Using Public-Private Partnerships (PPPs) to Improve Tanzania's Governance of its Diamond Sector and Enhance Compliance with the Kimberley Process Certification Scheme

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About the series:

The United Nations University-Institute for Natural Resources in Africa in collaboration with the University of Warwick's Centre for the Study of Globalization and Regionalization, University of Leiden-African Studies Centre, Universidade Eduardo Mondlane and University of Ottawa's Centre on Governance undertook a joint United Nations Economic Commission for Africa funded project on "Engaging the Private Sector for Inclusive Extractive Industries and Sustainable Value Chains in Africa." The project was carried out through the study and analysis of four country case studies: Ghana, Tanzania, Zambia and Mozambique. The two-year study examined and prioritized backward linkages in Africa's mineral extraction and natural resources sectors, contributing to on-going efforts at answering the central problematic of how to leverage the latter industries to support, encourage, facilitate, and drive broad-based and sustainable economic growth and development, both transitionally and in key case study states.

Abstract

International legal instruments and related agreements provide an important framework for the establishment of a lasting and effective management structure of natural resources. Tanzania is a country that is signatory to a large number of international agreements and is a member of various international bodies related to natural resources. Despite taking part in numerous natural resource governance accountability mechanisms, Tanzania's governance of the natural resource sector is modest. It faces several challenges in the extractive sector, while undertaking efforts towards better governance. Public–private partnerships (PPPs) have been limitedly examined as instruments for improving natural resource governance. This document shows concrete actions that can be taken within PPPs that were established with various private actors of the country. It does so by looking specifically at the Kimberley Process Certification Scheme (KPCS) and enhancing Tanzania's compliance with this mechanism.

INTRODUCTION

The United Republic of Tanzania (Tanzania) is an active participant within the system of the United Nations. As most countries, it is a signatory to a myriad of international agreements and treaties. These are important international instruments for various purposes, including environmental protection, conflict prevention, disaster prevention, the respect of human rights, and children rights, to mention of few. Some examples of such agreements signed by Tanzania are the African Charter on Human Rights and Peoples' Rights, the Terrorist Finance Convention, and the Vienna Convention for Protection of the Ozone Layer.

International legal instruments and agreements related to natural resources, such as the Extractive Industry Transparency Initiative (EITI), the Intergovernmental Forum on Mining, Minerals, Metals, and Sustainable Development (IGF), and the Kimberley Process, provide an important framework for the establishment of a lasting and effective management structure of natural resources. Tanzania is a signatory to and a participant in these and other resource-related intergovernmental and international agreements as well as policy instruments. It is a significant indication of the country's desire to address pertinent challenges in its extractive industry and the intersection between that and other social and environmental challenges. This desire is grounded in the recognition of not only of the extractive sector's important role but also the significance of an efficiently governed sector with regard to national development.

Despite the country's political engagement in numerous natural resource governance accountability mechanisms, i.e. measures by which accountability is achieved, Tanzania's governance of the natural resource sector is still modest. The country has put in place a legislative framework for the governance of natural resources and of the extractive sector and now has a unique and progressive programme for artisanal miners. However, Tanzania faces challenges related to management capacity in an environment where the political and administrative will is not lacking, but the ability to meet the standards and obligations of international protocols at the level of implementation presents difficulties.

Nonetheless, as a diamond-producing and -exporting nation seeking to improve the governance of the sector, Tanzania joined the Kimberley Process Certification Scheme (KPCS or KP) since its inception. The KP is an international certification scheme that regulates the trade in natural rough diamonds. Established in 2003 through a United Nations General Assembly Resolution 55/56, the KP aims to prevent conflict diamonds from entering the mainstream rough diamond market. 'Conflict diamonds' is the term used for diamonds mined in a war zone and sold to finance an insurgency, an invading army's war efforts, or a warlord's activity. Although it is not a treaty-based system, governments in the KP demonstrate a commitment to adopt and implement national laws regulating their diamond trades and certifying their rough diamond exports. Civil society groups and diamond industry representatives joined the process as observers, making the KP a tripartite mechanism (Bieri F, 2010).

Although the interest in the KP by various actors, including states like Tanzania is important, the actual implementation of the mechanism is ultimately what matters for the sector. The contribution of all relevant public and private actors engaged in various aspects of the diamond – and indeed larger extractive – sectors of member countries is necessary to operationalise the KP effectively. Signatory states need to utilise the expertise of private civil society and industry actors to advance and enhance compliance to the KP requirements. Limited input to emerging global standards for natural resource governance such as the EITI tend to undermine or restrict the reach of their impact in target communities (Balag'kutu, 2017). Increasingly, public-private partnerships (PPPs), which encourage a wide spectrum of expert and experience, have played a major role in the implementation of global policy instruments in some development areas with significant impact (Andonova, 2006, 2010, 2017; Brinkerhoff, & Brinkerhoff, 2011; Nishtar, 2004; Richter, 2004), in different (development) contexts (Liese, & Beisheim, 2011; Börzel & Risse, 2005) and at different levels (Andonova, 2006, 2017; Bäckstrand et al., 2012; Osborne, 2002). Sun (2017) observed that the success of a PPP depends on, among other factors, the political environment around the issue of importance. Tanzania has demonstrated the necessary will for efficient resource governance and has an elaborate history of PPP frameworks for the resource governance of the mineral supply chain. Against this backdrop, this paper, based on a detailed analysis of Tanzania's diamond sector and the KPCS, examines whether PPPs can enhance the country's compliance.

The rest of the paper is divided into five main parts. In the next section, we examine literature on PPPs, as well as an overview of Tanzania's PPP policy and legal frameworks. Following that is a discussion on the KPCS process, which looks at the requirements and special recommendations for alluvial diamond mining. A discussion of Tanzania's preparedness to adopt the KPCS follows; this section also examines diamond mining in Tanzania, considering the various scales of production, as well as the legal and policy frameworks governing the sector's operations; it also includes a review of institutional and regulatory frameworks for the implementation of the KP. The fourth section examines how PPPs can enhance compliance with the KP scheme in Tanzania, outlining the involvement of the various actors in the country's diamond supply chain. A concluding section reiterates the importance of the PPPs with regard to Tanzania's specific context.

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PUBLIC-PRIVATE PARTNERSHIPS

Public-Private Partnerships are a mechanism for governments to procure and implement public infrastructure and/or services using the resources and expertise of the private sector. According to Andonova (2017), PPPs are voluntary agreements between public actors such as officials of intergovernmental/international organisations (IOs), states or sub-states, and non-state or private actors like officials of non-governmental organisations (NGO) and companies. These agreements are based on set objectives and norms, rules, practices or procedures of governance, and their attainment within specific contexts. In its broadest sense, the ideal PPP exploits synergies in the shared use of resources and the application of knowledge management to attain the goals of all parties involved (Auld et al., 2009; Levin, Cashore & Koppell, 2009; Jomo et al., 2016).

A PPP indicates the inclusion of a private authority in the governance of a public issue that is of interest and brings to bear on both categories of actors. Public-Private Partnerships combine the skills and resources of both the public and private sectors through the sharing of risks and responsibilities, according to each entity's strengths and advantages. Governments are the shepherds of the PPP process, giving them a joint responsibility as partners and owners or supervisors of the overall governance process concerned. In this regard, they perform two main broad functions. Firstly, they must create the enabling environment in which partnerships can emerge. Secondly, through the growth of training and expertise, they must develop a sufficient regulatory and assessment capacity to ensure that projects are indeed in the interest of the public (Olsen, 2009). Private contractors can play a greater role in the technical aspects but would require support and training in estimating and understanding the specifications and output measures. Private actors often have extensive experience and sometimes better technical expertise on the substantive issues, as well as useful resources to facilitate community entry. Vogel (2010) underscores the complementary role and hence the importance of a private authority in the regulation of the activities of corporations. In a PPP, the activities of private actors enhance state policy implementation and are in turn enhanced by the state or governmental authority. Partnerships between private and public authority institutions reinforce the essence and impact of both categories of actors. Ultimately, PPPs enable governments to benefit from the expertise of the private sector, and allow them to rather focus on policy, planning and regulation.

Public-Private Partnerships have become popular following the emergence and realisation of the importance of a private authority in global governance processes. According to Andonova (2006), PPPs emerged on the global stage because of a convergence or intersection of strategic interests among various actors across different levels and to enable the expertise of private authorities to fill up governance gaps. This hybridisation of governance authority at the global level represents a response from IOs to the rising pluralisation of politics, while facilitating essential collaboration with non-state actors to utilise their expertise (Andonova, 2010). Thus, due to the political demand and supply of PPPs, the phenomenon has become a common feature and important part of governance within intergovernmental forums (Andonova, 2017).

At the domestic level, PPPs have served and continue to provide essential sources of policy guidance and governance expertise. They provide an important solution to several governance problems beyond the state (Reinicke & Deng 2000). Public-Private Partnerships have since been in common use in the industrialised world, following the rise of privatisation and/or deregulation in the 1980s (Börzel & Risse, 2005). Some scholars have also demonstrated that in the context of the developing world, PPPs have become important governance arrangements against the backdrop of inadequacies on the part of the public sector in the effective and efficient provision of public goods (Andrea & Beisheim, 2011; Nishtar, 2004). Public-Private Partnerships are also formed across sectors to enhance efficiency and advance governance for strategic reasons (Cashore, 2016).

Public-Private Partnerships are cost-effective and provide a wider pool of expert resources for policy and governance (Osborne, 2002). These partnerships facilitate synergies across processes and places, enhance neutrality and mitigate conflict within governments (Auld et al., 2009; Levin, Cashore & Koppell, 2009). Public-Private Partnerships complement the performance of governments by facilitating information sharing, capacity building, rule setting and programmes for efficient policy implementation and governance across scales (Andonova et al. 2009; Börzel and Risse 2005; Andonova, 2010; Sun, 2017).

Public-Private Partnerships also ensure the provision of essential services that some governments often grapple with. Andrea and Beisheim (2011) observe that in the developing world for instance, PPPs have been instrumental in the provision of water and other essential utility services. Besides, with the added expertise and problem-solving capacity of private actors, PPPs enable governments to improve their effectiveness in governance. The wider democratic participation also engenders legitimacy and accountability in the policy and governance processes (Börzel & Risse, 2005).

It is important to point out some observations about the possibility that PPPs can undermine governance and policy processes. Some have argued that PPPs can reduce accountability and undermine public control (Sands 2004). Jones and Stewart (2009) contend that PPPs sometimes lead to joint irresponsibility in practice, with no one ultimately being accountable. Despite the complementarity between public and private actors that PPPs engender, they also generate conflict due to the layering of rules and the politics that drive their operation in any given context (Bartley, 2011). Thus, the generally positive perception about PPPs often overshadows risks that PPPs bring to bear on governance (Richter, 2004).

Because the impact of a PPP depends on, among other things, the socio-legal context as well as the relationships in and the general nature of national politics around the issue area (Sun, 2017), they may sometimes be problematic to manage. Although private transnational networks are commonly value-driven (Keck & Sikkink, 1999), specific interests (in objectives, approaches, and outcomes) and political differences can interfere with their activities and in their engagement with public actors (Fransen, 2011). Sometimes, states are also reluctant to sufficiently empower a private authority within the context of a PPP (Börzel & Risse, 2005). Therefore, despite its positive impact on governance, PPPs can cause inefficiencies in a system if they are not properly managed.

While acknowledging the possibility of challenges to PPPs in general, we recognise that Tanzania presents a conducive and supportive political environment for PPPs. The state has taken steps to address malpractices in the extractive sector. Moreover, Tanzania has a history of a PPP framework, which can provide an adequate basis for the use of PPPs to enhance compliance to the KPCS. This environment is enabling for the necessary 'collective action', (Saldarriaga-Isaza, Villegas-Palacio, & Arango, 2015) not only among miners but also among all other relevant stakeholders to the KP. With respect to the accountability and (ir)responsibility argument, a system of continuous management and monitoring of PPPs through the verification of project deliverables can significantly translate the political will, the commitment of actors and a state's policy determination into meaningful results.

Since the emergence of due diligence in mineral supply chains for responsible sourcing[1] and since the Human Rights Council endorsed the United Nations Guiding Principles on Business and Human Rights in 2011, PPPs are being used as instruments for the promotion of companies' compliance with human rights, environmental standards, and laws (di Lorenzo F., 2017). Similarly, the intention of this paper is to look at a reverse scenario, where PPPs enhance the compliance of Tanzania's government with an international mechanism, namely the KPCS. Public-Private Partnership arrangements may be challenging in some respects (especially within domestic contexts), but their impact on governance is undeniable. With the right collaboration, exchange, as well as monitoring and evaluation of deliverables, PPPs are important role players in governance issues.
To achieve a successful PPP, a careful analysis of the long-term development objectives and risk allocation is essential. Public-Private Partnerships have become an integral strategy in Tanzania's national and international developmental plans such as the Sustainable Development Goals (SDGs). Tanzania's Five-Year Development

[1] In 2016, the OECD has established the Due Diligence Guidance which provides detailed recommendations to help companies to respect human rights and avoid contributing to conflict through their mineral-purchasing decisions and practices. This Guidance is for use by any company potentially sourcing minerals or metals from conflict-affected and high-risk areas. Similarly, the Responsible Minerals Initiative is a resource for companies from a range of industries to address responsible mineral-sourcing issues in their supply chains.

Plan 2016/17–2020/21, entitled Nurturing Industrialisation for Economic Transformation and Human Development has a dual focus on growth and transformation, and poverty reduction. There are four priority areas for action: fostering economic growth and industrialisation; fostering human development and social transformation; improving the environment for business and enterprise development; and strengthening the effectiveness of implementation. As such, the Plan embodies a 'business unusual' spirit, targeting more effective implementation (to be led by the Ministry of Finance and Planning) and embracing and promoting strategic partnerships with the private sector. The contribution of the broad extractive sector is important for the realisation of this plan. Improving the governance of the sector through mechanisms like the KP is imperative for this development agenda of the state. A PPP can significantly contribute to the state's KP compliance toward the overall development agenda. The next section examines Tanzania's PPP framework to give the context for its capacity to facilitate compliance to the KP.

PPPs legal framework in Tanzania

Public-Private Partnerships are not a new phenomenon in Tanzania. For nearly a decade now, Tanzania has adopted several PPP initiatives in internal development policy processes. In 2009, the government published a National PPP Policy that recognised the role of the private sector to bring about socio-economic development through investments and to ensure efficiency, effectiveness, accountability, quality, and an outreach of services.

In 2010 and 2011, the Tanzanian government overhauled the country's legal framework on PPP projects to facilitate and encourage more private sector participation in the provision of public services (The World Bank 2010-2017, & Ministry of Energy and Minerals), including:

- The Public Private Partnership Act No. 18 of 2010 (the Act) was brought into force in 2010, as the main governing act regarding PPPs in mainland Tanzania.
- Public–Private Partnership Regulations were introduced in 2011 to give effect to the Act and regulate the way PPP projects are identified, parties are selected, and agreements are implemented.

The Act established various public sector entities; each allocated a specific role in the PPP process:

- The PPP Co-ordination Unit (PPCU): based in the Tanzanian Investment Centre, to promote and co-ordinate all matters relating to PPP projects.
- The PPP Finance Unit (PPFU): based in the Ministry of Finance, to assess fiscal risk allocation and other financial matters.
- The Contracting Authority (CA): the body that enters into the PPP project agreement with the private sector.

In addition to setting up the two units, the Act sets out:

a. the responsibilities of each of the contracting parties in any given project;
b. what is to be contained in every PPP Agreement;
c. penalties for non-adherence to the Act.

There are some notable requirements for all PPP agreements, namely:

i. Provide for remedies in case of a breach by either party.
ii. Provide for the period of execution.
iii. Provide for assistance by the public party to the private party in obtaining licenses and permits necessary for the implementation of the project.
iv. Impose financial management duties on the private contracting party in the form of internal financial controls, transparency, reporting and accountability.
v. Contain obligations of the private party to be liable for risks arising from the performance of its functions.

The Act further states that all disputes arising out of such agreements shall be resolved by negotiation, mediation or arbitration. Furthermore agreements must be reviewed and approved by the Attorney General before the relevant public authority can sign them. Also, all PPPs are to be monitored by the ministry responsible for the provision of the service. The PPP legislation was amended in December 2014 for the creation of one PPP Centre, and setting up a PPP Facilitation Fund, as well as, two committees: the PPP Technical Committee and a National Investment Steering Committee. The government also revised PPP Regulations in 2015, thereby replacing the Public Procurement Regulations 2013 (Ministry of Energy and Minerals).

Other applicable laws include: The Public Procurement Act, 2011, as amended in 2014; the National Public–Private Partnership Policy, 2009; the Tanzania Investment Act, 1997; the Public Procurement Act, 2012; and the Electricity Act, 2008. Examples of projects structured as PPPs include:

- Energy Kinyerezi III and IV
- Gas Power Project (900 MW)
- Mkuranga Gas Power Project (250 MW)
- Ngaka Coal Power Project (200 MW)
- Singida Wind Power Project (150 MW)
- Urban Transports Bus Rapid Transit
- Dar es Salaam Ports and Bagamoyo Port

The new PPP regime applies to the following sectors: agriculture, education, energy, environment and waste management, exploration and mining, health, industry and manufacturing, information and communication technology, infrastructure, natural resources and tourism, trade marking and sports and recreation. In July 2017, Tanzania's parliament passed three pieces of legislation that made significant changes to the legal and institutional frameworks governing oil, gas, and mineral extraction: the Written Laws (Miscellaneous Amendments) Act 2017;, the Natural Wealth and Resources (Permanent Sovereignty) Act 2017; and the Natural Wealth and Resources (Review and Re-Negotiation of Unconscionable Terms) Act 2017. Thus, Tanzania has an elaborate and useful legal and policy framework regarding PPPs.

Tanzania's PPP legal and regulatory context does not limit or prohibit foreign investment, participation or control, and firms generally do not restrict foreign participation. Similarly, participation in industry standards-setting consortia or organisations is not restricted. Associations representing the tourism, telecommunications, and mining industries are composed of, and often led by, foreigners.

In the next section, we turn to the KP scheme (highlighting how it fits within Tanzania's diamond sector) to demonstrate how the standard's implementation can benefit from partnerships between public and private authorities in the country.

THE KIMBERLY PROCESS

The Kimberley Process is governed by the KPCS Core document which sets out the requirements for controlling the production and trade of rough diamonds. The unique KPCS Core Document is available to the public through its website (www.kimberleyprocess.com). Under the terms of the KPCS, participants must:

- satisfy 'minimum requirements' and establish national legislation, institutions and import/export controls;
- commit to transparent practices and to the exchange of critical statistical data;
- trade only with fellow members who also satisfy the fundamentals of the agreement, and based on authentic KP certificates;
- certify shipments as conflict-free and provide the supporting certification.

The measures agreed upon within the Kimberley Process are designed to protect the interests of all countries with diamond interests, whether they be producing, processing or consuming nations. Implemented through the national legislations of its participants, the KP is binding and cannot be considered an international agreement from a legal perspective. Because of the requirement for participants in the KP to trade only among themselves, almost all diamond- producing and -trading countries are members of the KP. They account for approximately 99.8 per cent of the global trade of rough diamonds. As such, Tanzania's membership enables the country to export their diamonds to various destinations all over the world.

The effectiveness of the KP implementation lies in the compliance to the Scheme by each participant. Because of the often informal and illegal nature of alluvial artisanal diamond mining, diamond-producing countries with such a type of production face many challenges regarding compliance to the KPCS, as documented in the 2005 KP Plenary Moscow Declaration. The objective of this process is to ensure safety, security and sustainability in the diamond supply chain. However, with the presence of extensive informal and often illegal artisanal diamond mining in Tanzania, activities of the country's diamond sector can undermine the aim of the scheme.

The Kimberley Process's Special Recommendations on Policies and Actions for Alluvial Diamond Production

In 2005, the Kimberley Process recognised that the weakest link of its implementation was within the artisanal diamond mining sector because of the number of people involved. It is also because of the fact that internal controls from mines to exports were and are difficult to establish. Not surprisingly, Tanzania, like all countries with alluvial artisanal production, has also struggled with the governance of the sector.

At the KP Plenary in Moscow, several key policies and actions were identified which, if implemented by countries with alluvial artisanal production, would significantly enhance their compliance. It would do so through the ability to guarantee that only diamonds produced and traded in accordance with national legislation and the standards of the KPCS can be exported. The five actions and policies are summarised below according to various categories which they represent. They emanate directly from the 2005 KP Moscow Declaration. These are the precise areas that a PPP would need to address for compliance enhancement:

(i) Ensuring traceability of production from mines to exports: ensure that full records of production are kept by artisanal diamond miners on a daily basis and that these requirements are backed up with adequate provisions for penalties in cases of false record-keeping; ensure regular cross-checking of these production records against sales records (to be kept by diamond buyers at the local level); and ensure that precise indications (plot) of the origins of a particular lot of diamonds are indicated on all invoices and documentation accompanying the diamonds to the point of export.

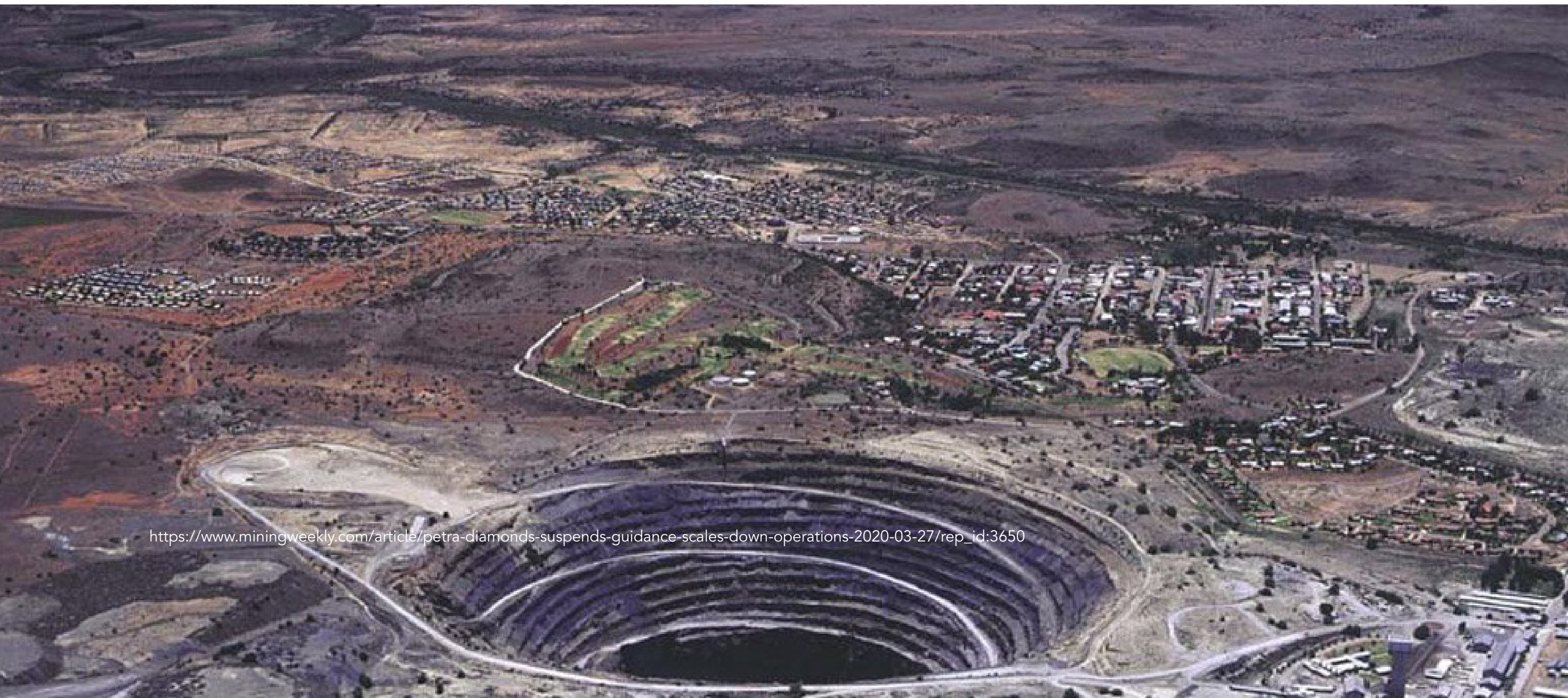
(ii) Regulating artisanal diamond mining: establish functioning cadastre systems to maintain accurate and up-to-date information on production areas and mining licenses granted and ensure that the information contained in cadastre entries is fed into and cross-checked against the information derived from production reports (as set out under point (i)); carry out detailed geological surveys of production capacities in artisanal mining areas and ensure regular cross-checking of reported production against the capacity estimated by such surveys; ensure that adequate numbers of mining inspectors are deployed in artisanal mining areas; and apply legislation and regulations by requiring that only licensed miners can engage in artisanal diamond mining and that mining licenses must be shown whenever diamonds are offered for sale by artisanal miners, as well as that mining licenses indicate the area of authorised diamond mining activity.

(iii) Regulating the trade in alluvial diamonds: verify buying licenses on a regular basis and in this context verify the volumes of diamonds declared; carry out spot-checks to ensure that reported purchases and sales between different levels of the buying chain add up; ensure proper supervision of the activities of diamond trading offices, either through the presence of government officials in diamond trading offices overseeing transactions or through appropriate spot-checks; ensure that daily buying records are kept and are regularly submitted to the appropriate authorities; undertake spot checks to ensure that licensed numbers given on receipts correspond to the actual origin of the diamonds; and ensure that all stakeholders in the oversight and regulation of diamond production, trading and export have a clear understanding of the aims and modalities of the KPCS.

(iv) Tackling illicit cross-border trade: coordinate policies at the regional level with regard to export and other relevant taxes, including through regional harmonisation of tax rates where appropriate; take the possible impact on the flow of illicit diamonds into consideration when implementing changes in the national tax policy; share information about export tax levels with other participants in the same region and make this information more widely available within the KP; share data on diamond trafficking at a regional level, including through the establishment of regional databases and blacklists of organisations and/or individuals involved in the smuggling of rough diamonds; and strengthen border controls and ensure full cooperation with the customs authorities of neighbouring participants to help prevent illicit diamonds and potential conflict diamonds from neighbouring countries being brought into the official export chain.

(v) Encouraging artisanal miners to move into the formal economy: provide advice on effective and safe mining and efficient recovery methods in artisanal mining; create incentives and regulatory frameworks for the establishment of miners' cooperatives; consider mechanisms for allocating part of the tax revenue raised from diamond exports to the development of diamond-producing areas and support for artisanal miners; and promote the development of formal banking infrastructures in artisanal mining areas.

The next section examines the diamond sector in Tanzania, considering how relevant the KP is to the sustenance and contribution of the diamond supply chain as well as its overall growth and development.



TANZANIA'S DIAMOND MINING AND THE KIMBERLEY PROCESS

This overview of the diamond mining focuses specifically on the artisanal diamond mining sector. It also includes a review of the KP requirements for internal controls related to diamond production and exports that Tanzania has to follow for compliance within the PPPs.

Initiated in 1930s, the diamond mining industry in Tanzania is composed of large-scale, small-scale, and artisanal mining. The diamond industry includes mining, trade, and export of rough diamonds into international markets. Tanzania has recorded significant diamond production over the years. In 2016, the total value of Tanzania's diamond export was US$86.6 million (KP Statistics). Tanzania's diamonds were mainly exported to the European Union and the United Arab Emirates as indicated in Table 1 below. Table 2 and 3 provide important statistics on Tanzania's diamond production and trade.

Table 1: The Top Three Tanzanian Exports

Country/Region exported to	Volume (carats)	Value (USD)
European Union	227,027.68	US$82,944,544.66
United Arab Emirates	11,915.78	US$2,666,853.57
Israel	1,808.31	US$505,653.61

Table 2: Tanzania Annual Rough Diamond Summary: 2016

Activity	Volume (carats)	Value (USD)	USD/carat
Production	241,668.86	US$86,628,688.63	US$358.46
Import into Tanzania	0.00	US$0.00	US$0.00
Export out of Tanzania	241,668.86	US$86,628,688.63	US$358.46

Source: Tanzania Annual Report 2016 to the Kimberley Process

Table 3: Total Annual Production

Production by type of scale	Volume (carats)	Value (USD)	% by volume
Large scale: Williamson Diamond Mine	226,899.17	US$82,880,093.84	94%
Medium scale: El-Hilal Minerals	8,924.29	US$2,254,714.26	4%
Artisanal & Small-Scale Mining: from various areas	5,845.40	US$1,493,880.43	2%

Overview of Artisanal Small-Scale Mining in Tanzania

As stated already, Tanzania has an extensive artisanal and small-scale mining (ASM) of minerals, including diamonds. Artisanal small-scale miners' operations are non-mechanised; artisanal mining equipment are mainly picks and shovels. The artisanal diamond mining activities are carried out in Tanzania in the Shinyanga, Mwanza, Kahama, and Kishapu areas. These regions are in the North-Eastern part of Tanzania. See Figure 1 below.

The issues presented in this section regarding the artisanal and small-scale mining are for all minerals and gems of Tanzania, including diamonds. The first mining law, (the 1929 Mining Ordinance), established in colonial times gave preference to large-scale miners and discouraged artisanal mining. The colonial legislation

was later replaced by the first post-independence Mining Act of 1979, and it allowed artisanal mining and encouraged formalisation of the sector, leading to the adoption of the Small-Scale Mining Policy Paper of 1983. The 1979 Mining Act was replaced by the Mining Act of 1998 which sought to enable Tanzania to create an investor-friendly regulatory framework to boost Foreign Direct Investments (FDI) in the mining sector. As such, the 1998 Act opened up the mining sector to foreign investments with a massive allocation of land to foreign mining companies in the late 1990s and 2000s. Although artisanal miners were mentioned in the 1998 Act, the emphasis was on the need to upgrade and formalise the sector. Allocation of huge mining blocks to foreign multinationals led to conflicts and resettlement when large-scale miners moved into areas with poorly-documented artisanal rights (Ali, 2017). Artisanal and small-scale mining was officially recognised by the Mining Policy of 2009, which laid the foundation for the current Mining Act of 2010. The Mining Act of 2009 offers more protection and strengthens artisanal miners' rights. It also emphasises granting primary licenses to artisanal miners for exclusive areas. The Act also provides for the confiscation of exploration licenses held for speculative purpose instead of active exploration.

Tanzania's ASM sector grapples with some challenges, which include the following:

- Limited government capacity to enforce laws and regulations related to ASM.
- Lack of capital and reluctance of banks to provide loans and other financial assistance to ASM (mainly unregulated sub-sector).
- Lack of potential areas suitable for ASM.
- Cross-cutting social and environmental issues such as environment, health and safety, gender, HIV/AIDS.
- Use of inappropriate technology, and poor practices in mining and processing.
- Inefficiency in exploitation and the processing of minerals (low recovery).
- Low level of productivity.
- Lack of transparency in artisanal operations.
- Market barriers.
- Uneconomical decisions in investment.
- Lack of record keeping (financial records).
- Tax avoidance.

However, Tanzania has positioned itself as a leading player in formalising the ASM sector with clear development outcomes being monitored along the supply chain. The government has adopted several legislative, administrative, and extension services, as well as financial measures to improve ASM in Tanzania. These include measures to allocate land areas specifically for ASM operations; improvement in the security of permit tenure from five to seven years; decentralisation of licensing; extension services for miners; demarcation of areas for exclusive exploitation by ASM; and a grant and a loan scheme. Within this context, the long-term successful coexistence of large-scale and small-scale mining in the country will need to be carefully evaluated as formalisation initiatives unfold.

During the past two years, the Government of Tanzania has also acted on various measures to improve the status of ASM. In January 2016, the Ministry of Energy and Minerals stripped a prospecting license from a Canadian company PARGEA (a subsidiary of Acacia Mining) and returned the mining block to 5,000 artisanal miners. This was an unprecedented act, in favour of artisanal miners, after many years of neglect by the government and abuse by the multinational corporation. Through the State Mining Corporation (STAMICO) and the Geology Survey of Tanzania (GST), the government has embarked on a project which seeks to enhance the capacity of artisanal miners in various ways. This collaboration would provide miners with adequate access to market indicators and sales platforms, expert and technical advice on geology, and subsidies to boost ASM capital and productivity. It also provides training to improve occupational safety and health. The government is also encouraging artisanal miners to form groups to facilitate networking, the exchange of information, and joint access to government subsidies.

Despite the strengthening of artisanal miners' rights in the Mining Act of 2010, and despite its potential for livelihood support, ASM still does neither culturally nor officially get the respect and recognition it deserves. Artisanal miners are widely considered as criminals and chaotic and disorganised people. This does not only affect compliance with the KPCS from a non-positive engagement of artisanal miners, but it could also potentially affect the mechanism's reputation if the matter came to the consumers' attention through media reports, as it has happened with countries such as Angola and Zimbabwe.

Tanzania's legal framework for diamond mining

Tanzania has a comprehensive and adequate legal framework that regulates its trade in rough diamonds. The legal framework governing diamond mining consists of the Mineral Policy of 2009 (a revision of the Mineral Policy of 1997), the Mining Act of 1998 and the Mining Act of 2010. The Mineral Policy of 2009 aimed, among other things, to develop small-scale miners, and to promote and facilitate value addition to minerals. The government maintained its role as the regulator and facilitator of the mineral sector; the promoter of private sector investment in the mineral sector; and that of strategic participants in mining projects. The Mining Act of 2010 provided for free state-equity participation in large-scale mining projects. It also confined mineral rights for artisanal small-scale mining and gemstone mining to Tanzanian citizens or corporations exclusively controlled by Tanzanians.

Various mining regulations have been established under the Mining Act of 2010 to regulate mining activities and they include the following:

- The Mining (Mineral Rights) Regulations, 2010
- The Mining (Environmental Protection for Small Scale Mining) Regulations, 2010
- The Mining (Safe Working and Occupational Health) Regulations, 2010
- The Mining (Mineral Trading) Regulations, 2010
- The Mining (Radioactive Minerals) Regulations, 2010
- The Mining (Mineral Beneficiation) Regulations, 2010
- The Mining Development Agreement Model 2010
- The Mining (Salt Production and Iodation) Regulations, 1999
- The Merelani (Controlled Area) Regulations, 2002
- The Mining (Diamond Trading) Regulations, 2003

The key legal instruments relevant to the KPCS in Tanzania are the Mining Act No. 14 of 2010, and the Mining (Diamond Trading) Regulations of 2003.

Under the Tanzanian mining laws, only licensed dealers or miners are permitted to export rough diamonds. Licensed miners can only export rough diamonds that they extracted,from their respective mining areas. Licensed dealers can only export rough diamonds that would have been purchased by them from licensed miners and/or licensed brokers (Tanzania Mining Laws and Regulations Handbook 2017).

Institutional and Regulatory framework for KPCS implementation in Tanzania

The responsibility for the implementation of the KPCS in Tanzania are with the Ministry of Energy and Minerals through the Commissioner for Minerals, whose role is to enforce the country's Mining Act and Regulations. In addition, the entities involved in the implementation of the KP are the Tanzania Mineral Audit Agency, Customs, and the Tanzania Revenue Agency. The police ensures law enforcement in the sector. The Commissioner for Minerals or authorised officers issue the KP Certificates that accompany every parcel for export purposes (Ministry of Energy and Minerals).

The KPCS core document indicates that participants should: establish a system of internal controls designed to eliminate the presence of conflict diamonds from shipments of rough diamonds imported into and exported from its territory; designate importing and exporting authorities; ensure that rough diamonds are imported and exported in tamper-resistant containers; as required, amend or enact appropriate laws or regulations to implement and enforce the Certification Scheme and to maintain dissuasive and proportional penalties for transgressions; collect and maintain relevant official production, import and export data, and collate and exchange such data in accordance with the provisions of Section V of the Scheme; when establishing a system of internal controls, take into account, where appropriate, further options and recommendations as elaborated in Annex II; and ensure that their system of internal controls meets the requirements elaborated in Annex IV. The term 'internal controls' in the KPCS is equivalent to the term 'traceability' in other mineral supply chains. The implementation of KPCS consists of meeting the minimum requirements established by the Scheme, as well as setting of an effective use of internal controls. These are the measurements of compliance to the KPCS.

https://www.petradiamonds.com/our-operations/our-mines/williamson/

PUBLIC-PRIVATE PARTNERSHIPS AND ENHANCEMENT OF COMPLIANCE WITH THE KP IN TANZANIA

After reviewing the recommendations for the KPCS implementation in countries with artisanal diamond production, this section examines the application of PPPs for enhancing Tanzania's compliance with KPCS. It is important to reiterate that Tanzania is a KP compliant country, notwithstanding the continuous improvements required for controlling the artisanal diamond mining sector. Tanzania has also made significant strides in the formalisation of artisanal mining, one of the actions identified in the KP Moscow declaration. It is thus estimated that it would be reasonably easier to use PPPs in Tanzania for enhancing compliance, than in another country where formalisation and other supporting conditions are not present.

One of the crucial elements for compliance is the awareness and knowledge of legal requirements. It is thus important that as a first step for PPPs and for government compliance, all stakeholders involved in the KPCS are fully aware of and are sensitised with regard to the requirements. Starting with miners, who often are not even aware of the national laws, and then moving on to government agents and officials, including private sector participants such as dealers, specific and explicit knowledge on KPCS needs to be provided. The fact that PPPs facilitate knowledge creation and dissemination along the policy spectrum, is important (Sun, 2017). Besides, as Andonova (2017) indicated in the case of environmental governance, partnerships play a major role in ensuring proper understanding among all parties, not only with regard to the key requirements but also regarding their place in the process of policy implementation.

The diamond industry in Tanzania consists of several actors: miners, mining companies, brokers, and dealers. The functions and expertise of these actors in the diamond value chain would determine the role they can play in a PPP for enhancing compliance. Some of these actors include:

- Petra Diamonds, which is the large-scale mining company operating at the Williamson Diamond Limited (WDL) (https://www.petradiamonds.com/).
- El Hillal Minerals Ltd., is a medium-scale company, operating adjacent to the Williamson Diamond Mine (123Tanzania.com).
- Diamond brokers who buy rough diamonds from artisanal miners and sell them to dealers who export them. Diamond broking is a reserved activity for Tanzanians only, who may be eligible to be brokers.
- Diamond dealers buy rough diamonds from artisanal miners and brokers and prepare them for export. Unless cash-strapped, it is common for dealers to finance artisanal miners and brokers to enhance business.

While each of these categories of actors in Tanzania's mining sector is a key part of the KP implementation process, the collective input is more crucial (Saldarriaga-Isaza, Villegas-Palacio, & Arango, 2015). Each of the actors in the specific extractive process needs to abide by the KP requirements in order to adhere to the standard, and to demonstrate that they are indeed committed to the process. As scholars have observed, the reluctance by some partners, especially the public ones, often threatens the impact of a PPP (Börzel & Risse, 2005).

As stated earlier, the various actors of a PPP play various specific and specialised roles to enhance partnerships. Among others, civil society organisations (CSOs) often have better cordial engagement with miners and other policy-making actors in the extractive industry. Private CSO actors often have a better cordial relationship with miners than public (state) officials because the latter pursues law enforcement, which miners often perceive as inimical to their interests. In the diamond sector in particular, miners appear to have embraced initiatives by NGOs like the Diamond Development Initiative (DDI). This Initiative has successfully developed and implemented the Maendeleo Diamond Standard (MDS) in Sierra Leone. Other certification mechanisms by groups like the Alliance for Responsible Mining (ARM) and Fairtrade International (FLO) have attracted considerable interest among miners (Childs, 2010, 2014; Fisher, 2017; Sippl, 2015).

The Kimberley Process, which is a conflict prevention mechanism, operates through regulating international trade in natural rough diamonds. As stated earlier, the special recommendations made at the Moscow KP Plenary 2005 form the focus of actions to be undertaken within PPPs for the enhancement of compliance, namely ensuring traceability of production from mines to exports, regulating artisanal diamond mining, regulating the trade in alluvial diamonds, tackling illicit cross-border trade, and encouraging artisanal miners to move into the formal economy. As such, if PPPs were used as instruments for enhancing compliance of the government with the KPCS, conflict prevention would become the national public service. Then that would be what the private sector will expect the government to deliver. At the time of raging conflict diamond wars in Africa, conflict diamonds were framed and presented at the UN as a human security issue (Smillie, Gberie, Hazelton 2000). As such, the KP itself, being an assembly of 81 governments that implement and reinforce the KP within their own countries, can be viewed as delivering human security (Alkire, 2003; UNDP, 1994) as a global public good. Hence, the PPPs for enhancing compliance with the KPCS requirements will provide complementarity between conflict prevention as an intrinsic feature of good governance, and human security as an attribute of national stability.

In the KP, Tanzania is a member of the Working Group on Alluvial Artisanal Production (WGAAP), in which countries with artisanal diamond mining share and discuss best practices. Tanzania would be able to share its experience on PPPs for compliance enhancement and thus encourage other members of the working group to do the same. At the same time, the forum of this working group also provides an additional source of knowledge to Tanzania on dealing with actors of a partnership. Partners of the PPPs on Tanzania's KP process can also utilise their experience in other (similar) forums to improve their capacity to enhance the country's compliance through the PPPs.

Partnership with mining companies for enhancing compliance

Unlike in many other mineral sectors, the diamond industry recognises the need and the importance of transforming artisanal diamond mining as Tanzania has done. The legacy of conflict diamonds in African countries makes the KP very vulnerable to the reputational risks associated with artisanal diamond mining operations. The risk of exposure is collective in both countries that have experienced conflict diamond wars, such as the DRC, and those that have not, such as Tanzania. In addition, the now growing production of synthetics diamonds, is pushing the industry to be more collaborative with artisanal diamond miners. The KP is also the only assurance mechanism that the industry has for diamonds to remain attractive to discerning and critical consumers.

Capitalising on that, it is possible to engage diamond mining companies in Tanzania for PPPs that will contribute to enhancing government compliance to KPCS. The most suitable area of engagement is the formalisation of artisanal diamond mining. Of the actions identified above, this is the only one that would not create controversy between miners, a company and government. Mining companies can be meaningfully engaged in registering artisanal miners in their perimeter or vicinity to determine the number of people involved in the activity. Pushing formalisation even further, mining companies can positively impart knowledge to miners in various domains, such as health and safety, prospecting, and the prevention of environmental damages, among others. The information will have a lasting effect and cause positive and more responsible behaviour among artisanal miners. Engaging and partnering with miners in this way can improve Tanzania's diamond production and trade.

In other mineral sectors, such as gold, partnerships with investors are increasingly creating mechanised small-scale mines. By employing more advanced technologies, these mines are proving to be more productive than mines in Tanzania's ASM sector were in the past. If properly leveraged, such an investment could contribute to upgrading the artisanal diamond mining sector in Tanzania, addressing the financing gaps, and potentially elevating some artisanal and small-scale operations to medium-scale ventures. Before De Beers sold the Williamson Diamond Mine to Petra Diamonds, it had conducted a feasibility study for a partnership project involving artisanal diamond miners, the Mwadui Project in the surrounding community of Mwadui. The Project was discontinued once the Williamson Diamond mine came into Petra Diamonds' possession. Such a partnership can again be renewed and, with efficient management through the support of PPPs, help to improve governance of Tanzania's diamond sector.

Another angle of collaboration to include in the PPPs are the challenges identified within the ASM, such as the use of inappropriate technology, poor mining practices and market barriers. Currently, assistance to miners with regard to these issues is undertaken by the Government of Tanzania. Yet, mining companies have the expertise to assist miners with these issues. Education and training are key in this regard. In this respect, private partners like NGOs that have already established effective working relationships with miners can be instrumental. The DDI has made considerable progress with regard to this in various ASM communities. This is possible in countries like Sierra Leone through various initiatives, including its MDS programme (DDI, 2016).

For the enhancement of compliance, PPPs don't have to be be part of corporate social responsibility. They could form part of a special section in the agreements that government signs with investors and private companies. However, for the PPP to be effective and credible, companies need to follow the principles of good business: obey the law, observe core human rights and labour standards, desist from paying bribes, pay taxes, and be transparent and accountable in their operations. While companies may be a bit reluctant to apply these principles on their own for various reasons (Butler, 2015), engaging them through PPPs that involve other watch-dog actors like NGOs, would significantly improve companies' attitudes towards the KP requirements.

In August 2017, the Tanzanian government seized a parcel of Petra Diamonds Company, a 75 per cent majority holder at Williamson Diamond Mine. Tanzania valued the seized diamonds at US$29.5 million – double that of the Petra Diamonds' US$14.7 million valuation (Tanzania Broadcasting Corporation). In a statement, the government stated that it would confiscate the diamonds having determined that 'there was cheating involved in declaring the actual value of the mineral' (The Guardian, September 2017). Tanzania also ordered a criminal investigation against officials involved in declaring and valuing diamonds and issuing its export permits. Tanzania's finance minister claimed that the country most likely loses 'more than US$46 million' annually due to under-cleared diamond exports (The Guardian, September 2017). At present, it would appear very difficult to engage Petra Diamonds in a PPP to enhance government's compliance, because the company is alleged to have affronted the laws. If no scandals mar the medium-scale company El Hillal, it could be an alternative participant. Nonetheless, the willingness and ability of the state to take serious measures against an industry giant is testimony to the need for political will with regard to the KP process.

Where mining occurs in a community, such as Mwadui for the Williamson Diamond Mine, Public-Private Community Partnerships (PPCPs) are also an option. These multi-partnership arrangements emphasise the role of partnerships between communities, the private sector, the public sector, NGOs, and other groups. The benefits of this partnership model include the involvement of all stakeholders as a broader base for government's compliance and development, and to enhance social responsibility in the private sector. Thus, the engagement of such PPPs can go a long way to improve interactions between the Government of Tanzania and all the various role players in the diamond industry. It can also improve the development and living conditions of mining communities.

Public-Private Partnerships /Partnership with Brokers and Dealers

When it comes to brokers and dealers, their associative structures would be the most suitable entities to form a PPP with the government. One such structure in Tanzania is the Tanzania Chamber of Minerals and Energy, established in 1994. Acting as a voice for the industry, the Chamber plays a pivotal role within the sector as a mediator between the mining investment community and key stakeholders, notably the Government of

Tanzania and the public. With close to 60 members, the Chamber represents a broad spectrum of relevant players in the mining industry, including small-scale miners, individuals, service providers, and international mining companies of all sizes. It also carries out a range of activities, from exploration to production, within the mining sector.

Brokers and dealers engage in direct transactions with miners. Due to the nature of their relationships, they can be mobilised to participate in ensuring traceability from mines to exports, as well as assist in tackling illicit cross-border trade. Brokers and dealers would keep records of diamond purchases from miners, as well as records of their sales, ensuring that these transactions are only undertaken with entities who hold valid licenses. The government would collect all records to create a database that would support the analysis and effective monitoring of the sector. The data will allow in-country tracking of the diamond chain of custody. The system can be enhanced with technological elements (like blockchain) for greater efficiency.

The biggest challenge would be to convince brokers and dealers to offer competitive and non-exploitive prices to miners for their diamonds. In addition to harmonised regional taxes for diamond exports, obtaining fair prices for diamonds is one single element that would disincentive smuggling. However, the work of private non-state actors is transforming the jewellery industry (Bloomfield, 2015). Besides, their presence and advocacy are making a significant impact on fairness in the industry (Childs, 2010, 2014; Fisher, 2017). The implication of this trend is that industry actors are becoming increasingly amenable to the role and presence of the global civil society, and the rising recognition of the significance of all sorts of miners – especially those in ASM.

Engaging Civil Society Organisations

Because the Kimberley Process is a tripartite agreement, PPPs for enhancing government's compliance and the role of civil society organisations (CSOs) are essential. As flexible organisations, with tremendous competencies to engage populations (and hence miners), CSOs stand to make significant contributions towards the enhancement of compliance. Their interaction with the private sector and the government will build synergies for the delivery of other projects where socially and politically valued tangibles are public goods or services. It is noteworthy that in the case of services, PPPs in Tanzania have been implemented successfully by Faith Based Organisations (FBOs) in education, health and water sectors for many years. Since conflict prevention is a public service that also improves the framework of the KPCS implementation, it would be important to integrate the role of CSOs who are involved in natural resource governance.

Civil society organisations are particularly strong at sensitisation, education and advocacy. As indicated priorly, awareness and knowledge of legal requirements are pre-requisites for compliance. Education on and certification of sustainable practices, advocacy for fair prices, as well as transparency and accountability in the mineral value chain, are some of the key areas that CSO activism has impacted in the extractive sector. A notable effort aimed at the ASDM in particular is the DDI's efforts. As such PPPs involving CSOs can benefit from their activities.

Moreover, CSOs serve as mediators in contemporary governance processes. Their presence in resource governance has provided significant leverage between feuding government agencies with regard to the implementation of global standards. Thus far, CSOs have played a key role in the implementation of Article 7 of the Minamata Convention on Mercury, which addresses health and the environmental consequences of mercury use in ASM (field research in Ghana by Balag'kutu in 2017). Thus, the active involvement of CSOs as mediators among the various actors makes them an important part of the PPP to enhance compliance with the KP in countries like Tanzania.

Civil society organisations have considerable experience in the translation of international norms and standards governing the extractive sector and the artisanal mining industry broadly. Through education, training and sensitisation, as well as the use of various mechanisms including certification, the CSO/NGO community by itself, and sometimes in collaboration with state institutions, has facilitated the governance of natural resources in the broad sense and mineral extraction in particular. It often focused on artisanal operators (Auld et al., 2009; Auld, 2014; Bartley, 2003, 2010; Bloomfield, 2015; Cashore et al., 2004; Childs, 2010, 2014; Fisher, 2017; Sippl, 2015). These efforts have mostly focused on addressing social and environmental issues in artisanal mining communities. The work of DDI stands out in the diamond sector. This organisation has engaged with miners from various communities around the world, educating them on how to enhance sustainability and security and generally improve their operations. Besides, CSOs have often partnered with each other regarding the implementation of governance mechanisms. Until recently (2013), FLO and ARM engaged in a partnership to implement a certification programme for miners (Fisher, 2017; Sippl, 2015). With these experiences, the involvement of such private actors can greatly enhance governance compliance with PPP in Tanzania or any other state for that matter.

Public-Private Partnerships should only be adopted as a procurement option if it is documented that the PPP approach will deliver better value for money than traditional public procurement methods. The presence of strong indicators of a readiness and willingness for partnerships among the various public private actors is fundamental in this respect.

The following are suggestive/indicative of the fact that the use of a PPP for compliance with the KP requirements can produce valuable results and enhance the country's development process:

- The presence of a strong and experienced CSO community in the Tanzanian diamond sector.
- The elaborate and tested extractive legal and policy framework of Tanzania.
- The country's commitment to KPCS and to broadly enhancing good governance in the extractive sector.
- The commitment of various actors and the level of engagement between the government and other industry actors in Tanzania.

CONCLUSION

The Kimberley Process is an important conflict prevention mechanism that operates through the regulation of the trade of rough diamonds. The effectiveness of the Kimberley Process implementation lies in the compliance to the Scheme by each participant. It is not a treaty, but it is legally binding, involving 54 participants, who represent 81 countries. Tanzania is not just a member of the Kimberley Process but is also compliant with its requirements. The state has also adopted successful measures to formalise the artisanal mining sector, including diamond mining.

In the compliance enhancement to the Kimberley Process, the public service to be delivered by Tanzania is conflict prevention as defined in the KP mandate. This paper demonstrated that Tanzania's compliance can indeed be enhanced using the policies and actions specifically identified by the KP for that purpose. In addition, the use of PPPs to enhance compliance can include other issues that affect the artisanal diamond mining sector. With regard to these issues, the private sector is able to and in some cases, has already adopted measures to address it. The Tanzanian government's specific tasks in all PPPs can then focus on the regulation of artisanal miners and the diamond trade.

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