

REVISED
EDITION

Killing Kimberley?

Conflict Diamonds and Paper Tigers

"It sounds to me as though they have decided to kill the Kimberley Process, and they have sent out attack dogs with instructions to talk it to death."

– Anonymous International Negotiator

Summary

The Kimberley "Process" began in 2000 as a series of meetings among governments, NGOs and the private sector to solve the problem of conflict diamonds. Eventually, more than 70 governments joined to create the Kimberley Process Certification Scheme (KPCS) which began in 2003 to regulate the international trade in rough diamonds.

In some ways, the KPCS has been very successful. But during 2005 and 2006, it started to become clear that the KPCS had weak spots. Implementation in some countries was poor, and major problems emerged. Massive KP-related fraud was uncovered in Brazil and Guyana, and a UN report documented the wholesale laundering of conflict diamonds from Côte d'Ivoire through neighbouring countries. In each case the Kimberley Process behaved like a disinterested bystander, its response tepid, late or non-existent.

About this report (revised)

This report describes several very serious problems that faced the Kimberley Process as it began its annual deliberations in Gaborone, Botswana in November 2006. Partnership Africa Canada was deeply concerned, in fact, that the Kimberley Process was in danger of collapse.

PAC investigations in Brazil during 2005 and 2006 had uncovered massive diamond fraud under KP certification. A PAC study of KPCS implementation in Guyana found voluminous and systematic diamond smuggling. A UN Security Council report stated that Ghana had been certifying conflict diamonds from Côte d'Ivoire. The KP response to all of this had been weak, slow or non-existent. In addition, several participants had blocked consensus on important recommendations contained in a Three Year Review that could have strengthened the KPCS, and they blocked consensus on decisive action to deal with blatant cases of conflict diamonds and criminality.

As it turned out, much of our pessimism turned out to have been misplaced, although this report may have been instrumental in shaping events. The KP meeting took a tough stand on Ghana, requiring it to tighten its internal controls within a three month period, during which no diamonds would be exported without expert, external oversight. A follow-up review mission would take place at the end of three months. A review mission would be sent to Venezuela to determine its ability to remain a member of the Kimberley Process. All 43 recommendations in the Three Year Review were accepted, and the issues that had not attracted consensus in the ad hoc working group actually found consensus in plenary. It was agreed that "interim measures" for naming and suspending non-compliant participants would be developed. The World Diamond Council asked for effective and credible government oversight of the industry – perhaps a first in the annals of government-industry regulatory discourse. A thorny issue of statistical transparency was resolved, and it was agreed that issues related to the financing of the KPCS would be addressed in the coming months.

We have not changed the body of the report, which can now serve as part of the historical Kimberley Process record, but we have revised this overview in order to show that the KP and its certification system are flexible and responsive enough to deal with crisis. The Gaborone meeting did not solve all problems, but it devised timely and reasonable measures to deal with the most difficult ones. The test of KP effectiveness, of course, will be in the successful implementation of the measures agreed.

An internal Three Year Review of the KPCS carried out during 2006 virtually ignored the growing problems. Government members of the review committee vetoed almost every recommendation that might have tightened or professionalized the system. A draft report was watered down, sanitized and parts were even censored by virtue of the Kimberley Process's concept of "consensus".

The Kimberley Process can be an effective regulatory system for the eradication of conflict diamonds, but only if it is prepared to become more vigilant, more pro-active, and more insistent that its standards be enforced in participating countries. This report details the problems, and spells out what is required, if governments and industry are serious about ending conflict diamonds.

Introduction: Diamonds, Death and Destruction

The Kimberley Process Certification Scheme (KPCS) for rough diamonds is an outcome of what came to be called the Kimberley Process, initiated in an effort to end the phenomenon of "conflict diamonds" – sometimes called "blood diamonds". During the 1990s and into the current decade, rebel armies in Angola, Sierra Leone and the Democratic Republic of the Congo (DRC) exploited the alluvial diamond fields of these countries in order to finance wars of insurgency. Alluvial diamonds, unlike those mined in the deep kimberlite "pipes" of Botswana, Russia and Canada, are found over vast areas of territory, often only a few inches or feet below the surface of the earth. Alluvial diamonds have, from colonial times, proven difficult to manage and to regulate. Because of their high weight-to-value ratio, the ease with which they can be mined, and endemic corruption in the global diamond market, alluvial diamonds became a ready target for rebel armies.

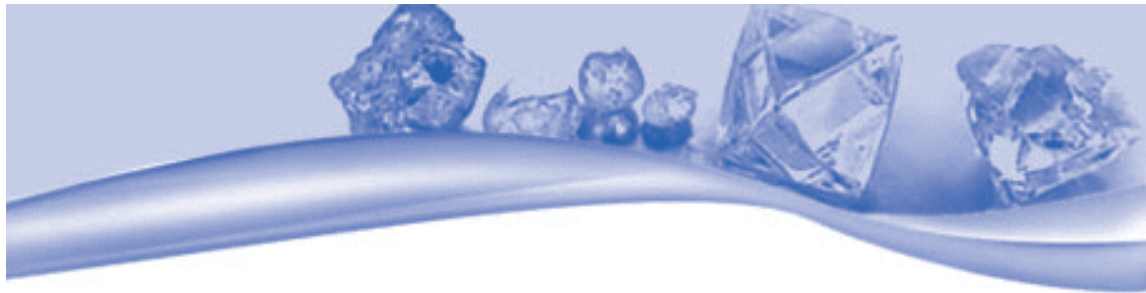
The trade in conflict diamonds began in the early 1990s with Jonas Savimbi's UNITA in Angola, but was quickly copied by the Revolutionary United Front in Sierra Leone, with assistance from Liberia's warlord president, Charles Taylor. It was then taken up by rebel armies in the

Democratic Republic of the Congo (DRC) and has affected the diamond industries of Guinea, Liberia and Côte d'Ivoire as well. As much as 15% of the world's \$10 billion annual rough diamond production fell into the category of conflict diamonds in the late 1990s. Hundreds of thousands of people died as a direct result of these wars, and many more died of indirect causes. Millions of people were displaced for half a generation, health and educational infrastructure was destroyed, development was reversed.

Historically, effective diamond regulation has proven almost impossible, whether in Africa, Europe, Asia or North America. This is partly because of the necessary security issues around such a valuable commodity, but it is also because much of the trade in diamonds, after they have been mined and marketed – in some cases by very large companies – has traditionally been in the hands of small, close-knit family enterprises, the kind of enterprise that defies effective governmental regulation. Historically, for example, high taxes have only served to drive diamonds underground, and most governments long ago stopped trying to impose more than minimal duties on rough diamond imports and exports. Even so, a parallel diamond economy, operating in grey and black markets, has always existed.

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Diamonds have thus proven useful in money laundering, and have been used to finance drugs and other illicit goods. In Africa, where more than 70% of the world's gem diamonds (by value) were produced throughout most of the 20th century, diamonds were used to hide and export profits and capital, and – as an alternative hard currency – to finance imports in weak economies. Corrupt and predatory governments in Sierra Leone, the DRC and Angola drove the diamond business even further underground. In addition, beyond the largest diamond mining companies, much of the legitimate diamond trade operated largely on a cash basis, without formal contracts or auditable paper trails. Diamonds were almost ideally suited to the purpose for which rebel armies came to use them. This is what the KPCS sought to end.



Accomplishments of the Kimberley Process

The Kimberley Process Certification Scheme may be the biggest thing that has happened to the diamond industry in a hundred years. Ironically and perhaps fittingly, the Kimberley Process began in the town where South African diamonds were discovered in the 1860s. In May 2000, the government of South Africa called together industry, NGOs and governments to see if there might be a way to deal with the problem of conflict diamonds, a problem that NGOs and the United Nations had brought to public attention over the previous 18 months.

Although it would take more than two years to create what became known as the KPCS, the very fact of the negotiations began to have an impact on conflict diamonds and the diamond industry at large. Conflict diamonds were the central topic at the July 2000 World Diamond Congress, which created a representative World Diamond Council (WDC) to take part in the KP negotiations. As negotiations continued, further NGO research and the reports of more UN expert panels corroborated early findings, and in places where diamond controls had been lax – notably Belgium – the rules began to tighten. Angolan and Liberian warlords found it more difficult to sell diamonds, and Sierra Leone's diamond-smuggling rebel army, starved of ammunition, suffered its first-ever military defeat in the summer of 2000.

The Kimberley Process can take some credit, therefore, for a story significantly more successful than some admit.

The wars in Angola and Sierra Leone ended before the KPCS came on stream, but the huge amount of public attention garnered by the issue, by the UN, by NGOs and

by the KP negotiations contributed. Today, the KPCS makes it much more difficult than in the past for criminals to sell large volumes of high-value diamonds. Governments must now certify all rough diamonds before export, stating not just that they are conflict free, but that there is an auditable paper trail tracing the diamonds back to the place where they were mined, or to the point of import.

Some in the diamond industry like to say that conflict diamonds never represented more than four percent of the world's total, and that today they represent a fraction of one percent. In fact the reality is more dramatic. In the mid to late 1990s, conflict diamonds represented as much as 15 percent of the world's total. The hemorrhage of diamonds out of Angola, the DRC and Sierra Leone was enormous and has been well documented. By 2000 when the Kimberley negotiations began, it had been reduced to about four per cent, and today it is certainly less than one percent. The Kimberley Process can take some credit, therefore, for a story significantly more successful than some admit.

It has done more than that, however. It has helped to raise huge volumes of illicit diamonds to the surface, making honest men out of a variety of criminals. It is estimated that during the 1990s, as much as 25% of the world's diamonds were in some way illicit – used for money laundering, to evade taxes, to buy drugs, weapons and other clandestine goods, or they were simply stolen. Some participants in the KP say that the system was designed only to halt conflict diamonds and not the wider problem of illicit diamonds. But if you hunt for big wolves you are bound to catch smaller wolves as well.

The best demonstrations of this can be seen in the DRC and Sierra Leone, where official diamond exports had declined precipitously during the 1990s. In 1995 the DRC exported \$331 million worth of diamonds, but since the advent of the KPCS, much has changed. Official exports from the DRC in 2005 totaled \$895 million, more than in

any year since the discovery of diamonds in 1907. In Sierra Leone, the turnaround was even more dramatic. From almost nothing five years earlier, Sierra Leone exported \$142 million worth of diamonds in 2005. That represents more than just a 50 fold increase; it represents a huge increase in export taxes, income taxes, exploration, mining, trading and export license fees, and a significant decrease in smuggling. And through its statistical data base, the KPCS can verify, for example, that the amount shipped from Sierra Leone to the European Community in 2005 (\$133.4 million) is the same as what the EC reports as having been imported from Sierra Leone. The carats, the dollar value and the shipment numbers submitted by the two parties every quarter can be verified.

The significance of these achievements in the diamond world and in the history of the diamond industry cannot be underestimated. They are worth celebrating. And they are worth protecting.

The KPCS: A Snapshot

The Kimberley Process Certification Scheme (KPCS) for rough diamonds came into effect on January 1, 2003. Over 45 countries, plus all those represented by the European Community, participate. Under the terms of the KPCS, each participating government agrees to issue a certificate to accompany any rough diamonds being exported from its territory, certifying that the diamonds are conflict-free. Each country must therefore be able to track the diamonds being offered for export back to the place where they were mined, or to the point of import, and it must meet a set of standards for these internal controls. All importing countries agree not to allow any rough diamonds into their territory without an approved KPCS certificate.

Given the large volume of diamonds being traded across borders, it was deemed necessary to produce trade and production statistics which can be compared from time to time in order to ensure that the diamonds leaving one country match those entering another, by volume and by value. Working groups comprising representatives of governments, industry and NGOs deal with statistics, monitoring, technical issues and membership in the KP. A peer review mechanism has also been created, and more than 30 country reviews had been undertaken by October 2006. During 2006, a "Three Year Review" of the overall KPCS was carried out, examining its impact and the effectiveness of its various systems and processes.

The Trouble with Kimberley

All regulatory systems need to be monitored, and where weaknesses are identified, they need to be strengthened. After more than 100 years of automobile manufacture, car theft remains a problem. To stop car theft, manufacturers first put locks on doors, and governments instituted licensing. Then manufacturers put locks on the ignition and serial numbers on the engine and chassis. Many cars today are fitted with alarms, immobilizers and GPS locators. But cars are still stolen. There are two lessons in this: first, thieves constantly look for ways around regulatory systems. Second, manufacturers, owners and law enforcement agencies must be vigilant, and they must regularly adapt their systems to stay one step ahead of the criminals. Certainly there is no thought of abandoning the field to thieves.

With diamonds the challenge is greater. Diamonds are the most concentrated form of wealth on the planet. They are small and easy to hide, and they are difficult to identify. Any mark applied to a diamond can as be easily removed, and the better the diamond, the fewer characteristics it will have that might help to identify its origin.

Broadly, the KPCS has demonstrated that it can work. Reduced volumes of conflict diamonds, increasing official exports in countries emerging from conflict, a mechanism to verify trade and production figures, and a monitoring mechanism that has sent review teams to more than 30 participating countries all testify to this. The expulsion of the Republic of Congo from the KP in 2004 because it could not explain the origin of its diamonds, or the absurdly low value it had placed on high quality goods, showed that the KPCS has teeth if it cares to use them.

New systems are needed, but the police act as though they are asleep at the switch

Recently, however, there has been an upsurge in "car theft". New systems are needed, but the police act as though they are asleep at the switch, the most serious investigations are being done by NGOs and the UN, and KP politicians deny the need for serious change.

Brazil

In May 2005, PAC issued a detailed report entitled *The Failure of Good Intentions: Fraud, Theft and Murder in the Brazilian Diamond Industry*. The report demonstrated conclusively that Brazil's Kimberley Process system was not working.

The Brazilian government denied everything, and used the November 2005 KP Plenary meeting to denounce PAC and its report. In February 2006, while PAC was researching a second report on Brazil, the country's Federal Police made a series of arrests, including people named in the first PAC report, and including the author of the government report presented at the November 2005 KP meeting.

PAC's second report, *Fugitives and Phantoms: The Diamond Exporters of Brazil*, was released in April 2006. Brazil halted all diamond exports and conducted its own internal review, finding that 49 of the 147 KP certificates it had issued since it joined the system had been fraudulent. At a June KP meeting in Botswana, the Brazilian government made a formal apology to PAC for what it had said eight months earlier.

The Kimberley Process itself took no action on this issue for more than a year. Finally, in June 2006, a KP review team visited Brazil. As of October 2006 its report had still not been finalized, but in the meantime, Brazil issued new diamond regulations and resumed exports. In all of this, the KP has seemed to be little more than a bystander.

Guyana

In April 2006, PAC released a report on Guyana, entitled *Triple Jeopardy – Triplicate Forms and Triple Borders: Controlling Diamond Exports from Guyana*. The report showed that a significant proportion of Guyana's diamonds have already crossed at least one border illegally before they are officially presented for export in Georgetown. The report, which involved PAC investigators in discussions that were sometimes risky and of necessity clandestine, aimed to inform the governments of Guyana, its neighbours, and the KPCS, which had a review visit scheduled for the month of June 2006.

As of October 2006, the review report remained uncompleted and there had been no reaction from the KP or the government of Guyana to the PAC report, its allegations or its recommendations.

Côte d'Ivoire, Togo and Ghana

Côte d'Ivoire has been a member of the Kimberley Process from its inauguration in 2003, but since that time there have been no official diamond exports. The conflict in that country and the fact that its diamond areas are behind rebel lines caused the government to suspend all shipments before the KPCS was inaugurated. In November 2005, however, Global Witness issued a detailed report – *Making it Work: Why the Kimberley Process Must Do More to Stop Conflict Diamonds* – demonstrating how diamonds mined in rebel-held areas were being smuggled out through neighbouring countries.

The report, timed to coincide with a KP meeting later that month, caused a flurry, and led to a variety of recommendations and resolutions within the KP, urging vigilance among all KP participants. A KP review team visited Ghana and Togo the following month, and during the first half of 2006 the United Nations Expert Group on Côte d'Ivoire invited individuals associated with the KP to take part in a visit to Côte d'Ivoire.

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In fact, however, nothing of substance was done. The KP review, carried out in December 2005, languished in draft form eight full months later. In a submission to the KPCS Three Year Review, Côte d'Ivoire said "In our view, the Kimberley Process has not effectively responded to the mandate given by the relevant UN General Assembly Resolution to combat the threat of conflict diamonds, because... Ivorian diamonds have been sold to the international market without any sanctions for those involved in that trade."

In the meantime, the UN Expert Group submitted its own report to the UN Security Council in October 2006, stating that as much as \$23 million in conflict diamonds has been finding its way out of Côte d'Ivoire and into the legitimate trade every year. It stated that much of the smuggling was being done through Ghana and onwards to Israel and Belgium. It said that Ghanaian KP controls were either inadequate or non-existent. Ghana denied most of the allegations. Meanwhile, the KP report on Togo, where diamond statistics are as dubious as those of Ghana, also remained unfinished ten months after the KP review visit.

Venezuela

Venezuela has been a member of the KP since 2003. From the beginning, the KP has had great difficulty in extracting annual reports and timely diamond statistics from Venezuela. Although diamond mining continues, Venezuela has mysteriously recorded no diamond shipments since March 2005. Calls from NGOs for action by the KP on Venezuela have been resisted. In April 2006, PAC reported that diamond buyers from Brazil were operating freely in the Venezuelan border town of Santa Elena, and that smuggling was rampant. Venezuela is one of only three countries that have not invited a KP review visit, and so Venezuela remains *terra incognita*, but the Kimberley Process still has no plan for action.

A forthcoming PAC investigation of the Venezuelan diamond industry will describe, among other things, the chaos and violence in the country's southern mining region, and the fact that most of Venezuela's rough dia-

mond production is being smuggled out of the country without any reference to Kimberley Process controls.

The United States

In July 2004, PAC and Global Witness produced a report entitled *The Key to Kimberley – Internal Diamond Controls: Seven Case Studies*. It recommended improvements in US diamond statistics, random spot checks of imports and exports by the US Customs Service, and spot checks and audits for KP compliance among companies trading in rough diamonds. Nothing was done.

In June 2005, a routine KP review team examined the US control system. It recommended, *inter alia*, improvements in US diamond statistics, random spot checks of imports and exports by the US Customs Service, and spot checks and audits for KP compliance among companies trading in rough diamonds.

Conflict Diamonds Go to the Movies

What Damage to Africa, Diamonds and the Kimberley Process?

When the diamond wars were at their height in the mid to late 1990s, there was little international interest in the subject outside the NGO world. Since then, however, the UN Security Council, UN peacekeepers, the diamond industry, the media and academia have all become involved. Now it is Hollywood's turn. *Blood Diamond*, starring Leonardo DiCaprio and Jennifer Connelly, focuses clearly on diamonds in Sierra Leone. The 2006 film, directed by Edward Zwick (*The Last Samurai*, *Courage under Fire*), is the tale of an unscrupulous soldier of fortune who sets out to retrieve a very large diamond at the height of Sierra Leone's horrific RUF war.

Two documentary films coincide with the release of *Blood Diamond*. The first, *Blood on the Stone*, produced by Insight News Television and made with the assistance of people working on *Blood Diamond*, shows that many of the issues raised in the fictional story remain alive and well today. *Bling* grew out of hip hop artist Kanye West's recording, "Diamonds from Sierra Leone", which won a 2006 Grammy Award. This documentary, produced by Article 19 Films with assistance from UNDP, recounts the story of the war and conflict diamonds, and follows three hip hop artists to Sierra Leone where they examine the state of today's diamond miners.

Joining the list is the History Channel, with a two-hour film to coincide with the release of *Blood Diamond*. Bringing up the rear, with a planned March 2007 release is *The Diamond Road*, a documentary by Kensington Productions of Toronto. It too will focus on Sierra Leone but is more likely to deal with the challenges of the present than the horrors of the past.

It is not clear what damage these films will do to African diamond producing countries, to the image of diamonds or the reputation of the Kimberley Process. Certainly the industry is worried. Had the Kimberley Process been willing and able to deal with the more blatant recent cases of conflict diamonds, the fraudulent use of KP certificates and the smuggling of illicit diamonds in Ghana, Brazil, Guyana and Côte d'Ivoire, it would have been easier to counter public criticism of the KPCS. As this paper was being drafted, various KP committees were debating what to do about the particular case of conflict diamond smuggling from Côte d'Ivoire into Ghana. From most governments, there was no call to arms, no sense of alarm, no appetite for decisive action. The same participants who argued for soft-peddling on this issue – notably the European Commission which will chair the KP in 2007, and South Africa which led the still unfinished KP reviews of Ghana and Togo in 2005 – also argued against almost every recommendation in the Three Year Review that would have tightened up the KPCS.

Apparently nothing was done, because in September 2006, more than two years after the first report, the US Government Accountability Office, in a report entitled *Conflict Diamonds: Agency Actions Needed to Enhance Implementation of the Clean Diamond Act*, recommended, *inter alia*, improvements in US diamond statistics, that government implement a plan for reviewing the activities of the US Kimberley Process Authority and its licensees, and that there be random spot checks of imports and exports by the US Customs Service. Within days the US State Department and the US diamond industry reported they were taking concrete action to deal with all of the recommendations.

Other Alluvial Diamond Producing Countries

Historically, it has proven extremely difficult to regulate the production and tracking of alluvial diamonds. Scattered over hundreds of square miles, alluvial diamonds are often an unattractive investment proposition. As a result, there are hundreds of thousands of diggers operating in the informal sector without any serious corporate or government oversight. KP-related internal controls remain weak in such countries, which include some of those mentioned above, as well as Guinea, Sierra Leone, the DRC, Angola and others.

The Kimberley Process has dealt with this in two ways. It has formed a working group made up of representatives of these countries to discuss the problems and to learn from one another. And some countries, notably the US and Canada, have offered technical assistance to countries that request help with training or systems development.

Beyond this, little has been done. In fact most of the problems associated with alluvial and artisanal diamond production have been well articulated over the past few years, and while countries with alluvial diamonds may well need technical assistance, the technical assistance on offer is woefully inadequate. Many African producer countries need assistance in establishing *and enforcing* rigorous systems of inspection and audit among those with licenses to mine, trade and export diamonds. This is a political issue in the sense that it needs to be given high priority in each country. A strong push for that could come from the KP, but it does not. And it requires money, which donors might assist with as well, but do not.

The KPCS: Losing the Fight for Effectiveness

When the KPCS agreement was approved at a KP meeting at Interlaken in November 2002, it was agreed that there would be a review of the system three years hence.

As the KPCS unfolded, a number of changes and additions were made to it. A “participation committee” was established soon after startup to sort out a number of membership issues. Some initial participants were dropped and a formal admissions procedure was established. There had been no serious provision for monitoring in the original agreement, but in October 2003 a peer review mechanism was established whereby three government representatives and one each from NGOs and industry would visit countries that invited a review. By mid 2006, more than 30 reviews had been conducted, and only three participants – Croatia, Indonesia and Venezuela – had not invited one. A Monitoring Working Group was chaired by the EC, although “chaired” in this case meant a full-time staff job assigned to the solicitation of review invitations, the organization of dates and times for reviews, the creation of 10-15 five-person voluntary review teams per year and the coordination of their reports and follow up. It is a complex job that also involves the gathering and analysis of annual reports from each of 45 participating governments, a task no less arduous than coordinating review teams.

It was agreed that a statistical data base would be an essential part of the KPCS. This was very slow to develop despite the best efforts of Canada, which chaired a Statistics Working Group (SWG). By mid 2006, however, there was a complete data base available to participants on a KP statistics website, with information by country on all rough diamond production (semi annually) and trade (by quarters), including carat weights and values. Cross referencing tables allow users to verify exports from one country against imports in another, and in 2006 members of the SWG carried out a first-ever comprehensive analysis of all countries, querying anomalies where they were detected. In the case of statistics, “chairing” meant the dedication of at least two person-years to the gathering, posting and analysis of data, the creation and maintenance of a statistics web site, and the solicitation and coordination of whatever voluntary labour might be provided by SWG members.

The beauty of the KP during its first three years was that each of these committees and working groups was comprised of volunteers. Israel, for example might be a member only of the Statistics Working Group. Depending on its level of interest, India might be a member of two or even three working groups. Apart from two large meetings a year, most of the work is handled by electronic exchanges and through conference calls that are frequent and often lengthy. Because membership is voluntary, so are the contributions of time. Any expenses – including the expenses of chairing a group, the expenses of establishing and maintaining a web site (of which there are two), or the cost of taking part in a review visit – all are met by the employer of the individual in question. The Chair of the overall Kimberley Process began to rotate annually after South Africa stepped down in 2003. Canada took the chair in 2004, Russia in 2005 and Botswana in 2006. The Chair deals with issues that transcend the committees, and it hosts (and pays for) two annual meetings: a “plenary” and a mid-year “intersessional” meeting.

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By mid 2006, however, the KPCS was showing signs of stress. The peer review system was highly dependent upon the regular participation of a few countries. The two NGO KP members bore the disproportionate expense of financing a civil society team member on each review. Not all reviews were of the same calibre, and the final reports on some of the most important, as noted above, were delayed for months. The Statistics Working Group was likewise strained by its dependence on voluntary labour from group members, and by lengthy delays in data production. The voluntary chairmanship of each working group suggests a concept of rotation, but the amount of work involved and the cost associated with the chairmanship of the three most important working groups had resulted in stasis, with no change in three years, and none on the horizon.¹

Worse, as noted above, when confronted with overt examples of obvious and serious non-compliance in Brazil, Guyana, Ghana and elsewhere, the Kimberley Process slowed to a snail’s pace or became paralyzed.

The Three Year Review: An 18 Month Debate

The Three Year Review was the first opportunity to deal with the growing challenges and complexities of the KPCS and its challenges in a comprehensive manner. The process began at the June 2005 intersessional meeting, where an *ad hoc* working group was mandated to develop terms of reference and produce a report for the KP Plenary meeting 18 months hence.² A questionnaire was created early in 2006, and views were sought from all participants, observers and other stakeholders. Replies were collated into a report, first presented in draft form to a Kimberley meeting held in Botswana in June 2006. The 100 page document praised the accomplishments of the KPCS, saying that it had been “remarkably successful”. And it made 80 recommendations, clustered around four basic themes:

- The KPCS “should focus on improving and enforcing internal controls” in participating countries, “especially those that produce alluvial diamonds”;
- The KPCS peer review mechanism, one of the KPCS’ s most effective tools, should be strengthened and made a permanent feature;
- The statistical underpinnings of the KPCS should be strengthened and some of the work hitherto done on a voluntary basis by members of the statistics working group should be outsourced to a professional body;
- The KPCS should find “new ways to finance a KPCS that has become larger and more complex with time. There needs to be more equal burden sharing on peer reviews, on the provision of resources for statistical analysis and possibly for a small permanent secretariat.”

Although none of this should have seemed controversial, virtually none of it survived

Although none of this should have seemed controversial, virtually none of it survived, with the exception of the peer review mechanism. Almost all recommendations relating to better controls, a professionalized data system and spending were rejected by at least one or more of the members of the *ad hoc* committee. What was then presented to the rest of the KP membership was a seriously diluted version of the original draft.

¹ The World Diamond Council chairs the Working Group of Diamond Experts, The EC chairs the Working Group on Monitoring and Canada chairs the Working Group on Statistics. The chair of the less demanding Participation Working Group has rotated among past chairs of the overall KP. An *ad hoc* group of alluvial diamond producing countries was also created.

² The committee included the EC, Sierra Leone, China, India, Israel, South Africa, Australia, Russia, the United States, NGOs and industry, with Canada as chair. Several members, including Sierra Leone – the only member with direct experience of conflict diamonds – took no active role in the process.

The entire 18 month process had, in fact, been acrimonious from the outset, with some participants wanting the report restricted to an in-house review of the impact of the KPCS with no consideration of its effectiveness or its systems and procedures. The June 2006 draft report was hotly debated in round after round of conference calls and revised drafts. Not surprisingly, NGOs supported a strengthened KPCS with tougher internal controls, a professionalized approach to data gathering and analysis, and a more equitable form of financial burden sharing. In each of these key areas, they faced withering opposition from at least one, if not several of the government members of the *ad hoc* committee.

Money, Statistics and Monitoring

NGOs had long argued that the way statistics and monitoring were being handled was not sustainable. Canada had chaired the Statistics Working Group (SWG) at considerable cost, and cost was the primary reason that no other country has been willing to take it on. In addition, NGOs were skeptical that the SWG's success (after three long years) in doing the first-ever full scale analysis of the statistics could be sustained on the basis of voluntary labour. They made a strong case for using a professional financial services firm such as KPMG or Deloitte Touche to gather and analyze data. Ignored several times over the past two years, the idea was rejected and expunged from the Three Year Review.

Consensus or Censorship?

The Kimberley Process works on the basis of consensus. This means that all members must agree on a course of action before it can take place. There is no voting mechanism. If only one party disagrees with a proposal, it will not go forward. This approach served the KP reasonably well in its early days, when it was essential that all major diamond producing and processing countries be willing members.

In the real world, "consensus" means general or widespread agreement. Where the Three Year Review is concerned, however, it means that even the most simple and mundane recommendations can be – and have been – blocked by a single participant. The result: little change, and an almost complete inability to deal with major problems when they arise. Some of the changes demanded in text and recommendations were tantamount to censorship.

NGOs, with funding provided exclusively by Global Witness and Partnership Africa Canada, have participated in almost every one of the 30-plus review visits since 2003. No other participant or observer has borne as much expense, and the NGOs argued that this was both unfair and unsustainable. But after weeks of debate, the best the *ad hoc* committee could recommend to the KP Plenary was that resource needs for peer reviews "need to be addressed". How, when or even whether this might happen was left unaddressed.

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Transparency became a major issue where statistics were concerned. Although KP data is the best single source of information on rough diamond production and trade, it remains hidden on a secret website, available only to KP participants and official observers. By the end of 2005, most governments had agreed that a limited set of KP data could and should be made public. But publishing even a one-line set of data on each country – production and trade, carats and dollars – was virulently opposed by the World Diamond Council, with backing from the United States, on the grounds that KP data quality remained suspect, and if released, could become problematic.

On the one hand, the use of a professional firm for data gathering and analysis was rejected on the grounds that the KP had finally come to grips itself with issues of quality, while on the other, the release of KP data was opposed because of its poor quality.

Tightening the Rules

Almost every suggestion in the original draft report relating to tighter internal controls was rejected, handed off to one of the various working groups, or reworded into meaninglessness. The idea, for example, that illegal shipments should be seized and not returned automatically to the shipper, turned into a lengthy debate about national sovereignty and the definition of "illegal", with final wording "encouraging" participants only to "revisit the procedures and penalties" to ensure that they are consistent with KP standards.

There is no such debate where illegal arms shipments and false end-user certificates are concerned. The laws are clear and violators are prosecuted. Intercepted illegal shipments are certainly not returned to illicit weapons traffickers. A regime designed to end conflict diamonds needs to be as clear and as unambiguous as that governing arms shipments.

Other rejected recommendations:

- The Review states that “internal controls go to the very heart of the KPCS” and the World Diamond Council is quoted as saying “No more important area of improvement can be identified.” The only recommendation to actually deal with the huge weaknesses in this area, however, refers to a consolidated list of standards. There is nothing in the Report or in the consolidated list that recommends changes to anything whatsoever in the KPCS, or that requires any participant to do anything;
- The KPCS has no mechanism for “suspending” a participant. A recommendation in the Three Year Review that one be developed was taken out of the draft report on the understanding that the Working Group on Monitoring (WGM), or the Participation Working Group would deal with it. On October 10, the WGM, in a conference call covering four continents, spent two and a half hours debating the concept of suspension in connection with the recent Security Council report on Côte d’Ivoire and Ghana. As in countless previous discussions on this subject, there was no agreement;
- The KPCS has no mechanism even for embarrassing a non-compliant participant into better behaviour, apart from a lengthy series of reminders. A rather tame recommendation that the names of those countries in states of minor non compliance be posted on the public area of the KP website was discussed *ad nauseam* and then rejected;
- NGOs had long argued that that governments should conduct spot checks and third party audits of diamond trading companies, but this too was rejected;
- No agreement was reached on how or even whether to address the evolving funding requirements of the KPCS;
- The idea of a small permanent secretariat was rejected out of hand.



Why Such Resistance to Better Regulation?

Speculation on the strong resistance by some governments to tougher rules and better enforcement is just that – speculation. Some governments say, however – in the face of overwhelming evidence to the contrary – that the KPCS is working just fine, so better rules and tougher enforcement are not needed.

A more mercenary set of objections clearly revolves around money: some governments, notably the United States, Israel and the EC, have flatly refused to accept any recommendation that could result in an appeal for funding. It might be asked of those participants what it is worth to protect a \$60 billion industry and a regulatory system involving some 70 countries. The answer, it appears, is zero.

There may be a fear that tougher rules and better enforcement might result in the need for changes in national legislation. That is unlikely, but it might be asked what level of new legislative effort in South Africa or the United States or the EC is justified in order to prevent the recurrence of diamond-fuelled wars in Africa. For governments resisting change on these grounds, the answer, it appears, is zero.

There may be a feeling that conflict diamonds are “over”, that massive diamond fraud under the KP banner in countries like Brazil and Guyana is “just” money laundering or theft or some other thing, and that the Kimberley Process need not be concerned. If true, this makes a fraud of the Kimberley Process itself.

It may also be that the preternatural abhorrence of self-criticism by governments – and especially by civil servants representing governments – has taken control of the Kimberley Process, eclipsing the fervour that caused the KPCS to be created, dulling memories about the ultimate purpose of the KPCS: to end diamond-fuelled conflict now and forever.

The Role of the Diamond Industry

In order to deal with the issue of conflict diamonds, the World Diamond Congress of 2000 created a World Diamond Council to represent the views of the industry – ranging from diamond mining firms to the retail jewellery end of the diamond pipeline. The WDC has participated in all Kimberley Process meetings, most working groups and committees, and has arranged for industry representation on most review visits. In addition, the International Diamond Manufacturers Association (IDMA) and the World Federation of Diamond Bourses (WFDB) created a voluntary system of self-regulation which required its members to sign on to a System of Warranties and a Code of Conduct.

The WDC created an “essential guide” to the Kimberley Process for the diamond industry and a variety of educational material about conflict diamonds. In 2006, in anticipation of the *Blood Diamond* film, it launched a new website (www.Diamondfacts.org) explaining the issues in much greater detail than before, and describing the important role of diamonds in the economies of African producing countries.

In the view of some, the industry could have done much more, sooner. Its voluntary systems are just that – voluntary – and they apply in fewer than half of KP participating countries. The industry has nothing to lose and everything to gain from tough controls on illicit behaviour, but it hung back on many debates until the spectre of Leonardo DiCaprio appeared.

That said, the diamond industry is not the villain of the Kimberley failings. The diamond industry, made up of mining firms, trading companies, cutters and polishers, jewellery manufacturers and retailers is so fragmented that no system of compulsory industry control could ever be agreed or effectively imposed. If diamonds are to be regulated, the regulation must derive from national legislation, and it must be enforced by national governments. That is why the KPCS is based on national legislation. Only governments have the force of law to validate regulations. Industry systems are welcome, but alone they are, and always will be, inadequate. The failures of the Kimberley Process thus have little to do with industry. They can be laid squarely at the feet of the governments that have argued against provisions that would make the KPCS a system that can respond rapidly to evolving situations, one that is nimble, robust and effective.

Conclusions and Recommendations

Partnership Africa Canada believes that the KPCS can be an effective regulatory system for conflict diamonds if it is strengthened, and *most importantly*, if its provisions are enforced. Without significant and urgent change, it will be little more than what it has shown itself to be during 2006: a paper tiger. Conflict diamonds do not represent a huge proportion of the world diamond trade today, but they do exist, and without effective controls, they could erupt again in any one of a dozen places. The KPCS is a remedial undertaking, but it is also a *preventive* mechanism. It is worth preserving, but only if it is done well.

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This report has indicated where Partnership Africa Canada believes changes are required. All of the changes we support appeared, in fact, in the draft Three Year Review document, before it was gutted. Some of the issues remain at the back of that report, in a section entitled “issues on which no consensus was reached”. Broadly, they fall under the categories discussed above:

- The KP must deal as a matter of urgency with the problems that have been identified in Brazil, Guyana, Côte d'Ivoire, Ghana, Togo, Venezuela and elsewhere. The problems that have been identified must be taken seriously, and the KP must take concrete action to see, and to verify, that they are remedied;
- The KP must focus on improving and enforcing internal controls in participating countries, especially those that produce alluvial diamonds;
- The KPCS peer review mechanism, one of the KP's most effective tools, should be strengthened and made a permanent feature. Additionally, the KP needs a research capacity of its own so that it is not entirely beholden to NGOs for investigative work;
- The statistical underpinnings of the KPCS should be strengthened, and some of the work currently done on a voluntary basis by members of the statistics working group should be outsourced to a professional body;
- The KP must find new ways to finance a KPCS that has become larger and more complex with time. There needs to be more equitable burden sharing on peer reviews, and on the provision of resources for statistical analysis;

- The KP needs a clear system of penalties for non-compliance, including a provision for suspension. Its current binary approach – “in” or “out” with nothing in between – is unrealistic and unworkable;
- Internal controls in each participating country must meet KP standards. *Inter alia*, but at a minimum, governments must conduct spot checks and third party audits of diamond trading companies;
- The KPCS deals with rough diamonds only, but there are growing loopholes where cutting and polishing is concerned. These loopholes must be identified and closed.

In all of this, the KP must have the capacity to move quickly when there are credible indications of non-compliance with its standards, and to take decisive action that demonstrates to all participants, the industry and diamond consumers that it is protecting their interests and – more importantly – that it is working to ensure that the scourge of conflict diamonds ends, forever.

Thanks and Links

Partnership Africa Canada would like to thank the many people who commented on a draft of this report. The views expressed in the report, as well as any errors or omissions, however, are those of PAC alone.

More information on the Kimberley Process can be found in the public pages of its web site at www.kimberleyprocess.com:8080/. Other reports on diamonds and conflict diamonds can be found on the websites of Partnership Africa Canada (www.pacweb.org) and Global Witness (www.globalwitness.org.) The World Diamond Council has created two websites: www.worlddiamondcouncil.com and www.diamond-facts.org.



Partnership Africa Canada

Killing Kimberley?
Conflict Diamonds and Paper Tigers

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