

# **Kimberley Process Certification Scheme**

Compliance and Limitations  
in Southern Africa

**Claude Kabemba**

Southern Africa  
Resource Watch

# SARW

Southern Africa Resource Watch

Resource Insight  
Issue 7 May 2008

Resource Insight is published by the Southern Africa Resource Watch  
Southern Africa Resource Watch (SARW) is a project of the Open Society Initiative for Southern Africa (OSISA).

ISSN: 1994-5604

Key title: Resource Insight

Southern Africa Resource Watch  
12th floor Braamfontein Centre  
23 Jorissen Street  
Braamfontein, 2017  
PO Box 678, Wits 2050  
Johannesburg

Tel: 27 (0) 11 403 3414/5/6

Fax: 27 (0) 11 403 2708

Email: [info@osisa.org](mailto:info@osisa.org)

[www.sarwatch.org](http://www.sarwatch.org)

Editorial Team: Tawanda Mutasah, Claude Kabemba, Alice Kwaramba and Stuart Marr

Design and Layout: Paul Wade

Production: DS Print Media

The opinions expressed in this Resource Insight do not necessarily reflect those of SARW / OSISA or its Board. Authors contribute to the Resource Insight in their personal capacities.

We appreciate feedback on this publication. Write to [sarw@osisa.org](mailto:sarw@osisa.org) or [info@osisa.org](mailto:info@osisa.org)

To order copies, contact [publications@osisa.org](mailto:publications@osisa.org)

Claude Kabemba is the director of Southern Africa Resource Watch (SARW).

---

## Introduction

“Diamonds are no longer a rebel’s best friends”

Benita Ferrero-Waldner, European Commissioner  
for External Relations and European Neighbourhood Policy

The paper discusses the effectiveness of the Kimberley Process Certification Scheme (KPCS) in Southern Africa. Southern Africa is the region of the world that gave birth to the KPCS. It is also a region where a great number of countries are producers of rough diamonds. Out of the 14 countries that are part of the Southern Africa Development Community (SADC), 8 are diamond producers: Angola, Botswana, DRC, Lesotho, Namibia, Tanzania, South Africa, and Zimbabwe. One member, Mauritius, is an important diamond-cutting centre. Botswana is the world largest producer of rough diamonds by value.

Southern Africa is also a region where diamonds have played a dual role: as both cure and curse. As a cure to the ills of poverty and underdevelopment, diamonds have contributed to the building of cities and societies in South Africa, Botswana and Namibia. Yet as a curse that brings with it inequality and tensions, diamonds have often promoted and maintained violent conflicts in the DRC and Angola. These two countries were affected by long and protracted wars maintained in part by the struggle by armed groups to access natural resources, – especially diamonds. The wars have since ended in both countries, although there are simmering tensions in parts of the DRC.

The proponents of the KPCS argue that it has played a key role in ending wars in the region. It is estimated that at the time of the launch of the KPCS, 4% of all traded diamonds came from conflict ravaged countries such as Angola, DRC and Sierra Leone. Since the KPCS was introduced in 2003, the level of illicit diamonds entering the international market is said to have been reduced to only 1%.<sup>1</sup> This paper suggests an important nuance to this assertion, arguing that the KPCS has been effective only in countries that have put in place systems of good governance to manage their natural resources and where political will exists. On the other hand, the paper maintains that – predictably - the process has failed dismally in undemocratic and failed states.

## **Kimberley Process – origins**

The Kimberley Process was initiated by African diamond-producing countries to develop an international certificate scheme for rough diamonds in order to prevent conflict diamonds from entering legitimate markets. Its main objective is to eliminate the illegal diamond trade. It was named after the town that experienced Africa's first diamond boom from 1867. In May 2000 in Kimberley, South Africa, interested governments, international diamond industries and a range of civil society stakeholders met to discuss how to track illegal diamonds and stop them from entering the international market. The United Nations, which at the time, was battling to end conflicts in a number of resource-rich African countries, quickly gave its support to the initiative and in November 2002, an agreement was reached on the KPCS.

The KPCS is an innovative system imposing extensive requirements on all producing, cutting and polishing, and consumer countries to control all imports and exports of rough diamonds and to put in place rigorous internal controls over production and trade. The overall objective is to ensure that conflict diamonds do not enter the legal diamond trade.<sup>2</sup> The initial target was to stop the sale and trade of diamonds that were used to bolster the coffers of rebel armies and rogue states, but more broadly it has come to be seen as an important tool that seeks to reduce smuggled diamonds as well.<sup>3</sup>

The initiative was officially launched in January 2003. Under the scheme, participants are required to export rough diamonds in tamper-resistant containers and provide certificates validating that their diamond exports are conflict-free. The Certificate is defined as a forgery-resistant document with a particular format that identifies a shipment of rough diamonds as being in compliance with the requirements of the Certification Scheme. Implementing countries are also required to submit annual reports outlining how the certification scheme is being implemented in their respective countries. Eli Izhakoff, Chairman and CEO of the World Diamond Council argues that “a credible and effective KPCS is essential to the continued viability of the legitimate diamond trade and to the positive image and reputation of the product.”

## **Southern Africa membership of the KPCS**

The KPCS has in total forty-six participants (seventy-two countries with the European Community counting as a single participant).<sup>4</sup> Eight of the fourteen SADC countries are members of the KPCS. These include Angola, the Democratic Republic of Congo, Botswana, Lesotho, Namibia, Tanzania, South Africa and Zimbabwe. One SADC member-Mauritius – is a cutting centre. Countries like Botswana, South Africa and Namibia have relied for decades on diamonds to benefit their populations.<sup>5</sup> In these countries revenues from diamonds have played a pivotal role in helping to address social questions as they relate to poverty, education, health, infrastructure and housing. Yet in countries such as Angola and the DRC, diamonds have simply helped to fuel conflict. However, with the formal ces-

sation of the wars in both countries, there have been high hopes that the revenue from diamonds will play an increasingly important role in establishing economic stability and addressing the pressing social problems that affect their citizenry.

## **KPCS: Implementation and effectiveness in Southern Africa**

The Kimberley Process has developed a number of tools that have been designed to facilitate compliance. These tools include regular statistical reporting, annual reports and other verification measures, such as review missions to participant countries and ad hoc missions where credible indications of significant non-compliance are detected. Over forty review visits have taken place since its inception in 2003 and numerous ad hoc monitoring missions have also been carried out. The last missions went to Zimbabwe in May of this year. African countries were among the first to be peer reviewed and thus far, all countries have been found to be in compliance with the KPCS.

To what extent has the KPCS been effective in curbing the illicit trade of diamonds in the different SADC countries?

### **Main argument**

The effectiveness of the Kimberley Process varies from country to country, yet as a rule, it is easier to implement in democratic and functional states. These states have the capacity to regulate, monitor and protect the extraction and commercialisation of diamonds. However, it is virtually impossible to implement in countries where state machinery is dysfunctional and resource spoliation is part of an elite culture.

## **KPCS and its limitations**

There are four interlinked of limitations with the KPCS.

*The first limitation is linked to the KPCS' implementation.* The KPCS is a voluntary mechanism, which can only be effective with the support and determination of the implementing country. An effective implementation of the Kimberley Process is only possible in countries where the state has minimum capacity to enforce regulation and where the political will exists. It is important to note however that the capacity of the state is not determined by peace and democracy alone. The implementation of the KPCS requires commitment from governments. The political will to enforce the law must be present in order for a government to devote sufficient energy and resources to the initiative. In Southern Africa, it is in countries that have each of these characteristics in which the Kimberley Process has been effective. These countries include Botswana, Namibia and South Africa.

In these countries systems of resource management, including the management of diamonds, are well structured and controlled. Governments in these countries can monitor both imports and exports of rough diamonds effectively and with the same efficiency and

rigour as their European counterparts. The KPCS finds fertile ground for progressive implementation in countries that uphold the rule of law and ensure good governance. Equally, it is far much easier to implement in countries where the KPCS's objectives are in line with those of the country's leaders.

However, it has been far more difficult to implement the KPCS in an undemocratic environment where the state is itself involved in primitive accumulation of resources. Again, DRC and Angola stand as stark examples of environments in which corruption and the absence of the rule of law have raised questions about the veracity of the claims that KPCS has been implemented in a credible manner. In both countries there are serious challenges. The government of the DRC is known for not being in control of its entire territory. Indeed, the state is so weak that it is not even in a position to monitor the mining contracts that it has signed with companies. The state has no capacity to monitor the extraction or export, not only of diamonds, but also of other much less sophisticated resources such as copper (copper, coltan and cobalt are difficult to hide). So weak are the systems that on a daily basis, flights land in remote parts of the DRC without government knowledge. Most importantly, the state is so weak that it cannot produce reliable statistics on which to base an accurate conclusion about the state of the diamond trade. If the KPCS works in curbing the illegal diamond trade in respect of the DRC, it is far more likely to do this as DRC diamonds enter another exporting country than when the precious stones exit the massive and largely uncontrolled territory.

In Angola, another phenomenon exists. There we find a strong state that is in control of its resources. The Angolan government can monitor its diamond trade if it wants to, yet has chosen to abdicate that responsibility because powerful networks of political figures control the diamond industry. The illicit diamond trade continues in Angola despite the fact the war has ended and in spite of the presence of the KPCS. It is difficult to find statistics on diamonds in Angola. This does not mean there is no legal diamond trade in Angola. Instead, the lack of statistics reflects the fact that the figures are likely to be so distorted that the government is not prepared to publish production and revenue figures. As a result of this, it is not clear how much revenue government receives from legal diamond sales.

*The second limitation is linked to its mandate.* The KPCS objective of ending the illicit diamond trade and reducing violent conflict only deals with the symptom – which is conflict – and not the cause. The cause of the illicit trade is bad governance in the management of diamond revenues. Conflict is simply an all-to-familiar consequence of poor management of resources and their revenues.

Just as conflicts will not be solved by limiting the illegal trade of diamonds, the illicit diamond trade will not disappear because wars have ended. Both conflict and the illicit diamond trade will be solved when countries like the DRC and Angola are able to put in place accountable and transparent resource management systems. Perhaps this is where the KPCS' biggest weaknesses reside: One cannot rely on externally driven mechanisms to deal with a problem which is

mainly caused by internal structural weaknesses. The recent case of Zimbabwe shows that when state structures are weak or have collapsed people fill in the gap. This sometimes includes moving into the extraction of resources that governments can no longer protect and control. Until recently Zimbabwe had an efficient and effective resource management system, but as the political crisis has unfolded across the country, this system has collapsed. The formal diamond trade is being replaced by an informal diamond trade. Despite the state's efforts to curb the informal diamond trade, it is continuing and in fact becoming increasingly sophisticated. As Tim Hughes attests, "recent reports of conflict and illicit diamonds seeping into South Africa from the DRC via Zimbabwe are timely reminder that despite, significant victories, the war on conflict diamonds has not yet been won."<sup>6</sup> In this situation – as in Angola and the DRC – the KPCS should play a supportive rather than primary role. The only way Zimbabwe will be able to stabilise the diamond industry again is through government ownership and control of a domestic resource management system that could be reinforced by the KPCS mechanism.

As in Angola and the DRC, the problem of the informal diamond trade in Zimbabwe is exacerbated by the existence of a network of powerful political figures in whose interests it is to maintain the illicit trade. It is impossible for the KPCS to produce positive results in countries where government officials are themselves preying on the mineral wealth of their countries. This situation challenges the design of a KPCS system that focuses on the diamond trade and not on governance in the different countries. Put simply, the KPCS can only be effective in an organised state where good governance is respected.

The main purpose of the illegal diamond trade is not necessarily to fuel conflict. The trade exists in this informal form in order to maximise profit by evading taxes that would otherwise be due to the state. Typically, conflicts are symptoms of deep-seated divisions in societies. One of these divisions is the unequal distribution of resources, especially natural resources. Today the problem of the illicit diamond trade in countries like the DRC and Angola is not fundamentally a problem of conflict. The larger challenge is that great deal of corruption accompanies the trade. This corruption deprives the state of revenues to deal with pressing social questions. In what has become a vicious cycle, the inability of the state to deal with these social questions in the long run threatens peace. The conflict over diamonds simply becomes a manifestation of the state's weaknesses in governance and democracy and its inability to cater to the needs of all but a few of their citizens.

To assume that only illicit diamonds fuel conflict is also simplistic. The possibility also exists for legal diamonds to fuel conflict. This happens when diamond revenues are not equitably shared among the population, and instead are used to strengthen and enrich a few who are close to the regime. The Marange diamond rush in Zimbabwe has benefited senior ZANU-PF officials and those close to them. . In Angola, there are rumours that in an attempt to buy the opposition, the government (MPLA) has given the opposition (UNITA) a concession to mine diamonds. This is a strange situation in African politics where a ruling party gives economic boost to an opposition party. Yet it is a clear manifestation of political co-

optation or a move to weaken the opposition's oversight role. The MPLA's co-optation of UNITA (former rebel/guerrilla movement) through the offer of an economic carrot to allow it to have some continued, if circumscribed, control over mineral wealth, is a sign that all is not well in Angola. Equally, a question could be posed about the extent to which UNITA would respect the KPCS requirements.

The high risk of violent conflict that has been attributed to resource abundance in Angola and the DRC is mediated by critical governance failures. Systematic corruption and economic mismanagement and patrimonial rule, often associated with resource abundance, may fuel political and economic grievances by undermining the state's legitimacy and by weakening its capacity to perform core functions. States' failures to put in place natural resource management systems strongly influence the opportunities for and feasibility of rebellion. This is why governance of natural resources needs to be made a central element of the KPCS if it is to remain relevant.

The KPCS must evolve beyond conflict prevention and include issues of governance and revenue transparency. For example, the process could constitute a database where it records the quantities of diamonds being traded and the possible revenues from these diamonds and follow through and see how a) the extent to which these revenues have been collected and b) how these revenues have been utilised. This could help track government's use of revenues from diamonds, especially in countries like Angola, the DRC and Lesotho, where resource spoliation is known to be significantly high. For example, despite the fact that "the official diamond revenues increased dramatically from US\$331 million in 1995 to US\$895 million? in 2005,"<sup>7</sup> the Congolese state cannot explain how the money was used.

Instead, Congo has witnessed the total collapse of the state company Miba (acronym for? Outline the company's role in the industry). Miba is unable to sustain its day-to-day operations and it has been forced to sign dubious mining contracts with third parties. In short, in order to maintain its relevance, the KPCS must address the predatory culture of state institutions. The parasitic nature of parastatals is the complex result of a colonial legacy of inefficiency and a post-independence leadership that promotes rent-seeking rather than socially beneficial economic activities.<sup>8</sup> The point here is that even when institutionally weak countries like Angola and the DRC find it in their interest to be transparent, individuals within institutions may prefer secrecy, to cover up incompetence, to protect opportunities for rent seeking, or simply to avoid the bother of public scrutiny.<sup>9</sup>

Perhaps we are not going to see armed conflicts as we witnessed it in 80s and 90s but a silent violence is emerging countries like DRC and Angola. Societal violence is on the increase and it is consuming communities through environmental degradation, water and air pollution and HIV and AIDS which are each causes and consequences of weak mining regulation, poor investment in communities and lack of sustained monitoring of mining in countries.

*The third limitation is linked to the structure of diamond production.* In Southern Africa, the KPCS has a serious challenge in countries where there are wide and entrenched artisanal mining operations. As much as 90 per cent of the production in countries like the DRC, Angola and Lesotho is produced by artisanal labourers using simple tools and equipment, and living in conditions of insecurity and poverty. The problem with artisanal mining is not that it is illegal, but rather that it is badly regulated and organised. The absence of any form of organised structure for these miners poses a multiple challenges to the KPCS. Artisanal miners are largely unregistered, and they operate in conditions that make them vulnerable to buyers. They tend to have few livelihood options, which means that they will often sell their stones to whoever comes first. In addition, the distribution channels of diamonds from this sector are not always clear, making it difficult to monitor diamond transactions. The weakness of the KPCS has been that it focuses more on the trade and export end of the industry and far less on the production of diamonds. The fact that governments in DRC and Angola are not capable of producing reliable statistics is in part a consequence of the high number of under-regulated artisanal miners who are involved in the industry. Because these governments do not control production at the mining stage, they are also not in a position to control trade. It is possible to assume that plenty of diamonds from the artisanal mining sector go unrecorded through an informal network. The tracking process can only be effective if it begins at the sites of mining activities, including those where artisanal mining is happening.

Another challenge to the KPCS relates to the capacity of even those institutions that have been mandated to maintain peace and regulate the diamond trade. Recent reports have suggested that United Nations personnel in the DRC have been involved in the illegal diamond trade, and in Zimbabwe the press has noted that “the United Nations Development Programme is being accused of aiding in the smuggling of diamonds out of Zimbabwe,”<sup>10</sup> in violation of the KPCS.

*The fourth limitation is linked to weak monitoring capabilities.* In both the DRC and Angola, there are signs of rampant smuggling, criminality and illegal exploitation of natural resources including diamonds. Trustworthy contacts in these countries confirm that significant quantities of diamonds continue to be illegally traded. Even if the DRC and Angola do submit their statistical records on time in line with the KPCS, it does not mean those statistics are accurate. The design of a system of control is one thing, its implementation is another. Ian Smillie convincingly – albeit harshly – described the KP during the KP plenary in Botswana in 2006 as “an increasingly bureaucratic and self-deluding operation that masks the reality of what is actually happening, and which will – if it does not collapse in on itself – do nothing to prevent the recurrence of conflict diamonds.”<sup>11</sup>

There are examples across Southern Africa that show that illegally obtained diamonds continue to enter the international market. Indeed, it is also possible for a country to comply with the KPCS whilst trading diamonds that are extracted illegally from another country.

This seems to be the case between Angola and the DRC. The occupation of the diamond rich zone of the DRC territory called Kahemba by the Angolan troops is a threat to peace and to the KPCS. It is possible that diamonds from the DRC could easily be validated by the KPCS as Angolan diamonds. This situation has raised political tension between the two countries. While it might not be a threat to peace in the short term, if left unattended it could lead to violent confrontations, over control of this diamond rich zone, when the pretexts for friendly relations between the two governments disappear.

This is similar to the Congo-Brazzaville example. Congo-Brazzaville was expelled from the KPCS when it was found that it was exporting diamonds at a rate approximately 100 times greater than its estimated production. The government was unable to account for the massive discrepancy between the volume of exports on the one hand and of domestic production and imports on the other. Given the explicit evidence that large quantities of diamonds have moved from Brazzaville with KPCS certificate into the legitimate diamond trading stream, the conditions cited by KP Chair Tim Martin as reasons for the decision to expel Congo-Brazzaville from the system were entirely justified.

The recent high rate of diamond discoveries in Lesotho has raised some suspicion regarding the true source of the diamonds, especially when contrasted with its historical discovery presented by surveys.<sup>12</sup> Before the discovery of the Lesotho Promise that was sold for US\$12.36 million to the South African Diamond Corporation, four other large diamonds were discovered weighing a total of 366 carats.<sup>13</sup> There is no evidence as yet to confirm this speculation; however, it may have been necessary for the KPCS to investigate this.<sup>14</sup> Diamonds are a fungible commodity, which means that they are a particularly attractive means of moving value across borders, in other words, money laundering.

While we have full confidence that it is in the interest of the big diamond companies to respect the rules of the game as established by the Kimberley Process. Yet, this might not be the case for many small companies with no mining history that are prepared to act against KPCS to maximise profit. Diamonds are among the easiest - and by far the most valuable — by weight to smuggle. Millions of dollars worth of diamonds can be carried almost anywhere in or on the body; they do not set off metal detectors. They can be sold quickly and they are virtually untraceable.”<sup>15</sup> A report by Global Policy Forum criticised the World Diamond Council for failing to coordinate effective industry monitoring. The report also accused governments of being uninterested in monitoring and regulating the diamond trade.<sup>16</sup> Partnership Africa Canada has attributed continued massive fraud and diamonds smuggling to this inability of the industry to monitor diamond smuggling.<sup>17</sup> Global Witness also criticised the KP’s implementation when it argued that the systems of controls put in place by governments to prevent the trade in conflict diamonds are poorly enforced and, as a result, some members of the diamond industry continue to trade in conflict diamonds.

## Conclusion

The conclusion of this paper finds its resonance in what Gareth Penny has stated that “the conflict diamonds issue has not left us and it will be complacent and dangerous for any one to believe that it has.”<sup>18</sup>

As the paper has demonstrated, the KPCS is being implemented correctly in countries that already have good governance systems in place and or have developed that capacity as a result of broader moves towards transparency and accountability. It is also clear that it is difficult to establish the impact of the KPCS in countries where internal rules and regulations for resource management and commercialisation are not transparent. It is not surprising, therefore, that even though the war has stopped in Angola and in most parts of the DRC, the illicit trade in diamonds continues in these two countries. The collapse of the Zimbabwean economy and of good governance has contributed to the collapse of the resource management system, which has exposed Zimbabwe to an increase in the illicit diamond trade. This suggests that the KPCS cannot be implemented in isolation from the need for effective and democratic states in Southern Africa.

Even if we were to be persuaded of the contribution of the KPCS to peace-building and the reduction of illicit diamonds trade, this contribution might be short-lived because revenues generated by the diamond industry in countries like Angola, DRC, Zimbabwe and Lesotho are, as yet, still not benefiting the majority of the people. The possibility for renewed conflict should not be underestimated in conditions of inequality and injustice. There are questions that will continue to challenge us: can voluntary initiatives like KP be robust enough to tackle the real meat of the problem? Where would the most effective intervention be taking place, and how can this be reinforced?

## Endnotes

- 1 Conflict diamonds have been reduced from approximately 4% to considerably less than 1% since the implementation of the Kimberley process in 2003.  
[http://www.diamondfacts.org/facts/fact\\_02.html](http://www.diamondfacts.org/facts/fact_02.html)
- 2 Kimberley Process: Liberia enters the diamonds trade, IP/07/612, Brussels, 4 May 2007
- 3 Diamond Development Initiative, Accra Conference, 2005, p. 3.
- 4 It includes all major diamond producing, trading and polishing centres, and counts on the active participation of civil society and industry groups.
- 5 An estimated 65% of the world's diamonds come from African countries.  
[http://www.diamondfacts.org/facts/fact\\_15.html](http://www.diamondfacts.org/facts/fact_15.html)
- 6 Tim Hughes, *Conflict Diamonds and the Kimberley Process: a briefing*, Johannesburg: South African Institute of International Affairs, January 2007.
- 7 Tim Hughes, *ibid.*
- 8 Report on Wilton Park Conference WP 725, Transforming war Economies: Challenges for peacemaking and Peace building, December 2003, New York, p. 17.
- 9 Stieglitz, Joseph E, Distinguished Lecture on Economics in Government: The Private Uses of Public Interests: Incentives and Institutions.' *Journal of Economic Perspectives* 12 (2): 3-32
- 10 <http://www.nysun.com/article/54766>
- 11 The Kimberley Controls: How Effective? Partnership Africa Canada.  
See <http://blooddiamond.pacweb.org/kimberlyprocess>
- 12 David Maleleka, *The Evolution of the Diamond Mining in Lesotho*, Resource Insight, Southern Africa Resource Watch, 2007
- 13 *Ibid.* see also Diamond Mining Activity in Lesotho, April 2007 at [www.diamond.blogs.com](http://www.diamond.blogs.com).
- 14 David Maleleka, The Evolution of the Diamond Industry In Lesotho, Resource Insight 4, Southern Africa Resource Watch, 2007,
- 15 Lloyd Sachikonye, *Diamonds in Zimbabwe: A situational analysis*. Resource Insight 1, Southern Africa Resource Watch , 2007, p. 12. Kimberley
- 16 Global Policy Forum, Diamonds in Conflict – Process.  
<http://www.globalpolicy.org/security/issues/diamond/kimberindex.htm>
- 17 Killing Kimberly? Conflict Diamonds and Paper Tigers (2006)  
<http://www.globalpolicy.org/security/issues/diamond/Kimberindex.htm>
- 18 Gareth Penny, Living Up To Diamonds. We All Have a Role to Play. Newsroom, May 10, 2007