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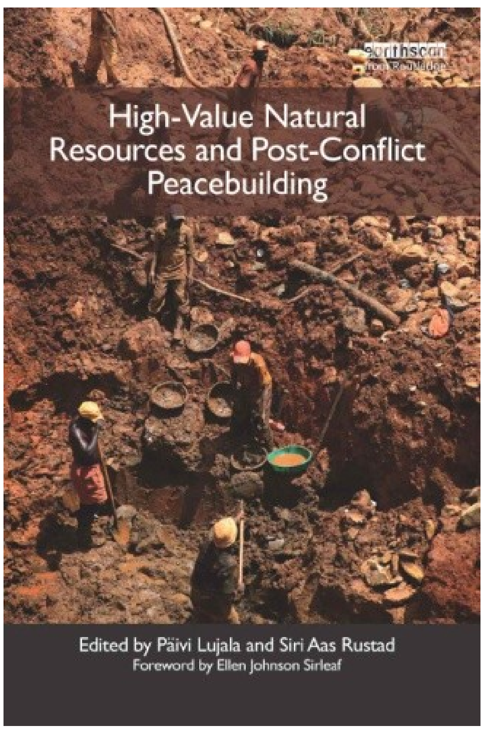

The Kimberly Process Certification Scheme: A model negotiation?

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The Kimberley Process Certification Scheme: A model negotiation?

Clive Wright

In the late 1990s, a series of alarming reports from civil society groups set out the clear link between the global trade in rough diamonds and the prosecution and perpetuation of brutal civil wars in countries such as Angola, the Democratic Republic of the Congo (DRC), and Sierra Leone (Global Witness 1998). In 1999, several governments—led by the three main diamond-producing countries in Africa (Botswana, Namibia, and South Africa) and the three leading consumers and marketers of diamonds (Belgium, the United Kingdom, and the United States)—came together to craft a response. One of the first meetings was held in the South African diamond-mining town of Kimberley; what became known as the Kimberley Process (KP) eventually embraced many more governments, as well as industry and civil society. The objective of the KP was to break the link between diamonds and civil war, and the model that was chosen—the Kimberley Process Certification Scheme (KPCS)—was signed in 2003, after three years of negotiation.[1]

Under the KPCS, the seventy-five participating countries must certify that all rough diamonds exported from their territory have come from legitimate sources that were not involved in supporting civil war.[2] Participants are also required to regulate the import of rough diamonds to ensure that they, too, have come from a legitimate source (as testified by the exporting participant), and to ensure transparency by exchanging information with all participants. The KPCS is the formal method that each participating country uses to assure all other participating countries that rough diamonds exported from its territory comply

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[1] See, for example, Grant and Taylor (2004), Paes (2005), and Wright (2004).

[2] For the full list of participating countries, see www.kimberleyprocess.com/structure/participants_world_map_en.html.

with the requirements of the scheme;[3] the implementation of the KPCS in each country must be fully transparent and is subject to peer review.

This chapter focuses on the roles played by the key actors during a negotiation that produced a unique agreement: the first to make a serious attempt, on a global basis, to end the illegal exploitation of a natural resource and break the link with armed conflict. The negotiation was also the first in which governments, industry, and civil society interacted on an equal footing. This may be the most important legacy of the KPCS: demonstrating that governments, industry, and civil society could put aside their differences and work closely to reach a common understanding on key international issues. Perhaps equally important, the participants took a vital decision early on: that they would act only by consensus, and on the basis of views expressed by any of the participants—views that carried equal weight, regardless of the author.

In the early stages of the negotiation, disagreements and preconceptions were commonplace. Outside of command economies such as the Soviet Union's, the diamond trade had enjoyed a nonregulated environment for as long as anyone could remember. Hence, industry viewed government "interference" with suspicion and alarm: allowing bureaucrats access to insider information and giving them a role in policing the industry was anathema. But behind the bluster was a more fundamental fear that elements within the industry had at best turned a blind eye to—and had at worst colluded in—some of the most brutal conflicts since the Second World War. The prospect of close government examination of the diamond industry was hardly palatable.

At the same time, many participating governments regarded industry as having ducked the corporate social responsibility (CSR) standards they had exhorted their business sectors to adopt. One such effort was the Global Compact, a policy initiative that the United Nations had launched in 1999. The compact, which incorporated ten basic principles in the areas of human rights, labor standards, and the environment, evoked only patchy participation in the early days of the initiative; but in any event, the governments engaged in the KP ultimately regarded the voluntary principles as not the best means of meeting the unique challenge posed by conflict diamonds.

Meanwhile, certain governments, particularly those functioning under more authoritarian models of governance, found it difficult to accept the participation of civil society groups, whom they viewed as interfering and intrusive, and as lacking a popular mandate or base of support. Nor were these governments keen to have a spotlight cast on their state-run diamond sectors, for the viewing pleasure of competitors from other states and private industry.

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[3] For additional views of the KPCS, see J. Andrew Grant, "The Kimberley Process at Ten: Reflections on a Decade of Efforts to End the Trade in Conflict Diamonds," and Harrison Mitchell, "A More Formal Engagement: A Constructive Critique of Certification as a Means of Preventing Conflict and Building Peace," in this volume.

Finally, the civil society groups that were involved in the KPCS were skeptical about industry's commitment to reform and reluctant to believe that governments would make any more than a halfhearted attempt to take on the industry, regulate it, and open it up to external scrutiny. At the same time, the civil society groups that had been invited to participate in the negotiations had to contend with accusations, from fellow organizations that were not directly involved and were frustrated at having been excluded, that they had "sold out."[4]

STAKEHOLDERS AND PARTICIPANTS

With all the baggage that the three groups brought to the table, how were they supposed to cooperate and produce a unique international agreement? The answer was, primarily and initially, mutual interest. Industry saw the threat of a consumer backlash as very real; movement in that direction was being stirred up in the U.S. Congress and elsewhere. Governments were alarmed about the threat to an industry worth US$50 billion per year—and equally intrigued by the prospect of, for once, breaking the link between natural resources and conflict. Nongovernmental organizations (NGOs) saw an opportunity to influence the outcome of a debate that they, more than anyone else, had framed, as well as the opportunity to exploit the high-profile "blood diamond" issue and to secure future funding for this and other campaigns.

But beyond those early objectives that converged on a common goal, albeit from different directions, each party quickly found that it admired the expertise and earnestness of the other two. The conscious decision by many of the participating delegations to retain the core membership throughout the three years of a highly technical and specialized negotiation (and beyond, during the implementation phase), helped the participants develop a level of confidence in each other that often transcended the politics of the moment.

Perhaps above all, the participants felt genuine ownership in the process, and believed that direct negotiations would allow a degree of focus and a sense of urgency that others, lacking intimate knowledge of the issue, could never achieve. So, for example, early attempts to have the UN run the negotiations were rejected with equal enthusiasm by government, industry, and NGOs alike. This was no time for diplomats to languish over a bureaucratic exercise: the wrangling and horse-trading in which the UN traditionally engages would only generate complications and delays. Thus, apart from being brought in periodically to bless and legitimize the progress made to date and to encourage further efforts through official resolutions, the UN was excluded.

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[4] Those civil society groups that had been involved in the earliest meetings—in particular, Global Witness and Partnership Africa Canada—agreed with the other groups to represent all civil society. During the first rounds of negotiation, mining unions from Southern Africa were among the civil society groups, but they dropped out early on, as they lacked sufficient funds to continue to participate.

In sum, a common purpose, shared experiences and expertise, a sense of ownership, and the assurance of being heard were the key ingredients that made the KPCS a success. Which is not to say that the process was entirely straightforward. The first group, sovereign governments, sat as individuals or were grouped as economic blocs. That arrangement ought to have been simple enough—but the European Union (EU), a single economic bloc, included two countries, Belgium and the United Kingdom, that felt they had at lot at stake, given the importance of the diamond industry in both countries. Interactions within the EU contingent were often fractious as a result, but at least the bloc appeared cooperative in public. Another issue was the presence of Taiwan, which plays an active role in the diamond industry and is an important trading partner for Shanghai, for example. Persuading an almost implacably hostile China to share the table with Taiwan (particularly when Beijing was already unhappy about Hong Kong's semi-independent role in the process) took a great deal of political effort.

Life among the NGOs also had its more difficult moments. It would have been impossible for all NGOs with an interest in the KPCS to be at the table. Ultimately, two were selected to represent the wider group: Global Witness and Partnership Africa Canada, the two organizations that had done the most to bring to the world's attention the relationship between conflict and diamonds. A much wider group of civil society organizations met on the sidelines during negotiations, as well as between negotiations, to agree on a way forward. Among the NGOs that had been left out, including Amnesty International and Oxfam, there was initially respect for the two chosen representatives. But relations occasionally soured during negotiations, when some NGOs viewed the inevitable compromises needed to achieve consensus—on the issue of the inspection and audit of industry's books, for example—as "selling out." Eventually, however, the other NGOs were persuaded to go along with the result.

Nor was industry free of internal bickering. There was never any question that De Beers would call the shots for industry: its dominance was total.[5] The establishment of the World Diamond Council, in 2001, created the fig leaf of wider representation, bringing together traders, cutters, and polishers. The council's elected officeholders negotiated on behalf of industry, while De Beers sat quietly in the second row of seats and decided matters during the breaks in the negotiation. Not that the company's influence was negative: far from it. De Beers had clearly decided early on to make the KPCS happen, and senior staff members spent a great deal of time and effort—and engaged in a lot of arm-twisting—to persuade industry to go with the flow.

The three main players came to the table not only with preconceived views of each other, but also with disparate visions of the shape and content of an

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[5] Almost two-thirds of the world's diamonds are channeled through De Beers' head office in London. Although far from being a monopoly or a cartel, as some claim, De Beers still exercises huge influence through its substantive holdings, mining operations, and marketing arm.

agreement. At times, fundamental conflicts about the details of the certification system, including participation, degree of transparency, and inspection by fellow participants (and even by outside third parties), almost derailed the process. But the key ingredients always ensured that such difficulties could be resolved to the satisfaction of all participants.

The negotiations also yielded spin-off benefits. Through repeated dealings with civil society groups over a three-year period, some governments' previously hostile attitude toward the participation of such groups in debates at the UN, and other similar forums, changed almost beyond recognition. The bureaucratic rigidity that might otherwise have stifled nimble responses to sudden political developments affecting the KPCS fell away, as phone lines hummed between London and Moscow, Luanda and Tel Aviv. For diplomats, the ability to fix problems with a single phone call to another capital was an exhilarating change from the more traditional course of diplomatic notes and protracted negotiations. Simply knowing the person on the other end of the line—as someone whose word could be trusted, and with whom you had worked closely during many days and nights, in different parts of the world, as the KPCS unfolded—allowed swift and effective progress on a variety of issues.

BUILDING CONSENSUS

One area of agreement among all three of the major stakeholder groups was the need to discipline errant participants. For the certification scheme to be respected both by the participants and the wider international community, the collective membership had to demonstrate that it would not tolerate failure to fulfill the membership requirements. It was therefore something of a shock for officials from Lebanon, as well as for those from more than half a dozen other countries, to find that they had been suspended from the KP for failing to enact local legislation implementing the KPCS.[6] And the suspensions had further implications. In the case of the Republic of the Congo, for example, the repeated failure to be transparent about the movement of rough diamonds through its territory got the attention of international financial institutions, whose displeasure and threats of punitive economic and financial sanctions forced the country quickly back to the straight and narrow.

A MODEL NEGOTIATION?

Was the KPCS a model negotiation? In many respects, yes. It brought together some highly disparate groups in a way that enabled them to find common cause; it also bound them together in a collaborative effort to deliver an outcome

[6] For reasons that were unconnected to the KPCS and had far more to do with internal politics, the Lebanese parliament was dragging its feet over the introduction of regulations.

that has been highlighted by the UN and other bodies as an example of cooperation and practical endeavor, and that has gone a long way toward ending the scourge of the so-called blood diamond. The KPCS is not a perfect agreement. One does not exist. Yet it stands out as having arisen from a negotiating model that set consensus as its highest goal, and that cast aside any sense of hierarchy among negotiators, no matter what their affiliation.

The KP cannot necessarily be transplanted successfully into other sectors or deployed for different issues. The ingredients for success will always depend on circumstances, players, and other influences, both internal and external. In addition, and most critically, the technical elements of the certification scheme were developed by people with an intimate knowledge of an opaque and quirky industry that, over the centuries, had developed its own unique way of doing business. Industry was able to embrace a far higher degree of transparency, as well as government regulation and oversight, only because the elements of the certification scheme were tailor-made. So the KPCS is not a case of "one size fits all": far from it. But the core elements are essential if the success of the certification scheme is to be emulated by others.

The KPCS made a difference. Brutal civil wars in Angola, the DRC, and Sierra Leone may have stopped for reasons other than the successful negotiation of a global regulatory regime for rough diamonds. But the fact that one now exists makes future prosecution of similar wars much more difficult, as long as the KP continues to forcefully defend its integrity.

And today, that is the rub. In October 2009, Zimbabwe's government stood accused, with good reason, of mass murder in connection with the ownership and operation of certain diamond deposits in that country—but the KP had not yet taken action. To many who had built the KP from the ground up and who continued to believe in it, this position was anathema. The organization may yet do the right thing, although there is clearly dissent as to the best course of action. If it does not, it will have severely undermined its credibility—as well as the argument that war sustained by natural resources need not be part of our future.

That said, the KP has vividly demonstrated that it is possible to directly and effectively address the poisonous connection between natural resources and conflict. And the transparency that the certification scheme brought to so many governments, in Africa and elsewhere, has allowed those governments to benefit from larger, more predictable revenue streams, which are vital to post-conflict nation building. Finally, the KP has allowed countries like Sierra Leone to see, at first hand, in places like Botswana and South Africa, that diamonds can be a blessing rather than a curse, and can strengthen development instead of undermining peace.

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