

Reflections on the Kimberley Process: *Interview with Shamiso Mtisi*

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Interviewed by Dr Clever Chikwanda, SALO Researcher

Introduction

Since 2013, SALO has been convening multi-stakeholder consensus building dialogues on the Kimberley Process. Initially built around supporting South Africa's 2013 chair of the KP, the work spilled over into 2014, during China's Chair. Over the period, SALO has engaged closely with Civil Society, Governments and Industry in an attempt to build consensus around some of the key issues relating to the KP. In marking the end of China's chairmanship and the coming in of Angola as the new chair for 2015, it is important to reflect on the past two years, and gather stakeholders' views on the future.

The Zimbabwe Environmental Law Association (ZELA) was identified for this interview as one of the leading and most active CSOs on the KP. ZELA works "to promote environmental justice, sustainable and equitable use of natural resources, democracy and good governance in the natural resources and environment sector."¹ The interviewee, Shamiso Mtisi, is the Head of Programmes, at ZELA and also the coordinator of the Kimberley Process Civil Society in Zimbabwe. This involves coordinating the activities of KP Civil Society groups and monitoring the compliance with the KP certification scheme. He is also participating in the Kimberly Process Certification Scheme (KPCS) on the trade of diamonds. A lawyer by profession, Mr Mtisi was the official spokesperson for the KP Civil Society Coalition during the 2013 plenary in Johannesburg, South Africa. He has done a lot of research on diamond mining, legal frameworks on mining and natural resources generally.

Clever: Thank you. As an individual and an organisation, what are your reflections with regards to your involvement or engagement with other CSOs in the KP itself?

Shamiso: I think this has been quite interesting, challenging as well. For me, the KP presented a lot of challenges in terms of, the need for you to be on your best, at the top in terms of reading. You need to follow trends, you need to follow events, because there are a lot of them. There are a lot of things happening in the diamond sector that also need to be flagged, what is happening on the ground. For me, what is important is to make sure that I get information from the communities, in Marange for example, on what is taking place. This could be related to human rights violations, and once I

¹ See www.zela.org

gather that information from the communities, I have to make sure that the information is verifiable and credible.

That is quite a challenge for many in civil society groups, because you often get accused by government and other players, especially the mining companies, that you are fabricating stories. So, as a civil society activist, you find that it is a thin line and you are treading on dangerous waters. So, that kind of challenge is what I have managed to get other colleagues in civil society to bring. At least government has started to, kind of, appreciate the nature of work that we do and that we rely on evidence-based information from the ground.

What actually helped us is that we initiated a concept of community monitoring work, where the people themselves gather the information and package it. They then give us that information which we then go on to verify. That has at least taken away the challenge of a number of issues.

In terms of participation, as civil society, sometimes we may not have adequate resources to enable us to participate in the KP civil society coalition or other KP meetings.

Some of the emerging challenges are the normal resource constraints, in terms of building capacity. It could be financial or technical resources. We still need a lot of training as civil society groups to really understand, especially for the membership of the civil society coalition and the KP itself. This is because it is quite a complex scheme. So, you need to be always on your toes, read, understand what's happening and also read what is happening in other countries and follow the trends.

Those are the challenges we face, but there are many more examples. One of the examples is that in 2010, when I started participating in the KP, there was that air of mistrust between government and civil society. So, with my coming in, I have managed to bring objectivity, to point out areas of weaknesses and strengths in terms of Zimbabwe's compliance with the KP. I remember well that we had a very difficult time with the former Minister of Mines, regarding our presentation. However, he ended up appreciating the kind of work that we are doing.

Clever: So, if we look at South Africa's chair-ship of the KP, and now with China and Angola taking over next year, what will be your comments in as far as their respective approaches have been and could be?

Shamiso: South Africa was celebrating the 10th Anniversary of the KP, and for me South Africa, at least managed to organise the event. They managed to bring people together. However, I think there were a number of things that happened in South Africa that we feel as civil society should have been tackled by that country. But let me start with the positives first. I think SA did well in terms of looking at the situation in Central African Republic (CAR). At least there was the suspension of export of diamonds from CAR, and the embargo on the diamonds in that country. The fact that it also resulted in the drafting of a work-plan between the KP and CAR was quite a positive outcome from South Africa.

But what was a bit disappointing was the fact that since SA was celebrating the achievement of being the first country to host the KP, they should have at least made sure that the reforms being advanced in the KP were taken forward. And one of the contentious issues was around the redefinition of what constitutes conflict diamonds. For us, South Africa at that point, stood a better chance at the opportunity to influence changes and redefining the KP. But they let that chance go. So, that was a disappointment. We were also thinking that South Africa would definitely come up with key recommendations, key reforms to drive the KP into a new era. You do not want to have a KP that was formed in 2002 but fails to take up key reforms, like the redefinition of conflict diamonds, to tackle areas where there are cases of violence against the people, maybe by state security agents or other non-state actors. So, that was a missed opportunity to be honest. I would have wanted SA to do that. But what resulted was the proposal to come up with what was called an Innovations Committee. That has so far not done any work. We haven't seen anything come out of that. With the kind of situation where there isn't any concrete discussions around reforming the conflict diamond definition, I think that's a major disappointment.

But in terms of China, I think they tried their best as well, but they didn't do much. The Vice-Chair-ship for 2015 goes to a country that can drive the KP into taking on board the reforms, into ensuring that the KP starts focusing on the provision of technical support to participants, especially in developing countries.

In the same respect, we as civil society are strongly opposed to the candidature of the United Arab Emirates to be the Vice-Chair of the Kimberly Process. We prefer that Australia be considered for the post. All is however in the hands of China, which is the current chair. We hope they will steer and persuade the UAE to stand down. This is because we have concerns around the UAE regarding transfer pricing, undervaluation of diamonds from developing countries, and a lot of things that are happening in Dubai. This includes the non-respect of the role of civil society. To this, we have told the UAE officials, that we are not happy with the way they treat civil society organisations (CSOs). They do not treat CSO's as an equal partner in the KP. There is that disrespect to us.

Dubai should be able to demonstrate that they have the ability to bring together the key players in the KP, and respect the tripartite nature of the KP. They are also struggling with the World Diamond Council. So, I think to give Dubai the Vice-Chairmanship for 2015 will not be in order, because they have not yet demonstrated the ability to bring together those key players.

As CSOs, we are for Angola's 2015 Chairmanship. We are looking forward to Angola's promises that they will at least be able to uphold the tripartite nature of the KP next year, 2015. We also take note of the fact that Angola has managed to repatriate a lot of Congolese who were involved in a lot of activities in that country. This was done following set out human rights standards and that was at least a positive. Our expectation is that Angola should as well be able to steer the KP to talk about reforms and issues of illicit trade of diamonds.

Most importantly, one thing that we would want them to talk about is the aspect around undervaluation of diamonds by other importing countries, in particular, Dubai. We would want Angola to look at that. We would also want Angola to look at the

tripartite nature of the KP as I have said earlier on. Angola should be able to bring together civil society, industry and government so that at least there is consensus on various aspects or challenges facing the KP.

Clever: Thank you very much. So, what are the key issues within civil society now with regards the KP, and your involvement?

Shamiso: There are issues in the KP, right now. The first major concern, going forward, is the issue of undervaluation of diamonds by Dubai. They buy diamonds from other countries at a much lower price. When they resell them, you are talking about more than 40% of the value of those goods being exported by Dubai to other destinations. For us, it is an indication of undervaluation of goods, and African countries, or African governments should actually be at the forefront of denouncing this. They are being duped by Dubai. There is need for African governments to closely monitor that. We are actually encouraging all KP countries to put this on their agenda, especially the producing countries, because we are losing out. Once we lose out, it means that the revenues that go to economic services or service provision in African countries is much less than is being realised. That is quite a key issue for the KP to look at.

The second issue is that the KP should look at its tripartite nature. We are saying that at the national level, all participants should reflect the tripartite nature of the KP. We are calling for the enhanced implementation of the KP tripartite arrangement at a local level, by establishing multi-stakeholder forums where civil society, the diamond industry, government and even communities come together and participate, carry out joint monitoring and assessments of compliance of KP standards at a local level. This is what we call mini-KP arrangement at a local level, where people come together and discuss problems in terms of implementation of the KP certification scheme. This will lessen some of the tensions that often happen at the international level, where civil society will be presenting the problems they face or faced by communities at the international level without those issues having been discussed at a community level.

On the issue of reforms in the KP, we would definitely want the KP to reform in terms of redefining what constitutes conflict diamonds. In that regard, we are saying the KP should be able, going forward, to look at issues of violence being committed in the diamond fields or in areas where diamond mining is taking place and these violations are being committed by non-state actors, or private security guards employed by mining companies. It could even be the military or the police.

On the other hand, although the situation in Zimbabwe right now has been stabilised, the lesson that this gives us is that the KP should tackle violence committed by the military or the police. We are not saying this is only applicable to Zimbabwe. It can apply to any country where violence occurs. When we talk about violence, people often become defensive because they would think we are only talking about Zimbabwe. No. This is because it would be an international scheme based on the lessons from Zimbabwe. This means it will be applied to all KP participants where violence would have occurred. That is an important point to make. This is because I often meet a lot of government officials in KP meetings. Once we start talking about redefining what constitutes human rights violations, they would then start saying, "Aah, no you are targeting Zimbabwe." We are not targeting Zimbabwe.

So, those are three key ones that we are looking at as civil society groups.

Clever: There are some accusations that most civil society organisations working on the KP have got some western orientation of some sort, what would be your response to that?

Shamiso: I have heard that many times, but as civil society groups, our response to that is that we are not informed by Western governments. We are not even informed by Western organisations. We have our own ideological perspectives around the protection of community rights.

It was out of the realisation that some of the people who are part of these civil society groups like myself, actually come from areas where the human rights violations are taking place. So, we cannot keep quiet when those violations are taking place. A good example is in Marange, where diamond mining companies are polluting water resources. It is actually my family that is being affected. We are losing cattle. A lot of us are losing our sources of livelihood, like the river systems and the ecosystems. Gardening has been affected, and this actually affects me as a person. So, when I talk about these issues at national or international platforms, people accuse me of being used by the Western countries.

I don't know why I should wait for someone from Europe to tell me that I have to live in a clean and healthy environment. I have to take that up myself. But in this fight, as you do your work, there are people who sympathise with your cause. There are people with good hearts out there, who are willing to help. It could be in terms of technical expertise. It could also be in form of financial support. So, I know some government officials think we are being used. Not at all. Instead, we are advancing the cause of our people.

We are calling on government to respect the rights of the communities. I don't know who they would want to raise those issues when the people on the ground are disempowered. The people in Marange, for example, at one point, were limited in terms of movement. There were a lot of limitations. Many of the people there may not realise that, but as an organisation, we have the information. We know what is happening. So, we raise these issues and start training the communities.

The other strategy that we use is through the process of community monitoring and empowering, so that communities start speaking for themselves. This is done to ensure that government sees that we are not just raising these things from nowhere. This is an approach that we are now using, so at least government and mining companies start understanding the issues that we are talking about. So to be honest with you, we are not being used.

The other point I wanted to raise is that in the Kimberly Process, for example, you find that there are different organisations there. I think there are organisations from the DRC that are part of the KP. There is also the Civil Society Coalition and civil society from Liberia. We also have organisations from Ivory Coast and Guinea. We now have organisations from Cameroon, and there is Partnership Africa Canada.

Now, people would think Partnership Africa Canada is the one that thinks and therefore the one that uses us. This is not the case. It is a coalition.

We respect each other's views, except to point that Partnership Africa Canada is coordinating. They have been part of the KP from the beginning. In fact the KP, for your information started as a result of the campaigns by civil society groups. So, I don't know why governments want to simply remove civil society groups from the KP. That is our fight with Dubai. It is civil society that called for, or campaigned against conflict diamonds, that resulted in the formation of the KP.

So, people should really appreciate the role of civil society. We are not there to please government. We are there to present facts as they are. But where possible, as ZELA, we are ready to engage government. We are ready to give them facts and figures. We are ready to present to them our independent view, and they should be able to listen. We are also ready to listen to criticism, where possible. Engagement is quite important and that is the reason why we are saying at a national level, we should start promoting this concept of local level mini KPs- CS systems where government, civil society and industry come together.

Clever: Thank you. So, what is the relationship between CSOs and governments?

Shamiso: The relationship is such that in the KP, there are participants and some governments that really see the value of civil society groups. This is because what we do is to often go out and meet the people. So, we present the positions of the people. We present the people's problems as faced by communities because of diamond mining. So that is a voice that many governments do not often get. So, you can only get that voice from civil society in the KP.

So, you will find that in the KP, there are some governments that respect the rule of law, and therefore engage civil society. We often have a lot of bilateral meetings with some participants, including African governments. Many African governments see the value of civil society groups. Also within the KP, there are other governments that see the relationship but do not see the value of civil society. Take for example, the UAE is the one that does not see the value of CSG. Zimbabwe is an interesting case in the sense that they see the value of CSGs, but in another way, when it is convenient for them, they do not see the value of CSOs.

Coming to the next level, with the Zimbabwean government, it is a love and hate relationship. However, I like it in the sense that they consult us where possible. Take for example, the recent Zimbabwean Diamond Conference-they invited us to that Conference and I presented a position of civil society and communities. They didn't like it. I know that a lot of people there were not happy with the statements I made during the Zimbabwean Diamond Conference, but I made those statements in a forum which was organised by government. The fact that they invited us to that forum is quite important, and I treasure that. I actually said to them, "I am happy you invited us, although we do not agree."

So, that is the relationship that we treasure as an organisation. At least, at this point, but we would want that to be with the Zimbabwean government. I would want a situation where we would have bilateral or tripartite meetings -where civil society,

industry and government would sit together and talk about the problems in the diamond sector. In that respect, I would want a situation where those companies that are mining diamonds in Marange and civil society community groups and government come together in a small or big room and start discussing ways of addressing the problems being faced.

The other aspect I want to talk about is the need for civil society and community groups to start talking about how best we can ensure that the country attracts investments. For us, that is quite key. From a Zimbabwean perspective, there is need for us to start helping government attract investment. We can help government by pointing out the loopholes, the challenges that bar or hinder investment. So, government should be able to listen to us.

The challenge for civil society organisations is to gather information, in particular, the one to do with responsible investment. So, as an organisation, we have a new strategic plan, which focusses on responsible investments, where we want to assist in terms of generation of information that can lead to that. By this, we are referring to companies that respect the rights of communities, environmental and human rights, and compensate people whenever they are displaced. We are also referring to companies that contribute to the payment of tax to government. That is our new strategy.

Clever: Thank you very much. Since you are involved in most of our seminars, you have seen the work that SALO does. What are your reflections on our role, and what do you think SALO should be doing as we move forward?

Shamiso: To be honest with you, I started participating in SALO programmes in 2013, when South Africa was chairing the Kimberly Process. I found the meetings to be quite interesting in the sense of the ability of SALO to bring together different players in the diamond sector. It's not easy to bring together civil society, industry and government in one room, and the chair of the KP. And those people have their different views. In fact, it was my first time to address such kind of meetings, where I was invited to share a platform with the chair of the KP. It was also quite interesting, though we differed on certain principles around redefining conflict diamonds and things like that. Also, the nature of the discussions were quite interesting because there were different views on these matters. The ability of SALO to bring together civil society, industry and government is something that was quite remarkable for me in the way of doing business. I also think that the emphasis on engagement is another plus for SALO.

Again, since I am on your mailing list, I consistently receive updates from you guys on events that you are organising. So, I continue to be informed. Also, it is a fact that you are respected regionally, because you tackle a lot of regional issues in Southern Africa, including the rigging of elections, natural resources management, the Kimberly Process and other matters in the development sector. So for me, the organisation is playing a critical role in enhancing dialogue and discussions around various topics and issues. So, that is a good approach and I would definitely recommend that you continue with that kind of approach, to bring together different experts or individuals. So, that is one thing.

What may need to be done is to enhance the work of in-country researchers. But I am sure you have in-country experts and researchers that would come and make the presentations. I think that's why you have been calling us and other groups from other countries as well as a pool, or some kind of consortia of experts who do research and then they can feed into SALO processes. What I would therefore recommend is to do more research, if that is not already being done. This research would then feed into on-going processes. If that is already your approach, to say, for example, if you are organising a meeting in October and you call me, you can commission someone to do a quick paper on a particular topic. Based on that particular research presentation, you can then come up with some kind of document or write up on it. This can be uploaded and shared with various stakeholders, so that at least we receive, not the presentation, but a summary of that write up or short research.

I think that would definitely be good. If it is already being done, I might have missed it. That is what I would recommend.

Clever: Thank you very much. What would you say is the future for the KP and its relevance?

Shamiso: The KP still has a future. I do not see the demise of the KP, but it has to reform. What I would recommend is that it should now bring on board new players—people who are informed, rather than those who have been in the KP for a long time and have caused a lot of disharmony by disrespecting the role of civil society. We now need fresh blood in the KP, people who understand what the organisation is all about. I would recommend the inclusion of more people with a legal background, so that they look at the KP core document, understand it and be able to see if it fits well into emerging beliefs, in terms of what constitutes conflict diamonds. That is one recommendation that I would make. Also, the KP should be able to look at redefining basically the same issue.

However the KP should also be able to work with other emerging initiatives such as the EITI on Transparency and Accountability. Also, we have been saying that the KP should be able to work closely with the OECD, because the OECD is quite critical in terms of looking at the value chain of the mining sector, to identify risks in areas that are conflict affected or afflicted. That is quite important. Again, there is this new initiative on precious stones, which resulted in the formation of a group to drive forces in assessing whether there is a need for companies to carry out due diligence before they invest in an area on the potential impact on the rights of communities in the precious stones sector. For example, it can be diamonds as one sector and coloured gems as the other, where the issue of human rights can be tackled by companies themselves or the industry. So those are the kinds of initiatives we would encourage the KP to work or collaborate with and make sure we learn one or two lessons from them. Those are key.

Clever: If we look at the relations between CSOs that work on the KP and natural resource governance generally, what are they like, here in Zimbabwe and beyond?

Shamiso: Here in Zimbabwe, we have a situation where civil society groups try at least to form coalitions. For example, we have this KP Civil Society Coalition Representative as a group of civil society that is concerned with monitoring the

situation in Marange. We have worked very well since 2010, when there was need to come up with what was called the Civil Society Focal Point. I was appointed as the coordinator of that. Initially, it was Farai Maguwu, but then the government opposed his nomination.

We worked very well because we were collaborating. We used to have a lot of cooperative meetings since 2010, but of late, because of limited resources, we haven't had a lot of them, although the coalition would still want to continue engaging and make sure we share ideas and perspectives. So, the relationship in that regard has been generally good.

But, I should mention that the organisations are different. They have different ideological beliefs, and different approaches in terms of doing business.

For us, we are a completely different organisation. We do not normally want to copy what others are doing. We want to do things our own way. We believe in evidence-based research. We believe in engagement. There are other organisations in the coalition that do not believe in engagement. They believe in making press statements and even campaigns, and things like that. We are different, and we respect that. They have their own way of doing things. So you find that sometimes there is that competition for resources since they are limited in the sector.

Now talking about the history, I do not want to state who was first to work on the issue of natural resources. Our work as an organisation, talking from a ZELA perspective, has never departed from what we set ourselves out to do, since 1999, when we started. Since we were still at law school, we have never departed from our mandate, which is to protect the rights of natural resource-dependent communities. So we have never departed from what we have set ourselves to do. Since that time, and over the years, we have been doing that. We have been tackling mining, forest issues, environmental management-related and matters like that. But now, because of the new political dispensation, and also because of the work we have done, a lot of new civil society groups are reprogramming into the natural resource sector, the extractives and mining, because of the new political and economic realities.

Since 2000 when we started, I have been saying that if you look at Zimbabwe, you should look at the natural resource sector with a leaning towards promoting democracy and good governance. People did not listen, and I remember that very well. We struggled to raise money for natural resource-related activities as an organisation. I remember well, it was one of the EU ambassadors, Michelle, who was still there, who said, "How are you guys going to promote democracy using the natural resource sector? Okay we will give you a chance." And they gave us a grant. That is what launched us into bigger programmes, in terms of natural resource management. But it was very difficult.

So, now you have new players who are coming into the sector. It means there is increased competition for resources in this sector. A lot of organisations are also looking to us and we have received a lot of those organisations here, who want to understand how we do business in the natural resource area. We are very free to share that information. We even upload our strategic plans onto our website. At one point, we even developed a Strategic Thinking Document that could be used by any

organisation. We have seen other organisations using it. So there is that relationship, of competition. However, for us competition and coalition building is quite important. It is a policy that we already have written down in our strategic documents.

Clever: Lastly, Mr Mtisi, what is the general diamond-related situation in Zimbabwe? What does it look like, between now and the future?

Shamiso: I often get distressed when mining companies in Marange say that they are downsizing the number of employees that they have. That they are downsizing, downgrading their operations in Marange. This is because over the past four or five years, they have been operating there, getting a lot of money and what has gone to the national economy? Nothing, except the pockets of a few mining people and possibly some government people there.

So the diamond sector so far has not resulted in significant improvement in the lives of people. Yes, they built some military academy somewhere, but without any national economic significance. They built a centre, a conference facility in Gweru. It doesn't benefit the country, right? The people are suffering, yet the companies are saying the diamonds are finished. It's terrible.

So, you have a set of players in Marange who have been licenced under Minister Mpfu, who are benefiting. These are opportunists, who are just getting the resources for themselves without sharing with the nation. It is quite disappointing. Then the companies are not investing in further exploration. Even government itself is not investing in exploration. They are not investing in acquiring new technology in order to go underground. They just want the easy picks. So, this is a group of opportunists, who want to quickly benefit and run away. That is a big problem.

Again, at the moment, diamond mining has resulted in significant violations of the economic, cultural and social rights of communities. I am quite disappointed by that as well because there is a company called DMC (Diamond Mining Company), which is owned by the Lebanese, but is registered in Dubai, or UAE, which is polluting the Save River. Visit that area, the site is terrible. It is appalling because people cannot access clean water. People are bathing in dirty water from mining sites. That has actually resulted in the death of livestock, and people think we lie when we say it. To be honest with you Clever, we have a lot of evidence, video evidence, pictorial evidence, even scientific evidence, which we share with government. But they continue refusing the facts. It is quite disappointing. My take is that diamond mining has not yet resulted in the expected economic prosperity we thought we would get.

Clever: Thank you very much Mr Mtisi, it has always been a pleasure having you in our seminars, and your contribution has been fundamental to advancing the cause of the KP and diamond mining at large. Is there any parting shot?

Shamiso: Yah, I would like to thank SALO as well for inviting me to the different meetings that I have participated in over the past few years. As I have stated earlier on, it has been quite enriching for me because I got to share the stage with very influential people in the KP and even in government. So, that was quite important for me and for civil society. At least those were platforms where we shared our views from an independent perspective. So, thanks to SALO.

Clever: Thank you very much.