



Options for forest verification

Case Study



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Comparative Case Study 1

The Kimberley Process Certification Scheme for Rough Diamonds



PARTNERSHIP AFRICA CANADA

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1. Introduction

The Kimberley Process Certification System (KPCS) for rough diamonds is an outcome of what came to be called the Kimberley Process, initiated in an effort to end the phenomenon of ‘conflict diamonds’, or ‘blood diamonds’. The Kimberley Process negotiations began in 2000, and the KPCS was initiated in January 2003. The first six months of implementation were very uneven, but by mid 2003 the system was working, perhaps better than imagined. At the time of writing, September 2005, it had been in full operation for about two years.

During the 1990s and into the current decade, rebel armies in Angola, Sierra Leone and the Democratic Republic of the Congo (DRC) exploited the alluvial diamond fields of these countries in order to finance wars of insurgency. Alluvial diamonds, unlike those mined in the deep kimberlite ‘pipes’ of Canada, Russia and Botswana, are found over vast areas of territory, often only a few inches or feet below the surface of the earth. Alluvial diamonds have, from colonial times, proven difficult to manage and to regulate. Because of their high value-to-weight ratio, the ease with which they can be mined, and endemic corruption in the global diamond market, alluvial diamonds became a ready target for rebel armies.

The trade in conflict diamonds began in the early 1990s with Jonas Savimbi’s UNITA in Angola, but was quickly copied by the Revolutionary United Front in Sierra Leone, with assistance from Liberia’s warlord president, Charles Taylor. It was then taken up by rebel armies in the Democratic Republic of the Congo (DRC) and has affected the diamond industries of Guinea, Liberia and Côte d’Ivoire as well. As much as 15% of the world’s \$10 billion annual diamond production fell into the category of conflict diamonds in the late 1990s. Hundreds of thousands of people died as a direct result of these wars, and many more died of indirect causes.

2. Some Problem Areas

In considering how rough diamonds might be regulated, several problems had to be confronted. First, while diamonds

have different characteristics from one mine or one country to the next, the differences are minuscule, and when diamonds are mixed, it is impossible even for the best ‘diamantaire’ to distinguish one from the other. It might be possible for an expert to say that a particular diamond, or a particular assortment of diamonds are not from, say, Namibia. But it would be almost impossible to say where they actually did originate. Scientific experiments to ‘fingerprint’ diamonds based on trace elements have not yet advanced to the stage of practical application. Marking or coating diamonds at the production site is a possibility, but available techniques are expensive and logistically prohibitive, and unless all diamonds worldwide were to be part of such a system, identifying unmarked diamonds as illicit would be impossible. Certainly rebel armies would be unlikely to mark diamonds, and in any case, there is no mark or coating that cannot be removed from a rough diamond.

A further complication in developing a tracking system is that the diamond industry has always operated in an opaque and secretive manner. Historically, effective regulation has proven almost impossible, whether in Africa, Europe, Israel or North America. This is partly because of the necessary security issues around such a valuable commodity, but it is also because the trade in diamonds, after they have been mined, has traditionally been in the hands of very small, close-knit family enterprises, the kind of enterprise that defies effective governmental regulation. Historically, for example, high taxes have only served to drive diamonds underground, and most governments long ago stopped trying to impose more than minimal duties on rough diamond imports and exports. Even so, a parallel diamond economy, operating in grey and black markets, has always existed.

Diamonds have thus proven useful in money laundering, and have been used to finance drugs and other illicit goods. In Africa, where more than 70% of the world’s gem diamonds (by value) were produced throughout most of the 20th century, diamonds were used to hide and export profits and capital, and, as an alternative hard currency, to finance imports in weak economies. Corrupt and predatory governments in



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Ministerie van Buitenlandse Zaken



Sierra Leone, the DRC and Angola drove the diamond business even further underground. In addition, much of the legitimate diamond trade operated largely on a cash basis, without formal contracts or auditable paper trails. Diamonds were almost ideally suited to the purpose for which rebel armies came to use them.

3. The Process

Conflict diamonds were first identified as such in Angola by a British NGO, Global Witness, at the end of 1998. The issue was important to the United Nations Security Council, which had pulled a peacekeeping force out of the country that year because of its inability to prevail in a war that had lasted off and on since independence 25 years earlier. At the beginning of 2000 a Canadian NGO, Partnership Africa Canada, published a report on the role diamonds were playing in fuelling Sierra Leone's nine-year old war. Later in 2000, the Security Council issued its own report on Angola, confirming what the NGOs had written about diamonds and the industry's complicity in the conflicts.

Until then, the diamond industry had largely ignored the problem; however by mid-2000 denial had turned into engagement. Several factors contributed to the change. A large proportion of the world's gem-quality rough diamonds pass through two narrow funnels. One is De Beers, a conglomerate which until recently controlled more than 80% of all rough diamond production. Although it had divested itself of all alluvial diamond sources by 2000, De Beers had a lot to lose from a sustained generic campaign against a luxury consumer product. Gem diamonds have no intrinsic value apart from the sentimental, and high market prices were manipulated for years by withholding supply and devoting hundreds of millions of dollars to advertising. De Beers understood the vulnerability of the diamond industry. The wider industry had a lot to lose as well, but with an industry leader the size of De Beers willing to engage, the problem in unifying thousands of small family businesses around the issue barely arose.



Diamond Diggers from the Revolutionary United Front, Kono District, Sierra Leone (PAC, 2001)

The second funnel is Antwerp. Centre of the world's diamond trade for more than two centuries, Antwerp serves as a crossroads for as much as 90% of the world's rough diamonds.¹ It is also a major trading centre for polished diamonds. Collectively, the Antwerp diamond business, Antwerp itself, and the Belgian economy as a whole would have had a lot to lose in a consumer campaign.

The government of South Africa was another player with high stakes in the diamond industry. In May of 2000, Phumzile Mlambo-Ngcuka, South Africa's Minister of Minerals and

Energy,² called a meeting to discuss the issue. The meeting was held in Kimberley, where South African diamonds were first discovered, giving the process that ensued its name. The meeting brought together industry leaders, governments and NGOs. So important had the issue become for Belgium that its foreign minister Louis Michel attended, rubbing shoulders with Belgium's NGO antagonists, industry leaders and other government representatives. Concerned Southern African governments with significant diamond industries were there in power – South Africa, Botswana and Namibia – as were others such as Canada (with its own burgeoning diamond industry) and Britain, which was beginning to take a lead on the conflict-prevention side of the issue.

The meeting took its cue from a system that had been initiated in Angola in mid 1998. Under a Security Council arrangement, no diamonds could be purchased from Angola unless the government of Angola issued a certificate saying that they were conflict-free. The certification system was largely ineffective, because conflict diamonds from Angola were simply smuggled to other countries and exported from there. Liberia, for example, was given as the origin of billions of dollars worth of diamonds during the 1990s, and many other countries with no diamond resources at all were being recorded as the country of origin or provenance in Belgian customs data – Gambia, Rwanda, Zambia and others. Alone, the Angolan certificates were ineffective, but if all countries were to become part of a system of certification, and if this system was based on good internal controls in each country, including producing, trading and polishing countries, something might be done.

The broad outlines of such a system were articulated at the first Kimberley Process (KP) meeting in South Africa. A further technical meeting was proposed to elaborate the issue, and it was assumed that a workable system could be developed in a matter of months. It would actually take 40 months – something of a record in such matters, but still much longer than was originally imagined. The issue was not so much the technicalities of the system, although these were complex, but the politics. Many countries came to the table with more than a little ambivalence to the entire concept. The United States (the biggest consumer of gem diamonds), Russia (the second largest diamond producing country) and China (an up-and-coming polishing country) were at first hostile to the whole idea. For them the problem was a combination of workload, cost and issues around the regulation of trade. Others were late in coming to the table: India (with one million cutters and polishers) and Israel (one of the biggest trading centres after Antwerp). As the meetings grew bigger, the process became slower, while each new participant was brought up to speed.

By 2001 the NGO participants in the Kimberley Process had created an effective coalition of more than 200 organisations, including large brand-name organisations like Oxfam, World Vision and Amnesty International. The NGOs continued to generate media attention and pressure, and although there was never an explicit campaign aimed at consumers, the industry saw the potential, as articles continued to appear around the world in every major newspaper and news magazine, and as 'blood diamonds' became a frequent topic on television news programs. Although NGOs took part in every KP meeting as full participants, the vociferous media campaign sustained pressure. For its part, the industry created a new body, the World Diamond Council, in 2000. A coalition of mining firms, trading companies and jewellery industry

representatives, the WDC was created to engage exclusively on the issue of conflict diamonds, and to represent industry interests at KP meetings.

Additional pressure, of course, came from the objective fact of conflict diamonds and the horrific wars that continued to blaze across Africa. A second UN Security Council Expert Panel confirmed the diamond connection in Sierra Leone at the end of 2000, and future UN reports on Angola, the DRC and Liberia continued to document the problem.

In all, there were a dozen KP meetings, held in various African and European capitals and in Ottawa, before a final agreement was hammered out at Interlaken in November 2002. Although not a formal part of the process, a dozen other meetings in various locales helped the parties to rehearse the issues and to grow more familiar with the challenges and each other. The World Diamond Council held annual meetings in London and Milan in 2001 and 2002 respectively, where many of the protagonists met and debated issues that had become stuck at the more formal Kimberley meetings. The Clinton White House organised a meeting in January 2001 and the World Peace Foundation organised one at Harvard in October 2001. A UN General Assembly resolution in December 2000 endorsed the KP and urged 'the implementation of the certification scheme as soon as possible, recognising the urgency of the situation from a humanitarian and security standpoint.' And two G8 Meetings, in Okinawa in July 2000 and at Kananaskis in Canada in July 2002 referred to the KP in their final communiqués.

Important as these endorsements – engineered by concerned governments and NGOs – may seem, they did little to deflect some governments from the technical and procedural concerns they brought to the table. The United States wanted the system to be open to any government, while NGOs argued that some governments had demonstrated enough criminal behaviour where diamonds were concerned to be excluded.³ China agreed that there should be a credentials committee, but this was because it wanted (but never said it wanted) to exclude Taiwan. Many governments worried that they might be forced to implement new laws and regulations, and wanted a system that could be based as much as possible on existing national laws. The industry wanted the least intrusive and least costly system possible, while the NGOs wanted a water-tight agreement with independent monitoring. They insisted that the outcome would also have to include a system of national trade and production statistics, so that the exports of one country could be cross-checked with the imports of others. Most governments wanted participation to be voluntary, while NGOs felt that any agreement had to be compulsory and legally binding on its participants.

As agreement neared, Canada and a small number of other governments felt that the KPCS should seek WTO endorsement, as the proposed system could be considered an infringement on trade. Switzerland and others argued that with all major diamond countries as participants, including the EC and all five permanent members of the Security Council, it would be better to ask for WTO forgiveness later in the event of any challenge, rather than to ask for permission in advance. If permission were denied, the entire KPCS would likely fall apart. In the event, however, Canada – joined by Australia, Brazil, Israel, Japan, Korea, Philippines, Sierra Leone, Thailand, the United Arab Emirates and the United States – went to the WTO to request a waiver.

In February 2003, the WTO Council for Trade in Goods recommended that the General Council grant requesting

members a waiver for trade measures taken under the KPCS through to December 2006. The decision recognised 'the extraordinary humanitarian nature of this issue and the devastating impact of conflicts fuelled by 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'.⁴

4. The Agreement

The agreement reached at Interlaken⁵ defines terms (for example the three customs codes covering the types of rough diamonds of interest to the KPCS), spells out the minimum standards required of participants and provides details on some additional optional standards (see Box 1).

Box 1: Basic Elements of the Agreement

- Each participant (i.e. each participating government) undertakes to maintain internal controls over rough diamonds. For producers this means establishing an audit trail between mines and the point of export; for others, it means maintaining a chain of warranties between the point of import and either the cutting factory or the point of re-export. Various suggestions are made as to how this might be done in a section on optional standards;
- Each participant agrees that a Kimberley Certificate will accompany each export; certificates, to be designed and issued by each participating country, have certain common features and must also contain adequate security features. All international shipments of diamonds must be made in tamper-proof packages;
- No participant will permit the import of rough diamonds unless accompanied by a KP certificate from another participant. Penalties are provided in the case of breaches;
- Each parcel received will be acknowledged by the importing authority to the exporting authority;
- Each participant must submit quarterly trade statistics and semi-annual production statistics within 60 days of the reference period. A centrally-maintained statistical web site allows participants and observers to compare and verify exports from one country with imports to another.

The agreement, which remains the central, unamended working document of the Kimberley Process Certification Scheme – often quoted like a rabbinical text – reflects many of the concerns expressed during the negotiations by various governments, and at face value it appears rather weak. The KPCS is not a treaty, it is not legally binding as a formal international treaty might be, and no government signed any document. The KPCS preamble recalls the General Assembly Resolution, cleverly worded by anonymous officials, which said that the KPCS should be 'a simple and workable international certification scheme based on national certification schemes and on internationally agreed minimum standards.' It recognised 'the differences in production methods and trading practices' that might require 'different approaches'. It recognised the importance of state sovereignty and said that everything would be agreed by consensus.

Consensus means that if one government dissents from a position, that position cannot go forward, a provision that would test the KPCS on more than one occasion in the

months ahead. The provision for monitoring was weak in the extreme, with no provision for sanctions in the unlikely event that a review mission ever took place. Reviews would only occur if a participant agreed to be reviewed, and if there were 'significant indications of non-compliance' with regard to KPCS provisions. What 'significant indications' meant was not spelled out. Further, the entire scheme was to be open to any government 'willing and able to fulfill the requirements of [the] scheme', with no credentials review of any kind. NGOs and industry, which had participated in all the discussions as equals up to that point, were now relegated to 'observer' status.

There would be no secretariat, staff or budget. Plenary meetings would be held once a year in the country of the KP Chair. The Chair was to be 'elected' annually, despite the provision for decision-making by consensus. Each country was to design and print its own KP certificate, meaning that customs authorities in each country would have to maintain a register with as many as 50 different sample designs.

None of these weaknesses were lost on those, especially NGOs and some governments, that wanted a tough, binding agreement with strong admission and verification standards. For them the question at Interlaken was whether to accept a weak agreement and to work later to strengthen it from the inside, or to leave the table entirely and for good. Given the obvious inability of the process to move beyond what was agreed at Interlaken, the latter would probably have destroyed the entire process, culminating in the consumer war that the industry feared, but which NGOs knew would hurt hundreds of thousands of innocent diamond miners and polishers in many developing countries.

5. Strengths

The agreement has several strengths, however, that were not obvious at first. One is that although the KPCS is completely voluntary, those countries that are members undertake not to trade with those that are not.⁶ Countries that 'voluntarily' stay out of the KPCS, therefore, cannot trade diamonds with countries that are in. This creates a situation where virtually any country with a rough diamond business – production, trade or consumption – must be a member. It is voluntary, but in real terms it is compulsory.

The KPCS minimum standards are not minimal standards, and some are set quite high. More importantly, they are – de facto – compulsory for all participants, something that is not true of many ratified international treaties. It was necessary for almost every serious participant to pass new laws in order to enforce the KPCS at home. New Kimberley-specific laws were passed in the EC, Canada, the United States and virtually every one of the more than 40 countries that joined. These laws spell out how rough diamonds will be handled prior to export and/or after import (internal controls). They state the need for tamper-proof packaging and the requirement for a government-controlled certificate testifying to the diamonds' bona fides. They spell out the penalties for infractions, which in most cases include fines and/or prison terms plus forfeiture of any diamonds seized. So while the KPCS is not a legally binding international treaty, each participating country has made its provisions legally binding within its own borders. Where an international treaty might have been difficult to enforce, laws in each participating country are much less so.

De facto, every country present at the Interlaken meeting became a participant by virtue of its representative raising a hand. Included were countries with no significant diamond

interests. Norway was there because it was concerned about conflict diamonds, and Burkina Faso, which had been accused of trafficking in conflict diamonds, was perhaps there to protect its reputation. Within six months of start-up, it had become clear that these countries and several others were not able to meet the minimum standards, and so a credentials committee was at last struck. Named the 'Participation Committee', it grew teeth that had not previously been there. It examined the laws and regulations of every potential participant for compliance with KPCS minimum standards, and scrutinised each country's Kimberley Certificate to ensure that it had adequate security features. In a new provision, each country was now required to submit an annual report on its KPCS compliance, including details of any problems or discrepancies. Many countries were dropped from the membership list: Norway because it had no laws or certificate (although it did produce these later and was able to join). Burkina Faso was dropped for the same reason (it never came back); Brazil, as well as a number of others, took several months before they could comply, and were dropped from the system until they did.

This took the KPCS further than many other conventional treaties. These may have reporting and complaints systems, but compliance issues take months, if not years to work their way through the system, and there are rarely provisions for penalties or expulsion.

5.1 Monitoring

NGOs continued to pursue the issue of monitoring, knowing that while all participating countries now had the requisite laws and certificates, in many of them internal controls were weak or non-existent. Several governments agreed with their position, but in the consensus arrangement this was not enough. Israel and Australia, among others, were strongly opposed to any regular monitoring system. Israel saw the idea as the thin edge of an NGO wedge which, if accepted, would result in hordes of NGOs poring over the accounts of individual Israeli diamond dealers, bringing the entire industry to a standstill. This is obviously not what NGOs had in mind, but they did have to clarify what they meant by 'monitoring'. The NGO intention was not to have teams auditing the books of individual companies. This, depending on how internal controls were set up, is the responsibility of participating governments. What NGOs wanted was a 'systems audit' of participants, to see if the internal controls and minimum standards were actually being applied.

Many of the breakthroughs in the KPCS were, and continue to be, worked out among antagonists behind closed doors before being brought to plenary discussion for endorsement. In this case, a complex sequence of events brought about significant (and fairly quick) change. The first event was a complaint of non-compliance lodged against the Central African Republic following a coup early in 2003. Several participants, supported by industry and NGOs, demanded a review under the non-compliance provision, and the CAR agreed. This started the engine, at least, for the existing KPCS monitoring provision, and showed that it had fuel.

The two primary NGO players, Partnership Africa Canada and Global Witness, continued to press for a broader, more comprehensive system, however, submitting background papers on monitoring provisions in other agreements. A KPCS plenary meeting in mid 2003 did not have the time or inclination to grapple with the issue, but some government delegations, notably the EC and South Africa, had begun

to discuss the idea of a peer review system. Just before the Sun City plenary of October 2003, the NGOs, the World Diamond Council and the Israeli government worked out an understanding, which in essence paved the way for industry and Israeli support for a 'voluntary peer review mechanism'. There was then enough momentum for China, India, Australia and others to be won over at the plenary.

Under this proposal, only countries that volunteered for a review visit would actually receive one. Review teams would comprise representatives of three other governments and one each from NGOs and industry. In the event, this bland arrangement was almost impossible to resist. A Monitoring Working Group was struck, and when several countries began to request review visits, it became harder for others not to volunteer. By mid 2005, 18 'voluntary' reviews had been carried out, and there was no country left in the KPCS that had not requested one.

It is worth noting that the KPCS also provides for any participant or observer to communicate with the Monitoring Working Group on the compliance of another participant. This established a de facto monitoring and 'complaints' mechanism through which compliance issues can be raised, outside the regular review and report mechanisms. Notably, it extends the right to raise compliance issues to observers.

Because there is no central KPCS fund, each member on a review team pays his or her own way. This avoids all the problems that might be associated with a central fund, but it also means that some countries do not designate members for review missions because of the cost implications.

Some reviews have been tougher than others. A review of the Republic of Congo (Brazzaville) was carried out in June 2003. It was not voluntary, and the KP Chair – Canada at the time – had to press the government to agree. At issue were voluminous diamond exports from a country with no known diamond mining, and no documented imports. The review resulted in the ROC being 'dropped from the list', a KP euphemism for expulsion. This was a defining moment for the KP, one with few precedents in the multilateral system.

A separate issue arose in the case of Lebanon. Here, the issue was not expulsion but admission. Lebanon had been slow to pass the requisite KP-related laws, and there were allegations about illicit trade between Africa and Lebanon. Before Lebanon was considered for admission in 2005, therefore, a review visit was required. This too was a first. Neither the Congo's expulsion nor Lebanon's admission happened without a great amount of behind-the-scenes debate, some of it quite strident. But that too was part of the KP maturation process.

5.2 The Peer Review Mechanism

If NGOs and industry representatives worried at Interlaken about being downgraded to passive 'observers', they need not have. NGOs and industry representatives continued to attend all meetings and to be recognised by the Chair every time they wished to make an intervention.⁷ NGOs and industry representatives are members of every working group, and serious comments from their side are taken as much into consideration where consensus is concerned as those of anyone else. This may be without precedent in organisations with the effective power to exclude a country from the trade in an important commodity. It is one of the key factors allowing the KP to make so much progress so fast.

NGO and industry representatives have participated on almost every review team. The June 2005 review of the United States, for example, was chaired by Russia, with government

team members from the EC and South Africa, an Israeli industry representative and one from a Canadian NGO. Each review examines a participant's compliance with the KPCS minimum standards and makes recommendations, where appropriate, for improvements. The participant is expected to report on changes in its next annual report.

Despite the early misgivings of many participants, the provision for consensus decision-making has proven in many ways to be a strength. In the early days of the agreement, a voting arrangement would have allowed participants to 'gang up' on members that held contrary and often very strong views. There was a real possibility that an important participant might walk away from the table, which could have proven very destructive. While some decisions may represent the lowest common denominator, there are at least, as a result, few major ructions. Many of the players have been involved in the process from the beginning, and this has helped to leaven the confusion and mistrust that newcomers sometimes bring to the table. Reaching consensus has become easier with time.



Diamond Diggers from the Revolutionary United Front, Sierra Leone (PAC, 2001)

The lack of a formal secretariat has stretched the KPCS in several ways, but again, this may not have been a bad decision for the early years. Some feared that an office with staff and a budget could take on a life of its own, usurping prerogatives of the plenary. South Africa was the self-appointed Chair of the Kimberley Process from May 2000 until December 2003, serving as unofficial champion of the overall process. But at the end of 2003, South Africa, which had invested considerable time and money in the initiative, announced its retirement. Canada took over the Chair during 2004, and estimated that it had expended something like \$250,000 in the process. Russia took the Chair in 2005, and Botswana will take over in 2006. This system has worked reasonably well so far, but the frequent changes work against continuity, and there is a limit to the number of countries that are likely to be willing and able to take on the position.

The secretariat function, however, is not as onerous as it might be because the KPCS has developed a system of 'working groups'.⁸ The working groups on monitoring and participation are described above. There is also a working group on statistics (about which, more below) and a technical working group of 'diamond experts'. The latter group has dealt with issues such as definitions used by the World Customs Organisation for harmonised customs codes, problems relating to diamond powder, and how to deal with core samples from exploration projects. All working groups have members drawn from a cross-section of participating countries – with efforts at geographic balance – as well as representatives of industry and

NGOs. The working groups, usually comprising about ten participants, 'meet' as often as required, by teleconference. During 2004, the statistics working group, for example, held about ten conference calls, most lasting about two hours. The committees are chaired by participants who volunteer to do so, knowing that there will inevitably be considerable time and cost involved.

As well as dealing with the work of the KPCS and laying the groundwork for plenary consensus-based decisions, the working groups help to develop solidarity throughout the process. There are some drawbacks to the system. Teleconferencing which ties together China, India, Europe, Israel, South Africa and the Americas presents a logistical, telephonic and audio challenge of considerable proportions. For some participants the meetings begin at 7:00 am, and for others at 10:00 pm. And although the KP plenary meetings have simultaneous translation in English, Russian, French and Portuguese, the working groups function entirely in English, restricting the ability of some countries to take part.

Drawbacks notwithstanding, the relative informality of this approach has enabled the KP to develop much more rapidly and effectively than it might have if decision-making were confined to once- or twice-yearly formal meetings. It is no exaggeration to say that the KP has sometimes accomplished in a single teleconference what would have taken a more formal international organisation several years of negotiation to achieve.

It was envisaged at Interlaken that plenary meetings would be held once a year. Since then it has proven useful, however, to have two. The one in mid-year has come to be known as an 'intersessional' meeting, usually bringing together members of specific working groups rather than the entire KPCS membership. These meetings are nevertheless quite large, with 50 or 60 individuals. A full plenary draws up to 150.

6. Weaknesses

6.1 Internal Controls

There are still many reasons for individuals to smuggle diamonds and try to circumvent the KPCS. The KPCS is only as strong as its weakest link, and many weak links remain. Several African producing countries, Brazil, and others have extremely weak internal controls. Diamonds from Angola, for example, can be dropped into the Congolese pipeline upstream of the export authorities, and there are few means of detecting them. The audit trail back up the pipeline there, and in many other countries, is weak for a variety of reasons: capacity, technological shortcomings, corruption. Governments are well aware of these weaknesses, but solutions remain a work in progress.

One solution might be the approach taken by Belgium, where further demands were added to the EC's relatively tough KP-based diamond regulations. Each Belgian diamond trader must keep full and accurate records of all rough diamond purchases and sales during the year, reconciling them against opening and closing stocks. These records must be audited alongside its financial statements. One trader's records can then be compared with another's if necessary, and government can send its own auditors in for occasional spot checks. It is possible that an external audit system could be applied in Africa as well. With adequate incentives and penalties, it might help to change the informality of the current system. Another check on internal controls is the increasingly universal requirement for governments to develop anti-money laundering laws which reduce the amount permissible

in cash transactions. This may also help to formalise some of the informal diamond trade.

6.2 Statistics

The creation of a consistent and comparable statistical data base has proven to be the greatest challenge to the KPCS. Russia had to change its official secrets act (only accomplished at the end of 2004) in order to be able to supply its trade and production data. Some countries send their information late, others not at all. And still others send information in a form that is inconsistent with agreed formulae, making it useless for purposes of comparison. Most countries submit data as recorded on the KP certificate, but some have laws which require them to provide data only in the form collected by their customs officials. This data tends to be variable and difficult to compare because of diverse valuation techniques, time lags and other problems

Canada, which chairs the statistics working group, has made efforts to compile the data that exists, and while there have been serious problems, even the flawed data has proven to be a treasure trove of useful information. For example, it was bogus information submitted by the Republic of Congo that triggered a review mission and that country's eventual expulsion from the KPCS.

Although not yet tested, an agreement was reached in mid 2005 on how data would be analysed. All countries had at last submitted data for the full 2004 calendar year, and the first detailed analysis was expected to be completed before the November 2005 plenary. In addition, a new guideline on exchanging certificate numbers should, once implemented, help close the loop between exports and imports.

6.3 Implementation Issues

In addition to problems in gathering timely, consistent and useful statistical data, there remain problems with the submission of annual reports, follow-up on review visits, and the effective application (as described elsewhere) of internal controls. Many of the implementation problems are not wilful or deliberate, but are the result of genuine capacity problems in some countries. Continuing NGO investigative research and pressure has been useful in keeping these issues alive, if not solved.⁹

6.4 'Opening the Document'

Tensions at the November 2002 Interlaken meeting were running high when the final text of the KPCS was agreed. Almost everyone in the room – the representatives of some 60 governments plus industry and NGOs – disagreed with at least some part of it. It was understood, however, that to 'reopen the document' any time soon would destroy a fragile consensus. Remarkably, the Kimberley Process has nevertheless proven flexible enough to deal with unforeseen problems through a variety of ad hoc 'administrative decisions' – creating committees, establishing an annual reporting system, toughening membership criteria, and establishing a monitoring mechanism. None of these things would have been acceptable at the time of Interlaken, and yet they all happened within 18 months of start-up.

At Interlaken it was agreed that the KPCS would be reviewed within three years. This is understood to mean before the end of 2006 when the WTO waiver will have to be addressed again. The three year period was established in order to allow the system to settle in before the document was, in fact, reopened. Despite some difficulties in designing

Lessons Learned

- The humanitarian imperative helped to drive the KPCS, but it is now felt to be as much about prevention as cure.
- The vulnerability of diamonds to consumer action encouraged industry and reluctant governments to the table.
- Heavy media pressure fostered by NGOs helped to maintain momentum.
- A government 'champion' was important; it is unlikely that NGOs or industry could have played this role.
- UN expert panels, a UNGA resolution and positive references to the KP (e.g. at G8 meetings) added legitimacy.
- The KPCS needed strong industry participation as industry understood the problems and possible solutions.
- Governments, industry and NGOs participated on an equal basis. There was real debate, and government delegations eventually came to meetings with enough authority to bargain.
- The relative informality and non-bureaucratic nature of decision-making aided negotiation and implementation.
- The KPCS is 'voluntary', but has become effectively compulsory for producer and trading countries.
- A WTO waiver was critical, and the waiver application benefitted from the involvement of eleven governments.
- Embedding the KPCS in national legislation, not a multilateral treaty, makes it sufficiently legally binding as long as there are strong provisions for monitoring and an understanding that non-compliance may result in expulsion.
- A weak agreement may be better than none if there is enough good will to allow adaptation. Many initial fears turned out to be unfounded. Adaptation was not easy however, and required good and constant communication.
- Acceptance of the initial weak agreement by NGOs was reluctant and (privately) conditional on progress in the area of monitoring and statistics; without this they would probably have left the process.
- Despite some early misgivings, the consensus decision-making system has been effective. Consensus, even if grudging, avoids the feeling among participants that they have 'lost' something important.
- A secretariat, budget and staff were not required for the KPCS, although it is not clear how long this will last.
- The system of 'working groups' spreads the workload, eases the financial burden on participants and builds trust and solidarity. However governments must volunteer to chair them, which requires time, effort and funds.
- Implementation problems have been reduced significantly in the 30 months since the KPCS began, but many remain, partly owing to low capacity in some countries. The work of NGOs has helped to keep these issues alive.
- In the diamond industry there are always receptions and cocktail parties; this has helped enormously. Many insiders refer to the 'Kimberley family', and early antagonists have become friends and genuine allies.

a methodology for the review, this will take place during the first half of 2006 and may lead to changes in some of the structures and procedures.

7. Conclusions

While challenges remain, some conclusions can be drawn about the impact of the KPCS 30 months after its inauguration. Diamond shipments operating outside the KPCS have now been seized by most major trading countries, a real sign that the KPCS is serious. The KP negotiations alone helped choke diamond supplies to rebel movements in Angola and Sierra Leone, contributing to the end of hostilities. Several countries attribute the growth of legitimate diamond exports (and hence tax revenue) to the KPCS. In 2004, for example, Sierra Leone exported \$126 million of diamonds, up from \$26 million in 2001. In 2003, the DRC had its best diamond export year in history. As important, the KPCS has helped to formalise and clean up an industry that – at its edges – had operated for a century with little transparency and few paper trails, making it a fertile playground for all manner of illicit activity, and for some of the world's most ruthless predators.

Endnotes

¹ About 20 tonnes of unpolished diamonds enter the market each year. Belgium exports 20,000 shipments of polished diamonds annually, compared with 1,200 from the UK.

² She became Deputy President in June 2005.

³ The heads of state of Burkina Faso, Togo and Liberia had been named in UN Expert Panel Reports for direct involvement in trafficking conflict diamonds and breaking UN weapon sanctions.

⁴ WTO decision: www.wto.org/english/news_e/news03_e/goods_

[council_26fev03_e.htm](#)

⁵ Full text at <http://www.kimberleyprocess.com:8080/site/>

⁶ Apart from Chapter VII instruments of the UN Security Council, all international agreements are, in any case, voluntary.

⁷ Industry is represented by the specially created World Diamond Council. It includes representatives of mining, trading and jewellery companies. Some members are regulars, others come and go. NGO representation has been varied; at some early meetings there were 20 NGOs from industrialised countries and Africa, although most formal NGO interventions were handled by the two NGOs with dedicated staff, Global Witness and Partnership Africa Canada. PAC and GW alone have served on the KPCG Working Groups, but several NGOs continue to attend the plenary meetings.

⁸ A description of the KPCS structure is available at <http://www.kimberleyprocess.com:8080/site/?name=structure>.

⁹ For example a 2005 report by Partnership Africa Canada revealed significant irregularities in the Brazilian diamond industry: *The Failure of Good Intentions: Fraud, Theft and Murder in the Brazilian Diamond Industry*, www.pacweb.org.

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Appendix: Checklist for KPCS Review Visits and Review Missions

This checklist is offered as a guide to members of KPCS Review Visits and Missions. It contains all KPCS provisions, both required and optional, and suggests 'action evident' and 'key informants' in order to determine compliance with the KPCS. The format can be used both by review teams and

by participants preparing for a review. Review teams should typically examine physical evidence of KPCS compliance through visits to the designated KP Authority, Departments of Minerals and/or Mines, customs, law enforcement and related agencies, and through examination of KPCS processes. Teams may also meet with companies and other entities in the diamond sector, and may visit mines in producer countries.

KPCS Ref.	Requirement	Action Evident	Key Informants	Comments of Review Team
II	The Kimberley Process Certificate			
II(a)	Each participant should ensure that a KP Certificate (hereafter referred to as the Certificate) accompanies each shipment of rough diamonds on export	Records indicate that KP certificates have accompanied all shipments	Designated KP Authority or agent	
II(b)	Each participant should ensure that its processes for issuing Certificates meet the minimum standards of the KP as set out in Section IV	See Section IV		
II(c)	Each participant should ensure that Certificates meet the minimum requirements set out in Annex I. As long as these requirements are met, participants may at their discretion establish additional characteristics for their own Certificates, for example their form, additional data or security elements. Action Evident refers only to requirements. Optional Procedures are included at the end of this template	Annex I: Certificates should meet the following minimum requirements: They should be tamper and forgery resistant; Each Certificate should bear the title "Kimberley Process Certificate" and the following statement: "The rough diamonds in this shipment have been handled in accordance with the provisions of the Kimberley Process Certification Scheme for rough diamonds"; Country of origin for shipment of parcels of unmixed (i.e. from the same) origin; Certificates may be issued in any language, provided that an English translation is incorporated; Unique numbering with the Alpha 2 country code, according to ISO 3166-1; Date of issuance and date of expiry; Issuing authority; Identification of exporter and importer; Carat weight/mass; Value in US\$; Number of parcels in shipment; Relevant Harmonised Commodity Description and Coding System; Validation of Certificate by the Exporting Authority and completion of the certificate by the Authority where applicable.		
II(d)	Each participant should ensure that it notifies all other participants through the Chair of the features of its Certificate as specified in Annex I, for purposes of validation.		Designated KP Authority and KP Chair	
III	The International Trade in Rough Diamonds			
III(a)	Each participant should, with regard to shipments of rough diamonds exported to a participant, require that each such shipment is accompanied by a duly validated Certificate	Application of KP regulations	Designated KP Authority and Customs	

III(b)	Each participant should, with regard to shipments of rough diamonds imported from a participant: require a duly validated Certificate; ensure that confirmation of receipt is sent expeditiously to the relevant Exporting Authority. The confirmation should as a minimum refer to the Certificate number, the number of parcels, the carat weight and the details of the importer and exporter; require that the original of the Certificate be readily accessible for a period of no less than three years	Application of KP regulations; confirmation of dispatch by the exporting authority to the importing authority of the recipient country (certificate number and date of issue); evidence that confirmation of receipt is being sent to the relevant exporting authority. In the case of participants whose certificates do not have a detachable confirmation slip, confirmation should be sent by e-mail, with complete data (certificate number, date of issue, volume in carats, value in US dollars)	Designated KP Authority and Customs	
III(c)	Each participant should ensure that no shipment of rough diamonds is imported from or exported to a non-participant	Application of KP regulations; evidence that confirmation of receipt is being sent to the relevant exporting authority	Designated KP Authority and Customs; KP statistics	
III(d)	Each participant should recognise that participants through whose territory shipments transit are not required to meet the requirement of paragraphs (a) and (b) above, and of Section II (a) provided that the designated authorities of the participant through whose territory a shipment passes, ensure that the shipment leaves its territory in an identical state as it entered its territory (i.e. unopened and not tampered with).	Evidence of how transit shipments (if any) are being handled.	Designated KP Authority and Customs	
IV	Internal Controls			
IV(a)	Each participant should 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	Existence of laws, regulations and binding procedures; evidence of company practice.	Designated KP authority, customs, law enforcement & related agencies; companies	
IV(b)	Each participant should designate an Importing and an Exporting Authority(ies)	Existence of a designated authority or authorities; regulations or legislation outlining their authority and responsibilities		
IV(c)	Each participant should ensure that rough diamonds are imported and exported in tamper resistant containers	Visual evidence		
IV(d)	Each participant should as required, amend or enact appropriate laws or regulations to implement and enforce the Certification Scheme and to maintain dissuasive and proportional penalties for transgressions	Existing laws and regulations; evidence of enforcement	Designated KP Authority; law enforcement and related agencies	
IV(e)	Each participant should collect and maintain relevant official production, import and export data, and collate and exchange such data in accordance with the provisions of Section V	Statistical database and evidence of timely submission to KP Statistics Chair, as per KPCS and subsequent interpretations; maintenance of a computerised database as required in Section V		
IV(f)	Each participant should, when establishing a system of internal controls, take into account, where appropriate, the further options and recommendations for internal controls as elaborated in Annex II	Annex II makes recommendations: If there are rebel groups suspected of mining diamonds within the country's territory, the areas of rebel diamond mining activity is identified and information has been provided to all other participants. This information is updated on a regular basis. The participant is making known the names of individuals or companies convicted of activities relevant to the purposes of the Certification Scheme to all other participants through the Chair. The participant ensures that all cash purchases of rough diamonds are routed through official banking channels, supported by verifiable documentation. If a producer, the participant analyses its diamond production by the characteristics of diamonds produced and by actual production.	Designated KP Authority or agent(s); law enforcement agencies; banking authorities.	

V	Cooperation and Transparency			
V(a)	Participants should provide to each other through the Chair information identifying their designated authorities or bodies responsible for implementing the provisions of this Certification Scheme. Each participant should provide to other participants through the Chair information, preferably in electronic format, on its relevant laws, regulations, rules, procedures and practices, and update that information as required. This should include a synopsis in English of the essential content of this information.	There is a designated KP Authority; Relevant laws, regulations and rules are available; Updates (if any) are available for consideration	KP designated authority	
V(b)	Participants should compile and make available to all other participants through the Chair statistical data in line with the principles set out in Annex III.	All required statistics are available as per Annex III; see below	KP designated authority	
V(c)	Participants should exchange on a regular basis experiences and other relevant information, including on self-assessment, in order to arrive at the best practice in given circumstances.	Information on exchanges with other participants is available.	KP designated authority	
V(d)	Participants should consider favourably requests from other participants for assistance to improve the functioning of the Certification Scheme within their territories.	Information on approaches from other participants, plus action taken, is available	KP designated authority	
V(e)	Participants should inform another participant through the Chair if it considers that the laws, regulations, rules, procedures or practices of that other participant do not ensure the absence of conflict diamonds in the exports of that other participant.	Information on any complaints or queries, from or to another participant, is available, along with details of action taken.	KP designated authority	
V(f)	Participants should cooperate with other participants to attempt to resolve problems which may arise from unintentional circumstances and which could lead to non-fulfillment of the minimum requirements for the issuance or acceptance of the Certificates, and inform all other participants of the essence of the problems encountered and of solutions found;	Information on any complaints or queries, from or to another participant, is available, along with details of action taken.	KP designated authority	
V(g)	Participants should encourage, through their relevant authorities, closer co-operation between law enforcement agencies and between customs agencies of participants.	Communications and other arrangements between the country's KP, customs, law enforcement agencies and those of other countries	KP Authority, customs, law enforcement agencies	
Annex III	Statistics			
Annex III(a)	Participants strongly support the following principles, taking into account the need to protect commercially sensitive information: to keep and publish within two months of the reference period and in a standardised format, quarterly aggregate statistics on rough diamond exports and imports, as well as the numbers of certificates validated for export, and of imported shipments accompanied by Certificates.	The participant has collected, is maintaining, and has submitted data on rough diamond production (if applicable) on a semi-annual basis as per KPCS. Possible question areas: large increases or decreases in carats, value and/or per carat value. The participant has collected, is maintaining and has submitted data on rough diamond imports and exports by origin and provenance, as well as by carat weight and value under the agreed HS classifications on a quarterly basis, as per KPCS. Possible question areas:	KP Authority and/or designated bodies; KP Statistics Working Group	
Annex III(b)	...to keep and publish statistics on exports and imports, by origin and provenance wherever possible; by carat weight and value; and under the relevant Harmonised Commodity Description and Coding System (HS) classifications 7102.10; 7102.21; 7102.31	•Large increases or decreases in carats, value and/or per carat value; •Reconciliation of trade data with other participants; •Reconciliation of certificate counts with other participants		
Annex III(c)	...to keep and publish on a semi-annual basis and within two months of the reference period statistics on rough diamond production by carat weight and by value. In the event that a participant is unable to publish these statistics it should notify the Chair immediately	Data is available on the KP statistics website.		

Annex III(d)	...to collect and publish these statistics by relying in the first instance on existing national processes and methodologies ...to make these statistics available to an intergovernmental body or to another appropriate mechanism identified by the participants for (1) compilation and publication on a quarterly basis in respect of exports and imports, and (2) on a semi-annual basis in respect of production. These statistics are to be made available for analysis by interested parties and by the participants, individually or collectively, according to such terms of reference as may be established by the participants			
Recommendations and Optional Procedures				
Annex IA	Optional Certificate Elements A Certificate may include the following optional features: • Characteristics of a Certificate (for example as to form, additional data or security elements) • Quality characteristics of the rough diamonds in the shipment	While the import confirmation slip is an optional certificate element, confirmation of receipt of shipments is not (see III(b) above). Where confirmation slips are included in a participant's certificate, these should always be returned by the importing authority to the export authority.		
	• A recommended import confirmation part should have the following elements: Country of destination; Identification of importer; Carat/weight and value in US\$; Relevant Harmonised Commodity Description and Coding System; Date of receipt by Importing Authority; Authentication by Importing Authority			
	Optional Shipping Procedures: Rough diamonds may be shipped in transparent security bags. The unique Certificate number may be replicated on the container.			
Control Over Diamond Mines				
Annex II (9)	Participants are encouraged to ensure that all diamond mines are licensed and to allow only those mines so licensed to mine diamonds.	Relevant laws and regulations; government records	KP Authority; mining licensing authority	
Annex II(10)	Participants are encouraged to ensure that prospecting and mining companies maintain effective security standards to ensure that conflict diamonds do not contaminate legitimate production.	Details of company security procedures; visual checks of parcels by valuating authorities	Diamond mining companies; government diamond valuers	
Small-scale Diamond Mining				
Annex II (11)	All artisanal and informal diamond miners should be licensed and only those persons so licensed should be allowed to mine diamonds.	Relevant laws and regulations; government database	KP authority; licensing body; artisanal miners	
Annex II(12)	Licensing records should contain the following minimum information: name, address, nationality and/or residence status and the area of authorised diamond mining activity.	Review of records	KP authority; licensing body	
Rough Diamond Buyers, Sellers and Exporters				
Annex II(13)	All diamond buyers, sellers, exporters, agents and courier companies involved in carrying rough diamonds should be registered and licensed by each Participant's relevant authorities.	Relevant laws and regulations; government database	KP authority; licensing body	
Annex II(14)	Licensing records should contain the following minimum information: name, address and nationality and/or residence status.	Review of records	KP authority; licensing body	

Annex II(15)	All rough diamond buyers, sellers and exporters should be required by law to keep for a period of five years daily buying, selling or exporting records listing the names of buying or selling clients, their license number and the amount and value of diamonds sold, exported or purchased.	Relevant laws and regulations; review of records. Review of government spot checks and audit procedures.	KP authority; companies	
Annex II(16)	The information in paragraph 14 above should be entered into a computerised database, to facilitate the presentation of detailed information relating to the activities of individual rough diamond buyers and sellers.	Review of records	KP Authority	
Export Processes				
Annex II(17)	An exporter should submit a rough diamond shipment to the relevant Exporting Authority.	Relevant laws and regulations	KP authority or designated agent	
Annex II(18)	The Exporting Authority is encouraged, prior to validating a Certificate, to require an exporter to provide a declaration that the rough diamonds being exported are not conflict diamonds.	Relevant laws and regulations; review of practice	KP authority or designated agent	
Annex II(19)	Rough diamonds should be sealed in a tamper proof container together with the Certificate or a duly authenticated copy. The Exporting Authority should then transmit a detailed e-mail message to the relevant Importing Authority containing information on the carat weight, value, country of origin or provenance, importer and the serial number of the Certificate.	Relevant laws and regulations; review of practice	KP authority or designated agent	
Annex II(20)	The Exporting Authority should record all details of rough diamond shipments on a computerised database.	Relevant laws and regulations; review of practice	KP authority or designated agent	
Import Processes				
Annex II(21)	The Importing Authority should receive an e-mail message either before or upon arrival of a rough diamond shipment. The message should contain details such as the carat weight, value, country of origin or provenance, exporter and the serial number of the Certificate.	Review of practice	KP authority or designated agent	
Annex II(22)	The Importing Authority should inspect the shipment of rough diamonds to verify that the seals and the container have not been tampered with and that the export was performed in accordance with the Certification Scheme.	Review of practice	KP authority or designated agent	
Annex II(23)	The Importing Authority should open and inspect the contents of the shipment to verify the details declared on the Certificate.	Review of practice	KP authority or designated agent	
Annex II(24)	Where applicable and when requested, the Importing Authority should send the return slip or import confirmation coupon to the relevant Exporting Authority.	Review of practice. Note: the confirmation of receipt is not optional (see III(b) above); return of the KP certificate return slip or import confirmation coupon is optional.	KP authority or designated agent KP authority or designated agent	
Annex II(25)	The Importing Authority should record all details of rough diamond shipments on a computerised database.	Review of practise	KP authority or designated agent	
Shipments to and From Free Trade Zones				
Annex II(26)	Shipments of rough diamonds to and from free trade zones should be processed by the designated authorities.	Review of practice	KP authority or designated agent; customs department; free trade zone authorities	