

OTHER FACETS

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THE KIMBERLEY PROCESS DERAILS OVER ZIMBABWE

NGOS WALK OUT OF KINSHASA KP MEETING, CONSIDER OPTIONS

A tempest in a tea cup or a harbinger of things to come? For the first time in the Kimberley Process's almost decade-long life span, civil society not only walked out of a meeting, but expressed a unanimous vote of no-confidence in the way the scheme is operating. The move came during the June 20-24, 2011 KP Intersessional meeting in Kinshasa when it became clear that most delegations were more interested in a face saving exit strategy than resolving the myriad problems of Zimbabwe's Marange diamond fields. The position was informed by several hard truths about the current state of the KP:

- It is unable and unwilling to hold to account participating countries that repeatedly break the rules.
- It does not prevent diamonds from fuelling violence and human rights violations, and thus cannot provide guarantees to consumers that they are buying 'clean' diamonds.
- It is unwilling to defend civil society, an integral member of the KP's tripartite structure.

While the walkout may only have covered the last two days of the Kinshasa meeting, it sparked a wider conversation among civil society groups about what, if any, role they will continue to play within the KP. Civil society can no longer accept the pretence that the KP in its current form can stop human rights abuses in diamond fields, or even guarantee the origin of diamonds. It does neither. Nor are most governments willing to strengthen the KP so that it can achieve these goals.

When compared to initiatives like the Extractive Industries Transparency Initiative (EITI), the KP has lost any claim it may have once had to being an innovative and dynamic conflict-prevention scheme. To restore its credibility as a regulatory body, governments participating in the KP need to commit to meaningful reforms that address the scheme's manifold shortcomings and loopholes. The necessary reforms are well known to KP participants but are worth repeating: adoption of an independent third-party monitoring system; credible sanctions for non-compliance; updating the definition of "conflict diamonds" to ensure that the KP works to prevent violence from contaminating the diamond supply chain; reforming its decision-making processes; and widening the KP mandate to include the cutting and polishing industry. The KP must also adopt a more proactive, risk-based approach to curbing the illicit diamond trade and the loop-holes that allow diamonds to finance conflict.

NGO's patience is running thin. The longer the KP dithers on embracing these reforms, and the more it whitewashes egregious examples of non-compliance, the more civil society groups will look to other initiatives to achieve its goals of a sustainable, conflict-free diamond supply chain.

ZIMBABWE? NO DOUBLE STANDARDS HERE...

An often heard refrain from African governments and industry is that Zimbabwe is being held to a "different standard" than other KP participants, and that a "political agenda" is behind an "overly onerous" roadmap to bring it back into full compliance with KP minimum standards.

This should come as news to Côte d'Ivoire, Guinea, Republic of Congo, Ghana, Brazil, and Venezuela which have all faced various corrective prescriptions - including suspension - due to incidences of non-compliance. In many examples, regaining their good standing took years; for others the process continues. With the exception of Venezuela, all of them have had to submit to outside scrutiny to prove they have rectified identified shortcomings - mostly related to smuggling and weak internal controls. So, Zimbabwe is not the first, nor

will it be the last, country to be singled out for special attention.

But Zimbabwe does stand out as a country where state actors have unleashed murderous violence on their own diamond sector. There is also a significant difference in attitude between officials from Zimbabwe and other countries with weak internal controls. Officials from Guinea and the Democratic Republic of Congo have openly admitted their challenges and sought assistance. Zimbabwe has failed to acknowledge any problems, refusing assistance from many quarters, including South Africa and Ghana.

If anything, Zimbabwe has benefited from a double standard that is not talked about - it is the only country that is not expected to honour agreements it

makes. Unlike Ghana or Guinea, each time the KP meets to discuss Zimbabwe, the standards are lowered further and further. This was demonstrated in the text of an agreement circulated in Kinshasa that KP Chair Mathieu Yamba later used to reaffirm his March 2011 decision to unilaterally greenlight exports from Marange (see sidebar “Kinshasa text”). The proposal falls far short of what is acceptable to maintain the credibility of the KP, protect civilians and civil society members living and working in Marange, or prevent substantive quantities of illicit diamonds from infecting the global diamond supply chain.

KINSHASA TEXT

Chair’s Notice of 23 June 2011 on the Zimbabwe Issue

1. Plenary endorses exports of production from the compliant mining operations of Marange Resources and Mbada with immediate effect.
2. Exports may take place from other mining operations in the Marange diamond fields following KP Monitor’s team verification of compliance.
3. The KP Monitoring Team will verify compliance of exports from such other producing mines (excluding Marange Resources and Mbada) including full access to and verification of post-shipment mine level data on an ongoing basis. This ongoing verification will continue until Plenary 2011.
4. Plenary endorses the nomination of a KP Monitoring Team consisting of Abbey Chikane and Mark Van Bockstael. In case of a lack of agreement between the members of the KP monitoring team, the Chair of the KP will resolve the matter.
5. Zimbabwe commits to uphold the KPCS minimum requirements and guarantees the participation of the local Civil Society to Kimberley Process Certification Scheme matters.

Mathieu YAMBA LAPFA LAMBANG
KP Chair

While the August 2010 report of the KP Review Mission to Zimbabwe found some improvements, it still concluded that Marange as a whole was far from compliant. Despite reaching this conclusion, the Kinshasa text makes no reference to the specific actions that Zimbabwe should be taking to bring the region into compliance with KP minimum requirements.

The Kinshasa text is glaringly silent on demilitarizing the diamond fields or tackling cross-border smuggling. It is also silent on Zimbabwe’s commitment to de-criminalizing and formalizing small-scale mining.

Artisanal miners in Zimbabwe are driven by poverty to risk injury and death at the hands of security forces. Without dedicated areas where they can mine legally, they will remain vulnerable to violence and Zimbabwe will have difficulty achieving KP compliance.

During the KP Plenary in Jerusalem in November 2010, the mining company Canadile (now operating as Marange Resources) imploded amidst allegations of corruption that personally implicated Zimbabwe’s Minister of Mines, Obert Mpfu, and half of the company’s board of directors (See *Other Facets* 34). Yet participants in Kinshasa, led by South Africa and the KP Chair, were prepared to accept an agreement allowing exports from Marange Resources, without requiring evidence that the concession has restored appropriate control systems.

Delegations in Kinshasa also saw fit to remove any mention of the Civil Society Local Focal Point (LFP) from the text. This is a betrayal of the July 2010 St. Petersburg agreement, in which enhanced KP monitoring for Marange (through the work of the LFP) was accepted by Zimbabwe in exchange for KP authorization of two shipments of exports from Marange. Zimbabwe exported its diamonds, but now rejects calls that it honour the second half of that bargain and work with the Local Focal Point in a respectful and responsible manner.

No double standards here...

MINISTER MPOFU - HOW NOT TO WIN FRIENDS AND INFLUENCE PEOPLE

In what has become a hallmark of recent KP meetings, Obert Mpfu, the Zimbabwean minister of mines, made another bombastic speech in Kinshasa laden with personal attacks and bearing little reality to the truth. Even by Mpfu’s standards, his diatribe was so insulting and over the top that several African delegations that have defended Zimbabwe were visibly angry and embarrassed afterwards. His disgraceful speech included such gems as:

- Zimbabwe is fully compliant with minimum standards and was being “abused” by the KP
- Stephane Chardon, the chair of the Working Group on Monitoring, is a “racist and should resign”.
- Members of civil society are “discredited people...who are failures in their respective careers”.
- Objections by participants to the Chair’s unilateral decision of March 19 to allow Marange exports are “racially motivated.”

Zimbabweans have a right to expect something very different from their elected representatives – and the KP should demand something much better from its participant countries.

ETHICAL CONSUMERS AND AFRICA - A GROWING DISCONNECT

One thing that has emerged from this long debacle over Zimbabwe is the growing disconnect between the mostly artisanal and alluvial diamond producing countries in Africa and countries that have to retail diamonds to ethically conscious consumers. Many African diamond-producing countries, including some that bore the brunt of the diamond fuelled civil wars of the 1990s, do not seem to realize that consumers will not buy diamonds that are linked to violence, whether this violence comes at the hands of rebel groups or from state security forces.

Countries with a retail jewellery business, however, particularly in North America and Europe, have additional considerations. If the diamond brand gets tarnished, their businesses feel the pinch. Like it or not, 60 percent of the consumer market is still in North America and Europe. Were even a fraction of that market to dry up a ripple effect would be sent down the entire diamond supply chain. Market research cited in a 2009 Lifeworth Consulting report on corporate responsibility also suggests that high net-worth consumers in India and China (the fastest growing consumer markets for diamonds) are increasingly motivated by ethical considerations. The report can be viewed at: <http://tinyurl.com/3bhxlwh>

What does this mean for African diamond producing countries? It could have far-reaching economic consequences if retailers lose confidence in the KP and move to develop systems that eliminate artisanal African diamonds from their supply chains.

In the days that followed the Kinshasa Intersessional meeting, PAC received several unsolicited calls from concerned ethical diamantaires in North America. All reaffirmed a growing trend: as ethical jewellers they are making a conscious and principled effort to source rough stones from mines in countries with no taint of violence. This is not good news for African producers, and it underscores a growing trend that countries ignore at their peril.

Some countries, particularly South Africa, should know better. In Kinshasa, South African Minister of Mines Susan Shabangu used her inaugural KP meeting to demonstrate the wrong kind of leadership. By accepting the KP Chair's invalid notice on Marange diamonds, South Africa placed itself as a beachhead for laundering Zimbabwe's dirty diamonds. In doing so, Minister Shabangu placed South African diamonds on par with those from Marange, and undermined the Kimberley Process that South Africa did so much to help create.

Future exports from South Africa are now going to face added scrutiny, and possible sanction, by countries that did not accept the Chair's notice, which to date

include India, the United Arab Emirates, Israel, the European Union, Switzerland, Canada and the United States. In other words, the major trading and manufacturing centres have upheld their commitment to the KP, demonstrating commendable support for its rules and procedures.

THE KIMBERLEY PROCESS: NECESSARY, BUT NOT SUFFICIENT

Since the Kinshasa June Intersessional meeting, a lot of journalists have been asking questions the diamond industry would rather not hear. What guarantee does anyone have that a diamond they buy is conflict-free? Does a KP certificate count for anything? With diamonds haemorrhaging out of Côte d'Ivoire, Venezuela, and Zimbabwe, and the origin of half of the diamonds coming out of DRC unknown, the answer isn't a happy one for law-abiding diamantaires.

If the KP cannot reform itself and has lost interest in defending human rights, then perhaps it's time for the KP to change its brand and re-think the promise it makes to consumers around the world. Civil society will then turn to other mechanisms to achieve the outcomes we want: a sustainably managed and conflict-free diamond supply chain that actually does benefit local communities, not just corrupt elites.

Whether the KP evolves or not, the diamond sector must not be allowed to return to the free-wheeling criminality with which it was characterized in the 1990s. In a post-911 context, the world cannot allow this high-value, low volume commodity to be unregulated. While the KP is proving itself to be an increasingly inadequate tool, the international community will still need to combat not only conflict diamonds, but also illicit diamonds used to finance terrorism and launder the proceeds of crime.

LOOKING FOR A HERO – WILL THE DIAMOND INDUSTRY PLEASE STAND UP?

The private sector has an important role to play in both shoring up the KP and providing an alternative if the KP cannot meet consumer demands for an ethical jewellery supply chain. Just don't tell that to the World Diamond Council (WDC), which is nervously hoping events in Kinshasa don't bring too much scrutiny to its "system of warranties" (SOW)—their much-heralded, but empty, self-regulatory initiative. Not only are the SOWs shockingly obsolete when compared to similar initiatives that seek to allay consumer demands for social and environmental responsibility in various supply chains, 10 years on they remain largely at the discussion stage.

While some movement towards developing a

more robust supply chain management system for diamonds and gold is emerging through the efforts of the Responsible Jewellery Council, the Alliance for Responsible Mining and the OECD, more needs to be done.

Making matters worse for industry was a June 2011 report by Fair Jewelry Action and Lifeworth Consulting, which benchmarked ten prestigious jewellery brands on their social and environmental performance, including their ethical sourcing of precious metal and gemstones. With the exceptions of Cartier and Boucheron, most brands failed to meet growing consumer expectations.

As the report stated: “The results of the study suggest that the major reasons for the overall poor performance include an inadequate focus on traceability and pro-poor development issues, insufficient transparency ... and limited attention to relationships. The reason for this lack of leadership is argued to be the absence of a positive vision for responsible jewellery. Although a decade of effort to reduce conflict and environmental damage from jewellery supply chains has curbed poor practices, it has not yet shaped an aspirational role for jewellery. The focus has been on risk reduction, rather than delivering positive outcomes.” The report can be read at: <http://tinyurl.com/68yfcfg>

GOING ROUND IN CONSENSUS CIRCLES

In addition to the continued unfolding of the Zimbabwe debacle, the 2011 KP Intersessional was characterized by failure to deal with a diverse range of other issues. The Participation Committee once again discussed Venezuela’s non-compliance with KP minimum standards, and once again referred it back to the Working Group on Monitoring for ‘follow-up’. *Plus ça change...*

The Selection Committee failed to come to consensus on the candidacy of the United States as Vice-Chair of the KP, leaving this critical leadership position vacant. In an extraordinary breach of tradition and practice, the Selection Committee barred industry and civil society from this meeting.

During the meetings of the Working Group on Artisanal and Alluvial Production (WGAAP), the Diamond Development Initiative presented an interesting proposal for a pilot project on the human rights responsibilities of public and private security forces as well as artisanal miners. But the discussion quickly degenerated when some governments, led by Angola, spoke of the irrelevance of human rights in the KP.

The only bright lights in an otherwise dismal week were a meeting of the ad-hoc committee on KP reform and a seminar on the responsibilities of importing

countries to curb the illicit trade in diamonds. Chaired by Botswana, the ad-hoc committee discussed how to enhance the administrative functioning of the KP and initiate a review of the efficacy of the KP. Even if an ‘office of administrative support’ is set up, however, it is difficult to see what it would accomplish in the current context, other than to help the KP chase its own tail even faster.

In the enforcement seminar, participants agreed that efforts to curb the illicit trade in rough diamonds need to adopt a more sophisticated approach akin to those used to curb the illicit trade in other commodities (e.g. narcotics). This would require a risk-based approach that supports diagnostic monitoring, allowing for targeted enforcement measures. A big question mark remains, however: can the KP evolve to incorporate these elements into its work, or does another body need to step up and perform these functions?

SEARCHING FOR A SILVER LINING

Away from the KP meetings themselves, some constructive initiatives are taking place in the diamond sectors of various countries. For example, in early June in Guinea, the US Geological Survey and the civil society organization CECIDE introduced government officials and the diamond industry to an innovative methodology for conducting multi-stakeholder assessments of artisanal mining activity levels. This methodology could help the KP identify unusual shifts in production and export figures from a given country indicating possible smuggling. Later in June in Côte d’Ivoire, the civil society organization GRPIE convened a multi-stakeholder workshop to discuss the challenges facing Côte d’Ivoire in its efforts to restore government oversight over its diamond sector and re-join the KP. In the Central African Republic, the PRADD project continues to generate impressive results in helping artisanal diamond miners officially secure their land tenure and property rights. In the Democratic Republic of Congo, the Diamond Development Initiative has begun piloting an artisanal miner registration and diamond production tracking project.

OTHER FACETS

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