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Using Public-Private Partnerships (PPPs) to enhance Tanzania's compliance with the Kimberley Process Certification Scheme

by Prof. Franklyn Lisk and Dr. Cristina D'Alessandro

1. Prof. Franklyn Lisk - University of Warwick, UK and Centre for Research on Political Economy, Senegal
2. Dr. Cristina D'Alessandro - Centre on Governance, University of Ottawa, Canada, UMR PRODIG (Université Paris 1-Panthéon Sorbonne) and Institute for Natural Resources and Sustainable Development.

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1. Background – Kimberley Process and its implementation

The Kimberley Process Certification Scheme (KP or KPCS) is an international certification programme that regulates the trade in natural rough diamonds. The process was established in 2003 by a United Nations General Assembly Resolution 55/56 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 are committed to adopting and implementing national laws regulating their diamond trades and certifying their rough diamond exports. Civil society groups and diamond industry representatives joined the KP as observers, making it a tripartite mechanism (Bieri F, 2010).

The Kimberley Process is governed by the KP Core Document which sets out the requirements for controlling the production and trade of rough diamonds. The document is available on the KP 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 connections to the diamond industry, whether they be producing, processing or consuming nations. Implemented through the national legislations of participants, the KP cannot be considered as an international agreement from a legal perspective. Because KP participants are required to trade only among themselves, almost all diamond producing and trading countries are members of the scheme. They account for approximately 99.8 per cent of the global trade in rough diamonds. As such, Tanzania as a diamond producing nation joined the KP in 2003 and that enables the country to export their diamonds to various destinations. In 2016, the total value of Tanzania's diamond exports by volume was 241,668.86 carats, worth US\$86.6 million (KP Statistics).

The implementation of KPCS consists of meeting its minimum requirements, as well as setting and using internal controls effectively. These are the measurements of compliance to the KPCS. Compliance to these requirements by each participant determines the effectiveness of the scheme. The responsibility for the implementation of the KPCS in Tanzania is with the Ministry of Energy and Minerals through the Commissioner for Minerals, whose role is to enforce the country's Mining Act and Regulations. Other entities involved in the implementation of the KP are the Tanzania Mineral Audit Agency, Customs, and the Tanzania Revenue Agency. The Police is also involved in law enforcement if an offense is alleged. The Commissioner for Minerals or authorized officers issue the KP certificates that accompany every parcel for export purposes (Ministry of Energy and Minerals).

2. Artisanal diamond mining: the weakest link of KPCS implementation

In 2005, the KP recognised that the weakest link of its implementation was within the artisanal and small-scale diamond mining (ASM or ASDM) sector because of the number of people involved. It is also because the internal controls from mines to exports were and are difficult to establish. The 2005 KP Moscow Declaration identified several key policies and actions that can be implemented by countries with alluvial artisanal production. If implemented, it would significantly enhance their compliance 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 stipulated are as follows: ensuring traceability of production from mine to export; regulating artisanal diamond mining; encouraging artisanal miners to move into the formal economy; regulating the trade in alluvial diamonds; and tackling illicit cross-border trade. Addressing these action points will require the involvement of and collaboration among various actors in the diamond sector.

The often informal and illegal nature of alluvial artisanal diamond mining, as well as the lack of transparency, undermines the Tanzanian government's ability to establish full internal controls (i.e. traceability) of all areas of production, as required by the KPCS. Besides, ASM poses other challenges, including limited government capacity to enforce laws and regulations related to ASM; lack of capital; reluctance on the part of banks to provide loans and other financial assistance to ASM (mainly unregulated sub-sector) operators; a lack of potential areas suitable for ASM; cross-cutting issues such as environment, health and safety, gender, HIV/AIDS, and other social issues; use of inappropriate technology and poor practices in mining and processing; inefficiency in the exploitation and processing of minerals (low recovery); a low level of productivity; market barriers; uneconomical decisions in investment; lack of record keeping (financial records); and tax avoidance. These challenges require thorough intervention by the government and its partners.

Tanzania has now positioned itself as a leading player in formalising the ASM sector with clear development outcomes being monitored along the way (Ali, 2017). The formalisation of artisanal mining is one of the actions identified in the KP Moscow Declaration. The government has adopted several legislative, administrative, extension services and financial measures to improve ASM in Tanzania. These include measures to allocate land areas specifically for artisanal small-scale mining; an improvement in the security of tenure from five to seven years; decentralisation of licensing; extension services for miners; the demarcation of areas for exclusive exploitation by ASM; and a grant and a loan scheme to support ASM operators.

During the past two years, the government of Tanzania has advanced 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 access to market indicators and sales platforms, expert and technical advice on geology, subsidies to boost ASM capital and productivity, and training to improve occupational safety and health. The government is also encouraging artisanal miners to form groups to facilitate networking, exchange information and get joint access to government subsidies. These measures will help to improve ASDM, and position the sector to fully comply with the KP requirements.

3. Private-Public Partnerships (PPPs) and Enhancing KPCS Compliance

The diamond industry in Tanzania consists of several actors: miners, mining companies, brokers, and dealers. These actors function within the provisions of public regulations and interact with public officials in the process. The respective function of each of these categories of actors in the diamond sector is key to and determines the role in a multi-actor engagement for enhancing compliance to the KP. Examples of diamond sector actors in Tanzania include:

- Petra Diamonds is the large-scale mining company operating at 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 and only Tanzanians may be eligible to be brokers.
- Diamond dealers who 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 in an effort to enhance business.

Under the Tanzanian mining laws, only licensed dealers or miners are permitted to export rough diamonds. Licensed miners can only export rough diamonds produced by them 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). Thus, Tanzania has established a strong legal and policy framework for the supply and distribution of diamonds.

Nonetheless, the extensive and complex informal ASM sector makes the need for improved governance still imperative. The existing governance framework hardly addresses the associated social and environmental externalities from ASDM in Tanzania. Despite Tanzania's efforts to instill effective governance in the sector through formalisation, ASDM remains prone to conflict and violence. Thus, the tripartite KPCS is relevant to Tanzania and being a signatory to it is appropriate.

To enhance compliance to the KP and ensure complete elimination of conflict diamonds in the market, coordination among the various actors – public and private – along the diamond value chain is essential. While each category (public and private) of actors in Tanzania's diamond sector is

essential, effective partnership among them can improve not only compliance with the KP but also the overall governance of the sector. A collaborative partnership between the public and private actors is necessary for the implementation, compliance and impact of the KPCS. The respective function of each of these categories of actors in the diamond sector makes a significant contribution to the public-private partnership (PPP) for enhancing compliance with the KP.

Public-Private Partnerships, which are voluntary agreements between public and private actors, have become a common and effective approach towards governance across scales and towards implementing international policy across issue areas (Andonova, 2017). Private-Public Partnerships enable governments to draw on the expertise of private authorities to fill up gaps in governance and sometimes create a convergence of strategic interests among different categories of actors (Andonova 2006). Given the potential impact of a PPP on governance and policy implementation, this policy brief recommends the use of a PPP to facilitate the implementation of and compliance with the KPCS requirements.

Public-Private Partnerships enable governments to procure and implement public infrastructure and/or services using the resources and expertise of the private sector. These partnerships between the government and private authorities are a cost-effective approach towards accessing a wide pool of expertise in order to facilitate policy and governance processes (Osborne, 2002). Public-Private Partnerships utilise synergies across processes and places, enhance neutrality and mitigate conflict within governments (Auld et al., 2009; Levin, Cashore & Koppell, 2009; Jomo et al., 2016). Moreover, PPPs facilitate information sharing, capacity building, rule setting and programmes for efficient policy implementation and governance across scales (Andonova et al. 2009; Börzel & Risse 2005; Andonova, 2010; Sun, 2017).

The presence and functionality of PPPs complement and sometimes improve the performance of governments in specific issue areas. According to Andrea and Beisheim (2011), PPPs have become instrumental in the provision of water and other essential utility services in the developing world in recent times. In the industrialised world, states have utilised PPPs since the emergence of privatisation in the 1980s (Börzel & Risse, 2005). With respect to intergovernmental bodies and the implementation of international policy and governance mechanisms, PPPs have proven to be instrumental and essential in various areas as well (Andonova, 2006, 2010, 2017; Brinkerhoff, & Brinkerhoff, 2011; Nishtar, 2004). Thus, Tanzania can benefit from the use of PPPs to enhance compliance with the KP.

Considering that the diamond sector in Tanzania – like many states – involves various actors with varying and sometimes competing interests, the use of PPPs can bring to bear on the KP objective of conflict prevention. The use of PPPs by Tanzania as instruments for enhancing government compliance with the KPCS makes conflict prevention a national public service in the diamond sector to be provided to the nation by government. Besides, conflict diamonds have been framed and presented at the United Nations (UN) as a human security issue (Smillie, Gberie, & Hazelton 2000). In this respect, the KP, which consists of an assembly of 81 governments, can be viewed as a mechanism for delivering human security (Alkire, 2003; UNDP, 1994) and as a global public asset. Thus, the use of PPPs to enhance KP compliance

in Tanzania generates complementarity between conflict prevention as an intrinsic feature of good governance and human security as an attribute of national stability.

As stated previously, the focus of actions to be undertaken within PPPs for enhancing compliance is based on the special recommendations made at the Moscow KP Plenary 2005. Different entities will play different roles in order to implement each of the indicated actions jointly with the government. It will entail partner groups signing specific agreements with governments to enhance and increase compliance with KPCS. The categories of actors that can form part of the partnership for enhancing compliance with the KP in Tanzania include mining companies, brokers and dealers, and civil society organisations (CSOs). All of them play specialised roles in the broad extractive industry and mineral value chain.

For mining companies, the most suitable area of engagement within a PPP for compliance enhancement is the formalisation of artisanal diamond mining. Mining companies can be meaningfully engaged in registering artisanal miners within their perimeters or vicinities 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. Indeed, knowledge creation and dissemination is a key factor for the increasing significance and impact of PPPs (Sun, 2017). Thus, miners will gain knowledge from mining companies and other actors through the PPP that will have a lasting effect and cause positive and more responsible behaviour among the miners.

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. 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. The expertise of brokers and dealers will enable the government to improve records of diamond purchases from miners and records of their sales. In this way they can ensure that only individuals with valid licenses undertake transactions. Furthermore, the Tanzanian government can create a database of the sector in order to support effective monitoring and analysis of trends in the sector. This data will allow in-country tracking of the diamond chain of custody and enhance its efficiency with innovative technology such as blockchain further.

Because the Kimberley Process is a tripartite agreement, PPPs for enhancing government's compliance can and should structure a role for civil society organisations (CSOs). As indicated priorly, awareness and knowledge of legal requirements are pre-requisites for compliance. With their experience and capacity in public sensitisation and community mobilisation, CSOs will play a key role in the knowledge dissemination that is central to the significance of PPPs. Indeed, CSOs have already contributed significantly through awareness creation, education and training. They have also contributed through the use of other tools like certification of governance in the extractive industry, especially in ASM (Auld et al., 2009; Auld, 2014; Bartley, 2003, 2010; Bloomfield, 2015; Cashore et al., 2004; Childs, 2010, 2014; Fisher, 2017; Sippl, 2015). Being flexible organisations, with tremendous

competencies to engage populations (and hence miners), CSOs are key actors for compliance enhancement. Besides, through a PPP, their interaction with other private actors and the government will build synergies for other diamond sector projects. With regard to these projects, socially and politically valued tangibles such as conflict prevention, are public goods.

A crucial element for compliance is awareness and knowledge of legal requirements. It is thus important that as a first step for PPPs to comply with government, all stakeholders involved in the KPCS must be fully aware of and sensitised with regard to the requirements. Miners, who are often unaware or ill-informed with regard to the national laws, private sector participants such as dealers, government agents and officials and all other actors need to have specific and explicit knowledge with regard to the KPCS. Besides, although ordinary citizens may not be directly involved in the activities of the PPP, they also play key roles which require knowledge or at least an awareness of the necessary requirements. Public-Private Partnerships facilitate knowledge dissemination (Sun, 2017). They also engender more active citizen engagement, which, although critical, is often lacking with regard to resource governance even under new international governance mechanisms (Balag'kutu, 2017). An informed and active citizenry ultimately facilitates efforts through PPPs to engender compliance with the KPCS and governance of the diamond sector in the broad sense. A key observation about PPPs is that their effectiveness depends on, among others, the socio-political, legal and policy environment surrounding the issue at stake (Sun, 2017; PPP Journal Article?). Tanzania has an elaborate policy and legal architecture for the diamond and larger extractive sector, a history of PPP legal and policy frameworks, and the essential political will to improve resource governance in the broad sense and diamond mining in the context of the KPCS. Therefore, the Tanzanian context is conducive for the use of PPPs to enhance compliance with the KP.

4. Conclusion and Policy Recommendations

This policy brief has sought to establish how easy it would be to use PPPs in Tanzania for enhancing compliance with the KP in comparison to another country where formalisation and other supportive conditions are lacking. The effectiveness of the KP as a conflict prevention mechanism and hence, a tool for global human security, depends on the compliance of its 54 participants, representing 81 countries. Tanzania is one of the participating countries that has made some progress toward compliance, having established the base requirement with the formalisation of the artisanal mining sector, including ASDM. Thus, this policy brief offers the following recommendations:

- Because Tanzania has a framework of natural resource governance in place and is making progress to be compliant with the KPCS, implementation of PPPs for enhanced compliance would be efficient. This is especially the case because the country has made significant progress in the formalisation of the artisanal diamond mining sector.
- A pre-requisite for all compliance is knowledge of the regulations and laws requiring compliance. For effective results, PPPs must build on sensitisation and

education with regard to the requirements. Given that CSOs are most effective and experienced in awareness creation, education, and sensitisation and also have strong working relationships with artisanal miners, the government of Tanzania should facilitate their participation in this aspect of the KP process.

- The most appropriate areas of engagement with various private sector entities, touch on three out of the five actions stated in the 2005 KP Moscow Declaration, namely formalisation, traceability and combatting smuggling. The remaining two actions referring to regulating artisanal diamond mining and regulating artisanal diamond trade are within the purview of government action, which is often lacking. The Tanzanian government can systematically improve and enhance the regulatory capacity through PPPs.
- The PPPs for compliance enhancement can include other issues that affect the artisanal diamond mining sector and which the private sector is able to address. However, regulation of artisanal miners and the trade should remain the Tanzanian government's responsibility in all PPPs.

For the government of Tanzania to engage with a private sector actor in a PPP, the entity needs to follow the principles of good business and adhere to the relevant standards and obligations, as well as take sensitivities related to conflict prevention into account.



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