

OTHER FACETS

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The Case for KP Reform: If Not Now, When?

Is 2012 a do or die year for the Kimberley Process? PAC would argue it is.

Lost and directionless for many years, the KP has rightly been criticized of late for coasting on autopilot and deferring any hard action on problems that come its way. Presented with modest and practical reforms that could address common and repeatedly experienced obstacles—or that could make the KP more efficient and responsive—the predictable response by a minority of Participants has been to offer up a litany of limp excuses in return.

All too often these reforms have been blocked by political, commercial and vested interests. This needs to change if 2012 is to be the breakthrough year many hope it to be.

The lack of reforms has stoked a growing frustration among civil society groups, and others, in the KP. It has also led to the KP increasingly being overshadowed by other multi-stakeholder initiatives, such as Extractives Industries Transparency Initiative (EITI), that have put in place safeguards that not only prevent pandering to the lowest common denominator, but allow for more appropriate responses to challenges that may arise.

The KP needs to break its culture of denial and naysaying. Take for example the current debate about a straightforward issue like creating a modest KP Office. It has elicited responses that range from unhelpful to bizarre. One major participant insists that no reforms, however small, are possible without changes to individual national legislations, while another claims the answer to all administrative problems is a “super website”.

PAC has long championed the need for structural reforms in the KP. We presented *Paddles for Kimberley: an Agenda to Reform* at the 2010 Tel Aviv Intersessional, and last November the KP Civil Society Coalition issued a communique which outlined further reform ideas. Both documents can be read here: <http://tinyurl.com/2wr5nh7> and <http://tinyurl.com/7v2xajd>.

The reasons for reform are many, but we provide four of the most compelling ones here:

- **Because it's long overdue:** Much has changed in the world of conflict minerals since the KP was created in 2000. Conflict and criminality is constantly evolving and the KP should take stock of what the current challenges are and how best to respond. The longer it dithers, the more it cements public, and internal, perceptions that it is failing as a conflict prevention tool.
- **We need to plan for the next Zimbabwe:** The KP may well have found a face saving retreat from dealing with ongoing compliance issues in Marange, but it's important the KP create new rules (or clarify existing ones) so as to avoid many of the pitfalls that emerged from the last three years. Tools at our disposal need honing. The most pressing are: to make review visits more effective and independent, including making mutually agreed to recommendations binding on participants; ground rules need to be more clearly codified, including creating a set of standardized and graduated penalties for issues of non-compliance; finally, decision making needs to be sorted out so that a minority of one cannot hold up administrative change or tougher action when needed.
- **Inefficiencies can't continue:** At the November 2011 Plenary, the Ad Hoc Committee on Reform successfully made the case for an “Administrative Support Mechanism”—an unwieldy term agreed to after some found the word “secretariat” too threatening. In making their case the Ad Hoc Committee identified several operational inefficiencies that have undermined the KP's effectiveness and could be remedied by a small professional office. They included such things as: poor communication and outreach; not enough training and capacity building; a lack of knowledge management and institutional memory; and little support for the executive.
- **The US Chair is showing the right kind of leadership:** The US has made clear it wants to see structural changes adopted by the KP this year. It is very much committed to improving the core functioning of the KP so that it can be an effective conflict prevention tool. It has surprised many by adopting the role of convenor to the reform agenda, acknowledging that imposing their own agenda could be negatively received by some Participants. This is a golden opportunity that should not be squandered. It is an opening for all Participants and observers to propose changes they want to see. This is especially true for African producers who need to spell out their vision of reform.

Following Global Witness' pullout from the KP in late November there was much handwringing, particularly by industry, about how the departure of a founding member of the KP could be interpreted by the outside world. The response by many was that the best way to quell the fallout was for the KP was to prove the critics wrong, to demonstrate

that it was capable of reform.

It is wise counsel, and it requires every likeminded Participant and Observer to do their utmost to convince the No Brigade to join the reform bandwagon. Civil society does not expect the KP to adopt every reform idea it has ever proposed this year, but there has to be demonstrable evidence that by the end of 2012 some of the key issues on the table are accepted, and that there is a willingness to embrace further change. At this juncture the three lowest hanging fruit are operationalize a KP office, widen the definition of conflict diamonds and incorporate human rights language into the KP's core documents.

Governments need to lead this process, but the World Diamond Council (WDC) has an equally important role to play. In recent years it has been a bystander to many issues—participating but not leveraging its influence as far as it could. Much of this has to do with the fact that the WDC is not a homogenous group. Its members include some very forward thinking companies and individuals. The problem is that more often than not the more conservative and shortsighted elements (usually in the middle of the supply chain) win out, leading to negative perceptions about the industry as a whole. The WDC urgently needs to remedy this problem by having producers, traders, manufacturers and retailers all speak from the same song book. They could do that by saying: “We support the inclusion of human rights language into KP minimum requirements; not only do we support a KP office but we are prepared to co-fund it so it can work efficiently; and finally, we acknowledge our system of warranties are inadequate and we have a plan to strengthen them”.

Committing to these three issues would send a strong signal to naysayers—in industry and amongst KP participants—that industry is prepared to do its part.

If the KP squanders this opportunity the KP will be faced with a bigger question: if no reform, then what? If with all the best resources and intentions, and ample lessons learned from the biggest crisis to face the KP since Charles Taylor, modest reforms were still not possible, it is certain the KP will seal its own irrelevancy. More people will reconsider their engagement with the KP. The KP will be reduced to a statistical database and little else.

Civil Society and the KP: Where to Next?

2011 was not a banner year for KP relations.

To briefly recap events: The KP Civil Society coalition walked out of the June Intersessional in response to an objectionable speech by Zimbabwean Minister of Mines Obert Mpofo, in which he denigrated civil society. The speech, and subsequent applause of many Participants, was a shameful moment in KP history (See *OF* 35). Two months later the Coalition announced it would not be attending the November Plenary out of concerns that a sham deal would be concluded on Marange. When that came to pass, Global Witness, one of the founding NGOs in the KP, announced it was quitting the scheme.

Aware of Global Witness's position since August, the Coalition met in Brussels in November to take stock of their position and rearticulate—a decade into the KP—a vision of what a responsibly managed diamond supply chain should include. (The communique from the meeting can be read here: <http://tinyurl.com/7v2xajd>).

The group concluded two things. The first was that despite our many frustrations with the KP, we continue to see it as a necessary, yet insufficient, means through which to regulate the international trade of rough diamonds, particularly those coming from high risk and conflict prone areas. The second was that the Coalition would no longer see the KP as the only initiative through which to raise issues that should be within the KP's domain.

In practical terms this will translate into the Coalition focusing its limited resources on areas that show the most promise. Within the KP this means redoubling efforts to

advance the reform agenda. PAC, for its part, represents the Coalition on the Ad Hoc Committee on Reform, preparing background papers on the modalities of how the proposed KP office could work, for example, as well as taking part in a larger effort to re-open and redefine core definitions and priorities of the KP. Earlier this year PAC also participated in consultations with industry representatives on co-championing explicit human rights commitments into core KP documents.

But in a wider sense the Coalition's new approach will see members engage other actors—primarily the Responsible Jewellery Council and the OECD—to generate a more open discussion about industry responsibilities in the diamond sector. This is particularly necessary in light of the inadequacies of the WDC System of Warranties to respond to the widespread smuggling of Marange diamonds.

The OECD and its efforts to draft due diligence guidances for several conflict prone minerals—namely gold, tin, tantalum and tungsten—also offer some promise. Such guidances provides recommendations for global responsible supply chains of minerals to help companies respect human rights and avoid contributing to conflict through their mineral or metal purchasing decisions and practices.

The Coalition will also look to other multistakeholder platforms, like the Extractive Industries Transparencies Initiative (EITI), for pointers on a range of issues, from improved decision making to ways to ensure better public accountability of diamond revenues.

Venezuela: A time of reckoning?

To hear Venezuela tell it, everything is in perfect order in their diamond fields.

Given an ultimatum at the Kinshasa Plenary to submit an annual report and statistical data by the end of last December or face possible expulsion, Caracas complied.

After six years in self-imposed “suspension” from the KP, it looked for a brief moment as though Venezuela was interested in returning to the fold.

What they sent the KP, however, raised more questions (and eyebrows) than answers. The biggest eye-popper was a declaration that it had only produced 8,500 carats over a two year period between 2009-10, and the report was more than vague on where these stones were stockpiled.

Venezuela has never been a big industry player, but considering the artisanal mining technology commonly used there, that level of production would conservatively account for the work of five miners—a number so improbably low as to be laughable.

Just to be sure, PAC contacted a diamond buyer in Sta Elena, a town near the Brazil and Guyana borders, and asked him how things were going, and what he had for sale. Things were good, he said, prices were high, production reasonable; he had some nice five carat stones, and a line on a 20 carater if we were interested in visiting. He mentioned the names of three other buyers known to PAC, all of them still working in Sta Elena.

The stated annual production would not support one buyer, much less four—and Sta Elena isn't even the biggest diamond town in Venezuela (that would be Icabaru or Ciudad Bolivar).

The figures also pose problems for the pending membership of Panama to the KP. Traditionally, non-producing countries applying for KP membership are more often than not transit countries looking to legitimize

an illegal trade. Just look at Mali and Mozambique who are grappling with illicit flows from Cote D'Ivoire and Zimbabwe. In Panama's case, its geographical proximity, coupled with its status as a secretive banking haven and strategic shipping centre, make it a logical choice for Venezuelan smugglers. But according to Venezuela, no diamonds have exited the country, raising the question for Panama: what is the source of your diamonds?

After years of deferring any action on Venezuela, it is clear the KP's patience is wearing thin. The Kinshasa ultimatum was the first sign of the change in approach. The US Chair, Ambassador Gillian Milovanovic, has made it clear to the wider KP that she intends to bring a resolution to the issue this year. The next critical step is for the KP to send a review mission to independently verify that issues of non-compliance first identified by PAC in 2006 have been satisfactorily fixed.

Venezuela's “other conflict minerals”

Dodgy diamond dealings are not the only thing giving Venezuela a bad name.

A recent investigative report by the US-based by the Center for Public Integrity cited Venezuela as a growing source of other “conflict minerals”. Their report found a robust, illicit trade in coltan and warned of a litany of risks to small-scale miners chasing the valuable ore.

The report also claims that children, women and indigenous Indians are particularly vulnerable to dangerous work conditions, and that drug smugglers and armed gangs are behind the smuggling. Illicit Venezuelan coltan, they argue, is likely being mixed with legitimate minerals in smelters around the world, and then sent to high-tech manufacturers.

The full report can be read here: <http://tinyurl.com/82xyo8n>

Angola: The case for the “other” conflict diamonds

Those following the growing debate around the need for more explicit human rights language in the Kimberley Process should take note of a precedent setting court case currently being heard in the Angolan capital, Luanda.

The case involves a who's who of Angolan military and political elite—most notably General Manuel Hélder Vieira Dias, Minister of State and head of the Military Bureau in the Angolan presidency, and a close business associate of President José Eduardo dos Santos. Other big names include three former commanders in chief of the Angolan Armed Forces: General António dos Santos França Ndalu, General João de Matos and General Armando da Cruz Neto.

At issue are rights abuses, including torture and murder, which are alleged to have occurred at the hands of security companies protecting diamond mines in Lunda-

Norte and Lunda-Sul, Angola's most lucrative diamond producing area, once the preserve of UNITA leader Jonas Savimbi.

After the war ended in 2002, the government granted mining concessions to several senior military figures. Most of the case revolves around the alleged behaviour of mining consortium Sociedade Mineira do Cuango (SMC)—which includes state mining giant Endiama—and Teleservice, a private security company. Both are accused of abuses against local communities and artisanal miners. Dias, commonly known as “Kopelipa”, and the other respondents are alleged to be shareholders of Teleservice.

The case was brought to the attention of Angola's Attorney General last November by noted anti-corruption crusader Rafael Marques de Morais. The trial began hearing witness testimonies this month. That the case has

even come to court is significant, as Angola is not known for its judicial independence in matters involving friends of President Dos Santos.

But it also underscores a reality the KP can't continue to ignore: the majority of human rights abuses occurring in diamond producing areas today are perpetrated by state actors and private security companies, not rebels.

This is not lost on Marques who told one journalist: "In Angola, the KP is worthless, since senior state officials have been complicit in some of the worst human rights abuses associated with the diamond industry: the destruction of livelihoods as well as torture and murder."

One lesson from this case is that the more the KP insists on turning a blind eye to such abuses, the more activists will turn to the courts to seek redress for and action against rights violators. In doing so, they increase the public perception that the KP is impotent and indifferent to such abuse.

Marques' comment on the KP, however, touches on an interesting debate that is currently bubbling in certain circles: the relative merits of promoting a "human security" agenda versus explicit human rights protections.

The move to introduce human rights language into core documents has been making small, incremental progress in recent years. At the Jerusalem Plenary, moves to acknowledge rights abuses in diamond producing *and* trading centres, irrespective of whether the perpetrators were rebels or state actors, almost won the day. (The World Diamond Council and every participant country *other* than China, India, Russia, and Angola supported it).

But some countries, even ones that supported the inclusion of human rights language, remain uneasy about a move that would bring greater scrutiny of, and possible sanction for, misbehavior by state security actors. Angola, with good reason, is one of them.

The response has been for some African governments to privately talk up "human security" as a less threatening alternative. It's a curious gambit that could actually cause its proponents some unexpected headaches.

Human security is a well-known concept in some policy circles, having gained wide currency in the mid-1990 as the basis for UNDP Development Report indicators and the underpinnings of the foreign policy approach championed by former Canadian Foreign Minister Lloyd Axworthy. It is less spoken of today, but in general, it refers to a holistic definition of security that encompasses not only a person's political and personal rights but their economic and health well-being as well.

Marques' reference to "destruction of livelihoods" is reflective of this, as well as a growing recognition by many diamond communities in Africa of lost economic and development opportunities that come with living in close proximity to a diamond mine.

In Angola's case, human rights abuses and concerns about revenue transparency by military and political elites

are old hat. Not so critiques about how the terms governing many diamond concessions allow a licensee to restrict the area for "security reasons" and thereby undermine a community's ability to farm or make a living. That same provision, it is also argued, lies at the heart of many of the current rights abuses taking place in Angola as mine owners turn to overzealous private security companies to "protect" their claims.

Enforcement: West African Countries discuss joint strategy

Officials from four West African countries—Côte d'Ivoire, Guinea, Mali and Burkina Faso—met recently to discuss how to more effectively address the problem of diamond smuggling at the national and regional levels.

The workshop, held in Ouagadougou from February 23-24, identified improved training of customs officials as the best way to tackle the illicit flows of diamonds from the region. In addition to agreeing to facilitate greater information sharing and collaboration between them and other regional and international actors involved in controlling the trade in rough diamonds, participants also committed to work with civil society and community representatives in efforts to stem the illicit traffic in diamonds, particularly conflict diamonds.

The workshop is a good example of how civil society and African governments can work together outside of KP meetings. Customs officials, mining administration and finance officials, and civil society representatives from each of the four countries all participated in the workshop. Representatives of international and regional organizations also participated, including the United Nations, the World Bank and the Economic and Monetary Union of West Africa (UEMOA). Technical support for the workshop was provided by resource persons from the United Nations Office on Drugs and Crime (UNODC), the UN Expert Panel for Côte d'Ivoire, Belgian Customs and Partnership Africa Canada.

The workshop is part of a series of national dialogues funded by the United States and born from an enforcement strategy begun under the 2010 Chair, Israel.

The Kimberley Process has redesigned its web site with the aim of making it a much more informative and transparent source of information:

<http://www.kimberleyprocess.com/>

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