

NATIONAL PROFILE – SIERRA LEONE

SMUGGLING AND ENFORCEMENT OF THE
KIMBERLY PROCESS CERTIFICATION
SCHEME

JUNE 2010

NETWORK MOVEMENT FOR JUSTICE AND
DEVELOPMENT (NMJD)

SIERRA LEONE NATIONAL PROFILE

SMUGGLING AND THE ENFORCEMENT OF THE KIMBERLY PPROCESS CERTIFICATION SCHEME:

1. Introduction

Sierra Leone was one of the first countries to experiment with the Kimberley Process Certification Scheme (KPCS). In fact, a Diamond Certification system, anticipating the KPCS, was instituted in Sierra Leone in September 2000, four months after the UN Security Council passed Resolution 1306 that placed a ban on diamond exports from Sierra Leone – meant to deny anti-government rebels a market, and was complemented by a ban on Liberian diamond exports several months later. The certification system was created with the assistance of the Belgian Diamond High Council. In addition to a Sierra Leonean diamond valuer, an independent valuer was also appointed. Official exports of Sierra Leonean diamonds increased dramatically thereafter. In 1999, the country officially exported only US\$ 1.3 million worth of diamonds but in the 12 months after the certification system was introduced (i.e. between October 2000 and September 2001), legal exports jumped to US\$ 25.9 million (210,675 carats). Exports in 2001 (January to December) totalled 222,500 carats, which were valued at US\$ 26 million. This figure represented a monthly average export of US\$ 2.17 million, which was extraordinarily high compared to the years prior to the introduction of the system. This trajectory has since continued, with exports rising almost every year. Diamond exports in 2003 were worth US\$ 75 million, in 2004 the figure was US\$ 126 million; and in 2005, it was US\$ 142 million. The value of diamond exports dropped slightly in 2006 to US\$ 125 million but rose again in 2007 to US\$ 141 million. It dropped to 371,285.31 carats valued at \$98,800,670 in 2008, and rose in caratage to 400,800.36 but with a lower value of \$79 million dollars in 2009. Exports for the first half of 2010 has 183,982.92 carats valued at \$41,658,991.57 (see table below).

The figures suggest that since the KPCS, official exports of diamonds have more or less stabilised. But problems remain: the Government Gold and Diamond Office (GGDO), values and levies export taxes on all diamonds that are officially exported from Sierra Leone, reckons that at least 20% of Sierra Leone's diamonds do not go through official export channels, and that lower valued stones from Liberia are getting in, while higher valued stones from Sierra Leone are being smuggled through Liberia and possibly Guinea. Zimbabwean diamonds are also getting into the country, but since these are easily identified, they do not get exported through the GGDO.¹

2. Political Context & Governmental Framework

The key issues in Sierra Leone, one of the countries that inspired the KPCS, revolve around internal controls. Though the country has made significant progress in peace consolidation and infrastructural development – including holding several nationwide elections and extending the writ of the state to all parts of the country – since its diamond-funded war ended in 2002, important problems remain. As the former Minister for Mineral Resources in Sierra Leone, Mohamed Swaray-Deen, noted, 'Without doubt,'

¹ Workshop presentation by Samuel Koroma, senior GGDO official (Freetown, 4 June 2010)

he said, '[the key] problems are illegal mining and smuggling, but especially smuggling.'² And illegal mining and smuggling, as the minister well knew, have been the key problems in the industry since the commercial exploitation of diamonds started in Sierra Leone in the 1930s. Importantly, government revenue from the increased diamond production remains minimal. Diamond exporters pay an export tax of 3% of the value of the goods. In addition, there is income tax, which is calculated for companies at 30% of their income after other applicable deductions. But where the holder of a mining lease has yet to make a profit, or where the chargeable income is below 7% of the investment, the company pays a flat 3.5% rate of income tax. There are also the license fees paid for mining (minimal), dealing (also fairly insignificant) and exporting (at US\$ 500,000 annually, this is a significant sum). However all these taxes totalled less than US\$ 10 million in 2007 – this has remained more or less the same since.

The Ministry of Mineral Resources is the key government arm providing oversight for the diamond industry, as well as for other minerals. The GGDO, which has a staff of about 11, backed up by an independent international firm of valuers who fly in a few times a year to audit and advise GGDO staff, is the organ responsible for valuing and levying export taxes on all diamonds that are officially exported from Sierra Leone. They code the diamonds to be exported, and then sealed them in tamperproof plastic bags with KPCS certificates. The GGDO has six valuers, one secretary, one financial controller and his assistant, and three auxiliary staff. For its labour, the GGDO gets 0.75% of the 3% export tax on diamonds, amounting to approximately \$1 million in 2004. This has progressively increased since then, but may have been reduced now because of the poor export figures.

The GGDO focus, however, is merely the endpoint of the diamond chain in Sierra Leone. But even here problems remain. There are concerns about undervaluation of stones directly exported by the key diamond company, Koidu Holdings Limited (KHL), which is the only one mining the country's kimberlite deposits. KHL took the lion's share of 2009 exports, at 112,284.48 carats, valued at \$19,483,364.28. But the company's diamonds, which it exports itself after valuation by the GGDO, has been consistently undervalued since it began operations in 2003/4 at about \$170 per carat. The average value of Sierra Leone's diamonds has remained at \$250 per carat, with many stones valued in excess of \$400 per carat. There is also a problem of forgery of KPCS certificates. This is done mainly by Advance Fee (otherwise known as 419) fraudsters, who then use the express mail service, Red Coat, to smuggle out the gems. Gold, often fake ones, have been the most persistently used in this way, but diamonds are also no doubt getting through this channel, bypassing the GGDO. There is also strong evidence that diamonds are being laundered by drug smugglers and money launderers.

Where internal controls are concerned – key to smuggling and other illegalities – much remain to be done. The licenses process is cumbersome and expensive, and internal monitoring of mining is lax. There are fewer than 200 Mines Monitoring Officers (MMOs) in the country, and these are poorly paid. They also have little or no logistics. There is only one functioning motorbike, and the MMOs are paid less than \$100 per month – a pittance, given that smugglers of high valued diamonds can easily afford to bribe 20 times that figure at any moment to be given a free pass. The 2009 Minerals Act reinstated a 1994 policy to give 40% of the value of diamonds apprehended from potential smugglers to the informants, but since this directive was made few informants

² Interview with Mohamed Swaray-Deen, Freetown, December 2005.

have benefitted from the scheme, and there is little knowledge about it. The only nationally known case of an informant getting paid hundreds of thousands of dollars through the scheme was in 1994, and the money went to a senior member of the National Provisional Ruling Council (NPRC), which issued the decree establishing the scheme. MMOs complain that they get no reward for informing on smugglers; that in fact they are often harassed by senior police and other officials when they inform on a favoured smuggler.

There are also said to be over 2000 Sierra Leoneans mining on the Liberian side of the border, and about 1000 of them on the Sierra Leonean side of the border. Most of these miners – on either side – are funded by a network of dealers who coordinate closely, making smuggling a matter of course. Recent announcements of large caratage finds in Liberia – a complete novelty – suggest the resurgence of the historical role of Liberia as mainly a ‘fencing’ country for the smuggling of high-valued Sierra Leonean stones. But Guinea – from where imported goods are routinely smuggled into Sierra Leone because of its low customs tariff – may also be implicated. Smugglers of other goods in turn buy diamonds which they then smuggle to Guinea – a number of such smugglers may also be involved in the drug trafficking, a very important issue in all three countries (Sierra Leone, Liberia and Guinea) in the region.

3. National Multi-Stakeholder Workshop

On 2 June 2010, a National Workshop on Smuggling and Kimberley Process implementation was held at the Hill Valley Hotel in Freetown. Funded by Partnership Africa Canada, the workshop was coordinated by the Network Movement for Justice and Development (NMJD). The workshop brought together a range of stakeholders, including government, CSOs, journalists, mining experts, representatives of state security, customs and immigration, as well as Mines Monitoring Officers from all across Sierra Leone.

The following institutions were represented at the workshop:

1. The National Parliament
2. Office of National Security (ONS)
3. Customs and Excise
4. Sierra Leone National Police
5. National Diamond Dealers Association
6. United Mines Workers Union
7. Civil Society Alternative Proces
8. African Minerals
9. Government Gold and Diamond Office
10. Network Movement for Justice and Development
11. Just Mining Campaign
12. Ministry of Mineral Resources
13. Mines Monitoring Office
14. National Revenue Agency

4. Key Areas of Discussion

The discussions focused on the following areas:

- Profile of a smuggler and why do people engage in smuggling?
- Taxation: critical analysis of tax regimes in all three Mano River Union (MRU) countries – Sierra Leone, Liberia and Guinea.

- Internal controls: processes, systems, mechanisms for issuing licenses, as well as monitoring and oversight of diamond mining and dealing.
- Low value of exports since 2007
- Porous borders: smuggling from and into Sierra Leone
- Corruption: pervasive corruption and bribery
- Mines Monitoring Officers: are they adequately equipped in terms of knowledge, skills, resources and logistics to do their work properly and effectively?
- Fraudsters: growing number of 419ers in the industry

5. Key Issues that came Out of the Discussions

- Export taxes on diamonds in the MRU countries are the same, the objective being to minimize incentives for smuggling of diamonds in the sub-region.
- Smuggling is fueled largely by the desire of diamond dealers to seek improved prices and thereby maximize profits. Smuggling has become an organized crime in the country, with connections to other criminal activity, including drug trafficking and money laundry.
- Smugglers use unemployed young people and children as couriers across borders.
- There are about 250 MMOs covering the whole country; they have only one motor-bike and are paid less than US\$100 per person per month. Unlike the smugglers, the MMOs are logistically-impaired: there is only one motorbike, and they are not provided cellphones.
- Postwar Liberia, with far weaker internal controls than Sierra Leone, has once again emerged as a fencing nation of the smuggling of Sierra Leone's high-valued gems.
- Guinea registered an unprecedented increase in the diamonds they exported last year. The authorities there attribute this to new discoveries of diamondiferous areas within the country, but an assessment carried out by the KPCS team found out that the new discoveries were not enough to give Guinea their new high export figures.
- Poor paper trail: Exporters agents are supposed to sit together with their principals in their offices to record transactions of all purchases. But this is not happening. Most times, agents live in remote parts of the country, far away from their principals, where they purchase diamonds on behalf of their principals. The agents are required by law to register the number and caratage of all stones bought for export, which they then enter onto a ledger book. The ledgers are poorly designed, and not all relevant information is recorded. In fact, because of the persistent absence of the agents in the offices, high valued stones to be exported are not recorded as such, and the exporters simply add up smaller lower valued stones, which they then declare to the GGDO for valuation and tax purposes. They then replace these stones with higher valued stones for export, bypassing the new 15% tax on high-valued stones of more up to 11 carats apiece.
- Smugglers have started using courier services like the Red Coat to smuggle precious minerals out of the country. Last year, an attempt to smuggle gold using Red Coat was foiled by the police. It was also discovered that some of the people involved in this are licensed dealers, but because they want to avoid paying taxes, they revert to smuggling in connivance with fraudsters.
- The borders between Sierra Leone and its neighbours are very porous. There are 92 crossing points on the Sierra Leone-Liberia border through Pujehun District and only one of these is legal and manned by security personnel. There are over 400 unofficial crossing points between Sierra Leone and Guinea. With the very poor logistical capacity of the police and army, border patrols are purely notional.

- Small-scale mining companies are not recording any exports. This is probably in order to avoid paying corporate tax; and it clearly leads to smuggling.
- A Border Guard Security Unit has been established within the Office of National Security (ONS), and the training of border guards drawn from the Sierra Leone Police, Sierra Leone Army, Immigration and ONS is currently in progress in the country.

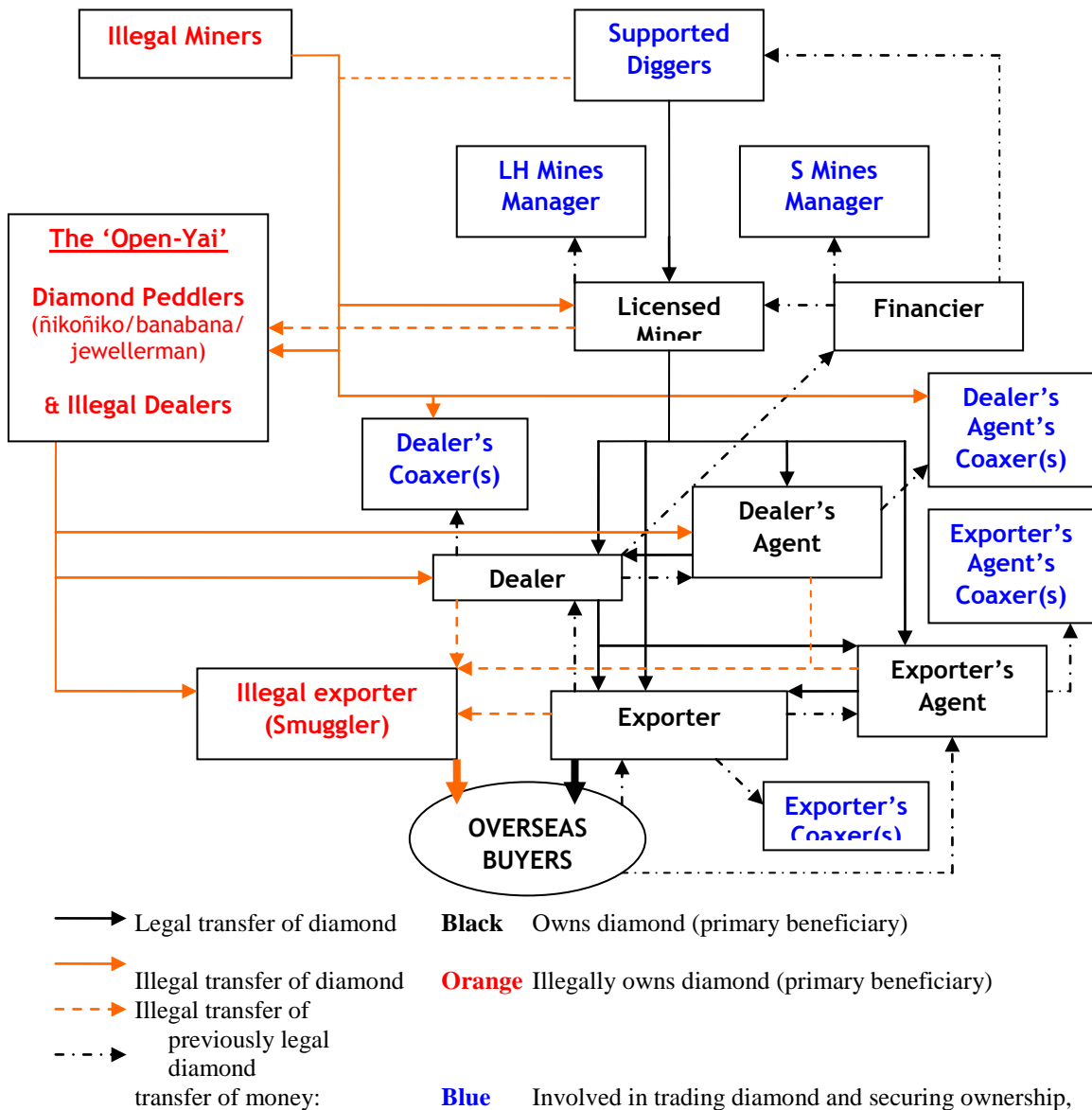
6. Profile a Smuggler?

While ethnic and other demographic profiling can be problematic, such profiling is integral to law enforcement. Most discussants at the workshop suggested that diamond smugglers are most likely to be from the Mandingo and Fula (Fulbe or Fulani) ethnic groups, because they have been historically associated with such cross-border trading networks, have relatives and business partners in all the MRU countries, and can easily claim citizenship in each of these countries. Because of these connections, they are always provided with timely information about happenings in the industry in the three countries and even beyond. A courier is now likely to be young – sometimes very young – unemployed Sierra Leone of mainly Mandingo extraction.

7. ROLES

7.1 Diamond Dealers

Diamond dealers are the most affected by the activities of smugglers. Genuine diamond dealers have to rent offices, pay taxes, pay salaries of staff and other overheads, which the smugglers are not obliged to do. Despite going through all of these rigours, dealers attending the workshop complained that they sometimes go for days, weeks and months without buying a single diamond. In essence, the smugglers are shoving dealers out of business.



7.2 The ONS

The Office of National Security, one of the effective security institutions created since the war ended – to coordinate all the state’s security institutions, army, police, customs, intelligence – does the following:

- Coordinate the work and activities of the various security and law enforcement agencies in the country.
- Has a special unit that deals with intelligence gathering and analysis. This unit has facilitated the arrest of smugglers and other criminals in the past.
- Has a border security unit, as well as a Serious Crimes Investigating Department. This last department works closely with other security and intelligence units in Sierra Leone and abroad to track down money launders, drug traffickers, and other smugglers. It also works with the Bank of Sierra Leone.

7.3 The Police

- There is the Precious Minerals Intelligence and Investigation Unit (PMIIU) within the Sierra Leone Police. It was established in 2004. This unit collaborates with the Ministry of Mineral Resources to curb smuggling and associated crimes. This is because the Ministry of Mineral Resources does not have the authority to carry out arrests. But the Unit is poorly funded; even the 0.05 percent that is to be provided for the operations of the unit from the 3 percent export duty is routinely used by the Ministry of Mineral Resources for other purposes..

8. Recommendations

The workshop made the following recommendations:

- There is a need for the creation of diamond buying centres in mining communities in order to bring diamond markets closer to the people. These markets should pay prices that are not vastly different from what is paid abroad. This will minimize smuggling. The GGDO should urgently consider this option.
- All diamond transactions should be done through the official banking system. This will help to minimize the use of dirty or laundered money in the diamond industry.
- Information gathering, processing, management and dissemination within the security and intelligence agencies in the country should be improved. In fact, a diamond desk should be established within the Sierra Leone Police or the Office of National Security.
- Methods of screening people applying for dealer and exporters licenses should be improved, and the police and other security agencies like ONS should be involved in the process. This will minimize the possibility of giving licenses to fraudsters.
- Organize training and other capacity building events for all those involved in monitoring the KPCS. The acquisition of knowledge should go along with the provision of logistics such as vehicles, motor-bikes, communication gadgets, etc. The KPCS needs to be properly institutionalized in Sierra Leone beyond the GGDO valuation and certification process.
- The Sierra Leone government should actively promote and implement the 40% compensation scheme for information leading to the apprehension of diamond smugglers.
- People working in the industry, as well as in security and intelligence agencies, should show a lot of sincerity, patriotism and commitment. No amount of training will make them effective if they are not ready to do it.

- Regional harmonization of natural resource management like diamond and gold should be enforced across the board using best practices.