

# OTHER FACETS

NEWS AND VIEWS ON THE INTERNATIONAL EFFORT TO END CONFLICT DIAMONDS

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## Special Issue: Kimberley Process Plenary 2009

### PLENARY 2009: TIME FOR RENEWAL Seven Years, Seven Issues

This special edition of *Other Facets* marks our 31<sup>st</sup> edition since April 2001. We are breaking with our regular format to present a special issue in advance of the Seventh Annual Plenary Meeting of the Kimberley Process in Namibia, in November. This meeting will mark other anniversaries. It will be ten years since discussions about a certification system for rough diamonds began, and it will be the 27<sup>th</sup> gathering of governments, industry and civil society since the first meeting in Kimberley in May 2000.

Over that time, the Kimberley Process has accomplished a lot. The very fact of the KP negotiations helped choke diamond supplies to rebel movements in Angola and Sierra Leone, and contributed to the end of hostilities. The KP has the best diamond data base in the world. And the KPCS is credited by several countries with the growth in legitimate diamond exports and thus of tax revenue. The Kimberley Process is discussed as a model for other extractive industries, and as a model of participation and communication between governments, industry and civil society, all of which play an active and meaningful role in its management.

But there was no provision in the Kimberley Process to do what all regulators *must* do. There was no provision to plug holes, tighten loose bolts and fix the parts that were not working. A fundamental part of any regulatory system is the need to keep one step ahead of those who would evade it, as they figure out new ways around rules and regulations. But in the Kimberley Process, there has, from the beginning, been a prohibition against 'opening the document'. In practical terms, this means that while some things can be changed, anything one or two participants don't like can be blocked by a single veto and a chorus against

reopening the document.

The time has come to reexamine this approach and to consider whether the Kimberley Process is meeting *any* of its most important objectives. If governments will not agree to fundamental reforms in the way the Kimberley Process is managed, it may not be worth continuing. A few voices have already called for an end to the Kimberley Process. It isn't working, they say, and after all, the problem of conflict diamonds has ended.

There may be problems with the Kimberley Process, but that is all the more reason to fix it, because the problem of conflict diamonds is far from resolved.

A small amount of conflict diamonds continues to leak into the system from Côte d'Ivoire. Regardless of whether KP participants agree or not, Zimbabwe has been covering its diamonds with blood—an example if one was needed of how quickly a polite fiction can descend into chaos and murder. A violent military regime has taken power in Guinea, where diamond production has increased by an astronomical 600% in three years, and where internal controls are extremely weak. More to the point, however, the combined cost of the 2009-10 UN peacekeeping efforts in Liberia, Côte d'Ivoire and the DRC is \$2.3 *billion*, and in some areas this is barely keeping a lid on the problem. While all of this is going on, the Kimberley Process, touting itself as a model for commodity regulation, cannot track half the stones in some of the countries worst affected by the diamond wars.

In this edition, we discuss seven issues that are in urgent need of attention if the Kimberley Process is to meet the high objectives for which it was designed.

### A SORRY CATALOGUE Current Unresolved Issues in the Kimberley Process

- Internal controls in the countries worst affected by conflict diamonds—Angola, DRC and Sierra Leone—are so weak that their governments cannot say where up to half the diamonds they export actually originate. KP reports and others have been pointing this out since 2004;
- The mining of UN-embargoed diamonds has actually expanded in Côte d'Ivoire in recent years. The Kimberley Process has had zero impact in the only country left with 'official' conflict diamonds;
- Guinea, which borders Côte d'Ivoire, has extremely weak internal controls, serious corruption problems and an unexplained 600% increase in diamond production over the past three years. A 2008 KP review team did not complete its report on Guinea for 11 months, by which time it was stale-dated;
- Lebanon is exporting more gem-quality diamonds than it imports and there are problems about the way its imports are valued. Although this has been an issue for months, no explanation has been given;
- Venezuela agreed to halt all diamond exports a year ago (even though it had not officially exported any diamonds since 2005). Since then, however, it has renewed diamond mining licenses, and easily verifiable diamond sales and smuggling continue to operate with impunity on the Brazilian border. By ignoring this, the Kimberley Process effectively condones diamond smuggling. So do Venezuela's neighbours, Brazil and Guyana;
- Zimbabwe exhibits a wide variety of serious problems: smuggling, illegal seizure of diamond leases, and outright denial of easily verifiable murder and human rights abuse in its diamond fields. Just five miles across the border from Marange in Mozambique a vibrant trade in smuggled diamonds flourishes for anyone to see. It has taken the Kimberley Process a full year of internal bickering and public embarrassment to reach the point where an exemplary decision may (or may not) be made;
- Angola expels tens of thousands of illicit Congolese diamond miners every year. Many are beaten and robbed, and all are force-marched to the border. Human rights and the rule of law are absent in Angola's diamond fields.

### ISSUE 1: 'CONSENSUS' DECISION-MAKING

In any dictionary, 'consensus' means "general agreement" – in other words, most parties to a decision agree. In the Kimberley Process it means 'unanimity'. Unanimity was important in reaching agreement on the basic KP operating principles, but it has now become totally dysfunctional. One or two participants, sometimes with vested political or commercial interests, can hold up forward movement on anything and everything. This stymies reform of the system, it blocks action on issues of non-compliance, and even on very small things such as the role of observers in the KP.

**Solution:** Creation of a voting system and an end to what is essentially a vetoing arrangement. The voting system could be simple or complex (e.g. a super majority required for issues of significance), but something must be done to end the KP's constant deadlock on so many issues.

### ISSUE 2: MONITORING

The current peer review mechanism is not working. Some review teams have written excellent and thorough country reports, and sometimes their recommendations have been adopted. But in many cases, there is no serious follow-up. A bigger problem is that some reviews are slow and incompetent, sometimes affected by the vested interests of team members. On other occasions, when there is an urgent need for some kind of review, it can take months to get a team together. 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 an undue cost in fielding team members. There is no burden sharing.

**Solution:** The KP needs an independent arms-length monitoring and research arrangement that sets a high standard of evaluation, avoids conflicts of commercial and political interest, and ensures timely follow-up. This will require a funding mechanism to ensure that money is not a limiting factor in participation.

### ISSUE 3: SANCTIONS IN CASES OF NON-COMPLIANCE

The KP finally agreed last year to the possibility of suspension (as opposed to expulsion) in cases of serious non-compliance, but there is no definition of 'serious non-compliance' and there is an extreme reluctance to sanction any kind of suspension, hence the Venezuela and Zimbabwe debacles.

In 2009, Zimbabwean industrial diamonds, easily identified by their size and colour, showed up as far afield as Guyana and Sierra Leone. Neither country reported this to the Kimberley Process. If low-value diamonds like these travel that far and that easily in search of a laundry, it is clear that high value goods have even greater range and speed.

Meanwhile, in DRC, Angola, Sierra Leone, Guinea and elsewhere, internal controls are so weak that these governments cannot say with any assurance where as many as 50% of the diamonds they export come from.

Effective internal control is the *only* standard of major importance in the KP. Despite KP and other reviews which have offered criticism and recommendations, little has changed in seven years. There must be strong enough sanctions in such cases to demonstrate that the KP is serious. Otherwise, why bother having a certification system at all? These are the countries that suffered most from conflict diamonds; they export 30 million carats a year worth more than \$1.5 billion, and yet the KP ignores this huge loophole in its system.

**Solution:** There must be serious enough sanctions that governments will act to remedy problems. In the absence of any others, a six-month suspension would serve as a powerful wakeup call, but only if the possibility is real.

**CIVIL SOCIETY: HERE FOR GOOD**

In the first issue of Other Facets, in April 2001, we commented on a *60 Minutes* program about De Beers, an article about conflict diamonds in *Esquire* and a new diamond campaign started by Amnesty International on Valentine's Day in conjunction with 73 other civil society organizations. We also reported on the Kimberley Process roadmap, which at that time aimed to have the KPCS up and running by the end of 2001. Both industry and NGOs were frustrated by the slow pace of events.

In the end, it took a full year more than planned for the KPCS to begin. It has taken seven more years since then to get to where we are today: a system badly in need of reform.

There is renewed interest in the Kimberley Process from the media, civil society and academics, but the interest is no longer about the KP as a possible model for other extractive industries. It is about why a regulatory system that began with such great promise cannot get even small things done without a fight, and why the big things it was obliged to deal with remain unfinished. Civil society interest, evidenced in the growing number of Southern NGOs taking part, by the June Human Rights Watch report and others, is rising. We are not going away until the Kimberley Process does what governments, industry and civil society expected it to do when it was first discussed a full decade ago.

**ISSUE 4: TRANSPARENCY**

For years, the KP kept its statistics on a secret, participants-only web site, citing 'commercial confidentiality' as the reason. There are, in fact, no commercial secrets whatsoever in these statistics, and the gradual opening up in the past three years has been a positive move. But the reports of review teams remain confidential. A summary is sometimes placed on the public web site, but many reports seem to have been lost entirely. For example there is nothing, even on the secret website, for the Republic of Congo, the only country expelled from the KPCS for non compliance.

The reason given for secrecy: some governments say that they would not open themselves up to full KP scrutiny if they knew that problems would be made public; transparency would inhibit full disclosure. The truth is different: governments with the most problematic internal controls bend over backwards to hide the fact *from KP review teams*, tidying up problems temporarily for the few days a team is in town. Some (e.g. Venezuela) lead the teams away from problems, while others (e.g. Zimbabwe) provide teams with blatant untruths. While there have been recommendations in KP reports for improvement in the internal controls of the US, China, Russia, Switzerland, Canada, Botswana and others, there was nothing that would have caused embarrassment. Secrecy has been used to conceal real problems and lack of change in a handful of countries from those in the media, industry and civil society who might use the information to press for KP action. Secrecy, in fact, only promotes inaction.

In any case, 'secret' KP statistics have been widely quoted in the trade media, and the interim report of the KP review team that went to Zimbabwe in June was available on the Internet within minutes of its completion. The *Wall Street Journal* quoted the full draft report in August, even though it has still not been shared with KP participants.

**Solution:** All KP Reviews should be placed, in full, on the open KP web site.

**ISSUE 5: OPERATIONAL DISORGANIZATION AND MISMANAGEMENT**

The annual rotation of the KP Chair is completely dysfunctional, and the vice chair has no responsibilities whatsoever. New chairs barely become acquainted with the process and the issues when they are replaced by another newcomer. When there are problems, the inclination of the Chairperson is to stall until the end of the year so that unpleasant decisions can be passed on to the next Chair. The Working Group arrangement has real benefits, but the coordination and execution of bureaucratic functions has become shambolic. The

coordination of review teams, the coordination of annual reporting and review, the review and coordination of annual statistics are all ad hoc, slow, patchy and often amateurish.

**Solution:** In conjunction with ISSUE 2 above, a small, permanent secretariat should be established, with funding for better coordination, research and information analysis. This would not replace the oversight of working groups or KP decision making, but it would provide the support that is today completely absent.

**ISSUE 6: HUMAN RIGHTS**

The second paragraph of the KP preamble 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.’

It is important to remember why the Kimberley Process was created. It was created first and foremost to end the phenomenon of conflict diamonds, and to prevent it from returning. Ending conflict diamonds meant ending the conflicts they fuelled and the human rights horrors that were the sub-text of those conflicts. Clearly it was *all* about human rights. That did not need to be spelled out beyond the KP preamble, because nobody imagined at the time that some governments, in pursuit of the internal controls required by the Kimberley Process, would shoot their own citizens to death, and would permit others to be beaten, raped and robbed.

**Solution:** The KPCS needs explicit provisions in its minimum standards that bind its members to uphold the rule of law and to assure basic human rights in their diamond industries.

**ISSUE 7: THE CONSEQUENCE OF FAILURE**

The cost of a Kimberley Process collapse would be disastrous for an industry that benefits so many countries, and for the millions of people in poor countries who depend, directly and indirectly on it. A criminalized diamond economy would undoubtedly re-emerge and conflict diamonds could soon follow. The budget of the UN Peacekeeping Mission in Liberia this year is \$561 million, over \$200 million more than the budget of the entire Liberian government. The UN Peacekeeping operations in Côte d’Ivoire and the DRC have a combined budget of \$1.8 *billion* between July 2009 and June 2010. The UN spends billions on peacekeeping, but after seven years the KP cannot get even close to proper diamond tracking in the countries most affected.

The KPCS is too important to fail, and it is too important to too many countries, companies and people for make-believe. Its problems are not insurmountable. They can be fixed. They can even be fixed without a major overhaul, but it will require a degree of honesty, commitment and energy that has so far been absent.

**Solution:** The diamond industry has said all the right things at each plenary. Its Responsible Jewellery Council is creating standards that may help. It has supported the Diamond Development Initiative. But this is not enough. The KP is all about the diamond industry, and in the end, consumer confidence will come into play. If the industry wants to avoid a return to the chaos and corruption that ruled the industry a decade ago, it must start to lead on all of these issues. And *all* governments must push for reform.

**TO THE KP PLENARY 2009**  
**Remember — In Time, or In Memoriam?**

Remember where we came from. Remember the death, destruction and warfare that was fueled by diamonds. Remember how the diamond industry—whose product is held by so many as a symbol of love, fidelity and beauty—was tarnished by smuggling, tax evasion, theft and sanctions busting. And remember that we already have a global agreement that involves 78 governments, an agreement with a box full of tools that with some fine-tuning are more than capable of dealing with the issues. Things *can* change if governments and the industry really want to turn the Kimberley Process from the talk shop it has become into the shining example of responsible management that we thought it would be when we first began to talk about it ten years ago.

**OTHER FACETS**

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