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Are Conflict Diamonds Forever?: Background to the Problem

There were more than thirty boys there, two of whom, Sheku and Josiah, were seven and eleven years old ... 'It seems that all of you have two things in common', the soldier said after he had finished testing all of us. 'You are afraid of looking a man in the eye and afraid of holding a gun.'

Ishmael Beah, former child soldier with the RUF¹

Chapter Overview

This chapter discusses the nature and parameters of the international legitimate diamond trade, before distinguishing it from the conflict diamonds trade. The definition of conflict diamonds, also known as blood diamonds, is discussed. The chapter discusses the role of conflict diamonds in exacerbating armed conflict and human rights violations in Angola, Sierra Leone, the Democratic Republic of Congo (DRC), and Côte d'Ivoire, before giving brief concluding remarks. A strong understanding of the nature of the conflict diamonds problem is essential to any meaningful attempt to respond to the two research questions, which seek to evaluate the effectiveness of the global response to the problem, and how this response might be improved, with reference to the networked pyramid regulatory model.

1 Beah, I, *A Long Way Gone: Memoirs of a Boy Soldier* (Sarah Chrichton Books, 2007).

The Mainstream Diamond Trade

The mainstream trade in rough or unprocessed diamonds is a multinational, multibillion dollar industry that, until very recently, has resisted modern trends towards transparency in its dealings. Diamond production in the legal industry during 2006 was valued at US\$11.5 billion, representing 176.7 million carats, where each carat is 0.2 grams in weight. Global diamond imports were valued at US\$37.7 billion, representing 500.5 million carats, and exports were valued at US\$38.4 billion, representing 514.2 million carats.²

The diamond industry has been dominated by the De Beers corporation for more than 100 years. De Beers produces about half the world's rough diamonds, calculated by value, and regulates world prices for unprocessed stones by purchasing and stockpiling up to 80 per cent of the world's rough diamond output.³ Diamonds are sorted in London into approximately 5,000 categories by size and quality. Most diamonds are then distributed to dealers in Antwerp, where the majority of rough diamond trading occurs. Other major centres are London, Lucerne, New York, Tel Aviv, Johannesburg, Bombay, and Dubai. The cutting and polishing of diamonds occurs in approximately 30 countries, including India, South Africa, Botswana, Russia, China, Sri Lanka, Thailand, Vietnam, and Mauritius. A diamond would have been traded several times before arriving at one of the major jewellery-making centres located in Israel, Belgium, India, and New York.⁴

Connected to the virtual monopoly exercised by De Beers, diamond transactions have neither been subject to the rigour of tough competition, nor strictly regulated by governments. Reliable statistics regarding the quantity and value of the rough diamond trade in recent decades are hard to come by. In 1998, for example, the Government of Sierra Leone recorded that 8,500 carats of diamonds were exported to Belgium, whereas records in Belgium indicated that 770,000 carats

2 Kimberley Process Secretariat, *Annual Global Summary: 2009 Production, Imports, Exports and KPC Counts* (Annual Report Summary, 7 August 2010).

3 Global Witness, 'A Rough Trade: The Role of Companies and Governments in the Angolan Conflict' (Report, Global Witness Ltd, 1998) 5–6.

4 Global Witness, 'Conflict Diamonds: Possibilities for the Identification, Certification and Control of Diamonds' (Report, June 2000), Section 1 'The Structure of the Diamond Industry'; Price, T M, 'Article: The Kimberley Process: Conflict Diamonds, WTO Obligations, and the Universality Debate' (2003) 12 *Minnesota Journal of Global Trade* 1, 30–36; Transcript of Proceedings, 'Evidence of Expert Witness Ian Smillie', *The Prosecutor v Charles Taylor (Trial)*, (Special Court for Sierra Leone, Trial Chamber II, Case No SCSL-03-01-PT, 7 January 2008) 522.

were imported that year from Sierra Leone. The discrepancy may be attributed to a combination of diamonds being exported without the knowledge of Sierra Leone, and also a tendency in Belgium not to rigorously investigate information provided to it regarding the country of export. To take another example, a United Nations Security Council (UNSC) investigation found that the addresses of Liberian companies appearing on Liberian export invoices in Antwerp, when investigated in Liberia, did not house actual company offices. In the case that postal mail was directed to the company, courier companies had been instructed to redirect the mail to the Liberian International Shipping and Corporate Registry.⁵

Identifying a country of origin for particular diamonds was made harder by the fact that the Antwerp record-keeping system, as well as other systems, identified only the country of last export, rather than the country of origin of the diamonds, thereby obscuring attempts to discriminate between the legitimate and black-market trades.⁶ The initial reluctance to confront the conflict diamonds problem by industry players can largely be attributed to this lack of transparency, and consequent reluctance to share information freely. It might be noted that the illegal trade in diamonds includes not only the conflict diamonds trade, but also other forms of smuggling aimed at tax avoidance or money laundering.⁷

The success of the diamond industry has largely ridden on its advertising approaches. Diamonds have become the most legitimate and acceptable symbol of marital engagement. In the 1930s, De Beers promulgated this image to recover dwindling sales in the Great Depression. Eighty per cent of engagements in the United States were consecrated with diamond rings by 1950, after the Diamonds Are Forever campaign. The United States and Europe are the largest consumer markets for diamond jewellery, representing about 65 per cent of the global market, while the demand from the Chinese market is rapidly expanding.⁸

5 Transcript of Proceedings, 'Evidence of Expert Witness Ian Smillie', *The Prosecutor v Charles Taylor (Trial)*, (Special Court for Sierra Leone, Trial Chamber II, Case No SCSL-03-01-PT, 7 January 2008) 543–544.

6 Smillie, I, L Gberie and R Hazleton, 'The Heart of the Matter: Sierra Leone, Diamonds and Human Security' (Report, Partnership Africa Canada, 2000) 6.

7 Saunders, L, 'Note: Rich and Rare are the Gems They War: Holding De Beers Accountable for Trading Conflict Diamonds' (2001) 24 *Fordham International Law Journal* 1402, 1414.

8 Koyame, M, 'United Nations Resolutions and the Struggle to Curb the Illicit Trade in Conflict Diamonds in Sub-Saharan Africa' (2005) 1 *African Journal of Legal Studies* 80, 94–95.

A product built on positive publicity can, however, fall by negative publicity focused on the association of diamonds with conflict and human rights violations. In 1998, Global Witness thrust the conflict diamonds problem into the public arena by highlighting its connection with the Angolan conflict. Protests in New York outside Tiffany & Co. jewellers led to publicity in the *New York Times*. Aware of the effect of negative publicity in debilitating the fur coat trade, media coverage of the conflict diamonds issue has been an important force in galvanising the diamond industry to take the issue seriously. It has also been argued that the existing diamond industry, which is still largely dominated by De Beers, has a strong interest in enforcing the Kimberley Process (KP), as it is a further means of shoring up a virtual monopoly over the international diamond trade.⁹

In 2002, business, NGOs, and governments combined to create the Kimberley Process Certification Scheme (KP), aimed at tackling the problem of conflict diamonds. The thrust of the Kimberley Process, discussed further in Chapter 4, is to create a paper trail between diamond miners at the beginning of the diamond pipeline, and end consumers of diamond products, so as to distinguish between the legal diamond trade and the illegal trade, thereby preventing the sale of conflict diamonds. Such a system is necessary to identify the country of origin of diamonds, as there is currently no available technology that can accurately identify the country of origin of a diamond simply through analysis of the stone. At most, generalisations based on the value of the stone might be made, noting, for example, that Sierra Leone typically produces stones valued at about US\$200 per carat, as compared to Canadian diamonds valued at about US\$100 per carat, or Congolese diamonds valued at about US\$25 per carat. Diamond value is assessed based on the qualities of clarity, colour, carats, and cut.¹⁰

9 Price, T M, 'Article: The Kimberley Process: Conflict Diamonds, WTO Obligations, and the Universality Debate' (2003) 12 *Minnesota Journal of Global Trade* 1, 30–36; Black, B, 'Panel: Combating International Corruption through Law and Institutions' (2007) 5 *Santa Clara Journal of International Law* 445, 461; Holmes, J, 'The Kimberley Process: Evidence of Change in International Law' (2007) 3 *Brigham Young University International Law and Management Review* 213, 218–219.

10 Transcript of Proceedings, 'Evidence of Expert Witness Ian Smillie', *The Prosecutor v Charles Taylor (Trial)*, (Special Court for Sierra Leone, Trial Chamber II, Case No SCSL-03-01-PT, 7 January 2008) 518, 534.

Naturally, the legitimate diamond trade holds great potential for the economic and social development of African producer nations, as is implied in the term development diamonds.¹¹ If diamond revenues were to benefit the country's population, and where an appropriate amount is paid as taxation revenue, the industry could become a constructive force. Unlike other trades, such as the trade in heroin, cocaine, and other debilitating drugs, it is hard to argue that there is anything intrinsically unethical about trading in diamonds. It is their connection with human rights abuses and conflict that makes black market trading a pariah. An interesting parallel can be made between the trade in certified diamonds and the trade in antique ivory products under the *Convention on the International Trade in Endangered Species*. In certain circumstances, the ivory trade is undesirable, namely where the trade in fresh ivory, or products made from it, is allowed. Naturally, this trade encourages the killing of elephants, an endangered species under the convention. The sale of antique items made using existing stocks of ivory, however, is arguably a distinct market, which does not require the continued killing of elephants.¹²

Conflict Diamonds

The definition of conflict diamonds used in the context of international law is that found in the Kimberley Process core document, which is based on Resolution 55/56 of the United Nations General Assembly (UNGA), and relevant UNSC resolutions:

Conflict diamonds [are] rough diamonds used by rebel movements or their allies to finance conflict aimed at undermining legitimate governments.

While it is important to find a workable definition for conflict diamonds, the definition that was arrived at in these early resolutions, and that found its way into the Kimberley Process core document, is open to some criticism. The definition aims to capture part of the concept of conflict diamonds, namely the role that the black market in

¹¹ 'Development diamonds' are discussed at length in Chapter 3.

¹² For a useful discussion of the Convention on the International Trade in Endangered Species, see United Kingdom Wildlife Licensing and Registration Service, 'Guidance for Antique Dealers on the Control of Trade in Endangered Species' (2005). Available at: www.culturecommunication.gouv.fr/content/download/97744/875972/version/1/file/2005_Guidance+for+Antique+dealers+on+the+control+of+trade+in+endangered+species.pdf.

diamonds plays in fuelling warfare. However, in focusing solely on the element of warfare, the definition fails to identify the important link to the separate concept that the black market in these circumstances also fuels serious human rights violations. It is a premise of international humanitarian law, the human rights conventions that apply during times of conflict, that warfare is not intrinsically illegal. Warfare only becomes illegal when fundamental principles are violated, such as the principle of distinction, which distinguishes between military personnel, who may be legitimately attacked, and others, including civilians and wounded soldiers, who may not be attacked.¹³ Perhaps the key element in harnessing world opinion against the trade in conflict diamonds has been its connection with serious violations of human rights, including the principle of distinction. The wars in Sierra Leone and Angola, for example, have both been characterised by the targeting and killing of civilians.

A further difficulty with the international definition of conflict diamonds is its differentiation between rebel movements and legitimate governments. One of the defining features of the development of international law during the past few decades has been a formal recognition that parties in a non-international conflict (i.e. rebel movements) are bound by the same laws of warfare as parties to the more established category of conflict between national armies.¹⁴ The terminology used in this context also suggests that recourse to warfare by rebel movements is always in contravention of international law. International law, however, recognises that recourse to warfare may be justified in certain circumstances, including a war of self-defence, and wars against a colonising power.

The distinction made between rebel movements and legitimate governments also suggests that governments may legally fund their wars through the diamond trade, and, more problematically, the implication that government forces by their very nature do not commit human rights abuses. Although it may be difficult to outlaw the manner in which the diamond trade finances wars fought by

13 For a useful discussion on the principle of distinction, see International Committee of the Red Cross, *Rule 1. The Principle of Distinction between Civilians and Combatants*. Available at: www.icrc.org/customary-ihl/eng/docs/v1_ru_rule1.

14 *Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II)*, opened for signature 8 June 1977, 1125 UNTS 609 (entered into force 7 December 1978).

national governments, it is particularly problematic to suggest that government armies do not commit human rights violations. In all of the conflicts discussed in this section — Angola, Sierra Leone, the DRC, Côte d’Ivoire, and Zimbabwe — reports of serious human rights violations have been made not only in relation to rebel movements but also government armies. Furthermore, during the conflict in the DRC, according to a key report by the UNSC Expert Committee, the armies of Uganda, Rwanda, and Zimbabwe were all mining Congolese natural resources, including diamonds, to further their war efforts. The issue has also been a thorn of contention in relation to Zimbabwean rough diamonds originating from the Marange diamond fields. It entails alleged human rights abuses committed by Zimbabwean authorities against alluvial miners at Marange. As such, it does not involve either a civil war or an international conflict, and would not, on its face, fall within the conflict diamonds definition as it appears in the Kimberley core document.

The connection between the trade in black market diamonds and human rights violations is perhaps better expressed by the term blood diamonds than conflict diamonds. Although the terms are used interchangeably, the connection with blood arguably connotes the violence directed against civilians better than the more prevalent term conflict diamonds. Perhaps the most infamous example of the connection between this trade and gross human rights violations is the recent civil war in Sierra Leone. The Revolutionary United Front (RUF) militia have been documented as committing crimes of terror to subdue civilian populations, including the amputation of hands and limbs. Weapons and other resources that supported these activities were largely funded through the occupation of diamond mining areas by the RUF, allegedly assisted by the Liberian Government.¹⁵

Considering the challenges with the definition of conflict diamonds, the non-legal status of the Kimberley Process may again prove to be a benefit. Such an issue is more problematic in legal status documents that are subject to established norms of interpretation. In the absence of a legally binding approach, the Kimberley Process has been able to take a broader interpretation of the definition to encompass rough

15 Saunders, L, ‘Note: Rich and Rare are the Gems They War: Holding De Beers Accountable for Trading Conflict Diamonds’ (2001) 24 *Fordham International Law Journal* 1402, 1402–1428; Tailby, R, ‘The Illicit Market in Diamonds’ (2002) 218 *Australian Institute of Criminology: Trends and Issues in Crime and Criminal Justice* 1, 1–6.

diamonds originating from Zimbabwe's Marange Field. Influential commentators, such as Ian Smillie, have argued for a 'purposive' interpretation of the Kimberley conflict diamonds definition.¹⁶ In particular, Smillie points to the human rights reference in the perambulatory passages of the Kimberley core document:

Recognising the devastating impact of conflicts fuelled by the trade in conflict diamonds on the peace, safety and security of people in affected countries and the systematic and gross human rights violations that have been perpetrated in such conflicts.¹⁷

With reference to this statement, he argues that the Kimberley Process has always been concerned 'about the appalling human rights abuses committed in the course' of conflicts. A purposive interpretation is even available with reference to 'black letter' international law. The *Vienna Convention on the Law of Treaties*, article 31, states:

A treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose.¹⁸

If customary international law is to be invoked, evidence of 'state practice' must refer to the fact that the UNGA accepted Marange diamonds as conflict diamonds in a number of their resolutions.

Recognising the political importance, if not the legal necessity, of reinforcing the broader definition of conflict diamonds, Smillie recommends an amendment to the Kimberley core document. He suggests that the following wording be added:

The Kimberley Process promotes respect for human rights as described in the Universal Declaration of Human Rights, and it requires their effective recognition and observance, as part of KPCS minimum standards, in the diamond industries of participating countries, and among the peoples, institutions and territories under their jurisdiction.¹⁹

16 Smillie, I, 'Paddles for Kimberley: An Agenda for Reform' (Report, Partnership Africa Canada, June 2010) 15–16.

17 Kimberley Process, *The Kimberley Process Certification Scheme* (Core Document, 2002) 1.

18 *Vienna Convention on the Law of Treaties*, opened for signature 23 May 1969, 1155 UNTS 331 (entered into force 27 January 1980) art 31.

19 Smillie, I, 'Paddles for Kimberley: An Agenda for Reform' (Report, Partnership Africa Canada, June 2010) 16.

It might be argued, however, that a more explicit amendment to the definition of conflict diamonds would be better in the interests of promoting certainty. Rather than adding a general reference above to the recognition of human rights, it might be advisable to clarify the definition of conflict diamonds, perhaps in terms such as these:

Conflict diamonds are rough diamonds, the production of which is associated with, or the sale of which finances, the commission of international crimes, including war crimes, genocide and crimes against humanity.

The cause of the Kimberley Process would be politically and legally reinforced if the clarified definition was endorsed by resolutions of the UNGA and the UNSC.

It would appear, however, that clarifications to the KP mandate have already met with political opposition within the KP Plenary. At the 2010 KP Plenary, the KP Civil Society Coalition introduced, for the fourth straight meeting, language seeking to clarify the relationship between the KP and human rights. The language stated that KP participants should respect international human rights law when providing security in their diamond sectors. Civil Society, supported by the World Diamond Council and a majority of governments, argued that the credibility of the KP would be seriously undermined if it was not seen to be actively engaged in preventing and responding to human rights violations by state agents in the diamond sector. Despite this support, consensus was blocked by India, China, Russia and the DRC. Botswana and Namibia reserved judgement, saying they needed more time to study the initiative.²⁰

While the Sierra Leone and Angolan wars fuelled by diamonds have now ended, diamonds still fuel conflict in the north-eastern Ituri region of the DRC, as well as Côte d'Ivoire. The world's three largest UN peacekeeping forces are in Sierra Leone, Liberia, and the DRC, consisting of 35,000 troops, with combined budgets of \$1.8 billion.²¹ There is also a documented link between conflict diamonds and

20 Partnership Africa Canada, *Other Facets: News and Views on the International Effort to End Conflict Diamonds*, No. 34 (February 2011) 4.

21 Global Witness and Partnership Africa Canada, 'Rich Man, Poor Man, Development Diamonds and Poverty Diamonds: The Potential for Change in the Artisanal Alluvial Diamond Fields of Africa' (Report, October 2004) 3.

international terrorist groups such as Al Qaeda. Grave human rights violations that, on their face, constitute international crimes, continue to be committed on the artisanal diamond fields of Zimbabwe and Angola by government forces.²²

Diamonds possess qualities that lend themselves to the exacerbation of conflict. They are easy to mine without complex equipment, particularly where there is an abundance of manual labour, which makes the miners an easy target for militia groups. Alluvial diamonds are the most vulnerable, being diamonds distributed close to the surface of the earth as a result of being moved by existing or historical river systems. Miners of alluvial diamonds are often called artisanal miners, because they are able to do the mining using only a shovel and a sieve. Artisanal miners also take advantage of tailings, such as those found in Sierra Leone, which are deposits of diamondiferous gravel that have been abandoned in the wake of large-scale industrial mining. Alluvial diamonds can be contrasted with kimberlite diamond deposits, which are concentrated deposits embedded deeply beneath the earth's surface, normally accessible only with the use of sophisticated mining equipment.²³

Gem-quality diamonds have historically held their value well, which makes them a good investment and useful as a form of hard currency to launder money, purchase weapons, or stockpile for later use. They are the world's most concentrated form of wealth, being very small and of high value, which makes them easy to transport or smuggle. They do not show up on a standard metal detector, although they would be detectable by an x-ray machine. The unregulated nature of the diamond industry has, until recently, contributed to the problem, as there have been few trading restrictions and the legal industry has traditionally not been transparent in its dealings. Multiple transactions,

22 Global Witness, 'For a Few Dollars More: How Al Qaeda Moved into the Diamond Trade' (Report, April 2003) 8–9.

23 Transcript of Proceedings, 'Evidence of Expert Witness Ian Smillie', *The Prosecutor v Charles Taylor (Trial)*, (Special Court for Sierra Leone, Trial Chamber II, Case No SCSL-03-01-PT, 7 January 2008) 517–520, 524–525, 530–531; Global Witness and Partnership Africa Canada, 'Rich Man, Poor Man, Development Diamonds and Poverty Diamonds: The Potential for Change in the Artisanal Alluvial Diamond Fields of Africa' (Report, October 2004) 3.

international transfers, and the practice of mixing diamonds from different sources obscure the origin of diamonds, thereby facilitating smuggling and illegal behaviour.²⁴

Beyond the connection between rough diamonds and international human rights crimes lies a further range of issues that problematise the diamond industry. International crimes are those human rights violations that are considered the most serious under international law, with the technical description of war crimes, crimes against humanity, and genocide, which fall within the subject matter jurisdiction of international criminal tribunals such as the International Criminal Court (ICC). Human rights violations such as murder, rape, the recruitment and use of child soldiers, or forced labour, where carried out on a widespread or systematic basis against civilians, are examples of such crimes. Other human rights violations, while still considered serious, are not classified as international crimes under international law. This second category includes child labour, such as parents including their children in artisanal mining activities, and violations of International Labour Organization conventions such as those relating to health and safety, and minimum levels of remuneration for labour.

Lower level human rights violations do not fall within the current mandate of the Kimberley Process, however, there is a clear connection between these problems and the risk of escalation to the commission of international crimes. Put differently, well regulated, healthy, and safe artisanal mining communities are less likely to be attracted or co-opted to sell their proceeds on the black market to the benefit of rebel militias. As a result, these lower level issues are discussed in the country-by-country section. Chapter 6 suggests a framework for extending the Kimberley Process mandate to encompass these lower level violations. One of the countries discussed, India, does not have an international crime level issue, but has other human rights issues associated with its diamond cutting and polishing centres, particularly the use of child labour. This information is included with the view in mind that the Kimberley Process mandate might at some stage take into account this broader range of human rights issues.

24 Transcript of Proceedings, 'Evidence of Expert Witness Ian Smillie', *The Prosecutor v Charles Taylor (Trial)*, (Special Court for Sierra Leone, Trial Chamber II, Case No SCSL-03-01-PT, 7 January 2008) 522–523; Global Witness, 'For a Few Dollars More: How Al Qaeda Moved into the Diamond Trade' (Report, April 2003) 1–3.

Estimating the Size of the Conflict Diamonds Trade

Although the period prior to the establishment of the Kimberley Process was characterised by secrecy and a lack of transparency, particularly in the area of statistics, nevertheless, attempts were made by several organisations to assess the overall size of the rough diamond trade, and the percentage of that trade represented by the trade in conflict diamonds. On the conservative side, De Beers estimated that, in 1999, conflict diamonds represented 3.7 per cent of the world rough diamond trade. The source countries for conflict diamonds in that year, according to De Beers, were Angola, Sierra Leone, and the DRC. It might be noted, however, that De Beers was adhering to the so-called narrow definition of conflict diamonds, namely, that they had to be fuelling rebel militias against legitimate governments. It was presumably on this basis that the entirety of Angola's rough diamond production was not included in the statistic, so as to exclude Angolan government rough diamonds from the conflict diamonds equation. According to the broad reading of the conflict diamonds definition, all Angolan diamonds that year should have been classified as conflict diamonds, given the fact that both parties to the civil war committed international human rights crimes.²⁵

In its three-year review, the Kimberley Process estimated that the percentage of conflict diamonds trade was thought to have been in the range of 4 to 15 per cent between the mid-1990s and the beginning of the 2000s.²⁶

Turning to the estimates of what the conflict diamonds trade may amount to right now, it is a particularly contested issue in light of the fact that participants within the Kimberley Process have split over the definition of conflict diamonds. As some national governments have preferred the narrow definition, which confines conflict diamonds to a connection with civil war rather than international human rights

25 De Beers Diamond Jewellers Ltd, 'Written Testimony before the United States Congress, House Committee on International Relations, Subcommittee on Africa', *Hearing into the Issue of 'Conflict Diamonds'* (25 May 2000). Available at: www.diamonds.net/News/NewsItem.aspx?ArticleID=4046.

26 Kimberley Process, *The Kimberley Process Certification Scheme: Third Year Review*, Kimberley Process (November 2006) 17. Available at: www.state.gov/documents/organization/77156.pdf.

crimes, rough diamonds originating from the Marange artisanal fields of Zimbabwe and the artisanal fields of northern Angola have not been classified as conflict diamonds. By contrast, others consider that the definition of conflict diamonds incorporates a connection between the mining and trade of rough diamonds with the commission of international human rights crimes. Under this broad definition, the association of Zimbabwean and Angolan rough diamonds with international human rights crimes means that these diamonds must be classified as conflict diamonds.

The three-year review of the Kimberley Process estimated that conflict diamonds represented about 0.2 per cent of the world's rough diamond trade in 2004. The estimate was based around conflict diamonds production from Côte d'Ivoire and UNSC embargoed diamonds from Liberia, although the figure did not take into account the ongoing fighting centred on diamond mines in the DRC. While the official Kimberley Process organs continue to refer to this figure, those who take the broader definition of conflict diamonds recognise that this figure was calculated without reference to Angolan or Zimbabwean conflict diamonds and is likely to contain further inaccuracies.²⁷

A Country by Country Approach

Angola

The Angola conflict was the first to bring international attention to the problem of conflict diamonds. The conflict had its genesis when Angola was granted independence from its former colonial master, Portugal, in 1975. While the Popular Movement for the Liberation of Angola (MPLA) was recognised as the first independent Angolan government, it was resisted throughout the 1980s and 1990s by the National Union for the Total Independence of Angola (UNITA) and its ally, the National Liberation Front of Angola (FNLA).²⁸ There were reports of gross human rights violations on both sides, including the

²⁷ Ibid.

²⁸ Maggi, M, 'The Currency of Terrorism: An Alternative Way to Combat Terrorism and End the Trade of Conflict Diamonds' (2003) 15 *Pace International Law Review* 513, 522.

indiscriminate shelling of civilians.²⁹ The war resulted in the loss of up to 1 million lives, with 1.4 million in need of food aid, 500,000 in critical danger of starvation, and the country burdened with 4–5 million land mines, killing or injuring 700 Angolans per year.³⁰

In 1992 there was a resurgence of the conflict following UN monitored elections that confirmed the legitimacy of the MPLA Government. UNITA, led by Jonas Savimbi, refused to accept the result and returned to civil war, focusing on control of the diamond-producing areas of Angola.³¹ Diamonds were needed to fund the conflict, given that the end of the Cold War had resulted in the loss of financial backing from the United States and South Africa.³² UNITA either directly exploited diamond mining areas, or used systems of taxation and licensing to extract commission from the labour of others. Proceeds from diamond sales were then used to purchase weapons.³³ Diamonds were also an important component of UNITA's strategy for acquiring friends and maintaining external support. UNITA gained particular support from the Mobutu Government in what was then Zaire.³⁴ Rough diamond caches, rather than cash or bank deposits, also constituted the primary and the preferred means of stockpiling wealth for UNITA. This provided a mechanism for avoiding the effects of international financial sanctions, such as confiscation of bank accounts, and provided a way of sustaining income expenditure over a long period.³⁵

In response to the renewed violence, the UNSC imposed a mandatory embargo on the sale or supply of weapons or petroleum products to UNITA forces in September 1993, and established a sanctions committee to monitor and report on the implementation of the mandatory

29 Price, T M, 'Article: The Kimberley Process: Conflict Diamonds, WTO Obligations, and the Universality Debate' (2003) 12 *Minnesota Journal of Global Trade* 1, 8–11; Global Witness, 'A Rough Trade: The Role of Companies and Governments in the Angolan Conflict' (Report, Global Witness Ltd, 1998) 7.

30 Price, T M, 'Article: The Kimberley Process: Conflict Diamonds, WTO Obligations, and the Universality Debate' (2003) 12 *Minnesota Journal of Global Trade* 1, 11.

31 Report of the Panel of Experts on Violations of Security Council Sanctions Against UNITA, UN Doc S/2000/203 (10 March 2000) 25.

32 Price, T M, 'Article: The Kimberley Process: Conflict Diamonds, WTO Obligations, and the Universality Debate' (2003) 12 *Minnesota Journal of Global Trade* 1, 9–10.

33 Report of the Panel of Experts on Violations of Security Council Sanctions Against UNITA, UN Doc S/2000/203 (10 March 2000) 25–26.

34 Juma, L, 'The War in Congo: Transitional Conflict Networks and the Failure of Internationalism' (2006) 10 *Gonzaga Journal of International Law* 97, 135–136.

35 Report of the Panel of Experts on Violations of Security Council Sanctions Against UNITA, UN Doc S/2000/203 (10 March 2000) 25, 32.

measures.³⁶ Despite the agreement of both parties to the Lusaka Peace Accord in November 1994, three years later it was clear that UNITA had used the period of peace to make extensive military preparations funded by its diamond mining activities.³⁷ In 1997 there was a global diamond recession, which affected the nature of the Angolan conflict. At this time, UNITA withdrew from Cuango Valley mines, cutting back supplies in an overstocked industry. UNITA attempted to close down Angola's official diamond industry by attacking government mining projects. As a result, it was difficult for the government to gain any profit from diamond resources.³⁸ The Security Council responded with increased pressure on senior UNITA leaders and their immediate families, prohibiting their access to transportation or transit through the territory of other countries.³⁹

UNITA have been key players in Angolan diamond production and in the international diamond business since the late 1980s. They have retained a predominant but shifting control over many of the major diamond areas, such as the Cuango River valley and the Lundas, both important areas of production. Between 1992 and 1994, UNITA controlled 90 per cent of Angolan diamond exports. In 1995, UNITA lost control of many areas and its percentage of exports changed. During 1996 and 1997, UNITA was producing about two-thirds of all diamonds mined in Angola. During 1998, the return of former UNITA areas to state administration took place, a condition of the 1994 Lusaka Protocol. UNITA's withdrawal from key areas, such as the

36 SC Res 864, UN SCOR, 3277th mtg, S/RES/864 (5 June 1998) (Angola) [19]–[23]; Price, T M, 'Article: The Kimberley Process: Conflict Diamonds, WTO Obligations, and the Universality Debate' (2003) 12 *Minnesota Journal of Global Trade* 1, 10.

37 Lusaka Protocol, UN SCOR, 17th sess, UN Doc S/1994/1441 (22 December 1994); Progress Report of the Secretary-General on the United Nations Observer Mission in Angola (MONUA), UN Doc S/1997/640 (13 August 1997); Price, T M, 'Article: The Kimberley Process: Conflict Diamonds, WTO Obligations, and the Universality Debate' (2003) 12 *Minnesota Journal of Global Trade* 1, 10.

38 Global Witness, 'A Rough Trade: The Role of Companies and Governments in the Angolan Conflict' (Report, Global Witness Ltd, 1998) 1, 7, 12; Maggi, M, 'The Currency of Terrorism: An Alternative Way to Combat Terrorism and End the Trade of Conflict Diamonds' (2003) 15 *Pace International Law Review* 513, 525.

39 SC Res 1127, 3814th mtg, UN Doc S/RES/1127 (28 August 1997) (Angola); Price, T M, 'Article: The Kimberley Process: Conflict Diamonds, WTO Obligations, and the Universality Debate' (2003) 12 *Minnesota Journal of Global Trade* 1, 8–11; Kaplan, M, 'Junior Fellows' Note: Carats and Sticks: Pursuing War and Peace through the Diamond Trade' (2003) 35 *New York University Journal of International Law and Politics* 559, 574–575.

lower Cuango Valley, had a major impact on its level of production, with revenue estimated to be US\$200 million for 1998; a major decline from previous years.⁴⁰

Between 1992 and 1998, UNITA obtained an estimated minimum revenue of US\$3.72 billion in diamond sales — not including revenue from other sources, or interest generated in overseas bank accounts.⁴¹ By this time, the international community had begun to recognise the critical link between the international diamond trade and UNITA's financial viability. In particular, De Beers was embarrassed by a Global Witness report, which focused on De Beers' annual reporting in relation to their Angolan trading policies. De Beers' annual reports indicated that its policy of buying out most of the rough diamonds on the market had continued, even when it was clear that Angolan diamonds in the 1990s were mined almost entirely by UNITA. It should be noted that in the wake of media criticism, De Beers announced an embargo on the purchase of all diamonds originating from Angola in October 1999 and went on to be a key supporter of the Kimberley Process Certification Scheme.⁴²

Further pressure was applied by the UNSC, which adopted resolutions 1173 and 1176 in 1998, prohibiting the direct or indirect export of unofficial Angolan diamonds — those diamonds not accompanied by a government-issued certificate of origin.⁴³ However, United Nations reports allege that a number of countries acted as intermediaries between UNITA and Antwerp-based diamond traders, including Burkina Faso, Namibia, South Africa, and Zambia, and that Antwerp largely turned a blind eye to the conflict diamonds traffic passing through its diamond market.⁴⁴ For example, the government of Belgium reported that Zambian diamond exports to Belgium between February and May 2001 totalled 35,614.14 carats, with an estimated value

40 Global Witness, 'A Rough Trade: The Role of Companies and Governments in the Angolan Conflict' (Report, Global Witness Ltd, 1998) 4. Its estimates were made using statistics from World Diamond Industry, Directory and Yearbook 1996/97, Diamond International 1997 and EIU, Country Profile 1997–1998.

41 Ibid 4.

42 Ibid 6–8; Koyame, M, 'United Nations Resolutions and the Struggle to Curb the Illicit Trade in Conflict Diamonds in Sub-Saharan Africa' (2005) 1 *African Journal of Legal Studies* 80, 85.

43 Price, T M, 'Article: The Kimberley Process: Conflict Diamonds, WTO Obligations, and the Universality Debate' (2003) 12 *Minnesota Journal of Global Trade* 1, 8–11.

44 Report of the Panel of Experts on Violations of Security Council Sanctions Against UNITA, UN Doc S/2000/203 (10 March 2000) 27–29.

of \$13.3 million, which is 20 times the officially recorded Zambian diamond exports between 1995 to 1998 at \$564,272. In addition, diamonds exported by Zambia between 1998 and 2001 had an average carat value of \$373.45, indicating that they were more likely to be high-quality gems of Angolan origin than Zambian diamonds.⁴⁵

In 1999, the government captured the crucial UNITA strongholds of Andulo and Bailundo, and forced Savimbi into exile. The offensive cost UNITA its diamond-mining areas, although UNITA profited for some time from stockpiles it had already created. UNITA remained connected to the international diamond markets by air shipping through third countries such as Zambia. In 2002, Savimbi was killed, the Angolan Government and UNITA called a ceasefire, and UNITA became a political party under new leader Samakuva.⁴⁶

Since the establishment of the Kimberley Process in 2002, Angola has played an active part, particularly in the Working Group on Artisanal Mining. It is ironic, in the light of its KP participation, that, unfortunately, the human rights situation in Angola's artisanal fields, which border the DRC, deteriorated dramatically in 2003. In 2003, Angola began a policy of expelling Congolese artisanal miners from Angolan diamond fields. In 2003 and 2004, tens of thousands of Congolese miners were expelled by the Angolan military, creating a refugee crisis in the neighbouring DRC. The first major waves of some 25,000 illegal Congolese miners were expelled in 2003, followed by another 10,000 in February 2004. In April, the UN Office for the Coordination of Humanitarian Affairs (OCHA) reported the arrival of 68,000 exhausted Congolese in the DRC border provinces of Bandundu, Kasai Occidentale, Kasai Orientale, and Katanga. Estimates suggest that approximately 100,000 illicit miners had been expelled from Angola by mid-2004, about a third of the estimated number of miners in Angola.⁴⁷

45 Supplementary Report of the Monitoring Mechanism on Sanctions Against UNITA, UN Doc 2001/966 (12 October 2001) 141; Koyame, M, 'United Nations Resolutions and the Struggle to Curb the Illicit Trade in Conflict Diamonds in Sub-Saharan Africa' (2005) 1 *African Journal of Legal Studies* 80, 85–86.

46 Kaplan, M, 'Junior Fellows' Note: Carats and Sticks: Pursuing War and Peace through the Diamond Trade' (2003) 35 *New York University Journal of International Law and Politics* 559, 573–578.

47 Partnership Africa Canada, 'Diamond Industry Annual Review: Republic of Angola 2004' (Annual Report, July 2004) 8–9.

While the expulsions were occurring, UN agencies, Human Rights Watch, and Médecins sans Frontières publicised concerns about abuses reported by returning miners, including rape, body cavity searches of both sexes for hidden diamonds, and general brutality. A human rights group, Voix des Sans Voix, reported that Angolan troops and civilians had subjected many of the Congolese to beatings and death threats.⁴⁸

Protests from the government of the DRC led to an agreement between the two countries that expulsions would be handled in a more co-ordinated and less repressive manner. Although the government of Angola made it plain that the expulsions would continue, Angola acknowledged the military brutality. 'These excesses provoked harmful repercussions, which we regret, and for which we offer a public apology', said Angola's Interior Minister Osvaldo Serra Van-Dúnem. One of the repercussions was a desperate food shortage among returning Angolan refugees in Malanje Province, unable to access markets just across the border in the DRC. In June 2004, the World Food Programme said the Angolan Government's forced repatriation of Congolese nationals had caused hostility towards Angolans who depended on neighbouring Congolese markets to purchase food and other necessary items. An estimated 17,000 Angolans were affected.⁴⁹

Unfortunately, in subsequent years, cross-border expulsions by Angola and attendant human rights abuses continued. As recently as November 2010, UNICEF reported that more than 650 women and girls had been raped during mass expulsions. Approximately 6,621 Congolese returnees arrived in the Western Kasai province in the DRC in two waves in September and October 2010. The reports of sexual violence are based on evidence collected by NGO welcome committees in the region. Many of the victims reported being locked up in derelict buildings, gang-raped and tortured by Angolan security forces, and then forced to walk several days back across the border into the DRC.⁵⁰

The scale of the mass deportations, involving systematic rape and abuse, suggest that they meet the indicia of crimes against humanity attracting the jurisdiction of the ICC. Unfortunately, the issue has not apparently attracted significant attention by either the ICC or the

48 Ibid.

49 Ibid.

50 Davies, C, *Reciprocal Violence: Mass Expulsions Between Angola and DRC* (17 February 2011) The Human Rights Brief. Available at: hrbrief.org/2011/02/reciprocal-violence-mass-expulsions-between-angola-and-the-drc/.

Kimberley Process itself. Unlike the situation in Zimbabwe, there has been relatively less media discussion of the Angola deportations. It would appear, on its face, that the connection between artisanal mining in Angola and the commission of these international crimes would qualify Angolan diamonds as being conflict diamonds.

A case study, based on an interview with 28-year-old Dallas Kabungo, is illustrative of the experience of many thousands of DRC citizens expelled from Angola:

The road north from the Congolese border town of Kamoko barely merits the name; a narrow rutted track, impassable save by toughest 4x4, clogged in early June this year by a tired stream of people flooding north from Angola. It was here that the *Annual Review* encountered 28-year-old Dallas Kabungo.

He had no money, few clothes, and nothing but flip-flops on his feet. He had no idea where to find his wife and child. He'd been walking that road, and others like it on the Angolan side of the border, for over five days, since the night the Angolan police and army surrounded his encampment at Tchiamba, near the town of Lucapa in Lunda Norte. They began by firing shots in the air. Everyone was rounded up, and those without Angolan papers were searched down to their underwear. Anything of value was confiscated. Kabungo lost his spare clothes, a radio, and US\$600. 'You came to this country with nothing,' the soldiers told him, 'you will leave with nothing.' Those who resisted the search were beaten, or whipped with belts ...

Meanwhile, after waiting a week in the Congolese border town of Kamoko, Dallas Kabungo was finally re-united with his wife, Chantal, and their three-year-old daughter. Soldiers had arrived at the house in Lucapa that Kabungo had bought for her with his diamond earnings. They looted the furniture, took her radio and money, and set her on the road north. It had taken her days of walking in the heat and dust to reach the border.

Their reunion was a bittersweet affair. Kabungo learned that his wife, coming over the border crossing at Myanda, had been raped repeatedly by Angolan border guards. Among his Baluba tribe, he said, it's believed that if a woman engages in adultery, her children soon fall sick and die. He's not sure if the curse works when the woman has been raped.⁵¹

51 Partnership Africa Canada, 'Diamonds and Human Security: Annual Review 2008' (Annual Report, October 2008) 14.

Grave human rights violations by the Angolan security forces, namely the Angolan military and national police, have also targeted Angolan citizens engaged in artisanal mining. One documented case, the killing of Belito Mendes, occurred on Saturday 12 May 2007. The victim, 28-year-old Belito Mendes, a veteran of the Angolan army, was beaten to death by members of the Angolan National Police after refusing to hand over the small amount of money he had on his person.⁵² It is unfortunate that the situation in Angola received no attention by the Kimberly Process at the time that these human rights violations were occurring.

While the Angolan expulsions have attracted little attention, there have recently been precedent-setting national prosecutions in French courts, in relation to arms trafficking and bribery related to the Angolan civil war of the 1990s. On 28 October 2009, a Paris court convicted 36 people in connection to illegal arms sales to Angola during its civil war, including arms dealers, middlemen, and French politicians. Arms trading went hand in hand with diamond and oil trading during the war, as sales of natural resources were used to purchase armaments, which were then turned on the civilian population. Arms dealers Pierre Falcone and Arkadi Gaydamak were sentenced to six years in prison for arms trafficking and other offences. Former French Interior Minister Charles Pasqua was sentenced to a year in jail for taking bribes from the two men. Amongst others convicted, a son of former president François Mitterrand and a banker from BNP Paribas, a top French bank, were given suspended sentences. At the time of reporting, appeals were expected to follow.⁵³

While the problem of international human rights crimes is front and centre when considering the rough diamond industry in Angola, lower level human rights issues present further challenges. In particular, the Angolan artisanal industry has a significant child labour problem. According to UNICEF, 70 per cent of Angola's population is under 24, and 30 per cent of children between the ages of five and 14 years work. A 2004 case study undertaken by Partnership Africa Canada and Global Witness in the Lunda Norte province showed that family

52 Ibid 13–14.

53 Global Witness, *Global Witness Welcomes French 'Angolagate' Verdict as Victory for Justice* (28 October 2009). Available at: www.globalwitness.org/en/archive/global-witness-welcomes-french-angolagate-verdict-victory-justice/.

mining groups consist of women and children as well as adult men. Forty-six per cent of those interviewed and working were children in the age group 5–16. Many women worked as well, and differences in gender representation were large in only one age group — young men dominated the 17–25 age group. The report noted:

In today's mining areas, fear, insecurity and sexual abuse are constant. Today's child miners are ... a direct result of war, poverty and the absence of education; there are few schools in the diamond regions and even the existing ones were destroyed during the many decades of war.

Yet these families, who worked in unsafe and abusive conditions, derived less than 5 per cent of their income from mining diamonds, with the largest part derived from agriculture and the rest from business and trading. This was not because diamonds represented less work than agriculture; it was because the diggers were so badly paid for the diamonds they found.⁵⁴

Sierra Leone

The conflict in Sierra Leone saw the problem of conflict diamonds reach a greater level of notoriety, through the activities of the RUF. It was through the activities of the RUF that the illegal diamonds trade became connected in the eyes of the international community not only with the prolongation of conflict, but also with the perpetration of graphic human rights violations. The terror tactics employed by the RUF to subdue the local civilian population included the amputation of hands, limbs, and body parts. The militia also perpetrated unlawful killings, physical and sexual violence against civilians, abductions, looting and destruction of civilian property, forced labour including sexual slavery, and the conscription of boys and girls into the armed forces and their deployment in active fighting. The names of their military operations, 'Operation Pay Yourself' and 'Operation No Living Thing', were illustrative of their intentions and encouraged

54 Partnership Africa Canada, 'Diamond Industry Annual Review: Republic of Angola 2005' (Annual Report, July 2005) 9; Global Witness and Partnership Africa Canada, 'Rich Man, Poor Man, Development Diamonds and Poverty Diamonds: The Potential for Change in the Artisanal Alluvial Diamond Fields of Africa' (Report, October 2004) 17–23.

the commission of these crimes.⁵⁵ The conflict resulted in the loss of 75,000 lives, created half a million refugees and internally displaced 2.25 million, while an estimated 12,000 children were abducted to fight as soldiers. Through the infamous practice of amputation, some 20,000 of the civilian population were left mutilated. In the quintessential paradox of the resource curse, Sierra Leone was listed at the bottom of the United Nations Development Programme (UNDP) Human Development Index in 2001, despite its abundance of natural resources.⁵⁶

In 1991, former army corporal Foday Sankoh emerged as the leader of the RUF, which attacked Sierra Leonean border towns from Liberia. The attacks were marked by brutality against civilians, and children were kidnapped and inducted into the RUF.⁵⁷ In 1994, the RUF overran diamond-rich areas, bauxite and titanium mines, thereby bankrupting the economy, but providing themselves with access to an abundance of natural resources. A peace accord was signed in 1996 by newly elected President Kabbah and Foday Sankoh, but soldiers seized power the following year under the banner of the Armed Forces Revolutionary Council (AFRC). Major Johnny Paul Koroma became the chairman and invited the RUF to join the government, resulting in systematic human rights abuses and the destruction of the formal economy.⁵⁸

The UNSC responded by imposing an arms embargo on Sierra Leone in 1997. The United Nations launched a limited peacekeeping operation, United Nations Observer Mission Sierra Leone (UNOMSIL), consisting of 70 observers. However, it was the regional peacekeeping force Economic Community of West African States Cease-Fire Monitoring Group (ECOMOG) that made the decisive intervention. In February 1998, 10,000 to 12,000 ECOMOG troops forced the RUF/AFRC out of

55 Transcript of Proceedings, 'Opening Statement of the Prosecution', *The Prosecutor v Issa Hassan Sesay, Morris Kallon and Augustine Gbao (Trial)*, (Trial Chamber I, Special Court for Sierra Leone, Case No SCSL-04-15-T, 5 July 2004) 26; Crane, D M, 'Terrorists, Warlords and Thugs' (2006) 21 *American University International Law Review* 505, 515–516.

56 Price, T M, 'Article: The Kimberley Process: Conflict Diamonds, WTO Obligations, and the Universality Debate' (2003) 12 *Minnesota Journal of Global Trade* 1, 13; Koyame, M, 'United Nations Resolutions and the Struggle to Curb the Illicit Trade in Conflict Diamonds in Sub-Saharan Africa' (2005) 1 *African Journal of Legal Studies* 80, 86.

57 Transcript of Proceedings, 'Opening Statement of the Prosecution', *The Prosecutor v Issa Hassan Sesay, Morris Kallon and Augustine Gbao (Trial)*, (Trial Chamber I, Special Court for Sierra Leone, Case No SCSL-04-15-T, 5 July 2004) 20.

58 Smillie, I, L Gberie and R Hazleton, 'The Heart of the Matter: Sierra Leone, Diamonds and Human Security' (Report, Partnership Africa Canada, 2000) 3.

the capital city, Freetown, and engaged their forces in the countryside, enabling the Kabbah Government to be re-established. During the same year, an embargo was imposed that allowed the government to rearm itself, but the embargo on RUF weapons was maintained.⁵⁹

The RUF, however, outmanoeuvred the embargo, and their offensive in January 1999 resulted in the capture of Freetown. In a period of only two weeks, Freetown witnessed the torture and murder of cabinet ministers, journalists, and civil servants, the deaths of some 6,000 civilians, and the disappearance of 2,000 children. The RUF were ultimately pushed out of Freetown by ECOMOG forces. In an effort to protect Freetown, maintain security, and train Sierra Leone's army, UN peacekeepers were increased to approximately 13,000, augmented by another 750 from the United Kingdom. A serious challenge arose with the capture of 500 UN soldiers by the RUF, who were only released when the UN was assisted by British troops.⁶⁰

Peace finally became a possibility following the capture of Sankoh in 2000 and the subsequent disarmament of the RUF. In May 2001, the RUF released children who had been abducted and conscripted — aged 10 to 15 — and in January 2002, the UN announced the completion of the disarmament of over 45,000 rebel soldiers. Kabbah was re-elected president in 2002 by 70 per cent of the vote in the first peaceful election since the civil war.⁶¹ Following certificate of origin initiatives such as the Kimberley Process, the legitimate diamond industry in Sierra Leone has begun to re-emerge. In 2003, Sierra Leone legally exported \$76 million of diamonds from alluvial fields, while the 2004 total was estimated as being \$120 million.⁶²

59 Ibid 2–3; Price, T M, 'Article: The Kimberley Process: Conflict Diamonds, WTO Obligations, and the Universality Debate' (2003) 12 *Minnesota Journal of Global Trade* 1, 14.

60 Smillie, I, L Gberie and R Hazleton, 'The Heart of the Matter: Sierra Leone, Diamonds and Human Security' (Report, Partnership Africa Canada, 2000) 3; Price, T M, 'Article: The Kimberley Process: Conflict Diamonds, WTO Obligations, and the Universality Debate' (2003) 12 *Minnesota Journal of Global Trade* 1, 14–16.

61 Price, T M, 'Article: The Kimberley Process: Conflict Diamonds, WTO Obligations, and the Universality Debate' (2003) 12 *Minnesota Journal of Global Trade* 1, 14–16.

62 Global Witness and Partnership Africa Canada, 'Rich Man, Poor Man, Development Diamonds and Poverty Diamonds: The Potential for Change in the Artisanal Alluvial Diamond Fields of Africa' (Report, October 2004) 9.

During the civil war, the RUF armed itself through the sale of illegal diamonds, earning about \$120 million per year from 1991 to 1999.⁶³ The alluvial diamond fields in the Kono region and the Tongo Field region were the prize, giving the RUF little reason to engage with the peace process or even to try to win the war. The RUF's mining regime was largely based on forced labour, whereby civilians, including children, were tied up, forbidden to speak, and forced to work 12-hour shifts at gunpoint. They were not paid or fed, and sustained themselves by eating nearby fruit. New labour was brought in when existing workers became too sick to work or were shot. Shootings were carried out by the RUF small boys' units, staffed by children as young as 11 years old, who were armed with AK-47s.⁶⁴ Expert evidence suggests that the reason that the RUF engaged in amputations and fear tactics was to maintain complete control over the diamond mining fields without interference by the thousands of freelance diggers who would otherwise also mine the area.⁶⁵ Prior to the RUF invasion, the diamond fields had been mined by thousands of licensed and unlicensed artisanal diggers, policed by a government force numbering 500 persons with access to helicopters.⁶⁶

From the very inception of the civil war, the RUF allegedly received the support of Liberian President Charles Taylor. He encouraged Foday Sankoh to mine diamonds and gold from the Kono district to finance the war, and trade these goods with Burkina Faso and Libya

63 Report of the Panel of Experts Appointed Pursuant to Security Council Resolution 1306 (2000), paragraph 19, in Relation to Sierra Leone, UN Doc S/2000/1195 (20 December 2000) 578–579; Price, T M, 'Article: The Kimberley Process: Conflict Diamonds, WTO Obligations, and the Universality Debate' (2003) 12 *Minnesota Journal of Global Trade* 1, 14.

64 Transcript of Proceedings, 'Opening Statement of the Prosecution', *The Prosecutor v Issa Hassan Sesay, Morris Kallon and Augustine Gbao (Trial)*, (Trial Chamber I, Special Court for Sierra Leone, Case No SCSL-04-15-T, 5 July 2004) 27; Mitchell III, A F, 'Sierra Leone: The Road to Childhood Ruination Through Forced Recruitment of Child Soldiers and the World's Failure to Act' (2003) 2 *Regent Journal of International Law* 81, 86–87; Woody, K E, 'Diamonds on the Soul of Her Shoes: The Kimberley Process and the Morality Exception to WTO Restrictions' (2007) 22 *Connecticut Journal of International Law* 335, 335.

65 Transcript of Proceedings, 'Evidence of Expert Witness Ian Smillie', *The Prosecutor v Charles Taylor (Trial)*, (Special Court for Sierra Leone, Trial Chamber II, Case No SCSL-03-01-PT, 7 January 2008) 581–582.

66 Kaplan, M, 'Junior Fellows' Note: Carats and Sticks: Pursuing War and Peace through the Diamond Trade' (2003) 35 *New York University Journal of International Law and Politics* 559, 568–570; Transcript of Proceedings, 'Evidence of Expert Witness Ian Smillie', *The Prosecutor v Charles Taylor (Trial)*, (Special Court for Sierra Leone, Trial Chamber II, Case No SCSL-03-01-PT, 7 January 2008) 503–505, 533.

for supplies, ammunition, and weapons.⁶⁷ In return for diamonds, Taylor allegedly supplied the RUF with consignments of AK-47s, RPGs, Uzis, and ammunition, and provided military training to the militia.⁶⁸ A UN expert panel collected evidence of cargoes of weapons in the period 1998 to 1999 being airlifted from the Ukraine and Eastern Europe to Liberia via transit stops in Burkina Faso and Niger. The weapons were then diverted to the RUF, who made use of them in their offensive against Freetown in January 1999 and other operations. It is interesting to note that one of the individuals cited as a key arms trader, Russian national Viktor Bout, has been tried and convicted in the United States on charges related to illegal arms dealing.⁶⁹

Even prior to the imposition of diamond trading sanctions on Sierra Leone, it became apparent that Sierra Leonean diamonds were reaching the international market after first being diverted through other countries including, most notably, Liberia. Liberian annual diamond production capacity is estimated as being 100,000 to 150,000 carats, however, rough diamond exports to Antwerp from Liberia were recorded at 31 million carats from 1994 to 1998, an average of six million carats per year. Similarly, Côte d'Ivoire, which had not been mining diamonds since the mid-1980s, registered exports of more than 1.5 million between 1995 and 1997. Guinea also appeared to be

67 Transcript of Proceedings, 'Opening Statement of the Prosecution', *The Prosecutor v Issa Hassan Sesay, Morris Kallon and Augustine Gbao (Trial)*, (Trial Chamber I, Special Court for Sierra Leone, Case No SCSL-04-15-T, 5 July 2004) 21.

68 Ibid 48; Torbey, C, 'The Most Egregious Arms Broker: Prosecuting Arms Embargo Violators in the International Criminal Court' (2007) 25 *Wisconsin International Law Journal* 335, 338; Woodward, L, 'Taylor's Liberia and the UN's Involvement' (2003) 19 *New York Law School Journal of Human Rights* 923, 932–933.

69 Transcript of Proceedings, 'Evidence of Expert Witness Ian Smillie', *The Prosecutor v Charles Taylor (Trial)*, (Special Court for Sierra Leone, Trial Chamber II, Case No SCSL-03-01-PT, 7 January 2008) 550–562; Report of the Panel of Experts Appointed Pursuant to Security Council Resolution 1306 (2000), paragraph 19, in Relation to Sierra Leone, UN Doc S/2000/1195 (20 December 2000) 34–36, 41; Stempel, J, 'Russian Arms Dealer Viktor Bout's U.S. Conviction Upheld', Reuters, 27 September 2013. Available at: www.reuters.com/article/us-usa-crime-bout-idUSBRE98Q0PG20130927.

a diversion point for Sierra Leonean diamonds.⁷⁰ In 2000, following the passing of United Nations Security Council Resolution 1306, banning the sale of diamonds from Sierra Leone, Liberian production increased 161 per cent from 1999 levels. In response to a UN panel of experts report, Security Council Resolution 1343 was passed, prohibiting the export or import of Liberian diamonds, so as to close the Liberian way-station for Sierra Leonean diamonds.⁷¹

According to Global Witness, the RUF trade in conflict diamonds also had connections to Al Qaeda and the world of international terrorism. For example, in 1998 an RUF official met with operatives from Al Qaeda to sell diamonds, with the first transaction involving \$100,000 in cash for a parcel of diamonds. As further evidence of the connection, in 2004 Ahmed Khalfan Ghailani, a high-level Al Qaeda operative from

70 Kaplan, M, 'Junior Fellows' Note: Carats and Sticks: Pursuing War and Peace through the Diamond Trade' (2003) 35 *New York University Journal of International Law and Politics* 559, 568–570; Smillie, I, L Gberie and R Hazleton, 'The Heart of the Matter: Sierra Leone, Diamonds and Human Security' (Report, Partnership Africa Canada, 2000) 6; Koyame, M, 'United Nations Resolutions and the Struggle to Curb the Illicit Trade in Conflict Diamonds in Sub-Saharan Africa' (2005) 1 *African Journal of Legal Studies* 80, 87; Cuellar, M, 'Panel: Combating Diamonds in Sub-Saharan Africa' (2007) 1 *African Journal of Legal Studies* 80, 447–448. The literature also notes that identifying accurately even the 'country of export' was complicated by problems of fraud and corruption within the Antwerp diamond market at the time. Smillie, I, L Gberie and R Hazleton, 'The Heart of the Matter: Sierra Leone, Diamonds and Human Security' (Report, Partnership Africa Canada, 2000) 6. It was also noted that Liberia was used as a way-station for other illicit diamonds — Russian diamonds, for example. Transcript of Proceedings, 'Evidence of Expert Witness Ian Smillie', *The Prosecutor v Charles Taylor (Trial)*, (Special Court for Sierra Leone, Trial Chamber II, Case No SCSL-03-01-PT, 7 January 2008) 565–567.

71 Kaplan, M, 'Junior Fellows' Note: Carats and Sticks: Pursuing War and Peace through the Diamond Trade' (2003) 35 *New York University Journal of International Law and Politics* 559, 570. Resolutions renewed the sanctions on a regular basis, even following the election of the reformist government of President Sirleaf on 23 November 2005, and the arrest of former President Charles Taylor on war crimes charges on 29 March 2006. However, trade in diamonds possessing a certificate of origin was permitted. Controversially, the sanctions were entirely removed in 2007 under SC Res 1753 of 27 April 2007, with commentators arguing that Liberia was still not in a position to ensure the conflict-free status of its diamonds. Global Witness, 'Cautiously Optimistic: The Case for Maintaining Sanctions in Liberia' (Report, 2006) 17.

Tanzania was arrested on suspicion of being involved in the trading of conflict diamonds and running a \$20 million financing operation, trading illegal conflict diamonds in the Liberian capital of Monrovia.⁷²

Crimes fuelled by conflict diamonds have now been prosecuted in a number of cases before the international criminal justice system, namely the Special Court for Sierra Leone. After Sankoh was captured in 2000, the Special Court was established to try him and other persons for violations of international law during the conflict. Although Sankoh died before the commencement of his trial in 2004, other members of the RUF leadership, namely Issa Hassan Sesay, Morris Kallon, and Augustine Gbao, were convicted of international crimes on 2 March 2009, with their convictions upheld on appeal on 26 October 2009.⁷³ In June 2003, the Sierra Leone Special Court unsealed an indictment against Liberian President Charles Taylor in relation to his alleged involvement in violations of international criminal law during the Sierra Leone conflict. President Taylor subsequently resigned his office and went into hiding in Nigeria in August 2003, until being taken into custody by the court on 29 March 2006.⁷⁴ His trial, which was moved to The Hague, commenced on 7 January 2008, with closing arguments concluding on 11 March 2011. Charles Taylor was found

72 Martinez, I, 'Africa at the Crossroads: Current Themes in African Law: VI. Conflict Resolution in Africa: Sierra Leone's "Conflict Diamonds": The Legacy of Imperial Mining Laws and Policy' (2001/2002) 10 *University of Miami International and Comparative Law Review* 217, 236; Global Witness, 'For a Few Dollars More: How Al Qaeda Moved into the Diamond Trade' (Report, April 2003) 45–50; Tanna, Ketan, 'Pakistan Arrests Conflict Diamonds Al Qaeda Operative', *The Rapaport Diamond Report* (2 August 2004), cited in Koyame, M, 'United Nations Resolutions and the Struggle to Curb the Illicit Trade in Conflict Diamonds in Sub-Saharan Africa' (2005) 1 *African Journal of Legal Studies* 80, 95. For discussion of the role of ECOMOG in such interventions, see Brockman, J, 'Liberia: The Case for Changing UN Processes for Humanitarian Interventions' (2004) 22 *Wisconsin International Law Journal* 711, 713–720.

73 Transcript of Proceedings, 'Opening Statement of the Prosecution', *The Prosecutor v Issa Hassan Sesay, Morris Kallon and Augustine Gbao (Trial)*, (Trial Chamber I, Special Court for Sierra Leone, Case No SCSL-04-15-T, 5 July 2004); *The Prosecutor v Issa Hassan Sesay, Morris Kallon and Augustine Gbao (Trial Judgement)* (Special Court for Sierra Leone, Trial Chamber I, Case No SCSL-04-15-T, 2 March 2009); *The Prosecutor v Issa Hassan Sesay, Morris Kallon and Augustine Gbao (Appeal Judgement)* (Special Court for Sierra Leone, Appeals Chamber, 29 October 2009). For a comprehensive analysis of the early work of the Tribunal, see Jalloh, C C, 'The Contribution of the Special Court for Sierra Leone to the Development of International Law' (2007) 15 *RADIC* 165, 165–207. See also Schocken, C, 'The Special Court for Sierra Leone: Overview and Recommendations' (2002) 20 *Berkeley Journal of International Law* 436.

74 Brockman, J, 'Liberia: The Case for Changing UN Processes for Humanitarian Interventions' (2004) 22 *Wisconsin International Law Journal* 711, 738–739; Special Court for Sierra Leone, Office of the Prosecutor, 'Chief Prosecutor Announces the Arrival of Charles Taylor at the Special Court' (Press Release, 29 March 2006). Available at: www.rscsl.org/Documents/Press/OTP/prosecutor-032906.pdf.

guilty on 26 April 2012 on all 11 counts, when the Trial Chamber delivered its judgement. On 30 May 2012, the Trial Chamber delivered its sentencing judgement, sentencing Taylor to 50 years imprisonment. On 26 September 2013, Taylor's conviction and sentence were upheld by the judgement of the Appeals Chamber.⁷⁵ Pro-government forces, most notably the so-called Civil Defence Forces (CDF) militia, have also been brought to account for human rights abuses allegedly committed during the war. For example, the CDF was known to practice torture, while the Sierra Leone Government was also documented as enlisting child soldiers during the military regime of Valentine Strasser from 1992 to 1996.⁷⁶ Members of the CDF leadership were convicted of international crimes by the Special Court on 2 August 2007, with the convictions upheld on appeal on 28 May 2008.⁷⁷

Since the conclusion of the Sierra Leone civil war, there has thankfully been a decade of peace and development. It should be noted, however, that issues remain, particularly in relation to Sierra Leone's alluvial diamond mining sector. Of particular concern is the ongoing problem of child labour in the 120,000 person strong artisanal industry.⁷⁸

The Democratic Republic of Congo

The problem of conflict diamonds was central to the outbreak and prolongation of the 1996–2002 war in the DRC, which has now transformed into the recent civil war in the north-east of that country. The DRC has suffered from a resource curse relating not only to diamonds, but a range of minerals including copper, cobalt, uranium, tin, zinc, and coltan, the latter being a key material in the manufacture

75 Special Court for Sierra Leone, Residual Special Court for Sierra Leone, *The Prosecutor vs. Charles Gankay Taylor*. Available at: www.rscsl.org/Taylor.html.

76 Pham, J P, 'A Viable Model for International Criminal Justice: The Special Court for Sierra Leone' (2006) 19 *New York International Law Review* 37, 70–72; Mitchell III, A F, 'Sierra Leone: The Road to Childhood Ruination Through Forced Recruitment of Child Soldiers and the World's Failure to Act' (2003) 2 *Regent Journal of International Law* 81, 85–86.

77 *The Prosecutor v Moinina Fofana and Allieu Kondewa (Trial Judgement)* (Special Court for Sierra Leone, Trial Chamber I, Case No SCSL-04-14-T, 2 August 2007); *The Prosecutor v Moinina Fofana and Allieu Kondewa (Appeal Judgement)* (Special Court for Sierra Leone, Appeals Chamber, Case No SCSL-04-14-A, 28 May 2008).

78 Global Witness and Partnership Africa Canada, 'Rich Man, Poor Man, Development Diamonds and Poverty Diamonds: The Potential for Change in the Artisanal Alluvial Diamond Fields of Africa' (Report, October 2004) 9–16.

of mobile telephones and other electronic equipment.⁷⁹ The resource curse is seen as working in two different ways in the DRC conflict. Access to resources acted both as a reason to enter the war for militias and national governments, and a factor for prolonging involvement in the war. The war resulted in the deaths of some 3 million people, because of fighting, disease, and malnutrition, as well as approximately 500,000 refugees and 2 million internally displaced people, and saw six national armies from neighbouring countries intervene in the conflict. The war also accentuated the poverty of the population, with the DRC ranked at 155th place out of 173 countries on the UNDP Human Development Index, despite its abundance of natural resources.⁸⁰

The war has its genesis in the 1994 genocide in Rwanda, where militias known as Interahamwe, backed by the government armed forces, killed some 800,000 ethnic Tutsis and moderate Hutus. In the wake of their defeat by the Tutsi-led rebels, the Interahamwe and other *genocidaires* fled across the border into the DRC, from which they launched attacks on Rwanda and the longstanding Tutsi population resident in eastern Congo. In response to these attacks, and in an attempt to protect the Tutsi population, the Alliance of Democratic Forces for the Liberation of Congo (ADFL), led by Laurent Kabila, was formed. The ADFL was backed by the incoming Tutsi-led Rwandan government, which, commentators allege, not only supported the ADFL's wider agenda to topple Congolese President Mobutu Sese Seko, but also had designs on the mineral wealth of the eastern Congolese provinces. In 1997, Kabila's forces entered the capital Kinshasa and toppled Mobutu's government. The 1996 to 1997 phase of the conflict is often termed the First Congolese War.⁸¹

79 Juma, L, 'The War in Congo: Transitional Conflict Networks and the Failure of Internationalism' (2006) 10 *Gonzaga Journal of International Law* 97, 122–124; British Broadcasting Corporation, 'Q&A: Plunder in the Congo', *BBC News: World Edition* (21 October 2002). Available at: news.bbc.co.uk/2/hi/business/2346817.stm.

80 British Broadcasting Corporation, 'Q&A: Plunder in the Congo', *BBC News: World Edition* (21 October 2002). Available at: news.bbc.co.uk/2/hi/business/2346817.stm; Fonseca, A, *Four Million Dead: The Second Congolese War, 1998–2004* (18 April 2004) 49. Available at: www.oocities.org/afonseca/CongoWar.htm. For statistics on casualties, refugees and displacements relating to the 1998–2002 period, see Koyame, M, 'United Nations Resolutions and the Struggle to Curb the Illicit Trade in Conflict Diamonds in Sub-Saharan Africa' (2005) 1 *African Journal of Legal Studies* 80, 89.

81 British Broadcasting Corporation, 'Q&A: Plunder in the Congo', *BBC News: World Edition* (21 October 2002). Available at: news.bbc.co.uk/2/hi/business/2346817.stm; Juma, L, 'The War in Congo: Transitional Conflict Networks and the Failure of Internationalism' (2006) 10 *Gonzaga Journal of International Law* 97, 132–139.

The support of Rwanda and allied Uganda for the new Kabila Government proved to be short-lived. Speculation regarding the change in Rwandan policy ranges from Kabila no longer being interested in protecting Congolese Tutsi, to wider rumours about Kabila reneging on important promises made to large mining corporations.⁸² In August 1998 the Congolese Rally for Democracy (RCD) emerged, supported by Rwanda and intent on enforcing a second regime change in Kinshasa.⁸³ The forward offensive was blocked, however, by troops from Angola, Zimbabwe and Namibia, and a four-year stand-off ensued in what is sometimes called the Second Congolese War.⁸⁴

Although Kabila's government survived the invasion, Kabila himself was not so fortunate, and died to an assassin's bullet in 2001. It was left to his son and successor, Joseph Kabila, to become a party to the September 2002 Luanda Agreement. The agreement saw the commencement of a gradual withdrawal of foreign armies, although conflict has continued through rebel groups operating particularly in the north-eastern Ituri and Kivu regions.⁸⁵

A UNSC expert panel has argued that the involvement of foreign governments and militias in the conflict was influenced by a desire to reap the benefits of the extensive mineral wealth, including diamonds, of the DRC. The panel argued that the main beneficiaries from the conflict have been individuals in the military and political leadership of the intervening nations, rather than those nations themselves.⁸⁶

As evidence of how Rwandan diamond enterprises supported Kabila's ADFL in the First Congolese War, the report detailed a financial transaction where a US\$3.5 million payment was made from a diamond company named MIBA to COMIEX, a company

82 Juma, L, 'The War in Congo: Transitional Conflict Networks and the Failure of Internationalism' (2006) 10 *Gonzaga Journal of International Law* 97, 144–148.

83 Ibid 145–147.

84 British Broadcasting Corporation, 'Q&A: Plunder in the Congo', *BBC News: World Edition* (21 October 2002). Available at: news.bbc.co.uk/2/hi/business/2346817.stm.

85 Price, T M, 'Article: The Kimberley Process: Conflict Diamonds, WTO Obligations, and the Universality Debate' (2003) 12 *Minnesota Journal of Global Trade* 1, 16–22; British Broadcasting Corporation, 'Q&A: Plunder in the Congo', *BBC News: World Edition* (21 October 2002). Available at: news.bbc.co.uk/2/hi/business/2346817.stm.

86 Report of the Panel of Experts on the Illegal Exploitation of Natural Resources and Other Forms of Wealth of the Democratic Republic of Congo, UN Doc S/2001/357 (12 April 2001) [135]–[138]; Clark, J F and M Koyame, 'The Economic Impact of the Congo War' in J F Clark (ed.), *The Africa Stakes of the Congo War* (Palgrave MacMillan, 2002) 55–56.

owned by Kabila. The payment was from an account held with the Rwandan Government's financial institution Banque de Commerce, du Développement et d'Industrie. The report also stated that cargo flights carrying military equipment to airstrips in eastern DRC would return with loads of gold and coffee, as well as businessmen with stolen diamonds for sale.⁸⁷

During the Second Congolese War, a major diamond and gold dealer named Ali Hussein was reported to have met many times with Rwandan Government officials.⁸⁸ Rwanda was estimated to have earned some US\$4 million from 1998 to 2000 as a result of diamond licensing revenues, although it later shared the income with the RCD-Goma regional administration.⁸⁹ Statistics from the Antwerp Diamond High Council show that Rwanda, which has no diamond resources of its own, exported US\$720,000 worth of diamonds in 1997, US\$17,000 in 1998, US\$439,000 in 1999 and US\$1.8 million in 2000.⁹⁰ These statistics were largely corroborated by World Trade Organization (WTO) records.⁹¹

The Ugandan Government funded its presence in the DRC through the re-exportation economy, repackaging and exporting natural resources from the DRC as Ugandan natural resources. According to the Antwerp Diamond High Council, Uganda, which was never previously a diamond exporter, exported \$1.5 million dollars worth of diamonds in 1998, \$1.8 million in 1999, and \$1.3 million in 2000.⁹²

87 Fonseca, A, *Four Million Dead: The Second Congolese War, 1998–2004* (18 April 2004) 49–50. Available at: www.oocities.org/afonseca/CongoWar.htm; Report of the Panel of Experts on the Illegal Exploitation of Natural Resources and Other Forms of Wealth of the Democratic Republic of Congo, S/2001/357 (12 April 2001) [25]–[29].

88 Report of the Panel of Experts on the Illegal Exploitation of Natural Resources and Other Forms of Wealth of the Democratic Republic of Congo, UN Doc S/2001/357 (12 April 2001) [93]; Fonseca, A, *Four Million Dead: The Second Congolese War, 1998–2004* (18 April 2004) 52. Available at: www.oocities.org/afonseca/CongoWar.htm.

89 Report of the Panel of Experts on the Illegal Exploitation of Natural Resources and Other Forms of Wealth of the Democratic Republic of Congo, UN Doc S/2001/357 (12 April 2001) 29.

90 Ibid 25.

91 Ibid [21]–[30]; Fonseca, A, *Four Million Dead: The Second Congolese War, 1998–2004* (18 April 2004) 54. Available at: www.oocities.org/afonseca/CongoWar.htm.

92 Report of the Panel of Experts on the Illegal Exploitation of Natural Resources and Other Forms of Wealth of the Democratic Republic of Congo, UN Doc S/2001/357 (12 April 2001) 21.

Statistics from the WTO corroborated the fact that Uganda, without diamond resources of its own, exported diamonds between 1998 and 2001.⁹³

Zimbabwe was also benefiting from Congolese diamonds, particularly in the diamond-rich Mbuji-Mayi area. There were notably 2,500 to 3,000 Zimbabwean troops in the area, even after most other foreign armies had withdrawn from the DRC in 2002.⁹⁴ The region had previously been the site of a major battle between Rwandan-backed forces and DRC forces in 2001.⁹⁵ Burundi also caused Kabila consternation when its military venture into South Kivu province appeared to threaten the Congolese diamond reserves in nearby Katanga.⁹⁶ WTO statistics showed that Burundi, without any diamond extraction industries of its own, exported sizeable quantities of diamonds in the period 1997–2000.⁹⁷ In an interesting twist, commentators suggest that Angola's involvement was largely concerned with the disruption of the conflict diamonds trade rather than its perpetuation, considering that Kabila was opposed to UNITA forces trading their diamonds on Congolese territory.⁹⁸

Mineral resources were also a goal for a variety of militia groups, some of which were allegedly proxies for foreign governments. As a result, diamond-rich areas became the focus of fighting during the conflict. In August 1999, the diamond-rich town of Kisangani was the site of a major battle following the split of the main rebel group, which was fuelled by the desire to control local natural resources. The RCD, split into two parts: the RCD-ML, supported by Uganda, and the RCD-Goma, supported by Rwanda. The battle, which also involved direct fighting between Ugandan and Rwandan troops, killed some

93 Ibid [21]–[30]; Fonseca, A, *Four Million Dead: The Second Congolese War, 1998–2004* (18 April 2004) 54. Available at: www.oocities.org/afonseca/CongoWar.htm.

94 Juma, L, 'Africa, its Conflicts and its Traditions: Debating a Suitable Role for Tradition in African Peace Initiatives' (2005) 13 *Michigan State University College of Law* 417, 454; Juma, 'The War in Congo', above n 69, 148–149; BBC, 'Plunder in the Congo', above n 115.

95 Report of the Panel of Experts on the Illegal Exploitation of Natural Resources and Other Forms of Wealth of the Democratic Republic of Congo, UN Doc S/2001/357 (12 April 2001) 36.

96 Fonseca, A, *Four Million Dead: The Second Congolese War, 1998–2004* (18 April 2004) 31. Available at: www.oocities.org/afonseca/CongoWar.htm.

97 Ibid 54; Report of the Panel of Experts on the Illegal Exploitation of Natural Resources and Other Forms of Wealth of the Democratic Republic of Congo, UN Doc S/2001/357 (12 April 2001) [21]–[30].

98 Juma, L, 'The War in Congo: Transitional Conflict Networks and the Failure of Internationalism' (2006) 10 *Gonzaga Journal of International Law* 97, 149.

400 soldiers and 200 civilians.⁹⁹ On 18 November 2000, RCD-Goma and its Rwandan allied troops stationed in Kisangani attacked and took control of positions belonging to Ugandan-supported forces in Bengamisa, 50 kilometres north-west of Kisangani, an area with an abundance of diamonds.¹⁰⁰ Late in December 2000, the RCD-Goma launched attacks against two other diamond-rich areas in Kandole and Lakutu.¹⁰¹ Control over diamond resources caused a further schism when the RCD-National formed with the objective of controlling north-eastern diamond resources in the Ituri region.¹⁰²

The RCD-ML benefited from its control over resources in the Ituri region during the Second Congolese War. For example, RCD-ML received benefits in exchange for granting the Ugandan-Thai company DARA-Forest a licence to harvest diamonds, coltan, and timber after the company had failed to acquire a concession from Kinshasa in March 1998.¹⁰³ The expert panel identified the retired Ugandan Major General Salim Saleh as benefiting from Congolese diamonds, particularly from the Kisangani region, as well as gold. He allegedly played a major role in Uganda's operations in north-eastern Congo, cultivating a reciprocal relationship with RCD-ML elites. In essence, he ensured their individual safety in return for their looking after his resource extraction schemes. The general also fostered a close relationship with the senior leadership of RCD-National, through which dealings in diamonds and other natural resources were facilitated.¹⁰⁴

In the wake of the phased withdrawal of foreign troops following the 2002 Luanda Agreement, the UNSC expert panel commented that governments, including DRC government members, have continued

99 Fonseca, A, *Four Million Dead: The Second Congolese War, 1998–2004* (18 April 2004) 32, 25. Available at: www.oocities.org/afonseca/CongoWar.htm; Juma, L, 'Africa, its Conflicts and its Traditions: Debating a Suitable Role for Tradition in African Peace Initiatives' (2005) 13 *Michigan State Journal of International Law* 417, 454.

100 Report of the Panel of Experts on the Illegal Exploitation of Natural Resources and Other Forms of Wealth of the Democratic Republic of Congo, UN Doc S/2001/357 (12 April 2001) 37.

101 *Ibid.*

102 Fonseca, A, *Four Million Dead: The Second Congolese War, 1998–2004* (18 April 2004) 42. Available at: www.oocities.org/afonseca/CongoWar.htm.

103 *Ibid* 51; Report of the Panel of Experts on the Illegal Exploitation of Natural Resources and Other Forms of Wealth of the Democratic Republic of Congo, UN Doc S/2001/357 (12 April 2001) [48]–[49].

104 Report of the Panel of Experts on the Illegal Exploitation of Natural Resources and Other Forms of Wealth of the Democratic Republic of Congo, UN Doc S/2001/357 (12 April 2001) [88]–[89]; Fonseca, A, *Four Million Dead: The Second Congolese War, 1998–2004* (18 April 2004) 52–53. Available at: www.oocities.org/afonseca/CongoWar.htm.

to benefit illicitly from mineral resources. The panel was critical of the connection between the DRC Government and the Zimbabwean Government, including the major mining project in the diamond centre of Mbuji Mayi. Other diamond projects are run as joint ventures involving both DRC and Zimbabwean officials, particularly under the umbrella of the COSLEG stock company. However, the panel argued that projects are run with the support of individuals from the DRC and Zimbabwean military and political elites, which give little or no revenue to the DRC national treasury, while supporting the individual interests of members of those elites. The panel also argued that, because of such arrangements, individuals in the Zimbabwean political and military circles will continue to benefit, even though the formal Zimbabwean military presence from the DRC is in a process of withdrawal. The panel argued that as a result of these transactions, Harare in Zimbabwe became 'a significant illicit diamond-trading centre'.¹⁰⁵

In the case of Rwanda, it is alleged in the expert panel's report that the regional administration in the Kivu region of the DRC has largely been infiltrated by persons loyal to Rwanda, who will continue to support the efforts of that country to exploit the DRC's mineral wealth, including diamond resources. Profits from resource extraction largely transferred back to the Rwandan Army through its Congo Desk, with only a small amount returning to the coffers of the regional administration.¹⁰⁶

Similar to the case of Rwanda, the panel argued that the formal withdrawal of the Ugandan military apparatus will not prevent continuing economic gain to individuals who are involved in private businesses in the DRC. In particular, the panel argued that there are a number of rebel groups in Uganda who operate as de facto arms of the Ugandan military, able to represent the interests of the Ugandan elite on an ongoing basis.¹⁰⁷

In response to the conflict diamonds problem faced by the DRC, the Security Council recommended a number of measures, including the imposition of a diamond embargo on the DRC and Rwanda, Uganda

105 Final Report Panel of Experts on the Illegal Exploitation of Natural Resources and Other Forms of Wealth of the Democratic Republic of the Congo, UN Doc S/2002/1146 (16 October 2002) 6–8.

106 Ibid 14–15.

107 Ibid 19–21.

and Burundi, as well as encouraging the imposition of criminal sanctions against corporations and individuals breaking the embargo. The Security Council also called for an end to trade with certain banks, the seizure of assets of particular individuals, and an arms embargo and suspension of military cooperation with national and rebel military forces operating in the DRC. In contrast to the cases of Sierra Leone, Angola, Côte d'Ivoire, and Liberia, however, sanctions were not immediately imposed on the DRC and its forces of occupation.¹⁰⁸ A 12-month arms embargo on the eastern half of the country was eventually mandated in July 2003, which was extended to the whole of the country in May 2005, along with assets of particular individuals being frozen. Sanctions on commodities such as diamonds were not favoured even as recently as 2007 by a UN expert panel.¹⁰⁹

In its subsequent 2002 report, the expert panel named not only individuals but a comprehensive list of small enterprises and very large multinational enterprises that were allegedly fuelling the DRC war. The persons and entities named were separated into two categories. The first category, listed in annexes I and II of that report, were targeted for restrictive measures because '[b]y contributing to the revenues of the elite networks, directly or indirectly, those companies and individuals contribute to the ongoing conflict and to human rights abuses'. While noting that those listed would be in violation of the Organisation for Economic Co-operation and Development (OECD) Guidelines for Multinational Enterprises, the individuals and enterprises 'involved in criminal and illicit exploitation' were targeted for particular measures: travel bans on selected individuals identified by the panel; freezing of the personal assets of persons involved in illegal exploitation; barring selected companies and individuals from accessing banking facilities and other financial institutions, and from receiving funding or establishing a partnership or other commercial relations with international financial institutions. The panel

108 Report of the Panel of Experts on the Illegal Exploitation of Natural Resources and Other Forms of Wealth of the Democratic Republic of Congo, UN Doc S/2001/357 (12 April 2001) [221]–[225]; Fonseca, A, *Four Million Dead: The Second Congolese War, 1998–2004* (18 April 2004) 68. Available at: www.oocities.org/afonseca/CongoWar.htm.

109 Global Policy Forum, *The Democratic Republic of Congo* (2006). Available at: www.globalpolicy.org/security/issues/kongidx.htm; Interim Report of the Group of Experts on the Democratic Republic of the Congo, Pursuant to Security Council Resolution 1698 (2006), UN Doc S/2007/40 (31 January 2007) [44]–[45].

recommended, however, that a grace period of four to five months be provided for those corporations identified to prove that they had ceased their financial activities in the DRC.¹¹⁰

The panel identified a further list of corporations, many large multinationals registered in Europe or the United States, as being presumably less criminally liable in their behaviour, but nevertheless in violation of the OECD Guidelines for Multinational Enterprises. The expert panel reminded national governments of their responsibility to ensure that enterprises in their jurisdiction do not abuse principles of conduct they had adopted as a matter of law, with criminal prosecutions under national legislation being one option for consideration by governments. The panel also recommended that the Security Council establish a monitoring body to oversee action taken by governments in relation to multinational corporations registered in their countries.¹¹¹

Diamond trading corporations featured prominently in both categories identified by the expert panel. In relation to the corporations singled out for direct punitive action, five corporations were exclusively identified with the mining or trading in diamonds. The second list, however, was perhaps more startling for its inclusion of diamond mining giant De Beers and other high-profile corporates such as the mining company Anglo-American, and Barclays Bank. Altogether, 12 exclusively diamond mining/trading enterprises were placed on the category two list.¹¹²

The UN panel report also called for the universal implementation of the Kimberley Process. Interestingly, they called for the establishment of a permanently staffed secretariat at the international level, and identified the necessity of creating a specialised enforcement organisation within each member country with the authority, knowledge and specialised training necessary to ensure the effectiveness of the Kimberley Process.¹¹³

110 Final Report Panel of Experts on the Illegal Exploitation of Natural Resources and Other Forms of Wealth of the Democratic Republic of the Congo, UN Doc S/2002/1146 (16 October 2002) [176].

111 Ibid [170], [177]–[178].

112 Ibid 5–7, 35–44; Fishman, J L, 'Is Diamond Smuggling Forever?: The Kimberley Process Certification Scheme: The First Step Down the Long Road to Solving the Blood Diamond Trade Problem' (2005) 13 *University of Miami Business Law Review* 217, 217, 222.

113 Final Report Panel of Experts on the Illegal Exploitation of Natural Resources and Other Forms of Wealth of the Democratic Republic of the Congo, UN Doc S/2002/1146 (16 October 2002) 182.

The withdrawal of Ugandan troops in 2002 sparked further problems, particularly in the Ituri area. Despite the deployment of a UN peacekeeping force, the United Nations Mission in the Democratic Republic of Congo (MONUC), the power vacuum created by the withdrawal of troops has now effectively been replaced by elements who defected from the regular forces of the Congolese Army, who now operate under the name of *Mouvement Révolutionnaire du Congo* (MRC). Reports from observers of the situation in 2006 noted that MRC military activities were supported by the illegal exploitation of natural resources in the region.¹¹⁴ Militia groups operating in the area had a strong incentive to acquire as much gold and diamonds as possible, so as to pre-empt the operation of the Ituri Pacification Committee, whose purpose under the Luanda Agreement is the management of natural resources. As a result, a showdown occurred between Ugandan-backed RCD-ML, *Front des Nationalistes et Intégrationnistes* (FNI), and *Force de Résistance Patriotique en Ituri* (FRPI) on the one hand, and the Rwandan-backed *Union des Patriotes Congolais* (UPC), supported by the Congolese Liberation Movement (MLC) and the RCD-National. The Ituri conflict was further complicated by an ethnic dimension, notably that the Ugandan-backed militias were composed primarily of people of Lendu ethnic background, while the UPC was primarily composed of persons of Hema ethnicity. The ethnic dimension sparked fears of a possible genocide, which fortunately didn't eventuate.¹¹⁵

Human rights violations in the Ituri region, however, attracted the attention of the international criminal justice system, leading to indictments and the first arrests by the newly established ICC.¹¹⁶ Thomas Lubanga Dyilo, leader of the UPC, was arrested on the same day as the issuance of the indictment against him on 17 March 2006, with the assistance of Congolese authorities, French armed forces, and MONUC forces.¹¹⁷ The indictment against Lubanga alleges that the UPC, under the leadership of Lubanga, seized control of Bunia and parts of

114 Africa Initiative Programme and Forum on Early Warning and Early Response (FEWER-Africa), 'Elections and Security in Ituri: Stumbling Blocks and Opportunities for Peace in the Democratic Republic of Congo' (Report, 13 June 2006) 4–27.

115 Fonseca, A, *Four Million Dead: The Second Congolese War, 1998–2004* (18 April 2004) 81–82. Available at: www.oocities.org/afonseca/CongoWar.htm.

116 Ibid 82.

117 International Criminal Court, Office of the Prosecutor, 'Issuance of a Warrant of Arrest against Thomas Lubanga' (Press Release, ICC-OTP-20060302-126-En, 2 March 2006); International Criminal Court, Office of the Prosecutor, 'First Arrest for the International Criminal Court' (Press Release, ICC-CPI-20060302-125-En, 17 March 2006).

Ituri in Orientale Province in 2002, resulting in the death of more than 8,000 civilians and the displacement of 600,000 others. The indictment also alleges that the UPC took young children from their families and forced them to join the UPC military forces, which constitutes a crime under Articles 8(2)(b)(xxvi) and 8(2)(e)(vii) *Rome Statute*.¹¹⁸ The ICC followed up its first arrest with a second on 18 October 2007, also in relation to alleged crimes in the Ituri area. The prosecutor alleged that Germain Katanga was a senior commander of the FRPI and was responsible for the massacre of hundreds of civilians in the village of Bogoro on 24 February 2004, as well as crimes of sexual violence and enlisting child soldiers.¹¹⁹ The third arrest, also relating to the Ituri situation, occurred on 7 February 2008. Mathieu Ngudjolo Chui had allegedly been the leader of the FNI at the time that the militia, along with the FRPI, attacked the Bogoro village and therefore faced largely parallel charges to Katanga.¹²⁰

The invasion of the DRC by its neighbours has also resulted in a number of cases before the International Court of Justice, which adjudicates international legal disputes between nations. In *Armed Activities on the Territory of the Congo*, the DRC claimed that the invasion of Congolese territory by Burundian, Ugandan, and Rwandan troops on 2 August 1998 constituted a violation of its sovereignty and its territorial integrity, as well as a threat to peace and security in Central Africa. The issue of illegal seizure of assets was also raised by the DRC. The International Court of Justice found that it had jurisdiction to consider issuing preliminary measures against Uganda.¹²¹ A further case before the International Court followed from the issuance of an

118 International Criminal Court, Office of the Prosecutor, 'Issuance of a Warrant of Arrest against Thomas Lubanga' (Press Release, ICC-OTP-20060302-126-En, 17 March 2006).

119 International Criminal Court, 'Case Information Sheet for The Prosecutor v Germain Katanga, ICC-01/04-01/07'. Available at: www.icc-cpi.int/en_menus/icc/situations%20and%20cases/situations/situation%20icc%200104/related%20cases/icc%200104%200107/Pages/democratic%20republic%20of%20the%20congo.aspx.

120 International Criminal Court, 'Case Information Sheet for The Prosecutor v Mathieu Ngudjolo Chui, ICC-01/04-02/12', www.icc-cpi.int/en_menus/icc/situations%20and%20cases/situations/situation%20icc%200104/related%20cases/ICC-01-04-02-12/Pages/default.aspx. Human rights violations and ongoing conflict have also occurred in the Rwandan-influenced regions of North and South Kivu, although a recent peace deal with General Nkunda, leader of a RCD-Goma splinter group, may herald the way to greater stability. See British Broadcasting Corporation, 'Eastern Congo Peace Deal Signed' (23 January 2008). Available at: www.globalpolicy.org/security/issues/congo/2008/0123gomadeal1.htm.

121 Gray, C, 'The Use and Abuse of the International Court of Justice: Cases Concerning the Use of Force After Nicaragua' (2003) 14 *European Journal of International Law* 867, 878-880.

arrest warrant by Belgium on 11 April 2000 against the incumbent DRC Foreign Minister, Mr Abdulaye Yerodia Ndambasi, alleging his commission of war crimes and crimes against humanity, pursuant to a Belgian criminal statute. The International Court ruled that the customary international rule providing immunity to incumbent foreign ministers against civil and criminal proceedings rendered the Belgian arrest warrant unlawful under international law. The court noted that this rule would not extend to proceedings initiated against former foreign ministers or proceedings before international criminal courts.¹²²

Recent statistics indicate that the legitimate diamonds trade in the DRC is recovering, indicating some degree of success of the Kimberley Process. In 2005, official exports were valued at \$642 million, constituting a 62.5 per cent increase on the previous year. New and independent valuation was partly responsible for the increase, as well as effective implementation of the Kimberley Process and the expulsion of Congo-Brazzaville from the process in 2004. The expulsion of Congo-Brazzaville, a neighbour of the DRC, resulted in an increase in the legal trade because it was recognised that Congo-Brazzaville was being used as a back door to avoid the Kimberley Process Certification System. As a result of its expulsion from the system, Kimberley Process members were prohibited from purchasing that country's diamonds, meaning that much of the diamond trade reverted to legitimate channels in the DRC. It should be noted, however, that there was still an estimated US\$350 million leaving the country illicitly, indicating the scale of work still to be done with the industry.¹²³ Given the example of conflicts in other nations, such periods of relative peace carry with them the threat of re-armament through the exploitation of conflict diamonds and other natural resources.¹²⁴

122 Golden Gate University School of Law, 'Annex: Arrest Warrant of 11 April 2000 (Democratic Republic of the Congo v. Belgium): International Court of Justice 14 February 2002' (2002) 8 *Annual Survey of International and Comparative Law* 151, 159–161.

123 Global Witness and Partnership Africa Canada, 'Rich Man, Poor Man, Development Diamonds and Poverty Diamonds: The Potential for Change in the Artisanal Alluvial Diamond Fields of Africa' (Report, October 2004) 25–32. The Republic of Congo was re-admitted in 2007 to the Kimberley Process. Hennessy, S, *Congo's Diamond Industry Let Back into Kimberley Process* (9 November 2007) Global Policy Forum. Available at: www.globalpolicy.org/security/issues/congo/2007/1109drckp.htm.

124 Malamut, S A, 'A Band-Aid on a Machete Wound: The Failures of the Kimberley Process and Diamond-Caused Bloodshed in the Democratic Republic of Congo' (2005) 29 *Suffolk Transnational Law Review* 25, 43.

In the period since 2005, although much of the DRC has enjoyed relative peace, conflict fuelled by natural resources is an ongoing feature of the disturbed north-eastern provinces. Even though minerals other than diamonds are the focus of reports by UNSC expert panels in 2007 and 2008, it is known that diamond deposits also exist in these conflict areas, so it may be premature to argue that conflict diamonds are no longer a feature of the DRC conflicts. A further development occurred with the release in August 2010 of the DRC 'Mapping Exercise' by the UN High Commissioner for Human Rights. The exercise sought to provide preliminary evidence of international crimes committed from 1993 to 2003 in the context of the Congolese war, and the report features a section exploring the connection between resources and conflict, and the role it played during the war. It is possible that a UN international tribunal may be established to prosecute persons most responsible for committing war crimes, crimes against humanity, and genocide during this period.¹²⁵

Côte d'Ivoire

The conflict diamonds problem arose dramatically with the outbreak of civil war in Côte d'Ivoire, also known as the Ivory Coast, in September 2002.¹²⁶ According to a UNSC investigation, the Forces Nouvelle militia in the north of that country, who went to war following discontent with a controversial election process, have been largely funded through the illegal diamond trade. The resurgence of the problem, in the era where the Kimberley Process Certification Scheme is active, has proven a significant test of the resolve of the international community in its efforts to combat the problem.¹²⁷

125 Interim Report of the Group of Experts on the Democratic Republic of the Congo, Pursuant to Security Council Resolution 1698 (2006), UN Doc S/2007/40 (31 January 2007); Final Report of the Group of Experts on the Democratic Republic of the Congo, UN Doc S/2008/773 (21 November 2008); United Nations Office of the High Commissioner for Human Rights, Report of the Mapping Exercise documenting the Most Serious Violations of Human Rights and International Humanitarian Law Committed within the Territory of the Democratic Republic of the Congo between March 1993 and June 2003 (August 2010) 349–367.

126 British Broadcasting Corporation, 'Q&A: Ivory Coast's Crisis', *BBC News: World Edition* (17 January 2006). Available at: news.bbc.co.uk/2/hi/africa/3567349.stm.

127 Kofele-Kale, N, 'The Global Community's Role in Promoting the Right to Democratic Governance and Free Choice in the Third World' (2005) 11 *Law and Business Review of the Americas* 205, 235; Wexler, Pamela, *The Kimberley Process Certification Scheme on the Occasion of its Third Anniversary: An Independent Commissioned Review* (Review Report submitted to the Ad Hoc Working Group on the Review of the Kimberley Process, February 2006) 7.

Côte d'Ivoire had experienced widespread stability and prosperity for more than three decades after independence under the leadership of its first president, Félix Houphouët-Boigny. It was considered to have the fourth-largest economy in sub-Saharan Africa. However, military rule from 1999 to 2000 under Robert Guéi, general political unrest under President Laurent Gbagbo, and the outbreak of civil conflict in 2002 led to widespread atrocities, allegedly conducted by both government and rebel forces, including political killings, massacres, disappearances, and numerous incidents of torture. While a peace agreement was brokered between the two sides in 2003, widespread impunity and a political and social climate fuelled by intolerance and xenophobia have caused fears that the hostilities will resume. UN peacekeepers have patrolled a buffer zone separating the rebel-held north and the government-controlled south, but political efforts to reunite the nation have not been successful to date. In September 2003, Côte d'Ivoire requested that the ICC accept jurisdiction over crimes committed on its territory since 19 September 2002.¹²⁸

Like the situation that affected Sierra Leone previously, the establishment by rebel militia of a war economy based on diamonds served to entrench the power of the militia and to delay the satisfactory resolution of the conflict, which centres around ethnic grievances and issues of political representation.¹²⁹ A UNSC expert panel reported that high levels of funds were reaching the northern-based militia through diamond sales, and that strict measures were required for this to be controlled. The report of the expert group resulted in a Security Council ban on imports of rough diamonds from Côte d'Ivoire, pursuant to Resolution 1643 (2005).¹³⁰ The expert group had conducted its activities through the support of the current peacekeeping mission

128 Punyasena, W, 'Conflict Prevention and the International Criminal Court: Deterrence in a Changing World' (2006) 14 *Michigan State Journal of International Law* 39, 64–65; Petrova, P, 'The Implementation and Effectiveness of the Kimberley Process Certification Scheme in the United States' (2006) 40 *International Lawyer* 945, 945.

129 British Broadcasting Corporation, 'Q&A: Ivory Coast's Crisis', *BBC News: World Edition* (17 January 2006). Available at: news.bbc.co.uk/2/hi/africa/3567349.stm.

130 SC Res 1643, UN SCOR, 5327th mtg, S/RES/1643 (15 December 2005) (Côte d'Ivoire).

in Côte d'Ivoire, United Nations Operation in Côte d'Ivoire (UNOCI).¹³¹ The responses of the UNSC and the Kimberley Process to this issue is discussed in more detail in chapters 4 and 5.

Côte d'Ivoire is a minor producer of rough diamonds and has been a participant in the Kimberley Process Certification Scheme since its inception. In a letter dated 13 October 2004, the Minister of Mines and Energy of Côte d'Ivoire informed the Chair of the Kimberley Process that all exports of rough diamonds from Côte d'Ivoire were prohibited on the basis of a ministerial order issued on 19 November 2002. As there are no significant diamond deposits in the government-controlled south, this measure seeks to cut off the northern rebels from international diamond markets.¹³²

The group of experts investigated the production and export of rough diamonds from Seguela, Bobi, and Diarabla localities in northern Côte d'Ivoire in July 2005 and obtained credible information about diamond production in the region. The group visited the area and received information that significant artisanal production of rough diamonds was occurring along a number of small streams between the villages, but that semi-industrial or industrial mining techniques were not used.¹³³ Based on the number of active pits and workers, the expert group estimated that production was at a level of 300,000 carats per year, equal to production prior to the conflict. The revenue accrued by the groups controlling the production is many millions of US dollars per year.¹³⁴ Rather than mining diamonds themselves, Forces Nouvelles were raising their revenue through systems of taxation. The militia appropriated the local diamond bureaucracy, and so were directly receiving taxes on diamond production that had previously gone to the national government. The militia also employed

131 Report of the Group of Experts Submitted Pursuant to Paragraph 7 of Security Council Resolution 1584 (2005) Concerning Côte d'Ivoire, UN Doc S/2005/699 (7 November 2005); Update Report of the Group of Experts Submitted Pursuant to Paragraph 2 of Security Council Resolution 1632 (2005) Concerning Côte d'Ivoire, UN Doc S/2006/204 (31 March 2006).

132 Report of the Group of Experts Submitted Pursuant to Paragraph 7 of Security Council Resolution 1584 (2005) Concerning Côte d'Ivoire, UN Doc S/2005/699 (7 November 2005) 17–20.

133 Ibid.

134 Ibid.

an indirect approach, through imposing a tax on those who purchased automobiles and motorcycles with revenue from diamond mining, or alternatively on persons seeking to access diamond mining areas.¹³⁵

Like the situation in other affected countries, conflict diamonds have been smuggled out of Côte d'Ivoire through neighbouring states. In this case, the countries in question are apparently Guinea — a Kimberley Process participant — and Mali — a Kimberley Process applicant at the relevant time — after which the diamonds have been distributed to international markets, such as Antwerp, Dubai, or Tel Aviv. It is interesting to note that, unlike the situation of Republic of Congo, neither Mali nor Guinea was expelled from the Kimberley Process in response to their alleged role.¹³⁶

According to a UN expert's report in 2010, diamonds from the Seguela and Tortiya regions of northern Côte d'Ivoire continue to be smuggled through neighbouring Burkina Faso, Guinea, Liberia, and Mali, which are unable or unwilling to enforce the diamond embargo. It is unclear, however, if the trade is connected to the most recent wave of violence in the country, in which outgoing President Laurent Gbagbo chose violent struggle over peaceful transition to the administration of newly elected President Alassane Ouattara. Gbagbo was ultimately arrested for international crimes related to the brief armed struggle occurring from latter part of 2010 to early 2011.¹³⁷ His arrest marked the end of the brief civil war.¹³⁸ His case at the ICC was joined to that of Ble Goude on 11 March 2015, and the trial commenced on 28 January 2016.¹³⁹

135 Ibid; Update Report of the Group of Experts Submitted Pursuant to Paragraph 2 of Security Council Resolution 1632 (2005) Concerning Côte d'Ivoire, UN Doc S/2006/204 (31 March 2006) 10. 136 Report of the Group of Experts Submitted Pursuant to Paragraph 7 of Security Council Resolution 1584 (2005) Concerning Côte d'Ivoire, UN Doc S/2005/699 (7 November 2005) 17–20.

137 Report of the Group of Experts on Côte d'Ivoire pursuant to Paragraph 11 of Security Council Resolution 1946 (2010), UN Doc S/2011/272 (17 March 2011) 55–61; 'Diamonds: Côte d'Ivoire' (February 2011) 41(12) Africa Research Bulletin, 'Diamonds: Zimbabwe' (2011) 41(12) February *Africa Research Bulletin: Economic, Financial and Technical Series* 18960; Dawn News, 'Blood Diamond Fears in Ivory Coast Political Duel' (28 December 2010). Available at: www.dawn.com/2010/12/28/blood-diamond-fears-in-ivory-coast-political-duel.html; McClanahan, P. *As Ivory Coast's Gbagbo Holds Firm, 'Blood Diamonds' Flow for Export* (23 January 2011) ReliefWeb. Available at: reliefweb.int/node/381665.

138 British Broadcasting Corporation, 'Gbagbo Held After Assault on Residence' (11 April 2011). Available at: www.bbc.com/news/world-africa-13039825.

139 The International Criminal Court, *The Prosecutor vs. Laurent Gbagbo and Ble Goude*, ICC-02/11-01/15. Available at: www.icc-cpi.int/cdi/gbagbo-goude/Pages/default.aspx.

Zimbabwe

Alluvial diamonds were discovered in the Chiadzwa district of Marange, eastern Zimbabwe, in June 2006. The diamond fields stretch over 66,000 hectares and, although estimates of the reserves contained in this area vary wildly, some have gone so far as to suggest that it could be home to one of the world's richest diamond deposits. Illicit production from the region, up to the end of 2008, was valued at approximately US\$150 million. Over the past four years, Marange has been plagued by horrific human rights abuses by state security agencies against diamond diggers and local communities, resulting in hundreds of deaths, and many more cases of assault, rape, arbitrary detention, and forced labour.¹⁴⁰

From early 2007, police officers stationed in the fields began forcing miners to work in syndicates under their control, demanding bribes, and beating or killing anyone else they found mining in the area. The violence reached a peak in October 2008 with the arrival of the army, and the launch of Operation Hakudzokwi or 'You will not return'. This operation appeared to have two goals: to ensure control of the diamond deposits for the Zanu Patriotic Front elite, and to reward the army for its loyalty to this clique. More than 800 soldiers were deployed alongside helicopter gunships, killing over 200 people.¹⁴¹

Following this operation, soldiers took over mining syndicates previously run by the police, and forced local people, including children, to mine for them. The military was also central in facilitating smuggling diamonds out of Zimbabwe to neighbouring countries,

140 Human Rights Watch, 'Diamonds in the Rough: Human Rights Abuses in the Marange Diamond Fields of Zimbabwe' (Report, June 2009) 3–4; Partnership Africa Canada, 'Zimbabwe, Diamonds and the Wrong Side of History' (Report, March 2009) 3, 5; Partnership Africa Canada, 'Diamonds and Clubs: The Militarised Control of Diamonds and Power in Zimbabwe' (Report, June 2010) 18; Global Witness, 'Return of the Blood Diamond: The Deadly Race to Control Zimbabwe's New-found Diamond Wealth' (Report, 14 June 2010) 6–8.

141 Human Rights Watch, 'Diamonds in the Rough: Human Rights Abuses in the Marange Diamond Fields of Zimbabwe' (Report, June 2009) 3–4; Partnership Africa Canada, 'Zimbabwe, Diamonds and the Wrong Side of History' (Report, March 2009) 7–8; Partnership Africa Canada, 'Diamonds and Clubs: The Militarised Control of Diamonds and Power in Zimbabwe' (Report, June 2010) 18; Global Witness, 'Return of the Blood Diamond: The Deadly Race to Control Zimbabwe's New-found Diamond Wealth' (Report, 14 June 2010) 6–8. There was an initial KP review visit in May to June 2007, prior to the worst violence. The review focused on the country's regulatory framework and noted that the contentious fields were under government control. The KP review was criticised for failing to highlight ongoing human rights abuses. Partnership Africa Canada, 'Diamonds and Human Security: Annual Review 2008' (Annual Report, October 2008) 23–24.

including Mozambique and South Africa. Once again, civilians found digging for diamonds independently of the syndicates were severely beaten or killed as a warning to others.¹⁴²

A Kimberley Process Review Mission was eventually sent to the country in June 2009 to investigate the violence and assess compliance with KP standards. The mission found evidence of grave human rights abuses, armed soldiers managing syndicates of miners, and a 'smuggling operation that enables rough diamonds to flow from Zimbabwe outside the KPCS ... largely operated and maintained by official entities'. This finding alone — that state agents were running diamond smuggling operations to Mozambique, a non-KP participant — should be grounds for expulsion from the scheme.¹⁴³

The review team, made up of government, NGO, and industry representatives, 'identified several areas in which Zimbabwe [is] non-compliant with the minimum requirements of the KPCS', and recommended that the country be suspended from the scheme for at least six months.¹⁴⁴

In a press conference held at the end of the visit, the mission's leader, Liberian Deputy Minister of Mines Kpandel Fayia, made an impassioned plea to the Zimbabwean authorities:

Minister, on the issue of violence against civilians, I need to be clear about this. Our team was able to interview and document the stories of tens of victims, observe their wounds, scars from dog bites and batons, tears, and on-going psychological trauma. I am from Liberia, Sir; I was in Liberia throughout the 15 years of civil war; and I have experienced too much senseless violence in my lifetime, especially connected to diamonds. In speaking with some of these people, Minister, I had to leave the room. This has to be acknowledged and it has to stop.¹⁴⁵

142 Human Rights Watch, 'Diamonds in the Rough: Human Rights Abuses in the Marange Diamond Fields of Zimbabwe' (Report, June 2009) 3–4; Partnership Africa Canada, 'Zimbabwe, Diamonds and the Wrong Side of History' (Report, March 2009) 7–8; Partnership Africa Canada, 'Diamonds and Clubs: The Militarised Control of Diamonds and Power in Zimbabwe' (Report, June 2010) 15–16; Global Witness, 'Return of the Blood Diamond: The Deadly Race to Control Zimbabwe's New-found Diamond Wealth' (Report, 14 June 2010) 6–8.

143 Partnership Africa Canada, 'Diamonds and Human Security: Annual Review 2009' (Annual Report, 2009) 19; Global Witness, 'Return of the Blood Diamond: The Deadly Race to Control Zimbabwe's New-found Diamond Wealth' (Report, 14 June 2010) 6–8.

144 Global Witness, 'Return of the Blood Diamond: The Deadly Race to Control Zimbabwe's New-found Diamond Wealth' (Report, 14 June 2010) 6–8.

145 *Ibid.*

The situation in the Marange diamond fields remains critical. The Zimbabwean authorities claim that the joint venture companies they have recently established and given permits to mine in Marange will help regulate the diamond sector and improve standards. However, these companies are only operating in around 3 per cent of the diamond fields, with the remaining 97 per cent under the control of the army.¹⁴⁶

The widespread smuggling of Marange diamonds out of Zimbabwe persists, and the army continues to operate syndicates of miners as a means of capturing the proceeds of this illegal trade.¹⁴⁷

There have been some cases of enforcement action by national governments in relation to smuggled Zimbabwean diamonds. On 20 September 2008, India's Directorate of Revenue Intelligence (DRI) apprehended two Lebanese nationals, named as Yusuf Oselli and Robar Hussain, from a hotel in Surat, the centre of India's diamond industry. They found rough diamonds weighing 3,600 carats and valued at almost \$800,000. The pair said they had brought the diamonds from Zimbabwe, and that they had made several earlier runs. The men, who did not have a Kimberley Process certificate or any other documentation for the diamonds, told the DRI that they had carried the diamonds through Dubai, landing undetected at Mumbai on 15 September.¹⁴⁸

In October 2008, Dubai Customs discovered bags of diamonds wrapped around the body of a Zimbabwean woman transiting in Dubai. The diamonds weighed 53,500 carats and were valued at US\$1.2 million. The information was carried in local and international media, including a photograph that shows that the diamonds resemble

146 Ibid.

147 Simpson, John, 'Profiting from Zimbabwe's "blood diamonds"', *BBC News* (online), 20 April 2009. Available at: news.bbc.co.uk/2/hi/africa/8007406.stm; Partnership Africa Canada, 'Zimbabwe, Diamonds and the Wrong Side of History' (Report, March 2009) 7–8; Global Witness, 'Return of the Blood Diamond: The Deadly Race to Control Zimbabwe's New-found Diamond Wealth' (Report, 14 June 2010) 6–8. Mugabe's wife has personally benefited from the mining according to some reports. Herskovitz, Jon, 'Zimbabwe Govt, c.bank in Blood Diamond Trade: WikiLeaks', *Reuters: Africa* (9 December 2010). Available at: af.reuters.com/article/topNews/idAFJJOE6B80F820101209.

148 Partnership Africa Canada, 'Zimbabwe, Diamonds and the Wrong Side of History' (Report, March 2009) 12.

those originating from Marange. There is no information on whether the woman was charged, her travel origin or destination, or the disposition of the diamonds.¹⁴⁹

Although access to the Marange diamond fields has been severely restricted, testimony gathered from victims by local civil society representatives shows that serious human rights abuses, including assault and rape, are still being committed by the army and the police.¹⁵⁰

In March 2010, the Centre for Research and Development, an NGO based in Mutare, the provincial capital, identified 26 victims of abuse in the diamond fields and the surrounding area, including two cases of rape, and one of a woman being beaten so severely she was left partially blind. In April, the same NGO recorded 24 cases of assault by the security forces against civilians.¹⁵¹

Some local experts believe that the actual number of assaults is much higher, but that people are too afraid to report abuses for fear of further harassment. The researchers also note that the violence often precedes visits to the area by important government delegations — an apparent attempt to clear the area of miners before the visitors arrive.¹⁵²

Despite the continued violence, Zimbabwe remains a member of the Kimberley Process, the international certification body set up to prevent diamond-fuelled violence and abuses. The failure of KP member states to agree to suspend Zimbabwe has prompted deep concern among some KP participants and observers, who have begun to question the future of the scheme.¹⁵³

In 2009, a compromise approach to the Zimbabwe issue was agreed to by the KP, whereby the KP sent an official monitor to the Chiadzwa region. Zimbabwe was given six months to fall in line with international trade standards, pursuant to a 'Joint Work Plan' that included the demilitarisation of the diamond fields. However, this has not happened, and there have been ongoing reports of smuggling and harassment by military officers. Despite this, the KP allowed two auctions of stockpiled

149 Ibid 12–13.

150 Global Witness, 'Return of the Blood Diamond: The Deadly Race to Control Zimbabwe's New-found Diamond Wealth' (Report, 14 June 2010) 6–8.

151 Ibid.

152 Ibid.

153 Ibid.

diamonds in 2010. The sales were meant to pave the way for full exports to resume, but KP members have not reached the necessary consensus on whether to allow full exports to resume. The KP has contradicted claims by the Zimbabwean Mines Minister in January 2011 that it has been given permission to make further official sales.¹⁵⁴

Central African Republic

The Central African Republic (CAR) conflict is an ongoing civil war in the CAR between the *Séléka* rebel coalition and government forces, which began on 10 December 2012. The conflict arose after rebels accused the government of President François Bozizé of failing to abide by peace agreements signed in 2007 and 2011. Many of the rebel groups had been involved in the CAR Bush War.

Rebel forces known as *Séléka* (meaning 'union' in the Sango language) captured many major towns in the central and eastern regions of the country at the end of 2012. *Séléka* comprises two major groups based in north-eastern CAR: the Union of Democratic Forces for Unity (UFDR) and the Convention of Patriots for Justice and Peace (CPJP), but also includes the lesser known Patriotic Convention for Saving the Country (CPSK). Two other groups based in northern CAR — the Democratic Front of the Central African People (FDPC) and the Chadian group Popular Front for Recovery (FPR) — also announced their allegiance to the *Séléka* coalition.

Chad, Gabon, Cameroon, Angola, South Africa, the DRC and the Republic of Congo sent troops as part of the Economic Community of Central African States' FOMAC force to help the Bozizé government hold back a potential rebel advance on the capital, Bangui. However, the capital was seized by the rebels on 24 March 2013 at which time President Bozizé fled the country, and the rebel leader Michel Djotodia

154 Africa Research Bulletin, 'Diamonds: Zimbabwe' (2011) 41(12) February *Africa Research Bulletin: Economic, Financial and Technical Series* 18960, 18960–18961; Global Witness, *Industry Must Refuse Zimbabwe Diamonds Certified by Rogue Monitor* (16 November 2010). Available at: www.globalwitness.org/library/industry-must-refuse-zimbabwe-diamonds-certified-rogue-monitor; Global Witness, *Conflict Diamond Scheme Must Resolve Zimbabwe Impasse* (5 November 2010). Available at: www.globalwitness.org/library/conflict-diamond-scheme-must-resolve-zimbabwe-impasse.

declared himself president. Due to the presence of diamonds in the country, the UNSC imposed a diamond embargo, which was backed by action from the Kimberley Process.

India

Beyond the current mandate of the Kimberley Process, which focuses on the connection of the diamond trade to human rights violations reaching the level of international crimes, lies the potential for addressing a range of human rights issues that, although serious, do not constitute international crimes. One of these issues is the use of child labour, which is a major problem not only in the artisanal mining sector, but also in the cutting and polishing industry, which is dominated by India.

The skills required for cutting and polishing diamonds are passed down by workers from generation to generation, or are picked up in the traditional master–apprentice relationship. Of the four Cs — colour, clarity, carat, and cut — nature dictates the first three aspects; the cut, often considered the benchmark against which a diamond’s beauty is judged, is the only factor determined by the human hand. It is a practice requiring great expertise. However, behind the glittering world of India’s diamond-cutting industry lie practices of exploitation and child labour. India enjoys a near monopoly in the diamond-cutting industry, but low wages and the easy availability of labour is what keeps the industry profitable. India gets a lot of small diamonds to cut and polish. The detailed nature of the work and the repetitive strain of cutting and polishing these tiny specks of stones make it labour-intensive and often unhealthy. There is a lot of dust from the ground diamonds that doesn’t always get filtered out of the crowded factory rooms, and proves harmful for workers’ health. These small stones often need sharp eyes and deft hands, and children are often highly prized in the trade, able to cut even ‘half-pointer’ diamonds, noting that 100 points make a carat, which is one-fifth of a gram.¹⁵⁵

155 Hussain, S S, ‘A Diamond’s Journey: Grime Behind the Glitter?’, *World News* (26 June 2009). Available at: www.msnbc.msn.com/id/15842528; Brilliant Earth, *Conflict Diamond Issues* (2007). Available at: www.brilliantearth.com/conflict-diamond-child-labor/.

Child labour is illegal in India, but remains widespread. By conservative estimates, 13 million children work in India, many in hazardous industries. According to one estimate, up to 100,000 children, in the age group 6–14 years, work in the diamond industry in Surat, cutting and polishing diamond chips.¹⁵⁶

Children are engaged as apprentices, with learning the trade taking from five to seven years. During the first two years of an apprenticeship children receive little or no remuneration, working for 10 hours a day. After two years, a child worker is paid about \$1.70 per month. Studies by noted academic Neeta Burra revealed that more than 30 per cent of these children get tuberculosis due to unhygienic conditions, overcrowding, and malnutrition. Major health issues include body aches, and finger tips grazed by the polishing disc. Child labour continues to be a major problem, despite efforts to stop the practice and generally improve working conditions amongst some in the cutting industry.¹⁵⁷

Concluding Remarks

This book considers two main research questions:

1. Has the conflict diamonds governance system achieved its objectives?
2. Does consideration of the system from the perspective of the networked pyramid model provide descriptive or normative insights?

Before a fitting response to these questions can be formulated, however, it is necessary to examine carefully the nature of the conflict diamonds problem. The conflict diamonds trade stands in contrast to the legitimate diamond trade, with rough diamond production in the legal industry during 2006 valued at US\$11.5 billion, and exports valued at \$US37.7 billion. Over the past century, large-scale

156 Hussain, S S, 'A Diamond's Journey: Grime Behind the Glitter?', *World News* (26 June 2009). Available at: www.msnbc.msn.com/id/15842528; Brilliant Earth, *Conflict Diamond Issues* (2007). Available at: www.brilliantearth.com/conflict-diamond-child-labor/.

157 Hussain, S S, 'A Diamond's Journey: Grime Behind the Glitter?', *World News* (26 June 2009). Available at: www.msnbc.msn.com/id/15842528; Brilliant Earth, *Conflict Diamond Issues* (2007). Available at: www.brilliantearth.com/conflict-diamond-child-labor/.

diamond production in the legitimate trade has been characterised by the monopolistic behaviour of the giant De Beers multinational corporation, and a high level of secrecy. At the same time, the low-tech mining of alluvial rough diamond deposits has provided insurgent groups with a commodity that is easy to smuggle, given the small size and very high value of such diamonds, which are considered the most concentrated form of wealth in the world. These characteristics have facilitated the emergence of conflict diamonds used to finance grave human rights violations and armed conflict against established governments. The issue was first highlighted by NGOs in the context of the civil war in Angola, where rebel group UNITA was able to fund its military campaign from diamond sales between 1992 and 1998. The diamond trade prolonged the civil war, which resulted in the loss of around 1 million lives, and reportedly involved such war crimes as the indiscriminate shelling of civilians. Around the same time, civil war fuelled by conflict diamonds also emerged in Sierra Leone. The infamous terror tactics of the RUF, which included the amputation of limbs and the conscription of child soldiers, resulted in a renewed focus on the connection between conflict diamonds and egregious human rights violations. More recently, conflict diamonds have fuelled ongoing civil war situations and human rights violations in the DRC and Côte d'Ivoire. The heavy-handed response of the Zimbabwean Government to the management of artisanal diamond mines in the Marange region represents the latest manifestation of the conflict diamonds problem.

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