Regulating Reality

Reconfiguring approaches to the regulation of trading artisanally mined diamonds

Nicholas Garrett, Estelle Levin and Harrison Mitchell

About Resource Consulting Services

Resource Consulting Services Limited provides research and advisory services in developing economies and high risk environments for a diverse range of clients. We conduct political economy analyses, investigations, including due diligence, and business sector research. We also provide solutions-oriented advice in a range of sectors, with expertise in mineral governance, ethical supply chains, minerals certification, conflict resources, securitised development, CSR, artisanal mining, and community development.

www.resourceglobal.co.uk

The founding directors are Nicholas Garrett, Estelle Levin and Harrison Mitchell.

Methodology

This report was produced after a desk-based research study supplemented by telephone interviews and email communications of ground research. Field research was conducted by Estelle Levin and Harrison Mitchell in Sierra Leone between 2004 and 2008. Field research was conducted by Nicholas Garrett in DRC in 2007.

Acknowledgements

The authors would like to thank all the interviewees who informed the writing of this report including: Annie Dunnebacke and Global Witness, Corinna Gilfillan, Simon Gilbert, Sofia Gionhas, Karen Hayes, Gavin Hilson, Jon Hobbs, Jan Ketelaar, Antonio Pedro, Susie Sanders, Ian Smillie and Partnership Africa Canada, Hilary Sunman, Ansumana Babar Turay, Mark Van Bockstael, Koen Vlassenroot, Steven Van Bockstael, Grant Wilson.

We would especially like to acknowledge and thank Shawn Blore and Partnership Africa Canada for providing details of the diamond trade in the DRC. This was based on research conducted for Partnership Africa Canada in June 2008.

We would also like to thank all the various people in Sierra Leone and DRC who offered their time to improve our understanding, but who were promised anonymity.

Disclaimer and Copyright

This report is prepared from sources and data which Resource Consulting Services (RCS) believes to be reliable, but RCS makes no representation as to its accuracy or completeness. The report is provided for informational purposes and is not to be construed as providing advice, endorsements, representations or warranties of any kind whatsoever. The authors accept no liability for any consequences whatsoever of pursuing any of the recommendations provided in this report, either singularly or altogether. Opinions and information provided are made as of the date of the report issue and are subject to change without notice.

Cover picture: Artisanal diamond traders in Kasai, © Karen Hayes

Contents

Acronyms

AMZ	Artisanal Mining Zone
CEEC	Centre d'Evaluation et d'Expertise de Certification
DACDF	Diamond Area Community Development Fund
DFID	Department for International Development (UK)
DRC	Democratic Republic of Congo
GDD	Gold and Diamond Department (Sierra Leone)
GoDRC	Government of DRC
GoSL	Government of Sierra Leone
IDMP	Integrated Diamond Management Programme
KPCS	Kimberley Process Certification Scheme
MIBA	Minière de Bakwanga
MM	Ministry of Mines (DRC)
MMO	Mines Monitoring Officer
MMR	Ministry of Mineral Resources (Sierra Leone)
OCC	Quality control office of the Ministry of Commerce (DRC)
PDA	Peace Diamond Alliance
SAESSCAM	Service d'Assistance et d'Encadrement du Small-scale Mining
USAID	United States Agency for International Development
WGAAP	Working Group on Alluvial and Artisanal Production

Executive Summary

Introduction

This study examines internal and external trade mechanisms in artisanally mined diamonds in the Democratic Republic of Congo (DRC) and Sierra Leone with the aim to determine optimal practices for regulating the trading chains and harnessing them for developmental ends. It contributes to the objectives of the Kimberly Process Certification Scheme's (KPCS) Working Group on Alluvial and Artisanal Diamonds (WGAAP).

In this report, the authors assert that there are important differences between a-legal and illegal trade, and informal and formal trade **in artisanally mined diamonds.** An understanding of the distinctions is necessary in order to map states of activity within the diamond producing and trading spheres. Misunderstanding, or in other words misclassification, of these categories can lead to the application of inappropriate regulation.

Illegal trade occurs when it is possible for agents to act legally but they choose not to. This can apply to both an illegal activity such as smuggling, and to trading in an illegal commodity, such as conflict diamonds.

A-legal trade in the artisanal diamond sector occurs where it is not possible for the agent to act legally because the state either does not apply and/or does not enforce the law correctly. In practice this occurs where the law makes requirements of the agent, (e.g. artisanal miners cards), but does not put the necessary structures in place for agents to comply (e.g. provide the cards).

Legal trade is licensed trade in a legal commodity compliant with all applicable laws.

Informal trade is trade unregulated by the institutions of society, in a legal and a social environment in which similar activities are regulated.[1] A-legal trade is always informal.

Formal trade is trade regulated by the institutions of society, taxed and monitored by government, and its proceeds are included in that government's GDP.

The DRC[2]

Many of the difficulties in controlling the DRC's diamond trade are related to artisanal mining, which is largely a-legal. In theory, the DRC has a relatively complete set of trade controls, which are supposed to allow it to check the chain of custody back through the value chain from each *comptoir* through the *négociants* to the individual who mined the diamonds in question.

In practise, the system produces some positive results from the purchase of diamonds at the *comptoir* level through to export, with some checks and controls in place[3]. However, given incomplete control over the traders in the middle of the chain, and the almost complete absence of information about diggers, there is little knowledge of the provenance of

[1] Alejandro Portes and William Haller (2005). "The Informal Economy"
[2] The authors would like to thank Shawn Blore and Partnership Africa Canada for their contribution to the field research which informed parts of this section
[3] Global Witness and Partnership Africa Canada (2004), *The Key to Kimberley*, Global Witness and Partnership Africa Canada, p. 11.

diamonds entering the formal trading chain at the *comptoir* level. Currently one cannot say with certainty that diamonds certified as KPCS compliant were mined in the DRC[4]. Although efforts are being made to improve the control system, a lack of institutional capacity, certain geographical attributes, and the sheer scale of the artisanal diamond mining sector make complete control over *négociants* and diggers impossible[5].

Sierra Leone

Sierra Leonean legislation has become swiftly modernised since the country emerged from the war in 2002. Yet, the capacity to perform effective oversight of diamond mining and trading remains weak. On the other hand, governance of exports has vastly improved, with legal export levels remaining relatively stable in the past three years. However, whilst there has been much attention to improving regulation and oversight of mining and exporting, governance of the trading tiers has been largely overlooked. Yet it is this tier which straddles the informal and formal spheres, enabling informally mined diamonds to be formally exported. Working to formalise and monitor this section of the diamond trade, as well as the artisanal mining sector, should be the next step in strengthening internal controls. Seeking to further understand the relationships within the diamond trade, as well as removing barriers to entry into the formal sector, should be the priority when devising next steps.

The comparison of these two case studies has identified specific successes and failures of the regulatory approaches to the artisanal diamond trade. These can be sub-categorised into law, governance, legal exports, fees and taxation, internal trade, external trade, and fiscal challenges.

Conclusion

This study examines internal and external trade mechanisms in artisanally mined diamonds in DRC and Sierra Leone with the aim of determining optimal practices for regulating the trading chains and harnessing them for developmental ends. In both countries diamonds are traded within and between two parallel systems: the formal and the informal spheres.

The informal artisanal diamond trade has proven to be recalcitrant, and many interventions and proposals for regulation and oversight have had only marginal success or have failed outright. Our findings suggest that the principal reason for failure of many interventions is because they have not taken into account the mechanics of an already functioning trading system, which has an unrivalled resilience. Often these interventions have been designed with unrealistic expectations of the regulatory capacities of the relevant institutional infrastructure, which is fundamental to effective application and enforcement. This is a misjudgement in two ways: firstly, the fact that existing informal institutions are internally functional (although often inequitable) has been disregarded. Secondly, the institutions that were supposed to impose the new regulatory regime over existing rule systems were not provided with sufficient resources to build the capacity to do so effectively.

The KPCS is the principal scheme that attempts to control production and trade in the diamond sector. For this KPCS to work effectively requires a significant increase in the monitoring capacities of implementing countries. In a country like the DRC with fledging democratic institutions, an estimated 100,000 dealers and up to 1.1 million artisanal diamond miners operating over a vast area, and 10,700 kilometres of porous borders, this is an impossible proposition.

---

[4] Blore, S. (2008), *Diamond Mining in DRC, unpublished document*, emailed to RCSL on August 15th 2008

[5] Ibid,

The geography and social processes which structure these trading chains will not be changed in the short-term, potentially not even in the longer-term. The sheer scale of the trade in both countries, but especially the DRC, leads us to suggest a fundamentally different starting point, which is to ***work with the existing trading structures as much as possible***. This approach would seek to both remove penalties for the informal sector, while simultaneously incentivising formalisation. Our recommendations below are written to this effect.

For internal diamond trade control systems, which complement the external regulatory regime of the KPCS, this means that controls should work in line with the existing trading system - seeking to formalise the status quo *first* and rationalise it *second*. Formalisation should be an incremental process, proceeding through progressive rationalisation of the sector in line with the increasing regulatory capacities of the state. This is a realistic path towards achieving the point of origin requirements of the KPCS, the regulation of the artisanal diamond trade, and harnessing this resilient and dynamic trade for developmental ends.

Recommendations

1. Change the approach to regulation and governance

- The law should facilitate formal production in line with reality rather the current approach in the DRC where the discrepancy between the theoretical model embedded in law and the trading chain as it is actually structured inhibits formal participation.

- Drawing on the conclusions of the 'Trading for Peace' project in the Great Lakes Region, and building on the World Bank's nascent project to improve fiscal and legislative harmonisation amongst Mano River Union countries, inter-governmental cooperation on regional trading issues should be prioritised and actively facilitated.

- International initiatives focusing on governance and the diamond trade should explore opportunities for coordination, to maximise synergies, reduce costs and bureaucracy, and increase legitimacy and reach[6]. For the artisanal diamond sector, some coordination between the KPCS and the EITI, for example, could mean that they lend their political support to (what is currently referred to as) the EITI++ process, which could oversee the publication of diamond revenues and how they are allocated and spent within government and local government (including traditional authorities). This process would empower citizens to hold authorities to account, and ensure revenues are contributing to development processes.[7]

- Governance is not just the state's responsibility. The roles and responsibilities of other stakeholders, such as civil society organisations and the private sector, should be identified.

[6] Levin (2008), *Certified Trading Chains in Mineral Production – Towards Technical Assistance*, BGR

[7] Experience from the World Bank's project in Madagascar has shown that formalisation of artisanal gold mining and trading accelerated once people saw the infrastructural developments their government put in place from licensing revenues

2. *Develop the law based on existing trading structures and institutional capacities*

- Understand the elements that structure current trading relations as a basis for developing a legal framework (i.e. the Mining Code) first legalising these structures and then rationalising them.

- Review the Mining Codes in both countries. This should be based upon sound research to understand how the trade works in actual fact. Consider:
  - Conferring legal rights and responsibilities on *all* operators in the trade. In Sierra Leone, for example, evaluate the utility of developing diamond peddler licences to provide an avenue for bringing this first step of the trading chain into the formal sector. Consider options for legalising the activities of subsistence artisanal diamond miners, such as overkickers and gado gangs, who are unable to get licences themselves or to work on licensed land[8]. Until these mining activities are legal, the first trade cannot be legal or formal.
  - Conducting further research into customary modes of organising production and trade, with a view to take inspiration from these for the process of formalisation.

- Minerals legislation and the processes for developing it should be designed with institutional capacities in mind.

3. *Move from control approaches to facilitation and incentivising formalisation*

- Move from an approach that prioritises controlling the trade to facilitating and improving existing trading structures by making them more rational and equitable. Make it easy and desirable and cheaper for operators to work legally.

- The trading system is directly impacted by the quality of infrastructure, which determines access to more competitive markets, instead of geographically induced monopolistic or oligopolistic markets. Governments and donors may wish to consider alternative ways to help miners get to markets, or markets get to miners. For example supervised local buying markets, decentralised diamond bourses, or a non-monopolistic mineral marketing board that guarantees a minimum price[9]. Such

---

[8] Sierra Leonean law only provides for artisanal mining organisations which have sufficient capital to mine an acre, using up to fifty diggers. This is beyond the reach of many miners, who choose to mine independently in the bush (gado gangs) or sifting through tailings (overkickers). To formalise the activities of these subsistence miners, the development of artisanal mining zones or artisanal diggers' cards could be the solution. The card could be groups of 5 or less using artisanal methods only (i.e. *no* mechanisation). This card could be free or for a nominal annual fee to encourage formalisation. The advantage would be that dealers could then legally declare from whom they bought the diamonds and where this was mined (village), without having to launder them. See also Levin, E. (2005) *From Poverty and War to Prosperity and Peace? Sustainable Livelihoods and Innovation in Governance of Artisanal Diamond Mining in Kono District, Sierra Leone.* University of British Columbia, Vancouver.

[9] Strategies would have to be developed to mitigate conflict with dealers and prevent malpractice. It would also be important for these initiatives to be coupled with infrastructure programs, which in turn should be carefully sequenced with security sector reform (SSR), as resultant better access also means easier access for armed groups. (Garrett, N. (2008), Walikale -

initiatives could increase competition between dealers, so helping miners get higher prices, and a bourse would make information-gathering and monitoring easier for the state.

- Third party valuation services should be re-employed at the point of export to ensure competitive valuation for the state.

- The (re-)establishment of a professional, well-funded investigation and enforcement unit, such as the retired PMMU in Sierra Leone, would do much to expose internationally relevant illegal activities. The unit should be exclusively focused on large scale illegal activity within the diamond sector such as conflict diamond trading and laundering rackets. Adequate political support is absolutely crucial and must be mustered and reified. This force should seek to work in cooperation with – and possibly be trained by – external international crime prevention agencies.

- In order to encourage dealers to use the banking system, governments should work with financial institutions to provide appropriate and reliable services for dealers. This would aid formalisation of transactions, and help harness the trade in artisanal diamonds for developmental ends. It would also provide a means for easier scrutiny of their activities.

Artisanal Cassiterite Mining and Trade – Implications for Poverty Reduction and Security, CASM, p. 71)

Introduction

Mineral wealth can serve as a basis for economic growth and development. However, historically, many African countries have not benefitted in line with their potential. In light of this it is of strategic importance to evaluate experiences of natural resources development in Africa and consider how mineral rich countries might best ensure that their natural resources contribute to their economic and social development. Harnessing the trade in artisanally produced diamonds should be an inherent part of the development strategies of diamond producing African nations, especially following the controversy the trade has caused in financing many of the wars that ravaged the continent at the end of the 1990s and early 2000s.

The Kimberley Process Certification Scheme ('KPCS') mandate is to certify shipments of rough diamonds as 'conflict-free' and prevent conflict diamonds from entering the legitimate trade[10]. Following its launch, experts estimate that conflict diamonds now represent a fraction of one percent of the international trade in diamonds, compared to estimates of up to 15% in the 1990s[11]. However, diamonds are allegedly smuggled into countries with lax internal management systems, allowing them to be laundered and exported legally[12]. Critics argue that the KPCS has been effective only in countries that have systems of good governance for managing their natural resources and where political will exists[13].

This study examines internal and external trade mechanisms in artisanally mined diamonds in Central and West Africa with the aim to determine optimal practices for regulating the trading chains and harnessing them for developmental ends. It therefore contributes to the objectives of the KPCS Working Group on Alluvial and Artisanal Diamonds (WGAAP). Drawing on the cases of the Democratic Republic of the Congo (DRC) and Sierra Leone, the study reviews what governments and international stakeholders are doing domestically and regionally to regulate the trade. The sections reflect on approaches that have worked, and elaborate on those that have not. The case studies form the basis for a brief comparative section to evaluate the successes and failures of different fiscal, legal and regulatory approaches more broadly, incorporating regional initiatives. The report concludes with recommendations for the efficient and effective regulation of the trading chains.

In this report, the authors assert that there are important differences between a-legal and illegal trade, and informal and formal trade **in artisanally mined diamonds.** An understanding of the distinctions is necessary in order to map states of activity within the diamond producing and trading spheres. Misunderstanding, or in other words misclassification, of these categories can lead to the application of inappropriate regulation.

Illegal trade occurs when it is possible for agents to act legally but they choose not to. This

[10] http://www.kimberleyprocess.com/background/index_en.html, accessed 14/8/2008
[11] http://www.kimberleyprocess.com/background/index_en.html, accessed 14/8/2008
[12] Interviews with diamond dealers, 2004-2007.
[13] Kabemba, C. (2008), *Kimberley Process Certification Scheme – Compliance and Limitations in Southern Africa*, Southern African Resource Watch, p. 3. As a rule, it is only possible to implement effective systems of control if there are well-functioning institutions, which have a higher capacity to regulate and monitor diamond production and trade. However, it is virtually impossible to implement in countries where state machinery is dysfunctional and predatory, and where resource spoliation is part of an elite culture.

can apply to both an illegal activity such as smuggling, and to trading in an illegal commodity, such as conflict diamonds.

A-legal trade in the artisanal diamond sector occurs where it is not possible for the agent to act legally because the state either does not apply and/or does not enforce the law correctly. In practice this occurs where the law makes requirements of the agent, (e.g. artisanal miners cards), but does not put the necessary structures in place for agents to comply (e.g. provide the cards).

Legal trade is licensed trade in a legal commodity compliant with all applicable laws.

Informal trade is trade unregulated by the institutions of society, in a legal and a social environment in which similar activities are regulated.[14] A-legal trade is always informal.

Formal trade is trade regulated by the institutions of society, taxed and monitored by government, and its proceeds are included in that government's GDP.

[14] Alejandro Portes and William Haller (2005). "The Informal Economy"

The Democratic Republic of the Congo[15]

Background

The DRC is one of the world's biggest producers of diamonds by volume, with the most significant deposits located in Kasai Oriental and Kasai Occidental, where alluvial deposits, as well as kimberlite pipes are mined. Only a small percentage of diamonds (5%) are of gem quality[16]. Further deposits can be found in Bandundu, Bas Congo, Equateur, Orientale and Maniema[17]. In terms of carats, the DRC has the largest known diamond resources in the world – approximately 150 million carats, or 25% of known worldwide reserves[18].

The major industrial mining company, the parastatal MIBA, has operational difficulties. Ministry of Mines statistics show MIBA's 2007 production fell to 972,882 carats, under 4% of the DRC total[19]. More than 60 mining enterprises are active in Kasai Oriental, of which five are in partnership agreements with MIBA[20]. There are a small number of semi-industrial operations, predominantly in Tshikapa, in Kasai Occidental[21].

Many of the difficulties in controlling the industry are related to artisanal mining, which is largely a-legal. The World Bank estimates artisanal diamond production accounts for 75% of DRC's total production (carats), and 62.5% of production (value)[22]. Expert estimates suggest the real total production figure could be closer to 95%[23]. The true number of artisanal diamond miners is unknown, however, it is estimated that up to 1.1 million are active in the sector[24]. Inclusive of five dependents per miner, this means that up to 5.5 million people could be dependent on artisanal diamond mining in their livelihood[25].

The developmental challenge is for the artisanal diamond sector to achieve a substantial socio-economic contribution. Currently, it does not contribute much to macro-economic stability, particularly with respect to fiscal revenues and local development. Informal trading activities are said to occur and jeopardize sectoral reform[26]. This point is explored in more detail below.

Regulating the Mining Sector

The DRC's mining sector is regulated by the Mining Code (Law No. 007/2002 of July 11 2002 relating to the Mining Code) and the accompanying mining regulations (Decree No.

---

15 Shawn Blore and Partnership Africa Canada provided detailed descriptions of production and trade and regulatory structures, following fieldwork research conducted by them in DRC in June 2008.

16 The World Bank (2008), Growth with Governance, The World Bank, p. 15

17 Ibid

18 Ibid

19 Blore, S. (2008), Diamond Mining in DRC, unpublished document, emailed to RCS on August 15th 2008,

20 The World Bank (2008), Growth with Governance, The World Bank, p. 15

21 Ibid.

22 Ibid.

23 Blore, S. (2008), Diamond Mining in DRC, unpublished document, emailed to RCS on August 15th 2008,

24 D'Souza, K. (2007), Artisanal Mining in the DRC, p. 4

25 Garrett, N. (2008), Observations from the DRC, *African Analyst,* Vol. 3, Issue 1, p. 81

26 The Policy Advisory Group (PAG), *Strategy Proposal to Improve the Performance of the Diamond Sector in the Democratic Republic of the Congo (DRC) – Executive Summary,* p. 1

038/2003 of 26 March 2003 relating to the Mining Regulations)[27]. On the production level, and depending on the province, the artisanal sector often contains a complex mix of martial, statutory and customary laws[28]. The Kimberley Process Certification Scheme ('KPCS') is implemented according to Ministerial Decree Number 193, dated 31st May 2003, 'In Respect of the Implementation of Kimberley Process in DRC'[29].

The Mining Code makes provisions for artisanal mining inside demarcated 'artisanal mining zones'. However, since artisanal mining zones have not been put in place countrywide, it is not currently possible for miners to operate legally. This means that artisanal mining operations are a-legal and it is not possible to tax them[30]. Furthermore, the Ministère des Mines (MM) and other state authorities suffer from capacity constraints in their attempts to enforce trade regulations in the field[31], which means the government has effectively ceased most field-based efforts to regulate the artisanal sector as a whole[32].

The non-enforcement of regulations has led to a situation where the sector finds itself in a so-called a-legal situation: some operations are technically illegal, but not actively prosecuted[33]. Currently, the Mining Code is thus merely a parallel rule system, largely ignored by the artisanal mining sector[34].

In the government's absence, traditional authorities have moved to fill the gap. It is often village chiefs, a management committee made up of chiefs, or local landowners, who designate dig sites or, in the case of a new and valuable find, allocate plots within the new digging area[35].

From Mine to Market

The internal trading chain in artisanally mined diamonds is opaque, as trade is largely conducted informally, without paperwork or record keeping, making it largely untraceable. MM officials estimate that there are some 100,000 active diamond traders[36]. Diamond buyers, at all levels, are by law required to have a *carte de négociant* (buyer's card), which costs US$500 per year and is issued by the provincial government[37]. Buyers' cards are open

---

[27] Global Witness and Partnership Africa Canada (2004), *The Key to Kimberley*, Global Witness and Partnership Africa Canada, p. 8
[28] Garrett, N. (2008), *Walikale – Artisanal Cassiterite Mining and Trade in North Kivu – Implications for Poverty Reduction and Security*, CASM, p. 5
[29] Global Witness and Partnership Africa Canada (2004), *The Key to Kimberley*, Global Witness and Partnership Africa Canada, p. 8
[30] Garrett, N. (2008), Walikale, Artisanal Cassiterite Production and Trade in North Kivu – Implications for Poverty Reduction and Security, CASM, p. 12
[31] The MM office in Mbuji-Maji, for example, barely has enough people to staff the 30 or so comptoirs offices in the city (Blore, S. (2008), Diamond Mining in DRC, unpublished document, emailed to RCSL on August 15th 2008, 15/8/2008)
[32] Blore, S. (2008), Diamond Mining in DRC, unpublished document, emailed to RCSL on August 15th 2008,
[33] Compare Sunman and Bates, (2008) *Trading for Peace*, DFID
[34] Garrett, N. (2008), *Walikale, Artisanal Cassiterite Production and Trade in North Kivu – Implications for Poverty Reduction and Security*, CASM, p. 27
[35] Blore, S. (2008), *Diamond Mining in DRC,* unpublished document, emailed to RCSL on August 15th 2008.
[36] Interview with MM KP coordinator Mabolia Yenga, Kinshasa, May 2008 (in Blore, S. (2008), *Diamond Mining in DRC,*).
[37] DRC Code Minier (2003)

only to Congolese citizens[38]. Law supposes buyers to furnish regular reports on their activities, and to sell only to *comptoirs* or other buyers licensed by the state[39]. In practise, only the higher-level buyers, the ones with a fixed place of business in a larger centre such as Mbuji-Mayi, tend to have a buyer's card[40].

At or near mine sites, a cadre of unlicensed buyers acquires diamonds directly from the *creuseurs (*miners)[41]. These pit-side buyers, known as *traffiquants* or *négociants* work with simple scales and have limited capital. They sell their diamonds either to a *comptoir*, or more likely to a larger more established buyer with a shop in a regional centre or capital such as Mbuji-Mayi or Tshikapa. They may also sell their stock at one of the busy outdoor diamond bazaars (also called *comptoirs*) in Mbuji-Mayi. In most cases records are not kept[42]. The outdoor markets and the smaller, Congolese-owned buying houses are generally left unsupervised[43]. Most traders do not even use a ledger book, which means most transactions go unrecorded[44].

At higher levels, traders who can afford to keep a shop in town are typically licensed, particularly those who transport diamonds from their home region to Kinshasa. A sizeable number of traders say they do this because the prices in Kinshasa are seemingly better than those at a *comptoir* in Tshikapa or Mbuji-Maji. The licence confers the right to transport diamonds within the country, and as the government does control the airports and passengers can be searched by police or customs, traders feel the cost of the licence is worth it as it secures tenure of their goods[45].

SAESSCAM

SAESSCAM was established by presidential decree in March 2003, following a pilot project set up in 1999 in Tshikapa[46]. SAESSCAM is the Congolese state's body for providing technical and extension services to the artisanal mining sector. One of its main objectives is to track the flow of diamonds, as well as other minerals, from the mine to the point of sale - and the collection of all payable government taxes. The intention is to ensure that artisanal production is funnelled into the formal sector, cutting down on smuggling and illegal sales[47].

As SAESSCAM is the only state service provider supposed to operate in artisanal mines, it could become an important partnering institution for local artisanal mining reform programs[48]. SAESSCAM's initial projects with cooperatives for semi-industrial producers in

38 Ibid.
39 Ibid.
40 Blore, S. (2008), *Diamond Mining in DRC,* unpublished document, August 15th 2008
41 Often, these miners are required to pay a tax on their turnover to the local chief or pit owner. The percentage paid to the traditional authorities varies from site to site and province to province, from a low of 10% to as high as 50% of gross production.
42 Field research, Kasai Orientale, Kasai Occidentale, June 2008 (Blore, S. (2008), *Diamond Mining in DRC*, unpublished document, August 15th 2008
43 Field research, Mbuji-Mayi, Tshikapa, Kamoko, June 2008 (Blore, S. (2008), *Diamond Mining in DRC*, unpublished document, August 15th 2008)
44 Blore, S. (2008), *Diamond Mining in DRC,* unpublished document, August 15th 2008
45 Though they still have to pay bribes to airport customs officers, the cost is much below what they would have to pay with no licence.
46 GW and PAC (2004), *The Key to Kimberley*, Global Witness and Partnership Africa Canada, p. 11
47 Ibid.
48 Garrett, N. (2008), *Walikale – Artisanal Cassiterite Mining and Trade in North Kivu – Implications for Poverty Reduction and Security*, CASM, p. 21

the Tshikapa area seemed promising, and great hopes were held out as the entity began extending its programs nationwide[49]. However, in the years since, SAESSCAM seems to have experienced difficulties, which its representatives explain with a lack of funding[50].

Currently there is a clear conflict of interest in SAESSCAM's mandate between AM tax collection and service provision, and it is not clear whether SAESSCAM always operates in the best interests of the miners[51]. SAESSCAM's most recent organising effort in Kasai-Oriental has moved to more of a cost recovery model, with the result that, from a digger's perspective, they offer much less and demand much more. In return for organising the diggers and bringing them into the formal sector, SAESSCAM seemingly expected to receive a 15% share of their production. Most of this money would be funnelled to Kinshasa and used to fund SAESSCAM itself, rather than benefitting the diggers. Some might return in the form of development programs[52].

With the help of the NGO PACT, SAESSCAM has developed an ambitious strategy for artisanal mining regulation, strengthening and transition. However with its current capacity constraints and chronic underfunding, it remains to be evaluated whether this program stands any chance to succeed53. The institution is overwhelmed by the sheer magnitude of its elaborate mandate. SAESSCAM therefore requires expert support and managerial training to sensitise its staff to the realities, constraints and challenges of AM. Capacity building and payment of its staff may also have a positive effect on the widespread accusations of corruption, levelled against the institution by artisanal mining communities[54].

As one advances to higher levels in the pyramid, the odds that a trader is licensed increase, though there are reports of Congolese traders with relatively large amounts of capital buying significant quantities of diamonds that do not bother with the licence[55]. These reports suggest that the difference in operating procedure between licensed and unlicensed does not appear to be significant. Neither demand identification from those from whom they buy goods and few, licensed or not, keep records[56]. The MM infrequently demands records from dealers, and is said to be unable to track the trading path of diamonds[57]. Generally speaking, the lack of any kind of consistent, methodical record keeping would make it impossible to determine, or even accurately estimate, what proportion passes through unlicensed versus licensed dealers.

It is unclear whether the distinction between licensed and unlicensed dealers is meaningful. The poorly capitalised low-level buyers may be *de jure* illegal, but engage in nothing resembling illegal activity. Closer to the top of the pyramid, a fully licensed trader with significant amounts of capital, access to higher quality diamonds and personal connections

---

[49] *Diamond Industry Annual Review, DRC 2005, 2007,* Partnership Africa Canada; KP Review Visit report, 2004.
[50] Interview with Baudouin Iheta, General Coordinator of SAESSCAM, Kinshasa, May 2008
[51] Blore, S. (2008), *Diamond Mining in DRC*, unpublished document, August 15th 2008
[52] Interview with Jean Claude Kabimba of SAESSCAM, Mbuji-Mayi office, June 2008 (Blore, S. (2008), *Diamond Mining in DRC,* unpublished document, August 15th 2008)
[53] Garrett, N. (2008), *Walikale – Artisanal Cassiterite Mining and Trade in North Kivu – Implications for Poverty Reduction and Security*, CASM, p. 21
[54] Ibid.
[55] Field Research, Kamako, Tshikapa, June 2008 (Blore, S. (2008), *Diamond Mining in DRC,* unpublished document, August 15th 2008)
[56] Ibid.
[57] Interview with MM KP coordinator Mabolia Yenga, Kinshasa, May 2008.(Blore, S. (2008), *Diamond Mining in DRC,* unpublished document, August 15th 2008)

in Kinshasa and Antwerp would be completely legal on paper, but could be the type of person with the incentive, connections and capacity to export diamonds out of the country through non-legal channels[58]. In other words, the entity can be legal, but the activity it undertakes may not be. The regulatory capacity constraints of the Congolese authorities make this a distinct possibility.

The right to export comes with a *comptoir*'s licence. All but one of the *comptoir* owners are foreigners coming from Israel and Lebanon. The latter are often Belgian nationals[59]. There are eleven licensed comptoirs active in DRC in 2007, according to MM figures.

Table 1: Comptoirs and Export Volumes/Values in 2007

Comptoir	**Volume (ct)**	**Value (US$)**	**$$/ct**
Abner Company	396,798.55	11,579,853	29.18
Adex	896,192.22	46,290,309	51.65
Ashley	31,415.47	566,733	18.04
Congo Diam	4,493,506.73	173,370,348	38.58
Congo Mines Trading	6.35	5,373	846.14
Diamond Stone Dev.	1,126.20	226,506	201.12
Gama	1,175,907.68	36,560,277	31.09
Kasai WaBalengela	5,159,039.48	72,733,162	14.10
Margaux	410,352.98	54,802,437	133.55
Millenium	7,250,879.59	103,814,446	14.32
Primogem	7,407,634.91	95,397,461	12.88

Source: Ministry of Mines

A *comptoir* (export) licence costs US$250,000 per year (US$200,000 in fees plus a US$50,000 deposit), and comes with the right to operate 10 purchasing locations at a licence fee of US$3,000 per location[60]. An unlimited number of additional outlets can be obtained at a cost of US$15,000 each[61]. The *comptoir* licence comes with performance criteria (US$31.5 million for 2007, adjusted upwards to US$48 million for 2008), and includes penalties (outlined in the Mining Code) for non-performance[62].

To circumvent this requirement, and to defray the steep licensing costs, many *comptoir* licences are shared among a variety of foreign diamond buyers[63]. Essentially, a foreign buyer pays for his own purchasing outlet, which he then operates independently of and in competition with any other outlet operating under that *comptoir* licence[64]. In many cases, each outlet buyer exports his diamonds to his own overseas customers – though under the name of the *comptoir*[65]. This suggests that the licensing fee is too high and though it makes for easier licence processing, oversight is harder. From personal observation, the individual outlet buyers appear to be almost entirely foreigners – Israelis, Belgians, Lebanese

---

[58] Blore, S. (2008), *Diamond Mining in DRC,* unpublished document, August 15th 2008
[59] Interview with MM KP coordinator Mabolia Yenga, Kinshasa, May 2008 (Blore, S. (2008), *Diamond Mining in DRC*, unpublished document, August 15th 2008); see also *The Key to Kimberley: Internal Diamond Controls, Seven Case Studies*, 2004. Global Witness and Partnership Africa Canada.
[60] from Blore, S. (2008), *Diamond Mining in DRC*, unpublished document, August 15th 2008.
[61] Ibid
[62] Ibid
[63] Ibid
[64] Ibid
[65] Interview with Congo Diam buyers in Tshikapa, Mbuji-Mayi. (from Ibid)

predominating. Some are owner operators[66]. Others work on salary or commission or a combination of the two. Foreign c*omptoir* licensees restrict themselves nearly exclusively to buying diamonds. They do not generally get involved as supporters of artisanal or small-scale mining, leaving that to Congolese players[67].

From the level of the *comptoir* upwards, law and practice fairly closely coincide. In accordance with recommendations made by the KPCS WGAAP in 2005, an agent of both the MM and the CEEC are generally stationed in each *comptoir* during regular business hours[68]. Each time a diamond purchase is made in a *comptoir*, the details of the purchase are recorded – with 5 copies – on an official sales receipt (*bon d'achat*). One copy goes to the seller, one copy stays with the *comptoir*, and the other three copies travel with the diamonds[69]. As well, two officials, one from the MM, the other from the CEEC, record each transaction in their own separate ledgers. The CEEC ledgers are kept in the regional office where the *comptoir* is located, and aggregated each month to provide a running tally of *comptoir* purchases[70].

When a *comptoir* buyer wishes to export, he takes his diamonds to the local CEEC office, located in Kinshasa or in one of six regional centres. The diamonds are weighed, and their weight and characteristics crosschecked against the sales receipts. If all is in order, the parcel is sealed, the paperwork attached, the parcel is shipped to the CEEC office in Kinshasa. Comptoirs then ship the parcel themselves[71].
At the CEEC office in Kinshasa, the seals are checked, and the package is opened and re-weighed, and re-checked against the sales receipts. Officials from the CEEC perform this procedure, while agents of the Ministry of Mines and the OCC – the quality control office of the Ministry of Commerce – act as witnesses. Any discrepancy at this point is investigated[72].

Two CEEC valuators then value the diamonds independently. In cases of serious discrepancy, a third more senior CEEC valuator may provide a deciding valuation. The valuation forms the basis of the 3.75% export tax[73].

The valuation completed, the diamonds are packed and sealed into a tamper-proof bag, and then locked in a CEEC safe. When the exporter returns with proof that the taxes have been paid, a Kimberley Certificate is issued, signed by the Minister of Mines and the head of the CEEC. Certificates are valid for 15 days, and are affixed to the sealed parcel in their own tamper proof plastic case[74]. It is fair to say that in practical terms, the KP tracking of diamonds extends only as far as the comptoirs.

---

66 Blore, S. (2008), *Diamond Mining in DRC*, unpublished document, August 15th 2008.
67 Interviews with comptoir buyers in Tshikapa, Mbuji-Mayi, May-June 2008. (from Ibid)
68 KPCS (2005). *Improving Internal Controls Over Alluvial Diamond Production: Declaration Adopted by the Moscow Plenary Meeting of the Kimberley Process,* 15-17 November 2005, at www.kimberleyprocess.com. The regulation of diamond exports is tied up with the DRC's Kimberley Process. The legal basis of the Kimberley Process Certification Scheme in DRC is contained in Ministerial Decree No. 193, 31 May 2003 ('In Respect of the Implementation of Kimberley Process in DRC'). The CEEC is the implementing authority for the KP in DRC.
69 Interview with CEEC Administrator Cezar Khonde Mazombe, Kinshasa, May 2008, (from Blore, S. (2008), *Diamond Mining in DRC,* unpublished document, August 15th 2008)
70 Field research, Mbuji-Mayi, June 2008, (from Blore, S. (2008), *Diamond Mining in DRC,* unpublished document, August 15th 2008)
71 Interview with CEEC Administrator Cezar Khonde Mazombe, Kinshasa, May 2008, (from Blore, S. (2008), *Diamond Mining in DRC*, unpublished document, August 15th 2008)
72 Ibid.
73 Ibid.
74 Ibid.

Mechanisms of Export Fraud

A large proportion of goods entering and leaving the DRC pass borders informally, even through recognised border posts. Not limited to diamonds, this can take various forms:

- *Incorrect use of trade nomenclature to calculate taxes is a means of extracting more revenue than is actually due*
- *Goods are taxed in order to reduce the tax burden*
- *Importers/exporters pay custom officials and other state agents to register a lower quantity/value or even to let them through without registration*
- *The state bodies concerned decide as bodies not to apply the official tax/customs regime either in full or in part to all or some traders, against payment*
- *Traders obtain tax exemptions for certain goods and use the to hide other goods amongst a consignment of exempt goods*
- *Traders in possession of tax exemptions trade on behalf of other people who do not have exemptions*
- *Goods are traded by people with good military links or members of the military and security services order other services to go away while their vehicles cross*
- *Goods cross at non-official border posts – in the open countryside, on side roads or by boat across lakes.*

Source: Pole Institute, 2007

Trade Controls

Both internal and external trade controls are weak. The internal trade in particular is not only weakly policed, but also stifled by those who are supposed to police it. The World Bank finds that once the miner sells his product to the *négociant,* broker, trading house, or *comptoir,* these intermediaries are also subject to numerous payments demanded by various layers of officialdom to transport the product and authorize it for export to the final market[75]. It is possible to roughly estimate the value of this extortion by taking the diamond sector as an example. At a typical dredge operation in the Kasai, approximately 50 sacks of diamond-bearing gravel are produced per day. While the diamond content (in terms of carats and value) varies, each sack is possibly worth US$30, depending on whether it is of industrial or gem quality. Of the 50 total sacks of gravel produced per day, as many as 30 sacks, or 60 percent, will be given over to various officials and other individuals[76].

Quantifying Fraudulent Exports[77]

Government officials believe that a significant amount of diamonds leaves the country illegally, though one must speculate as to what that volume might be[78]. Diamonds only begin being tracked when they enter the comptoir level, one step shy of export. There is thus no way of reconciling production with legal exports, and no way of telling how many diamonds may be going astray.

Partnership Africa Canada's 2005 Diamond Industry Annual Review for the DRC noted that

[75] The World Bank (2008), *Growth with Governance*, The World Bank. For supplementary information on extra-legal payments on minerals trades in DRC, see INICA (2007). *Natural Resources and Trade Flows in the Great Lakes Region: Phase 1 Report*. Kigali: UNECA.
[76] Ibid., p. 59
[77] Adapted from: Blore, S. (2008), *Diamond Mining in DRC,* unpublished document, August 15th 2008
[78] Interview with MM KP coordinator Mabolia Yenga, Kinshasa, May 2008. Also interview with CEEC officials, Kinshasa, May 2008.

an estimated US$200 to US$300 million worth of diamonds were still being smuggled out of DRC, even after the KPCS's expulsion in mid-2004 of Congo-Brazzaville, at the time a noted intermediary for smuggled DRC goods. Unfortunately, no source was provided for this claim, nor did the report provide the methodology that led to the estimate.

Global Witness, in a study of the UN Comtrade database[79], found US$4.7 million in polished diamonds travelling from three non-KP nations (Congo-Brazzaville, Uganda, Zambia) to KP trading centres. The report suggested these diamonds were probably sourced from DRC, and then misclassified as polished and re-exported.

In an interview in Kinshasa in May, 2008, the DRC Vice-Minister of Mines Victor Kasongo expressed the view that some DRC diamonds were still exiting from the Kisangani area for destinations in Rwanda and Uganda, and that some Zimbabwean diamonds were still entering the country. The vice-minister could not put numbers on either incoming or outgoing diamond flows.

In another interview in Kinshasa in May, 2008, a senior official with the DRC Ministry of Mines said that the volume of smuggled goods was 'at least' 10% of production. Taking 2007 figures, that would put smuggling at 2.6 million carats, or US$56 million. The figure was only an estimate, the official cautioned, and it was not for attribution.

The DRC's main policy for minimizing smuggling out of diamonds revolves around removing financial incentives for smuggling. To that end, export taxes are kept quite low, at 3.75% of assessed value. In addition, the CEEC endeavours to provide prompt processing of diamond shipments, and to keep the administrative overheads of complying with KP and export procedures to within reasonable limits. In terms of enforcement, the DRC has the normal range of customs inspections on passengers departing by air or via ferry to Brazzaville. In addition, passengers travelling on internal flights are also subject to inspection[80].

The DRC does not have a special police unit dedicated to investigating diamond smuggling or diamond related crime. DRC diamond sector experts have also expressed concerns about the CEEC valuing system. From 2003 until 2005 counter-valuation used to add a further control prior to export. The independent valuator, WWWSIDC, worked in the CEEC office, providing a second opinion on the value of DRC's diamond exports. During these years, the average value of DRC exports increased from US$23.71/ct in 2003 to US$27.21/ct in 2005. This was due in part to higher levels of valuation – which addressed years of apparent under-valuation[81]. Following the halting of WWWSIDC's work, the export value fell to US$22.5/ct[82]. The result has thus been a loss of independent oversight as well as a loss of potentially millions of dollars in foreign exchange earnings, as demonstrated by a stagnant average price per carat during what is a strong market for rough diamonds[83].

---

[79] Global Witness (2007). *Loopholes in the Kimberley Process: Diamond Trade Statistics Review*, October, 2007. Global Witness.

[80] Blore, S. (2008), *Diamond Mining in DRC,* unpublished document, August 15th 2008

[81] Global Witness and Partnership Africa Canada (2004), *The Key to Kimberley*, Global Witness and Partnership Africa Canada, p. 10

[82] Figures from MM stats. Information on valuator from Interview with CEEC Administrator Cezar Khonde Mazombe, Kinshasa, May 2008.

[83] Global Witness and Partnership Africa Canada (2004), *The Key to Kimberley*, Global Witness and Partnership Africa Canada, p. 10

Two further concerns have been raised about the DRC's potential role in laundering diamonds from other countries. The first is the establishment of polishing factories on the territory of the DRC, which runs the risk of converting untracked tough diamonds turned into polished ones, which are exempt from KPCS controls.

The second concern revolves around diamonds from Angola, which authorities in that country have long suggested are being smuggled into the DRC[84]. The long shared land border between the two countries and the large number of DRC miners working illegally in Angola suggest such traffic is possible. Hard evidence for such smuggling, however, is scant. Angola, despite a recently completed high-level government enquiry into its own artisanal diamond mining, has been unable to give a hard estimate for the extent of such cross border traffic[85]. Neither do DRC authorities have any reliable estimates.

Banking

There is virtually no use of any formal banking systems, and local networks are stronger than formal structures. In DRC there is a parallel exchange rate, which fixes CFR-USD independently from the Congolese Central Bank. Informal parallel foreign exchange dealers tend to set up in market places and along borders. This meets a need, but the absence of formal banking exposes small and uninformed traders to considerable foreign exchange risks. The lack of confidence in any baking systems in DRC means that Eastern Congolese traders often bank in Rwanda or Uganda – another incentive for fraudulent trade[86].

[84] Interview with Angolan vice-minister of Mines Paulo Nvika, 2007. Similar concerns raised by deputy head of Angola CSD and Angola DNIC (Criminal Investigation division of Angola National Police) May, 2008 (from Blore, S. (2008), *Diamond Mining in DRC,* unpublished document, August 15th 2008)

[85] Interview with Angola CSD, May 2008.

[86] H. Sunman and N. Bates (2007), *Trading for Peace,* DFID, p. 22.

Sierra Leone

Background

Sierra Leone is one of the most important diamond producers in West Africa, exporting around 600,000 carats worth $140m in 2007[87]. In 2006, approximately 20% of its diamonds were produced from one large-scale kimberlite and several small-scale alluvial and kimberlite mines[88]. The remaining diamond production is the output from about 150,000 artisanal miners, mostly in the districts of Kono and Kenema[89].

Table 2: Diamond Exports from Sierra Leone 2002-7

Year	Alluvial (carats)	Kimberlite (carats)	Total (carats)	Alluvial (US$ value)	Kimberlite (US$ value)	Total (US$ value)
2001	225520	0	225520	$26,022,492	0	$26,022,492
2002	351,859	0	351,859	$41,732,130	0	$41,732,130
2003	506,723	0	506,723	$75,969,751	0	$75,969,751
2004	612,699	79,058	691,757	$112,793,045	$13,859,589	$126,652,634
2005	552,044	116,665	668,709	$119,429,528	$22,510,716	$141,940,244
2006	491,526	112,039	603,565	$101,857,434	$23,447,407	$125,304,841
2007	n/a	n/a	603,623	n/a	n/a	$141,565,685

Sources: Gold and Diamond Department and Kimberley Process Statistics

Table 2 shows diamond exports from Sierra Leone from 2002-2007[90]. Since 2004, several major small-scale mining companies have been producing from alluvial deposits, yet alluvial production in carats has declined demonstrating either a decline in artisanal mining generally or an increase in smuggling. The former is most likely, as it is broadly understood that artisanal mining is decreasing due to the gradual depletion of payable deposits and industrialisation of the sector. Yet the diamond sector remains a crucial part of Sierra Leone's economy providing 12% of Gross National Income and 65% of total exports by US$ value in 2006[91]. Diamond exports are an important source of foreign exchange for Sierra Leone; in 2004, 90 per cent of the country's exports by value were from diamonds[92].

Since the war ended in 2002, the country has taken steps to tighten and introduce regulations to formalise the minerals sector and relevant industries, such as banking, and improve government oversight thereof. Beginning with a national certification scheme in

---

87 KPCS Statistics (2008). *Annual Global Summary, 2007*.

88 Gold and Diamond Department Official Statistics provided by the GDD in July 2007 and Management Systems International in February 2007. The proportion of artisanal to industrial exports has been steadily decreasing since Koidu Holdings first began exporting in 2004, while total exports have remained more or less constant. For commentary, see Le Billon, Philippe and Estelle Levin, 2008, *Merging Security and Development: Conflict Diamonds and Peacebuilding in Sierra Leone*, working paper, Vancouver: Liu Institute for Global Issues, University of British Columbia.

89 Partnership Africa Canada (2006). *Diamond Industry Annual Review – Sierra Leone, 2006*, at http://www.pacweb.org/e/images/stories/documents/annual%20review%20sl%202006.pdf.

90 Internal changes at the GDD have made disaggregated figures for 2007 difficult to obtain.

91 Atlas method, current US$, World Bank Indicators database, August 2008; and CIA World Fact Book, Sierra Leone.

92 Statistics Sierra Leone, (2008). *Annual Statistical Digest 2005-2006*.

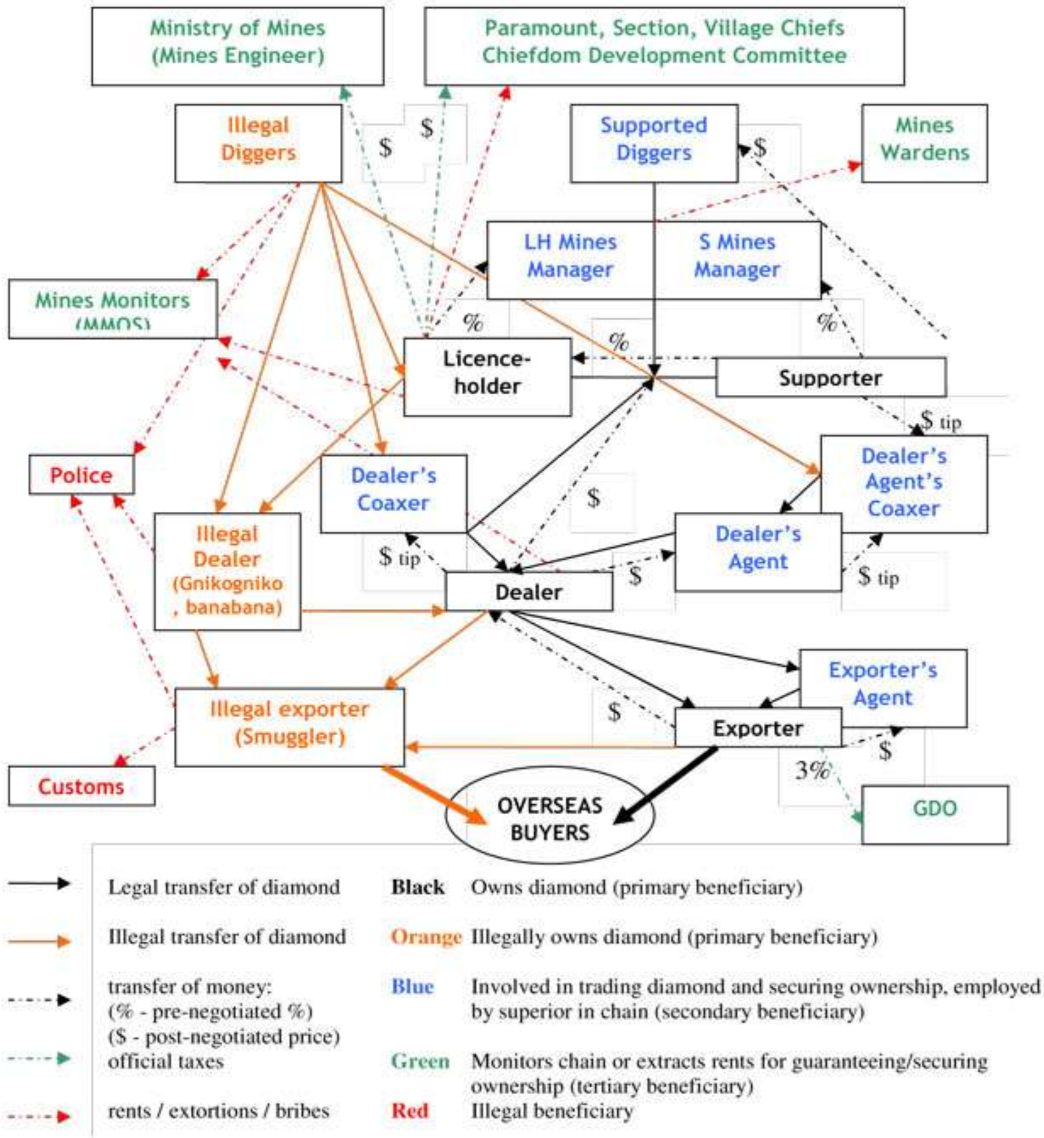
October 2000, Sierra Leone was the first country to enforce the KPCS in 2003. The aims have been to create an internationally competitive and investor friendly mining environment, and promote good governance especially for ensuring compliance with the KPCS.

Yet despite the progress made in rationalising the sector, informal activity in artisanal mining and trading remains high. Although accurate estimates of the size is unknown, one Mines Monitoring Officer (MMO) in Kono recently approximated that up to 50% of the activity in the diamond sector is informal, i.e. mining or trading is done by people who do not have the necessary miner's or dealer's licence[93].

This section takes a snapshot of the trading, marketing and export regimes in Sierra Leone, examines initiatives put forward by the Government of Sierra Leone (GoSL) with or without donor support, and compares this with activity in the informal sector. It considers government structures, the trading chain, and key themes. To aid conceptual understanding, Figure One demonstrates the complicated set of relationships between diggers, miners, supporters, dealers, exporters and authorities and provides a visual basis for understanding the plethora of options available to operators in terms of selling and buying artisanally mined diamonds.

[93] Interviews with Mines Monitoring Office, Kono, July 2008.

Figure One: Financial, Trading and Governance relationships in Sierra Leone's Artisanal Diamond Sector in Kono District[94]



Regulatory Regimes: the Legal Framework

GoSL efforts to rationalise the minerals sector and improve oversight and control of internal and external trade are taking two principle directions: firstly, the gradual industrialisation of the mineral sector[95], and secondly, the formalisation of the artisanal mining sector with an accompanied move to enhance regulatory oversight[96].

---

[94] From Levin, E., & L. Gberie, (2006). *Dealing for Development: The Dynamics of Diamond Marketing and Pricing in Sierra Leone,* The Diamond Development Initiative, March 2006.

[95] Government of Sierra Leone, (2003). *Core Mineral Policy,* para 1.2.

[96] Le Billon and Levin explore the compatibilities and contradictions between this 'securitised development' approach in their working paper *Merging Security and Development: Conflict Diamonds and Peacebuilding in Sierra Leone*, 2008, , Vancouver: Liu Institute for Global Issues, University of British Columbia. For more information on formalisation of artisanal mining activities, please refer to USAID project documents in this regard, as well as Tutusaus, J. P., S. Nelson, & A. Abadje. (2007.) *USAID/Sierra Leone Diamond Sector Program Evaluation*, July 2007. Washington, D.C.: USAID; and Levin, E. (2005). *From Poverty and War to Prosperity and Peace?*

Although significant effort has gone into reforming the extractive side of Sierra Leone's diamond sector, efforts to address diamond marketing have been limited to some research and analysis into trading structures, some regulatory reform, and one principle development intervention, namely the Integrated Diamond Management Programme's 'Earth-to-Export' scheme, which attempted to bypass traditional traders by creating direct miner-to-exporter relations as a part of their cooperatives scheme[97]. All efforts to manage diamond marketing have been oriented at decreasing smuggling to support the country's efforts at pioneering and successfully implementing the KPCS. Given the government's priority to industrialise the sector, the cursory treatment of diamond marketing may be explained by the fact that as industrialisation of production advances, artisanal diamond mining and thus marketing will become less important in terms of economic value.

The main law that governs the extraction and trade of diamonds is the Mines and Minerals Decree, 1994. In 2003, the GoSL published its Core Mineral Policy, which outlined the strategy and intentions of governance over the mineral sector. Consequently, as part of this strategy, the Mining Code was developed in 2004, and 2005 saw the Ministry of Mineral Resources (MMR) publish a policy document, *Details of Policy Measures relating to Small Scale and Artisanal Mining and Marketing of Precious Minerals*, which clarifies the legal aspects of mining and trading.

Other relevant legislation for diamond traders includes the Banking Act, 2000, the Anti-Money Laundering Act, the Income Tax Act, 2000. Other efforts include policy measures such as the requirement for bank transfers for diamond exports to go through the Gold and Diamond Department (GDD)[98].

Core Mineral Policy

Developed in the post-war period in conjunction with DFID and the World Bank, Sierra Leone's Core Mineral Policy (CMP) has been designed "to create an internationally competitive and investor-friendly business environment in the mining sector."[99] The policy is intended to outline a clear strategy for governance over the mining sector. Implementation of the CMP should "help to eliminate illicit and illegal diamond mining, trading and smuggling activities and improve the social, environmental and economic performance of artisanal and small-scale mining operators." [100] One way it will achieve is "by ensuring that all licensing fees, royalties, taxes and any other forms of income are collected and properly recorded and that all mining, trading and exporting companies in the minerals sector operate within laws that comply with international trading protocols." [101]

Sustainable Livelihoods and Innovation in Governance of Artisanal Diamond Mining in Kono District, Sierra Leone. University of British Columbia, Vancouver.

97 Assessment of trading structures in Sierra Leone has often been tied to investigations into credit delivery. For example, Moyers, R. (2003). *The Feasibility of Establishing a Formal Credit Delivery Mechanism for Small-Scale Diamond Miners in Kono District, Sierra Leone*. Washington D.C.: Management Systems International.; Even-Zohar, C. (2003). *Sierra Leone Diamond Sector Financial Policy Constraints.* Washington D.C.: Management Systems International; Management Systems International. (2004). *Integrated Diamond Management in Sierra Leone: A Pilot Project, October 2004. A Proposal for Assistance the United States Agency for International Development.* Washington, D.C.: Management Systems International; Levin, E. & L. Gberie, (2006) *Dealing for Development: The Dynamics of Diamond Marketing and Pricing in Sierra Leone,* The Diamond Development Initiative, March 2006.

98 Ministry of Mineral Resources, (2005). *Policy Measures relating to small scale and artisanal mining and marketing of precious minerals.* Freetown: Government of Sierra Leone.

99 Government of Sierra Leone. (2003). *Core Mineral Policy.*

100 Ibid.

101 Ibid.

While the CMP is replete with advice on tidying up the artisanal mining sector, any detail for how to deal with the trading sector is absent. The CMP states that the government will 'consider the formation of a diamond bourse, professional institutions and training schools that will assist in developing a measure of self-regulation within the minerals industry and in particular the diamond sector".[102] It also states that it will encourage the establishment of jewellery manufacturers and retailers, diamond cutting and polishing facilities and other businesses that will add value to exports and increase earnings[103].

The KPCS and Creating a Formal Chain of Custody

Sierra Leone developed the world's first Certificate of Origin (CO) in response to the UNSC embargo placed upon its diamonds in July 2000[104]. The CO was the forerunner to the Kimberley Process Certification Scheme (KPCS), which eventually came into operation in 2003. The CO and KPCS regimes in Sierra Leone established a system of checks and balances that are designed to record where a diamond was extracted and to whom it was sold.

In theory, the system is effective and is comparable to other systems in diamond producing countries with large artisanal mining sectors. Each operator must have a licence to either mine or trade; the buyer issues a receipt and records the sale for each transaction, and records are passed on to the point of export, where the exporter must prove origin in order to export the diamonds[105].

In practice, however, and while no hard data exists on the extent of the trade that falls completely outside of the formal sector, industry insiders *estimate* that up to 20% of the diamond trade by value in Sierra Leone may be completely unrecorded[106]. It is not so difficult for diamonds mined legally to be traded illegally, or for those mined illegally to enter the formal chain, while, at the end of the day, producing books that show a neat progression of formal trades of a formally mined diamond or parcel of diamonds.

The most important operator in making this possible is the licensed diamond dealer. Licensed dealers are highly effective at moving informally mined and traded diamonds into the formal trading chain. As most dealers finance other licensed mines, informally mined diamonds are bought and noted as production from the dealer's supported licences[107]. This demonstrates an industry-wide norm *that legal operators may do illegal acts* as and when it suits their interests. This 'straddling' of formal and informal markets has been occurring for decades and it is most probable that, no matter how the legal environment may change, traders will continue to navigate the legal-illegal divide to seize opportunities for accumulation as they see fit[108].

The crucial question is, to what extent does this matter? From the perspective of revenue collection, Sierra Leone's principle tax on diamonds is collected at the point of export. So long as diamonds mined and traded informally become formalised at some point in the trading chain, then the government can still collect its principal diamond tax. However, from the perspective of KPCS compliance, the laundering of informally mined stones opens a door for the laundering of informally imported stones too, and potentially, conflict diamonds.

---

[102] Ibid, Objective 2
[103] Ibid. Objective 9
[104] UNSC Resolution 1306
[105] Ministry of Mineral Resources, Policy Measures relating to small scale and artisanal mining and marketing of precious minerals.
[106] Current production is approximately 600,000 carats per year worth US$140m in 2007
[107] Interviews with diamond dealers, June and July 2004, and January 2006.
[108] See also Reno, W. (1991). *Corruption and State Politics in Sierra Leone.* Cambridge: Cambridge University Press.

It is in the government's interests, therefore, to know the business of the licensed dealers better, especially concerning their role in financing mining, to aid analysis into potential laundering when necessary. Section 6 of the Government's 2005 *Policy Measures* is an attempt to do this[109]:

> "Where Artisanal Miner is to be sponsored by a financier, such financier shall show proof of his financial ability to undertake the mining venture and may be a licensed dealer or an exporter. A financier without a dealer/exporter's Licence shall not be allowed to handle any of the precious minerals recovered from the mining operations but may facilitate the sale of such precious minerals to a licensed dealer or exporter."[110]

Registration with the Mines Engineer is also required, along with a fee of 50,000 Leones[111]. In January 2006, seven licences (of over 1000) were registered under five supporters with the Mines Engineer in Kono[112].

Institutions for Governance and Oversight

Oversight in Sierra Leone is chiefly the responsibility of the Ministry of Mineral Resources (MMR). The MMR has a number of regional offices run by Mines Engineers. Under the Mines Engineers are Mines Monitoring Officers (MMO) and Mine Wardens. Other oversight functions include the now defunct Precious Minerals Monitoring Unit (PMMU), the customs and the police. Traditional authorities also play a part in oversight, although principally at the point of extraction.

Mines Monitoring Officers

The principle regulators of diamond trading are Mines Monitoring Officers. MMOs enforce minerals legislation and monitor the activities of diggers, miners, dealers and exporters. They have the mandate to check records relating to the purchase and trade of diamonds to ensure all is legal. However, one evaluation of their situation described them as "largely unskilled, poorly paid and handicapped by a lack of logistical support," going on to say that "they have their jobs cut out for them in a world of powerful diamond traders with money to burn."[113] In 2005 there were only 64 MMOs to cover the entire district of Kono, which during the same year issued over 1100 artisanal mining licences[114]. At that time, they were earning as little as $40-50 per month[115].

Besides paltry salaries, both MMOs and Mine Wardens suffer from an enormous lack of capacity, which severely hampers effective oversight and control of diamond trading. Kono district in Sierra Leone produces half of the country's diamond output, has over a thousand licensed, and many unlicensed, artisanal mining plots, and 36 border crossings to Guinea. Yet, in 2008 the MMR office had only 8 to 10 operating motorcycles to transport the

[109] Ministry of Mineral Resources, (2005). *Policy Measures relating to small scale and artisanal mining and marketing of precious minerals.*
[110] Ibid
[111] Ibid
[112] Interview with Kono Mines Engineer, January 2006.
[113] Partnership Africa Canada, (2004). *Diamond Industry Annual Review*.
[114] Global Witness, (2006). *Experiences and lessons learned. Monitoring the Integrated Diamond Management Program's diamond tracking system in Sierra Leone,* May 2006. London: Global Witness.
[115] Ibid, pg 4

MMOs.[116] Even if basic infrastructure is in place, poor operational planning can mean that there is no money to buy fuel for transport and MMOs routinely complain about the inadequacy of their motorbikes[117].

This not only means that they are largely *unable* to do their jobs, but that are likely to be *unwilling* as they must commonly seek 'transport' from the miners and dealers that they are supposed to be regulating. Not only does this compromise their independence, but it lays the foundations for patrimonial relations of support and dependency, which provides an incentive for them to turn a blind eye to a dealer's wrongdoings.

In spite of a government incentive scheme which grants 40% of the value of diamonds to the MMO who confiscates them, confiscations rarely occurs[118]. This is partly due to alleged interference by the police, and ensuing disputes over who is entitled to the 40%[119]. In addition to the reward being uncertain, therefore, an MMO also stated that they fear confiscation would make those they have to monitor openly hostile to them as they do not have the necessary back up or power to enforce the law. The stakes for protecting the dealers are clearly higher than those for enforcing the law[120].

To obfuscate things further, MMOs are not civil servants, are poorly trained and are appointed politically through an unclear and complicated process[121]. Altogether, these overlapping zones of responsibility, accountability and authority puts into question their effectiveness as *government* representatives in the diamond sector.

Alternatively, Mines Wardens are civil servants, although their numbers are also far too few to effectively monitor the industry. Though Mine Wardens are trained and have the power of arrest, their main job is to ensure that licences are paid to the government and they have little influence over the enforcement of other regulations. According to Partnership Africa Canada, mines wardens are also poorly paid and have been known to accept bribes in order to look the other way[122].

Traditional Authorities

Chiefdoms have an important role in the regulation and oversight of artisanal mining. For example, though land ownership rights in Sierra Leone differ by district, miners in Kono are required to pay annual surface rent of 100,000 Leones per acre[123]. Chiefdoms also play a role in negotiating access for larger mechanised miners, usually in return for a negotiated fee[124]. They are motivated to encourage miners to formalise their activities through the Diamond Area Community Development Fund, which allocates 0.75% of export value of diamonds

116 Interview, MMO, June 2008. The motorbikes were donated by USAID in 2002/3. Management Systems International. DIPAM (Diamond Policy and Management) Project: First Semi-Annual Report, 2003.
117 Interviews with Mines Monitoring Officers, 2006 and 2008.
118 Interview, MMO, June 2008
119 Telephone interview with MMO, 5th September 2008. The MMO is supposed to hand over the suspect and the diamond to the police. Once matters go to court, cases have occurred where a police officer has claimed to have done the confiscation, leading to disputes between the police and the MMO in question.
120 Interviews with MMOs, 2004, 2006, 2008.
121 Interviews with MMOs, 2004, 2006, 2008.
122 Partnership Africa Canada, (2004). *Diamond Industry Annual Review. Sierra Leone*
123 Ministry of Mineral Resources, (2005). *Policy measures relating to small scale and artisanal mining and marketing of precious minerals*
124 Interviews, Kono district and Freetown, June 2008

back to the chiefdoms where diamonds were mined[125]. No such motivation exists, however, for traditional authorities to encourage legal diamond trading. Chiefdoms have barely any influence over diamond trading.

The Precious Minerals Monitoring Unit

The Sierra Leone Precious Minerals Monitoring Office (PMMU) was established in 2004, as part of the mineral sector reform promoted by donors in the post war period. Officers within the PMMU were trained by external experts and worked in conjunction with their counterparts in customs and the police to identify criminality in the diamond and gold sectors[126]. According to the *Policy Measures*, 0.05% of the value of diamonds at export was to go towards the operation of the PMMU[127]. At export values of $141m in 2007, this would have equated to just over $70,000[128].

The PMMU was shut down in 2005, a year after it became operational and 'just as it was becoming effective'[129]. According to one observer it was shut down for precisely this reason, in the wake of a sting, which caught the son of a government minister in the middle of an illegal diamond deal[130]. The effective operation and subsequent demise of this department highlights the need for high-level support of such initiatives that can directly interfere with powerful interests.

Cadastre

The newly established cadastre is one of the most successful attempts to formalise the mining sector through acting as "the foundation of an effective licensing system for mineral rights"[131]. Begun as a pilot project for licensing artisanal mining in Kono, it covered around 1000 plots and is widely regarded as a successful attempt to register the artisanal mining plots and licences in Sierra Leone using up-to-date GPS data and computer software. At the regional level, it does not encompass regulation of the dealers, however[132].

The cadastre has been important in Sierra Leone for a number of reasons. It has taken away the potential for conflict based on ambiguous demarcation, including conflict between artisanal miners and small- and large-scale concession-holders; it has helped enhance capacity to monitor production; and it has reduced room for discretion in the allocation of licences. Properly used, it would allow the verification of production figures against export

---

125 Distribution of the DACDF is dependent on the declared origin of the diamonds (based on the number of artisanal mining licences in a chiefdom relative to the national total) and so, in conjunction with the surface rent fee, further incentivises chiefdoms to promote legal artisanal mining operations on their territories. Unfortunately, the DACDF is poorly monitored and political interference has forced the government to make changes to the disbursement procedures, including making public the amount given from the government to the chiefdoms. While in theory this should allow for more transparent use of the funds, in practice, chiefdom leaders are often not held accountable to their constituency for the spending of these funds owing to traditional governance systems which work more as monarchies than democracies. For more information on DACDF, see Temple, Paul. (2007). *Leaving a Legacy.* Washington, D.C.: Management Systems International, 2007; and Temple, Paul. (2005). *Improving the Effective Use of the Diamond Area Community Development Fund*. Washington, D.C.: Management Systems International.

126 Interview, Jan Ketelaar, August 2008.

127 Ministry of Mineral Resources, (2005). *Policy Measures relating to small scale and artisanal mining and marketing of precious minerals*,

128 KPCS Statistics, (2008). *Annual Global Summary, 2007.*

129 Interview, Jan Ketelaar, August 2008

130 Ibid.

131 DFID, Diamond Sector Reform Program, April, 2004

132 Telephone interview with MMO, 5th September 2008.

figures. However, its proper use depends upon reporting requirements being upheld by licensees and regulators.

Non-Government Actors: The Peace Diamond Alliance

In recognition of the limited capacity of government to regulate the diamond industry and control the internal trade of diamonds, USAID sponsored the Peace Diamond Alliance (PDA) and Integrated Diamond Management Program (IDMP). These were a serious attempt at to promote 'grassroots governance' of the diamond resource in Kono and Kenema Districts, the heartlands of the war, through innovation in surveillance and discipline and addressing complexity and seeming injustice in the status quo[133]. The Kono PDA was inaugurated in 2003; the Kenema one in 2004. Following a year's preparation, in 2005 the IDMP attempted an ambitious scheme to establish diamond mining cooperatives in Kono, with a view to rationalising artisanal production and trade. The project has been written about extensively and a review is beyond the parameters of this paper[134]. However, of relevance to the trade and marketing of diamonds, is the fact that PDA cooperatives were the first to attempt to develop an assured artisanal diamond value chain through its 'Earth to Export' component[135].

As the name suggests, the Earth to Export Scheme was to verify the diamonds' origin right back to the mine and provide a watertight *intra*-national chain of custody to compliment the KPCS's *inter*-national assurance. It did this by by-passing all local diamond traders and creating relations directly between the miners' cooperatives and an international buyer. Effective operation of the scheme depended upon the performance of a series of independent monitors, each performing oversight over the next[136]. At the same time cooperative members were supposed to self-police each other to prevent theft and ensure proper management.

From a technical perspective, the Earth to Export component of the scheme is considered largely successful, although costly, as it proved that an effective system for tracking artisanal diamonds from mine to market is possible. However, *in toto*, the cooperatives scheme attempted to totally re-structure established systems of production and financial support in just one year, and proved to be too radical too quickly. Bypassing traditional traders may seem more desirable than trying to change their behaviour from a formalisation perspective, but their importance in traditional systems of relief means that they remained crucial patrons to cooperative members who may have either lacked loyalty to the cooperative or the foreign buyer, or who may have found themselves in need of some quick relief. For this reason, the traditional traders were almost certainly illegally sold diamonds mined legally by the PDA cooperatives.

---

133 See chapter 3 in Levin, E. (2005). *From Poverty and War to Prosperity and Peace? Sustainable Livelihoods and Innovation in Governance of Artisanal Diamond Mining in Kono District, Sierra Leone.* University of British Columbia, Vancouver.

134 For example, see Levin, E. with Turay, B. (2008). *Artisanal Diamond Cooperatives in Sierra Leone: Success or Failure?* Ottawa: Diamond Development Initiative & Partnership Africa Canada, July 2008; Tutusaus, J. P., S. Nelson, & A. Abadje. (2007). *USAID/Sierra Leone Diamond Sector Program Evaluation*, July 2007. Washington, D.C.: USAID; Temple, P. (2008). *Diamond Sector Reform in Sierra Leone. A Program Perspective*, Belgium: Egmont, *forthcoming*.

135 Integrated Diamond Management Program, 4th Quarterly Report, October 2005; Renzi, M. (2004). Integrated Diamond Management in Sierra Leone: A Pilot Project, October 2004., *A Proposal for Assistance the United States Agency for International Development*. Washington, D.C.: Management Systems International.

136 Global Witness, (2006). *Experiences and Lessons Learned,* May 2006.

Other Non-Government Actors

Other stakeholders are crucial for good governance of the diamond resource. Civil society groups in Sierra Leone are emerging as industry watchdogs, advocating for 'just mining' and the rights of indigenous peoples to benefit from their resources, and monitoring the activities of government regulators and supply chain operators, including traders. Key civil society organisations working on diamond sector issues are the National Advocacy Coalition on Extractives (NACE), the Network Movement for Justice and Democracy (NMJD), and the Coalition of Kono Youths (CKY). On the whole, however, and reflecting priorities present in other actors' approaches to the diamond sector, their oversight of diamond trading is far inferior to their efforts in relation to diamond mining.

The same cannot entirely be said for the labour organisations which assert the rights of diamond miners, including challenging structures which produce 'unfair' trading terms. The Alluvial Diamond and Gold Miners Association, the Mining and Allied Services Employees Union and the United Mineworkers Union all play a role in advocating for diamond miners, though their effectiveness could be improved[137].

The dealers too have organised into associations. The Kono Dealers' Association is led by a Kono diamond dealer whose mission is to increase the foothold of indigenous Kono people in the diamond trading tier. As Chairman, he acts as arbitrator in disputes over ownership, intervenes if an incident of theft is reported, and promotes the interests of the Kono dealers[138].

Altogether, the importance of these civil society and labour organisations in ensuring good governance of diamond trading lies in the need to have stringent oversight of government regulators who, on the whole, are paid too little, have limited capacity to do their job, and thus have few incentives to properly regulate diamond marketing. Building the capacity of these civil society monitors can do much to spur government regulators to do their jobs properly.

The Value Chain: From Mine to Market

Licensing Mining

In artisanal mining operations, a distinction is made between the diggers (labourers), miners (licence holders), dealers, dealers' agents, and exporters and their agents[139]. Diggers are not required to register with the State in any way; however, they are operating illegally if they either a.) mine on land that is unlicensed, b.) mine on licensed land without the permission

---

137 Various interviews with company employees, union and association leaders, and artisanal miners, 2006, 2007 and 2008.

138 Interviews with Head of the Kono Dealers' Association, July 2004 and January 2006.

139 For the purposes of this paper, a detailed overview of how mining is regulated in Sierra Leone is unnecessary. For more information, please refer to relevant laws, as well as Diamond Development Initiative (2008).*Standards and Guidelines for Sierra Leone's Artisanal Diamond Mining Sector*, Virginia: DDI International; Levin, E. & L. Gberie, (2006). *Dealing for Development: The Dynamics of Diamond Marketing and Pricing in Sierra Leone,* March 2006. The Diamond Development Initiative; Levin, E., (2005). *From Poverty and War to Prosperity and Peace? Sustainable Livelihoods and Innovation in Governance of Artisanal Diamond Mining in Kono District, Sierra Leone.* University of British Columbia, Vancouver; and Levin, E. "Reflections on the Political Economy of Artisanal Diamond Mining in Sierra Leone" in Gavin Hilson (editor) (2006). *Small Scale Mining, Rural Subsistence, and Poverty in West Africa. Experiences from the Small-scale Mining Sector.* Intermediate Technology Development Group Publishing.

of the licence-holder, or c.) sell their diamonds (mined on licensed land) to anyone other than the licence-holder. On the other hand, miners are required to obtain a licence for the particular piece of land that they intend to mine. The important distinction here is that, whereas in DRC, the individual is 'licensed' through the *carte de creusseur*, in Sierra Leone it is the *land* that is licensed for a *specified individual* to mine it. The law requires that artisanal miners be Sierra Leonean by nationality, whereas many of the diamond buyers are considered 'foreign', despite often being the second or third generation of their family born in the country[140].

The miner, therefore, will be the owner of the licence for the plot, but have a separate arrangement with the financier regarding the division of the proceeds, presuming s/he requires capital. This arrangement muddles the distinction between legal and beneficial ownership of the plot, and is certainly one reason why diamonds mined legally may be traded illegally as miners, or their diggers, seek to avoid their obligations to their financier or 'supporter'.

The Open-Yai

The term Open-Yai is used to refer to diamond peddlers who buy individual stones from miners and sell on parcels to dealers. Notorious for operating in the informal sphere and smuggling, they effectively link the informal and formal sectors. The GoSL and local dealers previously considered formalising this part of the trade "through the creation of brokering licences which could be paid for on a monthly or quarterly basis to enable those with limited capital but sufficient desire to deal legally". [141] This would help "those who deal diamonds on a smaller scale and who need more experience and a higher turnover to move into licensed dealing." [142] However, a suggested fee for such a broker's licence at a tiny $50 per quarter – instead of the $2000 per annum a citizen dealer must pay – was met with protest by members of the Open-Yai[143].

At the time, the chairman of the Kono Dealers Association cautioned that Open-Yai members would only formalise their activities once it is cheaper to deal formally than informally, i.e. when licensing costs are cheaper than the cost of paying bribes[144]. Understanding the way informal operators assess the costs and benefits, therefore, of operating within and/or between the formal and informal spheres is vital when new legal requirements are being designed.

Dealers

Alluvial Diamond Dealers must be licensed and can employ up to five agents to operate under their licence. Dealers may be of foreign citizenship, but their agents must have either Sierra Leonean or ECOWAS citizenship. Similarly, the licence fee is determined by citizenship, with foreigners paying an annual fee of $5000 for a licence, ECOWAS citizens paying $2500, and Sierra Leonean citizens paying $2000. Dealers' Agents pay an annual fee of $1000 for citizens and $1500 for ECOWAS citizens[145].

In law, dealers and their agents can only buy diamonds from artisanal or small-scale miners and can sell to exporters; they are prohibited from selling to other dealers. They are

---

140 Interview, Jan Ketelaar, August 2008.

141 Levin, E., and L. Gberie (2006). *Dealing for Development: The Dynamics of Diamond Marketing and Pricing in Sierra Leone*, The Diamond Development Initiative, March 2006:22.

142 Ibid,, 22.

143 Ibid.

144 Interview with Chair of the Kono Dealers' Association, January 2006.

145 Ministry of Mineral Resources, (2005). *Policy Measures relating to Small Scale and Artisanal Mining and Marketing of Precious Minerals.*

required to keep a record of purchases, which specifies the name of the seller (miner) and the mine site where the stone was mined (licence number) for each diamond purchased, and to issue a numbered invoice/receipt for each purchase or sales transaction. The records of purchases and sales (receipts) should be sent to the Director of Mines through the local Senior Mines Officer by the tenth of the succeeding month[146].

Dealers do not need to pay royalties. Royalty payments in Sierra Leone have been largely discarded in favour of a series of upfront fees paid to the MMR for licensing[147]. In addition to the licensing fees paid in order to register, dealers are also required to pay a monitoring fee of US$400 per year, and a rehabilitation fee of 500,000 Leones per year[148]. Dealers are also subject to income tax, which is levied at a standard rate[149].

Exporters

Exporters are required to pay a number of fees to obtain their licence, including US$40,000 per year for the exporter's licence. Exporters are allowed up to five Exporter's Agents. Two agents are allowed at no fee, while additional agents cost the exporter $5000 per agent. Exporters must also pay $1500 annually for reprinting the KPCS certificates[150].

Exporters are obliged to purchase diamonds only from holders of diamond mining licences or diamond dealers' licences. They must keep a record of licence numbers of the miners or dealers from whom the diamonds are purchased and issue a receipt showing the weight and value of the diamonds purchased and their own licence number.

Exporters are obliged to export a minimum of US$5,000,000 worth of diamonds per annum. If they fail to meet this target, the exporter must pay a total of 3% on the difference between his total exports and the minimum target as penalty to the Ministry of Mineral Resources[151]. However, a tax break of 0.5% (off the normal export tax of 3%) is offered to Sierra Leoneans who export more than US$1m worth of diamonds. For foreign citizens, the limit is $10m to enjoy the tax break[152].

The law requires exporters to receive payment in US dollars or Sierra Leone's local currency; US dollars must be brought through banking channels. Diamonds purchased by an exporter can only be exported and cannot be sold locally. At the point of export, the Gold and Diamond Department (GDD) values the diamonds. The GDD levies a 3% export tax, which is based on the highest of three valuations done by the exporter, the GDD's valuator and an independent valuator[153]. GGD management is also given an incentive to make high valuations and is given 0.03 of the value of diamonds to be exported[154].

[146] Ibid.
[147] The three per cent export tax (five per cent for small scale miners directly exporting, plus a one per cent valuation fee) could be viewed as a royalty payment.
[148] Approximately $170 at exchange rate of 2900L=$1
[149] See Ministry of Mineral Resources, (2005). *Policy Measures relating to Small Scale and Artisanal Mining and Marketing of Precious Minerals.*
[150] National Revenue Authority (undated). *Undertakings by Diamond Exporters,* at http://www.nationalrevenuesl.org/pdfs/ggd/Undertakings_By_Exporters.pdf, accessed 2nd September 2008.
[151] Ibid.
[152] Partnership Africa Canada (2004). *Sierra Leone Diamond Sector Review.*
[153] Interview with GDD, July 2008.
[154] Partnership Africa Canada (2004). *Sierra Leone Diamond Sector Review.*

Banking

The CMP outlines the GoSL's strategy for the operation of the financial sector, as it relates to the trade in minerals:

> "The Government of Sierra Leone, committed to a 'free market' approach and economic policies, will ensure the development of the minerals sector in accordance with international best practice. The Government will ensure the sector is managed in a transparent, open and accountable manner."

However, most operations in the diamond sector in Sierra Leone are cash based, using US dollars. The CMP suggests a number of ways to attract businesses to use national and international banking services including the use of market based exchange rates. Exporters are also required to transfer currency through the banking systems, although anecdotal evidence exists that large cash purchases of diamonds still go ahead. Indeed, there is a concerted reluctance to use the banks amongst dealers and exporters. This relates principally to the following[155]:

- Concerns about the integrity of certain banks and inadequate government supervision, based on evidence of previous mismanagement of funds.

- Banks in the main diamond buying towns often do not have the necessary cash available or may be closed when extra cash is necessary as most diamond dealing goes on at night. This means that dealers cannot rely entirely upon the banks, though they may use them for storing funds or receiving advances securely.

- High level of illiteracy amongst Maraka, Fula, and Kono (African) diamond dealer is a deterrent.

- Dealers are suspicious of anything which would enable any scrutiny of their commercial affairs owing to a strong desire to protect privacy to avoid predation by officials, harassment by people seeking relief, and to maintain good relations with their buyers.

Key Themes and Future Directions

Unrecorded Cross Border Trade

It is common knowledge amongst dealers and MMOs that unrecorded cross border trade in diamonds occurs between Sierra Leone and Guinea[156]. Traders use diamonds as a form of international currency, as gold has been used historically. The traders, who bring goods into the eastern provinces of Sierra Leone directly from Guinea, receive local currency for their wares, which then needs to be converted into a form of international currency to enable them to purchase more goods outside for import[157]. The size of this informal trade is unknown; however Global Witness identified a similar pattern of cross-border trade in a 2005 investigation, indicating that the trade is well established[158].

---

155 Interviews with former diamond exporter, and Maraka and Fula diamond dealers, January 2006.

156 Various interviews with diamond dealers and MMOs, Kono, 2004-2008.

157 Interviews, Dealer and MMO, Kono, July 2008

158 Global Witness, (2005). *Making it Work: Why the Kimberley Process Must Do More to Stop Conflict Diamonds,* November 2005.

Sierra Leonean Law prohibits the export of artisanally mined diamonds in Sierra Leone except via an exporter and certified by the GDD, making this trade illegal. Section 2 (b) of Sierra Leone's Money Laundering Act (2005) defines a money launderer as any person who:

> (a) engages directly or indirectly in any transaction which involves property that is the proceeds of crime; or
>
> (b) receives, possesses, conceals, disguises, transfers, converts, disposes of, removes from or brings into Sierra Leone any property that is the proceeds of crime[159].

The same law prohibits the "transfer to or from any country outside Sierra Leone of any moneys exceeding the equivalent of ten thousand United States dollars otherwise than by or through a financial institution."[160] Section 20 goes on to state that "a person who leaves or enters Sierra Leone with more than ten thousand United States dollars in cash or negotiable bearer securities without first having reported the fact to the Authority commits an offence."[161] Dealers in precious stones are specifically referred to in the Act, as parties who must pay particular attention to the Act[162]. Yet, the Act has apparently had little effect on the operations of the smaller traders who operate between Sierra Leone and Guinea.

The traders who most commonly export diamonds to be able to import other goods are Marakas, Fula and Madingo people. Originating from Guinea, Gambia, Mali, and Senegal, these traders will often have a family in each place[163]. Their trading routes are historic, pre-dating the discovery of diamonds in Sierra Leone in 1931 and most certainly the establishment of the Sierra Leonean nation-state in 1961. Conversations with Maraka and Fula traders suggest a trans-national identity that puts ethnicity, language, and the extent of personal geographical realms before any sense of loyalty to a particular nation-state. National borders and national laws are not sufficiently *material* to these traders and are simply ignored. 'Formalising' their behaviour will require much more than simply promulgating the Law; it will require garnering their respect for that Law through sensitising them on its legitimacy and purpose.

Besides the illegal export of Sierra Leonean diamonds across the Guinea border, diamonds are allegedly smuggled from Sierra Leone's Lungi airport. A government task team, led by a former Mines Monitoring Officer, was in situ in 2007 to aid customs and airport security in the confiscation of undeclared diamonds and detention of the guilty party[164].

Citizenship

Citizenship is a contentious issue in Sierra Leone. Much of the artisanal diamond sector is financed and run by 'non-citizen' dealers and exporters, who are predominantly of Lebanese or ECOWAS descent. Since the 1970s, the GoSL has promoted the interests of nationals in the mining and trading of diamonds, including through the Law. For example, Sierra Leoneans pay lower fees for dealers' licences and previously for exporters' licences, and foreigners are forbidden from owning artisanal mining licences. On the one hand, this policy is supposed to be a form of economic empowerment for those most disadvantaged in the country. On the other, it is exclusionary and prevents so-called foreigners, many of them the second or third generation immigrants, from being truly invested in the development of

159 Government of Sierra Leone (2005). *The Sierra Leone Anti-Money Laundering Act, 2005*, Section 2 (a)-(b)
160 Ibid, Section 3(b)
161 Ibid, Section 20
162 Ibid, page 29
163 Interview with Maraka Dealer and Elder, 2006.
164 Meeting with Joseph Kabia, July 2007.

their local community and the country at-large, so encouraging capital flight and a lack of respect for Sierra Leonean laws oriented at capitalising on the diamond resource for the sake of development[165]. The country's new Citizenship Act expresses that anyone born in Sierra Leone after 1971 is entitled to citizenship, but dual citizenship is forbidden[166]. The new Act is therefore unlikely to reconfigure the priorities of the country's Lebanese- and Maraka-descended communities.

Harmonisation in the Mano River Union

The Mano River Union (MRU) comprises Guinea, Liberia and Sierra Leone. In April 2008, Cote d'Ivoire joined the union. In acknowledgement of the transboundary nature of the diamond trade between Mano River countries, the World Bank's approach to improving diamond governance and surveillance of the industry generally has been to move from a country-based to regional strategy[167]. Based on a comparative analysis of the countries' (excluding Cote d'Ivoire) fiscal regimes, and following meetings in Conakry in February and Monrovia in August, 2008, Sierra Leone, Guinea and Liberia have agreed in principle to harmonise their fiscal policies and legislation (including income tax and mining acts), with the creation of identical terms for the gold and diamonds sectors[168]. Through standardising trading regimes in this way, the objective is to create a governance structure that uses market forces rather than emphasising monitoring and policing to remove some of the incentives to operate informally. This would make formal activities the more rational choice, economically-speaking[169].

Cote d'Ivoire is currently the only country in the world where conflict diamonds originate and an embargo on their trade has been in place since 2005.[170] A joint UN Security Council and KPCS report in 2006 reported that conflict diamonds may have been passing through Ghana and the resulting sanctions placed on the country by the KPCS did much to deflate local diamond prices and shut down the diamond trade in Ghana[171].

However, very little has been done to address the possible movement of conflict diamonds from Cote d'Ivoire to the other members of the MRU. This is despite an investigation by Global Witness in 2005 revealing that diamonds from Cote d'Ivoire are bought and sold in Guinea and elsewhere[172].

A sub-regional conference held in May 2008 with participation from all MRU countries was frustrating according to the head of the organising body[173]. While efforts to harmonise legislation exist, they are not yet being implemented, with a significant amount of confusion

---

165 See Levin, E. & L. Gberie, (2006). *Dealing for Development: The Dynamics of Diamond Marketing and Pricing in Sierra Leone*, March 2006. The Diamond Development Initiative.
166 The Sierra Leone Citizenship Act 1973, The Sierra Leone Citizenship (Amendment) Act, 2006. See http://www.unhcr.org/cgi-bin/texis/vtx/refworld/rwmain?docid=3ae6b50610 for more information.
167 Interview with Michael Stanley, Ekaterina Koryukin and Francisco Loayza, conducted by Estelle Levin and Philippe Le Billon 5th December 2006.
168 Telephone conversation with Ekaterina Koryukin, 27th August, 2008.
169 Interview with Michael Stanley, Ekaterina Koryukin and Francisco Loayza, conducted by Estelle Levin and Philippe Le Billon 5th December 2006.
170 UNSC resolution 164, 2005
171 Hilson judges that 80-90% of buyers went out of business. Interviews with Gavin Hilson, 10 August 2008 and 5 September 2008. See also Hilson, G. (2008). *Mining and Rural Development: the trajectory of diamond production in Ghana*. Belgium: the Egmont Institute.
172 Global Witness, (2005). *Making it Work: Why the Kimberley Process Must Do More to Stop Conflict Diamonds*, November 2005.
173 Interview, Sofia Gionhas, Conciliation Resources, 06 August 2008

over what should and should not be enforced[174]. Furthermore, civil society spokespeople who monitor the harmonisation state there is no clear donor sponsorship for harmonisation efforts within the MRU[175]. DFID's "Trading for Peace" project in the Great Lakes region, which is discussed further below, is leading the way for similar initiatives[176].

Towards Industrialisation

Industrialisation in Sierra Leone is occurring in two ways. Firstly, there is increasing mechanisation of the artisanal and local small-scale operations in response to diminishing accessible deposits. Secondly, international companies are developing small- to mid-scale exploration and mining operations owing to an increasingly secure investment environment brought on by clear concretisation of peace and the identification of virgin deposits and poorly-processed tailings. Despite the recent violence associated with local elections in July 2008, as well as a riot outside Koidu Holdings in December2007, which resulted in at least 2 reported deaths, investor confidence in the long-term stability of the country remains positive[177].

Further industrialisation is inevitable as accessible alluvial deposits become depleted and artisanal mining operations become un-economical[178]. In terms of monitoring, this is welcome news for the government, as the monitoring of industrial operations, particularly kimberlite operations, is simple relative to artisanal mining as the number of operators to be surveyed is fewer and industrial mines obtain permission to export their diamonds directly, rather than via other licensed exporters.

The impact of industrialisation on diamond trading is huge. Firstly, the necessary mechanisation of artisanal operations has increased the cost of production making the provision of financial support to miners riskier and more expensive for dealers. Secondly, the dispossession of artisanal miners through the allocation of land to foreign-owned exploration and mining companies has depressed artisanal mining activities and thus production, generally. Less production means less trading opportunities. In Kono specifically many diamond dealers have gone out of business and have moved to Kenema and abroad, especially the Lebanese[179].

Informalisation and the Changing Geography of Production and Trade

Another factor in depressing trade for licensed dealers since 2004 has been the changing geography of artisanal mining[180]. Accessible grounds near main towns and villages have been worked out and are decreasingly payable. Many miners have moved to virgin lands in other parts of the district, but far from these urban centres. This makes it harder for them to license their operations but also less necessary as mines monitors are unable to access these places. It also prohibits the town-based licensed dealers from buying directly from these

---

174 Interview, Sofia Gionhas, Conciliation Resources, 06 August 2008. The World Bank-led effort to harmonise legislation does not yet have a time-frame and relies upon the continued interest of each country to participate, the quality of their respective proposals, and the willingness of their parliaments to pass recommended changes to national legislation to support the move towards harmonisation. Interview with Ekaterina Ekoryukin, 27th August, 2008.

175 Interview, Sofia Gionhas, 06 August 2008

176 H. Sunman and N. Bates (2007), Trading for Peace, DFID.

177 Various Interviews, Kono District and Freetown, June 2008. Government of Sierra Leone. Jenkins-Johnston Inquiry into Events leading to the Disturbances in Koidu City on 13th December, 2007.

178 Various interviews 2004-2008, and focus group 2004.

179 Interviews with Lebanese dealers, MMOs, and local consultants, Kono, 2006 and 2007.

180 Based on interviews with traditional authorities, miners, diggers, and dealers 2004-2008, and focus group with licensed miners, 2004.

informal miners. Instead, the first diamond trade is more likely to take place between an informal miner and a banabana (diamond peddler), who base themselves in the new mining settlements.

Without the capacity to govern the established – yet depreciating – diamond areas it is no surprise that government regulators are unable to oversee activities in these new growth areas. With proper resources, planning for the changing landscape of production would be more possible, and informalisation could be better tackled.

Besides the opportunities and constraints posed by the geography of production, people are motivated to trade informally for a host of other reasons. Understanding these motivations, and using cultural and social lenses as well as economic ones to do so, is crucial for strategising on how to tackle informal activities. While various studies touch on this subject marginally, no systematic review of the rationale for informal trading has been conducted to the authors' knowledge.

In the case of Sierra Lone, informal trading remains common despite the progress made in rationalising the sector. The principle reasons include:

- Traders are discouraged from seeking licences or keeping necessary documentation (e.g. account books) owing to high rates of illiteracy, especially amongst the Maraka and Fula dealers;
- Post-war enthusiasm for order and concerted programmes by the GoSL and donors, especially USAID, helped advance the formalisation of the sector from 2002 to 2007. However, popular support for formalisation is likely to wane without the continuation of sensitisation programmes or evidence of benefits from formalisation.
- Informal mining is on the rise:
    - Miners may avoid seeking licences in the face of annulment of their licences and/or denial by the Ministry of Mines on the back of land allocation to foreign mining interests[181]. Unlicensed miners cannot sell a stone legally.
    - The cost of licensing is discretionary in practice, with informal 'taxes' and 'handshakes' inflating the cost and motivating miners to avoid seeking licences[182].
    - The purely subsistence miners, who operate independently, e.g. overkickers, kabudu workers, or gado gangs working in the bush, cannot sell legally and will mostly sell to the Open-Yai (diamond peddlers) or to a dealer with whom they wish to build a patronage relationship. So long as the Sierra Leonean law does not provide an option for these types of miners to formalise their activities, they will continue to operate illegally.
- Licensed miners may sell their legally mined stones illegally to avoid having expenses deducted by their supporter or to achieve the best possible price.

[181] Interviews with artisanal miners, MMR officials, and local authorities December 2006 and July 2007.

[182] Interviews with licensed miners, July 2004 and January 2006. See also Sorius Samura, 2007, *Blood on the Stone*, SW Pictures.

Establishing a Cutting and Polishing Industry

In 2007, the GoSL passed the Diamond Cutting and Polishing Act as an important first step in establishing a cutting and polishing sector in Sierra Leone[183]. This follows a trend occurring across producing nations in Africa including Angola, Botswana, Namibia and South Africa to encourage the downstream manufacturing of diamonds as a strategy for harnessing a greater proportion of a diamond's potential value within the country. From the perspective of traders, this provides another internal market for their diamonds and may even help increase local prices as costs associated with exporting rough are removed, e.g. insurance, building relations with foreign rough buyers, flights, and so on.

While it is in itself a desirable element to have secondary industries emerging in developing economies, the appearance of poorly monitored cutting and polishing factories in producing countries offers a unique opportunity for the laundering of illicit diamonds as the KPCS only applies to the trade in *rough* diamonds, not *manufactured* ones[184]. As such, the establishment of a cutting and polishing industry in Sierra Leone could threaten the integrity of the KPCS if proper oversight is not conducted to ensure rough diamonds are not illegally imported and manufactured. Given Sierra Leone's track record of its ability to govern its rough diamond trade, caution is required.

---

[183] The Act requires that any cutting and polishing operation submit their purchased diamonds to the GDD prior to being subject to the manufacturing process for the purposes of valuation and also allows the MMR to carry out inspection of the operations as it sees fit. Imported diamonds are subject to the KPCS. As with dealers, the Act requires factories to make complete records of their sales and purchases and submit these schedules to the GDD each month. Sierra Leone Diamond Cutting and Polishing Act 2007, Para 7 (m)

[184] Global Witness, (2005). *Making it Work: Why the Kimberley Process Must Do More to Stop Conflict Diamonds*, November 2005, pg 21

International Interventions

There are a number of interventions working on artisanal mining and trading. This section considers three which provide context to and inform this report.

The Kimberley Process Certification Scheme

The KPCS determined the official trading and export regimes for diamonds in Sierra Leone and DRC and is referred to extensively in this document. Both case studies show that the failure of internal control systems within artisanal diamond producing countries remain a grave threat to the integrity of the scheme, a conclusion also offered by the WGAAD[185]. In response, the WGAAD aims to promote "effective internal controls on the production and trade of alluvial diamonds." Their recommendations sound good in theory, but their practicality has to be questioned in the context of artisanal diamond producing countries with significant capacity constraints. This is not to say that they could not significantly improve the oversight in countries with small artisanal sectors, well-developed infrastructure and well-functioning bureaucracies. Our cases suggest, however, that in countries with large artisanal diamond sectors and unfavourable geographic attributes, even better functioning state institutions may not be able to effectively implement these recommendations.

Trading for Peace

In early 2007, DFID, in collaboration with COMESA and USAID, commissioned Forests Monitor, INICA, PACT and Pole Institute to undertake a detailed analysis of trade flows of natural resources and other commodities out of the DRC through the Great Lakes Region and East Africa.

The project provides a detailed analysis of the way trans-boundary trading corridors work and has presented Governments in the Great Lakes Region a sound base of evidence and analysis to inform their policies and reform implementation programmes[186]. The project's findings have fundamental implications , as it suggests a departure from attempts to police 'fraudulent' trade through, for example, sanctions. Instead, it promotes understanding the incentive structures that bring about fraudulent trade in the first place to design appropriate policies with the help of the relevant stakeholders that respond to these incentive structures. The outcome is a set of policies that respond to the realities of the trading system and potentially stand a higher chance of regulating it successfully.

This push to formalise *existing* trading structures rather than seeking to *change* these to suit a hypothetically ideal trading structure marks a radical shift in approaches to legal reform for improved natural resource governance. This is very much in line with the conclusions of this report.

The International Study Group to Review Africa's Mining Regimes

An International Study Group (ISG) led by the UNECA and the Africa Development Bank is currently reviewing Africa's mining regimes to evaluate past experiences in natural resources development. It aims to review the extent to which Africa's current mining regimes promote sustainable development of the mining sector, including artisanal and small-scale mining as well as the broad national and regional economy, and to propose key

---

[185] KPCS (2005). *Improving Internal Controls Over Alluvial Diamond Production: Declaration Adopted by the Moscow Plenary Meeting of the Kimberley Process*, 15-17 November 2005, at www.kimberleyprocess.com.

[186] Ibid, p. 3

policy elements for the next generation of Africa's mining regimes[187]. The project entails an institution-building component that focuses on the capacity of African policy makers and institutions to formulate policies, design mining regimes, and negotiate contracts.[188] It is also investigating several innovations and mechanisms to address these challenges in areas such as developing effective taxation policies, encouraging pro-environment policies, and promoting long-term infrastructure development and upstream/downstream linkages[189].

The project could potentially provide a good basis for the future design of appropriate regulation of alluvial diamond sectors. This is of particular importance for the artisanal trade in diamonds, as our findings suggest that many of the challenges of regulating the artisanal diamond trade stem from inappropriate regulation that stands in stark contrast to the regulatory needs and structural realities of the trade.

[187] The International Study Group to Review Africa's Mining Regimes (ISG) (2007), unpublished document available from the authors, p. 1
[188] Ibid, p. 2
[189] The International Study Group to Review Africa's Mining Regimes (ISG) (2007), unpublished document available from the authors, p. 5

Regulatory Successes and Failures

Law

The similarities between the DRC and Sierra Leone diamond trades are striking. In both countries, the legal requirements are very similar, partly as a result of donor intervention in re-writing of these and their orientation towards KPCS compliance. Both the GoDRC and GoSL, with input from international institutions, have put in place new Mining Codes that assume an institutional infrastructure with organisational capacities capable of regulating the trade in artisanally mined diamonds. Both codes make specific provisions with regard to legal obligations of the different actors, which are summarized in table 3.

Yet, our two cases also demonstrate that neither government has been able to fully apply and enforce the Law at the levels of extraction and trade and a significant share of trading, perhaps even up to 50%-75%, is allegedly done a-legally or illegally[190].

Legally taxing an a-legal activity is impossible. Yet, for an a-legal activity to become 'formal' regulations much be applied and enforced. The failure to fully apply and enforce the artisanal mining provisions in the law thus close an avenue to formalisation of the production and initial trading stages in the internal value chain. In practise, provisions in the mining codes do not correspond to the enforcement capacities of the countries' institutions and are based on hypothetical configurations of production and trading relations, which do not relate to reality. This gap is particularly noticeable where middlemen straddle the informal and formal spheres, moving diamonds between them and on the production stage, where operators can be a-legal. This means that the statutory legal sphere largely operates as a parallel rule system that is ignored by a significant proportion of operators.

The Law is more widely enforced at the point of export. This is partly due to the fewer number of operators to be monitored, but also due to the international requirements of the KPCS, which makes the point of export a priority area for the government. Nevertheless, exporters remain vulnerable to political interference and can be heavily influenced by financial considerations, which can lead to irregularities in export practices.

This has the following implications:

1. Providing a legal footing, and applying and enforcing this, for the internal trade as it is *actually* conducted at the levels of mining and dealing would pave the way for further formalisation of the sector as a whole.

2. Informal trading structures are not just the product of economic forces, but are also produced by the (sometimes competing) rationales of customary law, socio-political negotiations, and cultural practices. They remain important elements of the trade in artisanally produced diamonds, and of local society. Though they typically operate outside of statutory law, these informal modes of production and trade - inequitable as they may be - are internally functional.

3. Efforts to formalise trade would be more successful if they sought to use these extant structures as the starting point for formalisation, rather than seeking to coerce them into a hypothetically rational structure that is externally imposed, but does not correspond to the realities on the ground.

[190] This estimate is based on interviews with industry experts. The real figure is unknown.

Table 3: Actors and Activity in the Diamond Trade in DRC and Sierra Leone

	DRC		Sierra Leone	
	Legal	Illegal	Legal	Illegal
ASM	All miners must have the *carte de creusseur.* May dig only in a government-delimited "Artisanal Mining Zone" (AMZ).	Any miner digging without a carte de creusseur. Any miner, including those with a card, mining in land that is not delimited as an AMZ. Up to 75% of the trade takes place outside an AMZ.	Diggers do not require a licence. Miners are licensed to exploit a specified area of land, i.e. the *land* is licensed to a specified miner. Licence fees paid to MMR and traditional (chiefdom) authorities.	Any digger or miner mining in unlicensed land. Any licensed miner digging unlicensed land. Anyone mining in licensed land without the consent of the licence-holder. Miners sub-leasing land from a licensed miner, but not selling the stone through the licensee. Diggers may be mining illegally, technically, but have permission (and thus protection) of traditional authorities. "Up to 50% of the trade".
Trade	*Carte de Negociant.* Records of purchase and sale must be kept and distributed to the CEEC.	Unlicensed *negociants* buy and sell between the creusseurs and the *comptoirs.*	Dealers obtain licence and can appoint agents who must also be licensed. Licensed dealers can employ 'coaxers', often members of the 'Open-Yai', to entice miners to sell to them. They may only legally sell to licensed exporters. They are required to submit monthly records to authorities.	Unlicensed dealers or diamond brokers (called the Open-Yai) buy from licensed and unlicensed miners, and sell to licensed dealers or on the black market. Licensed dealers buy stones from unlicensed miners or diggers.
Export	Comptoir Licence	Smuggling, diamond laundering.	Exporter requires export licence, can appoint agents who also must be licensed. Must keep records of purchase and sale. Must use banking system.	Any unrecorded purchase and export is illegal. Smuggling, inter-MRU trade, diamond laundering, cash purchases (exceeding a certain amount) and money laundering.

Governance

The quality of governance of the trade in artisanally mined diamonds should be understood in the context of the significant capacity constraints that prevent governance structures from working efficiently and effectively. Our case studies demonstrate that capacity restrictions are nuanced, and often linked to the geography of the country such as size, geographic position vis-à-vis neighbours, traditional trading routes, and accessibility of production areas relative to trading centres and government offices. For example, the sheer size of the DRC, coupled with the size of the diamond trade, makes monitoring the trade a herculean task.

State capacity should also be seen as an issue of political will rather than just know-how or resources. Traders, as well as the political elite that benefit from the present system, may wish to maintain the status quo as part of their political and economic agenda. Yet, where there *is* political will, knowledge and resources, governance systems can be implemented more effectively. The establishment of the KPCS at the point of export was implemented relatively well in both countries, in part due to the influence of the private sector, substantial support from donors and the dedication of the governments in question.

Alternative domestic interventions in the governance and structure of the diamond sectors of the DRC and Sierra Leone have met with mixed success. SAESSCAM in the DRC and USAID's PDA and IDMP in Sierra Leone all championed initiatives that sought to formalise the ASM sector and empower artisanal miners, giving them a larger slice of the diamond pie. Yet, SAESSCAM has been severely restrained and has thus far not gotten off the ground, the IDMP cooperatives scheme was abandoned by the donor just one year after initiation, and the PDA has largely disintegrated following the closure of USAID's project in December 2007, leaving a question as to what its legacy will really be.

This has the following implications:

1. Vested interests constitute an obstacle to reforming the diamond trade, and can motivate further informalisation of production and trade, particularly if predation on formal sector operators reaches levels which reduce their operational performances to commercially unsustainable levels[191].

2. Political will coupled with knowhow and effectively applied resources can bring about significant changes in the structures that govern the trade.

3. Any serious attempt to reconfigure trading relations in line with the vision for formal value chains encompassed in the countries' mining legislation would have to engage for the long-term to ensure changes are sustained.

Legal exports, fees and taxation

The summary of fees in table 4 shows a similar fee structure employed in the DRC and Sierra Leone. Fees for dealers, their agents, and exporters' agents are relatively low, while exporters, who effectively finance the in-country operations, pay significant fees for their licences. The difference in exporter licence fees between the two countries can be understood in the context of their respective market values. For the DRC, official exports in 2007 were valued at $610m; for Sierra Leone, official exports were $141m.

---

[191] Garrett, N., Vlassenroot, K. and Sergiou, S. (2008), *Negotiated Peace for Extortion – The case of Walikale Territory in North Kivu*, forthcoming

Table 4: Summary of Fees Levied and Statutory Oversight in Sierra Leone and DRC

	Sierra Leone		DRC	
	Annual Fee (US$)	**Statutory oversight**	**Annual Fee (US$)**	**Statutory Oversight**
Dealer's Agent	$1,000	MMR (MMOs)	N/A	
Dealer	$2,000	MMR (MMOs)	$500	CEEC
Exporter's Agent	$5,000 (5 allowed)	MMR (MMOs)	$3000 (10 allowed) Or $15,000 each 'outlet'	CEEC
Exporter	$40,000 Minimum quota of $5m	MMR (MMOs) GDD	$250,000 Minimum quota of $48m in 2008	CEEC
Export tax	3%	GDD	3.75%	CEEC

Export fees are similar for both countries, between 3-3.75 per cent. Both countries revised their export fees downwards after discovering that high taxes incentivised smuggling to neighbouring regimes[192]. The cases show that fees and taxes at the point of export are more widely enforced due to higher effectiveness of existing oversight mechanisms at this point of the value chain and the procedures derived from the international requirements of the KPCS.

If fees were enforced further down the trading chain, it could significantly boost government revenues. For example, if the GoDRC would manage to license half of the country's estimated 100,000 dealers, this would result in additional US$ 25 million in revenue. In reality, the sheer scale of the sector places doubt on the possibility of effective oversight of the trade, even if oversight capacities of state institutions can be increased.

This has the following implications:

1. Producer countries have incentivised the export of diamonds through legal channels by lowering export fees to an acceptable level. In addition, and though smuggling still occurs, the KPCS's international requirements disincentivise exporters to export goods illegally owing to commercial and legal penalties that they could face at the point of import.

2. Fees and taxes accumulate towards the point of export where international and logistical requirements make oversight and collection of the fees by the state far easier. The implication of this is that exporters effectively collect taxes on the government's behalf by paying a disproportionally larger fee and then pushing the costs of this tax further down the trading chain. By operating in this manner, governments save on the costs on monitoring, but by not having full oversight over the source of production, effectively assume exported diamonds to be of legal origin.

3. An attempt to collect taxes from internal dealers is impossible in DRC. It would also have the effect of further disencentivising legalisation and drive the trade

[192] See for example, the trade between DRC and Congo-Brazzaville

underground. From a development perspective, it does not make sense to tax individual diggers and petty dealers given their low margins.

Internal Trade

In both of our cases, regulation of the internal trade in diamonds is governed by requirements from the point of export, which in turn is governed by the KPCS. This is a chain of invoices and receipts, which tally purchases and sales. Yet, the reality is that continued informal production produces informal markets, until some point where a licensed dealer can move the diamond into the formal trading chain for legal export.

This has the following implications:

1. The significance of informal mining as a proportion of production, and the mechanism for moving diamonds into the formal sector, as well as porous borders, means that artisanal diamond producing countries cannot assure that the diamonds that are exported as KPCS compliant are not from illegal or 'conflict' sources.

2. Although the internal trade of artisanally mined diamonds is largely informal, it is a functioning and highly sophisticated system, which balances a number of factors that one would see in a regulated market. The fact that governments have been unable to fully govern the trade means that their current approaches and capacities are incompatible with the realities of the internal trade.

3. Countries with any of the following attributes struggle and are likely to fail to properly enforce KPCS regulations: large artisanal mining sectors, specific geographical attributes (e.g. hard to access terrain, long borders, poor infrastructure), and/or the capacity limitations to monitor the sector.

4. Infrastructure and geography matter in the internal trade of diamonds. Underdeveloped infrastructure complicates access to mining areas and increases transport costs. Issues of access cause geographically induced monopolies or oligopolies in many rural mineral markets that translate into unfair prices for diggers and miners. It is not the dealer per se so much as the lack of access to a proper market that allows the digger to be exploited.

5. There are usually several 'levels' of dealers. Unlicensed diamond peddlers, or 'Open-Yai' as they are called in Sierra Leone, play an important commercially logical role in moving diamonds from the informal to the formal trading stages by buying single stones from informal diggers and miners and parcelling the diamonds for sale onwards to licensed dealers[193]. Yet, the law does not provide for their activities. Therefore creating a legal category for diamond peddlers could help formalise this tier in the diamond value chain. However, if this is done inappropriately it will create a tier which will again be navigated or avoided as these dealers see fit for commercial reasons.

Illegal exports

Legal exports are those which adhere to all requirements made of exporters in the relevant legislation and in compliance with the KPCS. Legal exports in DRC and Sierra Leone have been outlined in the section Legal exports, fees and taxation, however there remain a

[193] Levin, E., & L. Gberie, (2006). *Dealing for Development: The Dynamics of Diamond Marketing and Pricing in Sierra Leone,* The Diamond Development Initiative, March 2006

number of challenges for artisanal countries when it comes to official exports such as balancing the need to raise revenue through taxation while providing a market sensitive valuation to deter smuggling.

Most research which has been conducted on the illegal export of diamonds from artisanal producing countries has tended to remain confidential and for use only by the funding agencies and chosen collaborators[194]. As a result, understanding the motivations of the various actors who operate on this level is very difficult without conducting primarily research in this field. Therefore evidence of smuggling is predominantly anecdotal. For example, it is widely claimed in Sierra Leone that traders who have long operated between Sierra Leone and other ECOWAS countries use black market diamonds (and gold) as a form of convertible currency. This activity would contravene Sierra Leone's Money Laundering Act, yet would not appear to be on the same level as deliberate and concerted acts of money laundering. At the same time, such traders buying and selling on the black market could easily move conflict diamonds between nations.

This has the following implications:

1. Moves to monitor and stamp out the black market trade in diamonds seem unlikely to be successful, given capacity limitations and the well-established nature of the trading routes. Simplification may make more sense than tighter regulation. Incentives to trade outside officially acceptable procedures would need to be removed before measures to enforce formal/legal trade are implemented. It is often inappropriate regulation that drives producers/traders to circumvent it.

2. Trade harmonisation between nations, currently moving slowly in the MRU and the Great Lakes Region, could eventually remove incentives to use diamonds as a form of hard currency and therefore take a proportion of the trade used by traders out of the black market.

3. Reducing the number of 'a-legal' operators will increase the percentage share of explicitly criminal activity in the black market. Re-establishing, funding and supporting investigative units such as the PMMU in Sierra Leone, could work to identify and halt serious criminal activity.

[194] In the course of field research in 2004 and 2006, one author was made aware of attempts by the United Nations and bilateral donors to scrutinise illegal exports and smuggling as part of their efforts to keep the peace and inform diamond sector reform. Documents produced were not for publication or distribution.

Fiscal Challenges

As an extremely high value, highly transportable commodity, diamonds pose the following challenges to a country's fiscal regime:

- Tax avoidance is a significant motivation for informal trade[195]. The avoidance of taxation at the export stage is often rooted in disparate tax regimes, which make exports from one country significantly more expensive than from a neighbouring country. Failure to harmonise tax regimes across regions with porous borders can thus result in significant revenue losses for the country which imposes higher export costs[196].

- M**onetary restrictions** contribute to the proliferation of informal trade. For example, if a government restricts the purchase and sale of diamonds to local currency only in an attempt to boost foreign exchange reserves, this can backfire by driving trade underground[197].

- **Banking systems:** Many countries, including Sierra Leone, require foreign importers to transfer their money through the banking sector. While this potentially provides for safe transfer of funds, high fees and poor rates of exchange make the cost of exchanging cash on the black market significantly lower, incentivising traders to import cash illegally and buy diamonds outside the formal system.

- **Diamonds as international hard currency**. Traders from neighbouring countries use diamonds as a form of convertible currency to avoid the costs or difficulties of changing between local currencies. A trader from Guinea selling imported goods in Sierra Leone will be left with a significant quantity of Leones which he will then exchange for diamonds (or gold) to transport back to Guinea and sell.

- **Money Laundering and other criminal activity:** Specific examples of money laundering and other criminal activity in the diamond trade are notoriously elusive. The US Treasury's National Money Laundering Strategy 2007 notes that diamonds are attractive to money launderers because they are "easily transported and concealed" and "virtually untraceable to their original source". It further states that "even when diamonds are transported openly, it is relatively easy to mislabel the quality/value of a diamond for money laundering purposes."[198]

- **Undervaluation and profit declaration:** Undervaluation of diamonds at the point of export is a contentious issue in the diamond sector. Diamond valuation is not an exact science, and significant differences can exist between valuators' estimates. Buyers come to producing countries looking for cheaper diamonds than those found at the international exchanges. Implicit in the declared value difference at the point of export from a producing country and the value at the point of resale is the exporter's expenses and profit margins. However, KPCS statistics reveal that profit margins are often declared in tax free trading zones such as the United Arab

[195] Informal taxation includes extortion and bribes to facilitate trade.

[196] Garrett, N. (2008), *Walikale – Artisanal Cassiterite Mining and Trade in North Kivu – Implications for Poverty Reduction and Security*, CASM, forthcoming, p. 37

[197] Both Guinea and the DRC previously enacted legislation like this resulting in the trade fleeing across borders to other Mano River Union countries and Congo Brazaville respectively.

[198] US Treasury (2008). *National Money Laundering Strategy 2007*, pg 59.

Emirates and Switzerland. In the case of UAE, the US$ per carat value of rough diamond imports in 2007 was US$45.83, but US$70.28 at point of export. A difference of US$24.45, or over 50%, per carat. Switzerland, another tax free zone, also sees a similar difference in declaration between import and export of US$23.51[199].

199 KPCS Statistics (2008). *Annual Global Summary, 2007*.

Conclusion

This study examines internal and external trade mechanisms in artisanally mined diamonds in DRC and Sierra Leone with the aim of determining optimal practices for regulating the trading chains and harnessing them for developmental ends. In both countries diamonds are traded within and between two parallel systems: the formal and the informal spheres.

The informal artisanal diamond trade has proven to be recalcitrant, and many interventions and proposals for regulation and oversight have had only marginal success or have failed outright. Our findings suggest that the principal reason for failure of many interventions is because they have not taken into account the mechanics of an already functioning trading system, which has an unrivalled resilience. Often these interventions have been designed with unrealistic expectations of the regulatory capacities of the relevant institutional infrastructure, which is fundamental to effective application and enforcement. This is a misjudgement in two ways: firstly, the fact that existing informal institutions are internally functional (although often inequitable) has been disregarded. Secondly, the institutions that were supposed to impose the new regulatory regime over existing rule systems were not provided with sufficient resources to build the capacity to do so effectively.

The KPCS is the principal scheme that attempts to control production and trade in the diamond sector. For this KPCS to work effectively requires a significant increase in the monitoring capacities of implementing countries. In a country like the DRC with fledging democratic institutions, an estimated 100,000 dealers and up to 1.1 million artisanal diamond miners operating over a vast area, and 10,700 kilometres of porous borders, this is an impossible proposition.

The geography and social processes which structure these trading chains will not be changed in the short-term, potentially not even in the longer-term. The sheer scale of the trade in both countries, but especially the DRC, leads us to suggest a fundamentally different starting point, which is to ***work with the existing trading structures as much as possible***. This approach would seek to both remove penalties for the informal sector, while simultaneously incentivising formalisation. Our recommendations below are written to this effect.

For internal diamond trade control systems, which complement the external regulatory regime of the KPCS, this means that controls should work in line with the existing trading system - seeking to formalise the status quo *first* and rationalise it *second*. Formalisation should be an incremental process, proceeding through progressive rationalisation of the sector in line with the increasing regulatory capacities of the state. This is a realistic path towards achieving the point of origin requirements of the KPCS, the regulation of the artisanal diamond trade, and harnessing this resilient and dynamic trade for developmental ends.

Recommendations

1. *Change the approach to regulation and governance*

- The law should facilitate formal production in line with reality rather the current approach in the DRC where the discrepancy between the theoretical model embedded in law and the trading chain as it is actually structured inhibits formal participation.

- Drawing on the conclusions of the 'Trading for Peace' project in the Great Lakes Region, and building on the World Bank's nascent project to improve fiscal and legislative harmonisation amongst Mano River Union countries, inter-governmental cooperation on regional trading issues should be prioritised and actively facilitated.

- International initiatives focusing on governance and the diamond trade should explore opportunities for coordination, to maximise synergies, reduce costs and bureaucracy, and increase legitimacy and reach[200]. For the artisanal diamond sector, some coordination between the KPCS and the EITI, for example, could mean that they lend their political support to (what is currently referred to as) the EITI++ process, which could oversee the publication of diamond revenues and how they are allocated and spent within government and local government (including traditional authorities). This process would empower citizens to hold authorities to account, and ensure revenues are contributing to development processes.[201]

- Governance is not just the state's responsibility. The roles and responsibilities of other stakeholders, such as civil society organisations and the private sector, should be identified.

2. *Develop the law based on existing trading structures and institutional capacities*

- Understand the elements that structure current trading relations as a basis for developing a legal framework (i.e. the Mining Code) first legalising these structures and then rationalising them.

- Review the Mining Codes in both countries. This should be based upon sound research to understand how the trade works in actual fact. Consider:
    - Conferring legal rights and responsibilities on *all* operators in the trade. In Sierra Leone, for example, evaluate the utility of developing diamond peddler licences to provide an avenue for bringing this first step of the trading chain into the formal sector. Consider options for legalising the activities of subsistence artisanal diamond miners, such as overkickers and gado gangs, who are unable to get licences themselves or to work on

---

[200] Levin (2008), *Certified Trading Chains in Mineral Production – Towards Technical Assistance*, BGR

[201] Experience from the World Bank's project in Madagascar has shown that formalisation of artisanal gold mining and trading accelerated once people saw the infrastructural developments their government put in place from licensing revenues

licensed land[202]. Until these mining activities are legal, the first trade cannot be legal or formal.
   - Conducting further research into customary modes of organising production and trade, with a view to take inspiration from these for the process of formalisation.

- Minerals legislation and the processes for developing it should be designed with institutional capacities in mind.

3. *Move from control approaches to facilitation and incentivising formalisation*

- Move from an approach that prioritises controlling the trade to facilitating and improving existing trading structures by making them more rational and equitable. Make it easy and desirable and cheaper for operators to work legally.

- The trading system is directly impacted by the quality of infrastructure, which determines access to more competitive markets, instead of geographically induced monopolistic or oligopolistic markets. Governments and donors may wish to consider alternative ways to help miners get to markets, or markets get to miners. For example supervised local buying markets, decentralised diamond bourses, or a non-monopolistic mineral marketing board that guarantees a minimum price[203]. Such initiatives could increase competition between dealers, so helping miners get higher prices, and a bourse would make information-gathering and monitoring easier for the state.

- Third party valuation services should be re-employed at the point of export to ensure competitive valuation for the state.

- The (re-)establishment of a professional, well-funded investigation and enforcement unit, such as the retired PMMU in Sierra Leone, would do much to expose internationally relevant illegal activities. The unit should be exclusively focused on large scale illegal activity within the diamond sector such as conflict diamond trading and laundering rackets. Adequate political support is absolutely crucial and must be

---

202 Sierra Leonean law only provides for artisanal mining organisations which have sufficient capital to mine an acre, using up to fifty diggers. This is beyond the reach of many miners, who choose to mine independently in the bush (gado gangs) or sifting through tailings (overkickers). To formalise the activities of these subsistence miners, the development of artisanal mining zones or artisanal diggers' cards could be the solution. The card could be groups of 5 or less using artisanal methods only (i.e. *no* mechanisation). This card could be free or for a nominal annual fee to encourage formalisation. The advantage would be that dealers could then legally declare from whom they bought the diamonds and where this was mined (village), without having to launder them. See also Levin, E. (2005) *From Poverty and War to Prosperity and Peace? Sustainable Livelihoods and Innovation in Governance of Artisanal Diamond Mining in Kono District, Sierra Leone.* University of British Columbia, Vancouver.

203 Strategies would have to be developed to mitigate conflict with dealers and prevent malpractice. It would also be important for these initiatives to be coupled with infrastructure programs, which in turn should be carefully sequenced with security sector reform (SSR), as resultant better access also means easier access for armed groups. (Garrett, N. (2008), Walikale - Artisanal Cassiterite Mining and Trade – Implications for Poverty Reduction and Security, CASM, p. 71)

mustered and reified. This force should seek to work in cooperation with – and possibly be trained by – external international crime prevention agencies.

- In order to encourage dealers to use the banking system, governments should work with financial institutions to provide appropriate and reliable services for dealers. This would aid formalisation of transactions, and help harness the trade in artisanal diamonds for developmental ends. It would also provide a means for easier scrutiny of their activities.