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Blood Diamonds: The Successes and Failures of the Kimberley Process Certification Scheme in Angola, Sierra Leone and Zimbabwe

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BLOOD DIAMONDS: THE SUCCESSES AND FAILURES OF THE KIMBERLEY PROCESS CERTIFICATION SCHEME IN ANGOLA, SIERRA LEONE AND ZIMBABWE

INTRODUCTION

The 2006 Leonardo DiCaprio thriller *Blood Diamond*¹ brought the issue of conflict diamonds² to the awareness of the general public. However, conflict diamonds began wreaking their havoc on parts of the developing world long before appearing in theatres. Over the past several decades, diamond trade has fueled conflicts in many countries across the world.³ The Kimberley Process Certification Scheme, implemented in 2003,⁴ sought to “eliminate the presence of conflict diamonds in the chain of producing, exporting and importing rough diamonds” within participating countries.⁵

1. BLOOD DIAMOND (Warner Bros. 2006). See BLOOD DIAMOND PLOT SYNOPSIS, http://www.imdb.com/title/tt0450259/synopsis?ref_=tt_stry_pl (last visited Nov. 5, 2014). Set in 1999 in Sierra Leone, *Blood Diamond* portrays the violent struggles of the country’s civil war and the diamond trade that fueled the conflict. The film concludes with a conference, representative of the actual meeting held in Kimberley, South Africa, which gave rise to the Kimberley Process Certification Scheme. See also Jan Erik Wetzel, *Targeted Economic Measure to Curb Armed Conflict? The Kimberley Process on the Trade in ‘Conflict Diamonds’*, in INTERNATIONAL LAW AND ARMED CONFLICT: CHALLENGES IN THE 21ST CENTURY 161 (Noelle Quéniévet and Shilan Shah-Davis eds., 2010). Blood Diamond “specifically introduced the KP to a larger audience and, combined with campaigns by international non-governmental organisations (NGOs) such as Partnership Africa Canada (PAC), Global Witness, and Amnesty International, aimed at enlisting the general public in a new approach to curb armed conflicts by economic means.” *Id.*

2. DiamondFacts.org defines “conflict diamonds” as follows: “Conflict diamonds are diamonds illegally traded to fund conflict in war-torn areas, particularly in central and western Africa.” See also Conflict Diamonds, DIAMONDFACTS.ORG, http://www.diamondfacts.org/index.php?option=com_content&view=article&id=128&Itemid=134&lang=en (last visited Jan. 14, 2014).

3. See Conflict Diamond Issues, BRILLIANT EARTH, <http://www.brilliantearth.com/conflict-diamond-trade> (last visited Nov. 5, 2014). Brilliant Earth, a jewelry retailer committed to cultivating an ethical diamond industry so as to effect change in the diamond trade in developing countries, identifies the following African countries: Liberia, the Republic of Congo, the Central African Republic, the Democratic Republic of Congo, Côte d’Ivoire, Angola, Sierra Leone, and Zimbabwe. See also GLOBAL WITNESS: VENEZUELA <http://www.globalwitness.org/campaigns/conflict/conflict-diamonds/venezuela> (last visited Nov. 5, 2014). Venezuela has also experienced conflict fueled by rough diamond trade. See also Lucinda Saunders, Note, *Rich and Rare are the Gems They War: Holding DeBeers Accountable for Trading Conflict Diamonds*, 24 FORDHAM INT’L L.J. 1402, 1404–05 (2001). “Observers note that in several African nations insurgent groups use diamonds to fund civil wars. The revenue that insurgents obtain from smuggling diamonds across borders allows them to buy more arms and to continue fighting.”

4. KIMBERLEY PROCESS: ABOUT, <http://www.kimberleyprocess.com/en/about> (last visited Nov. 5, 2014).

5. Kimberley Process Core Document preamble, 2003, available at <http://www.kimberley>

Some have considered the Kimberley Process Certification Scheme (also referred to as the KPCS) a success while others view it as a strong attempt at resolution that has ultimately failed.⁶ There are also many proposals for changes and additions to the existing structure that aim to make the KPCS more effective.⁷

This note will focus on the history of the blood diamond trade in three African countries: Angola, Sierra Leone, and Zimbabwe.⁸ Part I of this note will delve into the history of blood diamonds in these three countries, including the conflicts, namely civil wars, which have been fueled by diamonds, and may still be fueled by diamonds today. Part II will detail the history of the KPCS—its structure regarding membership and policy, how it works, and how it is enforced. Part III will focus on the implementation of the KPCS in Angola, Sierra Leone and Zimbabwe and the extent to which this implementation has been effective, while also identifying the current status of blood diamonds in each of the three countries. Finally, Part IV will examine some areas where the KPCS is

process.comen/kpcs-core-document. See also GREG CAMPBELL, *BLOOD DIAMOND: TRACING THE DEADLY PATH OF THE WORLD'S MOST PRECIOUS STONES* 130 (Basic Books 2012) (2002). “And of course, there’s the Kimberley Process, which was organized by the South African government and held its first meeting in Kimberley in May 2000. The issue the group tackled was frustratingly complicated: How to ensure that diamonds sold around the world by legitimate houses, retail stores, and producers are not from African rebel groups. Coming up with a solution would prove nearly impossible.” *Id.*

6. For example, Global Witness, one of the first organizations to commit itself to researching and drawing attention to the issue of conflict diamonds, ended its partnership with the Kimberley Process on December 5th of 2011. The following statement made by Chairman Gooch, a Founding Director of Global Witness, was given as a reason for the departure: “The scheme has failed three tests: it failed to deal with the trade in conflict diamonds from Côte d’Ivoire, was unwilling to take serious action in the face of blatant breaches of the rules over a number of years by Venezuela and has proved unwilling to stop diamonds fuelling corruption and violence in Zimbabwe. It has become an accomplice to diamond laundering—whereby dirty diamonds are mixed in with clean gems.” Gooch referred to the Kimberley Process’s refusal to address the Zimbabwean realities in the Marange fields as an outrage. Press Release, Charmian Gooch, Global Witness Leaves Kimberly Process, Calls for Diamond Trade to be Held Accountable (Dec. 2, 2011), <http://www.globalwitness.org/library/global-witness-leaves-kimberley-process-calls-diamond-trade-be-held-accountable> (last visited Jan. 14, 2015). A discussion of Zimbabwe’s Marange diamond fields can be found in Section III, Subsection C of this note. Despite its departure from the Kimberley Process, Global Witness remains involved in investigating the trafficking of conflict diamonds. *Conflict Diamonds*, GLOBAL WITNESS, <http://www.globalwitness.org/campaigns/conflict/conflict-diamonds> (last visited Jan. 14, 2015).

7. Several such proposals are discussed and evaluated in detail Section IV of this note. Briefly, some examples of proposed changes include encouragement from the United Nations to participate, the creation of a uniform policing scheme including a uniform set of punishments for policy violations, and the creation of a security force associated with this overarching policy so as to avoid corruption in member countries.

8. These countries were selected because they demonstrate the varying levels of success with which the KPCS has or has not eradicated blood diamond trafficking, and have faced somewhat unique circumstances and struggles throughout the implementation of the KPCS.

lacking as well as some proposed revisions to make the KPCS more effective. Lastly, this Note will conclude with an evaluation of Lastly, this note will evaluate how the KPCS should realistically and practically be updated to accommodate for changes in the realm of the diamond trade.

I. HISTORY OF BLOOD DIAMONDS: ANGOLA, SIERRA LEONE AND ZIMBABWE

The KPCS Core Document defines conflict diamonds as “rough diamonds used by rebel movements or their allies to finance conflict aimed at undermining legitimate governments.”⁹ The document also refers to the United Nations General Assembly Resolution 55/56,¹⁰ which describes conflict diamonds as “rough diamonds which are used by rebel movements to finance their military activities, including attempts to undermine or overthrow legitimate Governments.”¹¹ Conflict diamonds are often referred to as “blood diamonds” because of the lives lost in violent armed conflicts funded by the sale and trade of these diamonds.¹² The populations of Angola, Sierra Leone and Zimbabwe have shed much blood during conflicts funded by diamonds. A deeply detailed account of these conflicts is beyond the scope of this article, however some understanding of the nature of each conflict is important as a backdrop for the discussion of the role of the Kimberley Process Certification Scheme in each of these countries.

9. KIMBERLEY PROCESS: ABOUT, *supra* note 4.

10. G.A. Res. 55/56, ¶ 2, U.N. Doc. A/RES/55/56 (Dec. 1, 2000). http://www.un.org/en/ga/search/view_doc.asp?symbol=A/RES/55/56&Lang=E. This resolution is titled: “The role of diamonds in fuelling conflict: breaking the link between the illicit transaction of rough diamonds and armed conflict as a contribution to prevention and settlement of conflicts.”

11. *Id.* See also Paul Armstrong, *How Diamonds Fuel Africa's Conflicts*, CNN, updated May 16, 2012, available at <http://www.cnn.com/2012/04/26/world/africa/blood-diamonds/>. “They are generally in ‘rough’ form, meaning they have recently been extracted and not yet cut.” Although these diamonds are rough, they are still valuable and come at a high price.

12. Blood Diamonds, BRITANNICA, <http://www.britannica.com/EBchecked/topic/1793249/blood-diamond> (last visited Jan. 14, 2015). This definition was “formulated during the 1990s, when brutal civil wars were being waged in parts of western and central Africa by rebel groups based in diamond-rich areas of their countries . . . Rough diamonds mined in rebel-controlled areas were sold directly to merchants or were smuggled into neighboring countries, where they were merged into stocks of legitimately mined diamonds and then sold on the open market. Proceeds from diamond sales were used to buy arms and war matériel for the rebel groups, some of which conducted extremely violent campaigns that brought great suffering to civilians.”

A. Angola

Civil war began in Angola right after the country became free from Portugal in 1975.¹³ The Angolan Civil War was a power struggle between the Popular Movement for the Liberation of Angola, or the MPLA, and the National Union for Total Independence of Angola, or UNITA.¹⁴ The first segment of civil war ended with the signing of the Lusaka Protocol in 1994 by the Angolan government and UNITA.¹⁵ “A cease-fire went into effect two days later, and United Nations peace-keeping troops entered Angola in 1995.”¹⁶

“At the time the Lusaka Protocol was signed, UNITA controlled over 70% of Angola and nearly all of its diamond production.”¹⁷ Neither Angola’s government nor the diamond industry made any effort to halt the trade of diamonds mined by UNITA.¹⁸ Between the years of 1992 and 1998, UNITA’s profits from the diamond trade totaled up to \$13 billion¹⁹ This money went to fund various UNITA ventures, including the purchase of arms.²⁰

The Government of National Unity and Reconciliation was formed in 1997 in order to help unify UNITA and MPLA structures, despite the requirement by the Lusaka Protocol that state authority be reestablished in

13. Conflict Diamonds, *supra* note 2. Angola was established as a Portuguese colony in 1575. It later became a province of Portugal, then gained its independence after what is known as the “Armed Struggle,” during which the Portuguese colonial power refused to heed the nationalist groups’ demands for their rights. THE EMBASSY OF ANGOLA, *History*, <http://www.angola.org/index.php?page=history> (last visited Jan. 15, 2015).

14. THE ANGOLAN CIVIL WAR: THE CONCEPT OF “BLOOD DIAMONDS” EXPLAINED, <http://www.ugs-angola.com/the-angolan-civil-war-the-concept-of-blood-diamonds-explained.php> (last visited Nov. 5, 2014).

15. LUSAKA PROTOCOL, Oct. 20, 1994, <http://www.cfr.org/angola/lusaka-protocol/p23748>. The Lusaka Protocol is an agreement containing 10 Annexes for the specific peace-related matters addressed in the document. Some of these include Legal Instruments, Military Issues, Political Issues, and National Reconciliation. UNITED NATIONS PEACEMAKER, *Lusaka Protocol Summary*, <http://peacemaker.un.org/node/145> (last visited Jan. 15, 2015).

16. *Id.*

17. Patrick Alley and Alex Yearsley, *Angola: Diamonds are a War’s Best Friend*, Vol. 15 No. 1 South African Report, p. 10 (Dec. 1999) (<http://www.africafiles.org/article.asp?ID=3718>).

18. *Id.* Angola’s diamonds are of a high quality, usually falling within the top three categories on the nine-color scale used to assign value to diamonds. *See also* Wetzels, *supra* note 1 at 164. “The peace agreements of 1992 and 1994 had failed to end the conflict that had started in 1975. One reason for this was that UNITA could compensate its losses in external subsidies after the end of the Cold War by trading in diamonds.”

19. Alley, *supra* note 17.

20. *Id.* *See also* Saunders, *supra* note 3, at 1420–21. “UNITA used the revenue generated from the sale of diamonds extracted from their occupied territory to fund the war effort. Commentators speculate that UNITA made several billion dollars in revenue in the 1990s in diamond trade alone.”

Angola.²¹ UNITA diamond sales continued until June 12, 1998, when the United Nations Security Council adopted Resolution 1173,²² which held that “all States shall take the necessary measures . . . to prohibit the direct or indirect import from Angola to their territory of all diamonds that are not controlled through the Certificate of Origin regime of the GURN.”²³ The United Nations used this strategy of “choking the financial lifeline of UNITA” in an attempt to force it out of power.²⁴ The strategy was not entirely effective, as UNITA still managed to fund its activities with smuggled diamonds.²⁵

B. Sierra Leone

Civil war in Sierra Leone lasted from 1991 until 2002.²⁶ The rebel group called Revolutionary United Front, or the RUF, led by Foday Sankoh, gained possession of Sierra Leone’s diamond mines.²⁷ The RUF’s wartime practices were truly appalling.²⁸ Children were stolen from their

21. Augusta Chonchila, *United Nations Fails in Angola*, <http://mondediplo.com/1999/07/11angola> (last visited Nov. 5, 2014). “Even more striking was the regime’s agreement in April 1997 to form a Government of Unity and National Reconciliation (Gurn) including members of Unita before the rebel movement had given up an inch of the vast territory it had conquered at the cost of so much bloodshed, and despite the fact that the Lusaka Protocol had required the prior reestablishment of state authority throughout the country.”

22. S.C. Res. 1173, U.N. Doc. S/RES/1173 (June 12, 1998). <http://www1.umn.edu/humanrts/resolutions/Sc98/1173SC98.html>.

23. *Id.* ¶ 12. The Certificate of Origin system is “far from perfect as GURN paperwork is confused by the use of different stamps, and the CO system does not apply to non Angolan diamonds. Thus, as long as a smuggler can slip diamond parcels into a neighboring country and pay for a false CO, which are certainly available in Zambia and probably elsewhere, the UN sanctions can no longer be applied.” Alley, *supra* note 17.

24. Eli G. Burton, *Reverse the Curse: Creating a Framework to Mitigate the Resource Curse and Promote Human Rights in Mineral Extraction Industries in Africa*, 28 EMORY INT’L L. REV. 425, 430 (2014).

25. *Id.* See also Saunders, *supra* note 3. Trade of conflict diamonds is “essential to maintaining the insurgent war effort” in Angola. In other words, were it not for the money generated by trade of conflict diamonds, UNITA may not have had the funding to purchase arms.

26. *Sierra Leone*, DIAMOND FACTS, http://www.diamondfacts.org/index.php?option=com_content&view=article&id=129&Itemid=167&lang=en#sierra (last visited Nov. 6, 2014). See also Saunders, *supra* note 3. Sierra Leone was colonized by Britain in 1808 as a location for freed slaves to live. Sierra Leone gained its independence from Britain in 1961. *Id.*

27. *Sierra Leone*, *supra* note 26. See also Saunders, *supra* note 3. “During the 1990s, RUF forces controlled the major diamond mines in Sierra Leone. Commentators discuss that some RUF fighters were illicit diamond miners and traders before becoming combatants.” See also Wetzels, *supra* note 1 at 165. “Sankoh allegedly embezzled up to \$90 million USD by personally concluding concession contacts with foreign diamond companies; during the war, the RUF could gain profits between \$25–125 million USD annually, which it used to supply its armed forces and to finance military operations.”

28. As discussed above, the film *Blood Diamond* portrays the atrocities that occurred in Sierra Leone (See *supra* note 1). The musical artist Kanye West also brought the issue of blood diamonds

families, drugged, force-fed gun powder to make them violent, and were then recruited as soldiers for the RUF's rebel forces.²⁹ Children were also forced to work in diamond mines under hazardous, even deadly, conditions.³⁰ The ultimate affect of the civil war was to displace tens of thousands, force half a million to flee Sierra Leone, and leave unknown numbers dead or injured.³¹

In 1999, the United Nations Security Council established the Mission in Sierra Leone to help with peace efforts.³² The United Nations officially accused neighboring Liberia's leader, Charles Taylor, in 2002 of backing the RUF insurgency by providing weapons and training in exchange for diamonds.³³ The civil war in Sierra Leone was ignited in large part by Taylor's involvement.³⁴ Due to his involvement, Taylor was sentenced to 50 years in prison on 11 counts of aiding and abetting the rebels.³⁵ Also in

into the public's awareness with his 2005 song "Diamonds in Sierra Leone." KANYE WEST, DIAMONDS IN SIERRA LEONE (ROC-A-FELLA 2005). The music video for the original song depicts children working in mines as soldiers stand watch. At the end of the video, the phrase "Please purchase conflict free diamonds" appears on the screen. Vevo, *Diamonds in Sierra Leone*, YOUTUBE (2005). In a remix collaboration with fellow artist Jay Z, West tailored new verses to match the content of the original music video. The remix includes the following lyrics: "See, a part of me sayin' keep shinin'. How? When I know of the blood diamonds. Though it's thousands of miles away, Sierra Leone connects to what we go through today." KANYE WEST AND JAY-Z, DIAMONDS IN SIERRA LEONE (REMIX) (ROC-A-FELLA 2005).

29. *Return to Freetown* (CNN Television broadcast Dec. 23, 2001). Transcript available at <http://transcripts.cnn.com/TRANSCRIPTS/0112/23/cp.00.html>. "Then they took me away from my mother. My mother was alone. So they took me then with my elder brother and trained us. They gave us gunpowder and we ate it. They put some other medicine in it and that gave us the mind to be able to kill." In order to give them the "mind to kill," children were also told to rub blood in their eyes. *Id.*

30. Burton, *supra* note 24.

31. *Id.* "The war lasted until 2002, claiming over 50,000 lives and involving an incalculable number of inhumane acts."

32. UNAMSIL, United Nations Mission in Sierra Leone, <http://www.un.org/en/peacekeeping/missions/past/unamsil> (last visited Oct. 4, 2015). See also Wetzel, *supra* note 1 at 165. One United Nations effort was the Security Council Resolution 1306, passed in 2000, which "prohibited the import of uncertified rough diamonds from rebel-held territory in Sierra Leone."

33. Burton, *supra* note 24. Taylor was leading his own rebel movement, the "National Patriotic Front of Liberia, through which he armed the RUF in exchange for the diamonds mined in Sierra Leone. See also Wetzel, *supra* note 1 at 165. "The RUF had received support from Liberia all along, and after the election of Charles Taylor as president in 1997, Liberia had become an open route, with Taylor receiving up to 60 percent of the smuggled diamonds in return."

34. *Id.*

35. Ben Brumfield, *Charles Taylor Sentenced to 50 Years for War Crimes*, CNN, updated May 31, 2012, available at <http://www.cnn.com/2012/05/30/world/africa/netherlands-taylor-sentencing>. Taylor expressed no remorse at the trial, considering himself a peacemaker and accusing the United States of throwing the trial and paying witnesses to testify against him. He feels he is "a leader wronged by corruption and a hypocritical hand of justice with a political agenda." *Id.* The court, however, "saw his position of power as president of the neighboring country and the use of his own military's capabilities to stoke up RUF rebels as making him directly responsible for the bloodshed he encouraged." *Id.*

2002, the United Nations placed a ban on all direct and indirect diamond imports from Sierra Leone.³⁶ The civil war came to an end in 2002, and conflict has yet to break out again in Sierra Leone.³⁷ Observers have even seen diamonds contribute to the rebuilding of the country's infrastructure.³⁸

C. Zimbabwe

Zimbabwe gained its independence from Britain in 1980.³⁹ Since that time, Zimbabwe has seen only one president, Robert Mugabe. Mugabe's original party, the Zimbabwean African National Union, or ZANU, merged with the opposing Zimbabwe African Peoples' Union, or ZAPU, to form ZANU-PF.⁴⁰ When challenged by the Movement for Democratic Change, or MDC, lead by Tsvangirai in 1999 the ZANU-PF responded with intimidation and rigged elections in order to maintain political control.⁴¹ Tsvangirai won many votes in the early rounds of the 2008 presidential election, but withdrew after a violent ZANU-PF response.⁴² Despite the plainly tenuous relationship, international pressures led

36. *Sierra Leone*, *supra* note 26. This was done "in an effort to help stabilize the country and reduce the rebel's access to foreign currency and arms." *Id.*

37. Brumfield, *supra* note 35. Peace was achieved and maintained with the help of a United Nations Peacekeeping Mission in Sierra Leone, known as "UNAMSIL." See UNAMSIL: A SUCCESS STORY IN PEACEKEEPING, available at <http://www.un.org/en/peacekeeping/missions/past/unamsil/Overview.pdf>. "Over the course of its mandate, the UN disarmed tens of thousands of ex-fighters, assisted in holding national elections, helped to rebuild the country's police force, and contributed towards rehabilitating the infrastructure and bringing government services to local communities. The UN also helped the Government stop illicit trading in diamonds and regulate the industry. During the war, rebels had used money from "blood" or "conflict" diamonds to buy weapons which had fuelled the conflict." *Id.* UNAMSIL oversaw free presidential and parliamentary elections, facilitated elections for local officials, helped set up the Special Court for Sierra Leone where those responsible for war crimes can be tried and brought to justice, and reconstructed schools, police stations and medical clinics. *Id.*

38. Conflict Diamonds, *supra* note 2. While this may seem like a small step toward overall progress when juxtaposed against the atrocities still occurring in Zimbabwe's Marange diamond fields, as discussed below, it is important to see that revenue from diamond exports *can* be used for positive change. Perhaps, in this way, Sierra Leone has begun to reverse its resource curse.

39. ZIMBABWE PROFILE, BBC News Africa, <http://www.bbc.com/news/world-africa-14113618> (last updated July 29, 2014).

40. Julie Elizabeth Nichols, *A Conflict of Diamonds: The Kimberly Process and Zimbabwe's Marange Diamond Fields*, 40 DENV. J. INT'L L. & POL'Y 648, 664 (2012). "Following a horrific period of massacres between 1982 and 1985, ZANU and its main political opposition, the Zimbabwe African People's Union ("ZAPU"), reached an agreement, which merged the two parties, creating ZANU-PF and maintaining Mugabe's presidency."

41. *Id.* "The ZANU-PF government responded by further suppressing civil liberties and intimidating its way through multiple fraudulent elections."

42. *Id.* at 665. "ZANU-PF's response was so violent, immediate, and widespread that Tsvangirai withdrew."

Mugabe and Tsvangirai to establish a regime where Mugabe remained president and Tsvangirai became prime minister.⁴³ It is easy to understand why this arrangement, while legitimate, is so hotly contested.⁴⁴ This is significant because it means that the legitimate government, rather than rebel or opposition groups, controls all diamond mines in Zimbabwe.⁴⁵

D. A “Resource Curse”?

Angola, Sierra Leone and Zimbabwe, like most of the African continent, have all suffered from what some scholars call a “resource curse.”⁴⁶ This occurs when countries with at least one very plentiful natural resource, here diamonds, are unable to utilize that resource to rise out of poverty.⁴⁷ Resource curses tend to lead to poor economic growth, authoritarian-style government regimes, corruption due to rent-seeking behavior, and conflict.⁴⁸ The structure overall seems to be what has prevented wealth from reaching an affected country’s population at large, and results ultimately in poverty and significant inequalities.⁴⁹

43. *Id.* “However, international pressure eventually convinced the leaders to establish a transitional power-sharing agreement, in which Mugabe retained the presidency and Tsvangirai became prime minister. Since September 15, 2008, this hotly contested and extremely controversial coalition has been Zimbabwe’s legitimate government.”

44. *Id.*

45. *Id.* Unlike the use of conflict diamonds to fund rebel movements in Angola and Sierra Leone, the diamonds mined in Zimbabwe are being used to fund only the activities of the legitimate government. The Kimberly Process’s failure to address this at-home corruption is one of the principle reasons that Global Witness has decided to end its relationship with the Kimberley Process. Global Witness stated in its press release: “Newspapers have reported that the Zimbabwean Central Intelligence Organisation, the state security service aligned with Mugabe whose members are accused of committing acts of violence against opposition supporters, directly benefits from off-budget diamond revenues.” GLOBAL WITNESS LEAVES KIMBERLY PROCESS, CALLS FOR DIAMOND TRADE TO BE HELD ACCOUNTABLE, *supra* note 6.

46. Lesley Wexler, *Regulating Resource Curses: Institutional Design and Evolution of the Blood Diamond Regime*, 31 CARDOZO L. REV. 1717, 1718 (2010). A resource curse arises “when an open market and an abundance of natural resources combine to create or exacerbate a governance problem.” Wexler points out as particularly “vexing” the resource curse which occurs “when a valuable natural resource contributes to the instigation and lengthening of internal conflicts.” *Id.* The continued trade of conflict diamonds to fund election intimidation strategies seems to meet this second category of resource curse.

47. *Id.* at 1723.

48. *Id.*

49. *Id.* “This rent-seeking behavior leads to low redistribution of rates, which fosters low standard of living, poverty, and systemic inequalities.” *Id.*

II. THE KIMBERLEY PROCESS—HISTORY, KEY PLAYERS, HOW IT WORKS AND HOW IT IS ENFORCED

The Kimberley Process first took shape in May of 2000 when representatives from several African countries met in Kimberley, South Africa to “discuss ways to stop the trade in ‘conflict diamonds’ and ensure that diamond purchases were not financing violence by rebel movements and their allies seeking to undermine legitimate governments.”⁵⁰ The United Nations General Assembly adopted a resolution for the creation of an international scheme for the certification of rough diamonds in January of 2001, by which they “welcom[e] with appreciation by the African diamond-producing countries to launch an inclusive consultation process of Governments, industry and civil society” and also “[u]rge[] all States to support efforts of the diamond producing, processing, exporting and importing countries and the diamond industry to find ways to break the link between conflict diamonds and armed conflict.”⁵¹ The KPCS was implemented in 2002 via the Interlaken Declaration and participants began following the KPCS in 2003.⁵²

As of 2014, there are 54 “Participants” in the KPCS, representing 81 countries, since the European Union and its Member States collectively count as one participant.⁵³ Roughly 99.8% of the world’s rough diamond exports come from Kimberley Process members.⁵⁴ “Applicants” are candidates for membership that have committed to joining the KPCS, but do not yet meet the membership requirements to become official

50. KP BASICS, <http://www.kimberleyprocess.com/en/about> (last visited Nov. 5, 2014). *See also* Wetzel, *supra* note 1 at 170. “The KP aims at cutting off funds to rebel movements by curbing trade in conflict diamonds, while protecting and promoting legitimate trade. Its principal tool for this dual purpose is the establishment of a certification scheme for rough diamonds.”

51. G.A. Res. 55/56, *supra* note 10.

52. KP BASICS, *supra* note 50. *See also* Campbell, *supra* note 5 at 116. “The procedure was dubbed the Kimberley Process, after the famous De Beers mine in South Africa, and was designed to hammer out a united front, a game plan for cutting off the flow from the rebel groups that, even if most of them know it was practically impossible, would at least give the impression of a positive, pro-active response to the mounting criticism of the industry.”

53. KP BASICS, *supra* note 50. *See also* KP PARTICIPANTS, <http://www.kimberleyprocess.com/en/participants> (last visited Nov. 6, 2014). A full listing of all 54 participants is available. *See also* Tina Muscarella Gooch, *Conflict Diamonds or Illicit Diamonds: Should the Difference Matter to the Kimberley Process Certification Scheme?*, 48 NAT. RESOURCES J. 189, 194–95 (2008). The KPCS members meet once a year at a Plenary meeting. While these meetings are closed to the public, an annual Communiqué is published after the Plenary meeting ends.

54. PARTICIPANTS, *supra* note 53.

members.⁵⁵ Membership in the Kimberley Process is not limited to state actors.⁵⁶ There are also groups labeled “observers” who provide assistance and expertise in monitoring the effectiveness of the KPCS.⁵⁷ Each year, a new Chair and Vice Chair are selected. In 2014, China serves as Chair and Angola as Vice Chair.⁵⁸

Joining the Kimberley Process scheme is voluntary, however countries that choose to join must meet and maintain certain minimum requirements.⁵⁹ The KPCS works by requiring three things of participating nations. First, countries must enact legislation putting in place a requirement that any diamonds shipped into or out of that country be certified under the KPCS, including trade prohibitions that ban rough diamond trade with any country not participating in the KPCS.⁶⁰ Second, the participating nation must make an official commitment to uphold the goals of the KPCS.⁶¹ Finally, the participant must agree to meet annually with other participants to monitor the progress of the KPCS.⁶² Significantly, an enforcement mechanism is not required, leaving enforcement to the discretion of each participating nation.⁶³ The KPCS leaves participating nations independent to enact whatever legislation they deem necessary for enforcement of the scheme.⁶⁴ The Core Document makes a series of “recommendations,” but the voluntary nature of the

55. CANDIDATES, <http://www.kimberleyprocess.com/en/candidates> (last visited Nov. 6, 2014). Current candidates for the KPCS are: Burkina Faso, Republic of Chile, Republic of Kenya, Mauritania, Mozambique, and the Republic of Zambia.

56. OBSERVERS, <http://www.kimberleyprocess.com/en/observers> (last visited Nov. 5, 2014).

57. *Id.* The observers are the African Diamond Producers Association (ADPA), the Civil Society Coalition, the Diamond Development Initiative (DDI), and the World Diamond Council (WDC). Observers attend the annual Plenary meeting with all KPCS participants.

58. CHAIR, <http://www.kimberleyprocess.com/en/chair> (last visited Nov. 5, 2014). The Vice Chair is selected by participants each year at the Plenary meeting. The Vice Chair then becomes the Chair having completed its year-term as Vice Chair. The Chair and Vice Chair oversee the implementation of the KPCS generally, as well as the activities of committees within the KPCS.

59. Burton, *supra* note 24.

60. Julie L. Fishman, *Is Diamond Smuggling Forever? The Kimberley Process Certification Scheme: The First Step Down the Long Road to Solving the Blood Diamond Trade Problem*, 13 U. MIAMI BUS. L. REV. 217, 225–26 (2005).

61. *Id.* at 226.

62. *Id.* The overarching goal of these measures is “to make it more difficult for warlords, rebel militias, and rogue regimes to flood the international market with diamonds, meaning that diamonds will no longer serve as a means of funding revolts.” *Id.* at 225.

63. *Id.*

64. Kimberley Process Core Document § 2, 2003, *available at* <http://www.kimberleyprocess.com/en/kpcs-core-document>. Specifically, section 4 of the document states: that each participant should “as required, amend or enact appropriate laws or regulations to implement and enforce the Certification Scheme and to maintain dissuasive proportional penalties for transgressions.”

entire scheme is emphasized throughout.⁶⁵ As will be discussed in Part IV, the lack of overarching uniform legislation and enforcement mechanisms has faced criticism.

Under the KPCS, any shipment of diamonds must be accompanied by a Kimberley Process Certificate.⁶⁶ The Kimberley Process Certificate can be in any language so long as an English translation is also incorporated, must be resistant to tamper and forgery, and must bear the title “Kimberly Process Certificate,” and this statement: “The rough diamonds in this shipment have been handled in accordance with the provisions of the Kimberly Process Certification Scheme for rough diamonds.”⁶⁷ Minimum additional pieces of information required are country of origin, numbering with Alpha-2 country code, dates of issuance and expiry, issuing authority, identification of both the importer and the exporter, carat weight, value of the shipment in U.S. dollars, the number of parcels in the shipment, and a validation of the Certificate by the exporting authority.⁶⁸

What about diamonds purchased by consumers before the implementation of the KCPS? The drafters of the KCPS recommended that if these diamond owners are seeking to sell their diamonds, they should stipulate to the best of their ability the origin of the diamonds.⁶⁹ Data regarding member states’ diamond trade and production can be found

65. *Id.* at annex 2. Recommendations give examples of what participants are encouraged to do. For example, “Participants that produce diamonds and that have rebel groups suspected of mining diamonds within their territories are encouraged to identify the areas of rebel diamond mining activity and provide this information to all other participants.” *Id.* at annex 2. The language throughout the rest of the core document describes what participating countries “should” do, rather than what they must do or what they are required to do. Further, the document prescribes for self-regulation, stating that “participants understand that a voluntary system of industry self-regulation, as referred to in the Preamble of this Document, will provide for a system of warranties underpinned through verification by independent auditors of individual companies and supported by internal penalties set by industry, which will help to facilitate the full traceability of rough diamond transactions by government authorities.” *Id.* § 4.

66. Kimberley Process Core Document sec. 2, 2003, available at <http://www.kimberleyprocess.com/en/kpcs-core-document>.

67. Kimberley Process Core Document Annex 1 (2003), <http://www.kimberleyprocess.com/en/kpcs-core-document>.

68. *Id.*

69. Fishman, *supra* note 61, at 228. “. . . the KPCS drafters recognized that billions of dollars worth of rough and polished diamonds presently exist in industry inventories, as well as in the hands of past consumers. Both of these diamond supplies may easily re-enter the marketplace over time. Instead of confiscating all diamonds mined and sold pre-January 1, 2003, the drafters recommended that all owners of such diamonds in the market to sell these diamonds stipulate to the best of their ability that the diamonds are not blood diamonds and indicate the place of origin, preferably with a statement from the seller attesting to this fact.” *Id.*

on the KPCS website.⁷⁰ This information was not made public until 2007 when member states finally gave into pressure from NGOs.⁷¹

The diamond industry itself responded to the increased attention being paid to conflict diamonds with the formation of the World Diamond Council.⁷² The World Diamond Council then established its “System of Warranties” which “extends the effectiveness of the Kimberley Process beyond the export and import of rough diamonds.”⁷³ This is a voluntary system of self-regulation that requires that members include a statement of compliance on all invoices for the purchase or sale of rough diamonds, polished diamonds, and pieces of jewelry containing diamonds.⁷⁴

III. ANGOLA, SIERRA LEONE AND ZIMBABWE NOW: DID THE KPCS WORK?

It has now been over a decade since the KPCS was implemented. Angola adopted the KPCS in 2003,⁷⁵ as did Sierra Leone⁷⁶ and

70. The KPCS website provides annual reports dating back to the year a particular participant joined. *See, e.g.*, ANGOLA, <http://www.kimberleyprocess.com/en/angola> (last visited Nov. 6, 2014). Information on the “Annual Rough Diamond Summary” report includes the volume and value of total diamonds produced, imported and exported for a given year. There is also a calculation in US dollars of the value per carat of diamonds produced, imported and exported. Also denoted is the number of Kimberley Process Certificates that the country has issued that year.

71. Wexler, *supra* note 46, at 1766. “Over time and with NGO pressure, however, member states agreed to put trade and production data on the website six months after internal publication. In 2007, the website made this data available to the public.” *Id.* Making this data public should help ease concerns regarding transparency in the KPCS certification process and enforcement.

72. Andrew Winetroub, *A Diamond Scheme is Forever Lost: The Kimberley Process’s Deteriorating Tripartite Structure and Its Consequences for the Scheme’s Survival*, 20 *IND. J. GLOBAL LEG. STUD.* 1425, 1427 (2013). “As governments and civil society groups began to act, so too did the diamond industry by participating in the creation of the KP and by creating its own standards through the World Diamond Council (WDC).”

73. MISSION STATEMENT, <http://www.worlddiamondcouncil.com> (last visited Jan. 18, 2015). The World Diamond Council also seeks to provide technical, financial and other support to the Kimberley Process, and generally serves as a representation for the diamond industry in KPCS Plenary meetings and other related forums. *Id.*

74. *Id.* The following is the text of the statement which must be present on invoices for sale and purchase of rough diamonds, polished diamonds, or jewelry containing diamonds: “The diamonds herein invoiced have been purchased from legitimate sources not involved in funding conflict and in compliance with United Nations resolutions. The seller hereby guarantees that these diamonds are conflict free, based on personal knowledge and/or written guarantees provided by the supplier of these diamonds.” Failure to comply with this and other principles laid out in the System of Warranties could result in “expulsion from the various diamond industry institutions.” SYSTEM OF WARRANTIES, World Diamond Council, <http://www.worlddiamondcouncil.org/download/resources/documents/System%20of%20Warranties%20WDC%202014.pdf> (last visited Jan. 18, 2015).

75. ANGOLA, <http://www.kimberleyprocess.com/en/angola> (last visited Nov. 6, 2014).

76. SIERRA LEONE, <http://www.kimberleyprocess.com/en/sierra-leone> (last visited Nov. 6, 2014).

Zimbabwe.⁷⁷ To what extent has the Kimberly Process Certification Scheme been successful in curbing trade of blood diamonds to fuel armed conflict in Angola, Sierra Leone and Zimbabwe?

A. Angola

An author reflecting upon Angola's experience since the implementation of the KPCS described Angola as a "poster child for the global effort to keep 'blood diamonds' out of the world's jewelry stores"—at least on paper.⁷⁸ Yet, human rights violations continued to occur through recent years with incidents of unlicensed miners being beaten and bribed by security guards and soldiers.⁷⁹ So while the Kimberley Process may have curbed the flow of blood diamonds from Angolan mines to outside sources, there is a significant loophole that permits the violence and bloodshed to perpetuate. Specifically, the loophole rests in the KPCS's definition of a conflict diamond, since it does not account for human-rights abuses occurring in diamond mines controlled by Angola's legitimate government.⁸⁰

Rafael Marques de Morais, an Angolan journalist and prominent human-rights activist, recognized in an address to the European Parliament Subcommittee on Human Rights' hearing on 'Indigenous People and the Extractive Industries' that there is a stark contrast in Angola "between abject poverty and scandalous wealth."⁸¹ Poor villagers dig in the mines because they have no other means to survive while government and military leaders fill their own pockets with diamonds by purchasing from the poor, illegal miners.⁸² De Morais explains the practical effect of the

77. ZIMBABWE, <http://www.kimberlyprocess.com/en/zimbabwe> (last visited Nov. 6, 2014).

78. Michael Allen, *The 'Blood Diamond' Resurfaces*, WALL ST. J. (June 19, 2010) <http://online.wsj.com/articles/SB10001424052748704198004575311282588959188>. This author stated in more detail: "Angola is now a leading member of the so-called Kimberley Process, an industry-wide effort to prevent commerce in rough diamonds by insurgent groups. Today, Angola is the world's fifth-largest diamond producer by value, and its gems are coveted for their size and purity."

79. *Id.* "Here in the sprawling jungle of northeast Angola, a violent economy prevails in which thousands of peasant miners eke out a living searching for diamonds with shovels and sieves. Because they lack government permits, miners and their families say they are routinely beaten and shaken down for bribes by soldiers and private security guards—and, in extreme cases, killed."

80. *Id.* "But critics say there's a big loophole in that definition: It doesn't take into account human-rights abuses in diamond territory controlled by governments themselves."

81. Rafael Marques de Morais, *Angolan Blood Diamonds: The Role of the European Union and the Kimberley Process* (Apr. 24, 2013) (transcript available at <http://allafrica.com/stories/201304250288.html>).

82. *Id.*

loophole in the KPCS definition of “conflict diamond” with the following powerful statement: “Diamonds being mined today in Lundas are no less bloody than those that funded past wars. Today, my people are being assassinated not to fund a civil war, but out of sheer greed and malignance.”⁸³

B. Sierra Leone

A visit in 2011 to Koidu in Sierra Leone revealed a country still very much affected by the evils of the diamond trade.⁸⁴ Despite the fact that the war had been over for almost a decade,⁸⁵ a “frustration” one author described as a “deep-seated sense of injustice” still hung heavy in the air.⁸⁶ Yet, a BBC reporter urged boldly in 2012 that “there are no more ‘blood diamonds’ in Sierra Leone.”⁸⁷ The city of Koidu, which was once a “moonscape of small pits” dug by people searching for even the tiniest gems, the city has started to become lively once more.⁸⁸ An NPR reporter recognized Sierra Leone’s new roads and the advent of electricity to major cities, but qualified this progress by noting that the diamonds are still a major source of contention for Sierra Leone and will continue to be so until they can be used as a resource for development.⁸⁹

83. *Id.*

84. Campbell, *supra* note 5, at 231. “Anyone who doubts that the gap between diamonds marketing mythos as symbols of love and the realities of their origins was as wide as ever in 2011—even without warfare to exacerbate the difference—need only spend a few days in Koidu, a run-down collection of cinderblock buildings, mosques, and market kiosks still teetering in the wake of the war, held together with bush sticks and clotheslines. Throughout the RUF war, Koidu got the worst of it and has yet to recover.”

85. *Id.* at 233. “From afar, it was tempting to get the impression that all was fine. No instances of large-scale violence had occurred since the 2002 election that marked the end of the war.”

86. *Id.* at 232–33. “Yet there was clearly a sense of frustration in the air around Koidu, a vague feeling of trouble brewing that took some time to identify as a deep-seated sense of injustice.” *Id.* at 265. “Sierra Leone of 1991 must have been a lot like Sierra Leone of 2011. It has all of the ingredients: a weak central government riven with corruption, greed-blinded chiefs in the provinces selling out their own people for cash, resource industries run with no transparency or accountability, and a citizenry yet again disenfranchised and starting to feel its resentment rise.” *Id.*

87. Mark Doyle, *Sierra Leone ‘Blood Diamonds’ Not Forever*, BBC News, <http://www.bbc.com/news/world-africa-18109186> (last updated May 20, 2012).

88. *Id.* “Where there were rebels with guns, there are now police officers. Where there were hungry, displaced people, there are now lively market traders.”

89. Tamasin Ford, *Sierra Leone’s Diamonds Still a Source of Contention*, NAT’L PUB. RADIO (Nov. 23, 2012, 6:40 AM), <http://www.npr.org/2012/11/23/165271466/sierra-leone-holds-a-vote-not-a-war-on-diamonds>. “There are new roads and electricity in the major cities. But the challenge of transforming the country’s natural resources into development for its people still remains.”

C. Zimbabwe

In 2006, a group of villagers in the Marange district in Zimbabwe discovered what has been valued as the richest diamond deposit ever found.⁹⁰ The diamond deposits are even more desirable because they are alluvial, rather than Kimberlite, meaning that they could be much more easily extracted than diamonds in other mines.⁹¹ The mines had been declared open for mining by Zimbabweans; however, after an influx of illegal miners entered the mines, ZANU-PF's army took control of the mines in 2008, at which time over 200 miners were massacred.⁹² Serious human-rights violations such as dog attacks and beating by guards occur too regularly in the Marange diamond fields.⁹³ There have also been reports of mass rapes by soldiers overseeing work in the mines.⁹⁴ In 2011, various mining camps were discovered in Zimbabwe's Marange fields, where corrupt police and military would recruit illegal miners to dig diamonds for them.⁹⁵ Similar beatings and dog-biting incidents were common in these camps.⁹⁶

90. *Zimbabwe and Blood Diamonds*, BRILLIANT EARTH, <http://www.brilliantearth.com/Blood-Diamonds-Fact-Sheet-2010/> (last visited Nov. 7, 2014). It is projected that the Marange fields could produce as much as 40 million carats per year, which translates to \$2 billion.

91. Wexler, *supra* note 46, at 1769–70. This also meant that individuals, not just private companies, had the ability to extract diamonds. “Unlike the previously existing Kimberlite diamond mines, which required private companies to extract stones, individuals could mine in these new alluvial diamond fields through less intensive methods.” *Id.*

92. Sebastian Berger, *Zanu-PF and Zimbabwe Military ‘Profiting from Diamond Massacre,’* THE TELEGRAPH, June 26, 2009, <http://www.telegraph.co.uk/finance/newsbysector/epic/gemd/5644252/Zanu-PF-and-Zimbabwe-military-profiting-from-diamond-massacre.html>. “In its report, *Diamonds in the Rough*, Human Rights Watch says that ‘at least 214’ people were killed at Chiadzwa, and that Zanu-PF used the mineral deposits to reward the military and keep them loyal as Zimbabwe spiralled into chaos.”

93. *Zimbabwe: Rampant Abuses in Marange Diamond Fields*, HUM. RTS. WATCH, Aug. 30, 2011, <http://www.hrw.org/news/2011/08/30/zimbabwe-rampant-abuses-marange-diamond-fields>. The Human Rights Watch has gathered evidence of incidences of violence against local unlicensed miners in Zimbabwe's mines, despite reports made by Zimbabwe government officials denying the occurrence of such incidents. *Id.*

94. Burton, *supra* note 24, at 436. “Even after taking the mining fields from the police forces that oversaw them, under state control, there have been reports of underage child miners, severe beatings, and even wrongful death suits against the companies The most egregious allegation, however, is the report of mass rapes by soldiers at the mines.”

95. Hilary Andersson, *Marange Diamond Field: Zimbabwe Torture Camp Discovered*, BBC PANORAMA, Aug. 8, 2011, <http://www.bbc.co.uk/news/world-africa-14377215>. Locals refer to the main mining camp as “Diamond Base,” and a witness described it as a “remote collection of military tents, with an outdoor razor wire enclosure where the prisoners are kept.”

96. *Id.* One victim commented that the beatings were so severe that miners were sometimes unable to walk properly. Another victim stated that miners would be administered 40 whips in the

To its credit, the KPCS has not been completely silent on the issue of human rights violations in Zimbabwe. When human rights offenses began in Zimbabwe's Marange diamond fields as early as 2006, human rights groups associated with the KPCS attempted to document the incidences. However, Zimbabwe denied that the abuses ever occurred.⁹⁷ Remaining suspicious, the 2008 plenary meeting of the KPCS recommended further monitoring of the diamond trade in Zimbabwe in light of continued reports of violence and diamond-smuggling in the Marange fields.⁹⁸ In 2009, the KPCS issued a report documenting occurrences of violence and smuggling, and collected evidence of these injustices to support these claims when Zimbabwe permitted investigators a surprising amount of access to the Marange fields.⁹⁹ Despite this transparency, the state of blood diamond trade in Zimbabwe remains tenuous. The KPCS placed a ban on diamond imports from and exports to Zimbabwe in 2009 due to its repeated violations in the Marange fields, but Zimbabwe was reinstated in 2011.¹⁰⁰

IV. THE KIMBERLEY PROCESS: A SUCCESS?

While it is clear that the KPCS is not without its flaws, it is important to recognize that the system has succeeded in reducing the trade of conflict diamonds.¹⁰¹ Nor is the KPCS flawed beyond repair. Supporters and critics alike tend to agree that the Kimberly Process has been an important step in the right direction.¹⁰² In the 1990s, conflict diamond sales made up

morning, 40 in the afternoon and another 40 in the evening. Another prisoner described a procedure by which mine police would handcuff miners, then unleash dogs to bite the miners.

97. Wexler, *supra* note 46, at 1771. "The Kimberley Process slowly addressed these human rights abuses and KPCS violations. Human rights groups associated with the Kimberley Process began documenting these abuses in as early as 2006, but Zimbabwe vociferously denied such occurrences."

98. *Id.* at 1771-72. "In 2008, the Kimberley Process plenary meeting recommended 'further monitoring of development and concerted actions' and expressed 'growing concerns at the reports of violence and indications of smuggling in the Marange Mining area.' Thus, the working group on monitoring began investigating trade anomalies and member states were asked to provide technical assistance to Zimbabwe to stop the illicit flow of Marange diamonds."

99. *Id.* at 1773.

100. Burton, *supra* note 24, at 435. "While the KPCS banned imports from, and exports to, Zimbabwe in 2009 due to reports relating to military control of the diamond mines, the KPCS reinstated Zimbabwe in late 2011 after reassessment."

101. Wetzel, *supra* note 1, at 161. "While not perfect, [the Kimberley Process] is a good example of how to address the economic basis of a conflict in order to influence the decision-making process of the relevant warring stakeholders."

102. *Id.* at 178. "... [H]ence the KP can be seen as a positive step made by the international community and as an early model for how the international regulation of the trade in a special commodity can contribute to the curbing of an armed conflict."

15% of the world's diamond trade, and this number dropped to .4% by 2009 because of the implementation of the KPCS.¹⁰³ There has also been an expansion in the legal diamond market in certain African countries after the implementation of the KPCS.¹⁰⁴

One strong indicia of the KPCS's failure is Global Witness's withdrawal from the Kimberley Process.¹⁰⁵ Global Witness is an organization that strives to effect change in areas of the world suffering from conflict, corruption or environmental destruction.¹⁰⁶ In a press release announcing Global Witness's departure from the KPCS, Founding Director Charmian Gooch pointed toward three specific ways¹⁰⁷ in which the KPCS failed: (1) it failed to deal with conflict diamond trade in Cote d'Ivoire; (2) it took no serious action when Venezuela blatantly and repeatedly breached KPCS rules; and (3) the KPCS has failed to halt the human rights violations and violent atrocities occurring in Zimbabwe.¹⁰⁸ In Zimbabwe, Global Witness was specifically concerned with funds from Marange diamonds being used to intimidate voters in the 2013 presidential election.¹⁰⁹

103. Burton, *supra* note 24, at 433. "By 2009, the KPCS succeeded in lowering the sales of conflict diamonds from their 1990s level of fifteen percent of the world's diamond trade to merely 0.4 percent. The legal diamond market has greatly expanded thanks to the KPCS."

104. *Id.* at 433–34. For example, Sierra Leone generated essentially no revenue from legal diamond trade during its civil war years, but this grew to \$125 million in 2006. *See also* Wetzel, *supra* note n. 1, at 177. "... [L]egitimate trade in rough diamonds has created revenue for former conflict-ridden countries. In 2006, Sierra Leone exported US\$125 million worth of diamonds legally . . . these revenues can now be invested in local infrastructure. Hence, the KP has helped turn 'conflict diamonds' into 'reconstruction diamonds.'"

105. Winetroub, *supra* note 73, at 1428. "Despite the potential for an inclusive organization with broad participation, states and the industry are threatening the KP's legitimacy by failing to adequately address diamonds that continue to fund violence and human rights abuses, as exhibited by the Marange diamond fields case in Zimbabwe that led to Global Witness's departure from the KP." The legitimacy of the entire scheme may be called into question if the KPCS cannot effectively address the human rights violations being funded by sale of Zimbabwe's Marange diamonds.

106. *About Us*, GLOBAL WITNESS, <http://new.globalwitness.org/about-us/> (last visited Oct. 4, 2015).

107. The first two of these discussed failures of the Kimberley Process Certification scheme, while relevant to the diamond certification scheme at large, are beyond the scope of this Note.

108. Press Release, *Global Witness Leaves Kimberley Process, Calls for Diamond Trade to be Held Accountable*, GLOBAL WITNESS, Dec. 2, 2011, <http://www.globalwitness.org/library/global-witness-leaves-kimberley-process-calls-diamond-trade-be-held-accountable>. The tone of the press release, Gooch's commentary in particular, demonstrates an extreme level of frustration. *See also* Campbell, *supra* note 5, at 240–41. The case of Zimbabwe is "a stark illustration of how toothless the Kimberley Process has proved to be since it was adopted with much fanfare as the cure for blood diamonds. A KP participant, Zimbabwe had for years been ruthlessly using its state security units to force civilians to dig for diamonds at the Marange field near the border with Mozambique, a diamond area discovered in 2006."

109. Press Release, *supra* note 109. "Over the last decade, elections in Zimbabwe have been

At the 2013 KPCS annual meeting, representatives expressed disappointment at the group's failure to redefine "conflict diamonds" under the KPCS to include those diamonds currently falling through the cracks because they lead to civil rights abuses by state entities, rather than directly funding the purchase of weapons or other war supplies.¹¹⁰ The United States made a push for a redefinition during its term as Chair in 2012.¹¹¹

Ernest Blom, of the World Federation of Diamond Bourses, has argued that the KPCS was successful in achieving its goal of stopping the practice of mining diamonds to fund wars.¹¹² Human rights violations like those occurring in Zimbabwe, he argues, fall outside of the scope of the diamond industry.¹¹³ This view, that the KPCS is a "robust system that works most of the time"¹¹⁴ is certainly not shared by the majority of interested parties.

associated with the brutal intimidation of voters. Orchestrating this kind of violence costs a lot of money. As the country approaches another election there is a very high risk of Zanu PF hardliners employing these tactics once more and using Marange diamonds to foot the bill."

110. *Kimberley Process Fails to Redefine 'Blood Diamonds'*, DEUTSCHE WELLE, <http://www.dw.de/kimberley-process-meeting-fails-to-redefine-blood-diamonds/a-17246854> (last visited Nov. 6, 2014). One party to the conference, Shamiso Mtisi, stated that a new definition was necessary "to capture the abuses that are ongoing in communities and these are abuses committed by state entities, by the police, the military and also private security guards." *Id.* Such a definition would encompass the present situation in Zimbabwe. *See also* Winetroub, *supra* note 73, at 1432–33. "[T] . . . he definition's minimizing scope sees the role of diamonds in fueling conflicts as excessively black-and-white. Conflict diamonds are not simply the product of a system in which illegitimate rebels operate against 'legitimate governments.'" As a result of this false premise, the KP makes no exceptions for groups whose principal purpose is to confront a repressive regime or to combat human rights abuses." *See also* Wetzel, *supra* note 1, at 173. "On a general level, while the KP's definition is wider and includes for example Charles Taylor's involvement in Sierra Leone, it is still narrow in that only trading by rebel movements is prohibited. Diamonds certified by a government are seen as legitimate, even if it subsequently uses trade revenues to finance its own military activities. The KP thus also bars 'legitimate' rebel movements fighting against oppressive regimes from acquiring funds. In this regard, the KP is merely conserving the status quo."

111. Winetroub, *supra* note 73, at 1433.

112. James Melik, *Diamonds: Does the Kimberley Process Work?*, BBC NEWS, June 28, 2010, <http://www.bbc.com/news/10307046>.

113. *Id.* Blom stated: "As far as Zimbabwe is concerned, we have supposed human rights abuses which I think is out of the gambit of the diamond industry . . ." *Id.* (quotes omitted). *But cf.* CAMPBELL, *supra* note 5, at 241 ("To most people who monitor the trade in conflict diamonds, this seemed an open-and-shut case of a KP participant blatantly violating its commitment to the program. Human Rights Watch and other NGOs decried the abuse and called on the Kimberley Process to level sanctions on Zimbabwean diamonds.")

114. Melik, *supra* note 113. Although there can never be a cast-iron guarantee about the provenance of diamonds, Mr. Blom of the World Federation of Diamond Bourses believes the public can rest assured that the Kimberley Process is a robust system that works most of the time. 'We want to give comfort to the consumer that the diamonds they have bought have come from legitimate sources and they can wear it with pride and with love,' he says. *Id.*

Many authors have pointed out flaws with the KPCS, and have recommended potential remedies. One of the flaws of the KPCS is that, while participation is encouraged by the United Nations, it is entirely voluntary. A more forceful push from the United Nations would presumably increase KPCS membership, giving it the power to actually end global trade in blood diamonds.¹¹⁵ Another critique of the KPCS is that, because it lacks an independent monitoring system, it becomes too easy for participating nations to opt-out of their own laws prohibiting trade of blood diamonds.¹¹⁶ Some type of uniform enforcement policy would ensure participant compliance. In addition to implementing their own enforcement schemes, participating countries create their own punishments for violations of KPCS requirements and standards.¹¹⁷ Uniform punishments could result in a more effective KPCS.¹¹⁸

115. Fishman, *supra* note 61, at 234. Fishman insists, in order for the Scheme to truly be effective, global participation is imperative. However, despite unanimous support for the Scheme from all members of the United Nations General Assembly, only forty-three nations, with twenty more attempting to meet the criteria for membership, currently participate. The commitment of approximately sixty-three nations by no means amounts to *global participation*.

Id. (footnotes omitted). See also Wetzel, *supra* note 1, at 174 (“The most important practical problem from the outset was seen in the lack of a forceful international dimension of enforcement, i.e., the absence of an international monitoring body.”).

116. Fishman, *supra* note 61, at 235. Fishman suggests a partnership with the United Nations as a means of establishing this independent monitoring system:

Creating a task force or commissioning an organization to keep a closer watch on all participating nations (that has the power to sanction those which do not comply with the fullest force possible) may serve as a monitoring system that can eradicate some of the current problems with compliance.

Id. See also Wetzel, *supra* note 1, at 174. Wetzel also points out,

the KP is a regime in which the industries and states active in the diamond trade voluntarily regulate themselves. The Interlaken Declaration of 2002 as its constituting document is not an international treaty, but rather, a non-binding political agreement between participating nations. In addition, while the establishment of a system of internal controls in general is required, specific measures such as the licensing of traders, extended record-keeping and spot-checks are only recommended.

Id. at 175 (footnote omitted). Because each participant creates its own domestic controls to implement the Kimberley Process, “the success of the KP depends on the quality of the internal controls in both diamond exporting and importing countries.” *Id.* at 176.

117. One possible explanation for the broad discretion left to each participating state is the concern that a uniform system might not realistically work in each individual, unique nation. Participants face different needs and concerns, which may not be adequately addressed by a uniform scheme. Another explanation could be one of empowerment. Countries may be more likely to follow a regulatory scheme if they are charged with creating it.

118. Fishman, *supra* note 61, at 236. Currently,

a blood diamond trader in one participating nation might receive a penalty as extreme as capital punishment, while a blood diamond trader in another participating country could face little more than a slap on the wrist. Under the terms of the Scheme as currently drafted,

Another critique of the KPCS is the lack of government control over diamond mines. Arguably, increased security at mining sites would decrease the number of unregistered, unlicensed or illegal miners, therefore preventing these diamonds from entering the stream of commerce.¹¹⁹ However, the efficiency of this structure assumes that those monitoring the security efforts at the mines are not working under a corrupt regime, and are not corrupt themselves. Security guards like those overseeing Zimbabwe's Marange mining camps only perpetuate the trade cycle of blood diamonds rather than prevent diamonds from entering the market.

Another concern with the KPCS is the ease at which a country could forge the certificates on which the entire scheme relies.¹²⁰ Many African nations have forged documents to procure arms—this history may indicate the possibility that the same countries would be willing to falsify a KPCS

however, both nations are complying with the requirements for membership and are considered participants in good standing.

Id.

119. *Id.* at 238. Fishman points to Botswana as an example of a country that has used heightened security in mines to prevent diamond-smuggling: "Botswana serves as a good example of a nation where the government effectively secures all diamond mines by keeping a tight reign over excavation. The Botswanian mines are heavily guarded, and at the end of each workday, all excavators are thoroughly searched for diamonds." *Id.* (footnote omitted).

120. There is additional concern that since the KPCS regulates only rough diamonds, trade of suspicious polished, cut or set diamonds continues to go unregulated. *See* Wetzel, *supra* note 1, at 174.

On a practical level, only rough diamonds are targeted; processed diamonds fall outside the scope of the certification scheme. However, by cutting, polishing and setting, diamonds are substantially transformed, thereby acquiring new countries of origin. A review by the NGO Global Witness found millions of dollars worth [sic] of 'suspicious' trading on polished diamonds.

Id. Wetzel's proposed solution for this issue is "to extend the KP to further parts of the supply chain" but this may be difficult to implement. *Id.* Wetzel points out that

[u]ncertified diamonds could even be stolen or rebranded during 'trans-shipment', i.e., the transport of diamonds via third countries, and subsequently reinserted into the regulated trade as certified. Identifying diamonds according to their geochemical characteristics is theoretically possible, but requires scientific expertise beyond that of ordinary customs controls. All of this leads to the result that the true country of origin cannot always be determined.

Id. (footnotes omitted). *See also* CAMPBELL, *supra* note 5, at 240 (discussing the problem of tainted diamonds becoming certified and entering the mainstream diamond market). Campbell writes,

[w]hat's worse, the Kimberley Process has almost no mechanism for dealing with this problem. Site visits to review how participants are following the agreement's dictates and principles are infrequent, and follow-up visits to ensure those falling short are tightening screws can take years. Rogue participants can flaunt the system for years with no real worry they'll be sanctioned. There seems little will among Kimberley Process leadership to use its only punishment tools, suspension or expulsion from the club.

Id.

certification document if given a strong incentive.¹²¹ The diagnosis may be to offer KPCS participants some kind of incentive to stay committed to the Kimberley Process.¹²²

In addition to proposed changes to the KPCS to increase efficiency, other groups are beginning to fill the gaps left open by the KPCS' failure to adapt to the realities of the conflict diamond issue.

One such group is the Responsible Jewellery Council.¹²³ This group consists not of states, but of more than 400 companies from the mining and retail sectors of the diamond industry, and also the gold and diamond industries.¹²⁴ The Responsible Jewellery Council's Code of Practices requires members to follow certain practices including those related to human rights, working conditions, health and safety, and disclosure regarding mining of diamonds and precious metals.¹²⁵ The Code of Practices also establishes a relationship with the KPCS.¹²⁶

Another group seeking to supplement the existing KPCS scheme is the Diamond Development Initiative,¹²⁷ which seeks to foster "an environment that leads to economic development not just for the state as a

121. Fishman, *supra* note 61, at 239. "Many African nations, however, have repeatedly provided false end-user certificates to disguise their arms shipments to rebels in Sierra Leone, Angola, and the DRC. These nations engage in such illegal trade because rebel groups handsomely reward each country for participation. Having demonstrated a history of disregard for the law, it is not unlikely that these same countries would also falsify KPCS certificates if provided a good enough incentive from rebel groups to do so."

122. Fishman, *supra* note 61, at 234, 238–40. Fishman proposes two potential incentive structures. First, she suggests incorporating "into the KPCS a commitment to reduce import limits on each diamond producing country's chief import, in exchange for continued commitment to the KPCS." *Id.* The United Nations would broker these agreements between participating diamond-exporting countries and their major trading partners, even negotiating reduced taxes. *Id.* Second, "a trade agreement mechanism could be incorporated into the KPCS where, if any country violates the KPCS, all other participating countries can retaliate against that violator by refusing to import goods from that nation." This would motivate countries to follow KPCS requirements more closely. *Id.* at 239–40.

123. *About*, RESPONSIBLE JEWELLERY COUNCIL, <http://www.responsiblejewellery.com/about-rjc/> (last visited Sept. 5, 2015). The Responsible Jewellery Council describes itself as follows: "The RJC is a whole-of-supply chain standards initiative for the jewellery supply chain, from mine to retail. It is unique in its participation of organisations at every step of the value chain, each bringing a commitment to a responsible supply chain and implementation of responsible business practices." *Id.*

124. Burton, *supra* note 24, at 439.

125. *Code of Practices*, RESPONSIBLE JEWELLERY COUNCIL, Provs. 5–28 (Nov. 2013), http://www.responsiblejewellery.com/files/RJC_Code_of_Practices_2013_eng.pdf.

126. *Id.* at prov. 27. Provision 27.1 prohibits members from knowingly buying or selling conflict diamonds, and provision 27.2 requires members to implement the KPCS verification system for trade in rough diamonds. Members must also keep records of every Kimberley Process Certificate they receive, which the Responsible Jewellery Council will audit annually according to provision 27.4.

127. *Our Vision*, DIAMOND DEVELOPMENT INITIATIVE, <http://www.ddiglobal.org/our-vision/> (last visited Sept. 6, 2015).

whole, but also for the miners and their communities . . .”¹²⁸ The Diamond Development Initiative is an “observer” of the KPCS, so it has partnered with the KPCS on certain group committees and initiatives.¹²⁹ The Diamond Development Initiative partnered with the Responsible Jewellery Council in 2011, each organization becoming a member of the other, to help advance the goals of both.¹³⁰

CONCLUSION

Criticism and skepticism aside, the Kimberley Process is, at the very least, a very good step in the right direction in the global effort to curb the trade of blood diamonds. Angola, Sierra Leone and Zimbabwe all saw brutal civil wars funded by the trade and sale of valuable diamonds. Cursed by abundant resources, greed and corruption ran rampant in these countries when the powerful exploited the land’s wealth at the expense of the powerless.

It would be over-simplifying the situations in Angola and Sierra Leone to say that conflict diamonds no longer have negative impacts on people living in those countries. That said, the KPCS appears to be more successful in Angola and Sierra Leone than it is in Zimbabwe. I observe two major reasons why this is the case. First, Zimbabwe’s legitimate government is unwilling to play by the KPCS rules. There is a sense of opportunism in Zimbabwe’s use of a very serious loophole in the KPCS framework. This is very significantly linked to the second reason why the KPCS’ success has been limited in Zimbabwe; namely, the loophole created in the KPCS definition of “conflict diamond.” As has been discussed, the definition does not account for diamonds that are used by legitimate, albeit corrupt, governments that are not technically rebel

128. Burton, *supra* note 24, at 440. The Diamond Development Initiative “focuses largely on the plight of artisanal and alluvial (surface diamonds) miners, attempting to put in place regulations that will give laborers a better share of the revenue from their efforts outside of large mining companies.” *Id.*

129. *Kimberley Process Development Agenda*, DIAMOND DEVELOPMENT INITIATIVE, <http://www.ddiglobal.org/our-work/kimberley-process-development-agenda> (last visited Sept. 6, 2015).

130. Burton, *supra* note 24, at 440 (“In November 2011, DDI and RJC partnered to advance each of their goals. Each organization became a member of the other to ensure greater cooperation to achieve improved social, environmental, and labor practices. The joint venture will seek governmental and intergovernmental sponsors for its projects, a move that will enable both organizations to better ensure ethical mining.”) (footnotes omitted).

groups.¹³¹ The human rights abuses occurring in Zimbabwe's Marange diamond

and fields occupy this precise niche, and therefore Zimbabwe remains in minimum compliance with the KPCS.

Of the various suggested improvements by critics and skeptics, the simplest and most easily-enforced change would be to expand the KPCS definition of "conflict diamond" to include the trade of diamonds by groups, and even legitimate governments, that commit gross human rights violations within the boundaries of the country in which the diamonds are mined or the country in which the trading group operates.¹³² This redefinition of a "conflict diamond" would be an easy place to start, and would specifically address the situation in Zimbabwe, which is arguably the KPCS' biggest failure.¹³³

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131. Campbell points to the Zimbabwe situation:

KP representatives argued that the diamonds from Zimbabwe weren't conflict diamonds, in that rebels weren't using them to wage war against the government. That the government was effectively waging war against its own citizens, and selling the bounty of that war into the multibillion-dollar international diamond market as perfectly clean stones approved by the Kimberley Process, seemed not to matter.

Supra note 5, at 241.

132. This change in definition would necessarily be incorporated into the legislative schemes participants have already developed, reducing the need for uniform measures of enforcement and punishment across all participating states.

133. While this change of definition would be the simplest, and I believe easiest way to address the shortcomings of the Kimberley Process Certification Scheme, I believe a fuller, more complicated remedy would yield the best results. This remedy would pull from all of the suggestions made by authors and commentators who have studied the Kimberly Process Certification Scheme and how it has changed the landscape for diamond trade since its implementation. An ideal remedy would include a true over-arching governing body for the KPCS, as well as uniform rules, incentives and punishments across all participating countries. It would also extend certification requirements beyond the export stage to all stages of the diamond production, so that the diamond's path could be traced from country of origin, through the cutting, polishing and setting phases, all the way through the diamond's ultimate purchase and end destination. The redefinition of "conflict" diamond is merely the first step in a series of changes that should be implemented to make the Kimberley Process Certification Scheme the effective tool it was created to be.

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