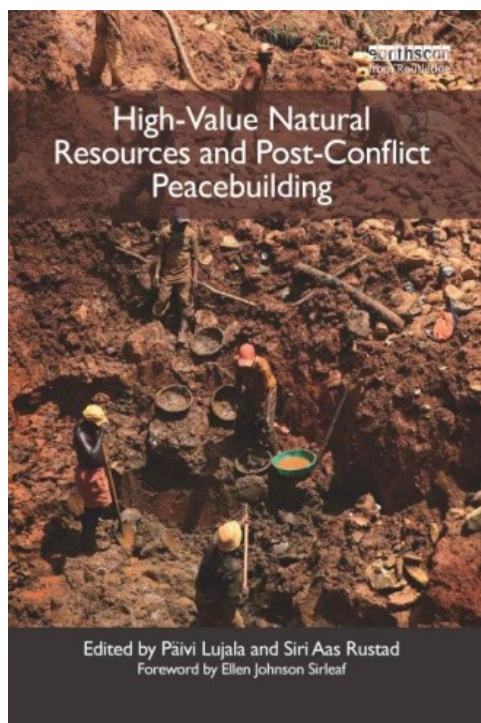


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**The Kimberly Process Certification Scheme: The primary safeguard for the diamond industry**

**Andrew Bone<sup>a</sup>**

<sup>a</sup>*De Beers Group*

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# The Kimberley Process Certification Scheme: The primary safeguard for the diamond industry

*Andrew Bone*

Diamonds evoke emotions—and for decades, the international diamond industry has relied on positive emotional messages to promote the gems. Recently, however, the industry has learned that emotional messages can also be used to put diamonds in a negative light. Love and commitment—or war and misery? The emotional value of a diamond is only what the consumer believes it to be.

Clearly, a product that aspires to be associated with the highest human values should not be associated with the misery and destruction of armed conflict. To the consumer, a diamond is a symbol of love, commitment, and self-esteem—qualities that the consumer understands and desires. And what the industry desires is to safeguard this proposition.

Without question, industry leaders have a central role to play in ensuring that diamonds are mined and traded in ways that Nicky Oppenheimer, chairman of De Beers,<sup>1</sup> describes as “living up to diamonds.” In practical terms, living up to diamonds means taking personal responsibility for ensuring that every gem that passes through the diamond value chain comes from ethical and properly managed sources.

From the deserts of Botswana to the frozen tundra of Canada, the vast majority of diamonds are mined under secure and well-managed conditions, and provide economic development and other benefits to the countries and communities where they are extracted. But a significant percentage of diamonds originate in areas that are subject to poor governance and lack the capacity or political will to manage the trade. Although this segment makes up a minority of the trade, it is here that governments, the diamond industry, and civil society focus their attention and resources, through various organizations and initiatives, the most prominent of which is the Kimberley Process Certification Scheme (KPCS).<sup>2</sup>

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Andrew Bone is director of international relations for the De Beers Group.

<sup>1</sup> De Beers, established in 1888, is the world’s largest diamond producer; it has mining operations across Botswana, Namibia, South Africa, and Canada.

<sup>2</sup> For additional perspectives on the KPCS, see J. Andrew Grant, “The Kimberley Process at Ten: Reflections on a Decade of Efforts to End the Trade in Conflict Diamonds”; Clive Wright, “The Kimberley Process Certification Scheme: A Model Negotiation?”; and Harrison Mitchell, “A More Formal Engagement: A Constructive Critique of Certification as a Means of Preventing Conflict and Building Peace,” all in this volume.

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The first thing to say about the KPCS is that it is not a perfect construct—but then, few international arrangements are. It is a work in progress, evolutionary by its very nature. It is for that reason that this unique partnership between governments, the international diamond industry, and civil society meets twice each year: to improve and refine the systems that have led diamonds to be one of the most monitored and audited natural resources in the world.

### THE INDUSTRY'S PRIMARY SAFEGUARD

The diamond industry, from mining companies to jewelry stores, participates in the Kimberley Process (KP) through representation on the World Diamond Council (WDC). Given such a wide and disparate constituency, each sector of the industry that is represented on the council's board must take a pragmatic approach. Discussions are occasionally spirited—but, ultimately, the focus remains on securing credible and enduring solutions to the challenges that confront the KPCS.

Although the diamond industry participates in the KP and provides it with financial and logistical support and expertise, the WDC does not “run” the KP, nor does it act as an apologist for it. Rather, it is the government members who are responsible for implementing and enforcing the requirements to which they have committed themselves by enacting national legislation. The industry's responsibility is to ensure its own compliance with the standards of the KPCS, to remain vigilantly on guard against illegal activity, and to work with member governments and civil society to highlight issues that threaten the security and credibility of the process.

In fact, the WDC often sides with civil society in challenging the governments and calling for improvements. The reason is simple: the WDC regards the KPCS as its primary safeguard against criminal infiltration or abuse during armed conflict, and as a bulwark in its efforts to provide assurance to consumers. Where differences arise between the WDC and civil society, attempts are made to resolve them, usually through informal engagement—meetings and teleconferences—at which issues are discussed, divergences addressed, and solutions sought. There is often agreement on strategy and objectives, although there may be disagreement on precisely which tactics to deploy.

It is the diamond industry that has most to gain from an effective and credible KPCS; it is thus in the interests of the industry to seek common ground with both government and civil society. In his address to the 2006 KP plenary, in Gaborone, Botswana, Eli Izhakoff, chairman of the WDC, said,

Let me make this absolutely clear. The international diamond industry believes that a workable and effective Kimberley Process is absolutely essential if we, and the millions of people who depend on this industry, are to be properly protected from criminal activity and rebel or terrorist organizations that have no interest whatsoever in protecting the lives of innocents, in business ethics or in sustainable development in Africa (Izhakoff 2006).

## WHAT THE KPCS IS—AND WHAT IT IS NOT

Although the WDC acknowledges that the scheme is not perfect and that there remains much work to be done, the council also believes that it is counterproductive and ineffectual to attack the KP as if it were an independent organization with its own exclusive resources, such as police and dedicated monitors. The KP depends on its member governments to provide political will and the resources of the state—border control, customs, etc.—that will enable the KPCS to realize its objectives and reach its full potential. Without the government support that is its lifeblood, neither the KPCS, nor any other initiative of its kind, will work as effectively as it could or should.

The KPCS is primarily designed to shine a light on noncompliance and illegal activity; in doing so, it relies on government agencies to act in harmony. For example, customs officials in each importing and exporting country are responsible for ensuring that diamond parcels are accompanied by the correct documentation and transported in the proper containers. Every KP member state has laws on smuggling that have been on the books for decades—and police and border control agencies are responsible for ensuring that those laws are enforced, with or without the existence of the KPCS. Similarly, domestic and international laws and treaties prohibiting human rights abuses have been in place for some time, and are subject to enforcement regardless of the activity with which those abuses may be associated or by whom they may be perpetrated. It is incumbent upon governments and the international community to act on these violations.

Clearly, the KPCS has an important and high-profile role—but what is needed, to achieve lasting success, is more effective cooperation and collaboration within and between governments. Although cooperation is not entirely lacking, it is not yet at the level necessary to achieve significant progress. Indeed, intra- and intergovernmental cooperation is the foundation for addressing current and future risks to the credibility of the KPCS. Without it, the KP's ability to resolve clear examples of noncompliance—and even capriciousness—is limited.<sup>3</sup> Neither outright noncompliance nor lesser offenses, however, are failures of the KP; instead, they stem from insufficient resources and political support on the part of member nations.

The industry has called for a higher level of cooperation and continues to do so. Although recognizing that there have been many achievements since implementation in 2003, such as the creation of the review missions and the implementation of greater transparency in the collection and sharing of trading data, the WDC is currently pressing for the following reforms:

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<sup>3</sup> Too many issues have remained outstanding for too long. Although Zimbabwe continues to secure the headlines and occupy much of the KP's time, noncompliance in Venezuela and serious challenges in Côte d'Ivoire, Guinea, and Lebanon linger on (Global Witness 2007, 2009; KPA 2005a, 2005b, 2006, 2008).

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- *The creation of a small, permanent secretariat.* The industry believes that the KP's operations are compromised by the lack of full-time professional support. Particularly in light of the fact that the chair changes annually, ongoing support is needed to provide continuity, arrange logistics, coordinate the working groups, and carry out rudimentary research, among other tasks.
- *A move away from consensus to a system of majority voting.* Consensus among government participants was essential to the early development of the KPCS and was instrumental in bringing together a large number of diverse governments, with differing agendas and political cultures. Seven years later, however, it is no longer the most effective method of decision making. Although consensus may be necessary for some issues, many decisions these days are technical and operational, and a simple majority vote would suffice. Relying solely on consensus as the decision-making mechanism leads to inertia and politicization: there is a temptation to delay the simplest decisions in order to engage in horse-trading on other, unrelated agenda items.
- *Greater transparency with regard to reports and decision making.* Clearly, there is a need for a certain level of confidentiality regarding the reports and decisions of the KP. But it is important to recognize that in addition to its primary function—preventing trade in conflict diamonds—the KPCS is also a process that is of legitimate interest to the public, including consumers of diamond jewelry.

The WDC also supports the efforts of civil society participants to include specific wording in the KPCS that will address human rights in the diamond mining sector (including the artisanal sector); in particular, the WDC believes that security measures should be consistent with international human rights obligations, and should apply to both diamond miners and local communities. Although several governments—including the United Kingdom, the United States, and Canada—have joined the call for the inclusion of such wording in the KPCS, some participating governments believe that human rights issues are outside the purview of the KPCS. But in fact, the KPCS was largely born out of the need to address human rights abuses in central and western Africa—an origin that is explicitly reflected in the preamble to the KPCS: “recognising 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” (KPA 2002).

### THE NEED FOR A MULTILATERAL APPROACH

At the time of the KPCS's implementation, in 2003, Secretary-General of the United Nations Kofi Annan said,

It is time for a fundamental reassessment of how the world body [United Nations] works. We are living through a crisis of the international system, and the

emergence of new and non-conventional threats forces us to ask whether the institutions and methods to which we are accustomed are really adequate (Turner 2003, 3).

The KPCS is a new methodology and a relatively new institution that has demonstrated the potential to reconcile differing and occasionally entrenched positions. It is an opportunity to be seized and embraced, but political will and adequate support will be required to bring it to its full potential.

The KPCS should also be regarded as one of several instruments capable of addressing the many socioeconomic challenges facing developing nations, where governance is often the overarching issue. Addressing a KP meeting in Johannesburg in November 2003, Nicky Oppenheimer highlighted the role of the KPCS in supporting good governance:

We—industry and governments together—need to provide assistance to those countries where the logistics of control are more complicated to ensure that diamond revenues are retained by local communities and for redevelopment post-conflict. Failure to secure these productions will leave them, large number of diggers and many needy communities vulnerable to unscrupulous buyers seeking to circumvent the Kimberley provisions.

To achieve this goal we need to engage with these countries, encouraging a return to good governance, the rule of law, and sound fiscal policy in exchange for benign investment. Security of tenure, legal protection of property rights and contracts, courts immune to political whim, and bureaucrats free of corruption are essential pre-conditions. Industry, in turn, must ensure that profits gained make a real and lasting contribution to the countries and communities in which it operates, and this should be done in tandem with local and international NGOs (Oppenheimer 2003).

Oppenheimer's comments underline a point made earlier: namely, that viewing the KP as solely responsible for governance issues related to mining and trading—much less as having the wherewithal to address such issues unilaterally—is a distraction from the legitimate debate about how best to address the challenges facing many communities today. Instead of focusing on the presumed shortcomings of the KP, all parties concerned should use the experience that they have acquired through the KPCS to turn a spotlight on issues that are associated with, but not exclusive to, the diamond business. After all, smuggling, poor working conditions, human rights, and corruption are problems that face not just mining, but all extractive industries—not to mention other industries as well. These problems can and should be dealt with through collaboration across sectors and borders; the KPCS has an important contribution to make to this effort, but it is not the silver bullet.

## **CONCLUSION**

The KPCS is a unique, world-class example of cross-sector collaboration. In spite of the challenges it faces, it is making progress. But the diamond industry

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is the first to acknowledge that a thing is only well done when it *is* done—and the work of the KPCS is not yet done.

Through the KPCS, the industry has learned that positive engagement with all stakeholders not only benefits the industry—by allowing it to be part of the solution—but is also the most effective way to develop solutions that are sustainable because they involve all interested parties. A multi-stakeholder approach creates a sense of universal ownership and accountability, enabling all participants—from industry and nongovernmental organizations to governments and communities—to feel that they have made an investment in something important and lasting.

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