

# UAE Combatting Corruption in the Diamond Industry

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## The Kimberley Process

The United Nations ("UN") states that conflict diamonds especially emerge from regions that are controlled by rebel forces who are opposing internationally recognised governments. In the 1990s, African countries were facing severe conflicts due to the blood diamond trade, thereby bringing awareness to the diamond industry, governments, the UN and several non-governmental organizations ("NGO") that there must be a system to protect the legitimate diamond supply from conflict diamonds, in order to eliminate the funding of further conflicts. African diamond-producing states met, to discuss what could be done to achieve this protection, in 2000 in Kimberley, South Africa and the Kimberley Process Certification Scheme ("Kimberley Process") eventually came into operation in 2003 with the aim of increasing transparency and oversight in the diamond industry.

The Kimberley Process is comprised of governments, businesses, NGOs and public individuals (more than 80 countries are participating) with the initiative to prevent situations where governments are threatened by rebellious groups gaining access to weapons from the sale of conflict diamonds. Participating countries are required to enforce the Kimberley Process by codifying it in their national legislation.

Under the Kimberley Process, there is a scheme for the satisfaction of diamonds and a specified method by which diamonds are purchased. Every shipment of rough diamonds that crosses an international border must be transported with a government-validated Kimberley Process Certificate in a tamper-resistant container and exported only to another Kimberley Process participant country. Failure to comply with the procedures can lead to criminal sanctions along with the confiscation or rejection of the shipment. It is important to note that synthetic diamonds do not require a certificate; certificates are only required when trading rough and semi-polished diamonds.

The main goal of the Kimberley Process is to eliminate illegal mining along with the trafficking of illegally-mined diamonds, but there are several human rights issues connected to illegal mining which the Kimberley Process also aims to reduce.

## Corruption

Any abuse of power that leads to personal gain is considered corruption. Corruption can exist at all levels within a nation: within the government, public officials, private companies, and individuals. Before the implementation of the Kimberley Process, too often diamond buyers were well aware of the illegal origin of the stones, but they would still purchase them – usually at a lower price than the market rate, allowing their own business to prosper. Furthermore, agents assisting with the importation and exportation of diamonds were also receiving kickbacks from the eventual profits of the blood diamonds they helped smuggle and sell abroad. However, such corrupt acts allowed rebellious groups to continue to grow, innocent people to die and the governments to weaken.

Whilst the UAE law (for example, the Federal Penal Code) deals with the consequences of corruption, the aim of the Kimberley Process is to reduce corrupt practices in the first place. This requires the effective

implementation of the Kimberley Process. The process embodies the concept of self-regulation but, unfortunately, the diamond industry faces difficulty in policing itself. In order for the procedure to operate optimally, it requires the participant states to have effective control systems at every stage. Although the scheme creates barriers for conflict diamonds to reach the legitimate diamond market, there are still weaknesses within the process which have allowed 1% of the diamonds in the market to be conflict diamonds.

Firstly, the certification process itself creates vulnerability. The procedure does not actually require individual diamonds to be identified or traced back to the mine that they originated from; rather the shipment must have a certificate. This allows the possibility for blood diamonds to slip into the legitimate diamond trade since governments can sometimes give certification, knowingly or unknowingly, to diamonds with unknown origins. Several forms of corruption can occur during this stage of the process, such as bribery and fraud. For example, when Brazil performed an internal review of its diamond exportation in 2006, it discovered that 49 of the 147 Kimberley Process certificates the government had issued since the implementation of the scheme were actually fraudulent. This illustrates a universal challenge in reducing corruption: governmentally-issued documents have the possibility of being forged or being obtained through illicit means, such as bribery.

Moreover, the importing country's customs are responsible to ensure that a shipment's contents actually match the certificate provided and bribery can exist at this stage of the process as well, in the form of facilitation payments or kickbacks.

Illicit trade of diamonds can also be used in the assistance of money laundering or for terrorist financing.

There is still a need to improve the process and it requires governmental involvement including further oversight of the diamond industry and conducting regular investigations to ensure compliance by the diamond companies and the public authorities.

Lastly, in order to obtain the desired reform it would be beneficial to publish the statistical data that is compiled by the group to reveal the exact issues or challenges within each country, so that each country can focus on its weaknesses to improve their systems.

## **2016: the United Arab Emirates Chairs the Kimberley Process**

The Kimberley Process participants and observers meet once a year to analyse the statistics they have gathered, discuss the implementation of the scheme in the participant countries, discuss any technical issues and evaluate the applications from countries wishing to join.

This year, the United Arab Emirates is chairing the group and it is the first Arab nation to do so. The UAE was also the first Arab country to implement the Kimberley Process Certification Scheme and is the only GCC country which requires compliance with the scheme. Therefore, rough diamond trade cannot be carried out between UAE and other GCC countries. Lebanon and Israel are the only other participating countries within the Middle East and North Africa region. The scheme was implemented in the UAE by the Ministry of Economy in 2003 under Federal Law No. 13 of 2004 regarding the Supervision of Import/Export and Transit of Rough Diamonds.

It is also important to note that the Dubai Multi Commodities Centre free trade zone ("DMCC") is the only place of import and export for rough diamonds within the UAE.

	<b>Volume (cts)</b>	<b>Value (USD)</b>	<b>USD/ct</b>
Production:	0.00	\$0.00	\$0.00
Import:	62,028,811.45	\$5,441,576,991.82	\$87.73
Export:	63,581,801.10	\$7,555,431,888.11	\$118.83
KPC Counts			

Import:	4,702
Export	7,859

At the UAE's first meeting as the host, on 24 May 2016, Ahmed Bin Sulayem, the Executive Chairman of the DMCC and the current Kimberley Process Chair, stated in particular that the following two tasks needed to be addressed:

- To overcome the challenges that the industry is currently facing in order to strengthen the Kimberley Process;
- To ensure that the process is effective enough to overcome challenges in the future.

His Excellency Sultan Bin Saeed Al Mansouri, the UAE Minister of Economy, said that diamonds are one of the highest contributors to the UAE's GDP and the UAE's economic growth and diversification in the recent years has made the UAE among the top global diamond trading hubs. He also mentioned that the reason the UAE was able to build strong partnerships with the Kimberley Process is because they both aim to enable trade in a secure and beneficial environment.

One of the most critical issues in the industry is diamond valuation and the UAE Chair hosted a 'KP Chair Special Forum' on rough diamond valuation, on 23 May 2016, before the inter-sessional meeting.

Where a diamond is sold below its market price, it causes the government a loss because it will receive less tax revenue from the sale of that diamond and such under-pricing activities are facing severe criticism. Ahmed Bin Sulayem announced that the Organisation for Economic Cooperation and Development ("OECD") will be collaborating with the Kimberley Process with regard to rough diamond valuation, to create a universally recognised pricing method for rough diamonds. This specific initiative will be advantageous for those countries that rely on diamond exportation for their income, enabling them to sell diamonds at a more valuable price than they currently do.

The Chair aims to develop further mechanisms that will regulate the diamond industry by government-led efforts and industry-led due diligence in conjunction with the Kimberley Process regulations. Ahmed Bin Sulayem also intends to enhance financial transparency, supply chain traceability, cross-border trade and data collection in order to improve the diamond industry. Transparent and uniform pricing systems along with a more regulated industry would further combat the different forms of corruption that currently exist when trading rough diamonds.

## Conclusion

After the implementation of the Kimberley Process, trading blood diamonds has become more difficult due to the requirements. However, corruption can still exist within the diamond industry. Self-regulation is not enough to eliminate corruption in this industry and, therefore, there must be a more regular and a stricter review of the enforcement of the process. Ahmed Bin Sulayem, as the Kimberley Process Chair of 2016, has laid out many objectives regarding the regulation of the industry that he aims to initiate while the UAE is the Chair.

In a Mid-term report, published in August 2016, Mr. Bin Sulayem set out the work and initiatives that have been carried out during the first half of his tenure as the Kimberley Process Chair. These include:

- **Venezuela** – The re-admission of Venezuela to the Kimberley Process.
- **Central African Republic** – Mr. Bin Sulayem made a visit to Central African Republic, to expedite the country's reintegration into the diamond market.
- **A Valuation Seminar** – The report states that Mr. Bin Sulayem believes efforts should be made to improve the conditions and benefits for Africa's diamond producing countries. One idea to help benefit African nations is to increase awareness and education on valuation and value of rough diamonds.
- **Developing online presence** – Mr. Bin Sulayem's office has developed a strategy to revamp the Kimberley Process website. The report states that this is to further promote the Kimberley Process to a

broader, more discerning audience and that industry professionals will benefit from continual updates, while the public will be able to see first-hand what the Kimberley Process is doing and how effective it is in applying its principles.

- **Blockchain Technology** – With a view to combating potential fraudulent activity and to enhance security measures, Mr. Bin Sulayem has proposed the implementation of Blockchain technology. Research conducted by Mr. Bin Sulayem's office in collaboration with the UAE Kimberley Process office has discovered that Blockchain technology could be immensely important to the future of the Kimberley Process, by helping to eradicate false Kimberley Process certificates and significantly reducing the impact of human error in data uploads.
- **Africa Initiative** – In the belief that the Kimberley Process has a role to play in the improvement of the prosperity and livelihood of miners and all people in African diamond producing countries, Mr. Bin Sulayem has made a commitment to keep a hands-on presence in diamond producing nations to help facilitate Kimberley Process compliance, the fulfilment of Kimberley Process mandates and to give Africa a voice.
- **Media and PR** – A strategy of enhancing the reputation of the Kimberley Process and raising regional and global awareness of the organisation has seen a 462% increase in published articles compared with the four previous Chairmanships combined. The report also states that Mr. Bin Sulayem's office will initiate new social media strategies, engaging with platforms such as Facebook, Twitter and LinkedIn.

We congratulate Mr. Bin Sulayem on these achievements, which demonstrate the willingness of the UAE to lead the way in improving the diamond industry for the benefit of all concerned, and we will continue to closely monitor and report developments on this interesting and important topic. This is not only about the diamond trade and improving the situation of the participant countries, but it is also another example of the UAE engaging in the fight against corruption in every arena.