act quickly to correct them, applying meaningful sanctions where necessary. Participants must be held accountable, and the KP must move swiftly to deal with cases of obvious non-compliance.

The Annual Review has gained a wide readership in recent years among governments, industry, civil society, academia and the media. Many of our readers have influence, and even the power to push for changes that are so obviously needed in the Kimberley Process. We hope you will add your voice to ours.

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Table 1 • 2008 Diamond Exports

(countries covered in this report)

Country	Volume (carats)	Value (US\$)	US\$/ct
Democratic Republic of Congo	21,284,136	551,879,602	25.93
Angola	7,389,133	995,408,419	134.71
Guinea	3,097,360	66,705,270	21.54
Lebanon	2,456,651	48,475,333	19.73
Ghana	629,043	19,959,304	31.73
Sierra Leone	371,260	98,772,170	266.05
Zimbabwe	327,833	26,693,385	81.42
Guyana	193,026	31,190,622	161.59
Liberia	46,888	9,871,033	210.52
Republic of Congo	36,737	1,019,705	27.76
Côte d'Ivoire	0	0	0
Venezuela	0	0	0

Source: Kimberley Process Statistical Data Base.

Note: Côte d'Ivoire remained under a UN diamond export embargo during 2008. Venezuela reported that no diamonds had been exported during the year.

Table 2 • Top Diamond Producing Countries in 2008 (by volume)

Country	Carats	World
		Total %
Russian Federation	36,925,150	22.7%
DR Congo	33,401,927	20.5%
Botswana	32,276,000	19.8%
Australia	14,932,137	9.2%
Canada	14,802,699	9.1%
Other	30,569,803	18.7%
Totals	162,907,716	100%

Source: Kimberley Process Statistical Data Base.

Table 3 • Top Diamond Producing Countries in 2008 (by value)

Country	Value US\$	World Total %
Botswana	3,273,001,000	25.7%
Russia	2,508,957,130	19.7%
Canada	2,254,710,603	17.7%
South Africa	1,236,240,109	9.7%
Angola	1,209,789,970	9.5%
Other	2,249,579,996	17.7%
Totals	12,732,278,808	100%

Source: Kimberley Process Statistical Data Base.

Table 4 • Top Diamond Importing Countries in 2008 (by value)

Country	Value US\$	World
		Total %
European		
Community	14,507,530,886	37.5%
India	9,591,555,855	24.8%
Israel	5,357,613,277	13.9%
PR China	2,331,180,223	6.0%
United Arab		
Emirates	2,155,662,557	5.6%
Switzerland	1,560,438,270	4.0%
Other	3,171,797,424	8.2%
Totals	38,675,778,492	100%

Source: Kimberley Process Statistical Data Base.

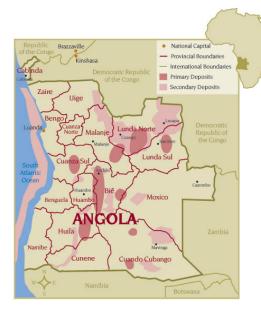
Note: Imports appear to exceed global production figures by a significant factor because rough diamonds imported to the EC, for example, are re-exported to other countries. There is, therefore, considerable double counting. These figures are mainly indicative of the level of commercial interest a country has in rough diamonds.

ANGOLA

Introduction

Angola has a new artisanal diamond law. Long in gestation, timid in conception, hastily published in an edition full of typos, the new regulations will be costly and difficult to implement. And, they are almost identical to regulations that have sat on the books un-enforced for over 15 years.

Still, for a fraction of Angola's artisanal miners, the new code represents a small legal step forward. The questions now are how, when and whether the authorities will implement this new code



That aside, the code does little to improve Angola's Kimberley Process compliance. It outlines no concrete procedures for tracking artisanal production, and no mechanisms for collating, analysing or publishing data on artisanal trade and production. Angolan officials say, however, that the government takes its KP responsibilities seriously, and plans to tighten things up during implementation. That will bear watching.

For the vast majority of informal artisanal producers in Angola, the new code does nothing. Large scale commercial *garimpo* — of the type that produces some 30% of Angola's diamonds by value each year — was illegal under the old regulations, and remains so under the new code.

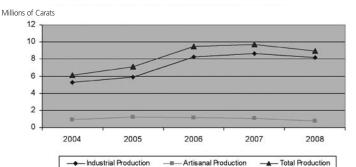
With the passage of the new code, however, Angolan authorities seem to be evincing a new determination to finally shut down large scale *garimpo* and expel the tens or hundreds of thousands of remaining commercial-scale *garimpeiros*. Nobody denies Angola's right to manage its own diamond fields or deport illegal immigrants. But the violence that has accompanied past expulsions is unacceptable. That too, will bear watching.

The Global Economic Crisis and its Effects

Diamond mines have shut down or slashed production, exploration has come to a dead halt, and for the first time in nearly a decade, Angola no longer has foreign suitors lined up begging for a diamond concession. These are but some of the effects of the world economic crisis on Angola's diamond sector.

Since the crisis hit in 2008, artisanal production has also fallen by nearly a third, from 1.1 million carats in 2007 to just 736,000 carats in 2008. With the fall in prices, the majority of Angola's artisanal diggers seem to have simply downed tools and gone home.

Figure 1 • Angolan Diamond Production: 2004-2008



→ Industrial Production — Artisanal Production — Total Production

In the formal sector, the fall has been less dramatic, with diamond production dropping 5% to 8.18 million carats in 2008. Although the international media have reported shutdowns, Endiama reports that production at the large Catoca kimberlite mine remains

largely unchanged. Fixed costs at the mine are such that the savings from a slowdown or even a complete shutdown would be marginal. Catoca may also benefit from having the Russian giant Alrosa as its largest foreign shareholder, and perhaps as a steady overseas buyer.

Other industrial firms have not been so fortunate. Early on, some firms attempted to slow production and shed personnel. The Angolan government responded with a directive proscribing layoffs. Unable to square this circle, two small alluvial projects run by South Africa's TransHex — Fucauma and Laurica — shut down completely. Of the remaining ten producing projects, some have drastically slowed production and sent personnel home.

Sodiam, the government-owned diamond buyer, has undertaken to buy the diamonds of any companies that remain in production and are unable to find purchasers on their own. What price Sodiam is offering, and how many carats it has stockpiled, is information Angolan authorities are unwilling to share.

On the exploration side, all but one of the 26 joint ventures in the prospecting phase have shut down operations (the sole exception being ENDEB, the De Beers-led joint venture in Lunda Norte). Many foreign investors who provide capital and expertise for these projects have packed up and left, and at least two companies have had their joint venture agreements officially terminated.

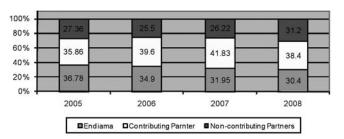
Media reports quoting the Angolan military suggest that as many as eleven of these paralysed exploration projects have had their concessions overrun by *garimpeiros*, mostly from the DRC. However, the Angolan army is a notoriously unreliable source when it comes to *garimpeiros* and the Lundas. Endiama says that all of the projects are being protected.

During the first half of 2009, only one new joint venture agreement was signed — a contrast from earlier years when half-a-dozen was the norm for a six-month period.

A final victim of the economic crisis was the World Diamond Fair that Angola had planned to hold in Luanda in November, 2009. Angola hoped to use a vast gathering of the world's diamond glitterati to show off the new African Diamond Producers' Association, perhaps launch a line of Angolan-mined and polished jewellery, and to make a bid for leadership of Africa's diamond sector. But when the crisis hit, sponsors pulled out, followed by prospective attendees, leaving Angola's Council of Ministers no choice but to call the whole thing off. There are currently no plans to relaunch the fair.

Endiama Loses Ground

Figure 2 • Average Ownership of New Joint Ventures, 2005-2008



Source: PAC (percentages aggregated from joint-venture contracts as published in Angolan Diário da República)

New joint venture contracts signed in 2008 continue a trend: the state diamond company Endiama earns a reduced share of the revenue, while politically controlled companies receive a bigger share. Contractually, these companies are not actually required to do anything, but they receive a large share of the profits. Most are controlled by political allies of the Angolan president.

Figure 2 shows the development of this ostensibly legal but deeply corrupt practice. Over the four years from 2005 to 2008, Endiama's average share has shrunk from nearly 37% to just over 30%, while on average the percentage claimed by do-nothing "contributing partner" companies has grown from 27.36% to 31.2%. The average percentage claimed by the foreign investors, which provide the know-how and investment, has remained largely stable at between 35% and 40%.

These giveaways cost the Angolan government (and theoretically, the Angolan people) a great deal of diamond revenue.

The New Artisanal Code

"Diamond *Garimpo* only for Angolans", screamed the headlines in the June 28, 2009 *Jornal de Angola*. The government-owned newspaper had largely missed the point of the story. A more accurate headline might have read, "Artisanal Mining Legalized, Sort Of".

The new artisanal code is the fruit of nearly two years of work by CIPRED, a high-level committee drawn from all of Angola's front line ministries. Despite lengthy deliberations and fact-finding trips to Liberia and Brazil, the CIPRED committee has produced a near word-for-word copy of the existing, unwieldy and ineffective, 1994 Diamond Law.

Left out of the "new" artisanal regulations was much consideration of Angola's Kimberley Process commitments, or any detailed method for registering and tracking artisanal production. This, despite that fact that the first Kimberley Process review mission in 2005 noted the weakness of Angola's internal artisanal controls, and demanded that they be fixed.

Vision

The vision of artisanal mining as outlined in the code is restricted to local people working part-time, with no machinery on local lands. The new regulations do give artisanal producers the right to dig for, transport and sell any diamonds they find. This is a welcome legal advance for artisanal producers — or at least it will be, if it is actually put into effect.

The great doubt hanging over this and all other provisions of the code is that the exact same regulations were also written into the old Diamond Law, together with a series of financial and administrative barriers that in practice made it impossible for anyone to ever become legal. Those same barriers are in the new artisanal code.

Only Legal on Low-grade Lands

The first of the many barriers is a requirement that artisanal mining take place only on land that has been surveyed and deemed economically non-viable for industrial-scale exploitation. Endiama is the agency is charge of evaluating and demarcating artisanal areas. Endiama held this responsibility in the previous Diamond Law, and in 15 years never once managed to demarcate a single artisanal area.

However, according to the Ministry of Geology and Mines, there is now strong ministerial backing for the artisanal code, and thus significant pressure on Endiama to demarcate at least a few areas. As part of this process, Endiama plans to begin enforcing the provisions of the Diamond Law that require concession holders to surrender half of their 3000 km² concession as they move from prospecting to actual production. To date, this provision has never been enforced. Artisanal areas will initially be located on these surrendered areas. It is envisaged that some pilot zones will be set up by October, 2009.

In the longer term, the Angolan government has commissioned a full geologic survey, which is supposed to differentiate industrial quality areas from those with the low grades the Angolan government has deemed suitable for artisanal exploitation.

Licensing

The second major barrier is the cost and difficulty of the licensing requirements. In order to dig for diamonds, artisanal producers must first obtain both a mining permit (or *credencial*) and an artisanal mineral claim (*senha mineira*). Both permits and mining claims are restricted to Angolan citizens, 18 years or older, who have been resident in the area of production for at least ten years.

Artisanal claims cover from one to three hectares in area. Up to five people may work a single artisanal claim, but all five must be licensed, and must come from the same family or village. The claim holder must submit a list of the five diggers when submitting a claim application.

To meet the residency requirement, applicants must present a Proof of Residency document, verified by their local civic administration, and countersigned by the village chief or other traditional authority. In addition, applicants must also submit a copy of their national ID card, a copy of their taxpayer card, a criminal records check or a certificate of good standing from their local civic administration.

Simply assembling all of these documents will be a challenge. Then there is the question of processing.

Applications must be made to the provincial division of the Ministry of Geology and Mines, typically located only in provincial capitals. In Lunda Norte, the provincial capital of Dundo is a full day's journey by road from mining areas such as Lucapa. From Cafunfo, a road journey to Dundo is a major 3-4 day undertaking, much longer in the rainy season. To require Cuango basin diggers to report to the capital is to guarantee they will never be licensed.

The ministry's Paulo Mvika says that his department plans to send a blitz of roving licensing teams through the mining regions. In the longer term, Mvika claims that procedures will be developed so that applications can be submitted and licenses returned via the local provincial government administration.

This remains to be seen. The danger is that after an initial spurt, Geology and Mines will fall back on bureaucratic inertia and will require applicants to travel to and from provincial capitals. Faced with a week long trip just to take out a license, the majority of potential diggers will simply ignore the regulations.

Costs

The yearly charge for an artisanal digger's license is set at about US\$100, roughly five times the monthly salary of a rural Angolan school teacher. An artisanal mining claim costs an additional US\$100 per year. The minimum cost to begin mining is thus US\$200. Given the abysmal poverty prevalent in the Lundas, these charges will prove a significant additional barrier to licensing.

The ministry, however, is resistant to lowering the price. The attitude is odd, considering the costs that will be incurred setting up money-losing Sodiam sales channels (see 'Non-existent Sales Channels', below), and the revenue that will be foregone if Angola follows through on a plan to close the informal sector *contuarios* (buying house) (see 'Closing Down *Garimpo...* Still' on page 6). Given the magnitude of these costs, the short-sightedness of burdening potential legal miners with high up-front costs in the licensing office makes no sense at all.

Non-existent Sales Channels

The last of the significant barriers to the new Angolan artisanal regime is the provision by which diamonds are to be sold. The regulations state that artisanal producers cannot sell their diamonds into the network of Sodiamlicensed buying houses (*contuarios*) that currently purchase informal production in the interior. Instead, they will have to sell their diamonds to special artisanal-only *contuarios* that will to be run directly by Sodiam.

For diggers, the danger with a monopoly buyer is that prices will be kept artificially low, although the code does contain a mechanism for arbitration, should the digger be unwilling to accept the prices offered.

The main problem is that no such buying houses currently exist, and setting them up will be a money-losing proposition. In order for the scheme to work, the buying houses will have to be located in close proximity to artisanal dig sites. However, given the restrictions on site quality and worker numbers, the volumes of diamonds produced from legal artisanal sites are certain to be low. Low volumes and a widely flung network mean that these new artisanal-only buying houses will run at a loss.

According to Paulo Mvika, the Ministry of Mines is prepared to accept the costs, whatever they turn out to be. However, should Sodiam prove less willing than Mines to incur the necessary expense, the buying houses will never be set up, and the legal artisanal system will be stillborn.

Little to No Improvements to KP Compliance

The new artisanal code contains almost nothing about Angola's Kimberley Process commitments, a curious omission. The 2005 KP review team noted the weakness of Angola's artisanal diamond controls. Several reports from Partnership Africa Canada have further illustrated Angola's complete inability to track its artisanal diamonds from source to sale, putting it in contravention of its KP commitments.

Yet in the entire 23-page code there are exactly three minor sub-clauses that have some bearing on internal controls of diamond flows, and thus on Angola's KP commitments.

Article 11-3(l) says that a claim holder must "organize a register of economic activity, namely of diamonds extracted, sold and not sold."

Article 12(c) says that the Ministry of Geology and Mines must "organize and register the production and commercialization of diamonds."

Article 31-2 says that Sodiam or some other state commercial entity must create buying establishments close to the areas of artisanal exploitation, "obeying the requirements and procedures of the Kimberley Process in a way that assures the transportation¹ and circulation of diamonds up to their certification..."

And that's it; odd indeed, given that this is a set of implementing regulations — the kind of document that normally spells out detailed forms and procedures. The KP should ask itself how seriously it is taken by Angola. If the answer lies in this code, it is "not very".

At a minimum, the regulations should require artisanal producers to register diamond production by weight, number of stones, quality and date of extraction, with the information verified and countersigned by a mines officer or local authority. Regulations should require diamond buyers to record the names and identities of artisanal sellers for every purchase, along with the weight, stone count and quality of diamonds purchased. They should require the buying house to transmit this information on a regular basis to the Ministry of Geology and Mines, which should have the responsibility of collating, verifying and cross-checking this information before certifying artisanal diamonds for export. The regulations should specify the tracking documents required to maintain a chain of custody of diamond parcels, and thus track production from mine to export.

The CIPRED committee could easily have included such details: they visited Liberia and Brazil, both of which have such tracking systems in place. According to the Ministry of Geology and Mines, however, all of this will be worked out as they go along. Maybe.

Closing Down Garimpo... Still

The effort has been enormous and costly over five years: massive police and army expulsion operations, several hundred thousand *garimpeiros* expelled, innumerable human rights violations and extensive damage to Angola's international reputation — all of it to no discernable effect — and still Angolan authorities aren't willing to give up.

Angolan efforts to expel illegal and foreign *garimpeiros* began with *Operation Brilhante* in 2004, and have continued with similar brutality every year since. The latest was *Operation Crisis*, which began May 9, 2009, and in 37 days expelled some 18,000 garimpeiros from Lunda Norte alone. If it is similar to the 2008 operation,² it was see miners rounded up at gun point, beaten, robbed and set loose to trek back north across the border on foot.

Despite the brutality, the expulsions have been remarkably ineffective.

Informal *garimpo* diamond production in 2003, before these operations began, was 1,231,688 carats. In 2007, informal production was 1,102,198 carats, a decline of just 11%.

The expulsion tactic hasn't worked because miners simply drift back into Angola, their passage facilitated by lax or corrupt border guards, their presence welcomed by corrupt police officials who control *garimpo* sites, and by government licensed buying houses that profit so handsomely from informally sourced diamonds.

Despite this, Angola plans to intensify efforts to expel illegal miners and shut down all *garimpo* in the diamond bearing provinces. According to Paulo Mvika at the Ministry of Mines, the new plan is to revoke the licenses of diamond buyers working in the interior, and thus shut down the *contuarios* that currently buy up informal production. With no place to sell, the reasoning goes, there will be no way to finance digging, and thus *garimpo* will cease.

This seems unlikely to work. Informal dealers and smuggling networks will simply take up the slack left by the legal *contuarios*. Angola's KP controls, already bad, will only get worse.

According to Mvika, the Angolan government is already set on this course, despite the potentially huge loss in royalty revenue. Although by volume artisanal production currently accounts for only 11% of Angola's production, by value, it represents over a quarter of Angolan exports. Shutting down the informal sector could mean eliminating fully 27% of a US\$1.2 billion industry.

However, Angolan government revenue from the diamond sector comes not just from royalties, but also from a 35% industrial tax, and a 10% capital tax levied on mining companies. In 2006, the industrial sector paid another US\$138.5 million in such taxes, while the artisanal sector paid only US\$14.3 million. Put another way, for every dollar the industrial sector paid in royalties, it paid another \$2.80 in industrial and other taxes. For every royalty dollar, the informal sector paid barely 78 additional cents in tax.³ For the government, formal industrially produced diamonds actually yield far more revenue than informal *garimpeiro* produced diamonds.

Shutting down informal production thus comes with a short term cost, but with potential for much larger income later through industrial exploitation. For the tens and perhaps hundreds of thousands of artisanal diggers that remain in Angola, all of them illegal, many of them foreign, this likely means a future of continuing expulsions.

On this point, nobody denies Angola's right to manage its own diamond fields or deport illegal immigrants. But the violence that has accompanied past expulsions is unacceptable. The Kimberley Process has turned a blind eye to human rights abuse in the diamond industry. If it wants to protect the industry at large and its reputation, this must change.

For Angolan police and army, the rules of engagement should be very simple: no killing, no beating, no looting, no robbing, no rape. That, surely, is not too much to ask.

¹ The Angolan word is 'transibilidade', a term that could not be found in several standard dictionaries. Transportation is thus an interpretation.

² For details, see the Diamonds and Human Security Annual Review 2008, Partnership Africa Canada.

³ Interestingly, under Angolan tax law artisanal and formal sector mining are given equal treatment. As the beneficiaries of the mined product, the Sodiam-licensed buying houses ASCORP and LKI are supposed to pay the industrial and capital taxes in place of the garimpeiros. That the Angolan state receives so little in tax revenue from the informal sector implies that these companies are adjusting their costs in a way that leaves very little gross profit. Odd, considering operational costs are relatively low, and Angolan buyers are known to pay bottom dollar for large stones, taking advantage of garimpeiros' illegal status to force sales at bargain basement prices. How then do they show so little profit? According to the Ministry of Geology and Mines, buying houses play fast and loose with their account books. That is, despite what they may have paid in reality, when it comes to the accounts, they claim a purchase price that is only slightly less than what they sell it for. "They adjust their accounts and leave the government with nothing," says a ministry official. As there are no receipts, there's no one to say otherwise.

There is some poetic justice in this. Had Angolan authorities regularized this system, and implemented proper KP controls, there might have been receipts and the paper trail that could have helped prevent contuarios from cheating the government.

The New Mining Code: New Life for Bad Law

The most controversial aspect of the 1994 Diamond Law was the graduated series of 'protection' zones it established in and around mining concessions, and the powers it granted concession holders to use their own private armed guards to restrict freedom of movement and economic activity anywhere in the vicinity of a mine site.

The scope of the Diamond Law restrictions is vast, both in terms of territory and in terms of what it disallows. Restricted zones cover the mining concession itself, typically 3000 square kilometres in area (a square 55 km on a side). Protection zones cover a further five kilometres everywhere around a concession. Reserve zones came to cover every other square centimetre of land in both Lunda Norte and Lunda Sul.

Within these zones, there are severe restrictions on freedom of movement and on all types of economic activity. Fishing in local rivers is prohibited in Lunda Norte. Farming is discouraged. Peasants have had cropland seized by mining companies, often with risible compensation. Goods transiting the Lundas are liable to inspection and seizure, both by police and by private security services. Foreigners are required to obtain permission before travelling in the Lundas. Locals travelling on roads near or through mining concessions are regularly stopped, searched, arrested and beaten. Some have even been killed.

The human rights abuses carried out by police and private security companies in enforcing various aspects of the Diamond Law reserves have been the subject of numerous reports, including those of Partnership Africa Canada⁴ and Angolan human rights campaigner Rafael Marques.

In the past, these abuses took place mainly in Lunda Norte and Lunda Sul, provinces isolated by distance and culture from the rest of Angola. Now it appears to be the rest of the country's turn. Despite all the obvious drawbacks to these zoning regimes, the Angolan government has copied the restriction-zone language, almost verbatim, into its new country-wide Mining Code.

A draft of the code obtained by the *Annual Review* shows that restricted, protected and reserve zones will be extended to cover any type of mineral, anywhere in the country. As in the old Diamond Law, enforcement of the restrictions will be given to private security firms, responsible not to the public but to the mining companies that hired them.

Given the breadth of the restrictions, the new Mining Code is a potentially serious bar to economic development, and the evolution of a balanced economy. It is difficult to imagine a farmer making serious investments in his land, knowing it can be taken over at any time. It is difficult to imagine a manufacturer locating a plant where his goods and materials are liable to search and seizure by

another company's private security guards.

Given the sad history in the Lundas, the new Mining Code is also a grave threat to human rights throughout Angola.

Recommendations

- 1. Human rights abuse in Angola's *garimpeiro* expulsions and its reserve laws is abhorrent. It taints *all* of Angola's diamonds and should be rejected by all those who import Angolan diamonds. The Kimberley Process has shied away from the inclusion of respect for basic human rights as part of its minimum standards. The time for this to change is long, long overdue.
- Angolan police and army officials have consistently claimed that expulsions of foreign garimpeiros are carried out with a minimum of force and no abuse of human rights. Numerous reports from various reputable NGOs and media networks claim otherwise. The Angolan police can put an end to these doubts by allowing international monitoring of expulsion operations.
- 3. The Ministry of Geology and Mines should start work immediately on a system for tracking artisanal production from mine to export. The system should include a method for Geology and Mines headquarters in Luanda to assemble and electronically collate data on production and sales from miners and *contuarios*. The Kimberley Process, which recommended this four years ago, must now insist upon it as a part of Angola's basic compliance with KPCS minimum standards.
- 4. The regime of restricted, protected and reserve zones has been a disaster for local populations in the Lunda provinces, both for human rights and economic development. The Angolan Council of Ministers should rethink their inclusion in a nationwide mining code.



Artisanal diamond field, Angola

DEMOCRATIC REPUBLIC OF THE CONGO

Diamond Production in Areas of Conflict

The arrest of Tutsi-Congolese warlord Laurent Nkunda in January 2009, and the subsequent integration of his former CNDP militia into the regular Congolese army (FARDC) put an end to the most aggressive and effective of the nongovernment militias operating in the eastern Congo. However, the eastern DRC still abounds with armed groups, and government control of the countryside remains weak to non-existent.

The most significant armed groups include the ex-Interahamwe Hutu from Rwanda known as the FDLR, and various local-defence militias or Mayi-Mayi. Further north along the border with Uganda, the Lord's Resistance Army (LRA) also continues to use Congolese territory as a rear staging area.

Given this background, the *Annual Review* set out to determine whether and to what extent diamonds are being exploited by armed groups — government or militia — either for personal profit, or to purchase weapons that might prolong the conflict.

Diamonds are present throughout much of the Congo's conflict zone, both in Orientale province on the border with Uganda, and in the provinces of North and South Kivu. The Kivu sites were given priority by the *Annual Review*, given the presence of the FDLR in these areas.

In South Kivu, we set out to investigate reports that a mine site in the Shabunda area — some 250 kilometres west of provincial capital Bukavu — had come under the control of a rogue officer of the FARDC. Shabunda's active diamond sites are located 50 km north of town near the village of Mapimo. Only one site is currently active, with no more than half a dozen diggers currently at work.

According to local diggers, however, the site was full in 2008 when FARDC general Silvestre Tchikwese stationed troops around the dig,

ostensibly for protection, and began acting as a patron, supplying diggers with tools and food, and buying any diamonds they produced. Prices were more or less dictated by the general himself, making the relationship between the general and his

diggers an exploitative one, though arguably not much more than is standard in DRC patrondigger relationships.

In North Kivu province, known diamond sites include Musienene, Vatican and Kasisi. The Musienene site is located along the main road between Butembo and Lubero, one of the few corridors in the province under reliable government control. Visits by the *Annual Review* confirmed that the sites are exploited by a few score of *creuseurs*, who sell their diamonds to buyers in Butembo.

The Kasisi site is located about 50 km from Lubero on the South Taliha River. According to the district mines officer, headquartered in Lubero, the area witnessed a battle in May 2009, between the local mayi-mayi and the FDLR. Since then, mining activity on the site has largely ceased.

The Vatican site is located some 50 km southwest of Lubero, deep in Interahamwe territory. The mines officer for the region has not visited the site for over a year, for fear of falling into the hands of the FDLR.

To gauge conditions at the site, the *Annual Review* located two *creuseurs* who had abandoned the dig one week before, in July 2009. According to these eye-witnesses, the Vatican site was being exploited by some 30 miners, all of them locals from the nearby village of Kilau. The Interahamwe-FDLR did not control the site. However, at approximately weekly intervals, a



troop of FDLR soldiers appear from the forest and demand that the diggers hand over any diamonds in their possession. (Sometimes the FDLR offer the digger a goat — stolen from local villagers — by way of compensation.)

How the FDLR convert these extorted diamonds into cash is not known. Likely, they sell them to a willing *negociant*, who then sells them on into a *comptoir*, no questions asked.

The volume of diamonds that come into rebel possession is likely quite low, but they are, nevertheless, conflict diamonds. According to the diggers interviewed by the *Annual Review*, the Kilau site once supported over 500 diggers, but this has been reduced by Interahamwe predations to barely 30. All are locals who abandon the site the moment they discover a diamond, using forest trails unknown to the FDLR.

The presence of any armed group in control of diamonds or diamond-producing areas is disturbing, no matter how limited the caratage or tentative the control. While the volume of diamonds falling into rebel hands appears currently to be quite low, there is nothing in the DRC system that would prevent the FDLR — or any other rebel group — from laundering their diamonds into the 'certified' KP diamond stream.

The DRC abounds in rebels. Given the proximity of the FDLR to the much richer diamond areas of Walikale, and the armed presence of the Ugandan LRA in the diamond bearing terrain of Orientale, this is not an academic issue.

Chaos and Confusion: No Way to Regulate Diamonds

Warfare continues in the eastern third of the Democratic Republic of the Congo. Government forces battle ineffectively against two remaining rebel groups, at least one of which funds its war in a very small way through the exploitation of diamonds.

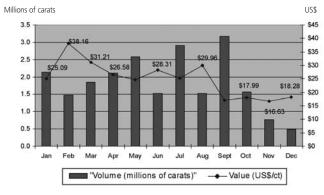
The Kimberley Process was designed expressly to prevent this occurring ever again, in Africa or elsewhere. It continues in the DRC because Congolese authorities have never put more than the rudiments of an internal control system in place. There are no systems for gauging diamond production or tracking internal sales. Diamonds are registered only as they enter the large *comptoirs* or buying houses — located mostly in the capital Kinshasa — where no questions are asked and no identification is required.

The Kimberley Process bears a large share of responsibility for this situation. Year after year, the KP has been advised of the essential weakness of the Congo's internal controls by Partnership Africa Canada, other NGOs, the United Nations and its own monitors. Year after year, the KP has chosen to do nothing, and to allow the Congo to do nothing.

As a result, the DRC's network of *comptoirs* is the world's most effective system for laundering conflict, illicit and clandestine diamonds.

Recession Hits DRC Diamonds

Figure 3 • DRC Diamond Production by Volume and Average Carat Value for 2008



Source: PAC (based on statistics from CEEC annual reports)

The worldwide economic crisis has chopped the legs from under the DRC diamond industry. Figure 3 shows diamond production and average diamond values for 2008. Until August, average values ranged from US\$25/ct to US\$38/ct, and production volumes ranged from 1.5 million carats to over 3 million carats per month. As the crisis took hold, however, average values plunged to under US\$17/ct and production crashed, falling to under 500,000 carats in December.

Many artisanal diggers have switched their focus to gold or left the pits entirely. Formal sector majors such as De Beers and BHP Billiton shuttered their exploration operations. Government-owned MIBA, the DRC's last

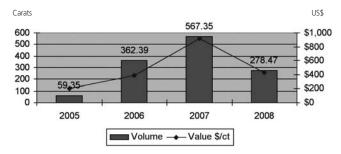
large-scale industrial diamond producer, is all but bankrupt according to the Ministry of Mines. In 2008, MIBA produced just 765,497.5 carats, representing only 3% of the country's total production.

Emaxon Goes Under

The DRC's flagship polishing facility, opened just a few short years ago by the Dan Gertler company, Emaxon, has also fallen victim to the crisis. The Emaxon polishing facility was plagued with problems from the beginning. From a start of under 100 carats of polished in 2005, Emaxon's production rose to a not-very-impressive 567 polished carats in 2007, before falling off again to just 278 carats in 2008. Total gross revenue over the four years shown amounted to just US\$794,084.

In 2009, according to the DRC Ministry of Mines, Emaxon simply walked away, turning the plant and polishing equipment over to the government.

Figure 4 • Failure to Launch: Polished Diamond Production by Volume (bars) and Average Carat Value (line) for the Emaxon Polishing Facility in Kananga



Source: PAC (based on statistics from CEEC annual reports)

CEEC Takeover

Another victim of the current downturn in the DRC is the Centre d'Evaluation, d'Expertise et de Certification (CEEC), the government agency charged with valuing and assessing taxes on diamonds. Before the crisis the CEEC was an autonomous government company in charge of its own revenue and expenses. With the fall in diamond prices, however, the CEEC found itself unable to pay its bills or meet its payroll. Too important to be allowed to fail, the former entreprise publique has been absorbed into the Ministry of Mines, which now oversees its budget, paying its bills and salaries. Whether the Ministry of Mines will restore the CEEC's independence when the diamond world returns to normal remains unclear.

The Rise, Fall and Resurrection of the Independent Valuer

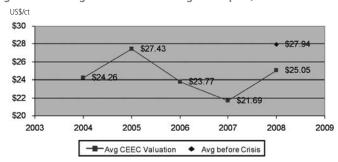
The 2008 edition of the *Annual Review* strongly recommended that the DRC reappoint an independent diamond valuer to oversee valuations inside the CEEC. In 2006, the company providing valuation services to the CEEC had its contract terminated under questionable circumstances.

Our recommendation was based on an analysis of DRC rough prices, which

reached a peak of US\$27.3 per carat in 2005 (the first full year with an independent valuer in place) and then fell off a cliff in 2006-2007, just after the valuer was terminated. The DRC, we noted, was losing millions of dollars of much-needed tax revenue.

In 2008, the CEEC hired Jean-Pierre Amuri Tobakombee Daito to head up the valuation department. A Congolese citizen employed for many years by De Beers, Amuri served as one of the principals in the valuation company that was terminated in 2006. His re-hiring is a welcome sign.

Figure 5 • Average Value of DRC Rough at Export, 2004-2008.



Source: PAC (based on statistics from CEEC annual reports)

Note: Peaks appear in years (2005 and 2008) when an independent valuer was employed. The higher 2008 peak (US\$27.94) shows the 2008 average for the months Jan-Aug, before the economic crisis hit.

Though as a CEEC employee Amuri is not officially independent, his work overseeing and revising the CEEC's regular corps of valuers has had immediate results. From a low of US\$21.69/ct in 2007, the DRC's average carat value rose by over US\$6/ct to US\$27.94 during the first 8 months of 2008, before falling back as the effects of the world economic crisis set in. Even so, over the entire course of 2008, the DRC average still reached US\$25.05, US\$3.36 better than during the boom years when there was no independent valuation.

In just the first 8 months of 2008, the additional revenue accruing to the DRC government from these more accurate valuations adds up to nearly US\$3 million.

By the Numbers: Mass Confusion

If reliable statistics are a keystone of the Kimberley Process, then what to make of the DRC, a shadowland of claim and counterclaim, where no one agency ever gives the same number or the same answer, even when supposedly describing exactly the same thing?

The 2008 *Annual Review* revealed a growing discrepancy between the DRC's export statistics as recorded by the Ministry of Mines and those filed by Congolese authorities with the Kimberley Process. The difference amounted to millions of carats and tens of millions of dollars.

Table 5 • DRC Diamond Exports, as recorded respectively by the Kimberley Process, the CEEC, and the Ministry of Mines.

	KP Sta	atistics	CEEC S	tatistics	Ministry of N	Mines Statistics
Year	Volume	Value	Volume	Value	Volume	Value
	(ct)	(US\$)	(ct)	(US\$)	(ct)	(US\$)
2003	n/a	n/a	27,111,526	642,742,788	27,752,627	650,336,071
2004	30,162,413	720,899,077	29,988,062	727,486,407	29,609,872	708,623,102
2005	32,949,849	895,457,801	31,733,747	870,307,938	32,795,555	885,032,408
2006	30,177,840	679,488,866	28,253,572	671,677,791	28,253,571	671,677,791
2007	28,331,376	609,833,223	28,269,337	613,163,797	25,928,301	565,943,295
2008	21,284,137	551,879,602	22,096,489	553,840,000	n/a	n/a

Source: KP Website, CEEC Annual Reports, Ministry of Mines Reports

Table 6 • Comparison of the various figures for DRC diamond exports: KP vs CEEC; KP vs Ministry of Mines; CEEC vs Ministry of Mines.

	Difference	: KP-CEEC	Difference: KP-Mines		Difference: CEEC-M	
Year	Volume	Value	Volume	Value	Volume	Value
	(ct)	(US\$)	(ct)	(US\$)	(ct)	(US\$)
2003	n/a	n/a	n/a	n/a	(641,101)	(7,593,283)
2004	174,351	(6,587,330)	552,541	12,275,975	378,190	18,863,305
2005	1,216,102	25,149,863	154,294	10,425,393	(1,061,808)	(14,724,470)
2006	1,924,268	7,811,075	1,924,269	7,811,075	0	0
2007	62,040	(3,330,574)	2,403,075	43,889,928	2,341,035	47,220,502
2008	(812,352)	(1,960,398)	n/a	n/a	n/a	n/a
Totals	2,564,409	21,082,636	5,034,178	74,402,371	1,016,317	43,766,054

Source: KP Website, CEEC Annual Reports, Ministry of Mines Reports

Note: Bracketed figures are negative numbers. In an ideal world, this table would consist entirely of zeros.

Table 6 compares these statistics: KP against CEEC, KP against Mines, CEEC against Mines. In an ideal world, Table 6 would consist entirely of zeros. That is hardly the case. Over the course of the six-year period from 2003-2008, the difference between the CEEC's own statistics and those submitted to the KP total over 2.5 million carats and US\$21 million. The difference between the KP's numbers and those kept by the Ministry of Mines is even greater. And it only follows logically that the export statistics kept by the CEEC and Mines — the DRC's two lead diamond agencies — should differ from each other by over a million carats.⁵

Over the five years from 2004-2008, an average of over half a million of extra carats per year appear in the KP's numbers. According to the CEEC numbers, these diamonds were never exported. This represents half a million carats a year in phantom DRC diamonds.

Reliable, accurate statistics form the core of the Kimberley Process. Comparing exports for one country with imports for another, ensuring that diamonds do not magically appear or go missing: this is the key function served by accurate production and export statistics. Given the size of the DRC's diamond industry, the fragility of its peace, and its key location in the heart of Africa, the KP simply cannot continue to ignore this discrepancy.

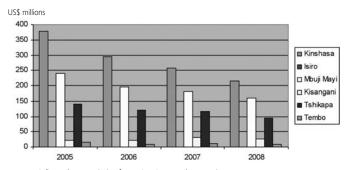
DRC Diamonds — Origin Unknown

Nearly half of the 30 million carats exported each year from the Congo are untraceable.

Diamonds occur across much of the length and breadth of the DRC, with the richest concentrations found in the provinces of Kasai-Oriental (*comptoirs* in Mbuji-Mayi), Kasai-Occidental (*comptoirs* in Tshikapa), Orientale (comptoirs in Kisangani), and Bandundu (comptoirs in Tembo). Only the Bas-Congo and the region surrounding the national capital, Kinshasa, are completely devoid of diamonds.

Figure 6 shows the supposed 'regional origin' of the diamonds produced in the DRC over the past four years, according to the CEEC. It is important to note that these are not production statistics (though the CEEC calls them that). Production statistics do not exist in the DRC. What these figures represent is the physical location of the licensed comptoir (buying house) where a diamond was purchased from a digger (*creuseur*) or *negociant* (field buyer). It is at this point that DRC record keeping begins. Where a diamond came from, what happened to it before it entered a *comptoir*, is for DRC officials a complete mystery.

Figure 6 • Diamonds (by value) Entering Licensed DRC Comptoirs, 2005-2008



Source: PAC (based on statistics from CEEC annual reports)

Note: Artisanal production by region. Columns indicate the location of the comptoirs. Figures for Isiro are too small to register on the chart. The prominence of Kinshasa-based *comptoirs* should be noted.





Digging for diamonds in DRC

5 CEEC's statistics represent diamonds that have been valued and certified rather than actual exports. Theoretically, it would be possible for discrepancies in yearly figures to creep in if a parcel certified in December were not exported until January. However, the cumulative multi-year totals should eventually balance out. As can be seen in the cumulative totals at the bottom of Table 6, they do not.

Officially, the CEEC and Ministry of Mines officials stationed in every *comptoir* are supposed to verify that the individual selling a diamond is in possession of a *negociant's* or artisanal digger's license. In practice, this is never done.

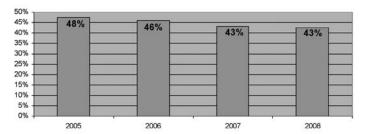
Given the total lack of rigour with which IDs are checked and provenance verified in Congolese *comptoirs*, the gunrunner Viktor Bout himself (were he still at large)⁶ could walk into a DRC *comptoir* and exchange a shopping bag full of diamonds for cold, hard cash, with no questions asked. The diamonds would then enter the world's system certified as conflict free, complete with a KP seal of approval.

In short, the network of *comptoirs* in Kinshasa is the world's most perfect system for laundering dirty diamonds. Kinshasa, it should also be noted, has good air links to the diamond producing nations of southern and western Africa. There are no security checks at Kinshasa's airport capable of detecting diamonds.

Have those who habitually take advantage of loopholes in the KP system discovered this gaping hole in Kinshasa? The prominence of Kinshasa-based *comptoirs* suggests that they have. Figure 7 shows the percentage of the DRC's overall diamond production entering the system via Kinshasa *comptoirs*. The numbers are simply astonishing: on average, 45% of the country's total production by value. Roughly half of the DRC's diamonds are first recorded only when they arrive in the capital. For all intents and purposes, the DRC might as well label these diamonds, 'origin unknown'.

It should be noted that the 2004 KP review of the DRC did recommend ways that this loophole could be closed, but nothing was done by the DRC government, and there was no follow-up by the Kimberley Process. The mid-2009 KP review of the DRC goes into this problem in detail and makes similar recommendations. But recommendations + inaction = zero. The KP, the DRC government and the diamond industry at large need to take a much more proactive approach to this very large problem.

Figure 7 • Diamonds Entering the DRC System via Kinshasa-based Comptoirs, as a Percentage of total DRC production, 2005-2008



Source: PAC (based on statistics from CEEC annual reports)

Note: Percentage of total DRC production by value claimed to have originated in Kinshasa. Percentages are based on value, as opposed to volume. Given the total absence of any tracking mechanism, at a minimum, DRC officials should label these diamonds as 'Origin Unknown'.

Regional Regulation of the Diamond Fields

The decentralized administration of the diamond mining sector in the DRC varies widely from one province to the next, resulting in vastly uneven control. Overall policy is set in the Ministry of Mines in Kinshasa. Day-to-day administration is the job of the provincial *Divisions de Mines*, responsible to, and funded by their respective provincial governors.

In Kasai Orientale, the *Division des Mines* employs just enough officers to staff the score or so of *comptoirs* operating in Mbuji-Mayi. Artisanal dig sites go unrecorded and un-inspected, *creuseurs* are never registered, and *negociants* often don't bother to renew their registration. They know that in Kasai Orientale no one checks, and no one cares.

The *Division des Mines* in both North and South Kivu provinces makes a more serious attempt at administering artisanal mining. Both maintain field offices throughout their respective provinces, from which mines officers attempt to make regular field inspections. They are hampered by the presence of armed groups and ongoing fighting between government troops and rebels. In South Kivu, mines officers even attempt to maintain a system of claims for artisanal mine sites, with *creuseurs* ostensibly required to file a yearly claim⁷ to their one square kilometre artisanal dig site. Many sites go un-registered, but the rudiments of a regulatory system are at least present.

The *Division de Mines* in Orientale province runs the most thorough registration and inspection system, one that with a little extra effort could even begin producing basic production statistics.⁸ Artisanal miners are genuinely required to register their production sites, which can measure up to 4 square kilometres. Registering an artisanal site costs US\$350 per year, and is restricted to those with a valid *creuseur's* licence (cost US\$25 per year). As part of the registration process, a mines officer sketches out the claim on a regional map.

Claims are filed at one of five local mining offices spread around the province. Each office has a number of substations, with the result that the province's 200 mines officers are in reasonably close contact with most of the significant mining areas.

The claim holder — known in Orientale as the AFM or Administrateur de Foyer Minier — is supposed to keep track of diamond production on his site. Most keep track of at least their own share of total production; a few even file production reports with their local mines office. These sporadic and slap-dash reports are currently useless for estimating production, but with a bit of effort, and a bit more rigour, Orientale mines officers could successfully enforce a requirement for artisanal claim holders to keep and file regular production figures. The result would be a much stronger ability to track diamond flows, and thus a much stronger Kimberley Process in the DRC.

Diamond regulation would be further strengthened if the *Cadastre Minier* (CAMI), the central government agency charged with administering the country's mineral concessions, began incorporating these artisanal claims into its national database of mining concessions. Unfortunately, according to provincial mines officers throughout the DRC, CAMI currently makes no effort whatever to record these provincial artisanal claims, or even consult with provincial mines officers before issuing a large scale mineral concession.

Continued on page 14 --

⁶ Viktor Bout, world renowned arms dealer and sanctions-buster, was apprehended in 2008 in a sting operation in Thailand, set up by the US Drug Enforcement Agency. A Bangkok court refused to extradite Bout to the US in August. The decision is being appealed and the process will likely take months.

⁷ Known as a Déclaration d'Ouverture d'un Chantier d'Exploitation Artisanale.

⁸ The only drawback to the Orientale system of artisanal mine registration is the authority it provides the claim holder — the Administrateur de Foyer Minier — over the ordinary diggers on his site. Unfortunately, local tradition is for the AFM to use this authority to exploit ordinary diggers to a greater degree than elsewhere in the Congo.

Gold and Diamonds

The town of Isiro stands on a height of land in the east of the DRC, surrounded north and south, east and west by gold and diamonds. Artisanal diggers bring both for sale to the city's *comptoirs* and back alley buying shops.

The gold mostly heads east, and mostly in secret, circumventing customs and crossing borders en route to Uganda or Kenya or Rwanda, and thence onwards to Dubai.

The quantities are vast. An investigation in Isiro recently seized the account book of just one back alley gold *comptoir*. Scribbled in shaky pen on a school exercise book, the ledger records average weekly exports of about 2,500 grams, almost all of it undeclared. In a typical month, in this case November, 2008, the *comptoir* shipped out 12 kg of gold, while declaring just 300g. Over the course of a year, that works out to about 144 kg — worth US\$3.6 million — from just one *comptoir*. There are a dozen such gold buyers in Isiro.

According to both officials and the smugglers themselves, the demand is driven by importers in flourishing border cities such as Beni and Butembo, who use the gold as a substitute for international banking. These importers ship containers full of consumer goods from Dubai across the DRC border, paying little or nothing in customs duties. They sell these goods in the eastern Congo's burgeoning markets, then use their piles of Congolese francs to buy up gold. The gold gets smuggled across to Kampala (and to a lesser extent to Kigali), from whence there are direct daily flights to Dubai.

The DRC government loses millions in unpaid royalties on the gold. Had the single Isiro buying house mentioned above paid the 3% mineral tax, it would have put an extra US\$100,000 a year into the DRC budget. Multiply it by 10 for Isiro and perhaps 100 for Oriental, and the missing gold royalties can be

estimated in many millions of dollars.

Diamonds take the opposite track. Diamond dealers in Isiro, even those who happily smuggle gold (and who offer ivory if you ask), prefer to sell their diamonds west to Kisangani and Kinshasa, into the DRC's legal comptoir system. The same is true of dealers in Butembo and Lubero, towns barely kilometres from the Uganda border. It's not for fear of customs, though buyers do mention the ease that comes with the legal right to transport diamonds. The real brake is that the bigger dealers, the Lebanese and Israelis who buy diamonds in bulk, are simply not to be found in Kampala or Kigali.

This could be seen as a vindication of the Kimberley system. Denied the legal KP outlet in Kampala that is available in the DRC, the larger diamond dealers opt for legality, with the result that the diamonds flow legally into the DRC. It's possible.

The other reason that gold is smuggled east is that there are few legal gold *comptoirs*. Until 2008, the cost of setting up a legal buying house for gold in the DRC was a prohibitive US\$75,000. Seeing potential tax revenue haemorrhaging east, Congolese officials decided to drop the cost of opening a gold *comptoir* to a mere US\$5000. Their hope is that legal buyers will come in and set up a buying network similar to the one for diamonds, and with that gold will begin to flow through proper legal channels.

Of course, there is no international KP-style tracking system for gold.9 The eastern DRC is



Gold buyer, Isiro, Orientale, DRC

thus a real world experiment. If it works, the DRC government will gain millions in lost revenues. It will also demonstrate that what matters is a convenient sales channel and low export taxes, rather than a complex system of international certification.

If, on the other hand, the government's gold plan fails, it will greatly strengthen the case that the KP's international certificate system is genuinely effective. (The DRC might then begin pressing for an international KP-style system for gold.)

The results will be real and demonstrable, and will probably be available within a year or so. The experiment is worth careful study.

9 A regional certification system of minerals other than diamonds is, however, one of the plans agreed by the eleven heads of state that are members of the International Conference for Peace in the Great Lakes Region.

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Frequently, large scale concession holders arrive in areas they have been assured are free of mining activity, only to find their claims overrun with artisanal diggers, many with legally registered claims.

The central government must begin to enforce national standards, and build on the best examples from provincial *Divisions de Mines* to begin implementing a national system that can register diamond production as the stones leave the ground.

Recommandations

To the KP, CEEC and the Ministry of Mines

The discrepancy between KP and CEEC export figures cannot continue.
 A delegation from the KP working group on statistics must sit down with the DRC's CEEC and Ministry of Mines and determine what is going on. As part of the exercise, the DRC must account for the missing 2.5 million carats in phantom exports.

To the KP and DRC

- 2. The network of Kinshasa-based comptoirs is wide open to abuse. DRC authorities must take immediate measures to fix the problem. As a crucial first step, CEEC and Mines officials must insist that those selling diamonds show a valid, up-to-date negociant's license. DRC authorities may want to consider restricting negociant licenses, so that these are only valid within provincial boundaries.
- 3. The KP has so far tolerated the DRC's non-existent controls on alluvial production. This must cease. As originally envisioned, the *comptoir* system was seen as only one part of a comprehensive system of internal controls. Registration of diggers and digging sites, field inspections by mines personnel, production controls and statistics, tracking of diamonds as they move up the value chain from digger to *negociant* to *comptoir*, all these were supposed to follow. DRC authorities must resume serious efforts to extend the system. The KP must insist that the DRC follow through, and it must follow-through itself.

To the DRC

- 4. Develop a single national standard for the regulation of artisanal diamond mining. The national Ministry of Mines should clearly set this standard, using examples of best practices from around the country.
- 5. Begin work developing a real system of production statistics. This is clearly within local capabilities. It requires only effort, and a willingness to take KP commitments seriously.
- 6. Begin work developing a tracking system to follow diamonds from the mine site, through various middle men, and then to the *comptoir*.
- 7. Shut down SAESSCAM. The organization provides *creuseurs* with no assistance (far from it, SAESSCAM field agents simply prey on diggers) and it has no hope of ever formalizing DRC's diggers, much less taxing them. Use the funds for something more useful to better equip mines officers in the field, and with that build up a system of production statistics; or else to fund civil society efforts to register diggers.

SIERRA LEONE

"Everyone wants to be in control, and no one is"

There are two things everyone in Sierra Leone seems to agree on, namely that its diamonds are yet to benefit the country, and that it desperately needs a profound overhaul of its mining sector.

That's where agreement ends. There are as many divergent views on the changes needed as there are players involved. There is no clear consensus about where new legislation will lead, or how it will improve the diamond sector, if at all. The country earns 90% of its export revenue from minerals, mostly diamonds, but mining accounts for just 20% of the GDP.

That this situation prevails during a global economic crisis and a slump in diamond prices makes matters worse, as there is considerable pressure on the Sierra Leone government from some donors and mining companies to make itself more attractive to investors, that is, grant still more concessions. A March 2009 report by the National Advocacy Coalition on Extractives (NACE), Sierra Leone at the Crossroads: Seizing the Chance to Benefit from Mining, notes that even before the economic crisis, the country granted "extraordinary concessions" to mining companies, with tax agreements that resulted in "miniscule" government revenues, just 5-6% of the value of mineral exports. The study documents "massive problems" associated with governance: lack of transparency, capacity, monitoring mechanisms in the mining sector, gaps in regulation, and the prevalence of corruption.

According to the Mines Superintendent in Kono, Jean Peter Koroma, who has been in his position for 30 years, there is no control over what is going on in the diamond fields. "We had more control in 1979 than we have today," he said. "Everybody wants to be in control and no one is."

Too Little, Too Late? Mining and Reform in Sierra Leone

In 2008, President Ernest Bai Koroma inspired great hope for many in Sierra Leone when he set up a Presidential Task Force to review the mining sector, with funding from the United Nations Development Program (UNDP).

According to Task Force convener Frank Kargbo, one of the first things the Task Force did was to set up an Assessment Team of "very experienced professionals" to handle the review of contracts with the four largest mining companies in the country, beginning with Koidu Holdings. The de facto leader of that negotiating team is Professor Louis Wells of Harvard University, who has been engaged in similar mineral negotiations in neighbouring Liberia and elsewhere. Revenue Watch has also contributed legal experts to the team.

The Task Force also looked at the new draft Consultative Mines and Minerals Bill before passing it back to the Ministry of Mineral Resources (MMR) for further review. One of those working on revisions to the Bill is Adam Smith International (ASI) consultant, Luqman Ahmad, technical advi-

sor in the MMR as part of a project funded by the UK Department for International Development (DFID). His role is contentious. Just as he expresses reservations about civil society expectations and understanding of mining and mining economics, civil society expresses reservations about an expatriate consultant inside the ministry, handling revisions of the draft mining legislation. They told the *Annual Review* that they had already gone through the draft, made their own recommendations and briefed Parliament, and they did not feel that a foreign consultant should be involved.

There have also been questions about the lack of transparency in selecting the Assessment Committee reviewing mining contracts. It is unclear on what basis the contracts will be renegotiated given that the new Core Mineral Policy and Mines and Minerals Bill have yet to be finalized. Minister of Mineral Resources and Political Affairs, Alpha Kanu, told the *Annual Review* that the contract review could not wait for the legislation, and that the results will feed back into the new policies and laws. Civil society groups worry this means mining companies are influencing the new legislation through the back door.

Meanwhile, in 2008, with support from the DFID-funded project within the MMR, the ministry launched a new website that claimed it would be regularly updated with information about mining in the country. The website has not been updated; mining leases shown on the site are from April 2008. When the *Annual Review* asked the Minister for updated lease information in March 2009, we were sent to the Director of Mines, who redirected us to his deputy, who re-directed us to the Geological Department in another part of town, where this information had to be collated before it could be made available. There is still a long way to go before the promised transparency and an up-to-date information flow in the mining sector are achieved.

Alpha Kanu told the *Annual Review* that as part of his ministry's restructuring, a new and semi-autonomous Minerals Agency will be created within the MMR. The Agency will handle all technical matters — leasing, contracts, mining safety and environmental concerns. He said that the Minerals Agency, with funding from DFID and the World Bank, will initially be handled by the ASI consultants who conceived it, but eventually it will "attract capacity" from the Sierra Leonean Diaspora to become self-supporting and Sierra Leonean-run.

That these negotiations and indeed the mining review are taking place during a global economic crisis, giving companies a powerful bargaining chip with a cash-strapped government, led Tankoro Paramount Chief Saquee to quip that all of this was "too little, too late".

The Task Force was to have concluded its work within a few months after it was established in 2008. By the end of the first quarter of 2009, early optimism about the review process had long since faded, and it began to look as opaque as the mining sector it was meant to reform.

The Kimberley Process — Tightening Loopholes for the Next Cycle

Samuel Koroma, a valuator in the Sierra Leone Gold and Diamond Office (GDO), told the *Annual Review* that the export of diamonds had dropped from 603,623 carats (value over US\$141 million) in 2007 to 371,285 carats (value about US\$99 million) in 2008. He said the drop in exports related directly to a 30% drop in diamond prices. Others suggest that the halving of export volume also reflects a growing scarcity of easy-to-find alluvial diamonds and a reluctance to sell at the lower prices.

But a seasoned diamond investor thinks this is not the whole story. He told



A long way from Hollywood: side street in Koidu, Sierra Leone's diamond centre

the *Annual Review* that the Kimberley Process is good and he supports it. "But now it's not working as well as it should because it's been around a while and people are finding the loopholes and ways to get around it. Diamonds are now going to Dubai, to Israel; there's a lot of paperwork to do in Antwerp." He said that much of the buying in Sierra Leone, where the selling price for diamonds was still surprisingly high, had to do with "money laundering". He alleged that "Lebanese rings" were bringing out old stones to appeal to buyers. In March he saw diamonds from Zimbabwe, Angola and Guinea for sale in Sierra Leone, which he said were smuggled into the country to fool buyers willing to pay premium prices for Sierra Leone gems.

The GDO also said that diamonds from Zimbabwe and other African countries are showing up among those submitted for export, but that these are easily identified and returned to the would-be exporters, because there is no legislation in Sierra Leone that would allow the GDO to confiscate them.

ASI/DFID consultant Luqman Ahmad maintains that most of the country's diamonds do eventually come into the formal chain. He says the government takes the Kimberley Process very seriously, "although if someone really wants to try they probably can get around it. But the exporters in this country are pretty good at sopping up any supply, at gathering any supply; their networks reach far into the country. Ideally those are coming from licensed pits but if they aren't, they eventually get into the system and are taxed."

Artisanal Diamond Mining — Where are the Benefits?

Life for Sierra Leone's artisanal diamond diggers has always been difficult. But in 2008 things became even more difficult and continue to do so into 2009. Sky-rocketing food prices early in 2008, coupled with plummeting prices for diamonds later in the year, as well as the growing scarcity of easy-to-find alluvial diamonds, have all combined to make life in the diamond pits of Kono and Kenema districts untenable, although 80% of diamond export value still comes from artisanal mines.

Table 7 • Sierra Leone Diamond Exports 2003-2008

Year	Exports (carats)	Exports (US\$)	Average Per Carat (US\$/carat)
2003	506,674	75,926,192	149.88
2004	691,756	126,652,633	183.09
2005	668,635	141,833,581	212.12
2006	603,566	125,304,842	207.61
2007	603,623	141,565,685	234.53
2008	371,260	98,772,170	266.05

Source: Kimberley Process

"Diamond pits are the place you go to suffer and die," said Solomon Fayiah, who has decided to return to his rural community, using his shovel to farm. "I found no diamonds and my children could not go to school." Artisanal miners are now desperate to find alternative livelihoods, or go back to their villages and agriculture.

According to the MMR, the number of artisanal licenses has been dropping, although there is some discrepancy in the actual figures reported:

- 2184 leases in 2006 (MMR website);
- 1968 leases in 2007 (MMR website);
- About 1700 leases in 2008 (according to DFID consultant); about 2300 leases, down from 2,500–2,600 last year (according to the Director of Mines).

All mining operations and sales are to be "monitored" by Mines Monitor Officers (MMOs), 120 young men hired directly by the Minister of Mineral Resources in Freetown. The MMOs are poorly paid (Le230,000 or US\$74 a month, of which Le40,000 or US\$13 is to cover all work-related transportation). They are poorly trained; some cannot read and write. Corruption is rampant. "It is a discretional job," said one mines monitor in Koidu. "If one guy has a 30-carat diamond and gives me Le10 million (US\$3,221), I'll let it go out. I have a wife and family. You understand."

The Annual Review learned of abuses in the leasing system in Sandoh Chiefdom. There, artisanal leaseholders are asked to sign a crude, typewritten document from the chiefdom itself, which states, among other things, "That I will immediately stop mining and surrender the plot to the mining company as and when they wish to mine within the plot." The name of the company is not specified, but African Minerals and Milestone hold leases in the area. Illegal agreements like this put artisanal leaseholders and miners at the mercy of larger companies that work behind closed doors with Paramount Chiefs, high-level MMR technocrats and politicians in order to secure their leases.

The ASI/DFID consultant in the MMR believes that the amount of illicit mining in Kono has dropped, now accounting for 20-30 percent of activity, although he conceded that it is much higher in the more remote eastern and southern parts of the country. The Mines Superintendant Koroma in Kono District told the *Annual Review* that there is rampant illicit mining in the north, where there is no District Mines Office.

The Diamond Area Community Development Fund (DACDF) was established in 2001 to try to ensure that local communities benefited from the diamonds and to discourage illicit mining. It represents 0.25% of the 3% government export revenue collected by the GDO. However, no DACDF funds were distributed in 2007 and 2008 because of problems with accountability. The MMR and the Ministry of Local Government revamped the procedures, stipulating that DACDF distribution be made only on the basis of written project proposals from the Chiefdoms and District Councils. Between \$1 and \$2 million in unspent DACDF funds had reportedly built up by early 2009.

On the occasion of the first official visit of President Ernest Bai Koroma to Koidu in March 2009, the Director of Mines handed out cheques covering one year's DACDF payment. Paramount Chief Paul Saquee of Tankoro Chiefdom, in which Koidu Town is situated, told the *Annual Review* that he received Le86 million (US\$26,697). By any measure, amounts like these are not enough to make a dent in the developmental needs of the Chiefdom, especially in Koidu Town, which has no town water supply, no electricity, a crumbling infrastructure and terrible roads.

The Mayor of Koidu, Sesie Musa Gbenda, complained directly to the Director of Mines that the municipal council had received no DACDF funds. The Director then wrote him a cheque for Le10 million (US\$3,200) and gave the District Council Le300 million (US\$96,000). "The money he gave to me was on his own discretion," he said.

The arbitrary and opaque way that cheques were handed out in 2009 shows that more transparency and better procedures are still needed in the DACDF.

But whether they are working in legal or illegal pits, the plight of the artisanal miners remains a serious concern. Artisanal diamond mining remains the only option for many youth in a country where unemployment rates and poverty remain extremely high. In the words of Jonathan Shaka, District Mines Engineer in Kono, it is a difficult issue for the government to tackle and improve, "The only way out is to allow the diamonds to dry up, and people find something else to do."

The "Big Boys" — A Turbulent Year in Sierra Leone's Industrial Mining Sector

Koidu Holdings

Ibrahim Kamara, administration and public relations manager of Koidu Holdings, describes the past months as a "nightmarish period" for Sierra Leone's largest industrial diamond (kimberlite) mining operation. The turbulence began in December 2007 when police guarding Koidu Holdings opened fire on demonstrators protesting blasting at the mine, killing two and injuring many others. President Ernest Bai Koroma suspended Koidu Holdings operations in both Koidu and Tongo Fields, and launched a com-

In loving memory of our late brother
AlAH MOMOH
Who died on the 13 Dec 2007 during a
peaceful demonstration by the people of
KONO (A.P.O.R) against Koldu Holdings
SA Limited for Corporate abuse
of COMMUNITY Pights
Age 30
FUNDING: Campaign for JUST MINING
AND N.M.J.D.
CONSTRUCTED BY AFFECTED PROPERTY
OWNERS ASSOCIATION (A.P.O.A)
RIP

Grave of man killed in protest against industrial diamond mining, Koidu, Sierra Leone

mission of inquiry. Based on the findings, the government issued a White Paper, which echoed the demands of the inquiry, including that Koidu Holdings pay compensation for the victims of the demonstration and that the two police officers be prosecuted.

In a remarkable turnaround, immediately after Koidu Holdings owner Beny Steinmetz jetted into Freetown in May 2008 and met with President Koroma, the president's office issued a press release absolving Koidu Holdings of all charges and lifting the suspension. Civil Society groups were outraged. But government officials said that the suspension had cost the government up to US\$12 million. Before the suspension Koidu Holdings had accounted for 20% of the country's diamond export earnings.

Kamara said that the company was simply going to do the "groundwork" and would not resume full operations until the results of an on-going review of the Koidu Holdings agreement were known. He denied that Koidu Holdings was using the global economic crisis as a "trump card" in contract negotiations. But with falling diamond prices, Kamara said the mining review was ill-timed.

Herbert M'Cleod, co-convener of the Presidential Task Force and of the Assessment Team handling negotiations with Koidu Holdings, doesn't agree. He told the *Annual Review* that the mining company argument that the market is down and they don't have any capital should be looked at cautiously. "When you have unfair agreements and the market is down, both parties 'suffer', and when the market is up, both parties enjoy. What we are proposing is variable royalty rates", which would rise when commodity prices are high and drop when they are low.

By the end of March 2009, the Assessment Team had met behind closed doors with Koidu Holdings three times, twice in London and once in Makeni, provoking more complaints about transparency, and casting doubt on the MMR's promises that future contracts would be standardized, without special concessions to any individual company.

Koidu Holdings has also been negotiating with the local community in Koidu in an effort to improve relations. A Committee on Re-opening Koidu Holdings was set up to deal with outstanding grievances such as resettlement and crop compensation. Ibrahim Kamara could not say how much Koidu Holdings would pay out in additional crop compensation, but called it a "huge amount". A Resettlement Action Plan was to be completed and approved by mid-2009.

African Minerals

African Minerals describes itself as a "mineral and diamond exploration and production company" focussed on Sierra Leone. It claims to be "a socially responsible business" and one of the "largest private sector employers" in Sierra Leone. In March 2009, its website also claimed that African Minerals held the "largest holding of prospecting, exploration and mining licenses" in the country. In 2008, at a time of angry allegations from local people and civil society groups that African Minerals was "land-grabbing", the company stated on its website it held an area of more than 40,000 km², or more than half of Sierra Leone.

It was not possible for the *Annual Review* to obtain any firsthand information from the company itself. Its Corporate and Public Affairs Manager rebuffed all telephone requests for interviews and ignored a letter requesting an interview.

Both African Minerals and its Executive Chairman, Frank Timis, are no strangers to controversy. In the past year in Sierra Leone, the company's acquisition of a disputed iron ore portfolio with a 99 year lease sparked a heated public debate between African Minerals and the British London Mining.

African Minerals has very limited diamond operations in Sierra Leone, and indeed has done very little exploitation for all its many prospecting leases in the country. This is puzzling as the company continues to attract investors, leading to allegations about the nature and purpose of both investors and investments. The 2008 *Annual Review* noted exports of over 7,000 carats (worth US\$2.5 million) from 'bulk sampling' with no more than an exploration license, revealing another loophole in legislation.

African Minerals is one of four companies whose contracts are being reviewed as part of the mining review process.

Milestone Trading (Target Resources)

Milestone is a growing player in the diamond and gold mining landscape in Sierra Leone. In 2005, written evidence submitted to the UK Parliamentary Commissioner for Standards suggested that lobbying on behalf of Milestone by British MP Tony Baldry to secure diamond leases for the company in Sierra Leone, aimed "to help Milestone smooth over allegations of links to the mafia". ¹⁰ The lobbying was effective and Milestone was granted diamond leases, including one in the protected Gola Forest.

In March 2009, Milestone suspended its diamond operations due to falling prices and announced that it would concentrate instead on gold. Before that, Milestone was mining diamonds on about 18 km² in three chiefdoms near Koidu, under three small subsidiary companies. Despite statements from several MMR officials that this had been upgraded to a large-scale mining lease in 2008, an updated list of leases obtained by the *Annual Review* showed that this was not so. If the updated MMR list is correct, then it reveals more loopholes in mining legislation and a very serious lack of MMR oversight. Large-scale leases require an environmental impact assessment (albeit by a firm chosen unilaterally by the company) and require land rehabilitation.

Massive lay-offs of the workforce following Milestone's closure of its diamond operations near Koidu, increasing dissatisfaction among local people who told the *Annual Review* they have not benefited from Milestone's operations.

Asked about the company's diamond lease in the Gola Forest Reserve, Milestone's Country Director said that exploitation of that lease would involve "major investment" because it was in the forest, "The government has to decide whether it wants development or the forest."

REPUBLIC OF CONGO

Why So Little Interest?

Before the Kimberley Process came on stream, there was a massive diamond smuggling operation through Brazzaville. In 2001, 5.4 million carats valued at \$223.8 million were imported from Brazzaville into Belgium according to Belgium's Diamond High Council. This far exceeded anything that could conceivably have been mined in the country. The smuggling operation was not new; in 1996, 7.6 million carats worth \$612 million were imported from ROC into Belgium.

In our 2008 *Annual Review*, we noted that the expulsion of the Republic of Congo (ROC) from the Kimberley Process in 2004 marked a coming of age for the certification scheme, which was at the time less than two years old. The issues were straightforward enough. The Republic of Congo was continuing to export large volumes of diamonds whose origin could not be explained (see Table 8). A KP review team visited the country in 2004. There was little evidence to support the export volumes, and there were no official imports. In fact, diamonds had been flowing with impunity across the river from the Democratic Republic of the Congo, and were no doubt helping to sustain conflicts in both countries.

The ROC was thus "dropped from the list" — KP-speak for expulsion, and it was agreed that in addition to evidence of better internal controls, a precondition for readmission would be an independent assessment of the country's actual rough diamond production capacity as a reference point for

Table 8 • Republic of Congo Production and Exports 2003 - 2008

Year		Production			Export		Net
	Volume cts	Value US\$	US\$/ct	Volume cts	Value US\$	US\$/ct	inventory cts
2003	0	0	0	4,686,774	29,686,296	6.33	-4,686,774
2004	0	0	0	0	0	0	
2005	0	0	0	0	0	0	
2006	0	0	0	0	0	0	
2007	22,000	1,000,000	45.45	0	0	0	22,000
2008	110,000	5,250,000	47.73	36,737	1,019,705	27.76	73,262

Source: Kimberley Process

¹⁰ Written evidence received by the [UK] Parliamentary Commissioner for Standards. Sunday Times article, 27 March 2005, "Tory MP in £1.5m diamond mine row". Select Committee on Standards and Privileges. http://www.publications.parliament.uk/pa/cm200506/cmselect/cmstnprv/421/42105.htm

future exports. It took two years for ROC to reorganize its internal controls and to arrange for the independent study of production capacity. In 2007 a special KP review team visited the country again, and in November of the same year the Republic of Congo was officially readmitted to the Kimberley Process.

Following the readmission of the ROC to the KPCS, the country began recording some rather precise production figures, building up an unexported stockpile worth several million dollars. There is no information on the public KP website regarding the ROC, and apart from its KP certificate and signatories, there is nothing on the secret website either. The report of the 2007 Review Mission seems to have disappeared.

Given that the Republic of Congo is the only country ever expelled from the Kimberley Process for reasons of serious non-compliance, it is odd that it has been of so little interest to the Kimberley Process since its readmission in 2007, and that there is no information available to the public or to KP participants about the Republic of Congo on either the public or secret KP websites.

Despite internal calls within the KP for an immediate review mission to Zimbabwe, the debate was prolonged when some participants refused to countenance any discussion about human rights abuse, saying the KP had no mandate to deal with human rights violations, even those directly related to diamond mining.

Finally, eight months after the massacre of diamond diggers (which is still denied by the Zimbabwe government), and a year after smuggled Zimbabwean diamonds began showing up across Africa, in India, and even as far away as Guyana, the KP finally organized a review mission to Zimbabwe. A team comprised of Liberia (team leader), Canada, the European Community, Namibia, South Africa and the United States, along with representatives of industry and civil society, visited Zimbabwe at the end of June. Like almost all important KP documents, their report remains secret, but it corroborates most of what was reported by PAC and subsequently by Human Rights Watch in a June 2009 report (available at www.hrw.org/node/83960) It remains to be seen, however, whether the KP will have the strength and the will required to impose effective measures that will bring Zimbabwe into compliance with KP minimum standards and the observance of basic human rights in its diamond industry.

ZIMBABWE

Massacre, Smuggling and KP Dithering

In January 2009, the Kimberley Process was urged by NGOs, industry representatives and some governments to deal with reports of an October 2008 massacre of artisanal diamond diggers by the Zimbabwe military, and with growing evidence of widespread diamond smuggling from Zimbabwe. In the absence of any clear sense of direction from the Kimberley Process, at the beginning of March 2009, Partnership Africa Canada published a lengthy investigation of the Zimbabwe diamond scene, *Zimbabwe, Diamonds and the Wrong Side of History*¹¹.

The report described the role of diamonds in the Zimbabwean economy and their place in the country's repressive governance. It described growing evidence of smuggling, the militarization of diamond resources and the killing of at least dozens of unarmed diamond diggers by the police and armed forces. The report described the lacklustre role in all of this played by the Kimberley Process, "the multilateral body designed to regulate the world's trade in rough diamonds, but whose members lack the initiative and the skills required to investigate smuggling and non compliance, and who lack the courage required to denounce gross human rights violations in the diamond industry."

The report said that the health of the world's diamond market comes down to consumer choice. "To maintain customer confidence, the onus is on the world's diamond industry and the Kimberley Process to demonstrate beyond doubt that the diamonds it certifies are clean, and that questionable Zimbabwean goods are not tainting the wider world of diamonds." The report concluded with strong recommendations to the United Nations Security Council, the governments of Zimbabwe and South Africa, and the Kimberley Process.

GUINEA

Export Statistics Demand Explanation

In 2008, The *Annual Review* noted that as a mid-size diamond producing country with three neighbours that have suffered the ravages of conflict diamonds, Guinea should be taking the issue of diamond controls and the Kimberley Process seriously. Not so. Guinean officials denied even the most common garden variety problems experienced by many African producer countries: porous borders, illicit artisanal mining, smuggling. In Guinea they didn't exist.

The truth is more complicated. Guinea's diamond areas are almost a thousand kilometres from the capital, Conakry, and government control and reporting mechanisms are understaffed and under-equipped. Systems exist, but there are major gaps, and in fact there is virtually no way of tracing artisanally produced diamonds that show up at Conakry comptoirs for export. On top of that, comptoirs have complained for years that the *Brigade Antifraude des Matières Précieuses* was little more than an extortion ring.

Following the death in December 2008 of Guinea's long-time strongman president, Lansana Conté, a military coup took place under the leadership of Captain Moussa Dadis Camara. Days after taking power, the new government temporarily shut down all mining operations, saying that it would open negotiations with companies 'within the coming days' and would work towards 'an advantageous collaboration for all parties.' Coup leaders also said they would mount a crackdown on corruption and would hold democratic elections within two years. In March 2009, several former mines ministers were arrested on suspicion of embezzling more than \$5 million. They were released on bail in April after making substantial 'repayments'.

¹¹ The report is available at: http://www.pacweb.org/Documents/diamonds_KP/18_Zimbabwe-Diamonds_March09-Eng.pdf .

Guinean diamond exports fluctuate wildly, along with average per carat average prices. 2008 exports were triple those of 2007, representing a sixfold increase in only two years, while the per carat average has dropped by 80%. The numbers are, frankly, staggering, and media reports have charged Guinea with using diamonds for money laundering.

KP reviews took place in April 2005 and August 2008. The first review made a series of recommendations about the need to improve reporting and internal controls, saying politely that the existing system was "dormant or implemented in an incomplete way". The report of the August 2008 review was not completed until July 2009, by which time it was stale-dated.

Table 9 • Guinean Diamond Exports

Year		Export	
	Volume - cts	Value - US\$	US\$/ct
2004	692,995	47,206,000	68.12
2005	523,774	55,768,000	106.48
2006	468,122	42,916,000	91.68
2007	1,009,732	50,197,000	49.71
2008	3,097,360	66,705,270	21.54

Source: Kimberley Process

Lebanese Miracle Diamonds

The Kimberley Process has an excellent data base of annual world rough diamond production and trade. This is essential to verifying the movement of diamonds between countries. For example if South Africa says it exported 1000 carats of gem-quality diamonds worth \$100,000 to Mauritius in 2007, Mauritius import statistics should confirm this. If they do not, questions should be asked.

Often questions are not asked, however — and when they are, sometimes they are not answered. Such is the case with Lebanon, which was extra keen to join the KP in 2007 to service a nascent polishing industry. It seems, however, that polishing ideas have been put aside, and quite a nice little import-export business has developed — about 2.5 million carats a year. More than 97% of all diamonds leave Lebanon soon after they arrive. And something miraculous happens to quite a lot of them: 85% of the diamonds arrive as industrials worth a couple of dollars a carat, but some 250,000 more carats leave as gem-quality diamonds than arrive —worth 36 times their import value.

You might think that regulators worth their salt would have jumped on this with cleat boots when the first reports of it surfaced early in 2009, but six months later when we went to press, the KP was still only asking polite questions and getting very little from Beirut in return.

Smoke and Mirrors

French Guiana

As if reality was not exotic enough, the diamond industry is rife with rumour about dark deeds in faraway places. It was the Antwerp rumour mill that put PAC and the *Annual Review* onto problems in Brazil and Venezuela in 2005, and the rumours turned out to be true. So when it was suggested last year by authoritative voices in Antwerp that we should look into French Guiana, we took it seriously.

French Guiana is an integral part of France, a minor Gallic quirk, most notably when it comes to customs authorities. Flights from Guiana to Paris, being "domestic", are no more subject to customs controls than flights from Marseilles. So if illicit diamonds were entering French Guiana from Guyana, Venezuela or some other country, it would mean that they were, for all intents and purposes, bypassing existing official European entry points. In other words, this would be an excellent way to launder large amounts of diamonds into the legitimate European trade, completely unseen.

So the *Annual Review* sent a seasoned investigator. Inquiries with customs and police in the capital Cayenne revealed no knowledge of a diamond laundering scheme. Undercover investigations in Cayenne turned up no individuals or networks with the knowledge or skill to deal in rough diamonds. Given the city's small size, the *Annual Review* frankly doubts that any exist. The enclave's highly limited flight connections attest further to the impracticality of such a scheme. Cayenne has no direct flights to its diamond-bearing neighbours Guyana and Venezuela, or to next-door Surinam. Flights go only to Paris and Brazil.

Investigations outside of Cayenne revealed a large corps of Brazilian *garimpeiros*, some registered, many more of them illegal immigrants. The Brazilians are scattered throughout the hinterland, but the wealth they seek is not diamonds. The rivers running through the French territory are in fact a rich source of alluvial gold, some of which is sold legally in Cayenne. Much more of it is smuggled across the border to the Brazilian town of Oiapoque. The Brazilians who mine, buy and smuggle French Guiana's gold are quite open about what they do; if they had diamonds, they would probably admit it.

Before the coup (and since), nobody in the KP really knew what was going on in Guinea's diamond industry, because nobody was paying much attention. The August 2008 review team was one of the largest in its history, and yet the team's nine members spent only two hours on the ground outside of Conakry. This was not much of a "review", especially for a country directly bordering Côte d'Ivoire, home of the world's last officially surviving conflict diamonds.

In conclusion, Guinea's internal diamond controls have ranged from weak to non existent. The government has no way of knowing where most of its artisanally produced diamonds are mined, and there has been a rash of false Guinean KP certificates showing up in various countries. Before the coup, corruption had badly infected the government's diamond administration. Since the coup, very little information has become available about what the new government is doing to improve matters, but unbelievable export statistics suggest that something is seriously wrong. Where Guinea is concerned, the Kimberley Process has failed almost completely.

GHANA

Bleak Short Term Diamond Prospects

Ghana's diamond mining sector is facing one of its worst crises in nearly a century. The sector, still reeling from the knock-on effects of temporary Kimberley Process sanctions imposed in 2007 due to the alleged incursion of conflict diamonds from Côte d'Ivoire, has nose-dived as a result of the global economic downturn and the corresponding fall in diamond prices, threatening the livelihoods of artisanal miners and the country's entire production and trade in diamonds. This has been further compounded by government's inability to secure an investor for the large-scale diamond mining operations of Ghana Consolidated Diamonds (GCD) Ltd., which were suspended in September 2007. After intensive efforts, the previous New Patriotic Party (NPP) government failed to secure an investor. Two interested parties could apparently not honour the upfront 20% payment requested by the Divestiture Implementation Committee (DIC). The current National Democratic Congress (NDC) government is yet to take a decision on GCD.

One conspicuous development with possibly serious socio-economic and environmental implications has been the large-scale shift by artisanal diamond miners to gold, in response to the uncertain prospects of diamonds. Miners have invaded areas such as Akantin, Kubriso and Apinamang with possible disastrous consequences from mercury pollution. Further land use conflicts with large scale mining concessionaires are likely.

Faced with the double agony of the GCD suspension and shifts in artisanal mining activity, Akwatia, the hub of Ghana's diamond mining activities, has witnessed a dramatic out-migration of people, damaging the already precarious socio-economic prospects of the area, along with the livelihoods of its artisanal diamond miners and their dependants. Traders who reportedly stockpiled diamonds in anticipation of better prices have been forced to release stocks at very low prices to make ends meet.

In spite of the gloomy situation, however, administrative measures institut-

ed in 2008 to strengthen Ghana's internal controls in accordance with the Kimberley Process Certification Scheme made substantial progress, especially in the latter part of the year. This included formation of a high-powered KP Joint Task Force made up of a Deputy Minister (Lands, Forestry and Mines) and representatives from the Precious Minerals Marketing Company Limited (PMMC), Customs, Excise and Preventive Service (CEPS), Ministry of the Interior, the Minerals Commission, the Geological Survey Department and the Ghana Immigration Service. The Task Force composition reflects the country's commitment to the Kimberley Process. Enhanced internal controls include pre-shipment inspection of rough diamond purchases by licensed buyers, the registration of diamond traders and miners, sensitization programs and security and other measures on the diamond trading floor at PMMC in Accra.

USGS (US Geological Survey) assistance to the Ghana Geological Survey, promised many months ago, has yet to materialize, including the development of a diamond tracking database. As part of the European Commission (EC) technical assistance, some equipment has been delivered to the Minerals Commission but the bulk of the November 2007 Brussels KP Plenary pledge of €230,000 to support the registration of miners and other forms of technical assistance had still not appeared more than 18 months later.

With the divestiture of GCD still uncertain, the global recession, a drastic fall in diamond prices and a shift by miners to gold, the future of Ghana's diamond mining sector looks bleak. Even more worrisome, the efforts to improve Ghana's Kimberley Process oversight may be threatened until the industry begins to pick up.

LIBERIA

Diamonds and Poverty

Over the past year, Liberia has made significant progress in its internal diamond control systems. Commendably, the government has invited additional civil society members to sit on its Presidential Diamond Task Force which is similar to the 'Diamond Board' recommended by the KP Review Visit which took place in May 2009. The Government has also improved procedures at the country's Regional Diamond Offices and in the chain of custody system. However, there is still considerable room for improvement.

Linkages between the country's Poverty Reduction Strategy (PRS) and the diamond industry are weak. The three-year PRS, introduced in mid 2008, set ambitious targets for revamping the sector, improving mining recovery methods and reducing poverty among stakeholders. Notably, the PRS promises assistance and empowerment for about 100,000 artisanal miners. Regrettably, implementation is lagging. A reduction in fees, especially for miners, would help. Organizing miners into cooperatives, the introduction of loan schemes for startup activities, training in business development planning for post-mining livelihood, and improved mining recovery methods were all included in the PRS, although there has so far been little action. The government should place a premium on the diamond sector by re-visiting, upgrading and reinforcing implementation of the PRS.

Some exploration companies are actually mining diamonds. The threat posed by this activity is enormous. Government and communities lose revenue, and the practice creates a breeding ground for diamond smuggling, because only mining license holders can approach the KP system for valuation and certification. Some concessionaires undertake mining activities without prior community consent, undermining the PRS, and threatening peace and security across several concessions in Bomi, Grand Gedeh, River Cess and River Gee counties. Some mining communities, in fact, are unable to identify any potential benefits from the diamond sector and the Kimberley Process. If this is to change, diamonds must contribute to poverty reduction.

The presence of foreigners in Liberia's diamond industry has led to violent clashes on several recent occasions. Controlling the presence of aliens would help to improve regulation of the sector. In addition, security forces (including UNMIL) need to patrol and enforce KP regulations in hostile communities where recalcitrant ex-fighters direct mining activities.

Miners are completely unaware of how to balance mining and environmental considerations — civil society can and should work together to change this. For this or any other improvement to take place, ministry officials in the field, as well as their civil society interlocutors, need better logistical and office support. Transportation remains a serious problem: some mining agents do not even have a typewriter.

Assistance is also required to expand and deepen targeted capacity building for all diamond industry stakeholders, including civil society, miners, brokers, dealers, government officials and companies, in order to better define roles, to understand diamond valuation and pricing, and to improve mining recovery methods.

CÔTE D'IVOIRE

Conflict Diamond Production Grows

Officially, Côte d'Ivoire remains the only country where the conflict diamond phenomenon continues to exist. Despite a 2005 UN embargo, illicit Ivoirian diamonds continue to flow into the formal trade. Continued diamond mining by rebel forces was reconfirmed in 2008 by a joint mission of experts from the United Nations and the Kimberley Process. A year later, satellite photographs provided by the expert group shows that diamond mining seems to have had a rapid growth in some areas. Although the value of contraband Ivoirian diamonds is currently estimated at US\$25 million annually, it could grow if no measures are taken to remedy the problem.

According to the expert group, the mining is well organized. Although it is artisanal in nature, the photos show that there has been considerable investment in modernizing some of the sites, and in some places, industrial equipment is being used. This underlines two important problems. The first is that there is growing production in areas controlled by the rebel Forces Nouvelles. The second, following from the first, is that these sanctioned Ivorian diamonds are finding an international market.

A separate issue has arisen. The Government of Côte d'Ivoire claims to hold

an amount of diamonds produced in areas under its control, and has asked the UN for a partial lifting of the embargo so that it can sell these diamonds on the open market. This is makes no sense in a country that is partly under the control of rebel forces, and where the government has ignored a variety of recommendations put forward by the expert group. For the time being, the UN embargo remains in place, at least until the presidential elections that are set for November 2009.

In the meantime, the government should agree to work with the Kimberley Process to establish a 'footprint' describing the geological characteristics of Ivoirian diamonds. Such a footprint could help to identify Ivoirian diamonds entering the market illegally. Regional action is also required, especially in neighbouring countries, to halt the flow of conflict diamonds. To this end, a Kimberley Process sub committee has been established, to facilitate the formation of a regional collaborative initiative that would include the members of the Mano River Union and others.

Perhaps the ultimate answer to Côte d'Ivoire's conflict diamonds lies not so much in more satellite photos, more committees and more study, however. This *Annual Review* notes the almost complete lack of internal diamond controls in neighbouring Guinea, and the dismal monitoring exercise carried out there by the KP during 2008 and 2009. The mystery of the missing Ivoirian diamonds may not be such a mystery at all.

VENEZUELA

Absent, with Leave

In mid-2005, following an organizational shake-up in the ministry of mines, Venezuela ceased issuing Kimberley Certificates. None of Venezuela's explanations was entirely credible. The key point is that although the Venezuelan government was refusing to issue KP certificates and to report mining and export data to the Kimberley Process, it was allowing miners to mine, buyers to buy and, by extension, exporters to export. The Venezuelan government was thus actively condoning the smuggling of 100% of its diamond production out of the country.

The Kimberley Process did little to address the situation until the problems were pointed out in a 2006 PAC report. The KP then procrastinated further, shying away from any concrete action until October 2008, when finally, four years after large scale smuggling began, a KP team was allowed to visit Venezuela. Breaking all precedent, the KP permitted the Venezuelan government to dictate the composition of the team, and for the first time in KP history, civil society participation was banned. The KP likewise allowed the agenda for the visit to be dictated by the Venezuelan government.

The KP team, which did not visit the diamond mining areas, reported essentially what the Venezuelan government told it. In November 2008, Venezuela took it upon itself to "self-suspend" from the KPCS, saying it would halt diamond production and trade for at least two years while reorganizing its diamond sector. This face-saving measure seemed to solve the problem and the Kimberley Process concurred.

Outside of Caracas, however, it is an open secret that Venezuela's diamonds are still being smuggled out of the country daily. This was the case before

the KP visit and during the KP visit, and it remains the case today. Early in 2009, the mineral leases of five diamond mining cooperatives in the Santa Elena area came up for renewal. The leases are held by the state-owned mining concern Corporacion Venezolana de Guyana (CVG). If the government had been interested in stopping mining in the Caroní basin, all it had to do was instruct CVG not to renew the leases. It did not, and CVG duly renewed all five for another ten year period. A visit by PAC investigators to the Venezuelan border town of Santa Elena in May 2009 found that diamond traders remain actively engaged in buying and selling for the illegal cross-border traffic.

In a March 2009 letter posted on the public Kimberley Process website, the KP Chair, Namibia, hailed the arrangement with Venezuela saying that the KP would "assist and support the country in developing appropriate internal controls over its alluvial diamond mining." The Chair said that this was "yet another example of mutual inclusiveness inherent in the Scheme and is testimony to the willingness of the KP family to stand together, learn from global best practices and proactively provide assistance when required."

For its part, the Venezuelan government reverted to form, ignoring the KP with one exception. In June 2009, Venezuelan deputy ambassador Raquel Gomez attended the KP Intersessional meeting in Windhoek, and said again, without any apparent embarrassment, that Venezuela had halted production and exports. The truth is that most attempts to communicate with Venezuela since the agreement on so-called 'mutual inclusiveness', the learning, the standing together and the offers of 'proactive assistance' have simply not occurred. Venezuela is once again AWOL. Its government appears to see no value in the KP. Its diamond exporters have learned to bypass the KP and its diamond miners have never even heard of the KP. In Venezuela the Kimberley Process is not just impotent, it is irrelevant.

GUYANA

The Destination of Choice for Venezuelan Diamond Smugglers

Ironically, this small South American nation actually has a comprehensive and rigorous system of internal controls on artisanal alluvial production. Miners are supposed to record their diamond production (both carat and stone counts) on weekly production sheets. Exporters must be able to show a valid production sheet — countersigned in the field — for every diamond in an export package. Every sheet is methodically cross-checked before export. Diamonds without valid, signed sheets are liable to seizure.

How then do smugglers work their stones into the Guyanese system? They fiddle the paperwork.

A recent PAC investigation into the export files of the Guyana Geology and Mines Commission (GGMC) reveals how the fraud works. Typically, in an otherwise standard shipment, a dishonest exporter will include four or five sheets showing an extraordinary volume, or diamonds of an extraordinary size.

On 24 February, 2009, for example, exporter Company A successfully exported 987.74 carats, priced at US\$222,242. Among the production

sheets are some showing extraordinarily high volumes of diamonds (409 carats per week, when the Guyana average for a jig of the size in question is 42 carats), or an extraordinarily large size of diamond (0.35 carats per stone, when the Guyana average is 0.10), or both. One sheet showed weekly production of 409 carats (9.8 times the Guyana average) of stones whose average size was 0.41 cts (4.1 times the Guyana average).

An export by the same company a few days earlier, on 19 February, 2009 showed similarly unbelievable production data. In this case, six of the production sheets, supposedly representing two different jigs with two different owners and operators, had all been filled out by someone using the same pen with the same handwriting, showing the same extraordinary luck — production volumes 12 times the average, and diamonds twice the normal size.

An export on 30 January 2009 (5,035.56 carats, US\$503,566) by Company B included a jig with an extraordinary history. Records for the six months before and after this export show the jig produced an average of 18.25 carats a week. Suddenly, during three weeks in January, the jig produced an incredible 424.23 carats per week.

An export on 13 June 2007 by Company C (1,866.01 carats, valued at US\$653,103.5) showed a consecutive numbered series of production sheets, in which the average size of the diamonds produced by the jig — located in the same area with the same operator — went from 0.10 carats per stone to 2.25 carats per stone. (Production volumes remained steady at around 90 carats a week, so it is not as though the jig was finding a few large stones. It was, supposedly, finding very large numbers of very large stones, something never seen in Guyana.)

These incidents almost certainly represent smuggled Venezuelan stones with falsified paperwork. Blank, signed sheets are said to be available on the streets of Georgetown at a cost of US\$1 per carat of falsified export.

In July, 2009, PAC sent a draft of this article — including the actual company names — to the GGMC, which responded detailing its actions in relation to these cases. For the first case, involving Company A, the GGMC noted the elevated production levels and sent a team out to investigate. Some mini production boom does appear to have occurred in the reported area. However, by the time the team arrived on site the boom had ceased, so it was impossible to determine whether the numbers reported in the export reflected reality or 'reality plus Venezuelan contraband'.

For Company A's subsequent case, the GGMC concurred that the PAC's argument regarding the export numbers "appeared convincing". Unfortunately, no field checks were conducted at the time, and the exports went ahead unmolested. However, other discrepancies in this export caused the GGMC to issue Company A with a "final warning". As of press time, Company A continues to export.

The GGMC concurred that Company B's production figures were cause for suspicion. Again, no field checks were performed at the time, and the export proceeded unimpeded.

With respect to Company C, the GGMC noted that it actually flagged the anomalous nature of the production at the time of export, and demanded an explanation of the exporter. As this was not entirely satisfactory, the exporter was fined and given a warning. According to the GGMC, the company no longer exports from Guyana.

The GGMC contends that these and other enforcement actions demonstrate a good record of KP vigilance. In fact, Guyana is better than most.

And yet, PAC's fairly brief perusal of the GGMC's files revealed four suspicious exports, only one of which was flagged and held at the time. 'Good' could clearly be better.

Unfortunately, any KP calls for more rigour in Guyana might well fall on deaf ears. In 2008, Guyana watched as the KP accepted Venezuela's completely false statement that no diamonds were being mined in, or exported from that country. As a result, the KP no longer carries the weight in Guyana that it once did.

Recommendations

- The smuggling of diamonds anywhere compromises the integrity of the Kimberley Process. In addition to dealing clearly and forcefully with Venezuelan intransigence, the KP needs to halt the smuggling into neighbouring countries, making it clear to Guyana that sloppy internal controls will not be tolerated.
- 2. PAC has long recommended that Guyana,

Brazil and Venezuela create a trilateral commission of enquiry and adjudication. The Kimberley Process could be asked to use its good offices to coordinate a three-country process of dialogue that would aim to create synergies among the diamond production and control procedures in the three countries. This should be chaired by a neutral fourth government. If successful, the lessons from such a commission might find useful application in parts of Africa where borders are porous and control systems weak.

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