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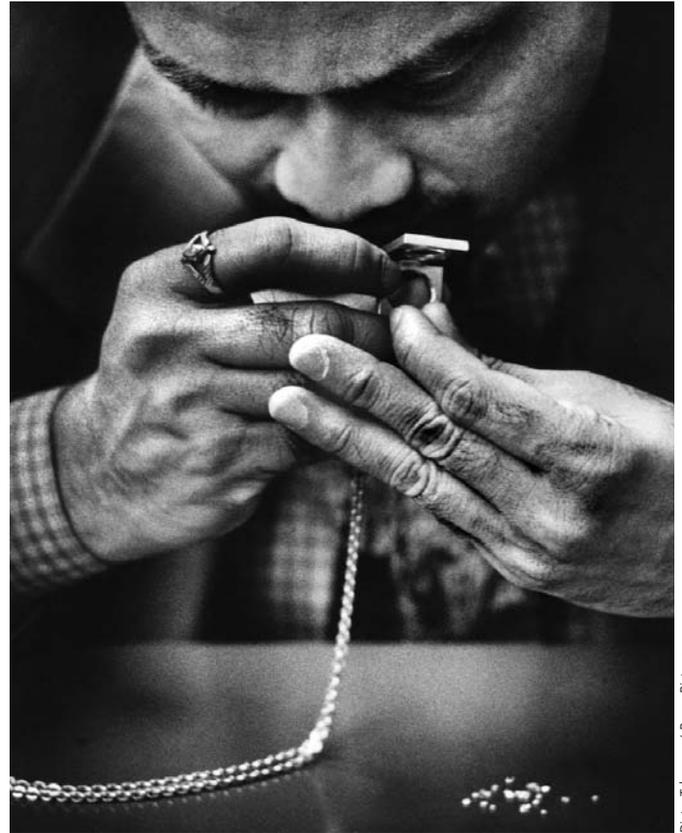
Illicit Diamonds in the Kimberley Process

The illicit trade: Gateway for conflict diamonds

The illicit trade in rough diamonds is one of the greatest threats facing the Kimberley Process (KP) certification scheme. The KP was created to halt and prevent the trade in conflict diamonds that cost so many lives during the last two decades. At the end of the scheme's fifth year, the trafficking of conflict and illicit stones is looking more like a dangerous rule than an exception.

Partnership Africa Canada and Global Witness have long argued that the Kimberley Process should be more proactive in monitoring infringements, and tougher in curtailing this illicit trade. The situation today is getting worse. In Venezuela, rampant diamond smuggling continues while the government flouts the certification scheme. Despite a UN embargo on Ivorian conflict diamonds, stones are still mined in northern Côte d'Ivoire, smuggled into international trading centres and sold on to consumers. Reserve Bank of Zimbabwe governor Gideon Gono recently stated that over 10,000 people were visiting the border town of Mutare every month for illegal activities involving diamonds. Gono said that over 2,000 local syndicates were smuggling diamonds out of the country.

This paper reviews the issues around illicit flows of rough diamonds, particularly in countries facing serious challenges in controlling the artisanal mining sector. We present the results of a survey assessing how participant countries are enforcing KP controls and monitoring the diamond industry, and we put forward specific recommendations for changing the way the KP is managed and implemented. We hope that the procrastination and denial that have gripped the Kimberley Process on these issues in recent years can be replaced at the forthcoming Plenary Meeting in New Delhi with a proactive and dedicated response to the problems.



Dieter Telemans / Panos Pictures

A trader in Belgium uses a loupe to examine rough diamonds.

The Kimberley Process should:

- ◆ Take swift action when faced with cases of non-compliance and agree an interim suspension mechanism with clear criteria;
- ◆ Require of its participants stronger government oversight of the diamond industry, including regular stock audits of companies;
- ◆ Require the cutting and polishing sector to adhere to KP minimum standards;
- ◆ Require participants to improve internal controls and increase collaboration and enforcement efforts to combat rough diamond smuggling;
- ◆ Develop a research and monitoring capacity to address illicit flows of rough diamonds.

WEST AFRICA

The diamond-rich nations of West Africa – Guinea, Sierra Leone, Liberia, Ghana, Côte d'Ivoire – are plagued by the challenges facing most artisanal mining countries: porous borders, fragile infrastructure, lack of transparency and weak governance. The continual flow of conflict diamonds out of Côte d'Ivoire, and the potential for renewed instability in neighbouring countries, means that robust Kimberley Process controls are vital to the region.

Investigations carried out by civil society and the UN Group of Experts on Côte d'Ivoire have shown that Ivorian conflict diamonds are reaching international markets through Mali, but also through KP participant countries in West Africa. Across the region, serious gaps in internal controls and government oversight of the diamond industry mean that hundreds of thousands of informal diggers and traders operate without government monitoring, and contribute to a substantial illicit cross-border trade in rough diamonds. Weak controls further up the chain in trading and manufacturing centres are allowing conflict diamonds, smuggled diamonds and stolen diamonds to reach consumers.

KP statistics for West Africa reveal worrying trends. In 2005, 2006 and 2007, Sierra Leone reported identical production and export figures. This was also the case for Ghana in 2005 and 2006, and for Liberia in 2007. This trend suggests that authorities have no credible data for national production capacity. Guinea's statistics have exposed large discrepancies with trading partners for over four years running, but the government has not taken steps to reconcile these differences.



KP participants must strengthen oversight of the diamond industry to curb the illicit trade in rough diamonds.



The artisanal mining sector is particularly difficult to regulate, and hundreds of thousands of informal diggers operate outside of government controls.

CÔTE D'IVOIRE

Côte d'Ivoire's diamond production is estimated at between 100,000 and 300,000 carats per year, and is concentrated in the rebel-held north of the country. The Forces Nouvelles (FN) rebel group levies a standard 8% tax on all diamond sales, although sources in the mining zones report that in some areas FN revenues from the diamond trade exceed 50% of the stones' value. Global Witness investigations in 2005 and 2008 revealed that these diamonds are being smuggled out through Mali and Guinea and are reaching international KP-certified markets, in spite of UN sanctions and KP systems.

The illicit trade in diamonds from Côte d'Ivoire is the only conflict diamond 'situation' the Kimberley Process has had to address since the scheme was launched in 2003. It is both alarming and unacceptable that the KP has consistently failed to solve the problem, and it remains a serious indictment of the scheme's effectiveness. The political situation in Côte d'Ivoire might be slowly improving, but inadequate controls in neighbouring countries and in international diamond centres mean that Ivorian conflict diamonds are still being smuggled out of the country and penetrating the legitimate trade. The UN expert panel has reported that these diamonds could be worth as much as \$23 million per year.

The KP has tried to address the issue through field visits and through additional recommendations to participants, but none of these measures have put an end to the illicit flow. There has been strong reluctance by governments and industry to meaningfully increase oversight and monitoring of the trade in Ivorian conflict diamonds.

DRC

Smuggling is intimately linked in many countries with weak internal controls. The Congo's vast population of artisanal diggers remains largely uncounted, unregistered and unregulated. The same is true of the fairly large corps of small-time traders who buy diamonds from creuseurs at dig sites and at any of Mbuji-Mayi's night-time diamond bazaars. None of them keeps records. Diamonds thus pass from artisanal digger to mine-site buyer to a larger buyer in town, without any government knowledge whatsoever.

Above this level there are buyers who do register and obtain a yearly US\$500 trader's license. However they rarely keep transaction records. They assemble packages of diamonds from many sources and transport them for sale to a comptoir in the capital. This is legal, but it masks the origin of the diamonds. The first record the DRC authorities may have of these diamonds is when they show up in a comptoir in Kinshasa, origin unknown.

The 2004 KP review recommended that DRC authorities enumerate and register the country's million or so artisanal diggers and develop a system for recording the volume of diamonds being produced at major artisanal digs. This data would allow authorities to compare production volumes with comptoir volumes, and provide a check on smuggling. The Ministry of Mines made only a brief attempt to register artisanal diggers, but even this ground to a halt two years ago.

ANGOLA

There are serious problems with Angola's system of internal controls, in particular those that are supposed to – but do not – track diamonds in the informal sector. These issues were first identified by the 2005 KP review team, which was not permitted to visit alluvial mining areas, but made a series of recommendations for reforming Angola's controls in the informal artisanal sector, including that trade should take place only between registered individuals, and that transaction records should be kept regularly. Three years later, little has been done to address these weaknesses.

Angola is concerned that a significant proportion of its diamonds in recent years have been mined and smuggled out of the country by illegal immigrants, notably individuals from the DRC. As a consequence, the authorities have initiated a series of mass

expulsions, affecting tens of thousands of people who have been displaced and forcibly returned home. Human rights issues aside, these expulsions are a stark reminder that if the borders are not stopping the illicit flow of people, they are unlikely to stop the flow of illicit diamonds unless better steps are taken to apply KP minimum standards, and to insist that KP reviews be taken seriously.

SOUTH AMERICA

An estimated 200,000 carats of rough diamonds are being produced in Venezuela every year. None are being exported legally, and none are being recorded in KP statistics. It is safe to assume that few, if any, are staying in Venezuela. There is good evidence that many of the diamonds are being smuggled out through Brazil, and more significantly through Guyana. Guyanese officials deny the charge, and KP peer review visits of Brazil and Guyana skirted the issue. Neither review team went anywhere near the Venezuelan border where smuggling takes place openly.



Strong controls are needed all along the diamond supply chain, and the cutting and polishing sector should adhere to KP minimum standards.

If smuggled Venezuelan diamonds are not going through Brazil and Guyana, then they are entering the chain somewhere else, and yet for two full years, the KP debated little more than how to make contact with the government of Venezuela, rather than how to solve the problems that had been exposed. Now Venezuela has “separated” from the KP – while its illicit diamonds continue to penetrate the international trade.

Survey of KP enforcement activity

Kimberley Process controls and legislation aim to address illicit flows and prevent the trade in conflict diamonds. The cases described above demonstrate that these controls are not stopping illicit diamonds from infiltrating legitimate markets and reaching consumers. Each KP participant is responsible for ensuring adequate oversight and enforcement to prevent the illegal trade. In July and August 2008, Partnership Africa Canada and Global Witness conducted two surveys to determine the extent of enforcement activity taking place within the Kimberley Process.

An examination of key KP documents from 2004 to 2007, including annual reports submitted by participants and peer review reports, reveals that a majority of KP countries are failing in their responsibility to tackle infringements and enforce controls. Of the 48 participants for whom recent information exists, nearly two thirds (62.5%) have not reported any infringements of the KP during the period under review. However, evidence of illicit activity in the diamond sector has been exposed in NGO and media reports in over half of those countries. In many cases, enforcement is simply not taking place.

In other cases, participants consistently fail to share information on enforcement with the Kimberley Process. KP-related arrests and seizures have been reported in the media over the past six months in Europe, Canada, the United States, Brazil, India and elsewhere, but little or none of the data is circulated among KP participants. In the few instances when infringements are reported, participants seldom provide information about follow-up action taken by authorities.

In addition to the review of KP reports, KP participants were directly surveyed on the application of KP prevention and enforcement measures since 2006. The survey was carried out through an on-line facility to ensure that it would be simple, quick and easy to fill out. An email was sent to all KP participants describing the objectives and the method of collection, and it was followed up with a reminder message. Of the 45 participants surveyed, there were 24 replies but more than half of the respondents answered only one question, rendering the results nearly unusable.

There are, nevertheless, some interesting trends, and we are grateful to those who took the time to provide information. A handful reported that random physical

spot audits are being done of diamond trading companies, but this is the exception rather than the rule. The EC has carried out the most spot checks, reporting 133 audits of diamond companies conducted since 2006 by KP authorities in Belgium, Bulgaria, Czech Republic, Germany, Romania and the UK.

On questions relating to the number of KP-related arrests, seizures, prosecutions and convictions since 2006, only four participants provided any information: Bulgaria, the EC, Liberia and the US. The US provided the most detailed information, reporting 19 shipments seized since 2003, with 12 of those in 2007 after enforcement measures were stepped up. The US reported seizing shipments from Brazil, South Africa, Ghana, Indonesia, Liberia, Spain, Hong Kong, Taiwan and Mexico and reported that the origins of the seized diamonds are unknown.

The confidentiality excuse

In addition to silence on most questions, some respondents simply retreated behind “confidentiality” regulations. For example, Australia stated that they were unable to respond to five out of seven questions “because the disclosure of this information is restricted pursuant to the privacy provisions of the Customs Administration Act 1985.” Australia was not alone in refusing to provide even very basic information about seizures or prosecutions in relation to diamonds.

The questionnaire did not request any information that would breach privacy regulations. When an individual is charged with a crime, in most countries this is public information. A quick survey of Australian press stories confirms that information such as names, nature of the crime, value of smuggled goods and details of sentence passed, are frequently cited. Several stories like this in relation to diamond arrests have been reported in the European, Canadian, American, Indian and Brazilian media in recent months. Clearly such information is not private or confidential.

Participants – and the KP as a whole – would gain credibility if they were more open about this kind of information. The secrecy suggests that either KP authorities in many countries do not actually know the answers to the questions posed; or worse, that there has been complete inaction on the enforcement of KP laws.

Conclusion and recommendations

In spite of Kimberley Process legislation and controls, there is still an extensive illicit trade in rough diamonds taking place in parallel with the certification scheme. In most cases, government monitoring and oversight of the diamond trade is not effective enough to stop these flows, and enforcement mechanisms designed to halt and prevent the trade in illicit and conflict diamonds are either failing or nonexistent.



Global Witness

KP participant governments should conduct periodic spot audits of all diamond trading and producing companies operating in their jurisdiction.

Signs of improvement in internal controls are apparent in the few KP participants who have stepped up enforcement measures in recent years, but as a whole the KP has failed to respond quickly and effectively to situations of concern, and to ensure that all of its members are compliant with the scheme's minimum requirements. We call upon India, the current Chair of the Kimberley Process, and all participants, to consider the following recommendations at the 2008 Plenary Meeting:

1. The Kimberley Process should take swift action when faced with cases of non-compliance, and should agree an interim suspension mechanism with clear criteria.

The Kimberley Process never did react to significant internal control problems in Brazil; it procrastinated over Côte d'Ivoire until it became a UN Security Council and media-driven problem; and in three years it has failed to come to grips with the problem of Venezuelan non-compliance. For several years there has been an urgent need for interim measures that lie between outright expulsion and complete inaction. The KP must develop a mechanism that would temporarily suspend a country with significant compliance issues from the KP until its problems have been rectified.

2. The Kimberley Process should require of its participants, stronger government oversight of the diamond industry, including regular stock audits of companies. The diamond cutting and polishing sector should be required to adhere to KP minimum standards.

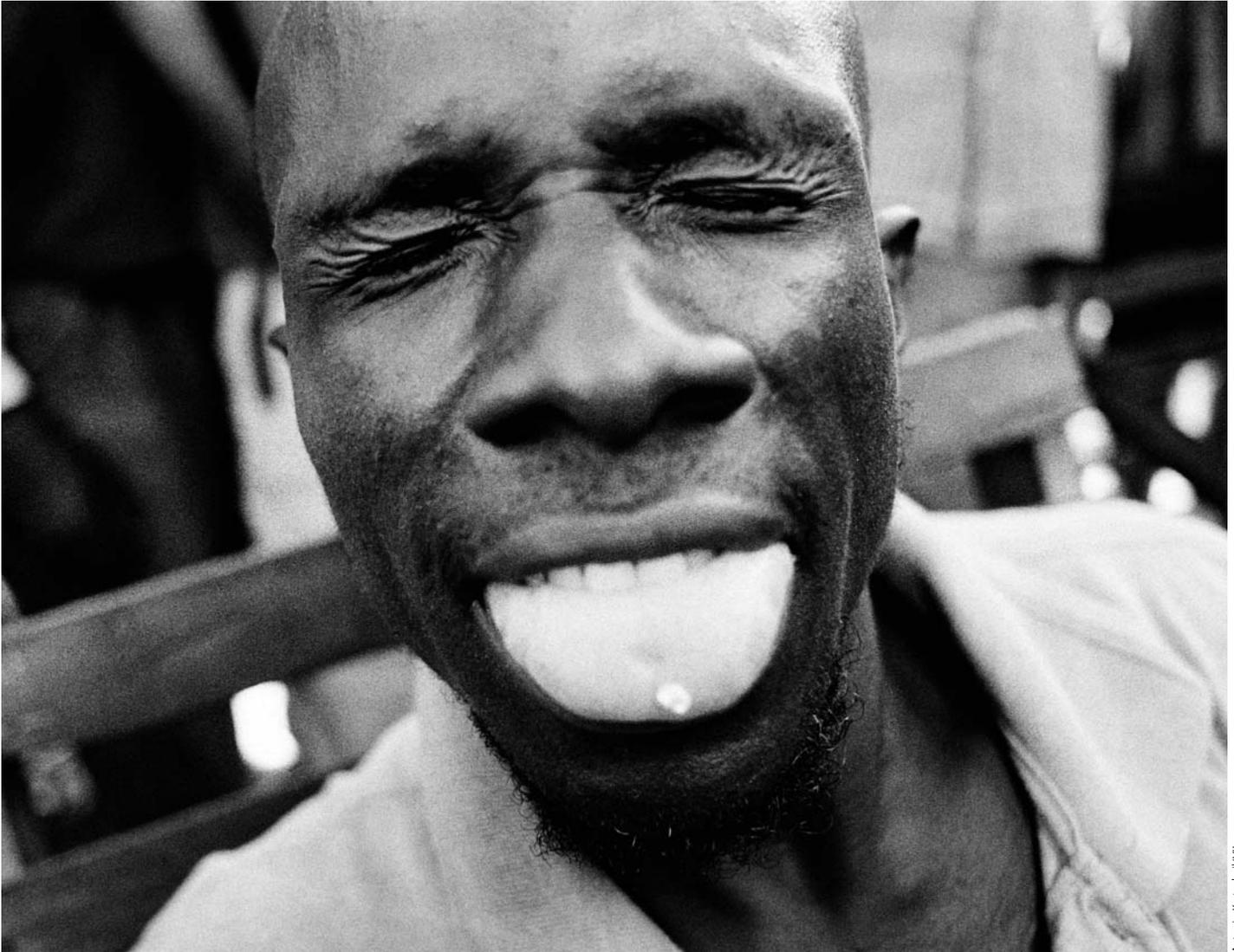
Stronger enforcement measures in each participant's internal controls should be added to the KP minimum standards. This would include a requirement that all diamond companies carry out stock audits as part of their annual financial audits; periodic government spot audits of diamond trading and producing companies; and explicit inclusion of cutting and polishing companies in the KP minimum standards.

3. Kimberley Process participants should improve internal control mechanisms and increase collaboration and enforcement efforts to combat rough diamond smuggling.

KP participants should make much greater efforts to crack down on smuggling, and should publicise these efforts rather than hide behind the excuse of confidentiality. Diamond producing countries in particular, should ensure effective control and monitoring of producing areas. Greater regional and global coordination is needed among law enforcement agencies, and the legitimate industry must work more proactively with law enforcement agencies to provide information on illicit behaviour.

4. The Kimberley Process should develop a research and monitoring capacity to address illicit flows of rough diamonds.

There is currently no funding or capacity to proactively research and take action on problems identified through KP review visits and annual reports, media reports or NGO investigations. The KP needs a monitoring capacity that can identify issues of concern and assist the Chair and Working Groups in improving compliance. This should not be an ad hoc arrangement left to NGOs, the media and others: it should be an organic part of the KP, making it an effective instrument for preventing the trade in conflict diamonds.



Antonin Kratochvíl/VII

An unlicensed diamond trader shows a diamond on his tongue in Koidu, eastern Sierra Leone, January 2006. He purchases diamonds from the hundreds of miners who search for diamonds at Congo Creek outside Koidu.



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