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Other section content:

37 Responsible pay

The Kimberley Process

## Conflict diamonds cut out

By Eric Marx

**The Kimberley Process has succeeded in virtually eliminating blood diamonds, but the global gem trade remains far from clean**

Ending the trade in diamonds to finance rebel movements is the mission of the Kimberley Process. The haltingly successful effort to regulate the diamond trade was launched in 2000 after a decade-long series of bloody civil wars in Angola, Sierra Leone and the Democratic Republic of Congo.

Funded by so-called blood diamonds – diamonds mined in a war zone and sold to finance an insurgency, an invading army's war efforts or a warlord's activities – Africa's diamond wars have taken four million lives.

Parallel efforts by the United Nations and several NGOs hoisted the issue onto the global agenda. The threat of boycott forced the diamond industry to take action through a remarkable negotiating forum that became known as the Kimberley Process. Its chief strength – a then-unique tripartite system of relations between states, NGOs, and corporations – is largely credited with what followed. This became a new regulatory scheme for a largely secretive and globally dispersed industry, and it was laid down, remarkably, in less than three years.

Although the trade in conflict diamonds has almost entirely stopped, the industry still finds itself linked to all manner of controversies – everything from strengthened arms-smuggling and money-laundering networks, to drug shipments and terrorist financing.

But perhaps none of these controversies has been more damaging than the effort to certify diamonds exported from Zimbabwe's recently discovered Marange mine. In 2008 a diamond rush resulted in a massacre of as many as 200 diamond

diggers, allegedly by the Zimbabwean armed forces.

Civil society groups also documented massive volumes of Zimbabwean diamonds smuggled out through neighbouring Mozambique. This is contrary to the procedure's most basic principle: that no rough diamonds may leave or enter a participating country without a government certificate.

The findings – first presented in October 2008 by Global Witness – have emphasised the urgent need for reform of the Kimberley Process. They have played out since then amid a lurching monitoring scheme that has seen Kimberley participants bickering over whether to suspend or expel Zimbabwe.

Already two founding fathers of the Kimberley Process – civil society member Ian Smillie and industry member Martin Rapaport – have walked away from the scheme in disgust. With more people and organisations threatening to follow, the very legitimacy and continued functioning of the Kimberley Process is at stake.

### Success or failure

Seven years after its launch, the Kimberley Process still does not have a secretariat, a professional staff, headquarters or any independent funding. Its enforcement largely rests on the good faith of government participants to report suspicious trades.

When members fail to comply, it lacks the tools to take action, Smillie says. He likens widespread murders and cross-border diamond smuggling in Zimbabwe, Angola and Venezuela to the same kind of lawlessness now being exposed at the ongoing trial – featuring Naomi Campbell et al – of former Liberian president Charles Taylor in The Hague.

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“The fact that you have governments killing people, raping people, arresting people and forcing them to march hundreds of miles across bad roads ... this is not the kind of thing NGOs want to be a part of or be seen in any way to support,” he says.

Smillie traces the process’s fundamental design flaw to consensus decision-making, which lends legitimacy but also means any country can block or use procedure to delay action. As a member government, Zimbabwe could block its own suspension.

Putting human rights explicitly on the agenda, then, becomes a near-impossible task, though civil society organisations have been buoyed in this rear-guard action by companies that are decidedly more aligned with NGOs than with governments.

Despite these failings, the regulatory effort can claim considerable success on a number of fronts. Since the late 1990s, the incidence of conflict diamonds in the pipeline fell from a high of 4% to less than 0.2%, according to the World Diamond Council, the body set up in 2000 to represent the industry in the then fledgling negotiations.

Today, 75 countries have joined the Kimberley Process and largely adhere to its extensive requirements. It is not a treaty. But because all of these countries have put into place national legislation, the Kimberley Process has the force of domestic law, including penalties specifying both fines and imprisonment, as well as a certification scheme requiring auditable documentation.

“People said this was an industry incapable of regulation,” says Elly Harrowell, a campaigner at Global Witness, which together with Partnership Africa Canada has had a seat at the negotiating table since the first talks in 1999. “Today we have a pioneering scheme in place that, if properly implemented, could do that.”

Renowned for secrecy and lack of oversight, the international diamond industry began its transformation in the 1990s with the ascension of Nicky Oppenheimer to the chairmanship of De Beers. The company was then estimated to control roughly 80% of all rough diamonds, but was losing market share and was under attack for allegedly buying diamonds from rebel-controlled mines in Angola.

An effective media campaign, followed by a special UN report on Angola, forced De Beers to the negotiating table in Kimberley, South Africa, recalls Alex Yearsley, then in charge of Global Witness’s diamond campaign and one of the organisation’s chief negotiators.

Yet it was far from clear what, if any, regulation would ensue. But De Beers chief negotiator Andrew Bone says initial misgivings were bridged once it became clear that both sides had the same objective – the eradication of conflict diamonds.

Less than three years later the certification scheme was launched, a remarkably fast accomplishment aided by a dualistic regulatory approach. This entailed a monitoring of the rough trade,



Conflict free, but dirt remains

requiring diamond-producing countries to seal all rough parcels before exportation to a diamond cutting or trading centre, and a voluntary system of self-regulation by the industry on cut and polished diamonds moving through the system.

#### Human rights?

The willingness of states to participate in this tripartite setting is explained by their limited obligations. Explicit mention of human rights in the definition of conflict diamonds, for example, was purposefully excluded because of sovereignty concerns, says Bone, though it was perfectly understood by all that “human rights are in the DNA of the Kimberley Process”.

The Kimberley certificate also has very little to do with chain of custody or country of origin, Yearsley says. It is a declaration that a parcel of diamonds did not come from a conflict area, obliging member states to have internal controls allowing them to prove that declaration when audited.

Owing to these weak controls, the illicit trade in smuggled diamonds is flourishing, concludes a 2008 Global Witness report highlighting irregularities in Ivory Coast, the Democratic Republic of Congo and Venezuela, among others.

As for the industry, large mining companies such as De Beers have led the way in instituting full chain-of-custody audits covering a range of ethical practices. These proprietary standards, however, have yet to translate into any kind of meaningful guidepost for small and medium-sized companies.

What the industry calls a system of warranties is an affirmation based on nothing more than someone’s personal knowledge, charges Annie Dunnebacke of Global Witness.

“A written guarantee simply stating that diamonds are not from conflict sources is meaningless unless it is backed up by actions and policies to monitor that the statement is true,” she says.

The Responsible Jewellery Council does have an

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JASON WARRINGTON/ISTOCKPHOTO.COM

Eliminating blood diamonds has wide social benefits

**Explicitly including human rights has created an impasse that threatens to break the Kimberley Process apart**

ambitious chain-of-custody certification system it is now testing for industry-wide application. The challenges are immense, however, given the diamond trade's dispersed character. There may have to be two or three different chains of custody, says Smillie, who is currently an adviser to the council, but it is possible to make it work. "The diamond industry gets it," he adds. "They understand that this is important and that consumers care."

Such a system would go beyond Kimberley by aiming to meet labour, development and human rights standards. But for the new standard to work it would have to supplant Kimberley, says Martin Rapaport, an industry figure who has charged ahead with several fair trade initiatives and is a fierce critic of the Kimberley Process.

"The Kimberley Process is a liar!" Rapaport says. "It tells people it deals with human rights abuses when it doesn't."

It would also have to engage miners in the alluvial diamond areas, where diggers work in dirty and dangerous conditions that are often the breeding grounds for poverty, underdevelopment and overcrowding. Nations that have suffered from the negative effects of blood diamonds all have alluvial diamond deposits, says Franziska Bieri, an adjunct professor at University of Maryland University College Europe.

Bieri's new book, *Diamond Development Initiative*, targets the alluvial diamond sector, which is a shining example of the inroads made by business and NGO groups working through the Kimberley Process.

And yet, Bieri argues, the Kimberley Process certification system was passed in such a quick, ad hoc manner that festering structural issues are now becoming more problematic. Governments hold all the power, leaving prominent industry voices such as Andrew Bone no option but to publicly excoriate government members. He did just that at Kimberley's

June 2009 intercessional meeting when, speaking on behalf of the World Diamond Council, he pleaded for "the deployment of a professional team to oversee the running of the Kimberley Process and assist the chair with logistics, communication and research".

### Zimbabwe and beyond

Bone's plea seems to have fallen on deaf ears. Indeed, even some in the business community oppose independent staffing, a fear born in the vision of a revamped Kimberley transformed into a standalone international agency fighting against money-laundering and terrorist financing.

"Transparency and disclosure are believed to constitute enormous commercial virtues. But are there limits?" says Chaim Even-Zohar, a prominent World Diamond Council member, writing in *Diamond Intelligence Briefs* (November 2009), an industry trade magazine. "Might it backfire? Such a global compulsory body would generate considerable media noise to justify its existence. How will this impact consumer confidence?"

As for NGOs, their call for the classification of conflict diamonds to explicitly include human rights has created an impasse that threatens to break the Kimberley Process apart. The move came in June this year after the Kimberley monitor appointed to review diamond mining conditions in Zimbabwe recommended that the country be allowed to sell a limited number of stockpiled diamonds as conflict-free from its contested Marange diamond fields.

A joint work plan agreed in November imposed significant restrictions, including physical security systems to curb smuggling, recommendations for tightened border controls with Mozambique, and the contracting of private security companies for mining areas.

"This is a very intrusive package," Bone says, referring to the compromise agreement, which restricts exports to diamonds mined after May 2010. "Tell me of another international organisation that has forced the Zimbabwean government to alter its views or behaviour. They are desperate for that money, and it is the Kimberley Process which has denied them access."

But to Ian Smillie, the concessions are a temporary salve serving only to undermine the entire system.

"Ask a young couple going into a store to buy an engagement ring what they want to see in a clean diamond," Smillie says. "They don't want diamonds that have been produced under conditions that you see in Zimbabwe."

What's changed in 10 years, since that first meeting in Kimberley, is that the public now knows more about where diamonds come from and, according to Smillie, NGOs' scrutiny is now a permanent fixture. "The NGOs are going to stay on this, and if the Kimberley Process collapses I think the industry will be in huge trouble." ■