

## **Dear Kimberley Process Participants,**

The Civil Society Coalition has engaged in significant discussion about our next steps within the system after the collapse of the mediation process with this year's Kimberley Process Chair, the United Arab Emirates (UAE).

At the November 2015 Plenary in Angola, in announcing the boycott of the Kimberley Process Chair, we said the UAE chairmanship crossed a "red line" due to widespread concerns with their lenient standards and antagonistic relationship towards civil society.

We entered into a mediation process in January 2016, led by the World Diamond Council (WDC), in an effort to address our concerns. In our remediation proposal, we underscored that our concerns were not isolated to the UAE, but that the Chair had a responsibility to show leadership in taking action to fix deficiencies that undermine the integrity and efficacy of the Kimberley Process.

To our regret, after four months of no progress, the Coalition was forced to conclude the UAE was not a serious partner in negotiations and had no intention to meet the promises it made in Angola to Kimberley Process members to remedy the concerns of civil society.

The collapse in discussions with the UAE comes with serious ramifications for the Coalition's future engagement within the Kimberley Process.

The most immediate impact of the UAE's failure to meaningfully engage in negotiations will be the absence of the Coalition at both the 2016 Intersessional and Plenary. The Coalition now is in a position in which it cannot engage in further negotiations with the UAE due to a serious loss of trust between the KP chair and the Coalition as the KP's third pillar. Our absence will deprive KP participants of insights with which to make informed decisions on critical matters being discussed at these meetings, and could impact the UAE's ability to forge consensus on its agenda.

The Coalition will be monitoring developments within the Kimberley Process for the remainder of the year. We will be seeking action on the concerns we outline below—and we will re-evaluate our position prior to Plenary. If insufficient progress is made, the Coalition will be forced to consider the range of options available to it. These options include increased public communication on issues of concern, as well as outreach to stakeholders outside the KP. Ultimately, if no progress is made, the Coalition will be forced to consider the need to publicly withdraw the third pillar from the Kimberley Process – once a landmark tripartite mechanism.

## UAE Mediation Failure

As part of our January remediation proposal to the UAE, the Civil Society Coalition outlined four areas of concern that undermined the Kimberley Process and needed immediate action:

- **The UAE's valuation processes.** The re-export of African diamonds in the UAE is on average 44% higher than the value at which they were originally imported from African countries – a figure four times that of competing trading centres.<sup>1</sup> This issue is significant because together with a lack of oversight of its internal diamond trade and the issuance of mixed origin certificates,<sup>2</sup> this mark-up creates an additional opportunity for conflict diamond infiltration of the legitimate supply chain and represents a massive loss of tax revenues to African treasuries.
- **A lack of enforcement cooperation with key trading partners.** This has prevented several diamond related investigations by police in other jurisdictions, with one investigator quoted as stating in respect of Dubai that “It’s like our fax line was directly connected to their shredder.”<sup>3</sup>
- **The absence of an enhanced vigilance system** for diamonds emanating from problematic and conflict affected areas like Central African Republic (CAR) and its immediate neighbours, as required by a 2013 Administrative Decision by the Kimberley Process. This has seen Dubai referred to in reports on the CAR conflict as somewhere “where it is easy to give illicit diamonds a second lease on life through forged KP certificates”.<sup>4</sup> This issue was felt to be particularly problematic given that 2016 would see the KP chair oversee a partial lifting of the KP’s CAR embargo.
- **The need for constructive and genuine engagement with the civil society coalition** in the spirit of the tripartite foundation upon which the KP was founded and is intended to operate.

Unfortunately, four months into mediation and with no progress to show—the Coalition was forced conclude that the UAE was not a serious partner and had no intention to meet promises it made in Luanda to satisfactorily remedy the concerns outlined. This conclusion was drawn because of the UAE’s failure to engage in any constructive talks with the Coalition or to issue a plan of action regarding its own practices as requested by the Coalition in January. This is despite the efforts of the World Diamond Council to arrange a face-to-face meeting, which the UAE appears to have ignored up to May 1<sup>st</sup>. On this date the Coalition officially withdrew from the mediation, concerned that these efforts were merely being instrumentalised as a stalling tactic ahead of the intersessional.

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<sup>1</sup> See for example PAC (2014).

<sup>2</sup> On these points, see Amnesty International, *Chains of Abuse: The Case of Diamonds From the Central African Republic and the Global Diamond Supply Chain*, September 2015.

<sup>3</sup> World Policy Institute, ‘Kimberley’s Illicit Process’, *World Policy Journal*, Winter 2014.

<sup>4</sup> Enough Project, *Behind the Headlines: Drivers of Violence in the Central African Republic*, May 2014, p.10.

## Major Challenges Ahead

The UAE Intersessional comes at a time when the diamond supply chain is faced with new challenges. The KP no longer needs to respond just to broadened human rights concerns, but other emerging issues such as the impact of synthetics, especially undisclosed synthetics, on the diamond trade; the withdrawal of funding to the industry from the banking sector, in part due to associated risks; and the need to tackle undervaluation and money laundering practices and vulnerabilities. These issues are not only supplementary to the KP. They strike at the very core of its ability to serve its own mandate under the Interlaken Agreement: to stem the flow of conflict diamonds. Failure to address illicit trading – be it money laundering, terrorist financing, under and over valuation, undisclosed synthetics – means a failure to address the flow in conflict diamonds. The significance of this to the efficacy of the KP is highlighted in the fact that despite the KP's embargo on the Central African diamonds since 2013, the UN Group of Experts have found that diamond exploitation and trade from rebel affected areas continues, estimating that between 2013 and 2014 alone, 140,000 carats of diamonds, valued at \$24 million, were smuggled out of the country, and into the international market.

These issues should matter to all KP Participants, and the longer the KP ignores them, the more it shrinks its orbit of influence. Our concerns with the UAE are symptomatic of larger ills that undermine the integrity and efficacy of the Kimberley Process and its claims to provide consumers with responsibly sourced diamonds.

Several prominent international organizations,<sup>5</sup> civil society groups both outside<sup>6</sup> and inside the KP,<sup>7</sup> and investigative journalists,<sup>8</sup> have repeatedly raised serious concerns about policies and practices that frustrate the ability to stem the flow of illicit diamonds (intrinsically linked to the issue of conflict diamond flows), as well as their contribution to tax evasion, which undermines upstream state efforts under the KP's Moscow and Washington Declarations. The policies and practices of the UAE and the Dubai Multi-commodities Centre (DMCC) have featured heavily in these reports. Unfortunately, these concerns have been met with no concrete action on the part of the UAE or the DMCC, including issues that were first raised as far back as their 2008 review visit

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<sup>5</sup>See for example the UN Panel of Experts for the CAR, [http://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/s\\_2014\\_762.pdf](http://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/s_2014_762.pdf) and the Financial Action Task Force, *Money Laundering and Terrorist Financing through Trade in Diamonds*, October 2013, <http://www.fatf-gafi.org/media/fatf/documents/reports/ML-TF-through-trade-in-diamonds.pdf>.

<sup>6</sup> See for example: Enough Project, *Behind the Headlines: Drivers of Violence in the Central African Republic*, May 2014, <http://www.enoughproject.org/files/CAR%20Report%20-%20Behind%20the%20Headlines%205.1.14.pdf>; Amnesty International, *Chains of Abuse: The Case of Diamonds From the Central African Republic and the Global Diamond Supply Chain*, September 2015, <https://www.amnesty.org/en/documents/afr19/2494/2015/en/>.

<sup>7</sup> See for example, Partnership Africa Canada, *All that Glitters is Not Gold: Dubai, Congo and the Illicit Trade of Conflict Minerals*, May 2014, <http://www.pacweb.org/images/PUBLICATIONS/All%20That%20Glitters.pdf>.

<sup>8</sup> World Policy Institute, 'Kimberley's Illicit Process', *World Policy Journal*, Winter 2014.

report. As an outward looking observer to the KP, the Coalition must reflect these concerns and object to the UAE's chairmanship for 2016.

Over the course of the last several months, the Coalition has spent considerable time reassessing our overall goals about how to improve governance in the diamond supply chain, particularly what goals and actions we will pursue that can improve responsible sourcing practices, transparency and economic development. A large part of our deliberations have focused on how, and under what circumstances, the Coalition will continue to engage the KP.

Throughout the UAE's chairmanship we have, and continue to, observe and assess statements and actions made by KP participants and industry groups. In our view, in the absence of any meaningful action by the UAE, the onus now shifts to Participants and Industry to hold the government of UAE to commitments it made as a precondition of them being awarded the chairmanship.

In the immediate term, concrete actions need to be taken by Participants and the WDC to safeguard the Kimberley Process, including addressing concerns previously and repeatedly raised by the KP Civil Society Coalition over the last two years.

In the coming months, the Coalition intends to reach out to KP Participants to share our understanding of the economic implications of the continued dysfunction of the Kimberley Process, particularly on African producers. We will also actively work with other forums, organizations and private sector actors to make industry members more aware of the reputational risks that come with inaction on diamond-related vulnerabilities, including the consequences related to the possible failure and disintegration of the KP.

### **Immediate Actions Required to Safeguard KP**

There are several actions through which the KP can demonstrate progress on the issues and concerns raised by the Coalition. For example, in our mediation proposal to the UAE, we offered many reasonable and actionable options to remedy the four areas of concern mentioned above.

In the interests of transparency, we have attached a copy of the January remediation for your full consideration. Therein you will find a list of recommended action items that Participants can use to support UAE and other similarly challenged governments to improve their diamond controls and the efficacy of the KP.

At the very least the Coalition expects KP Participants to move toward a substantial discussion and implementation plan of these recommendations by Plenary 2016.

The Coalition further takes note of the UAE's outreach to the OECD during its chairmanship. This new approach by the UAE offers a chance for the KP to create complementary synergies between the two initiatives. At the 10th OECD Forum on Responsible Mineral Supply Chains (held in Paris, May 10-12, 2016), it was made clear that *OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from*

*Conflict-Affected and High-Risk Areas ("the Guidance")* applies to all minerals, including diamonds. The Coalition shares this view and it is our expectation to see a meaningful uptake by the Kimberley Process of efforts to facilitate the implementation of the OECD Guidance. Doing so would more equitably rebalance the burden of compliance between governments and industry within the KP, and bring it more in line with other similar multi-stakeholder initiatives. This would entail the conclusion of an Administrative Decision in 2016 giving effect to the five-step framework for risk-based due diligence for responsible supply chains of minerals from conflict-affected and high-risk areas.<sup>9</sup>

## **Evaluating Our Future Position**

The role of the Civil Society Coalition and its status as one of the two founding Observers in the Kimberley Process is well established in both the Core Document and by precedent. The Coalition's current position on the UAE's chairmanship is a demonstration of its commitment to the KP. The Coalition will continue to communicate its position to all relevant parties in its efforts to preserve the integrity of the KP's tripartite foundation, which also includes ensuring the independence of the third (civil society) pillar.

As mentioned earlier, the Coalition will continue to monitor and assess developments within the KP for the remainder of 2016. Prior to Plenary the Coalition will hold a face-to-face meeting to discuss what progress, if any, has been made on achieving the targets set out here and in the January remediation proposal sent to the UAE. If insufficient progress has been made the Coalition will consider the range of options available to it, as outlined above.

In the interim we welcome the opportunity to engage with KP Participants to share perspectives on how best to achieve the objectives and our common goal of a conflict-free, transparent and legal diamond supply chain.

Kimberley Process Civil Society Coalition  
May 23, 2016

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<sup>9</sup> The five-step framework includes requirements that companies should (1) establish strong company management systems, (2) identify and assess risk in the supply chain, (3) design and implement a strategy to respond to identified risks (4) Carry out independent third-party audit of supply chain due diligence at identified points in the supply chain (5) Report on supply chain due diligence. The rest of the OECD Guidance can be read here: <https://www.oecd.org/corporate/mne/GuidanceEdition2.pdf>.