

False Consumer Confidence in Diamonds:

DECLINE OF CREDIBILITY IN THE KIMBERLEY PROCESS

What is the Kimberley Process?

In December 2000, the United Nations General Assembly adopted Resolution A/RES/55/56 to stem the role of diamonds in fueling conflict. This led to a series of meetings between governments, civil society, and the diamond industry, known as the Kimberley Process (KP). After months of negotiations, the KP Certification Scheme—a system that certifies rough diamonds as conflict-free—launched on January 1, 2003.

What is a Conflict Diamond?

According to the definition adopted by the United Nations and the KP, conflict diamonds are rough diamonds used by rebel movements or their allies to finance their military activities aimed to undermine legitimate governments.

Many civil society groups consider the KP's definition outdated. They believe the definition of conflict diamonds should consider smuggling, tax evasion, human rights abuses, and importantly, violence perpetrated by other groups such as governments or other actors.

What is a Kimberley Process Certificate?

The KP Certification Scheme certifies the origin of rough diamonds as conflict-free. The scheme is not an international legally-binding treaty, but by joining the KP, all Member States commit to passing national legislation that conforms to KP minimum standards and introducing a series of "internal controls" to ensure that conflict diamonds are excluded from trade. As part of these internal controls, KP Member States provide government-issued KP Certificates for each parcel of rough diamonds exported, certifying that the diamond is conflict-free. KP Member States can only trade diamonds with other KP Participants.

A KP Certificate implies that the issuing government is able to track diamonds to the place where they were mined and up to the point of import. The reality however, is different.

Countries with artisanal production often do not have a full picture of where their diamonds are mined, or even in some cases, their true origin. In October 2014, the UN Group of Experts on the Central African Republic (CAR) raised concerns about the illicit trade of the country's diamonds into Cameroon, despite a UN and KP embargo. The UN estimated that around 140,000 carats, worth \$24 million USD, were smuggled from CAR between May 2013 and October 2014.

What is the role of the diamond industry and civil society?

The KP is an intergovernmental system, but both the diamond industry and civil society organizations have been involved from the outset and are active members of working groups, review teams, and Plenary meetings. Together, these three groups make up the three pillars of the KP. The scheme is considered one of the first multi-stakeholder initiatives, with a tripartite structure where governments, industry, and the KP Civil Society Coalition work together to tackle a common problem. Other representatives of industry and civil society also sit as observers of the KP.

When I purchase diamond jewelry, should I ask for a Kimberley Process Certificate to have confidence in where the diamonds come from?

A KP Certificate only applies to rough diamonds as they are exported from their country of origin to the refining centre, where they may be cut and polished. The KP does not apply to cut and polished stones. Some diamond industry members voluntarily "self-regulate" throughout the entire supply chain through a scheme known as the "System of Warranties," however, when purchasing diamond jewelry there is no guarantee as to the origin of your diamond.

There is a weakness with KP Certificates and internal controls that allow conflict diamonds from countries under embargo, such as CAR to be smuggled and sold legally through neighbouring countries like Cameroon. Additionally, lax trading practices at diamond trading centers such as the United Arab Emirates, allow diamonds from conflict areas to enter the legal supply chain.

Who is the Kimberley Process Civil Society Coalition?

Investigations carried out by civil society groups, including IMPACT (formerly Partnership Africa Canada) in Sierra Leone, drew the original link between diamonds and conflict financing. Such organizations have played a vital role in the KP since its establishment. As observers, civil society groups are active members of working groups and country review missions, and participate in the annual Intersessional and Plenary meetings.

In 2007, civil society organizations came together to form the KP Civil Society Coalition to amplify their work. The Coalition has been able to successfully raise concerns as a coordinated group, including violations and recommendations to improve the diamond supply chain. The KP Civil Society Coalition has 11 international and community-based organizations from around the globe. The Coalition is the only official representative of civil society in the KP.

MEMBERS OF THE KP CIVIL SOCIETY COALITION

Groupe de Recherche et de Plaidoyer sur les Industries Extractives (GRPIE), CÔTE D'IVOIRE

Centre du Commerce International pour le Développement (CECIDE), GUINEA

Green Advocates, LIBERIA

Network Movement for Justice and Development (NMJD), SIERRA LEONE

Réseau de Lutte contre la Faim (RELUFA), CAMEROON

Centre National d'Appui au Développement et à la Participation Populaire (CENADEP), DEMOCRATIC REPUBLIC OF CONGO

Groupe d'Appui aux Exploitants des Ressources Naturelles (GAERN), DEMOCRATIC REPUBLIC OF CONGO

Zimbabwe Environmental Lawyers Association (ZELA), ZIMBABWE

Center for Natural Resource Governance (CNRG), ZIMBABWE

International Peace Information Service, BELGIUM

IMPACT (formerly Partnership Africa Canada), CANADA

What are the Civil Society Coalition's concerns with the Kimberley Process?

During the early years, the KP developed a reputation as a successful conflict prevention mechanism. In the mid and late 1990s, as much as 15% of the world's \$10 billion annual rough diamond production fell into the category of conflict diamonds. Since then, the proportion has fallen to less than 1%. Today, the Central African Republic is the only country in the world where conflict diamonds still exist, according to the traditional definition. However, while the KP may have restored consumer confidence—the scheme has failed to evolve and deal with new challenges. The KP must ensure the world's diamond supply chain is clean, legal, and does not contribute to armed conflict and human rights abuses, but as well must respond to emerging issues such as the impact of synthetics on the natural market, the withdrawal of support by leading banks from the diamond industry, how to tackle undervaluation, and money laundering.

OUTDATED DEFINITION: By continuing to use the original definition of "conflict diamonds" that emphasizes rebel group financing, the KP ignores the majority of conflict diamonds traded today those used by legitimate governments, private military companies, or other actors for their own interests.

Failure to reform: During a periodic reform cycle of the KP in 2012, the Civil Society Coalition undertook efforts to introduce a new, broader definition that would acknowledge the various actors, including government officials that can

ILLICIT DIAMONDS:

Illicit diamonds may not have anything to do with conflict, but are stolen, smuggled, used for money laundering, tax evasion, or have fraudulently declared their country of origin including with fake KP Certificates. For example, the KP has been unable to effectively tackle the issue of conflict diamonds from countries such as the Central African Republic entering the legal supply chain with a fake country of origin. Traceability - and stopping illicit trade is necessary to ensure the end to the trade of conflict diamonds. benefit from conflict diamonds, and the importance of tackling illicit trade. Despite months of negotiations over language, the adoption of a new definition was blocked due to the need for consensus. Attempts by civil society and some governments to include respect for human rights in KP's minimum standards have been blocked by a number of countries including South Africa, India, China, and Russia.

CONSENSUS-BASED DECISION MAKING:

By mandating decision-making through a consensus model—meaning unanimity—the KP renders itself ineffective. This is especially true when reforms such as a new definition are put forward, or especially when evidence of violations or abuses by Member States is released, as every single state has a veto.

Failure to act: The challenges of being an effective mechanism while applying consensus-based decision making were flagged by civil society during the negotiations to establish the KP. The evidence through the years has been clear. When cases of apparent "serious non-compliance" arose in Guinea, Lebanon, and Zimbabwe, the KP debated the issues, sent teams, wrote reports, and held extraordinary meetings, but it failed to deal with the substantive issues.

Expulsion has only been invoked once, in the case of the Republic of Congo in 2004. Since then, the KP's requirement for 100% consensus on all decisions has meant that no punitive action could be taken, even in the most obvious cases of non-compliance.

LACK OF TRANSPARENCY AND EXTERNAL

MONITORING: In any system dealing with supply chains, monitoring and transparency are essential. The KP has a peer review mechanism, with rotating review missions to participating countries by teams comprised of government, industry, and civil society representatives. Reports of these review missions, any recommendations, as well as other important documents that can provide insight into the KP and its progress are kept confidential.

Failure in oversight: The issue of external monitoring had been contentious from the beginning of the KP's establishment, with civil

society calling for independent, third party monitoring as the only credible solution. Despite transparency being a key focus of the KP early on, the scheme is shrouded in secrecy. The fact that reports from review missions—the only monitoring mechanism that evaluates how countries are implementing internal control measures to ensure conflict diamonds do not enter the supply chain—are kept secret is a failure of the system and prevents the public from holding their elected officials accountable. Moreover, recommendations from review missions are very rarely implemented, or even considered.

NO TOOLS TO DEAL WITH EMERGING ISSUES—AND UNWILLINGNESS TO

D0 S0: Despite evidence and recommendations, the KP refuses to address the changing nature of the conflict diamond trade. Issues that are increasingly important to deal with are smuggling, taxation, money laundering, and transfer pricing, which results in trading centres purchasing illicit diamonds for a fraction of their value. These issues are continually ignored.

Failure to mobilize: During the negotiations to establish the KP, civil society organizations called for a KP Secretariat to be established to manage the monitoring and related follow-up. The Civil Society Coalition introduced the proposal of establishing a Permanent Secretariat in

previous reform years, such as 2012, to ensure the KP has a mechanism to monitor emerging issues. Similarly, the Civil Society Coalition has long-advocated for a Multi-Donor Trust Fund to provide assistance to not only civil society, but to help all participants to attend KP functions and implement minimum standards. Both recommendations are up for debate during the 2017 reform year.

DISINTEGRATION OF "KP FAMILY" AS CIVIL SOCIETY COALITION PUBLICALLY

ATTACKED: The KP is heralded as one of the first multi-stakeholder initiative with governments, industry, and civil society working together to end the trade of conflict diamonds. In 2016, for the first time in the history of the KP, the Civil Society Coalition announced a boycott of the KP Chair, the UAE, due to widespread concerns over its lenient import standards that have allowed illicit diamonds from conflict areas to enter the legitimate supply chain. In an unprecedented move, the KP Chair and other states publically attacked the Civil Society Coalition and disparaged its work to improve diamond governance.

Failure to respect civil society: The involvement and voice of civil society in the KP is written into the original UN resolution. The Coalition repeatedly raised concerns with KP members about a possible UAE Chairmanship, but more problematically, about its antagonistic relationship with civil society groups.

