A GUIDE TO THE KIMBERLEY PROCESS





PARTNERSHIP AFRICA CANADA

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KP Civil Society Coalition

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This publication is also available in French.

Cover page photo

Aminata Kelly-Lamin of the Network Movement for Justice and Development, Sierra Leone, speaking on behalf of the KP Civil Society Coalition at a KP Plenary meeting.

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I. INTRODUCTION TO THE GUIDE

This guide has been produced by the Kimberley Process (KP) Civil Society Coalition. а arouping of civil society organizations working on the issue of conflict diamonds. The guide aims to provide an introduction to the Kimberley Process for civil society and other interested stakeholders. It gives an introduction to the history, operations and structure of the KP, as well as an overview of those involved. It also includes the views of civil society on the KP's shortcomings and improvements required. Finally, there is a glossary of terms and a resources bibliography of for further information.

The guide describes the role of the KP in curtailing the trade in 'blood' or 'conflict' diamonds around the world. Through an international certification system, increased transparency, provisions for strong internal controls in producing and trading countries, improved corporate social responsibility and good governance, the KP aims to completely eradicate conflict diamonds and to prevent their return. In order to maintain consumer confidence, the onus is on the world's diamond industry and the governments that participate in the KP to demonstrate that KPcertified diamonds are conflict-free.

It is our hope that this guide will assist all interested parties – civil society organizations, governments and the diamond industry, as well as students, the media and the general public - to understand this initiative and the challenges it faces.

What are Conflict Diamonds?

The United Nations General Assembly resolution 55/56 adopted on December 1, 2000 defines conflict diamonds as "...rough diamonds which are used by rebel movements to finance their military activities, including attempts to undermine or overthrow legitimate Governments".

During the 1990s in Africa, such conflicts led to the deaths of hundreds of thousands of people from both direct and indirect causes, as well as massive human rights abuses.

KP Basics

The KP Certification Scheme (KPCS) is legally binding, due to the implementation of domestic legislation, in some 80 diamond producing, processing and trading countries, including all member states in the European Union. No rough diamonds can be traded between these countries unless they are accompanied by a government-issued Kimberley Certificate stating that the diamonds are conflict-free.

The certificate is backed by a system of internal controls in each country. The KP is backed by a UN General Assembly Resolution and has the support of the UN Security Council.

II. OVERVIEW OF THE KIMBERLEY PROCESS

In December 2000, the United Nations General Assembly adopted Resolution (A/RES/55/56) on the need to break the link between the trade in rough diamonds and armed conflict. Earlier, in May 2000, a meeting had been called by the South African government in Kimberley, South Africa to discuss the issue of "conflict diamonds". This led to a series of meetings that became known as the 'Kimberley Process' (KP). After 30 months of negotiation, the KP agreed to implement a regulatory mechanism: an international certification system for rough diamonds called the Kimberley Process Certification Scheme (KPCS). This scheme came into force on January 1, 2003.

The KPCS is a certification-of-origin mechanism, requiring its members to certify shipments of rough diamonds leaving their borders as 'conflict-free'. KP Participants (as member countries are known officially) may trade rough diamonds only with other KP Participants. The scheme is voluntary in the sense that no country is obliged to join, but any country that does join makes a political commitment to pass legislation and regulations conforming to KP minimum standards. It therefore becomes binding on Participants through their own domestic legal regimes, even though there is no legally-binding international treaty.

The KP is an intergovernmental system, but 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. Consequently, the KP is often referred to as a tripartite arrangement involving governments, industry and civil society. As of November 2014, the KP had 54 participants, representing 81 countries, with the European Union and its member states counting as a single participant. The KP also includes Observers: the diamond industry, represented by the World Diamond Council (WDC), the KP Civil Society Coalition, the Diamond Development Initiative and the African Diamond Producers Association.

The two Kimberley Process websites

- KP Website: <u>http://www.kimberleyprocess.com</u>
- KP Statistics Website: <u>https://kimberleyprocessstatistics.org</u>

III. THE ORIGINS OF THE KIMBERLEY PROCESS

The wars that took place in the 1990s in Angola, Sierra Leone, Liberia and the Democratic Republic of the Congo were significantly financed and fuelled by the trade in conflict minerals, and in particular diamonds. In December 1998, a report by Global Witness, *A Rough Trade: The Role of Companies and Governments in the Angolan Conflict,* showed how diamonds were fuelling the Angolan rebel movement UNITA's ability to wage war. In January 2000, Partnership Africa Canada published *The Heart of the Matter: Sierra Leone, Diamonds and Human Security,* a report which showed how the diamond trade and its international connections were fuelling Sierra Leone's rebel war. In March 2000, a UN Security Council Panel of Experts reporting on Angola confirmed the findings of these two reports. At the same time, an international NGO campaign added to the pressure on governments and the global diamond industry to take action. In Sierra Leone, the Network Movement for Justice and Development launched the "Campaign for Just Mining", and campaigns also developed in other African countries.

The diamond industry and governments of countries with diamond economies feared a consumer boycott. Many were also deeply concerned about growing evidence of the direct connection between diamonds and conflict. In May 2000, the major diamond trading and producing countries, representatives of the diamond industry, and NGOs responded to the invitation of the South African government to meet in Kimberley, where discussions focused on how to tackle the conflict diamond problem. The result was the Kimberley 'process' and the start of an important and often contentious three-year negotiating exercise to establish a certification system for rough diamonds. Today, the KPCS is recognized as the basis for an accountable, transparent and inclusive regulatory mechanism for managing the trade in rough diamonds.

Kimberley Process Historical Timeline – the early years



IV. THE IMPORTANCE OF THE KIMBERLEY PROCESS

During the early years, the KP developed a reputation as a successful conflict prevention mechanism. As much as 15% of the world's \$10 billion annual rough diamond production in the mid and late 1990s fell into the category of conflict diamonds. Since then, the proportion has fallen to less than 1% of a rough diamond industry now worth some \$14 billion, in part thanks to the negotiation and implementation of the KP. The Central African Republic is currently the only country where conflict diamonds, as defined by the UN, still exist.

The KP's regulatory mechanism has also forced most of the industry to avoid *illicit* diamonds – diamonds that may have nothing to do with conflict but are nevertheless stolen, smuggled, used for money laundering, tax evasion and the like. Because the KPCS cannot distinguish one kind of illicit diamond from another, it must cover all of the world's rough diamonds.

Major Accomplishments of the KP

- The KP has successfully brought together stakeholders from the private sector, governments and civil society, and it has inspired the formation of other tripartite systems such as the Extractive Industry Transparency Initiative (EITI).
- Large volumes of diamonds have been brought into the legal trade, significantly increasing the revenues of several southern producing countries; for example, the rapid rise in value in Sierra Leone's official diamond exports from \$1 million in 1999 to \$141 million in 2007.
- The KP has also increased statistical reporting on diamond production and trade Participants are required to collect and publish data on their production, import and export of diamonds and to submit an Annual Report on the implementation of the KP in their countries.
- The KP has provided a framework for bilateral assistance on technical issues, such as mining legislation, police training, registration of miners, diamond valuation, etc. This technical assistance has enabled several countries to exert a better control on their natural resources. In some cases it has also covered broader issues such as community development and child labour.
- The KP has helped demonstrate that improved corporate social responsibility can be a win-win situation. By ensuring that trade in diamonds does not fund conflicts and/or contribute to human rights abuses, the KP has restored consumers' confidence in the origins of rough diamonds.



The KPCS preamble recalls UN General Assembly Resolution 55/56 (2000), which said that the KPCS should be a simple and workable international certification scheme, based on national certification systems and on internationally agreed minimum standards. It recognises that the differences in production methods and trading practices between countries might require different approaches in the application of the KPCS. The preamble also recognizes the importance of state sovereignty and says that all decisions should be agreed by consensus.

How does the diamond trade work?

Kimberlite diamonds and alluvial diamonds

Natural diamonds are found in two types of environments: kimberlite rock and alluvial deposits. The kimberlite rock occurs in ancient volcanic pipes and is the most common host to diamonds. Some of the kimberlite host rock has been washed away by streams and rivers through erosion. The sediment deposited in sand by the water, referred to as alluvial deposit, can also contain diamonds. Alluvial deposits are found in riverbed, coastal and marine/undersea locations.

Different mining techniques

Kimberlite and alluvial deposits require different mining techniques. Diamonds contained in kimberlite rock require open pit or underground mining operations, where the ore is crushed to uncover the diamonds. Coastal mining involves the excavation of sand to find diamonds, while undersea mining entails drilling into the seabed to recover diamond-bearing gravels. Riverbed mining is often on an informal, smaller scale – also known as artisanal digging – and involves the most basic of equipment, such as sieves and pans, to find diamonds.

Cutting and trading centres

At the point of export, diamonds are evaluated by the export authorities of a country and packaged into "shipments" by diamond exporters. Rough diamonds are sent to trading centres where they are sorted according to three distinct categories: gem quality (used for jewellery), industrial quality (used in equipment such as drill bits or lathes) and crushing boart (used for polishing diamonds). Gem quality diamonds are then cut and polished. The main cutting and trading centres are in India, Belgium, Israel, the United Arab Emirates (UAE) and the United States.

The Rough Diamond Trade at a Glance



Source: Kimberley Process Statistics Data Base

1. Minimum Requirements for KP Participants

All Participants in the KP are required to uphold certain minimum standards in their implementation of the scheme:

- Rough diamonds may only be traded between Participant countries (KPCS Core Document, Section IIIc), must be transported in a tamperresistant container, and must be accompanied by a valid Kimberley Process certificate (KPCS Section IIa and Section IVc).
- Each Participant must name an importing and exporting authority, as well as pass legislation to enshrine KPCS standards in national law. The standards include internal controls that enable the government to track diamonds that are offered for export back to the place where they were mined, or to the point of import (KPCS Section IV b and d).
- Participants must submit a series of reports, including statistical data, to the KP each year (KPCS Section Va and b).
- Participants are encouraged to invite review teams to verify their compliance with KPCS standards (KPCS Section VI Article 20).

KP Certificates

The KPCS requires that:

• Each diamond shipment is accompanied by a valid KP certificate.

- Each certificate is resistant to forgery, uniquely numbered and describes the shipment's contents.
- The importing country's customs service (or designated importing authority) is responsible for checking the contents of the shipment against the KP certificate.

It is illegal for uncertified shipments of rough diamonds to be imported or exported by a KP participant. Anyone attempting to import or export rough diamonds without a KP certificate is liable to have their parcel confiscated or rejected, and to face criminal proceedings according to the legislation in force in each country.



South Africa's certificate

Lebanon's certificate

Internal Controls

The KP requires that each Participant pass national legislation implementing a system of internal controls in line with KP requirements. The KP recognises that the controls may differ from country to country, but Participants must ensure that rough diamonds can be traced at each step of the supply chain from mine to export, or from import to re-export. To facilitate this, Participants designate KP import and export authorities, and collect information on the production, import and export of rough diamonds within their territory.

Participants are encouraged to undertake a number of other measures to strengthen internal controls, many of which are described in the Administrative Decision on Internal Controls (see box below). These include naming a KP focal point to facilitate communication and enquiries, licensing and registration of diamond miners and traders, establishing government oversight of the industry and encouraging industry self-regulation initiatives.

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Administrative Decisions

The Kimberley Process deals with unforeseen problems through a variety of ad hoc Administrative Decisions – such as the creation of new committees, establishing an annual reporting system, toughening membership criteria or establishing a monitoring mechanism. The list of Administrative Decisions can be found on the KP website:

http://www.kimberleyprocess.com/en/documents

Reporting and Statistical Data

Co-operation and data-sharing are central to the KPCS. Participants are required to provide a range of information to the KP, via its Working Group on Statistics and its Working Group on Monitoring (see section VI below).

Participants must submit annual reports to the KP on the laws, structures, regulations, bodies and practices that guide their KP implementation. Participants are also required to submit quarterly trade data and semi-annual production data. An analysis of this data is conducted yearly, revealing any changes in production and trade, and allowing for trade comparison between countries. If Participant A, for example, ships 100,000 carats to Participant B, worth \$10 million in a given year, the same data should appear in the statistics of both Participants for cross-checking.

2. The KP Peer Review System

The Kimberley Process has a peer review monitoring system with several elements, as constituted by the Administrative Decision on Peer Review.

Annual Reports

Participants must submit a report by the end of March each year, showing how they have met the Kimberley Process minimum requirements. The reports are reviewed by the KP Working Group on Monitoring (WGM), which deals with any issues or anomalies arising out of reports.

Review Visits

Periodically each Participant is expected to invite a review visit. Teams usually include members from three other countries and representatives of the diamond industry and civil society. Review visits assess if a Participant is in full compliance with KP minimum requirements and make recommendations on how compliance could be improved.

Review Missions

A review *mission* can be sent at any time where there are "credible indications of significant non-compliance" in a given country. Review missions are undertaken at the behest of the Working Group on Monitoring and with the agreement of the KP Chair. All such visits must be agreed by the country under review.

VI. THE STRUCTURE AND FUNCTIONING OF THE KIMBERLEY PROCESS

The KP began as a *process* for discussions and meetings that took place prior to the implementation of the KPCS. Once the KPCS was in place, however, it had to be managed and this is achieved by a structure that includes a Chair, a number of working groups, an annual Plenary Meeting of all Participants and Observers, and a half-yearly Intersessional Meeting.

All of this, still referred to as 'the Kimberley Process', is described in greater detail below.

1. Membership

Participants

'Participants' are countries or regional economic integration organizations that meet KPCS minimum requirements. KP Participants are expected to ensure the effectiveness of KPCS provisions within their national boundaries.

Participants are encouraged to co-operate with and assist other Participants that may be experiencing difficulties in implementing certain aspects of the KPCS. For instance, the European Community has provided technical advisors to Liberia's Ministry of Land Mines and Energy to comply with the recommendations made by the KP review team in 2008. Other examples include the assistance provided to Ghana by the experts of the World Diamond Council in order to identify diamonds of non-Ghanaian origin, and the project on foot printing and General Statistical Analysis of KP Data funded by Belgium, which has enhanced KP implementation in problematic areas in West Africa, Central Africa and South America.



There are 54 participants representing 81 producing, processing and trading countries. All participants meet the minimum requirements of the KPCS, except those indicated by an asterisk.

Angola Armenia Australia Bangladesh Belarus Botswana Brazil Cambodia Cameroon Canada **Central African Republic*** China Congo, DRC Congo, ROC

- Côte d'Ivoire European Union Ghana Guinea Guyana India Indonesia Israel Japan Kazakhstan Laos Lebanon Lesotho Liberia
- Malaysia Mali Mauritius Mexico Namibia New Zealand Norway Panama Russian Federation Sierra Leone Singapore South Africa South Korea Sri Lanka
- Swaziland Switzerland Tanzania Thailand Togo Turkey Ukraine United Arab Emirates United States of America **Venezuela** * Vietnam Zimbabwe

* **Venezuela** has 'withdrawn' from the KPCS and the **Central African Republic** is under temporary suspension.

The rough diamond-trading entity of Chinese Taipei has met the minimum requirements of the KPCS.

November 2014

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Observers

Observers in the KP are groups monitoring and supporting the implementation of the KPCS, notably members of the diamond industry and civil society organizations. The industry is represented through the World Diamond Council and civil society has formed a coalition. There are two other Observers – the Diamond Development Initiative and the African Diamond Producers Association.

• The World Diamond Council (WDC)

Amidst growing concerns over conflicts in diamond producing countries, the World Federation of Diamond Bourses and the International Diamond Manufacturers Association created the World Diamond Council (WDC) in July 2000. Today the WDC coordinates the efforts of the international diamond and jewellery sectors to control the trade in diamonds from areas of conflict, and promotes a voluntary, industry-based chain of warranties for tracking the movement of rough diamonds. In addition, it represents the industry in the Kimberley Process, and also provides administrative support to the KP Chair and working group chairs.

For more information on the WDC and its members, see its web site: <u>www.worlddiamondcouncil.com</u>

• The Civil Society Coalition

Leading up to the creation of the KPCS, more than 200 NGOs were involved in the conflict diamond campaign, although it was not until 2007 that a formal civil society coalition was created. The establishment of a KP Civil Society Fund helped support participation by southern civil society organizations in KP Plenary and Intersessional meetings, as well as review visits and missions.

Civil society plays a vital role in the KP system, as a source of independent information on the diamond trade, on infringements to the KP requirements and on the issue of conflict diamonds. In accordance with their observer status, civil society organizations have taken an active part in working groups and review visits to participants. A number of civil society groups continue to produce external reports on the KP, the issue of conflict diamonds and the diamond industry in general.

For a list of the Civil Society Coalition members, see Appendix 4 or visit the KP web site:

http://www.kimberleyprocess.com/en/civil-society-coalition

See also Appendix 2 for a list of civil society organization web sites.

• Diamond Development Initiative (DDI)

DDI is a development-focused, conflict prevention initiative that seeks to improve social and economic conditions for artisanal miners and their communities. With a primary focus on diamonds, DDI seeks to promote a better understanding of the issues surrounding artisanal mining through education and policy dialogue. Working directly with governments, civil society and industry, DDI seeks to provide concrete solutions through a variety of projects.

Current projects include the Development Diamond Standards[™] (DDS), which endeavours to bring certified, ethically-produced artisanally-mined diamonds to market; the Registration of Artisanal Miners mining diamonds, gold, and 3Ts; and acting as the Technical Assistance Focal Point as part of the Kimberley Process Certification Scheme's Administrative Support Mechanism (ASM). In this role, DDI acts as a facilitator for countries seeking or offering assistance that will help members to better implement the Kimberley Process Certification Scheme in their jurisdiction.

For more information on DDI, see its web site: <u>www.ddiglobal.org</u>

• African Diamonds Producers Association (ADPA)

ADPA is an Association of African Diamond Producing Countries created by the governments of the twelve member countries.

ADPA has the following objectives:

- Cooperation between member countries in policies and strategies concerning prospecting, mining, production, cutting and polishing, as well as development of human resources and acquisition of technologies in the diamondiferous sector.
- Adoption of harmonized legal solutions and the exchange of information between member countries in areas related to mining and commercialization in which individuals states have acquired valuable experience.
- Promotion of mutual technical assistance in the coordination of policies and strategies of development of the diamondiferous sector.
- Transformation of conflict diamonds into diamonds of peace and sustainable development.

Contact:

ADPA Executive Secretariat, Anibal de Melo Street 111-A Vila Alice, Luanda Angola. Tel: +244 222 265 392

• Guests of the Chair

The KP Chair may invite representatives of non-participating governments, civil society, financial institutions, international organizations and others to attend KP Plenary and Intersessional meetings. Those who wish to attend as occasional observers can apply to the Chair for permission.

• The United Nations

Although not a recognized Observer, the UN supported the formation of the KP through its General Assembly resolution (UNGA 55/56) of 2000, which is renewed every year. The UN and the KP have a collaborative relationship, which includes an annual report by the KP Chair to the UN General Assembly. The Security Council, through its Group of Experts, has also worked with the KP on examples of non-compliance in certain countries.

2. Structure

The Chair

The Chair of the KP rotates each year among KP Participant countries. The Chair oversees the implementation of the KPCS, the operation of its various bodies, and general administration. The Chair serves as the Secretariat for the year; organizes and hosts the annual Intersessional and Plenary meetings; communicates with Participants, Observers, Chairs of the Working Groups, prospective Participants, and others on KP matters; and retains and circulates KP documents. KP Chairs2003: South Africa2004: Canada2005: Russian Federation2006: Botswana2007: European Union2008: India2009: Namibia2010: Israel2011: Democratic Republic of the Congo2012: USA2013: South Africa2014: China2015: Angola

Given the challenges posed by the annual rotation of the KP Chair, the KP Adhoc Committee on KPCS Review (CKR) recommended creating an administrative support mechanism which would provide assistance to the Chair and working groups. At the November 2012 plenary it was agreed that the WDC would provide the required administrative services.

Working Groups and Committees

There are six Working Groups and Committees in the Kimberley Process. Working Groups monitor issues throughout the year, meeting or holding teleconferences between Intersessional and Plenary meetings. The devolution of responsibilities to Working Groups allows for flexibility and broad participation as well as some decentralized decision-making. Some Participants, often



i. The Working Group on Monitoring (WGM)

The WGM has been chaired by the **European Union** since 2003. Monitoring is an extremely important part of any regulatory system. The WGM monitors KPCS implementation, and is responsible for organizing peer review visits and conducting the assessment of Participants' annual reports. In addition, the WGM deals with implementation difficulties that might endanger the overall integrity of the Kimberley Process. The peer review mechanism envisages a review of each country's compliance with KP standards approximately once every three years. Using detailed generic terms of reference that are adapted to each situation, review visits are usually conducted by teams comprising three representatives of other participating governments plus one representative each from civil society and industry. In special cases where problems have emerged, additional review 'missions' (as opposed to 'visits') are undertaken.

ii. The Working Group on Statistics (WGS)

The WGS was chaired by **Canada** from 2004-2008, and has been chaired by the **USA** since 2009. Each Participant submits quarterly trade data and, in the case of producing countries, semi-annual mining production data. This data is compiled on the KP statistics website and is available to Participants and the Statistics Working Group for review. Its primary purpose is to reconcile trade data between countries. For example, if Sierra Leone reports exports of a certain weight and value to the EU, this should be reflected in EU import data. The data base is an important tool in monitoring and cross checking the flow of diamonds by weight, value and classification (i.e. gem quality, sorted/unsorted, industrial). The WGS ensures timely reporting of statistical data. It analyses all data on an annual basis, identifying and seeking explanations for anomalies. It also provides an analysis of a Participant's statistics for review teams as part of the peer review process.

iii. The Committee on Participation and Chairmanship (CPC)

Following a recommendation from the Ad-hoc Committee on KP Review (CKR), the November 2012 Plenary agreed to merge the Participation Committee with the Selection Committee, forming the new Committee on Participation and Chairmanship (CPC). The Chair of the CPC is the previous year's KP Chair and rotates annually. The CPC advises the Chair of the Kimberley Process on the admission of new Participants and on action to take (for example, the suspension of Participants) with those that are non-compliant. On questions of compliance, it



iv. The Working Group of Diamond Experts (WGDE)

The WGDE has been chaired by the **World Diamond Council** since 2003. The WGDE, also referred to as the technical working group, addresses technical issues in the implementation of the KPCS. This has included proposing changes to the 'Harmonised System Codes' for rough diamonds to the World Customs Organisation; classifying diamond powder; harmonizing valuation methodologies; and transferring diamond samples internationally from exploration projects. The WGDE has also worked to define diamond 'footprints' in areas of potential conflict – that is, a description of the physical characteristics of the diamonds found in a particular area.

v. The Working Group on Artisanal and Alluvial Production (WGAAP)

The WGAAP has been chaired by **Angola** since 2006. There are over 10 million miners, diggers and dependents in the artisanal mining sector. The WGAAP promotes effective internal controls on the production and trade of alluvial diamonds and seeks to find developmental solutions to what are, in many cases, development rather than regulatory problems.

vi. The Committee on Rules and Procedures (CRP)

The CRP has been chaired by the **Russian Federation** since 2006. The CRP develops new rules and procedures and makes proposals to modify, supplement or repeal existing rules and procedures within the KP.

Ad Hoc Committees

Another tool of the KP is the creation of Ad Hoc Committees to address issues requiring further research and discussion, such as for example diamond trading on the internet. In 2012 and 2013, the Ad Hoc Committee on KPCS Review (CKR) undertook a second review of the KP's functioning.

3. Evolution of the KP

The following table provides selected highlights of the evolution of the Kimberley Process since its first meeting in Kimberley, South Africa, in May 2000.

Major Meetings	I. Kimberley Process – the preparatory phase
Kimberley, South Africa (May 2000)	 Diamond trading and producing countries, the diamond industry and NGOs meet to determine how to tackle the conflict diamond problem. Agreement to continue meeting and to create a certification system.
Luanda, Angola (June 2000)	 'Working Group' meeting of the 'Kimberley Forum' to discuss technical details of a certification scheme; basic outline of the KPCS agreed.
Pretoria, South Africa (September 2000)	'Ministerial Diamond Conference' - originally expected to launch the scheme but it became clear that more work was required.
Windhoek, Namibia (February 2001)	 UN General Assembly Resolution 55/56's call for the development of detailed proposals for an international certification scheme for rough diamonds, creating a 'roadmap' for further progress. Task Force created to assist Chair in accelerating processes.
Brussels, Belgium (April 2001)	 Lengthy debates about possible common elements for a certificate of origin within the context of a broader certification scheme; examination of issues from the perspective of importers, users and re- exporters of rough diamonds.
Moscow, Russia (July 2001)	 First draft of 'Essential Elements' tabled; this became the working document for further KP negotiations. Agreement on the need for a comprehensive statistical data base. WDC proposes a self-regulated chain of warranties.
London, England (September 2001)	Further negotiations on the draft document.
Luanda, Angola (October 2001)	• Further negotiations to finalize the document, now in its sixth draft.
Gaborone, Botswana (November 2001)	• This was to have been a 'Ministerial Meeting' to finalize the document, but it was downgraded and negotiations continued.
Ottawa, Canada (March 2002)	 Intended as the final meeting before adoption of the 'Kimberley Process Certification Scheme', but many details remained unresolved, including WTO compatibility.
Interlaken, Switzerland (November 2002)	 Adopted the international certification scheme for rough diamonds, to be launched on January 1, 2003.
Sun City, South Africa (April 2003)	 First KP meeting after January 1, 2003 start-up of global certification scheme. Agreement on membership criteria and procedure for statistics; First review mission agreed (to Central African Republic). NGOs continue to press for regular independent monitoring of all national control mechanisms.

Plenary Meetings	II. Kimberley Process – the implementation phase
Sun City, South Africa (October 2003)	 Agreement on the establishment of a peer review mechanism. Agreement on gathering of statistical data.
Gatineau, Canada (October 2004)	 Lebanon 'dropped from the list' for not enacting KP legislation. Republic of Congo 'dropped from the list' for smuggling diamonds. Ad hoc committees created to deal with technical issues, problems specific to alluvial production countries, and a review of the KPCS.
Moscow, Russia (November 2005)	 First 'routine' KP Plenary meeting. Lebanon rejoins the KP. Declaration on improving internal controls of alluvial diamonds.
Gaborone, Botswana (November 2006)	 Ghana asked to block entry from Côte d'Ivoire of smuggled diamonds. Report of first Committee on KPCS Review discussed. Review mission to Venezuela agreed because of non-communication and findings of a civil society report on compliance issues.
Brussels, Belgium (November 2007)	 Republic of Congo rejoins the KP. NGOs and WDC ask for stronger government oversight of internal controls.
New Delhi, India (November 2008)	 Venezuela 'separates' from the KPCS for a period of 'two years'. Concern over KP implementation in Marange, Zimbabwe.
Swakopmund, Namibia (November 2009)	 Agreement on a work plan to bring Zimbabwe back into compliance with minimum requirements. New KP rough diamond statistics web site created.
Jerusalem, Israel (November 2010)	 KP Enforcement Seminar report presented. KP agrees CS monitoring role in Marange through Local Focal Point.
Kinshasa, DRC (November 2011)	 The Ad-hoc Committee on KP Review (CKR) mandate approved. KP CS Coalition protests removal of restrictions on Marange exports and issues Brussels Declaration.
Washington, USA (November 2012)	 KP membership surveyed as part of 2012-2013 periodic review. WDC offers administrative services to the Chair/working groups. Declaration on integrating development of artisanal and small scale diamond mining with Kimberley Process implementation.
Johannesburg, South Africa (November 2013)	 Work of second Committee on KP Review (CKR) concluded. Restructuring of working groups agreed. Suspension of Central African Republic confirmed. CS Coalition presented a review of the KP Peer Review system.
Guangzhou, China (November 2014)	 Côte d'Ivoire rejoins the KP. KP endorses West Africa Regional Approach in Mano River countries. DDI becomes ASM focal point for KP technical assistance.

4. Decision-making

All decision-making in the KP is made on the basis of consensus. Where consensus cannot be reached, the KP Chair undertakes consultations to try and reach consensus.

Major decisions are usually made at the annual plenary meeting, with issues discussed and fine-tuned in working group teleconferences throughout the year and at the Intersessional meeting. Decisions on routine issues having to do with monitoring, statistics and technical issues can be made by consensus in working groups, or they can be forwarded to other working groups or to the Chair for action. The relative informality of the working group approach has enabled the KP to develop more effectively than it might have, had all decision-making been confined to once, or twice-yearly formal meetings.

The Kimberley Process deals with unforeseen problems through a variety of ad hoc 'administrative decisions', e.g. the creation of new committees, establishing an annual reporting system, toughening membership criteria, and establishing a monitoring mechanism.

5. Non-Compliance

The core document of the Kimberley Process speaks of 'indications of serious non-compliance'. This can trigger a review mission, but 'serious non-compliance' has never been defined. The KP has few tools, apart from the issuance of recommendations or the provision of technical assistance, with which to deal with a Participant found to be in a state of serious non-compliance. In the case of lengthy delays in the submission of statistical and annual reports a notification on the public KP website has been used.

The different cases of 'serious non-compliance' have occasioned great debate, but full expulsion from the KP (being 'dropped from the list') has not occurred since 2004. In 2007, however, a suspension mechanism was agreed, and it was used for the first time with the Central African Republic in May 2013.

Lebanon

Its admission to the KP was delayed from April 2004 to October 2005. Lebanon was dropped from the original 2003 KP Participant list because it failed to enact legislation in accordance with KP standards. Lebanon was readmitted to the KP after finally passing the required legislation in 2005.

Republic of Congo

The Republic of Congo was 'dropped from the list' in October 2004, and was readmitted only in 2007. It's the only country to have been expelled from the KPCS. The decision came after a Review Mission discovered that the Republic of Congo was exporting far more diamonds than it produced or imported legally.



Brazil

Brazil voluntarily suspended its rough diamond exports for six months in 2006, following the discovery of diamond fraud in the country, which had been first identified by a civil society report. After a high-profile criminal investigation, the reform of its regulatory system and the reinforcement of its controls on the diamond trade, Brazil resumed its diamond exports and rejoined the list of KP participants.

Ghana

In October 2006, the UN Group of Experts on Côte d'Ivoire released a report concluding that diamonds mined in the rebel-held territory of Côte d'Ivoire were entering international markets through Ghana. A KP Review Mission to Ghana in March 2007 recommended Ghana retain its KP status, based on evidence of political will and a coordinated effort by the Government of Ghana to reinforce its system of internal controls. The KP introduced a supervised export mechanism whereby all shipments of diamonds from Ghana were examined prior to export by an independent expert to confirm their origin. The KP lifted the supervision mechanism in 2011.

Venezuela

After much pressure resulting from a civil society report in 2006 detailing evidence of major non-compliance, Venezuela voluntarily 'separated' from the KP in 2008, stating that it would remain a Participant but would neither export nor import rough diamonds until it had established credible internal controls. Today Venezuela still reports zero exports despite overwhelming evidence that diamond mining continues, with most of the production probably being smuggled across the border into neighbouring KP Participant countries – Guyana and Brazil. Unlike the case of the Republic of Congo, there has not been consensus in the KP for Venezuela to be 'dropped from the list'.

Côte d'Ivoire

Côte d'Ivoire became engulfed in civil conflict for several years following an attempted coup in 2002 and, although it was a member of the Kimberley Process, Côte d'Ivoire banned diamond exports because all diamond mining areas were under rebel control. Ivorian diamonds then fell under UN Security Council trade sanctions. The UN Group of Experts on Côte d'Ivoire estimated the value of production to be as much as \$23 million per year and maintained that diamonds provided an important source of income for the rebel Forces Nouvelles. Inadequate controls in neighbouring countries and in international diamond centres have meant that Ivorian "conflict diamonds" continued to be smuggled out of the country into the legitimate trade.



Zimbabwe

A major alluvial diamond deposit was discovered in 2006 in Marange, in eastern Zimbabwe, attracting tens of thousands of diggers and traders. In 2008, the authorities took control of the area using armed force, leading to the death of at least 200 diggers. A KP Review Mission to Zimbabwe in 2009 recommended that Zimbabwe be suspended from the KP for a period of at least six months. Instead, the 2009 KP Plenary approved a Joint Action Plan to bring Zimbabwe into compliance with KP minimum requirements.

Diamonds continued to be produced by artisanal diggers with units of the armed forces controlling the trade, much of which was channelled illegally through Mozambique. By 2010, several companies had begun industrial operations in Marange, leading to increased production. A key element in the Joint Action Plan was an oversight mechanism, with KP-appointed monitors being responsible for recommending approval by the KP of exports from specific companies operating in Marange. This was complemented by the work of a civil society Local Focal Point which monitored human rights questions. The Joint Action Plan came to an end at the 2011 Plenary.

Central African Republic

CAR has been a concern for the KP since June 2010 when rebel fighters established control over diamond mining areas in the east of the country. In March 2013, the rebel movement overthrew the CAR government, and in May 2013, the KP temporarily suspended CAR. The suspension remains in place, with armed conflict continuing in much of the country.

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VII. THE KIMBERLEY PROCESS TODAY: ISSUES AND CHALLENGES

This guide has provided an overview of the structure and functioning of the Kimberley Process. The following section will offer a civil society assessment of the KP's evolution and prospects for the future.

Since its inception in 2003, the Kimberley Process has evolved into a conflict prevention scheme with major potential. New countries have joined the KP's ranks. A peer review system has provided the KP with a framework for monitoring implementation. Guidance has been elaborated for cases where there is non-compliance with KP standards. Yet, the scheme is still struggling to put basic diamond tracking into practice in the countries that were most affected by conflict diamonds. Civil society has long argued that the KP should be more active in monitoring infringements and tougher in curtailing the illicit trade of rough diamonds, both in producing countries and in trading and importing countries.

Views of Kimberley Process effectiveness vary. Some consider it a model arrangement that is meeting its objectives. Others are much more critical. Civil society and parts of the diamond industry have called repeatedly for stronger oversight and much better internal controls in some producing and importing countries. The shortcomings of the KP are not insurmountable. And yet time and again, certain governments prove incapable of using the tools at their disposal to ensure effective implementation and enforce compliance. The KPCS is too important to fail - for an industry that benefits so many countries, and for the millions of people in poor countries who depend, directly and indirectly on it.

The following paragraphs reflect on some issues and challenges in the KP today. The future of the KP depends on a good understanding of these challenges, and on the willingness of Participants to address them.

INTERNAL CONTROLS – ARTISANAL PRODUCERS

In artisanal producing countries, internal controls are often weak and it's argued that the authorities in these countries cannot say with any assurance where up to 25-50% of the diamonds they export actually come from. The origin of diamonds is the *only* agreed standard of major importance in the KP, i.e. the ability of a Participant to confirm that its diamonds come from a known, clean source. Despite KP Review Visit reports and civil society studies which have offered recommendations and assistance, little seems to have changed in some countries during the decade that the KP has been in operation.

INTERNAL CONTROLS – TRADING CENTERS

Producing countries rightly question the commitment of the authorities in many importing countries, and particularly in the trading centres, towards implementing strict import controls. Diamonds are smuggled out of a number of countries – especially the main artisanal producing countries – but diamonds are rarely seized on entry into importing countries, with few if any arrests made. The playing field is far from level, as some jurisdictions attempt a certain level of control, whereas others appear uninterested. Overall, the commercial imperative of moving diamonds as quickly as possible seems to prevail above all else.

MONITORING

The current peer review mechanism is not as effective as it should be. Some review teams produce excellent and thorough evaluation reports, with very useful recommendations. But in other cases review reports are very late being produced and there is little or no follow-up. Because participation on review teams is 'voluntary' and costs are borne by the Participant, some countries participate in more reviews than others, and some never participate at all. Civil society and industry bear a disproportionate cost in fielding team members, for there is no burden sharing.

The Civil Society Coalition undertook a review of the KP Peer Review system in 2013 and presented its report at plenary, with a number of easily implementable recommendations. The KP needs to develop a stronger monitoring arrangement that sets a high standard of evaluation, avoids conflicts of interest, and ensures follow-up.

SANCTIONS IN CASES OF NON-COMPLIANCE

The KP has the possibility of suspending a Participant in cases of serious noncompliance but there is no agreed definition of 'serious non-compliance' and there is an extreme reluctance to impose any kind of suspension. The KP should develop a credible graduated sanctions tool that can and will be applied in cases of non-compliance.

TRANSPARENCY

The KP core document states that "Participants and Observers should make every effort to observe strict confidentiality regarding review mission reports and the discussions relating to any compliance matter" (Section VI, paragraph 15). During the early years of the KP, transparency was a hotly debated issue. Some Participants argued that all information and statistics related to diamond trading should remain secret, citing 'commercial confidentiality'. Review Visit reports remained largely confidential because, it was said, some governments would not be open to full scrutiny if potential problems risked being made public. Although there is now agreement that annual and review visit reports should be placed on the public part of the KP website, unless Participants explicitly note that (sections of) the report shall not be published, this has not always been put into practice.



Civil society believes that all KP monitoring reports, participants' annual reports, and statistics should automatically be made public.

DECISION-MAKING

The KP core document states that "Participants are to reach decisions by consensus. In the event that consensus proves to be impossible, the Chair is to conduct consultations" (Section VI, point 5). Consensus in the KP has come to mean "unanimity", rather than "strong majority" and this has slowed progress on a wide variety of issues, small and large. Whilst the KP Civil Society Coalition acknowledges the merits of a consensus decision-making approach, it believes that this must be complemented by a voting system to facilitate more efficient decision-making. Almost every institution in the world operates this way.

CONFLICT DIAMONDS DEFINITION

The KP's definition of conflict diamonds is both too limited and outdated, for it does not address the way in which violence in diamond producing areas has evolved in the decade since the Kimberley Process was created. The United Nations General Assembly resolution 55/56 adopted on December 1, 2000 defines conflict diamonds as "...rough diamonds which are used by rebel movements to finance their military activities, including attempts to undermine or overthrow legitimate Governments". The KP definition of conflict diamonds adopted in 2002 is <u>narrower</u> than the UN General Assembly definition, in that it applies only to rebel movements that are actually trying to overthrow a government, thereby excluding the activities of other militias and armed forces (e.g. Zimbabwe in 2008 and CAR in 2010).

HUMAN RIGHTS

The second paragraph of the preamble in the KP core document speaks of "The devastating impact of conflicts fuelled by the trade in conflict diamonds on the peace, safety and security of people in affected countries and the systematic and *gross human rights violations* that have been perpetrated in such conflicts." Civil society believes that human rights have always been at the core of the KP mandate and that this commitment should be clarified through the introduction of explicit human rights language in KP documents.

The KP must include respect for human rights in its minimum standards for all Participants. The provision and administration of security measures in Participants' diamond mining sectors should be consistent with international human rights law. As a means of addressing the potential for smuggling and other concerns relating to KP compliance in artisanal diamond mining, Participants should further provide and administer security standards and measures consistent with international human rights law with respect to diamond miners and members of local communities.

APPENDIX 1

GLOSSARY

Alluvial and Artisanal Production: 'Alluvial' refers to rivers and 'artisanal' refers to artisans. Alluvial artisanal diamond mining refers to small-scale mining with the simplest of tools, usually on a subsistence level. Deposits are often mined informally, in an unregulated way.

Compliance: Participants adhering to the minimum standards of the KPCS.

Conflict Diamonds: The KPCS defines conflict diamonds as 'rough diamonds used by rebel movements or their allies to finance conflict aimed at undermining legitimate governments.' (Core document, Section 1)

HS Codes: Harmonized customs codes are part of an international system used by governments to classify products and their corresponding tariffs. The Kimberley Process governs production and trade in rough diamonds only (namely, HS codes 7102.10, 7102.21 and 7102.31), as classified by the World Customs Organization.

Illicit Diamonds: Diamonds that are the subject of theft, smuggling, tax evasion or other unlawful activity.

Internal Controls: A Participant undertakes to establish a system of internal controls designed to eliminate the presence of conflict diamonds from shipments of rough diamonds imported into and exported from its territory. This includes such measures as amending or enacting appropriate laws or regulations to implement and enforce the Certification Scheme and to maintain dissuasive and proportional penalties for transgressions. Participants should also collect and maintain relevant official production, import and export data, and collate and exchange such data.

Intersessional Meeting: Members of KP working groups gather once a year in June to discuss technical issues such as statistics, monitoring and membership.

Kimberley Process Certificate: A 'forgery resistant document with a particular format which identifies a shipment of rough diamonds as being in compliance with the requirements of the Certification Scheme'. (Section 1)

Non-Compliance: Non-compliance is the failure or refusal to comply with KP minimum standards. For a KP Participant to be found non-compliant is a serious issue and can ultimately lead to their removal from the KP. This would mean that the Participant could no longer legally ship diamonds to any Kimberley Process participant country.

Observer: 'a representative of civil society, the diamond industry, international organizations and non-participating governments invited to take part in Plenary meetings.'(Section 1)

Participant: 'a state or a regional economic integration organization for which the Certification Scheme is effective.' (Section 1)

Plenary Meeting: KP Plenary sessions are meetings that take place once a year in November, bringing together all participating countries, industry representatives and civil society members. These meetings provide an opportunity for discussion and decisions regarding the implementation of the KPCS.

Review Mission: A team composed of Participant, industry and civil society representatives that can be sent at any time to investigate reports of 'credible indications of significant non-compliance' with the KPCS in a given Participant country. Such visits must be agreed to by the country in question.

Review Visit: Part of the KPCS's regular peer review monitoring system. These periodic visits aim to establish whether the Participant is in full compliance with KPCS minimum standards, and to make recommendations on how performance could be improved.

Rough Diamonds: These are 'diamonds that are unworked or simply sawn, cleaved or

bruted and fall under the Relevant Harmonised Commodity Description and Coding System 7102.10, 7102.21 and 7102.31.' (Section 1)

Shipment: One or more parcels of diamonds that are physically imported or exported from a country.

Transit: The KPCS considers transit as the physical passing of a shipment of rough diamonds through the geographical territory of a Participant on its way from the exporter to an importer.

See also "Section 1 – Definitions" in the KP core document, which can be found on the KP web site.

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APPENDIX 2

RESOURCES

Kimberley Process

Kimberley Process: <u>www.kimberleyprocess.com</u> Kimberley Process (Statistics): <u>www.kimberleyprocessstatistics.org</u>

Diamond Industry

Diamond Facts: <u>www.diamondfacts.org</u> International Diamond Manufacturers Association: <u>www.idma.net</u> Responsible Jewellery Council: <u>www.responsiblejewellery.com</u> World Diamond Council: <u>www.worlddiamondcouncil.com</u> World Federation of Diamond Bourses: <u>www.wfdb.com</u>

Civil Society Organizations

Bonn International Center for Conversion: <u>www.bicc.de</u> Diamond Development Initiative: <u>www.ddiglobal.org</u> Fatal Transactions: <u>www.fataltransactions.org</u> Global Witness: <u>www.globalwitness.org</u> International Peace Information Service: <u>www.ipisresearch.be</u> Network Movement for Justice and Development: <u>www.nmjd.org</u> Partnership Africa Canada: <u>www.pacweb.org</u> Réseau de Lutte contre la Faim: <u>www.relufa.org</u> Southern Africa Resource Watch: <u>www.sarwatch.org</u> Zimbabwe Environmental Law Association: <u>www.zela.org</u>

Other Organizations

World Bank - <u>www.artisanalmining.org</u> Global Policy Forum - <u>www.globalpolicy.org/component/content/article/182/33876.html</u> United Nations General Assembly - <u>www.un.org/en/ga/62/plenary/diamonds/bkg.shtml</u>

Appendix 3

REPORTS

This section includes a selection of reports related to conflict diamonds and the Kimberley Process. Further reports can be found on the web sites indicated.

Bonn International Center for Conversion

www.bicc.de

Fatal Transactions Newsletters

Governing the Gift of Nature Resource Conflict Monitor: The Links between Governance, Conflict and Natural Resources, June 2007

Conflict Diamonds and the Peace Process in Côte d'Ivoire, June 2008

Legacy of a resource-fueled war: The role of generals in Angola's mining sector, June 2013

Global Witness

www.globalwitness.org

<u>A Rough Trade: The Role of Companies and Governments in the Angolan Conflict,</u> December 1998

For a Few Dollar\$ More: How al Qaeda moved into the diamond trade, April 2003

The Key to Kimberley: Internal Diamond Controls - Seven Case Studies, Joint publication with Partnership Africa Canada, October 2004

Implementing Kimberley process - 5 years on - how effective is the Kimberley Process and what more needs to be done? Joint publication with Partnership Africa Canada, June 2005

Monitoring Artisanal Diamond Mines: A Workshop Report, November 2006

<u>Global Witness/Amnesty International US Diamond Retail Survey 2007</u>, February 2007 <u>Return of the Blood Diamond: The deadly race to control Zimbabwe's new-found</u> <u>diamond wealth</u>, June 2010

Diamonds: A Good Deal for Zimbabwe?, February 2012

International Peace Information Service

www.ipisresearch.be

<u>Gold and diamonds in the Central African Republic: The country's mining sector, and related social, economic and environmental issues</u>, March 2013 <u>Diamonds in the Central African Republic</u>, December 2014

Network Movement for Justice and Development (NMJD) www.nmjd.org

Diamonds, Blood and Tears: The Relationship between Koidu Holdings Ltd. and the Affected Property Owners of Kono, April 2010

Partnership Africa Canada

www.pacweb.org

<u>Other Facets</u>: PAC's newsletter on the international effort to end diamond-related conflict, human rights abuses and corruption around the world (2001-2012) <u>The Heart of the Matter: Sierra Leone, Diamonds and Human Security</u>, January 2000 <u>Hard Currency: The Criminalized Diamond Economy of the Democratic Republic of Congo and its Neighbours</u>, June 2002 <u>Rich Man, Poor Man – Development Diamonds and Poverty Diamonds: The Potential for Change in the Artisanal Alluvial Diamond Fields of Africa</u>, Joint publication with Global Witness. October 2004

<u>Fugitives and Phantoms: The Diamond Exporters of Brazil</u>, March 2006 <u>The Lost World: Diamond Mining and Smuggling in Venezuela</u>, November 2006 Zimbabwe Diamonds and the Wrong Side of History, March 2009

Diamonds Without Borders: An Assessment of the Challenges of Implementing and Enforcing the KP Certification Scheme, November 2010

Reap What You Sow: Greed and Corruption in Zimbabwe's Marange Diamond Fields, November 2012

RELUFA

www.relufa.org

Artisanal Mining, a Challenge to the Kimberley Process: Case Study of the Kadey Division, East Region of Cameroon, January 2013

Zimbabwe Environmental Law Association

www.zela.org

<u>Towards the development of a diamond act in Zimbabwe</u>, 2012 <u>Impact of Marange Diamond Mining Operations on Water Quality in the Save and Odzi</u> <u>Rivers</u>, July 2012 Tracking the Trend: An Assessment of Diamond Mining Sector Tax Contributions to

Treasury with Particular Reference to Marange Diamond Fields, 2013

Appendix 4

KP CIVIL SOCIETY COALITION



Members of the KP Civil Society Coalition, participating in the KP Intersessional meeting, Shanghai, June 2014

The KP Civil Society Coalition is an official Observer in the Kimberley Process. Civil Society organizations helped found the Kimberley Process and have participated in its governing structures since the beginning.

The current members of the KP Civil Society Coalition are:

- 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 the Congo)
- Groupe d'Appui aux Exploitants des Ressources Naturelles GAERN (Democratic Republic of the Congo)
- Zimbabwe Environmental Law Association ZELA (Zimbabwe)
- Center for Natural Resource Governance CNRG (Zimbabwe)
- Partnership Africa Canada PAC (Canada)