

AMERICAN UNIVERSITY OF BEIRUT

CRIME, CORRUPTION, AND THE  
RESOURCE CURSE

APPROACHING GLOBAL GOVERNANCE IN THE  
COLOURED GEMSTONE INDUSTRY

by

THOMAS GUSTAV ALEXANDER SCHEUTZ SPENCE

A thesis  
submitted in partial fulfillment of the requirements  
for the degree of Master of Arts  
to the Department of Political Studies and Public Administration  
of the Faculty of Arts and Sciences  
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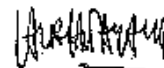


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# An Abstract of the Thesis of

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Title: Crime, Corruption, and the Resource Curse: Approaching global governance in the coloured gemstone industry

The coloured gemstone industry is a rapidly growing sector, but it suffers from a wide range of governance challenges including pervasive informality, an opaque environment that favours corruption, and widespread fraud and anti-competitive practices throughout the value chain. This thesis examines three examples in which similar governance challenges have been addressed at an international level in other extractive industries: the Kimberley Process in the diamond industry, the Fairtrade and Fairmined Standards in the gold industry, and the Extractive Industries Transparency Initiative. Based on these case studies, a certification programme targeted at gemstone traders is proposed, coupled with the development of a premium market to incentivise adoption of higher, voluntary standards. Such a governance scheme would enable greater transparency and revenue collection and impede fraud, while providing upwards pressure on working standards for miners. Recommendations are also made for how transnational advocacy groups can drive development of such a governance scheme, namely by applying public pressure on the global gemstone industry while working alongside governments and industry at a domestic level to design optimal certification processes.

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# Chapter 1

## Introduction

### 1.1 Resource Wealth and Sustainable Development

Countries which are home to significant deposits of natural resources face many possible benefits, but also significant challenges. First among these is the so-called ‘resource curse’. Originally coined in 1993 by Richard Auty, this hypothesis proposes that large resource endowments can cause drastic exchange-rate appreciation as raw materials are exported (Auty, 1993). This in turn makes import-dependent industries uncompetitive and leads to over-reliance on extractive rents in a process known as the Dutch Disease. Bolstered by a highly influential paper quantitatively linking resource dependence to reduced economic growth (Sachs & Warner, 1995), the concept of the resource curse began to take hold in academic and policymaking circles. Other theorists have proposed different mechanisms by which resource endowments may stymie growth, such as Tornell and Lane’s rent-seeking model, whereby voracity effects lead elites to transfer capital out of reach of taxation, resulting in slower overall growth (Tornell & Lane, 1999).

Subsequent work on the resource curse has expanded the thesis beyond these purely economic analyses by exploring the relationship between resource wealth and social and political issues. Corruption in particular has been associated with large natural resource endowments, both qualitatively (Shaxson, 2007) and quantitatively (Busse & Gröning, 2011). Quantitative studies have also linked natural resources with contributing to the onset, duration, and intensity of civil wars; lootable resources such as alluvial diamonds in particular have been linked to longer and more fragmented conflicts (Ross, 2003).

While the resource curse has become a widely recognised and accepted phenomenon, there have been criticisms of its applicability and scope. John Emery, for example, contends that the negative correlation identified between resource wealth and growth is “not sufficient to conclude resources are a curse”, and that the positive correlation between resources and income rates should be given

greater consideration as a mitigating factor (Boyce & Emery, 2011). Others have argued that the effect is valid, but that it requires certain preconditions (or ‘threshold effects’) to materialise – thus explaining why it is observed in some resource-rich countries but not others (Di John, 2011).

Further to the resource curse, the gemstone industry faces issues in its susceptibility to, and the prevalence in its supply chains of, crime (Naylor, 2010a). In many extractive industries (such as oil and gas production), the barriers to market entry are extremely high. Very few criminal groups have either the resources or impunity to develop their own oil wells or conduct seismic exploration. Similarly, the economically viable extraction of bulk metal ores requires heavy machinery that can increase the cost and visibility of illicit mining. For many gemstone deposits, however, precious stones are found in alluvial deposits close to the surface which can be excavated using simple hand tools such as picks, shovels, and pans. As such, gemstone mining is a highly accessible industry for both informal, artisanal miners and organised criminal groups. Furthermore, gemstones have by their nature an extremely high value-to-weight ratio, making them comparatively easy targets for cross-border smuggling. White-collar crime is also prevalent in the mining business, including that of gemstones. Corruption and money-laundering have both been identified as major challenges for the industry to overcome (Zabyelina & van Uhm, 2020).

The close links between the gemstone industry and illicit activity became a major topic in the literature during the 1990s and 2000s with the onset of several conflicts in West Africa. The role of illicit extraction and export of diamonds and timber in funding these conflicts led academics such as David Keen to highlight the “blurring of war and crime” (Keen, 1996). This concept was further developed by Mary Kaldor, who in 1999 proposed her theory of ‘New Wars’ – conflicts in which there were no clear “distinctions between war, organized crime and large-scale violations of human rights” (Kaldor, 1999). This theory was readily adopted by international organisations, with an influential World Bank study finding that “the extent of primary commodity exports is the largest single influence on the risk of conflict” (Collier & Hoeffler, 2000). Eventually, through the influence of non-governmental organisations (NGOs), this approach was translated into concrete policy responses such as the establishment in 2003 of the Kimberley Process to certify diamonds and prohibit the sale of those originating from conflict zones.

This early work linking crime with conflict has since been expanded, giving rise to a wide literature on the negative impacts of organised crime. Of particular prominence is the so-called ‘crime-terror nexus’, an observed relationship between illicit activity and terrorist actors (Hutchinson & O’Malley, 2007). However, funding and enabling conflict is not the only issue associated with organised crime. A 2019 report by the Transnational Alliance to Combat Illicit Trade (TRACIT) ascertained that organised crime negatively impacted every one of the UN’s seventeen Sustainable Development Goals (TRACIT, 2019). The illicit



trade in precious metals and gemstones in particular was identified as impeding ten different Sustainable Development Goals across the fields of economic development, human wellbeing, environmental stewardship, and conflict prevention.

Despite these severe and common negative impacts, a number of scholars of crime and development have pushed back against the assumption that crime is exclusively harmful. Instead, they emphasise the positive externalities that illicit trade can beget, such as employment and informal governance structures. In her studies of the Afghan conflict and the narcotics trade, Vanda Felbab-Brown has emphasised the major role that opium poppy cultivation plays in the employment, wellbeing, and social mobility of poor Afghans (Felbab-Brown, 2011). Because of this, she notes, repeated attempts to crack down on the trade by both Taliban and Coalition forces have been met with severe grassroots opposition. Similarly, in his analysis of West African conflicts, William Reno finds that criminal reform “often finds severe limits when it confronts networks that provide security and income to large numbers of people.” (Reno, 2009)

Further to providing employment, a long-standing strand of international relations literature, epitomised by Charles Tilly’s *War Making and State Making as Organized Crime*, posits that modern Westphalian states and governance structures are the ultimate product of increasingly sophisticated protection rackets (Tilly, 1985). Supporting this theoretical approach, Max Gallien has described the role of transnational crime – in this case smuggling in the borderlands on North Africa – in creating informal structures of governance between the state and otherwise marginalised groups (Gallien, 2019). This new approach has begun to influence policy practitioners, with a recent Chatham House publication on conflict economies advocating for states to tolerate some forms of organised crime which provide material support to local populations (Eaton et al., 2019).

## 1.2 The Role of Transnational Advocacy Groups

Between this academic debate over the roles of crime, corruption, and the resource curse in sustainable development and the realities of governance sit a number of transnational advocacy networks. These groups are defined by Margaret Keck and Kathryn Sikkink as “non-state actors who interact with each other, with states, and with international organizations” structured in networks and characterised as potentially involving a wide range of actors: companies, scientists, activists, etc. (Keck & Sikkink, 2002). This definition includes a broad array of NGOs, ranging from public activist networks such as Greenpeace to think tanks such as the International Crisis Group, each of whom adopts different strategies in order to promote their values. Several authors have sought to categorise the approaches that these advocacy networks adopt in order to better understand the reasons for adopting them and their impacts, giving rise to a range of theoretical systems for describing NGO strategies.

Lisa Maria Dellmuth and Jonas Tallberg identify a distinction between ‘inside’ and ‘outside’ lobbying efforts by advocacy networks who work with international organisations (Dellmuth & Tallberg, 2017). In this formulation, inside lobbying consists of engagement with private politics and “direct interaction with decision-makers”. This can range from formal partnerships or advocacy campaigns to knowledge production and dissemination. In contrast, outside lobbying approaches leverage the public political sphere, seeking to apply indirect pressure to policymakers by influencing public opinion. The organisation of protests, boycotts, and public information campaigns are examples of such outside lobbying strategies. Both inside and outside approaches have advantages and drawbacks. Leveraging private politics can reward an advocacy group with privileged access to decision-makers through partnerships or other relationships, enabling them to directly impact policy. Adopting such an inside strategy has also been shown to provide material benefits in the form of funding from large foundations and corporations (Brulle & Jenkins, 2010). However, inside strategies can struggle to shape public discourse and shift opinion. Outside strategies excel at this, despite their often inferior access to policymakers. Focusing on the public political sphere can also provide an important income stream for membership-based organisations, whose revenue is tied to their public profile (Dellmuth & Tallberg, 2017). This does, however, require them to be less specific in their demands, instead providing a big-tent position that can win over large numbers of potential supporters.

Thomas Lyon recognises a similar split, but argues that the main dichotomy in NGO strategies is one of “confrontation vs. cooperation” (Lyon, 2010). These approaches can take a variety of forms, and can be used in combination with either inside or outside lobbying strategies. Advocacy groups can endorse the positions of governments or companies, and they can support efforts at self-regulation through capacity-building and monitoring. These activities are highly cooperative, and can reinforce positive behaviours such as effective corporate social responsibility. However, too much collaboration with organisations which are perceived to be the cause of problems can harm NGOs’ credibility, reducing their ability to effect future change (Maxwell, 2010). Alternatively, NGOs have coercive tools available to them if and when cooperation does not prove fruitful. Denouncements, boycotts, or disruptive action through, for example, activist shareholders can be used to punish firms and governments for their failings. Even the threat of such actions can encourage changes in policy, making them a powerful tool when used appropriately (Maxwell, 2010).

Another axis along which advocacy groups’ strategy can vary is that of scale. NGOs can act at a range of scales, from the local to the international. In general, a changing focus on this scale involves a trade-off between legitimacy and impact: an advocacy network which operates at the international level has the potential to influence worldwide policy through the development of norms or treaties, but they may in return suffer from a loss of legitimacy if they are seen to be attempting to

undermine state sovereignty or engaging in neo-colonialism (Bernstein & Cashore, 2012). At the other end of the scale, a local NGO may be able to develop significant legitimacy by building direct relationships with its constituents and leverage this to great effect, but will struggle to impact conditions in areas outside of its core operations. That is not to say that exercising influence at a range of scales is impossible. On the contrary, there is important interdependence between these different levels of scale. In particular, the interactions between domestic policymaking and international negotiations have been widely studied (Kaarbo, 2001; Nikolaev, 2007); advocacy groups can play a role in the latter through the impact of domestic advocacy on government negotiation positions. In the other direction, by promoting international norms NGOs can have second-order impacts on the decision-making calculus of domestic policymakers.

The demands of transnational advocacy groups are also subject to a range of scales. Katharina Rietig describes a split between ‘macrodemands’ and ‘microdemands’ from NGOs (Rietig, 2016). Macrodemands are those which are wide-reaching, but often vague. Campaigns for climate justice, for example, would be considered macrodemands in this context as they encompass a broad range of possible outcomes. Microdemands, however, are highly targeted - they may be specific policy recommendations or changes to technical specifications. Macrodemands tend to be easier to communicate to the wider public and to generate interest, and they can provide a big tent for otherwise different interests to work together. However, macrodemands can be harder to achieve than microdemands, which are often more immediately achievable and for which advocates are able to apply targeted pressure to key decision-makers.

It is also important to examine the role of transnational advocacy groups in defining the terms of change. Many large international NGOs act as both advocates and knowledge producers. This gives them a great deal of power to set the terms of debate and define the issues and questions that are to then be addressed by them. This dual role has been evident in discussions of the resource curse - the 2000 World Bank report, for example, which linked commodity exports with conflict served to define the issue which organisations such as the World Bank themselves could then set out to ‘fix’. As outlined in the discussion of scale above, this approach to global governance is rooted in neo-colonialism and as such is rightfully criticised (Bernstein & Cashore, 2012).

### **1.3 The Coloured Gemstone Industry**

The coloured gemstone industry refers to the global production of and trade in a wide range of mineral products. The variety of products that this definition encompasses ranges from traditional ‘precious’ gemstones such as ruby and sapphire to far more common stones like quartz, and even to rare specimens of little commercial importance such as radioactive poudretteite. Notably, however, dia-

monds (even those with distinctive colours) are not included under the umbrella of the coloured gemstone industry. Because of this diversity, the scientific field of gemology seeks to classify coloured gemstones according to their chemical compositions and structures. Rubies and sapphires, for example, are both members of the corundum family; they are formed from crystalline aluminium oxide and obtain their colours from impurities in the crystal lattice - chromium in ruby's case. Similarly, emeralds and aquamarines are both examples of the beryl family, which has a considerably more complex structure of beryllium aluminium cyclosilicate.

### Coloured Gemstones' Value

Different species of coloured gemstones can be wildly different in value. Rarer stones are often more sought-after than their more commonplace cousins - while an untrained eye may not be able to readily differentiate between a typical ruby and a red garnet, the price tag for the former is likely to be an order of magnitude higher. At the same time, the value of ostensibly similar gemstones can vary enormously, as coloured gemstones are decidedly not fungible. In many mineral industries the value of a product is determined simply by its quantity and purity, and one shipment can easily be substituted for another of the same value. One emerald, however, cannot simply be replaced with another as a gemstone's value is based on a *perceived* quality. Unlike in the diamond industry, there is no universal grading system which can be used to value a coloured stone. Instead, each individual coloured gemstone is assessed for its value. This will typically be based on four characteristics, known as the four Cs: colour, cut, clarity, and carats (Gilbertson, 2018).

Colour refers to the hue of the stone, and is the main factor that drives value - deeper, richer colours are typically more valuable than paler alternatives up to a point, but a stone that is excessively dark will also lose value. The uniformity of a gemstone's colour will also have a significant influence on its value. Uneven distribution of colour within a stone is known as 'zoning' and will reduce the retail value of a gem if it is visible to the naked eye.

The cut of a gem refers to the shape and style in which a rough stone has been prepared during the cutting and polishing process, as well as the quality with which these processes have been carried out. Common examples include the brilliant cut, a highly intricate style which maximises the light-scattering effects of a stone, and the more subdued step cut which is commonly used for rectangular or oblong stones. The cut of a coloured gemstone is thought to make up approximately 10% of its value, with more saleable shapes (such as round or pear-shaped cuts) and higher quality faceting (which should avoid windowing and make a stone sparkle uniformly) being more valuable.

A gemstone's clarity is dependent on the number and nature of inclusions within it. An inclusion is "any material that is trapped inside of another mineral",

and can include solids, liquids, gasses, or even simply internal fractures. In general, the fewer inclusions and the less visible they are, the more valuable a stone will be. This is because inclusions typically impede the passage of light through a gemstone, reducing its luster and sparkle and making it appear cloudy. For some stones specific inclusions can increase the value, as they can reflect light within the stone in desirable ways. Microscopic copper inclusions in sunstone, for example, give the gem a quality known as ‘adventurescence’, which gives it a warm, glittery appearance popular with jewellers and consumers.

The final C, carats, refers to the size of a stone. For coloured gemstones, bigger does not always mean better. Stones which are sized appropriately for use in jewellery tend to have highest value-to-weight ratios. Stones which are too small have few uses, and stones which are too large cease to be useful and show diminishing returns with lower values per carat. On occasion, very large stones can fetch high prices due to their rarity, particularly if they have very good colour. Rough stones tend to be much heavier than the final cut products - yields from the cutting process are typically below 50%. In this process, however, very large rough stones can be cut into multiple, more appropriately-sized finished gems, thereby improving the value of the product.

Further to the four Cs, a stone can obtain value from intangible features. In particular, and in contrast to diamonds, the geographic origin of a stone is of great importance. A sapphire from Kashmir, for example, would fetch a significant premium over an otherwise identical specimen from Tanzania.

Assigning a total value to the coloured gemstone industry is challenging, as much production around the world goes unreported. However, the Natural Resource Governance Institute (NRGI) recently estimated the annual trade in rough stones to range from US\$4.75bn to US\$9.25bn, including jade (Shortell & Irwin, 2017, p.7). A great deal of value is added to these rough stones before they are eventually sold as jewellery; estimates suggest that the final value of the coloured gemstone jewellery market could be higher than US\$19bn per year (Shortell & Irwin, 2017, p.7). This estimate follows a decade of extremely strong demand growth in the coloured gemstone industry, with many headline stones (including sapphires, emeralds, and rubies) doubling in price between 2005 and 2015 (Genis, 2016).

## **Value Chain**

Coloured gemstones have a fairly linear value chain, beginning with exploration and extraction. Due to the wide range of minerals encompassed by the industry, the geological deposits in which coloured gemstones are found vary. As such, coloured gemstones can be found in deep formations (known as primary deposits) which require both technical expertise and significant capital expenditure to access, but also in shallow, alluvial deposits. Extraction from these formations is

considerably easier, and allows a large number of small-scale and artisanal miners to participate in the coloured gemstone industry. These miners are thought to account for 70-80% of the world's coloured gemstone production excluding jade, much of which is dominated by national companies in Myanmar (Shortell & Irwin, 2017, p.8).

Once a coloured gemstone has been mined, it is traded as a rough stone. As a result of the informality in mining processes, much of this trading activity also has highly informal characteristics. In Mozambique, networks of traders operate in the ruby-producing areas of Cabo Delgado province, aggregating supply from artisanal miners (or *garimpeiros*) for onwards smuggling out of the country to buyers abroad. In many countries, including Mozambique, these traders represent a mixture of locals, citizens of buying countries, and third country nationals (Hunter & Lawson, 2020, pp.34-35). Not all rough gemstone markets operate this way; there is a great deal of variation between countries in this part of the gemstone value chain. Where large companies have become involved in the extraction of coloured gemstones, for example, rough gemstones are marketed through semi-regular official auction processes (*Emerald Auction Results*, 2021).

The midstream portion of the gemstone value chain consists of processing to add value. The exact processes employed vary slightly depending on the stone in question, but typically include cutting and polishing. These procedures transform a rough gemstone into the familiar, sparkling, geometric shapes that consumers are familiar with and vastly increase the stone's value in the process. Other treatments may also be used to increase the value of gemstones during the midstream processing, including heating and dyeing to alter the clarity and colour of stones.

The processing of rough coloured gemstones into cut and polished products is dominated by a small number of industry hubs. These are largely concentrated in South and South-East Asia, with the India (in particular the city of Jaipur), Sri Lanka, and Thailand accounting for the bulk of coloured gemstone processing (along with China's Guangzhou, which is a leading jade processing center).

Cut gemstones are once again traded before entering into the final, downstream, segment of their value chain. At this stage, jewellery manufacturers incorporate the stones into their products for sale into the retail market. Sales are broadly concentrated in the North American market, although regional tastes mean that typical end markets vary by gemstone.

In addition to this linear value chain, a parallel upstream segment of the value chain has begun to emerge for coloured gemstones. A wide variety of coloured gemstones - including three of the most prestigious stones, ruby, sapphire, and emerald - can now be produced by synthetic means, providing an alternative to the traditional mining upstream. Synthetic gems are, however, typically viewed as less desirable than their natural analogues (although they can be difficult to detect), and as such sell at a discount.

## Governance Challenges

The structure of the coloured gemstone industry has given rise to a number of governance challenges. The prevalence of artisanal mining means that much of the upstream industry is highly informal and rarely licensed. As such is not subject to government control. While this arrangement does provide certain benefits for miners (including flexibility, mobility, and lowered tax burdens), it also reduces the ability for governments to attempt to make positive interventions. The resulting labour conditions are poor, often involving dangerous conditions and child labour. In the Fungamwaka area of the Democratic Republic of the Congo's South Kivu province, six workers were killed when a tunnel in an informal tourmaline mine collapsed in 2014 (IPIS, 2016, p.46). Lack of government oversight also leads to environmental damage as a result of artisanal mining (Paling, 2007). This includes mining in protected areas, which risks damaging delicate ecosystems, and minimal efforts to repair damaged landscapes after mining operations have been wound down. The informality of coloured gemstone mining also has an impact on government revenues. Without proper visibility of artisanal miners, governments are unable to levy appropriate taxes on their activities. Madagascar alone is thought to be missing out on millions of dollars of tax revenue to unreported ASM (*Madagascar*, 2020) - a significant sum for one of the world's poorest nations.

Artisanal miners have also come into conflict with formal mining companies over coloured gemstone deposits. The Montepuez ruby fields in northern Mozambique have been repeatedly marred by conflict between international license-holders and informal miners. Local artisanal miners attacked Gemfields' operations in the area in both 2019 and 2020 in an attempt to gain access to the rich ruby deposits. At their peak, these attacks involved up to 800 miners and lead to eleven deaths. The violence has not been one-sided though, as Gemfields has been accused of attacking and abusing artisanal miners' human rights around its Montepuez site in coordination with Mozambican security forces (*Gemfields Press Statement*, 2018). While the company has denied these accusations and admits no liability, a compensation settlement was reached in 2019. This sort of collective action is not unusual for artisanal miners, although formal organisation and representation through instruments such as labour unions is extremely uncommon.

The opaque pricing structure used for coloured gemstones and the treatments that can be applied to them act as drivers for fraud in the supply chain. Misrepresentation of the origins of a gemstone is common, as it enables dealers to charge geographic premiums to their customers. As Thomas Naylor observed in Thai trading centres:

*“Thus, all rubies purchased in Thailand exit with certificates attesting to Thai origins. Beyond Customs, certificates miraculously appear attesting to Burmese provenance ... sometimes the rough stones came*

*from Thailand, Cambodia, Vietnam or even Kenya.”* (Naylor, 2010b, pp.225-226)

This form of fraud is extremely difficult to detect, even with dedicated laboratory analyses. Similarly, the false labelling of less-desirable synthetic stones as natural can allow vendors to inflate their prices. The emergence of more complex treatment methods to enhance a stone’s value has also provided opportunities for unscrupulous traders to make money. By treating a stone to, for example, improve its colour, a seller can make it more impressive and charge a higher value for it. However, if the trader also claims that it is untreated, then a buyer may be willing to pay an even higher price, believing that they will be able to enhance it further.

As with many other extractive industries, there are also concerns over a lack of transparency in the coloured gemstone trade. In Mozambique, for example, ruby concessions were allocated through an opaque process to local companies. Many of these concessions ended up in the hands of Mozambican political elites, including General Raimundo Pachinuapa, former governor of Cabo Delgado province; Felicio Zacarias, former FRELIMO public works minister; and David Simango, the former mayor of Maputo among others. The politically-connected nature of the concession awards process in Mozambique extends to the partnerships that have developed with international companies. General Pachinuapa’s Mwriti Limitada partnered with Gemfields to create the joint venture Montepuez Ruby Mining (MRM) in 2011 (Hunter & Lawson, 2020, pp.35-36). A simple LinkedIn search indicates that Pachinuapa’s son Raime is MRM’s director of corporate affairs while Companies House lists Samora Machel Jr, son of Mozambique’s first President, as its chairman. Similarly, Fura Gems (which has recently expended its operations in Mozambique) is connected to Felicio Zacarias through its acquisition of rights from Regius Resources. While these political connections may be legitimate, they raises serious questions about the openness of business practices in the upstream sector of the coloured gemstone industry.

Anti-competitive practices are thought to be particularly prevalent in the mid-stream section of the value chain. The consolidation of cutting, polishing, and treating processes into only a few powerful centres has created barriers to the development of domestic industries in other countries which are actively maintained by those who currently dominate the trade. When Vietnam attempted to develop a domestic cutting industry, for example, members of the Thai industry reportedly released synthetic stones labelled as Vietnamese into the market to destroy their nascent rival’s reputation (Naylor, 2010a, p.145). This protectionism makes it extremely difficult for producer countries to develop any form of value-adding industry, leaving them vulnerable to the resource curse.



## 1.4 Research Question

The coloured gemstone trade has historically been peripheral to transnational advocacy networks due to its unusually high levels of informality, diffuse nature, and relatively small size. However, over the last few years the sector has begun to take on more formal characteristics as global interest in coloured gemstones has increased. Large international companies such as the UK-based Gemfields have started to expand their coloured gemstone mining operations, shifting the balance away from artisanal and small-scale miners. As a result, governance in the coloured gemstone sector is beginning to emerge as a topic of interest to NGOs and development organisations. The NRGi - an international NGO dedicated to guiding governments towards principles of good governance in the extractive sector - began to explore the topic in 2017 (Shortell & Irwin, 2017). The Global Initiative Against Transnational Organised Crime (GI-TOC) followed in 2020 with a study on Africa's illicit coloured gem trade (Hunter & Lawson, 2020). No clear consensus has yet emerged, though, on how such organisations could approach the coloured gemstone industry.

In this thesis, I seek to answer the question of how NGOs can best promote sustainable and inclusive development in the global coloured gemstone industry. To do this, I will analyse the development of global governance structures across three distinct case studies.

Since such structures are not yet found in the coloured gemstone industry, these case studies will necessarily be drawn from other sectors. In order to ensure that the case studies are relevant to the coloured gemstone industry, the scope of this study will be restricted to only extractive industries, defined by UNCTAD as “*processes that involve different activities that lead to the extraction of raw materials from the earth, processing and utilization by consumers*” (Sigam & Garcia, 2012, p.3). This is the group of industries most closely related to the coloured gemstone industry - many of them suffer from the same challenges of informality, corruption, environmental damage, and the ‘resource curse’. In contrast, other sectors (such as financial or manufacturing businesses) face a considerably different landscape of problems and as such will require different solutions.

The extractive industry which presents the closest analogue to coloured gemstones is the diamond business - so much so that the two trades are often conflated. The diamond industry is regulated by the Kimberley Process, a unique international agreement bringing together states, industry, and civil society. The close similarities between diamonds and coloured gemstones make this a critical case study to analyse if insight into the opportunities for governance over coloured gemstones is to be obtained.

The second case study will be focused on the gold industry, and in particular on attempts to transplant governance methods from other sectors onto it. Gold has recently been the subject of a campaign to develop voluntary standards to

improve working conditions and environmental standards in small-scale mines. This campaign has been based on Fairtrade's market-making approach to agricultural businesses, with consumers encouraged to make ethical choices and pay a premium to incentivise their uptake. This attempt to regulate a resource without government involvement is unique among extractive industries, and as such it is deserving of study.

The final case study will cover the largest attempt to regulate global extractive industries so far - the Extractive Industries Transparency Initiative (EITI). The EITI's remit covers all remaining extractive resources, and even has some overlap with regulation of gold and diamonds. In some countries, the EITI has already incorporated limited reporting on coloured gemstones; however the suitability of this framework as a solution for coloured gemstones' many challenges has not yet been investigated in detail.

For each of these case studies, I will detail the processes that led to their implementation and the methods by which they operate before moving on to a discussion of the strengths and weaknesses that they exhibit. I will then bring these case studies together to discuss what aspects of each of them could be and should be used to develop an international governance system covering coloured gemstones. In making these recommendations, the similarities and differences between coloured gemstones and the case study industries will be considered, as will the challenges introduced above which impact the industry. Following these recommendations, I will explore how transnational advocacy groups could best work towards the implementation of such a governance system. This discussion will be conducted with reference to the strategies used by NGOs in the case studies and will be centered in the theoretical frameworks for transnational advocacy strategies outlined above.

While answering this research question it is important to remain aware of the relative positions of different actors. Transnational advocacy groups are unlikely to fully understand all of the issues that participants in the coloured gemstone market face, and risk projecting their own preferred solutions onto populations who neither want nor need them in a manifestation of neo-colonialism. At the same time, different groups of participants will necessarily be motivated by self-interest when defining the issues they see in the industry. Gemstone cutters in Thailand, for example, will have a very different set of priorities to artisanal miners in Colombia or to British mining executives. While this thesis and its research question could be considered by some to be a contributor to the paternalistic approach of international NGOs, it is nonetheless an important question for transnational advocacy groups to answer if they seek involvement in this sector (as both the NRG and GI-TOC have already done). In order to avoid the pitfalls outlined above, I will aim throughout this thesis to judge prospective approaches not only on how they address governance challenges, but also on how they impact the most marginalised and least organised members of the coloured gemstone value chain.

The outcomes of this analysis will be directed at those NGOs, such as the NRGi or GI-TOC, who may wish to influence the development of the coloured gemstone industry; in the conclusion to this work, I will provide summary recommendations as to what strategies and goals these transnational advocacy networks should adopt in order to help build effective governance structures in the coloured gemstone industry.

## Chapter 2

# Case Studies: Approaches to Global Governance

### 2.1 Diamonds: The Kimberley Process

#### Background

Perhaps the most obvious place to find a governance model for the coloured gemstone industry is in its close cousin: the diamond trade. The value chain of diamonds is analogous to that of coloured gemstones - rough stones are mined from a mixture of deep and alluvial deposits; these are then traded and shipped to cutters and polishers; and the finished stones are once again traded before shipping to jewellers and other consumers. Diamonds also have a secondary market which coloured gemstones do not in industry, where they are used in various applications (as abrasives, for example) due to their high hardness.

At the beginning of the 21<sup>st</sup> Century, the diamond industry was dominated by a small number of actors and was regularly described as a cartel (Dharmadhikari, 2008). Two factors contributed to this state of affairs. First, diamond production is (much like that of individual coloured gemstones) confined to only a few geographies. From 2001-2005, just four countries (Botswana, Australia, Russia, and the Democratic Republic of the Congo) supplied 77% of the world's rough diamonds by weight (Janse, 2007, p.109).

At the same time, a small number of companies dominated the diamond trade along the entire value chain, most notably De Beers. Originally founded in South Africa in 1888 by Cecil Rhodes, De Beers today is a London-based international company comprising major operations along the entire diamond value chain. Under the stewardship of the Oppenheimer family, De Beers enjoyed a near-monopoly on the global diamond trade for much of the twentieth century. In 1934, De Beers founded the Central Selling Organisation (CSO) in London. The CSO played the role of middleman in the diamond trade and controlled access to the industry through its 'sightholder' system, wherein only certified buyers could

participate and even then they could not negotiate over prices (Dharmadhikari, 2008). For years, De Beers used this cartel system to maintain control over the world's rough diamond supply, and with it diamond prices. Through the CSO, De Beers controlled distribution of both its own production and that of prospective competitors. Any country or company which attempted to bypass the CSO and De Beers' stranglehold was roundly punished. In 1977, De Beers quashed attempts by Israeli traders to operate independently; four years later it flooded the market to crash the price of Zairian diamonds in response to Zaire refusing to sell to De Beers (Siegel, 2009, p.35). As a result, De Beers was able to restrict diamond supply when demand was low, maintaining prices and ensuring that diamonds always had the appeal of exclusivity. During this period of dominance, De Beers would even go so far as to hire former intelligence operatives and criminals to spy on and disrupt competitors' businesses (Siegel, 2009, p.35).

However, this cosy arrangement had started to change by the early 2000s. As more countries began producing diamonds, the existing cartel structure that had dominated the industry for more than a century began to collapse as De Beers' found it increasingly difficult to prop up prices; in 2004, De Beers was even officially found to have engaged in price-fixing (Siegel, 2009, p.37). At the same time, growing awareness among policymakers and the general public of the role that 'blood diamonds' had played in financing civil wars in Sierra Leone, Angola, and the DRC (as well as De Beers' involvement in this side of the business) led to increased pressure from the public on the diamond industry to adopt a new system of governance.

It was in this context that the Kimberley Process came into being. The transnational advocacy group Global Witness was one of the main drivers behind the Kimberley Process' formation. After publishing highly critical report into the problem of conflict diamonds entitled *A Rough Trade* in 1998, Global Witness made contact with the Jewellers Vigilance Committee (JVC), an industry organisation which had since 1912 attempted to self-regulate the jewellery business to improve business ethics and with them public trust. JVC recognised the potential reputational threat to its members that Global Witness' report posed, and joined together with other industry representatives to form the World Diamond Council (WDC) and began lobbying politicians to deal with the conflict diamonds issue in a way that was acceptable to the industry.

This led to a tug-of-war between the diamond industry and several producing nations on the one side and a range of transnational advocacy groups and concerned politicians on the other. The industry sought to achieve the minimum possible regulation at a global level that would deal with the problem of conflict diamonds, heading off both public opinion and the possibility of more stringent requirements being introduced at a national level. The NGOs wanted much tighter regulations placed on the diamond industry, including strict reporting, transparency, and licensing requirements. While the industry and major producers held much of the negotiating power, NGOs such as Amnesty International

demonstrated their ability to cause problems to the diamond trade if their demands went unmet by organising public protests. Negotiations (including state, industry, and NGO representatives) continued in the former diamond-mining town of Kimberley in South Africa over two years, from 2000 to 2002.

## The Kimberley Process in operation

The agreement that resulted from this process was the Kimberley Process Certification Scheme (KPCS), which came into effect in January 2003. The KPCS core document is not, however, regarded as an instrument of international law. The state delegates to the Kimberley Process negotiations were not imbued with treaty-making authority by their governments, and representatives of NGOs and industry certainly have no such power. The core document required neither signature nor ratification, and as such it must be considered “non-binding as a matter of international law” (Schefer, 2018, p.83). This interpretation is supported by much of the language used to describe the Kimberley Process. The US State Department describes it only as “an international, multi-stakeholder initiative” (*Conflict Diamonds and the Kimberley Process*, 2021), while the Kimberley Process itself uses the phrase “multilateral trade regime” (*What is the Kimberley Process?*, 2021).

However, some scholars argue that the Kimberley Process has become a piece of international law over time. Daniel Feldman suggests that because “individuals have changed and will change their behavior to avoid violating its commands” (Feldman, 2014, p.870), the Kimberley Process has acquired many of the characteristics of international law. This argument sees the KPCS as satisfying the two requirements of having developed into a piece of customary international law: state practice and *opinio juris*. Whether such an argument would be borne out if challenged is, however, unclear, particularly given that the careful language used by many parties in reference to the KPCS suggests attempts to avoid fulfilling the second of these requirements.

Given the ambiguity over its status, the KPCS could be described as a piece of ‘soft law’ - a quasi-legal document which, while it does not produce legally-binding obligations which could be enforced by a court, does create norms and expectations of behaviour from its participants.

Regardless of its status under international law, the Kimberley Process represents an active means of regulating the diamond trade. Now in its eighteenth year of operation, the KPCS features a diverse array of actors. Eighty-two countries are involved as participants in the Kimberley Process; they are joined by a number of civil-society groups and the diamond industry itself, represented by the WDC. All of these participants meet biannually, with a different country acting as chair each year. Seven smaller committees exist within the KPCS, formed from subsets of the organisation’s participants. These focus on particular aspects of the Kimberley Process, such as artisanal and alluvial production or monitoring.

Implementation of the KPCS is the responsibility of the states which are participants to it. These states must meet certain ‘minimum requirements’ set out by the KPCS through the development of domestic legislation and national institutions. Once a state has met these requirements, they are permitted to trade with other countries that have met the minimum standards and to issue their own Kimberley Process Certificates. These certificates are required for the international shipment of rough diamonds and serve to guarantee that they are not conflict diamonds - defined by the KPCS as:

*“rough diamonds used by rebel movements or their allies to finance conflict aimed at undermining legitimate governments, as described in relevant United Nations Security Council (UNSC) resolutions ... and as understood and recognised in United Nations General Assembly (UNGA) Resolution 55/56, or in other similar UNGA resolutions which may be adopted in future.” (KPCS Core Document, 2021, p.3)*

The requirements set out by the KPCS for certificating countries cover a range of factors and include both compulsory and suggested measures. To be allowed to trade in rough diamonds, countries must establish “internal controls designed to eliminate the presence of conflict diamonds” (*KPCS Core Document*, 2021, p.7) and institute laws that enforce these controls, along with penalties for breaking them. States must have a designated authority to govern imports and exports, and must require rough diamonds to be transported using tamper-proof methods. Finally, participant countries must provide official data on their diamond trades to the other participants in the KPCS. On top of these requirements, states are encouraged to follow further recommendations including stringent licensing procedures for miners and traders, digitisation of records, and direction of all cashflows through official banking processes.

States’ compliance with these requirements is monitored primarily through annual reports on implementation measures submitted in advance of the KPCS’ plenary meetings. At the plenary meetings themselves these reports are peer reviewed by the current chair and participants. If this process suggests significant non-compliance, additional verification measures in the form of ‘review missions’ can be requested. These review missions are intended to comprise five members representing three (geographically-balanced) participant states, civil society, and the diamond industry.

In instances of serious non-compliance, a country may be suspended from the KPCS and barred from international trade in rough diamonds. During its nineteen years of operation, three countries have been removed from the scheme for breaching their requirements. The first suspension came in 2003, the first full year of operation. Following François Bozizé’s coup d’etat, the Central African Republic (CAR) was suspended from the scheme over doubts that it had the capacity to implement the Kimberley Process’ requirements (Davidson, 2016, p91).

However, following a review mission, it was decided that CAR was successfully maintaining its control over the diamond industry and the country was reinstated. CAR was once again expelled from the KPCS in 2013 following the seizure of Bangui by Seleka rebels. Certain regions of the country were readmitted into the Kimberley Process in 2016 following the imposition of government control, representing a new, more granular approach for the KPCS.

In 2004, Lebanon was also briefly suspended for failing to enact stringent enough legislation, although domestic laws were swiftly passed to rectify this and the country was readmitted (Davidson, 2016, p91). In a more serious breach the same year, the Republic of the Congo was suspended following claims that it was facilitating smuggling from neighbouring DRC and thus evading the DRC's certification processes (BBC, 2004). Within a matter of months, the Kimberley Process had conducted a review mission which found serious discrepancies in the Republic of Congo's production and export figures - as a result, the country was suspended from the KPCS. After these measures were taken, an increase in formal, certificated exports from DRC was observed, suggesting that they had successfully curbed the smuggling. Three years later, a new review indicated that the Republic of Congo had reformed sufficiently to meet all of its KPCS requirements, and it was reinstated to the scheme (Davidson, 2016, pp.92-93).

The fourth country to face suspension was Côte d'Ivoire. In 2004, after being informed that conflict diamonds were being produced in the north of Côte d'Ivoire (then held by rebel groups), the chair of the KPCS banned members from trading in rough diamonds with Côte d'Ivoire. This happened after dialog with the Ivorian government, and in parallel with a domestic ban on the export of rough diamonds. Kimberley Process certificated diamond exports from Côte d'Ivoire eventually resumed in 2015 following the implementation of recommendations from a review mission carried out in 2013 (Davidson, 2016, pp.92-93).

## **Criticism of the Kimberley Process**

While these instances of swift punitive action by the KPCS, combined with its rapid adoption and growth, might suggest that it is a rare example of an effective international agreement, several critics contend that it is in fact the opposite. The Kimberley Process suffers from many of the same weaknesses that other international agreements do. In order to secure the agreement of its many participants, the KPCS Core Document is written to give a great deal of latitude to its signatories - described by Michelle Murdock as "One of the KPCS's best and worst attributes" (Murdock, 2021, p.476). This flexibility manifests in several ways. Perhaps most significantly, states are given to enact their own legislation to implement the Kimberley Process domestically. This approach is similar to other international agreements, such as the United Nations Convention against Transnational Organised Crime (UNTOC), which requires signatories to pass laws prohibiting various forms of organised crime but does not specify exactly



what legislation should be introduced.

An additional concession to participant states is in the wording used to govern decision-making under the KPCS. All decisions in KPCS meetings are required to be reached “by consensus”; if consensus cannot be reached then the chair is required to “conduct consultations”. However, the core document does not define consensus, and although it is typically taken to mean unanimity in other international agreements, some commentators have highlighted a range of possible interpretations in the context of the Kimberley Process (Smillie, 2010). In practice, this burden on decision-making processes has enabled individual countries to block progress, led to watering-down of resolutions and, most concerningly, an inability to pass enforcement action.

The Marange region of Zimbabwe provides the starkest example of this. As early as 2008, there were reports that Zimbabwe was failing to meet its minimum standards, and that up to 200 miners had been killed by governmental security forces in the region. However, the KPCS found itself largely powerless to intervene as the review mission became highly politicised and consensus proved impossible to achieve (Grant, 2013). Strong support for Zimbabwe from influential KPCS participants such as South Africa led to a watered-down review mission taking place. Following this review, and despite it finding that Zimbabwe was not complying with its minimum KPCS requirements, the country was not excluded from the rough diamond trade; instead a ‘Joint Work Plan’ was devised which allowed for the continued export of Marange diamonds despite the violence surrounding them. This led to fierce criticism from NGOs involved in the KPCS, with Global Witness - one of the most significant actors in the creation of the KPCS - withdrawing from the programme in response. The problem of violence in the Marange diamond fields has still not been resolved, leading Human Rights Watch to pronounce in 2018 that “the Kimberley Process is not up to the task” of tackling human rights violations in the diamond industry (Kippenberg & Maguwu, 2018).

States also have flexibility under the KPCS in how they deal with countries which are outside of the scheme. Participants are only required to “ensure that no shipment of rough diamonds is imported from or exported to a non-Participant”. In practice, this means that trade can continue with countries that have been suspended through paper contracts. This flexibility was allegedly used by some traders to continue trade with the CAR during its second suspension from the programme (Global Witness, 2017, p.7). Domestic and international buyers would simply purchase non-certificated diamonds from the country, which remained legal, and avoid exporting them (which would have been illegal). They accordingly built up stockpiles of rough diamonds inside CAR which, once parts of the country were reinstated to the KPCS, could be certificated and legally exported. In effect, by not outlawing the *purchase* of diamonds from the CAR, some countries enabled their traders to effectively buy diamond futures from the country despite its suspension from the KPCS.

Another criticism levied at the KPCS is the limited ambition of its scope. By focusing exclusively on the highly emotive and reputationally-valuable issue of conflict diamonds, the agreement fails to address a number of the diamond industry's other negative externalities. There are no requirements - or even recommendations - in the KPCS for states to regulate the environmental and public health impacts of diamond mines such as water contamination or disease propagation (Murdock, 2021, p.470). Similarly corruption, poverty, and pervasive human rights issues in the supply chain such as forced exploitation and child labour are all ignored. Coupled with the appearance of action that Kimberley Process certification gives to the public, these oversights have led some to describe the KPCS as the "*perfect cover story*" for the diamond industry (Rhode, 2014).

Artisanal mining has long been another blind spot for the Kimberley Process. Given their lack of administrative capacity, small-scale miners of the type that are prevalent in many of Africa's alluvial diamond fields are typically unable to comply with requirements imposed on them in the name of the KPCS. This effectively shuts them out of legitimate markets, reducing opportunities for many miners and forcing those who remain into the black market (Munier, 2020, p.171) - where their diamonds may benefit the very groups the KPCS seeks to cut out of the industry, and where governments cannot benefit from taxation.

Even within its narrow area of focus, the KPCS is limited in its scope. In particular, the definition of conflict diamonds given above has restricted the agreement's ability to respond to violence. By linking conflict diamonds to 'rebel movements', violence perpetrated by other groups - including forces affiliated with 'legitimate governments' is outside the scope of the KPCS. While this may have made the agreement more palatable to prospective participant governments, it has significantly blunted the powers of the agreement and added a layer of confusion to its implementation. The case of CAR described above illustrates this. The first time that CAR's participation in the KPCS was suspended, it was in response to a rebel group *becoming* the new government. This was recognised by the KPCS, and after they were satisfied that the new government was able to implement its minimum requirements, they were rapidly readmitted. A decade later, the situation was markedly similar. Following Bangui's fall to Seleka rebels, Michel Djotodia formed a new government. However, and in contrast to the response in 2003, the KPCS did not accept this and maintained the ban on CAR diamonds for the duration of his government (Munier, 2020, pp.149-151).

Another major weakness of the KPCS is the fact that it focuses exclusively on the upstream side of the supply chain, from mines to cutters. As outlined by Global Witness, by not extending certification requirements to cut diamonds, the KPCS creates major loopholes for prospective smugglers (Global Witness, 2007). Rough diamonds produced outside of the KPCS can be illicitly shipped to trading centers, where unscrupulous cutters and polishers can process them into cut stones. At this point, the diamonds no longer require any oversight from

the Kimberley Process and can simply be mixed with other, legitimately-sourced diamonds for onsale. Alternatively, conflict diamonds may be directly exported simply through misclassification as cut stones, bypassing the need to obtain a Kimberley Process certificate. During Côte d'Ivoire's suspension from the KPCS, these loopholes were used to maintain illicit diamond exports from the country (Council, 2007). Similarly, an investigation by Global Witness demonstrated that similar processes were being used in 2017 to evade the partial ban on CAR diamonds (Global Witness, 2017, p.7). Various groups have sought to find ways to improve traceability of cut diamonds, ranging from the Gemological Institute of America's microscopic laser inscriptions to De Beers' proposed blockchain ledger (*Natural Diamond Reports & Services Details*, 2021; *TracrTM*, 2021). However, as yet the KPCS has not shown any appetite to adopt such measure and extend its governance beyond the rough diamond trade.

## 2.2 Gold: Fairtrade and Fairmined

### Background

Like diamonds, gold as a commodity bears a number of similarities to coloured gemstones. It is a luxury good whose primary use is in the jewellery industry, it has a very high value-to-weight ratio, and in many parts of the world its extraction is characterised by artisanal and small-scale mining (ASM). This informality is particularly prevalent in Latin America, South East Asia, and Africa, where the rise in global gold prices since the 1970s triggered a number of gold rushes. In several of these countries, the sudden growth in artisanal gold mining led to gold outputs more than doubling between 1986-1998, with Indonesia demonstrating a staggering 1,319% growth during that period (Hilson, 2002).

Gold's value chain has a similar structure to gemstones. It is first mined - either industrially or artisanally - before processing and refining; which plays a similar value-adding role to cutting and polishing. The refined gold is then shipped on to consumers including banks, jewellery-makers, and retailers. Gold can also be easily recycled, with finished gold products returned to refiners and smelters where it can re-enter the supply chain. Where gold does differ significantly from coloured gemstones is in its fungibility. Gold is a commodified resource, and one carat of gold is theoretically worth the same as any other, irrespective of its provenance. Its production is also far more widespread than any one coloured gemstone. In 2019, 43 different countries mined gold (*Gold Production by Country*, 2021); in contrast only around thirteen countries are primary producers of rubies (Yager, Menzie, & Olson, 2008).

The gold industry, like that of coloured gemstones, faces a range of governance challenges. Criminal capture is common in many parts of the gold value chain. Where ASM is the prevalent means of production, a range of push and pull factors have been identified which drive this phenomenon. Gold's suitability for illicit untraceable flows (it is easily smuggled, high value, largely anonymous, and usable as a parallel currency), coupled with the often prohibitively high transaction costs that informal miners face push them towards criminal syndicates, while the criminal elements exert strong pull factors through their use of violence and their control over facilitation of ASM (through e.g. financing or materiel provision) (Hunter, 2019). The consequences of this criminal capture are significant. In Colombia, rents extracted from illicit gold mining were one of the primary sources of funding for the FARC and ELN insurgencies, totalling up to US\$40 million in 2015 (Massé & Le Billon, 2017). Two years earlier, it was estimated that over 800 people were killed in conflicts over illicit gold rents from Darfur's Jebel Amir site. Ultimately, this production center came under the control of Musa Hilal, who is thought to have made US\$54 million from it annually until his arrest in 2017 (Hunter, 2019, pp.22-23).

Further down the supply chain, criminal capture presents a challenge to governments. Much of the gold produced by criminal groups in Africa is smuggled out of its country of origin, bypassing export duties and starving governments of tax revenues. Typically, it is then legally imported to Dubai, where it is refined and sold on. However, Dubai itself also suffers from revenue losses due to smuggling. Despite the gold at this stage being legal (regardless of its illicit provenance), it is regularly smuggled out of the UAE by sea - once again avoiding export duties - and delivered to India (Mahadevan, 2020). Refined gold is also regularly smuggled into India from neighbouring Myanmar by air or overland (Mahadevan, 2020, pp.23-24). As well as depriving exporting governments of revenue, these smuggling routes fund organised crime groups in India and provides an opportunity for money-laundering through a system of false ownership known as *benami* (Mahadevan, 2020, p.6).

Environmental impact is also a major concern arising from the gold industry. As with coloured gemstones poor pit maintenance, unrestricted mining, and a lack of remediation efforts can all cause harm. However, gold mining - when not properly regulated - can be even more damaging due to the use of mercury in extraction processes. When mercury is mixed with gold-bearing sediment, it forms an amalgam which can be easily filtered out and then burned to yield gold. This process is easy, cheap, and reliable, all of which contribute to its prominence in small-scale gold mines. Unfortunately, it is also extremely harmful to the environment and public health as mercury is toxic to animals (Hilson, 2002). Due to the unregulated nature of much small-scale mining, mercury used for gold extraction is often released into the environment, causing lasting damage.

## **Establishing the certifications**

Fairtrade International was founded (as the Fairtrade Foundation) in 1992 in Germany with a mission to “*connect disadvantaged producers and consumers, promote fairer trading conditions and empower producers to combat poverty, strengthen their position and take more control over their lives*” (Our mission and vision, 2021). Fairtrade seek to accomplish this through the development of standards covering ethical, social, and environmental issues in different industries. These standards represent an interesting approach to governance, as they do not involve states, instead relying on companies and advocacy groups to increase the demand for ethical practices among consumers: in return for meeting these standards, producers are able to leverage the Fairtrade brand to charge a premium to customers who value such ethical behaviours.

Fairtrade sits somewhere between a private company and a typical NGO; it is a non-profit organisation, but it is also reliant on the power of its brand to motivate consumers to buy its producers’ products and charges license fees in exchange for the use of this mark. Initially covering cocoa, tea, and coffee, Fairtrade has since expanded to cover a wide range of products, with a primary

focus on agricultural goods.

The Alliance for Responsible Mining (ARM) was formed in 2004 by a group of independent mining, environmental, and business organisations. Based in Colombia, the organisation's membership draws largely from the Global South and has together contributed to ARM becoming a centre of expertise on artisanal and small-scale miners, to whom it provides operational and business support.

In 2006, Fairtrade International and ARM began working together to develop standards for artisanal gold mining. For Fairtrade, this marked a departure from their traditional focus on agricultural products; a departure that was enabled by ARM's deep understanding of the mining industry. In contrast, ARM had no experience in successfully marketing ethical certifications - a skill gap that was amply covered by Fairtrade. By 2009, these organisations had developed a formal partnership which led to the release of the first 'Fairtrade and Fairmined Standard' in 2010. The Standard had the stated goal of "creating opportunities for economically disadvantaged artisanal miners and their communities" and promoting formalisation of the ASM gold sector (ARM & Fairtrade International, 2010, p.4). The next year, timed to coincide with Valentine's Day, the first gold produced by artisanal miners and conforming to this standard was brought to market in the UK and Ireland.

Initial implementation of the Fairtrade and Fairmined Standard was concentrated in Latin America, with organisations in Bolivia, Colombia, and Peru obtaining accreditation in the first years of the Standard's operation. At this point, rapid expansion of the Standard seemed possible: producers from more countries were on the path to accreditation, new consumer markets were brought into the programme, and initial moves had been made to extend the Standard to other precious metals such as silver and platinum.

However, cooperation between Fairtrade and ARM did not last for long. In 2013, only two years after their success in bringing certified gold to market, the two organisations parted ways over differences of opinion regarding the use of mass-balancing in the supply chain (Fisher, 2018). This split led to the creation of two parallel accreditation schemes for ethical gold: Fairtrade gold, run by Fairtrade International, and ARM's Fairmined Standard.

## **Fairtrade and Fairmined in practice**

Both the Fairtrade and Fairmined standards have similar operational structures. In each process, there are three main actors involved in certifying gold: artisanal mining organisations, auditors, and the certifying bodies themselves (Fairtrade and ARM, respectively). Notably, all of these are private actors, unlike in the KPCS discussed above. Elements of civil society *do* often have some involvement in this process as local partners Fairtrade or ARM; however their role in the process is a supporting one, restricted to creating connections between mining groups and the certifying bodies.

To become Fairtrade certified, a gold-producing artisanal mining organisation must begin by submitting an application (including any required fees) to FLO-CERT. FLO-CERT began as Fairtrade International’s certification arm, but has since developed into a broader provider of assurance services. FLO-CERT then organises an audit to confirm that the applicant meets all the requirements of the Fairtrade Standard. If successful, a producer then gains a Fairtrade Certificate, allowing them to use the Fairtrade brand and participate in Fairtrade supply chains; this can also be used to retrospectively certify produce from the 12 months preceding their certification (*Start Trading Fairly today with FLOCERT*, 2021).

In the Fairmined standard, an artisanal mining organisation must first apply for certification directly to ARM. ARM then works with an audit partner (IMOSwiss AG and NaturaCert) to examine the mining group’s documentation and physical locations and ensure that they meet all the requirements set out in the Fairmined Standard. Following a successful audit, the mining organisation receives Fairmined certification for twelve months. After this time period has ended, annual audits are carried out to ensure continuing compliance with the Fairmined Standard and promote further improvements where possible (*Fairmined for miners*, 2021).

Although they operate in similar ways, the two standards have different requirements that mining organisations must meet to achieve certifications. The Fairtrade Standard has a heavy focus on the external impacts of gold mining (International, 2013). Certificated gold producers must restrict a range of environmentally-damaging behaviours, including wastewater dumping, and must refrain from carrying out any mercury amalgam leaching. Miners must also undertake impact assessments for critical ecosystems, which require approval from third-party organisations. Similarly, the Fairtrade standard places more restrictions on linkages between the mining organisations and conflict than does the Fairmined Standard. In contrast, ARM have taken a more pragmatic approach with their Fairmined Standard.

To achieve Fairmined certification, a mining organisation still needs to meet certain environmental standards and prevent direct funding of conflict; however these requirements are generally laxer than their Fairtrade equivalents. Illustrative of this is the use of mercury amalgam treatments, where Fairmined’s policy is as follows:

*“Although elimination of the use of mercury in responsible artisanal and small-scale gold mining is an important goal, the total and immediate elimination of mercury and cyanide is not a realistic condition for Fairmined Gold ... if it were included in the STANDARD as a condition, 95% of all artisanal miners would be excluded from the development opportunity of Fairmined.”* (ARM, 2014, p.26)

Instead, Fairmined aims to support certificated mining organisation in progres-

sively phasing out the use of mercury amalgamation; to this end the standard applied increasingly strong restrictions on mercury use over time, with mining organisations required to completely abandon it by the ninth year of certification. One dimension where Fairmined does apply stricter standards than Fairtrade is in the use of child labour - it is banned outright by Fairmined, while Fairtrade allows employment of children under the age of fifteen under certain restrictive conditions or within family businesses.

These differences mask the fact that the two standards share the same key goals. Formalisation of the ASM industry is one of these. Both Fairtrade and Fairmined require miners to acquire legal permits to mine before they can receive certification. Similarly, both standards aim to alleviate poverty (and encourage uptake of their standards) by ensuring that buyers pay at least 95% of the market gold price to their miners, plus a further premium dependent on the ecological performance of the mine. In order to pay certified miners these premiums for their products, both Fairtrade and ARM engage with downstream segments of the gold industry.

To do this, Fairtrade extends the certification process to all participants in the gold trade. For gold to be considered Fairtrade, “the entire trade chain (producers, importers, exporters and brand owners) must be Fairtrade certified” (*Start Trading Fairly today with FLOCERT*, 2021). As such, Fairtrade must offer an attractive proposition to retailers. It does this by allowing licensees to market their gold - which must be traceably sourced from other Fairtrade licensees - as sustainable and approved by the powerful Fairtrade brand. This in turn allows retailers to sell their products at a premium to discerning consumers. These increased prices are passed back down the value chain, ultimately funding the 95% market price and premiums promised to miners and enabling all participants to benefit. At present, Fairtrade lists 36 such licensed jewellers

Fairmined follows a very similar route, offering certification and licences to refiners, traders, jewellers and others, who can then leverage the Fairmined brand to increase their asking prices. At the same time, Fairmined offers a more corporate-friendly approach. Regarding the question of mass-balancing that caused the split between the erstwhile partners, Fairmined allows it for its ‘incorporated’ gold product, targeted at large companies who wish to make “sustainability claims on a corporate level”. Major customers therefore have the opportunity to choose between this incorporated gold or fully traceable ‘labeled’ gold, for which mass-balancing is not permissible. For the same customers, Fairmined also offers to sell certificates of Fairmined gold without the underlying commodity. This allows a company to pay the Fairmined premium to effectively ‘offset’ their existing gold in a system analogous to carbon markets in the energy industry. This corporate-focused approach is also evident in Fairmined’s promotional material. Alongside the moral benefits of the certification and the potential for increased sale prices, Fairmined highlights the opportunity for licensees to “Mitigate reputational risks



and provide assurance to your consumers and stakeholders.” (*Fairmined for jewelries mints banks*, 2021)

While the numbers of enrolled miners and retailers has varied over time, since 2020 seven artisanal mining organisations producing 133kg of gold per annum have Fairmined-certified status (*Our Impact*, 2021), while a further three sites are licensed to produce Fairtrade gold (*Gold miners*, 2021). All ten of these mining groups are based in South America - African and Asian artisanal miners have been licensed by one or other organisation in the past, but have since withdrawn from their programmes. Downstream, ARM lists 23 authorized suppliers to Fairtrade’s 36, while both organisations count hundreds of individual retailers as part of their networks (*Virtual Map*, 2021; International, 2020). In a market where global production ranges from 4,000-5,000 tonnes each year<sup>1</sup>, however, the market penetration of the Fairmined and Fairtrade standards remains low even after a decade of operation.

## **Strengths and weaknesses of the Fairtrade approach**

The Fairtrade and Fairmined Standards have had many positive impacts since their joint inception. For workers in these certificated groups, salaries and safety standards have been drastically improved. At the same time, there are positive impacts for informal miners in non-certificated organisations as well. Fairtrade and Fairmined have, in countries where they are active, helped to reframe public and political perceptions of ASM (Childs, 2014). By painting ASM as an opportunity in need of formalisation rather than a menace in need of elimination, the standards have helped shift policy approaches towards informal miners away from suppression and criminalisation. In tandem with this, it is clear how these certification schemes can support the governments of resource-rich countries. By requiring their participants to hold appropriate licences and pay their required taxes, Fairtrade and Fairmined incentivise artisanal miners to enter into the legal market, thus increasing the state’s visibility and tax revenues.

In spite of this success, it is apparent that this approach is not a panacea to the gold industry’s ills. First and foremost, it is a very narrowly targeted programme. By focusing exclusively on artisanal miners, these two standards fail to address governance issues elsewhere in the gold ecosystem. Smuggling along the supply chain, corruption and environmental degradation involving major producers, and rent-seeking behaviour are all explicitly out of the scope of Fairtrade and ARM’s initiatives. Furthermore, criticism has been levelled at the standards for their narrow scope even *within* the ASM domain. By restricting certification to only those mining organisations who can obtain proper licensing, Fairtrade and Fairmined certifications put themselves out of reach of all but the most highly organised artisanal mining groups - the average artisanal miner who has achieved

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<sup>1</sup>Per the World Gold Council (*Gold supply and demand statistics*, 2021)

certification under these schemes earned US\$15/day before certification - the average for artisanal miners worldwide is only US\$1.83/day (Sipl, 2020). By focusing on these ‘low-hanging fruit’, the standards fail to reach the artisanal miners who are in most need of support and risk entrenching the challenges that the poorest participants in the supply chain face.

Of more concern than these issues which are not addressed by Fairtrade and Fairmined are those which may in fact be caused or exacerbated by them. One notable impact of these schemes is that they reduce the role of middlemen by connecting miners more directly with refiners, jewellers, and other consumers. While at first glance this seems like a benefit, it is well documented that these local middlemen play an important role in the financing of informal mining operations. Many small-scale miners cannot afford the capital required to purchase tools that improve their efficiency (such as vehicles or ore grinding equipment). Instead, they are sponsored by a local gold miner, who will provide the materiel needed in exchange for gold purchase rights (Banchirigah, 2008). By cutting these local middlemen out of the supply chain, Fairtrade and Fairmined risk eliminating this crucial pre-financing for the poorest miners, increasing the barriers they face to market entry (Fisher, 2018).

At the same time, concerns have been raised that the Fairtrade and Fairmined standards could entrench the process of elite capture in the gold industry. Analysis by de Haan and Geenen of mining collectives in DRC suggests that the such organisations - which both standards promote - can act as a vehicle for maintaining customary and political power. They find that miners are rarely aware of their rights within mining organisations, and that the cooperatives are typically run by local powerholders (de Haan & Greenen, 2016). The Fairtrade and Fairmined standards risk worsening this issue by requiring mining organisations to acquire formal licences in order to participate, thereby rewarding the more politically-connected leaders with the possibility of increased profits and legitimacy while creating further barriers to those cooperatives which are not already captured by elites.

## 2.3 Oil, Gas, and Minerals: The EITI

### Background

Diamonds and gold are not, however, the only commodity which bear a resemblance to coloured gemstones; extractive industries more generally face a similar range of issues in promoting good governance. The risks of the resource curse, for example, are prevalent in all extractive industries - Auty's original formulation of the resource curse was based on "mineral economies" in general, not on any specific commodity.

However, there are also key differences between the largest extractive industries - hydrocarbons, bulk metal ores, and the like - and coloured gemstones. One of the largest of these comes back to the informality that is so prevalent in the gemstone industry. In the oil & gas sector or in, for example, iron ore there is little scope for small-scale or artisanal producers to participate in extraction. This is largely due to the high barriers to entry in the form of technical expertise and capital requirements. As such, where coloured gemstones are distinguished by a vast network of small-scale operators, most large-scale extractive industries are dominated by a handful of large state- and privately-owned companies with access to the resources needed for market entry.

Other governance challenges do, however, have parallels between coloured gemstones and other industries. Fraudulent business practices are prevalent in the supply chains of both industries. In the oil industry, for example, smugglers may disguise the geographic origin or destination of crude oil to evade sanctions (such as those in place on Iran, Venezuela, and North Korea), presenting clear parallels to the ruby or jade trade. Unscrupulous traders may also lie about treatments that they have used on products, for example, adulteration of oil products with cheap or illegal additives. In one of the most brazen cases in recent years, painted rocks were even passed off as copper in a US\$36m fraud (Hoffman, 2021).

Similarly, accusations of corruption have dogged the extractives industry for many years. High-profile cases such as the series of disputes surrounding Guinea's Simandou iron ore mine - a scandal which has drawn a diverse range of actors over the years, from international mining giants and Guinean politicians to diamond dealers and private military contractors (The Economist, 2014) have damaged mining's public image. Primary extraction is not the only part of the value chain that is mired in accusations of corruption though. Traders, refiners, and retailers have all been tarnished at one time or another. Some of the world's largest trading houses, for example, have been found guilty of using corrupt practices to secure business: Swiss trader Vitol plead guilty in 2007 to passing illegal kickbacks to Saddam Hussein's regime in Iraq; the year before their rival Trafigura's founder and CEO was imprisoned in Côte d'Ivoire over a corrupt scheme to dump toxic waste in the country (Honan, 2007; Murphy, 2007).

This episode also alludes to a further criticism of the extractive industry: its heavy environmental price. Much has been written about the harmful impacts of the hydrocarbon industry (Patin, 1999, e.g.), whether these be the results of incidents (such as oil spills or gas leaks) or business as usual (the industry’s towering CO<sub>2</sub> footprint, for example). However, other large-scale extractive industries also cause lasting environmental damage. Strip mining of ore deposits can cause a multitude of ecological issues, ranging from destruction of valuable ecosystems to water and air pollution (Sengupta, 1993, pp.1-2). Because most extractive industry is caused by large-scale operations, without proper governance its impacts on the environment can be vast in comparison to the damage caused by individual artisanal miners with relatively simple tools at their disposal.

## The EITI’s development

The drive for a better system of governance over extractive industry began in earnest over Angola’s oil and gas sector. Towards the end of the Angolan Civil War, transnational advocacy groups began to highlight a lack of transparency and accountability in the exploitation of the country’s rich hydrocarbon deposits. In 1999, Global Witness published a report titled *A Crude Awakening* which concluded that “*A significant portion of Angola’s oil derived wealth is being subverted for personal gain*” (Global Witness, 1999, p.2). In apportioning blame for this state of affairs, Global Witness did not shy away from targeting the large companies with interests in Angola, announcing that “*the international oil industry and financial world must accept their complicity*”. Global Witness applied yet further pressure through a follow-up report published in 2002 which called on all oil companies active in Angola to commit to full transparency (Global Witness, 2002).

As a result of pressure from Global Witness’ ongoing advocacy (and after deciding that transparency was in the best interests of its shareholders given Angola’s difficult business climate), BP became in 2001 the first oil company to commit to publishing its payments in Angola. However, an angry backlash from Sonangol, including threats of contract termination, highlighted the fact that any movement to increase transparency would have to be multilateral; no one company could risk alienating their business partners by going it alone. In order to overcome this setback, a set of six NGOs including Global Witness, Oxfam, and the Open Society Institute founded the Publish What You Pay movement in 2002 with the mission to “ensure that revenues from oil, gas and mining help improve people’s lives” (EITI, 2021).

Publish What You Pay engaged in a multifaceted campaign to further the transparency movement. The advocacy groups involved continued to publish reports on the situation in Angola, highlighting the links between a lack of accountability and the country’s dire humanitarian situation (Oxfam International, 2001). At the same time, a concerted lobbying effort was initiated. While key

allies of Publish What You Pay such as the Catholic Church built support for the initiative in developing countries, the initiative's founders focused their attention on the UK Government. Through the British Overseas Aid Group and direct contact between George Soros and Tony Blair, Publish What You Pay sought to encourage the UK to take a leading role in promoting transparency in the oil industry (van Oranje & Parham, 2009).

These lobbying efforts paid off when 10 Downing Street announced the creation of the Extractive Industry Transparency Initiative in 2002 in a bid to improve the stability of resource-producing nations upon which the UK was reliant. The following year, a group of twenty countries along with industry representatives, investors, international bodies, and transnational advocacy groups convened in London to agree on a Statement of Principles for the EITI (*EITI: Statement of Principles and Agreed Actions*, 2003). Over time, these principles led to the development of the EITI Rules (published in 2009 and 2011) and eventually the currently-active EITI Standard. These documents contain sets of requirements across seven themes which a state must satisfy in order to become an implementing country.

## **The EITI in action**

The EITI consists of three permanent bodies as specified in its Articles of Association: the EITI Members' Meeting, the EITI Board, and the EITI Secretariat. Each of these bodies plays a different role.

The EITI Members' Meeting is the organisation's governing body, and meets every three years. It is made up of the EITI's members, who are grouped into three 'constituencies' representing countries, companies, and civil society (EITI, 2019, p.54). Various rules ensure that each of these constituencies has some power in the decision-making process - quorum requires at least a third of each constituency's members be present, and for a resolution to pass it must have both a two thirds majority of all members and at least one third of each constituency voting in its favour. Similarly, the number of votes assigned to each constituency is normalised by the number of participating countries to ensure that each group is accorded the same weight. among the responsibilities of the EITI Members' Meeting is the election of the second permanent body, the EITI Board (EITI, 2019, p.56-57).

The EITI Board acts as the executive body for the EITI. It is made up of a chair, nine members representing countries, six company representatives, and five civil society representatives; each of these members serves a three year term lasting from one EITI Members' Meeting to the next. The power to control work plans, budgets, monitoring, and even de-listing is controlled by the EITI Board through its biannual meetings (EITI, 2019, p.57-59).

The third permanent body, the EITI Secretariat, is the EITI's equivalent of a civil service. Its staff are seconded by members and are responsible for the

EITI's day-to-day operations (as directed by the EITI Board). This includes advocacy, dissemination of best practices and technical advice, and management of validation processes. Much of this work is carried out in collaboration with other organisations such as the World Bank or national development agencies (EITI, 2019, p.60).

Since its inception the EITI has grown significantly, such that it now counts 55 implementing countries. For a country to join the EITI, it must begin by satisfying the first of the EITI's seven requirements: oversight by a multi-stakeholder group (MSG). This MSG must consist of representatives from civil society, the government, and the private sector. It must then agree upon a publically-available work plan which aligns with the EITI Board's requirements and deadlines. At this point the country may apply to the EITI Board for membership. If this application is granted, the country will then need to start complying with all of the EITI Requirements.

The EITI Requirements are set out in the EITI Standard and consist of several points across seven broad categories (EITI, 2019, pp.9-33). The first such category, as described above, concerns oversight by an MSG. The second to sixth requirements all focus on disclosure and transparency: of the extractive sector's management, of exploration and production, of revenue collection, of revenue allocation, and of the ultimate spending of funds derived from the extractive industry. The final Requirement mandates the MSG to use the data made available under the other requirements is used to inform public awareness and debate.

As with the Kimberley Process, the exact way that countries meet these requirements is not prescribed by the EITI. While implementing countries must move towards meeting all the EITI Requirements (which apply equally to all participants) over time, the routes that they take to do so are recommended by each participant's domestic EITI organisation rather than the international body itself.

To monitor compliance with the requirements, the EITI carries out regular Validation processes. A country's first Validation will take place two and a half years after a successful application to join the EITI. After a Validation process has been completed, a participating country is categorised as having made satisfactory, meaningful, inadequate, or no progress towards its minimum requirements. Satisfactory or meaningful progress both mean that the subject remains an EITI country, with corrective actions requested by the next Validation if the latter of these assessments is given. Inadequate progress, on the other hand, will result in a temporary suspension from EITI country status with an opportunity to return if meaningful progress is demonstrated by the following Validation. A temporary suspension can also be implemented where a country is unable to meet its requirements due to conflict or instability. The worst possible Validation assessment, no progress, will result in a country being fully delisted from the EITI; a lengthy suspension due to instability may also result in this outcome (EITI, 2019, pp.37-39).

The EITI has shown itself to be capable of responding decisively to failures to meet its requirements where necessary. Azerbaijan became the first EITI compliant country in 2009 after it passed its Validation process, but in 2017 it was suspended from the EITI after the Board deemed that it had failed to implement corrective actions requested of it<sup>2</sup> (*Board decision in full*, 2017). Similarly, both Guatemala and Honduras were suspended in 2020 following their most recent Validation processes. Countries which miss their Validation deadlines may ask for extensions, but if these are also missed the EITI Board has a track record of implementing punitive suspensions; both Cameroon and São Tomé & Príncipe are currently suspended for this reason. Suspensions due to instability have also been wielded by the EITI Board, most recently against Myanmar following the 2021 coup. Yemen was also suspended due to conflict in 2015; two and a half years later the EITI Board voted to fully delist Yemen until the situation in the country had improved enough for it to reapply for EITI membership.

A comparison of the EITI with the Kimberley Process - its close contemporary - reveals key differences in the way that the two systems incentivise participation. Where the Kimberley Process imposes penalties for countries which do not participate - exclusion from the international diamond trade - delisting from the EITI has no such direct consequences. Instead, the EITI relies on indirect rewards to incentivise membership. The first benefit that the EITI describes for implementing countries is “*an improved investment climate*”. This is based on the premise that the commitment to transparency that EITI implementation represents will lower the financial, regulatory, and reputational risks associated with doing business in a country, thus making international corporations and financiers be more willing to invest (*Benefits from implementing EITI*, 2021). Other advertised benefits include greater stability and improved tax revenues arising from more effective domestic governance.

## The EITI framework’s impacts

In the eighteen years since it was established the EITI has driven improvements in the transparency of extractive industries around the world. In some countries, this has even translated into direct financial gains: the publication of transparent accounts and their subsequent auditing allowed the Nigerian government to recoup US\$2bn of outstanding payments from the state oil company, NNPC (Lehmann, 2015, p.9).

Whether the EITI has been successful in helping countries avoid the resource curse is, however, a subject of much debate. Using a quantitative approach, Papyrakis et al. assert that the initiative has been able to support good governance among its members, noting that committing to the EITI Standard “*can offset to a*

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<sup>2</sup>Azerbaijan withdrew itself from the EITI in response to this suspension and as such is no longer a member.

*large extent the tendency of mineral rents to fuel corruption*” (Papyrakis, Rieger, & Gilberthorpe, 2016). However, they do also caution that the EITI is not a cure-all for the resource curse. Other authors have taken a less positive view of the EITI’s impacts. A study conducted contemporaneously to Papyrakis et al.’s by Sovacool et al. took the opposite conclusion: that EITI compliant countries do not improve across governance metrics compared to before they joined, and even fare no better than countries outside the EITI (Sovacool, Walter, Van de Graaf, & Andrews, 2016).

One of the main criticisms of the EITI is its focus on transparency as a means to combat the resource curse. While transparency is a respectable aim, it does not, of itself, prevent several of the governance issues prevalent in the extractive industry. Ivar Kolstad and Arne Wiig argue that while the EITI’s focus on transparency does yield some benefits in reducing corruption (it increases the risks and therefore costs associated with corruption and helps build norms of integrity), it does not do enough to justify its prioritisation. In conjunction with transparency initiatives, they argue, the capability of domestic NGOs must be built so that they can *use* the information that is now available to them. Furthermore, given that transparency can cause risks of its own (such as by allowing criminals to more easily identify opportunities for corruption), they argue that transparency should be deprioritised in favour of more directly anti-corruption options such as institution-building (Kolstad & Wiig, 2009).

Similarly, while the EITI hopes to address many aspects of poor governance through its indirect transparency-focused approach, there are others which it does not impact at all. The environmental and ecological harms that can be caused by extractive industry are not a part of its remit; nor is the reduction of fraudulent practices in the industries concerned.

Another challenge that the EITI faces is its incentive structure. As described above, the EITI is entirely voluntary and relies on market-based incentive structures to provide benefits for compliant countries. This incentive structure is no, however, infallible; for certain countries and companies it can break down. Companies are encouraged to participate by a range of pull factors, including the positive reputational impacts of publicly supporting the EITI (although it has been suggested that minimal awareness of the EITI among consumers dilutes this benefit somewhat (Schuler, 2012, p.13)). The low costs of supporting the EITI also act as a push factor to encourage corporate participation. Companies are only required to contribute small sums towards the initiative (up to US\$50,000 for the largest firms), and are not required to publish any information beyond what national laws require (Schuler, 2012, p.9). Furthermore, for companies which are headquartered in jurisdictions with strong long-arm transparency laws (such as the US Foreign Corrupt Practices Act), the marginal cost of disclosure requirements in EITI compliant countries may in fact be negligible (Schuler, 2012, p.10). As a result, most of the world’s leading companies in the oil and gas, mining, and commodity trading sectors participate in the EITI as supporters. However, while



most major extractive companies and their investors prefer to operate in transparent jurisdictions due to their less risky investment profiles, several companies prefer to operate in relative secrecy. This can disincentivise a country from joining the EITI, as doing so could cause temporary capital flight from companies which do not wish to be bound by EITI participation (Sovacool et al., 2016).

On the other hand, several countries simply do not need the EITI to help make them an attractive investment opportunity. Looking at many of the world's most resource-rich countries, it is clear that highly competitive producing nations have little need or desire for the EITI. Of the world's ten leading oil producers<sup>3</sup>, only Iraq implements the EITI; among the top ten natural gas producers<sup>4</sup>, only Norway is EITI compliant. Similarly, less than ten percent of the world's iron ore production originates from EITI-implementing countries<sup>5</sup>. Despite this, it is a testament to the EITI's robustness that it continues to function appropriately and promote its goals even without the participation of most major producers. In contrast, the functioning of the Kimberley Process is reliant on the bulk of the world diamond trade being within the scheme.

The EITI also struggles to provide transparency with regards to artisanal mining. Efforts have been made to address this in reporting (including a requirement for implementing countries to estimate its scale), but the EITI has often found provided data to be “*out of date, unreliable and often not sufficiently detailed*” (*Artisanal and small-scale mining*, 2020). Due to its focus on revenues at a national scale, the largely unrecorded flows in informal mining industries often pass the EITI's reporting requirements by.

Despite these challenges, the EITI has received praise for the way that it incorporates civil society into its governance structure at a range of scales. At an international level, the EITI's voting structure ensures that transnational advocacy groups are able to exert influence over the organisation's direction. This has been a driving factor behind growth in the EITI's scope such as the 2016 expansion of reporting scope to include beneficial ownership (Arond, Bebbington, & Dammert, 2019). At a local scale, the EITI's requirement that participating countries institute an MSG creates roles for domestic NGOs and thus allows for more direct communication with society. In DRC, for example, this structure was able to enhance the participation of civil society groups from across the country; in Liberia it facilitated a national conversation through local community meetings (Lehmann, 2015, p.8).

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<sup>3</sup>By 2019 production: USA, Saudi Arabia, Russia, Canada, Iraq, UAE, China, Iran, Kuwait, and Brazil (BP, 2020)

<sup>4</sup>By 2019 production: USA, Russia, Iran, Qatar, China, Canada, Australia, Norway, Saudi Arabia, and Algeria (BP, 2020).

<sup>5</sup>2019 production figures taken from USGS (Tuck, 2020); percentages were calculated by this author

## Chapter 3

# Governing the Coloured Gemstone Industry

Through an analysis of the case studies described above, it is possible to identify best practices which can be applied to the coloured gemstone industry. Similarly, pitfalls which have troubled other initiatives can be recognised and avoided as a governance system begins to take shape.

As outlined in Chapter 1, the coloured gemstone industry is characterised by informal and small-scale actors, much more so than either the highly-consolidated diamond industry or bulk commodities such as oil or iron ore which are dominated by international and state-run companies. Despite having benefits for some, this informality has led to minimal government oversight and thus challenges such as poor working conditions, minimal tax receipts, and damaging environmental practices. A growing number of international businesses have begun to develop their interest in coloured gemstone mining, but with this growing influence has come a different set of problems: conflict with artisanal miners is common, and relationships between international investors and local powerbrokers are highly opaque and thus susceptible to corrupt practices.

The valuation of coloured gemstones places large premiums on difficult-to-verify characteristics such as geographic origin, and the structure of the value chain concentrates much power in the hands of middlemen (both traders and cutters). This has led to the widespread use of fraudulent and anti-competitive practices in the industry, further reducing the opportunity for states and their citizens to properly benefit from their coloured gemstone resources.

As a result of this market structure, the major governance challenges that the coloured gemstone industry faces are manifold. An ideal governance system for coloured gemstones would address all of these concerns without damaging either the livelihoods of miners or the ability of governments to benefit from their resource endowments. Initial discussions of governance over the industry have been made by the NGRI and by GI-TOC (Hunter & Lawson, 2020; Shortell & Irwin, 2017), but aside from very minor (and roughly-estimated) reporting

under the EITI, there has been little to no attempt made to implement a solution or even to identify what such a solution ought to look like.

When identifying optimal strategies to take when approaching governance in the coloured gemstone trade, it is important to recognise that many of the issues faced by coloured gemstones have been addressed - with varying degrees of success - in the case studies presented above. By comparing these cases to each other and to the coloured gemstone trade (while taking into account the key differences between these industries and their likely ramifications), a proposed approach to address many of these challenges can be obtained.

## **Certification**

A robust certification scheme targeted at the coloured gemstone industry could address several of these challenges. With widespread acceptance in the jewellery industry already, the certification scheme used by the Kimberley Process would appear to be an obvious candidate for either expansion or replication to cover coloured gemstones. The Kimberley Process' approach would, however, require a number of adaptations to meet the realities of the coloured gemstone industry.

First and foremost, the Kimberley Process' narrow focus on conflict diamonds would need to be adjusted. The body of literature that connected diamonds to conflict finance and rebel movements in the late 1990s and early 2000s does not exist for coloured gemstones. In contrast, the reported violence that has occurred has been between informal miners and licensed companies, sometimes with the alleged involvement of state security forces. The definition of conflict stones that the Kimberley Process currently uses would not cover this type of violence, as demonstrated by the KPCS' inability to act over violence in Zimbabwe.

Since the Kimberley Process is only designed to filter out conflict diamonds from the global supply, it only needs to apply to the first step of the value chain - rough stones. In the coloured gemstone trade, however, a certification scheme would also need to address fraudulent misrepresentation of stones' origins for inflated prices, which can take place both before and after stones are cut, polished, and incorporated into jewellery. To do this, any putative certification scheme could emulate Fairtrade's approach to gold and require certification at all stages of the value chain, enabling full traceability of each gemstone. This ability to confirm a gemstone's provenance would also assuage concerns in the industry about the penetration of hard-to-detect synthetic gems into the market. In contrast, the Fairmined Standard's 'incorporated' gold licensing scheme - while also applied at all stages of the value chain - is unlikely to transfer effectively to the coloured gemstone industry due to the non-fungible nature of gems.

Unfortunately, such a certification scheme is unlikely to be a cure-all for the coloured gemstone industry's issues. While traceable certificates could cut down on certain types of fraud, the use of other deceptive practices would still be challenging to detect under such a certification scheme. Undeclared treatment of

stones, for example, would still be a lucrative way for sellers to inflate their prices. While certificates could incorporate information regarding the ways a gemstone has been treated, advances in scientific analysis of stones will ultimately be needed to enable verification of such declarations.

## **Implementation**

In order to proceed, this governance plan for the coloured gemstone industry would need the participation of states in support of the proposed incentivisation structure. In order to secure this state backing, a similar approach to both the EITI and the Kimberley Process should be used wherein states have the flexibility to implement certification requirements through domestic laws and organisations of their choice. Taking this stance on implementation would minimise the impact of any programme on state sovereignty and increase the likelihood that a ‘critical mass’ of governments would be willing to participate.

While flexibility would strengthen participation in the programme, minimum standards would be needed to ensure that certificates still served their purpose. These minimum requirements should include clear geographic traceability to a sub-national level. This limited requirement of minimum standards would reduce the administrative burden of certification while tackling the most prevalent and high-impact issues in the value chain. Further governance challenges could then be addressed either through gradual increases in the minimum requirements or through recommended additional standards.

Introduction of certification requirements is also likely to cause issues for the artisanal miners which make up the majority of the industry’s production. As happened in the Kimberley Process, overly burdensome requirements could push artisanal miners into black markets rather than the ‘grey’ markets most currently operate in. It is therefore imperative that any such certification requirements be accessible for small-scale miners. Both the Fairtrade and Fairmined Standards have sought to make themselves accessible to artisanal gold miners, but have only been able to reach the most organised groups. A new approach to certification should therefore be sought which avoid the pitfalls of both the KPCS and the Fairtrade/Fairmined programmes. One such alternative would be to place the burden of certification on the traders who aggregate gemstones from local informal miners. Since these traders act as brokers and aggregators, they are fewer in number than the artisanal miners. They are also typically better organised and financed than miners, and often have ties to established businesses in processing centers. As such, they present a considerably easier target for formalisation efforts.

For any form of certification to reach these traders - and through them miners - close cooperation will be needed between campaigners at the international level, national governance structures, and (crucially) local and sub-local actors. When decisions on certification processes and requirements are being made at a

national level, domestic and international NGOs who participate in the certification scheme should ensure that the voices of local and sub-local stakeholders are amplified. This will not only enable certification to be tailored to maximise benefits and minimise harms to impacted communities, but will also reinforce participation by giving the scheme greater legitimacy in the eyes of otherwise-marginalised market participants.

The ability to reach many more informal miners through the formalisation of brokers should not be underestimated. However, targeting governance requirements at the first layer of gemstone brokers would come with trade-offs. By avoiding attempts to directly formalise artisanal gemstone mining, the positive impacts of certification programmes on informal mining practices (like the impacts on environmental and labour standards that the Fairtrade and Fairmined Standards have had) will be diluted. Despite this, basic standards could still be enforced through the use of spot audits on individual brokers and their suppliers.

### **Incentivisation**

Any certification programme for coloured gemstones would require incentives for participation. The Fairtrade and Fairmined approach of offering a premium price for certificated products would likely find a receptive market in some consumer countries. However, it would be difficult to extend such an incentive-based system to the entire market - if all gemstones are sold at a premium, then none are. Furthermore, some countries (and companies within them) would likely be reluctant to certify their gemstones. While Burmese ruby miners may welcome protection for the premium status of their product, Mozambican sellers would lose the option to falsely market their rubies as their more expensive cousins. The major cutting and polishing industries in Thailand, Sri Lanka, and India would similarly lose out on a money-making opportunity for fraud.

For these reasons, a different approach to incentivisation is required. A ‘carrot and stick’ approach combining the Kimberley Process’ and the EITI’s strategies encourage adoption of a certification programme. The carrot in this case would be based on the EITI’s promise of material gains for countries who implement it. By providing technical and financial support for producer countries in implementing certification processes and customs checks, a global governance system could support formalisation of the gemstone industry and give governments access to increased tax flows. In light of the increasing presence of international companies in coloured gemstone mining, participation could also provide confidence to potential investors that a country will present a stable environment for them. In a more formalised sector, the conflicts that have occurred between Gemfields and artisanal miners in Mozambique (leading to financial and reputational costs for the company) would be less likely to occur.

Despite its unsuitability as a primary incentive, the Fairtrade and Fairmined approach could be leveraged to encourage countries to go beyond the minimum

requirements of certification. If consumers prove willing to pay higher prices for coloured gemstones with better environmental or social credentials (which, given that ‘ethically sourced’ gemstones are offered by many jewellers already, albeit without any guarantees of their provenance, seems likely), then countries which choose to implement more stringent certification requirements could turn their gemstones into premium products. Similarly, jewellers and consumers would - in conjunction with NGOs - be empowered to identify and boycott gemstones which originate from regions where they may contribute to conflict.

In parallel with these benefits, disincentives should be aimed at countries which do not participate in certification, as is the case in the Kimberley Process. In this case, the power lies primarily in the hands of those countries home to the largest consumer markets. If traceable certification were made a requirement for the import or export of any coloured gemstone (or product containing them), then producing and processing states would have strong drivers for participation. Enforcing this structure would, however, be extremely challenging. Excluding countries from the coloured gemstone trade could in many cases pose major problems for global supply. If, for example, Tanzania were excluded from this proposed scheme, then the entire global supply of tanzanite would become uncertificated. In this case, the Tanzanian government would simply be able to continue trading illicitly as tanzanite dealers would have no alternative source from which to buy. Because of this, demand reduction would be necessary to reduce the volume of tanzanite exports. This could be achieved through close collaboration with the jewellery industry (which would likely require pressure from advocacy groups as in the case of the Kimberley Process). To continue the tanzanite example, the stone’s popularity with customers was driven by Tiffany & Co. campaigns; in a decertification situation companies would be in a position where they could influence consumer tastes *away* from certain stones. For enforcement, therefore, the cooperation of both industry and the governments of consumer countries would be required.

For this reason, enforcement of the proposed standards should be governed by a similar structure to the EITI Board. A robust decision-making body should be composed of a combination of countries, representatives from civil society, and - given their critical role in enforcement and compliance - industry representatives. As in the EITI, each of these groups should have voting rights in matters regarding to minimum requirements and decertification of participating countries. Furthermore, in contrast to the Kimberley Process’ vague requirement for consensus, decisions made by this proposed body should require either a simple or qualified majority.

## **Transparency**

One aspect of the coloured gemstone trade which this proposed certification scheme does not address is the lack of transparency and potential for corrup-

tion that characterises it. However, the existing EITI framework has begun to make inroads on this problem. In their most recent EITI reports, both Tanzania and Mozambique included figures on the production and taxation of coloured gemstones. While there is still a lot of progress to be made on achieving full transparency - tender processes for gemstone licenses are still opaque, and international companies links to government officials are not clear - this represents a significant positive step and enables NGOs to better understand any problems that can be addressed.

Furthermore, as artisanal mining becomes increasingly formalised around the world, more transparency will become possible through existing EITI mechanisms. At present, countries cannot provide more than estimates of artisanal production because its true scale is unknown; similarly, they do not have the ability to tax it completely so cannot provide meaningful information on tax takes. For this reason, the EITI will continue to be an important pillar for achieving sustainable and inclusive governance alongside a certification programme that addresses other governance issues.

While the approach proposed above promises many benefits, it is important to recognise the challenges it is likely to face and the weaknesses that it may exhibit. Stakeholders in the coloured gemstone value chain who rely on weak governance (such as smugglers and many gemstone cutters) are unlikely to embrace any form of certification scheme, and could work to undermine such a programme through either licit or illicit means. Similarly, gaining the support of governments around the world may require compromises in the integrity of the programme, for example through dilution of enforcement powers or implementation of consensus-based decision making. These steps should be avoided if possible, but may be necessary to secure the involvement of reluctant participants.

## Chapter 4

# Developing Governance Through Transnational Advocacy

Each of the three case studies presented above has illustrated the critical importance of transnational advocacy groups in the formation of global governance systems. The proposed certification mechanism for coloured gemstones is no different, and would require concerted efforts by NGOs and other advocacy groups to drive its development. This raises the important question of how transnational advocacy groups could promote this specific vision of governance, should they wish.

Once again, a comparison of the role of NGOs in each of the three case studies can help answer this question. In the Kimberley Process, many advocacy groups played a range of roles which varied over time. Global Witness - one of the most prominent NGOs involved in the process - is an example of these shifting strategies. Initially, Global Witness adopted a highly confrontational, outside lobbying approach to the diamond industry. Reports such as *A Rough Trade* took aim at the industry's shortfalls and raised awareness among the general public. Other transnational advocacy groups followed suit, as the protests organised by Amnesty International illustrate. As this approach began to bear fruit, Global Witness quickly adapted their strategic approach to a cooperative, inside one as evidenced by their collaboration with the JVC and later participation in negotiations for the Kimberley Process.

There followed a sustained period in which Global Witness continued to pursue its cooperative, inside strategy through participation in the KPCS. However, when it became apparent through the case of Zimbabwe that the power of NGOs to influence the Kimberley Process from within had diminished, they withdrew from the organisation, heralding a return to confrontational strategies. Other transnational advocacy groups followed suit, with Human Rights Watch's 2018 denouncement of the KPCS a clear example of this.

A broadly similar trajectory characterises the strategies that NGOs adopted when pushing for the development of transparency initiatives and ultimately the



EITI. In this case, the organisations which made up the Publish What You Pay coalition released a barrage of reports highlighting the damage that a lack of transparency in the extractive industry was doing. The focus on the highly emotive issue of the Angolan Civil War ensured that this issue was not merely regarded as a technical demand for policymakers to address, but instead gained traction among the general public. Publish What You Pay then enacted a parallel strategy of direct lobbying - a form of inside strategy - with the UK government. Where civil society groups have since abandoned their inside and cooperative approaches to the Kimberley Process, those who are involved with the EITI maintain this strategy today through their participation in each of the organisation's permanent bodies.

In both of these cases, starting with a combative, outside lobbying strategy to build pressure demonstrated transnational advocacy networks' capability to cause problems for decision-makers. Following this up with an 'olive branch' in the form of a cooperative, inside strategy (such as negotiations or government lobbying) led to the successful establishment of both the EITI and the Kimberley Process.

Where advocacy groups' approaches to the Kimberley Process and the EITI do differ considerably is their use of different scales. During the formation of the Kimberley Process, the NGOs that were involved were primarily international in scale. While the same is true of the initial impetus for the EITI, the requirements placed on participants to have MSGs ensure that there is a place for advocacy groups who operate at a smaller, national or regional, scale to get involved. This has been a successful approach; the participation of local NGOs allows for easier direct communication with both domestic publics and decision-makers, thus maintaining pressure through simultaneous inside and outside strategies. It also goes some way to address the legitimacy concerns that transnational advocacy groups face at a domestic level by making each individual country's relationship with the EITI a local concern.

A second difference of note is the scale of the demands each campaign was making. Publish What You Pay had a very specific goal - the publication of transparent figures showing how much money was moving between companies and governments in the extractive industry. Publish What You Pay therefore followed a *microdemand* strategy. In contrast, the movement against conflict diamonds had a more general goal: the elimination of conflict stones. This demand, given the number of different possibilities it entails, is a *macrodemand*. However, it is also of note that the subsequent inclusion of transnational advocacy groups in the Kimberley negotiations allowed them to transition this macrodemand into more specific stances behind closed doors.

The approach that Fairtrade and ARM adopted when developing their standards for ethical gold represents a markedly different strategy. Both groups focused on a decidedly small scale, seeking to promote neither international norms nor domestic laws, but instead good governance practices at individual mining

sites. At the same time, Fairtrade and ARM took an unusual approach to the gold industry. Their interactions with the industry can be viewed as an outside strategy - rather than focusing their efforts on major decision-makers or power-brokers, Fairtrade's reputation with consumers (i.e. the public) was leveraged to grow a market for ethical gold.

However, unlike most outside strategies, Fairtrade and ARM's approach was not confrontational. Rather than demanding that the gold industry change their ways, they invited smelters, jewellers, and retailers to join them with the promise of premiums if they did so. In contrast to the pressure campaigns that had forced concessions from the diamond, oil, and minerals industries, Fairtrade and ARM took a decidedly more 'carrot' than 'stick' approach to the gold industry. The split between Fairtrade and ARM was also reflective this outside, cooperative strategy. Where ARM sought to cooperate even further with industry by offering mass-balanced gold, Fairtrade saw that as a concession too far.

This strategy has allowed both Fairtrade and ARM to effect a change in the gold industry from a position of little negotiating power. At no point in the development of their standards did either group succeed in mobilising significant public or political opinion in favour of regulating the gold industry. Without the ability to thus pressure industry participants, it is ARM and Fairtrade's ability to sell the benefits of their standards to industry participants that has driven their growth.

In the cases studied above, it is apparent that the strategy used by transnational advocacy groups in campaigning for the Kimberley Process and the EITI has had more success than that used by Fairtrade and Fairmined for the gold industry. The transition from outside, confrontational strategies to inside, collaborative ones allowed NGOs to force the implementation of governance systems with wide reaches and to shape them to some extent. As such, when approaching the coloured gemstone industry, transnational advocacy groups should seek to emulate these approaches. Where possible, they should aim to build public awareness of the issues surrounding coloured gemstones and grow support for improved governance. Using the resulting public pressure (and its potential impact on profits) as leverage, they should then enter into dialogue with the gemstone industry and with governments of producer and consumer countries.

However, NGOs must also recognise that not all of the strategies used to push for the EITI and Kimberley Process will be replicable. Where Global Witness and other organisations could leverage the emotive topics of the Angolan Civil War and various West African conflicts to mobilise the public, the coloured gemstone industry has not yet been involved in such a high-profile humanitarian tragedy. This may reduce the ability of advocacy groups to build a pressure campaign large enough to force the industry to negotiate.

In contrast, some aspects of the coloured gemstone industry may make it easier for transnational advocacy groups to influence. The relative weakness of major upstream industry concerns (particularly when viewed in contrast to De

Beers' outsized influence on the diamond trade) will reduce both the leverage required by NGOs and the power of industry to define the parameters of any developing governance system. On the other hand, national governments have extremely strong negotiating hands in the coloured gemstone industry: many downstream countries hold near-monopolies on specific gemstones, and the few countries with powerful beneficiation industries also wield significant influence.

These key differences imply that two key modifications will be needed to the strategies used by Global Witness and others in the Kimberley Process and EITI case studies. Firstly, while a confrontational outside strategy should still be pursued to strengthen NGOs' negotiating positions, more focus should be placed on inside, cooperative strategies (as demonstrated by ARM and Fairtrade in their gold standards). The strength of government positions with regards to the proposed certification scheme means that any successful campaign will need to sell its benefits to the states involved. Similarly, the relative weakness of upstream industry concerns may make them receptive to the potential benefits of increased formalisation and reduced friction with artisanal miners. For the same reason transnational advocacy groups should focus on a national, rather than international scale. Recruiting support from local NGOs, workers, and powerbrokers in major coloured-gemstone producing countries will help to tailor the certification scheme to local conditions and help garner crucial support from domestic powerbrokers.

A national-level focus may also enable incremental improvements rather than the all-or-nothing approach of the Kimberley Process - for coloured gemstones, recruiting single countries could bring entire product categories (such as tanzanite, which is endemic to Tanzania) into the certification programme. On this basis, advocacy groups may also choose to focus their efforts on specific classes of gemstone in order to make more rapid progress towards functional certification, with a view to expanding or replicating the process for other gems as more countries are convinced of its benefits.

# Chapter 5

## Conclusion

The coloured gemstone industry suffers from several major governance challenges which contribute to the development of a resource curse in gem-rich countries.

It is dominated by informality, which increases the autonomy of individual miners but concurrently reduces government oversight. This has led to dangerous labour conditions and environmentally harmful practices being commonplace in the industry. It also restricts the ability of states to levy taxes on the production, export, and processing of coloured gemstones in their territory. While this allows artisanal miners to keep a larger share of their earnings, it inhibits the resources' potential for wider development benefits.

Where large, international companies have become involved in coloured gemstone mining, a new set of problems has emerged. Conflict, often violent in nature, is regularly noted between formal mining concession-holders and (often long-established) artisanal miners who seek to operate on the same land. The awarding of gemstone concessions has regularly proven to be opaque and dominated by political elites, resulting in a business environment where accountability is minimal and corruption is likely.

Even the intrinsic nature of coloured gemstones' valuation has led to governance challenges. Easily falsifiable features such as the colour and geographic origin of a gem contribute much to its value. This has enabled widespread fraud to flourish in the trading and cutting parts of the value chain, short-changing both producers and end-consumers. Similarly, with much of a stone's ultimate value being derived from a stone's cut, producing countries are able to access only a small portion of the resources' value. The dominance of a few major cutting and trading centres has led to the proliferation of fraudulent and anti-competitive practices which impede producer countries from developing domestic beneficiation industries.

Because of these challenges, it is desirable that some form of global governance be implemented to regulate this industry. However, any such governance system must be attuned to the needs of the most marginalised members of the coloured

gemstone value chain, and not simply reflect the interests of international NGOs and development agencies. Other extractive industries have already developed governance regimes that seek to address similar concerns and lessons can be learned from these that can be applied to coloured gemstones.

From 1998, transnational advocacy groups had been putting pressure on the diamond industry over the issue of conflict diamonds in the public sphere. This ultimately led to negotiations between industry, NGOs, and states which developed into the Kimberley Process, an international agreement that has governed the diamond trade since 2003. The Kimberley Process has primarily focused on the issue of diamonds being used to fund conflict by requiring signatory states to pass domestic laws preventing it, but has also increased transparency in the (formerly highly opaque) industry through reporting requirements. States which fail in these commitments risk being excluded from international diamond markets.

The Kimberley Process has enjoyed some successes in facing the challenges of the diamond industry. It has been able to implement swift punitive action in some cases on non-compliance to prevent diamonds from benefiting violent armed groups. However, it is in many ways an imperfect solution to the diamond industry's problems. It affords enormous leeway to participants in terms of implementation and decision-making, diluting its efficacy. The certification requirements are not designed with artisanal miners in mind, and as such the Kimberley Process has forced many of them into the black market. Its scope is also limited to rough diamonds - the value chain downstream of cutting is therefore still ungoverned at an international level.

In the gold industry, the NGOs Fairtrade International and ARM have sought to develop a market-based approach to governance. Originally together and now separately, they have designed accreditation schemes that offer certification (and with it the ability to command higher prices) to artisanal mining groups that meet their social, labour, and environmental requirements. This is an approach to governance which is dependent largely on private actors - on buyers and consumers making ethical choices, and on auditors and certifying bodies. Governments are not involved in either of the certification programmes, and civil society is only included on the periphery.

Growth in these certifications' uptake has been inconsistent and slow, but they have had concrete benefits for the artisanal miners that participate. A second, intangible, benefit of these schemes is that they have helped to shift perceptions of artisanal mining from being a problem needing solving to being an opportunity for both workers and governments. However, both Fairtrade's and ARM's programme have been criticised for targeting only the most organised artisanal mining groups, leaving them susceptible to elite capture. This widens the opportunity gap between them and the miners who are most in need of support, as does the removal of traditional middlemen and their financial backing. The certifications also do nothing to address the negative externalities of formal, industrial-scale gold mining.

The EITI represents the largest effort so far to institute governance over extractive industries. Originating from a campaign for transparency in the oil and gas industry led by a number of prominent international NGOs, the EITI's formation was secured by successful lobbying efforts directed at governments and oil majors. In its current form, the EITI comprises three constituencies representing industry, governments, and civil society. At a national level, participating countries are required to work with domestic representatives from these constituencies to implement a set of minimum requirements focused on reporting and transparency. The incentive for complying with this process is the ability to market the country as EITI compliant, and therefore attract foreign investors with the promise of a lower-risk business environment.

The EITI is now a wide-ranging and influential organisation. It can point to a number of success stories where it has improved transparency and increased government revenues, and its incorporation of civil society in a prominent role is admirable. However, qualitative analyses of the EITI's impacts are inconclusive, and its focus on transparency precludes direct action on other issues such as environmental degradation or corruption. Even this goal of transparency has been difficult to realise in areas where informal mining predominates. The positive incentivisation of the EITI also poses challenges, as many major resource-producing countries do not need to rely on the EITI to incentivise investors and as such have chosen not to participate.

Comparing these three cases with each other and with the unique challenges of the coloured gemstone industry leads to a number of recommendations for structuring a prospective governance model. A certification-based approach focused on gemstone traders rather than miners would be the most suitable method for achieving an improved level of governance; such an approach would be the most effective way of reaching marginalised miners rather than just the most organised groups. These certificates should require a minimum of geographic traceability, but encourage the inclusion of further information. Properly designed, such a system would improve the ability of governments to tax coloured gemstones and allow buyers to feel confident that they are not being sold fraudulent stones. It would also enable consumers to express their preferences for more sustainably-sourced stones through the purchase of gems with extensive documentation, encouraging (but not mandating) conflict-free supply chains, better environmental standards, and improved labour conditions.

This proposed governance scheme would require the backing of transnational advocacy groups to support and drive its development and adoption. In order to do this, advocacy groups should work simultaneously on public-facing campaigns to put pressure on the coloured gemstone industry (as used to pressure the diamond industry) and on engaging in constructive dialogue with companies and governments who would stand to benefit from certification (as per the establishment of the EITI). These strategies should be carried out at local and national,

rather than international, levels through collaboration with small NGOs, labour groups, and communities who properly understand the issues faced locally. This would enable tailoring of certification processes to local conditions and improve the chance of buy-in from the governments of producing and processing countries and from workers in the coloured gemstone industry, on whom the success of certification would be reliant.

# Appendix A

## Abbreviations

ARM	Alliance for Responsible Mining
ASM	Artisanal and small-scale mining
CAR	Central African Republic
CEO	Chief executive officer
CSO	Central Selling Organisation
DRC	Democratic Republic of the Congo
EITI	Extractive Industries Transparency Initiative
ELN	<i>Ejército de Liberación Nacional</i>
FARC	<i>Fuerzas Armadas Revolucionarias de Colombia</i>
GI-TOC	Global Initiative Against Transnational Organised Crime
JVC	Jewellers Vigilance Committee
KPCS	Kimberley Process Certification Scheme
MRM	Montepuez Ruby Mining
MAG	Multi-stakeholder group
NGO	Non-governmental organisation
NNPC	Nigerian national Petroleum Corporation
NRGI	Natural Resource Governance Institute
TRACIT	Transnational Alliance to Combat Illicit Trade
UNCTAD	United Nations Conference on Trade and Development
UNGA	United Nations General Assembly
UNSC	United Nations Security Council
UNTOC	United Nations Convention against Transnational Organised Crime
WDC	World Diamond Council



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