



KIMBERLEY PROCESS

THROUGH AN AFRICAN LENS:

Reimagining responsibilities
and definitions in a
changing mining sector



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The rapporteurs for the conference were Patrick Mavinga and Chuma Yafali. This report was edited by Dr Claude Kabemba and Georges Mukuli.

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INTRODUCTION

The Southern Africa Resource Watch (SARW) in partnership with Partnership Africa Canada (PAC) and the International Crisis Group (ICG) hosted a policy workshop in Johannesburg on June 1st 2013 under the theme *'Through an African Lens: Reimagining responsibilities and definitions in a changing mining sector'*. This report is based on the discussions at the workshop.

Organised to coincide with the Kimberley Process Certification Scheme (KPCS) Intersessional meeting in Kimberley, the workshop brought together 45 leading civil society activists, academics, and parliamentarians from Africa and beyond. The meeting was also attended by the Chairperson of the Kimberly Process, Ambassador Welile Nhlapo.

The workshop assessed the achievements and failures of the Kimberley Process (KP) and looked at the future of the KP given the changing environment in Africa. Two key questions guided the workshop: To what extent is the Kimberley Process still relevant to the contemporary governance needs of Africa? What role can Africa play in transforming the Kimberley Process?

The workshop proceeded under the guidance of Dr Claude Kabemba, Director of SARW, who stressed in his opening remarks that the agenda was to reflect, through an African lens, on the first 10 years of the KP, celebrate its achievements, identify its key challenges and weaknesses, and discuss its future. Although the workshop was

attended by representatives from various sectors, Dr Kabemba pointed out that the platform was primarily created to allow African civil society actors to openly analyse and exchange ideas on the current status of the KP in Africa and its future.

In his introductory notes, Bernard Taylor, Executive Director of Partnership Africa Canada, provided some historical background on the creation of the KP. He mentioned the pivotal role played by the South African government in bringing together representatives from key diamond producing countries, civil society organisations and the international diamond industry to discuss the problems and challenges that were facing the global diamond industry at the time. Taylor acknowledged the outstanding role played by civil society in focussing the attention of the international community on the link between diamonds and armed conflicts in Africa. Although diamonds were not the immediate cause of the conflicts in Angola, Sierra Leone, Liberia and Guinea in the 1990s, there was consensus among actors from government, civil society and the diamond industry that the gems intensified and prolonged these armed conflicts.

Since the conflict diamond issue was of political and economic interest to Africa and the diamond industry, it did not take long for the various actors to strike a deal, which led to the establishment of a diamond certification process: the KPCS.

Although the rough diamond industry is far more manageable than it was before, Taylor highlighted the need for urgent reforms of the Kimberley Process if the scheme is to remain relevant given the changing social, political and economic dynamics of society. Taylor was adamant that reforming the KP requires serious lobbying by key diamond actors such as South Africa. As an emerging market and regional powerhouse, the South African government has the necessary soft power to influence fellow KP participants in transforming the ailing mechanism.

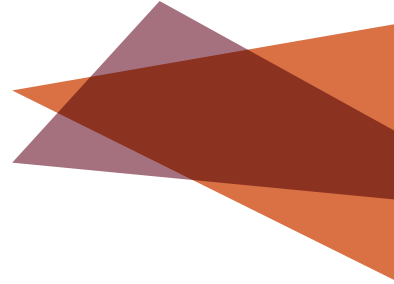
To improve the operational nature of the KP, Taylor suggested that more attention should be focussed on artisanal mining since it is this informal practice that was instrumental in Africa's diamond-linked civil wars in the 1990s. He commended and endorsed the 2012 Washington Declaration as a tool capable of transforming and formalising the so-called 'illegal mining practises'. He argued that formalising artisanal mining can result in sustainable mining practises, increased transparency and accountability, the establishment of legitimate diamond revenue structures (which benefit both government and artisanal miners) and improved mining conditions. In his conclusion, Taylor urged actors within the diamond fraternity to continue advocating for a more transparent diamond industry as well as for the promotion of the rights of artisanal miners and good governance in the extractive industry as a whole.

1 Session One:

THE KIMBERLEY PROCESS:

Its role and contribution to a conflict-free diamond industry in Africa

This session was led by **Ambassador Welile Nhlapo**, Chairperson of the Kimberley Process, and **Honorable Edward Chindori-Chininga**, Chairperson of the Parliamentary Portfolio Committee on Mines and Energy of Zimbabwe.



In his presentation, Ambassador Nhlapo focused on three areas: the African perspective on the KP; the continued role and relevance of the KP; and the role of Non-Governmental Organisations (NGOs) in supporting a clean, apolitical, transparent and people-centred KP.

From the outset, Ambassador Nhlapo wanted to dispel the view that African minerals are conflict minerals. He argued that Africa's natural resources should not be stereotyped as conflict minerals as this creates a negative perception against Africa's natural resources as a whole. However, he acknowledged that there is a need to promote good governance in how resources are managed and affirmed that Africa's resources belong to both present and future generations. As such, sustainable extraction methods are necessary if future generations are to benefit from their country's natural wealth.

He stressed the need for Africa to create its own governance mechanisms and establish and fund its own projects if the continent's development projections are to be achieved. He warned African leaders against adopting non-African governance mechanisms, which might not provide the best guide to how the continent should be extracting and managing its natural resources. He emphasised that such obligations belong to African governments and not external actors.

Ambassador Nhlapo proposed the creation of a common African defence and security mechanism to guard against the outbreak of mineral-related violence, and suggested that the KP could be integrated within the frameworks of the African Union Peace and Security Council. Such a move, he argued, is likely to promote the KP's objectives of peace, security and development. He suggested that the structures of the KP should also collaborate and complement the works of the United Nations, especially in areas where sanctions have been imposed on KP member states.

The ambassador did not shy away from stating that western and emerging countries are already embarking on a new scramble for Africa, which is opening up opportunities but also creating serious challenges for the continent. He

argued that most extractive concessions between African governments and developed and emerging governments generally fail to benefit Africa.

On the subject of the role and relevance of the KP, the ambassador argued that the KP should be a dynamic vehicle that is capable of adapting to changing circumstances and challenges. He reiterated the importance of the scheme to the African extractive sector and argued that the KP remains the most suitable resource governance mechanism for assisting African countries to develop their infrastructure and strengthen their internal administrative and legislative frameworks.

*Africa's natural resources
should not be stereotyped as
conflict minerals*

Linking the relevance of the KP to the Central Africa Republic (CAR), he argued that it is the duty of the KP to assist in rebuilding that country, strengthening its internal diamond control systems and adopting the minimum requirements of the KP. Indeed, the role of the KP is particularly important in countries whose economy relies to a large extent on the diamond trade. As such, the case of the CAR provides a number of lessons for the KP, especially about how best to respond to challenges facing a weak state. The ambassador further argued that the African Union failed to take into consideration the role of diamonds in its efforts to come up with a relevant conflict resolution mechanism in the CAR. As a result the root causes of the conflict in CAR were not properly identified, leading to the failure of the government of national unity that was agreed upon in Gabon. He stressed that the diamond trade played a key role in the conflict in CAR and it needs to be incorporated into the search for peace.

The ambassador stressed that he felt that those civil society actors who were calling for the abandonment of the KP were either misinformed or did not have Africa's best interests at heart. He argued that it is because of these voices that the KP has been used as a smokescreen to deflect attention away from the real challenges affecting the extractive sector in Africa. He encouraged civil society activists to utilise the advantages of globalisation in terms of mobilising public opinion but to make sure to refer their issues to the relevant authorities.

In conclusion, the ambassador urged all member states and participants to continue supporting the KP as a relevant tool for Africa's natural resource governance. He insisted that dismissing the KP as a failure is not an option since it offers a platform for relevant parties to constructively engage on matters of resource governance. He insisted that the KP could only be improved through open dialogue as opposed to debates in the media. He urged civil society to take advantage of such platforms and express their views and arguments.

Honorable Edward Chindori-Chininga focussed on a range of issues, including the structural composition of the Kimberley Process, its impact on member states, its sustainability, consistency in the application of its provisions, diamond smuggling, the application and effects of sanctions, and the deviant application of its minimum requirements in the case of Zimbabwe's Marange diamonds.

He reminded participants of the key objectives of the KP, which are assuring consumers of clean, traceable and conflict-free diamonds, and creating and facilitating dialogue between respective actors within the global diamond industry. He argued that it was because of this unique mechanism that trade in conflict diamonds fell from 15 percent of global trade in the 1990s to less than 1 percent now. However, he was quick to highlight that the true success of the KP is not measured by the number of carats flowing into the legitimate diamond market but by the advancement of people's livelihoods.

On the role the KP has played in recent times, especially in Zimbabwe, he raised a number of challenges experienced by member states. He suggested that the KP, which was designed to operate as an apolitical mechanism, had become vulnerable to political manipulation, especially by powerful states. He argued that the imbalance of power in the global arena works against the interests of Africa – and insisted that Africa and the developed world should foster a symbiotic relationship that benefits both parties.

As the interest of global powers in Africa's natural resources increases, Chindori-Chininga advised African governments to jealously guard their natural resources against former colonial powers. In such an environment, he argued that international resource governance mechanisms

could no longer protect the interests of Africa. Indeed, he complained that the KP had permitted itself to be used to pursue the political interests of a few powerful member states. As such, it is the role of Africans themselves to protect their own resources. He further argued, with regards to the scope of the KP, that there is a need for the scheme to exercise its mandate within its agreed limits and not meddle in the national political affairs of member states. He stated that the KP's minimum requirements should be applied equally across all participants. In his view, the case of Zimbabwe demonstrates how the KP has allowed itself to be used – by selectively interpreting and applying its statutes in relation to the Marange diamonds with the aim of appeasing a few stakeholders who share a different political perspective to that of the government of Zimbabwe.

Chindori-Chininga also argued that the KP is failing to adopt necessary reforms, which have allowed the diamond supply chain to become opaque and unreliable. KP member states have weak internal diamond controls and it is the KP's responsibility to continue pressuring its participants to adopt and domesticate the minimum requirements into national legislation. This is true in the case of Zimbabwe, where diamonds continue to be smuggled out through neighbouring Mozambique, which is not a member of the KP. Besides Mozambique, other countries that provide overland passage for conflict diamonds are Burkina Faso, Niger, Mali, Uganda and Panama. It is likely that these countries find no political or economic gain in acceding to the KP and as a result they are not motivated to take action against the trade in conflict diamonds across and within their borders. However, he maintained that the KP certification scheme was not designed to solve the root causes of the problems facing the diamond-mining sector – a sector that is prone to economic predators and violence.

Chindori-Chininga supported reforms of the KP. Firstly, he proposed that the decision-making structure of the KP be restructured because a single member state can currently block the adoption of any decision, which can thereby hinder progress. As a result, the KP has been unable to take strong decisions against non-compliant member states. This has greatly undermined its effectiveness and credibility in the eyes of consumers and participants alike since decision making in the KP appears to be driven by patronage and political interests rather than the need to transform the diamond industry.

Secondly, he argued in favour of strengthening the KP's independent technical capacity. He identified a number of key weaknesses of the scheme, including the lack of a permanent secretariat, adequate funding, a central knowledge database and connection between past and present KP chairpersons as well as its slow response to critical issues and its inability to follow up on

recommendations and other issues of concern. To solve these challenges, he called for the introduction of an independent professional body to support KP's administrative matters as well as its statistical and legal analysis.

And thirdly, Chindori-Chininga proposed that the KP should also control the cutting and polishing centres around the world, which absorb most illegal diamonds. He stated that there is evidence to show that diamonds smuggled or stolen from Zimbabwe, Gabon, Cameroon, Ivory Coast, Venezuela, and even some European airports are finding their way to diamond cutting and polishing industries across the globe. To reduce such problems, he suggested that participative governments should be permitted to conduct reviews of diamond cutting and polishing companies so that transparency is restored to the entire value chain. If reforms are not made, the cutting and polishing industry will likely remain a 'black hole' through which illicit diamonds continue to be processed.

On the KP's intervention in Zimbabwe, he praised the Zimbabwean government for its unceasing commitment to the KP. However, he stated that Zimbabwe's national interests were severely affected by the unprecedented prejudice propagated by some KP member states. He blamed the KP for allowing itself to be used to disgrace its noble apolitical and developmental orientated agenda. He argued that, despite Zimbabwe demonstrating her willingness to meet the KP minimum requirements and uphold standards of transparency and cooperation, the KP continued to bend to the foreign policy aims of stronger states. He argued that sanctions imposed upon Zimbabwean diamond companies (by western countries and their allies) were proving to be counterproductive since some of the affected diamond companies were opting to deal with informal diamond markets, thereby compromising the transparency of the diamond supply chain. He questioned the agenda of the United States and European countries in relation to Zimbabwe, particularly why these actors approved Zimbabwe's diamonds as KP compliant in 2011 only to label the same diamonds conflict diamonds in 2013.

Chindori-Chininga recognised the governance challenges that the diamond industry is experiencing in Zimbabwe – admitting that the Zimbabwean government has struggled to collect significant diamond revenues due to a range of internal and external factors ever since the discovery of the Marange diamond fields. In 2012, the government projected revenue of around US\$600 million from the diamond fields, but that was not achieved. As for 2013, Zimbabwe's Finance Minister (at the time), Tendai Biti, confirmed that the Treasury had not received any diamond revenue from Marange. Chindori-Chininga blamed the sanctions imposed by the US as the major reason why diamond revenues were not filling the Treasury's coffers.

Discussions

Very important comments and observations were made by participants in response to the two speakers. The issue of illegal diamonds and how they are being smuggled out of KP member states to overseas diamond retail markets via non-KP member states was raised. It was observed that, for example, Zimbabwean diamonds are continuously smuggled out through Mozambique, a non-KP member state. Overseas diamond retailers in countries such as Belgium were accused of purchasing illegal diamonds from Africa too easily, which is perpetuating the illegal trade in diamonds.

Participants also discussed how the KP's definition of conflict diamond fails to take into account the governance capacity of member states or the specific geographical landscape. For this reason, there was a proposition that a new definition be found that will encompass 'economic conflict'.

The suggestion that the trade in conflict diamonds makes up less than 1 percent of all trade was disputed. It was argued that there were significant unrecorded illegal diamond transactions, which continue to take place across the globe. In response to this objection, it was clarified that the 1 percent referred to illegal diamonds that are officially traded. Even so, considering all the illegal transactions, the KP might require the assistance and intervention of Interpol and the World Customs Organisation. The meeting was also informed that a concept document identifying areas of key concern in the diamond industry was currently being formulated.

In relation to reforms of the KP, it was suggested that the decentralised nature of the KP had its advantages and disadvantages. It was also suggested that the KP needed to have permanent structures to enforce and monitor the adoption of minimum requirements and to coordinate ideas raised by participants and observers. The idea of situating the KP's policies within the African Union framework to improve natural resource governance on the continent was supported.

One issue that attracted a lot of comments was multi-stakeholder meetings. Participants recommended that there was a need to consolidate and strengthen a multi-stakeholder approach involving government, the private sector and civil society. While the scheme has been successful in creating an international platform where state, business and civil society meet, it is imperative that this is replicated at the national level. Participants agreed on the need to have multi-stakeholder meetings at the national level, which would also include mining communities.

It was also suggested that the KP includes, within its minimum requirements, environmental standards, human rights protection, and citizen participation. However, for these values to be incorporated as part of the KP, participants recommended the creation of a vibrant secretariat with adequate capacity. This view embraced by many participants who argued that a secretariat

can only be successful if issues of membership, coordination, transparency, control and research are first agreed upon on by all member states. Participants also agreed that it would be the duty of each member state and the diamond industry to finance the secretariat. However, the meeting was concerned about the many challenges that such a secretariat would probably face – from funding to human resources to political domination by powerful actors. It was suggested that, if a secretariat were established, Africans would have to own the structure by playing a pivotal role within the secretariat. It was also noted that the failure of the KP to produce and disseminate country review reports is compromising the effectiveness of the scheme.

On the issue of extending the duration of the KP chairpersonship, no real consensus was reached in terms of proposing an alternative to the current arrangement, which sees each chairperson staying for 1-2 years and which is clearly stipulated in the KP's core document.

Issues around South Africa's leadership were also raised with some participants calling for South Africa to demonstrate its commitment to global governance by joining governance mechanisms such as the Extractive Industry Transparency Initiative (EITI). This proposition was countered by the argument that sovereign states join different mechanisms on the basis of their national interests.

The behaviour of civil society was also addressed. It was argued that civil society does not exist in a vacuum, hence it should acknowledge other actors and respect registration processes enacted by various governments.

Overall, it was agreed that reforms were required to strengthen the KP but that these changes, such as including human rights in the KP, must take into account the sensitivity of some of these issues in relation to state sovereignty.

2 Session Two:

THE KIMBERLEY PROCESS:

What is working and what is not? How to make it more responsive to African needs and realities?

The panellists were all adamant that it was important to identify the KP's successes and challenges within the context of Africa's political economy since its inception before trying to discuss how to make it more relevant now and in the future.

In terms of successes, it was argued that the KP has managed to bring together actors from civil society, government and the diamond industry – and maintain a close working relationship between them – and that this has helped to curb the illicit trade in conflict diamonds. The KP has also been successful in coming up with minimum requirements, which have been adopted by member states across the globe, while the certification process has made it more difficult for illegal diamonds to be traded within the legitimate diamond supply chain. The

scheme is also credited with playing a part in ending the wars in Sierra Leone, Liberia, the DRC and Angola.

The influence of the KP is demonstrated each time country review missions are announced as the relevant member states work hard to put everything in order before the reviews begin. The KP peer review mechanism was also praised for encouraging some of the progress seen in some member states. Meanwhile, the KP has worked fairly well with civil society – as witnessed in Zimbabwe, where a local focal point was established due to the efforts of civil society. The KP's ability to hold annual plenary sessions also demonstrates consistency and its commitment towards achieving its objectives.

Furthermore, the KP has managed to persuade member states to adopt and implement its diamond regulations – and domesticate them into national legislation. For example, the government in Sierra Leone came

up with justifiable natural resource legislation, which aims to improve natural resource governance and borrowed some concepts from the KP.

In terms of challenges, it was argued that the KP has failed to address the contentious issue of human rights abuses – for example, in both Zimbabwe and the CAR. These failures saw a number of influential players from civil society abandoning the scheme, which has often been described by critics as ‘clinically dead’ or just a façade. The KP has also failed to change and adapt to the new realities in the global diamond system, particularly the changing nature of conflict – and it has failed to deal with issues around diamond smuggling, money laundering, and non-compliance.

It was also suggested that the KP does not convincingly address Africa’s development needs and that it should be involved in the internal distribution of diamonds revenues so that local people benefit. This view was motivated by the fact that diamond-rich governments fail to provide essential services to local communities, such as health and education, as well as other socio-economic necessities despite earning millions of dollars in diamond revenue. However, foreign diamond companies were also blamed for failing to honour their corporate social responsibility obligations. Local communities, particularly those living close to diamond mining areas, also expect the KP to help defend their interests in relation to environmental justice, relocation, and water and air pollution caused by large-scale diamond mining.

Panellists seemed to agree that the KP’s definition of conflict diamonds is outdated and needs to be changed. It was noted that the current definition fails to acknowledge the link between diamonds and various human rights abuses. The term ‘conflict diamond’ should encompass issues of internal strife, and social

and economic crises caused by diamond mining and perpetuated by legitimate governments. It was suggested that the responsibility of governments and companies in relation to the loss of livelihoods, environmental destruction and the displacement of local people should be viewed in the same manner as the impact of armed conflicts on society. The example of Botswana – where the government unconstitutionally relocated the local San people from

their homesteads and began mining activities – was highlighted. In some countries, mercenaries have been hired by mining companies to restore order in diamond mining areas and massive human rights violations have subsequently been committed.

It was also noted that the KP has done very little to influence member states to become transparent in the allocation of mining contracts and the use of diamond revenues.

The role of civil society in the KP was also discussed. It was observed that civil society is reactive and not proactive. It simply react to abuses when they take place instead of taking a proactive approach and engaging other stakeholders – such as diamond companies, parliaments and executives – on how to improve the industry so that it serves and benefits the people. Civil society should also demand information about diamond revenues in order to have a clear picture of how diamond revenues are being utilised. For this reason, some panellists called for the KP to include economic security within its mandate.

There was also a suggestion that a tripartite alliance of civil society, industry and government should be established at national level. The duty of such an alliance, it was argued, would be to closely monitor internal diamond control systems. Since the effectiveness of the KP is judged by people on the ground, there was also a call for local KP structures to incorporate civilians. And there was also a call for the KP review missions to be strengthened by inviting independent actors from

diamond-rich governments fail to provide essential services to local communities ... despite earning millions of dollars in diamond revenue.

outside the KP to inspect a country’s internal diamond control systems and revenue transparency.

Other panellists took a grassroots approach to assessing the KP’s effectiveness and asserted that the key weakness of the KP is the gap that exists between its ideal standards and the realities on the ground. It was suggested that diamond production is characterised by four features: high level of informality (most diamonds come from informal sectors especially in most central African countries, apart from Angola); opacity of the diamond chain (in the DRC it is difficult to know where legitimate diamond trading offices are located); insecurity and permanent conflict in diamond mining areas (especially in Central Africa where conflict is usually between migrant workers and local miners, and between mining communities and the security forces); and diamond smuggling. If these problems are to be resolved, national governments must take the lead role, including establishing effective diamond regulations and control systems. It was argued that the KP’s

requirements were proving to be inadequate. However, if they were effectively adopted and implemented at national level, they would promote better governance. The panellists also looked at whether the KP should incentivise the scheme so that member states see benefits in adhering to the requirements of the scheme. It was also suggested that the KP could learn from other initiatives such as Extractive Industries Transparency Initiative (EITI) since the two mechanisms share common objectives.

Finally, it was argued that the KP is failing to deal with issues of member states non-compliance. Although sanctions and suspensions might appear the most suitable way to respond when member states are non-compliant, there is a danger of promoting the illegal diamond trade since non-compliant countries will likely continue to trade their diamonds on the illegal market. And so the KP was urged to consider the political conditions in any diamond producing country before taking punitive measures.

Discussions

A robust intervention was that there is too much emphasis placed on the relationship between governments and companies. If a state is left to perform a number of duties by itself it will invariably end up giving preference to the interests of the corporate world at the expense of its citizens. It was argued that corporate actors should not be trusted, as these actors do not have the interests of the state - or its citizens - at heart. African governments were urged to protect their national interests by adhering to their constitutions before any global governance mechanisms.

Some participants warned that the EITI was not necessarily the best example of a functional governance mechanism since it has its own flaws. However, others

- while acknowledging its challenges - commended the EITI for its willingness to adopt reforms and remain relevant in a changing global political economy. It was argued that the reluctance of KP members to be similarly flexible and introduce reforms to keep it relevant would kill the scheme.

Participants also argued that the KP - just like the EITI - has an ideological foundation that needs to be understood. Equally, it is important to understand the ideological and political nature of African states in order to correctly interpret actions taken by these states in terms of KP compliance. There is a need to analyse what constitutes the African state and how different social forces and power

dynamics operate on the ground. Without understanding the nature of African states, the KP will not be in a position to fruitfully engage with them.

Participants questioned the extent to which the KP is able to protect people living in diamond mining areas from illegal displacement by governments and mining companies. It was stated that that the KP seems to overlook - and even undermine - artisanal miners, who in some parts of Africa have developed sustainable livelihoods through their so-called informal diamond mining practices. There was an insistence that local communities be recognised as critical stakeholders rather than treated as third class citizens with no direct participation.

NON-AFRICAN COUNTRIES ARE PENETRATING AFRICA THROUGH MECHANISMS SUCH AS THE KP

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Session Three:

WHAT HAS CHANGED SINCE THE KP'S INCEPTION AND HOW SHOULD AFRICA RESPOND? WHAT WOULD AN AFRICAN CONFLICT DIAMOND DEFINITION LOOK LIKE?

In an effort to craft an African definition of conflict diamonds, it was argued that African governments should first acknowledge the need to expand the definition of conflict diamonds. It was maintained that human rights ought to be encompassed within the definition of conflict diamonds. Zimbabwe was mentioned as a country where the current definition of conflict diamonds is severely challenged. The Zimbabwean case demonstrates how legitimate governments can collude with corporates and commit serious human rights abuses against their own citizens. It was argued that failure to redefine conflict diamonds continues to undermine the objectives of the KP.

There was a strong sense among panellists that the recognition of human rights by the KP would have a significant influence on state transparency and accountability. As such, it is high time KP acknowledged that conflict diamonds are not only those controlled by rebel groups, but also by legitimate governments and private actors where human rights abuses occur.

It was argued that there is need for the KP to acknowledge the social, political and economic changes characterising different societies and factors them in formulating a new definition of conflict diamond. The panel insisted on the need to factor in the different forms of violations such as displacement of communities without proper compensation, the loss of livelihoods, and corruption, which is a serious obstacle to the optimisation of the benefits of diamonds.

A panellist attempted to provide a new definition of conflict diamond, which he said could only be formulated by first understanding the operational nature of the diamond industry, Africa's political economy and other social forces involved in the diamond industry. By identifying these social forces, one is able to come up with a strong and informed definition applicable in various contexts across the globe.

There are two camps within the KP – those in favour of reforms and those against them. Those in favour of a new definition of conflict diamond argue that the era of rebels sustaining their

movements through conflict diamonds in Africa has passed, hence the need to pay attention to new realities, such as human rights abuses. On the other hand, those against a new definition argue that the move might be a way to indirectly punish African states through the KP. This view is supported by the majority of African governments, which believe that non-African countries are penetrating Africa through mechanisms such as the KP, which they are using for their own political agendas. This group argues that in Zimbabwe's case the KP allowed itself to be used to settle political scores.

It was also suggested that a justifiable definition of conflict diamonds should not only focus on Africa but should also take the global context into consideration. There was a need to understand the different roles of played by all the various actors within the diamond industry so that the new definition covers the widest possible range of issues likely to emanate from the diamond industry.

The panellists also looked at corporate behaviour in the mining sector. The KP was urged not only to focus on the behaviour of governments but also on the impact and influence of corporate behaviour on the livelihoods of communities. It was suggested that the KP should introduce a rating mechanism to track the behaviour of companies in relation to their corporate social responsibility in order to prevent the unjustifiable exploitation of resources and communities by corporate actors. Communities ought to benefit from their natural resources but this can only be guaranteed by scrutinising the behaviour of companies, and the relationship between them and governments. Corporate actors are not always concerned about the interests of communities so there is a need for civil society to continue pressing for transparency and accountability, especially with regards to governments issuing mining contracts.

It was suggested that as the KP could learn from – and indeed borrow – reforms undertaken by other governance mechanisms, such as the African Peer Review Mechanism (APRM) and the EITI.

It was argued that the KP should be careful when making decisions regarding the non-compliance of member states. In particular, it should not rush to punish member states directly but instead it should wait for other institutions, such as the United Nations, to impose sanctions on a country and then impose its own punitive measures. While this approach might make the KP appear weaker, it takes into consideration the actual capacities of the KP, which has to operate within its limited mandate and with limited resources.

It was announced that the KP is currently working on a concept document, which aims to address key issues of definition, non-compliance and the structure of the KP.

Discussions

Participants agreed on the need to change the definition of conflict diamonds. Some participants also called for the mandate of the KP to be widened so that it could monitor the flow and use of diamond revenues by member states and international corporations, which would help to reduce corruption at national and global levels.

One participant argued that African governments are not prepared to accept a new definition of conflict diamond because a new one will force them to undertake an internal audit, which will end up revealing severe inconsistencies with regards to the KP's minimum requirements. The participant added that if the KP's tripartite alliance was intended to achieve a common goal, then the partners in that alliance should operate on an equal footing rather than being treated differently like they currently are – with some being participants and others merely observers.

An important point that was raised is the fact that conflict diamonds are not as controversial as some diamond actors want everyone to believe. Actors from the diamond industry are simply advancing their own interests above those of local communities. The majority of diamonds coming from Africa are conflict diamonds since the destination of most of the revenues generated from these precious stones remains unknown. There was a perception that the effectiveness of the KP is severely compromised by politics at national and global levels. One participant argued that the reason given by most African governments for not supporting a new definition of conflict diamonds is senseless and political. However, other participants took another view, arguing that the KP suffers from double standards – confirmed by its readiness to label African diamonds as conflict diamonds until they reach international diamond retail markets when they suddenly become conflict-free diamonds. One participant stressed that the KP is characterised by the politics of domination by the world's more powerful countries and it will remain ineffective until all actors are treated equally.

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Session Four:

HOW COULD HARMONISING LAWS, TAX REGIMES AND APPROACHES TO THE ARTISANAL SECTOR HELP TO IMPROVE KP COMPLIANCE AND OVERCOME SHARED PROBLEMS? And how could adopting a regional approach – including a shared certificate as in the EU – make for more cost effective compliance, better cooperation by law enforcement agencies, and successful regulation of the artisanal sector?

A panellist blamed the international diamond industry for failing to reform and strengthen its self-regulatory structures. He argued that the people should not blame the continued existence of illegal diamonds solely on the inability of weak states to monitor and control the flow of diamonds within their boundaries, but also on the diamond industry for failing to identify illegal diamonds at the international level. Instead of measuring the success of the scheme by how many illegal or conflict diamonds entered the legal trade, it would be more progressive to measure its capacity to transform the social livelihoods of communities. It was suggested that the certification process has too many loopholes, which permit illegal diamonds to enter the legitimate system. Indeed, there are so many loopholes that the number of illegal diamonds entering the market is not known.

The panel also suggested that the nature of the diamond supply chain does not make it difficult for illegal diamonds to filter into the legitimate trade – and as a result, diamonds from conflict zones are making it into legitimate diamond retail markets. In addition, it was suggested that African diamond-producing countries should create an initiative that addresses their own problems and issues. Indeed, it is clear that a better governance mechanism is needed, which is capable of managing natural resources in Africa so that local communities benefit directly from diamond revenues.

Another panellist dismissed the view that KP is being used to punish African governments. He argued that the KP should be understood as an incentive rather than a tool to punish African countries. He suggested that the KP should stretch its mandate so that it monitors not only the mining and exportation of diamonds, but also all of Africa's other natural resources. He argued that such a mandate is achievable through creation of national and regional offices to support the KP. These offices would strive to harmonise policies between different countries on the continent. He also identified the porous nature of most African borders as a key problem compromising the effectiveness of the KP.

Panellists discussed the situation in Liberia and Sierra Leone since both countries have succeeded in encouraging local artisanal miners to work closely with the KP by establishing mining cooperatives. Diamond mining cooperatives in these two countries have increased transparency because the local people understand the benefits that come with it – including peace and stability. In addition, the diamond mining industry goes beyond the adoption of the KP's minimum requirements since the ultimate goal is to improve social livelihoods of communities through acquisition of diamond revenue at national level.

It was suggested that a diamond-mining sector of this nature is only achieved through harmonising laws, tax regimes and visions at regional level.

However, one panellist disagreed with the notion that Liberia was doing well with its artisanal mining, arguing that poor transparency in the artisanal diamond mining sector in Liberia was leading to diamonds leaving that country unrecorded. To counter the problem of porous borders in most parts of Africa, a panellist suggested that the KP should find ways to work with both KP member states and non-member states in an effort to trace the flow of diamonds.

It was argued that the diamond industry appears to be a 'silent partner' in the tripartite relationship and this lack of input is a real cause for concern since it makes it harder to improve the nature of the global diamond trade. One panellist suggested that it was probably difficult for diamond industry actors to find common ground on certain issues due to the size of the industry and the different interests driving different actors. It was suggested that one way of improving the diamond industry, especially in Africa, was to identify diamond industry actors who are willing to work with the KP and particularly civil society in improving local communities.

Discussions

An observation was made that the KP produces different results in different countries. In Lesotho, for example, it was argued that the diamond sector has been neglected yet the country is considered to be KP compliant.

The issue around communities was again raised where a participant argued that the KP seems to protect the interests of States and the diamond industry at the expense of local communities. He supported his view by stating that where there appears to be a formalised diamond industry, the KP interprets it as compliant but where locals are struggling to be recognised as legitimate artisanal miners, it is interpreted as illegal.

The KP was also criticised for failing to disseminate review reports to other member states and to the general public. Indeed, the KP's capacity to monitor and hold governments to account has to be called into question if it is unable to produce or publicise country review reports. At this point it was emphasised that most country review missions are undertaken

on a voluntary basis and as a result respective governments and KP monitors lack the political will to conduct a thorough review.

In relation to rebel groups, it was suggested that one way of dealing with them in diamond rich areas is by working with local communities and civil society groups. However, an effective relationship at that level can only develop when the diamond industry is transparent and accountable to its people. Local people need to trust their government for such a relationship to exist.

Finally, it was reiterated that the major challenge facing Africa's diamond industry is the large number of artisanal miners on the continent. Not only would developing a record of all these artisanal miners cost a substantial amount but also most African countries are unable to create mechanisms capable of tracking diamonds produced in artisanal mining areas. It was suggested that African countries should come up with ways to formalise artisanal mining, including a comprehensive database, so that artisanal miners are incorporated into the legal diamond system.

5 | Session Five:

WHAT NEW CERTIFICATION AND GOVERNANCE MECHANISMS HAVE HELPED TO ADVANCE MORE RESPONSIBLE EXTRACTION OF AFRICAN MINERALS?

Once again the KP's definition of conflict diamonds was seen as being inadequate since rebel movements are not the only things capable of destabilising legitimate governments – so it should be expanded to include all possible factors that have the potential to destabilise, or cause chaos within, a country. It was argued that the violation of economic, social and political rights destabilises societies and should be included within the KP's official definition of conflict diamonds. It was argued that in most parts of Africa rebel movements arose following human rights violations by legitimate governments, especially natural resource rich governments. Angry

and dissatisfied communities, which are not able to publicly and politically highlight their concerns over violations of their rights, see no attempt by the government to address them and do not benefit from their natural resources, will resort to violence.

It is clear that issues of development cannot be separated from human rights. The African Union Charter on Human and Peoples' Rights, which was passed by the then OAU in 1981, recognises the link between natural resources and human rights – so the issue is far from being a new phenomenon in Africa and the KP should not treat it as such. It was suggested that the

African states lack the institutional capacity to effectively police the extraction and trade of their diamonds

recognition of human rights by the KP would benefit the African continent in various ways, including encouraging higher natural resource revenues, greater transparency within the natural resource sector and better social livelihoods.

The panellists observed that Africa does not suffer from a shortage of governance mechanisms. Instead, the real problem rests with implementation. Mechanisms include the EITI, the OECD Voluntary Principles on Security and Human Rights and the US Dodd Frank Act but most of these suffer from one key weakness – they are voluntary and cannot legally compel member states to implement their requirements or non-member states to join. In relation to the KP, a panellist stated that the voluntary nature of the scheme also compromises its effectiveness. He cited Venezuela, which voluntarily suspended itself from the KP and today the destination of her diamonds remains unknown. The Venezuelan case demonstrates the limited options open to the KP when it comes to influencing both member states and non-member states. He stated that most African countries simply accede to governance mechanisms to ‘clear their conscience’ and appear as though they are trying to improve the governance of their resource sector or to seek legitimacy at international level and appease the donor community in the hope of receiving additional funding.

It was further argued that the role of businesses in the mining sector is worrying since they are driven purely

by profit – usually at the expense of sustainable development. It was explained how US companies involved in diamonds and gold initially rejected the Dodd Frank Act and came up with various arguments to try and convince the US Congress not to sign the act into law. Their actions make it abundantly clear that they are not genuinely interested in helping Africa to promote a more sustainable development agenda.

It was argued that the competition for Africa’s natural resources by global powers – such as China and Russia, which are not interested in issues of corruption, good governance and human rights – has not helped African countries to improve their governance. Indeed, these countries usually complicate the political, economic, social and environmental situations in resource rich African countries.

Although some panellists were critical of the effectiveness of governance mechanisms in Africa and around the world, there was a general recognition that these mechanisms did provide an important platform – and helped to promote debates around transparency and accountability at national, continental and global levels.

It was suggested that in order for governance mechanisms such as the KP to produce positive results, they had to identify exactly what the core problem was and how best to address it. The long-term solution for the KP should be to focus on building the capacities of local communities in Africa, so


that they develop the ability to make it more difficult for foreign industries to acquire extractive contracts that disadvantage them. African governments, especially ministers and members of parliament, should also be trained and technically assisted so that they do not sign disadvantageous extractive contracts. They need to know how to ensure that their people receive maximum benefit from their resources – rather than merely advancing their own personal interests.

A powerful point was made about the disparity between the KP’s view of Africa’s diamonds and the reality on the ground – since most African states lack the institutional capacity to effectively police the extraction and trade of their diamonds – and this could prevent the KP from achieving its objectives. In addition, the KP might support or denounce actions by certain participants but without adequate resources nothing will come to fruition.

The importance of political will was emphasised – since only with political will from all parties in the diamond industry will it become more transparent and accountable. Until African governments alter the way they operate and strive to work effectively with various actors within their countries, it will not be possible to build truly sustainable diamond industries. It was argued that diamond companies benefit the most from the diamond trade – and since they are motivated solely by profits, they are likely to absorb all types of diamonds, whether conflict free or not.

Another panellist stated that governance mechanisms such as the KP, which aim to improve revenue transparency, often seem to have a direct effect at the micro-economic level but not very much influence at the macro-economic level. However, these mechanisms also do not address the issue of revenue transparency in a clear way since there are no set benchmarks regarding how a state ought to channel its diamond revenues to the Treasury.

KEY RECOMMENDATIONS

- The KP will remain a relevant mechanism as long as it is reformed to align it with the changing realities in our societies;
 - The KP's tripartite alliance needs to be reinforced and consolidated;
 - The mandate of the KP needs to be expanded and this requires creating a stronger structure and enhancing its capacity;
 - A reformed definition of conflict diamond should be situated within a Pan-African context and should address questions of human rights, which must involve both governments and businesses;
 - The success of the KP depends on whether a state's institutions are working and whether its democracy is sound;
 - The harmonisation of regulations at regional level is fundamental to monitor the illegal export of diamonds;
 - The relationship between diamonds and poverty needs to be properly integrated within the KP;
 - The KP can learn from other international voluntary mechanisms; and
 - The entire diamond value chain should be transparent and conflict free.
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Participants

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The mission of the Southern Africa Resource Watch (SARW) is to ensure that extraction of natural resources in southern Africa contributes to sustainable development, which meets the needs of the present without compromising the ability of future generations to meet their needs.

SARW aims to monitor corporate and state conduct in the extraction and beneficiation of natural resources in the region; consolidate research and advocacy on natural resources extraction issues; shine a spotlight on the specific dynamics of natural resources in the region and building a distinctive understanding of the regional geo-political dynamics of resource economics; provide a platform of action, coordination and organization for researchers, policy makers and social justice activists to help oversee and strengthen corporate and state accountability in natural resources extraction; and, highlight the relationship between resource extraction activities and human rights and advocate for improved environmental and social responsibility practices.

SARW focuses on 10 southern Africa countries but is also working to build a strong research and advocacy network with research institutions, think tanks, universities, civil society organizations, lawyers and communities in southern Africa, the African continent and beyond that are interested in the extractive industries as it relates to revenue transparency, corporate social responsibility, human rights and poverty eradication.

www.sarwatch.org



The Open Society Initiative for Southern Africa (OSISA) is a growing African institution committed to deepening democracy, protecting human rights and enhancing good governance in southern Africa. OSISA's vision is to promote and sustain the ideals, values, institutions and practice of open society, with the aim of establishing a vibrant southern African society, in which in which people, free from material and other deprivation, understand their rights and responsibilities and participate democratically in all spheres of life.

www.osisa.org

