

2023]



CRITICAL “LOUPE” HOLES: CONFLICT DIAMONDS
AND SECURITY THREATS ARISING FROM
WEAKNESSES IN THE KIMBERLEY PROCESS

M. Erica Crouse*

I.	INTRODUCTION	77
II.	BACKGROUND	80
	A. <i>Diamond Mining Process</i>	80
	B. <i>The Kimberley Process</i>	81
	C. <i>KPCS Certification and Vulnerabilities in the Global Diamond Supply Chain</i>	84
III.	DIAMOND TRAFFICKING AND RISKS ARISING FROM THE KIMBERLEY PROCESS.....	88
	A. <i>Diamond Trafficking</i>	89
	B. <i>Money Laundering</i>	91
	C. <i>Terrorist Financing</i>	93
	D. <i>Transnational Organize Crime</i>	95
	E. <i>Child Labor and Human Trafficking</i>	96
IV.	ANALYSIS OF THE “LOUPE”-HOLES WITHIN THE KIMBERLEY PROCESS FRAMEWORK.....	99
	A. <i>Critical Weaknesses of the Soft Law Framework</i>	100
	B. <i>Kimberley Certified “Conflict-Free” Diamonds are Hardly Conflict-Free</i>	103
	C. <i>Criminal Exploitation of Critical “Loupe”-holes in the Kimberley Process</i>	104
	D. <i>The Diamond Industry’s “Shadow Economy” Exposed</i>	108

* M. Erica Crouse is an Antonin Scalia Law School J.D. Candidate, anticipating graduation in May 2023. For nearly a decade, Erica gained industry experience as a bench jeweler, and she continues to design, manufacture, and repair fine jewelry. She studied fine studio art with a concentration in metals and jewelry at James Madison University and Millersville University. Erica further expanded her studies to gemology at the Gemological Institute of America.

E. Model of United States Foreign Policy and Protection of the Diamond Trade.....	109
V. RECOMMENDATIONS	113
A. Expanding KPCS Legal Force and Definition of “Conflict Diamond”	113
B. Civil Society and Private Sector Supply Chain Due Diligence.....	114
C. Implementation of FATF Recommendations	116
VI. CONCLUSION	118

I. INTRODUCTION

“A diamond is forever.”¹ This iconic four-word sentiment evidences the diamond industry’s masterful influence over consumer behavior.² Beyond perceptions of permanence and beauty lies a shadowy world of conflict, corruption, and death. At the end of the twentieth century, reports of “blood” or “conflict diamonds” fueling gruesome violence across nations like Angola, Liberia, and Sierra Leone, thwarted the diamond industry’s ability to maintain a curated gloss on public perceptions.³ The 2006 release of the Leonardo DiCaprio action thriller *Blood Diamond* spurred public outrage,

¹ *A Diamond is Forever*, DE BEERS GROUP, <https://www.debeersgroup.com/about-us/a-diamond-is-forever> (last visited Dec. 5, 2022). Coined in 1947, the De Beers mining company’s infamous tagline became known as the “The Slogan of the Century” in 1999. *See id.*

² *See generally* J. Courtney Sullivan, *How Diamonds Became Forever*, N.Y. TIMES (May 3, 2013), <https://www.nytimes.com/2013/05/05/fashion/weddings/how-americans-learned-to-love-diamonds.html>. Diamond engagement rings used to be “money down the drain,” but now, “a girl is not engaged unless she has a diamond engagement ring.” *Id.* De Beers controlled the world’s rough diamond supply and sought to create permanent demand for diamond engagement rings, a luxury item traditionally relegated only to the wealthy. *Id.* Following the Great Depression, De Beers implemented the tagline and marketing campaign, successfully influencing cultural norms by creating “a situation where almost every person pledging marriage feels compelled to acquire a diamond engagement ring.” *Id.*

³ A GUIDE TO THE KIMBERLEY PROCESS 4, 6 (Partnership Africa Canada et al. eds., 2nd ed. 2015) <https://impacttransform.org/wp-content/uploads/2018/03/A-Guide-to-the-Kimberley-Process-2015.pdf>. The diamond industry “feared a consumer boycott” as evidence of diamond-fueled conflict amassed. *See id.* at 6.

putting retailers on the defensive and ultimately tarnishing the diamond industry's sparkling reputation.⁴

Born of the blood diamond crisis, the Kimberley Process ("KP") is the standard-bearer of the multi-billion-dollar global diamond industry's governance system.⁵ The KP is a multilateral trade regime designed to protect against the flow of "conflict diamonds" into the legitimate diamond supply chain.⁶ The KP Certification Scheme ("KPCS") is legally binding through domestic legislation in eighty-five nations and requires KPCS Participant nations to implement shipping safeguards and certify rough diamonds as "conflict free."⁷ Yet KPCS's narrow definition of "conflict diamond" does not protect against diamonds tainted by torture, human trafficking, child labor, sexual violence, organized crime, and the unscrupulous acts of corrupt state actors.⁸

Critics describe international efforts to curb the conflict diamond trade as merely a "smokescreen" designed to placate concerned consumers.⁹ The lack of transparency and number of potential "loupe" holes in the KP create the perfect cover for

⁴ See *BLOOD DIAMOND* (Warner Bros. 2006). The film tells the fictional tale of a mercenary smuggler "[f]orced to confront the brutal human cost" of Sierra Leone's diamond-fueled civil war and his journey to seek redemption instead of financial reward after he experienced a change of heart. See *Blood Diamond*, WARNER BROS., <https://www.warnerbros.com/movies/blood-diamond> (last visited October 22, 2022).

⁵ See *What is the Kimberley Process?* KIMBERLEY PROCESS, <https://www.kimberleyprocess.com/en/what-kp> (last visited Dec. 22, 2021).

⁶ See *id.*

⁷ *The Kimberley Process Certification Scheme Core Document*, KIMBERLEY PROCESS § 1, <https://www.kimberleyprocess.com/en/kpcs-core-document> (last visited Jan. 1, 2022) [hereinafter CORE DOCUMENT]. The KPCS defines a "Participant" as "a state or a regional economic integration organization for which the Certification Scheme is effective." *Id.*

⁸ See *id.* The KPCS narrowly defines "conflict diamonds" as "rough diamonds used by rebel movements or their allies to finance conflict aimed at undermining legitimate governments." See *id.* (emphasis added).

⁹ *Conflict Diamond Chain Tracing Led by Jason Miklian*, PRIO, <https://www.prio.org/projects/1619> (last visited October 22, 2022). Frustrated co-founder of the KP, Global Witness, dropped out of the KP criticizing it as "little more than a smokescreen for governments to offer the illusion of action." *Id.*

smuggling, corruption, and human rights abuses.¹⁰ As the plight of “blood diamonds” fades from the political spotlight, the façade of regulation and transparency accomplishes little to protect the millions of lives who are forced daily to bear the macabre costs of the global diamond trade.¹¹

Maintaining integrity in the diamond supply chain is both a public policy and national security interest.¹² This Comment presents critical security threats within the global supply chain, ranging from human rights atrocities in diamond mines to authenticity issues with domestic importation and verification. The diamond supply chain is transnational and highly complex—a convenient target for “international and multijurisdictional” diamond trafficking, money laundering, terrorist financing, and organized crime.¹³ This Comment assesses the existing framework’s effectiveness by studying the interplay between the KP, role model nations, impoverished diamond-rich nations, and the illicit actors within the illegal diamond “shadow economy.”

Section II of this Comment explains the diamond mining process and the KP’s international regulatory framework. This Section explores the complexities affecting the global diamond supply

¹⁰ See SIMON MACKENZIE, *TRANSNATIONAL CRIMINOLOGY: TRAFFICKING AND GLOBAL CRIMINAL MARKETS* 101 (2020).; see also Leah Valentine, *A New Way to Sparkle: GIA and IBM Team Up to Revolutionize the Diamond Industry*, IBM CORP., <https://www.ibm.com/case-studies/gemological-institute-of-america/> (last visited Dec. 29, 2021). A jeweler’s “loupe” is a small tool common in the diamond trade that allows gemologists to inspect the color and clarity of a diamond under 10x magnification. See *id.*

¹¹ See generally Therese Sjöström, *Childhood Lost: Diamond Mining in the Democratic Republic of the Congo and Weaknesses of the Kimberly Process* 8, 16 (2016), https://swedwatch.org/wp-content/uploads/2016/12/83_swedwatch_drc_diamonds_0.pdf (stating that in addition to the victims of human trafficking that are brutally beaten, raped, and forced to labor in diamond mines, experts estimate that around one million children between the ages 5-17 work in small-scale, “artisanal” diamond mines).

¹² See *infra* Section III (discussing the public policy and security imperatives for protecting against tainted diamonds in the global diamond supply chain).

¹³ See FIN. ACTION TASK FORCE, *MONEY LAUNDERING AND TERRORIST FINANCING THROUGH TRADE IN DIAMONDS* 6 (2013), <https://www.fatf-gafi.org/media/fatf/documents/reports/ML-TF-through-trade-in-diamonds.pdf>.

chain and threats posed to the legitimate diamond industry by the diamond “shadow economy.” Section III examines diamond trafficking and security threats arising from weaknesses within the global KP framework. Section IV of this Comment analyzes the impact of the KP controls on eliminating conflict diamonds from the global supply chain. In assessing the critical weaknesses of the KP, this Section recognizes the strength of the United States’s leadership in protecting the legitimate diamond trade. Section V offers recommendations to strengthen the KP framework, support private sector due diligence, and promote development in mining countries. This Section petitions for the expeditious expansion of the KPCS’s narrow definition of conflict diamonds to protect the integrity of the supply chain and prevent further criminal exploitation of the legitimate diamond trade.

II. BACKGROUND

A. *Diamond Mining Process*

Most diamond mining is a crude process performed by unskilled above-ground laborers armed with rudimentary picks, shovels, and sieves, or divers who mine underwater for hours at a time.¹⁴ Unlike the sophisticated industrial mining sector, the world’s gem-quality diamonds typically originate in alluvial deposits mined in small-scale, difficult-to-control, “artisanal” operations in impenetrable jungles.¹⁵ Miners unearth these stones from riverbeds or shallow deposits, laboring in informal mines absent meaningful regulation.¹⁶ Miners either receive a legitimate license from local authorities to dig for diamonds, or dig without permits, coining the term “illegal miners.”¹⁷ Illicit mining is a “regular phenomenon” in many countries, like the Democratic Republic of Congo (“DRC”),

¹⁴ See *id.* at 18.

¹⁵ See *id.* In this Comment, “[a]rtisanal” refers to unorganized mining activity that does not use sophisticated machinery. An “artisanal” miner is defined as a subsistence laborer who is not officially employed by a mining company or who works independently, typically laboring by hand or crude tools. See *id.*

¹⁶ See Sjöström, *supra* note 11, at 12.

¹⁷ See Dina Siegel, *Trafficking of “Conflict Diamonds,”* in ROUTLEDGE HANDBOOK OF INT’L CRIMINOLOGY 200, 204–05 (2011).

where less than 10% of diamond miners are officially permitted to dig.¹⁸

“Artisanal miners” extract up to 20% of the world’s gem-quality diamonds and often operate in unregulated and unsafe conditions.¹⁹ Diamonds are primarily sourced from the African continent, but also originate from Canada, Russia, Australia, and South America.²⁰ When artisanal laborers discover a diamond, the value of the stone is evaluated “on the spot.”²¹ The earnings are divided among the ten to fifty workers at the discovery location, unless the discoverer smuggles it out of the mine and sells it directly to a local trader.²² Some mining companies employ armed guards to watch the miners, to ensure that “nothing is hidden in the mouth, nose, or clothes” of the laborers.²³ Once extracted from the earth, rough diamonds are purchased by local street vendors or regional dealers and sold into the global diamond market.²⁴

B. *The Kimberly Process*

The product of two years of negotiations between “government, industry, and NGO representatives,” the KP was crafted to establish a standardized certification scheme for shipments of rough diamonds destined for international transit.²⁵ The KP is a voluntary

¹⁸ See *id.* (stating illegal mining occurs alongside and “interfaces with” legal, licensed diamond mines); see MACKENZIE, *supra* note 10, at 102.

¹⁹ See Sjöström, *supra* note 11, at 12.

²⁰ See *id.* Countries like Canada and Australia mine diamonds industrially and under “clear regulations” and enjoy comparatively low human rights violations. *Id.* In contrast, alluvial diamonds in the DRC and other African countries naturally occur in remote areas and cannot be reached with industrial equipment. See *id.*

²¹ See Siegel, *supra* note 17, at 205.

²² See *id.* (noting miners are tempted to hide diamonds because “the more people work at the mine, the less money each gets to earn,” which creates a culture of “mutual suspicion”).

²³ *Id.* Siegel highlights that distrust between ethnic groups in diamond-rich countries ignites conflict. See *id.* For example, in 2004, the Angolan government expelled 100,000 Congolese migrants from the country for allegations of stealing stones while working in the local mines. See *id.*

²⁴ See FIN. ACTION TASK FORCE, *supra* note 13, at 19–20.

²⁵ See Simon Mackenzie, *Do We Need a Kimberly Process for the Illicit Antiquities Trade?*, COUNTERING ILLICIT TRAFFIC IN CULTURAL GOODS 151, 152 (France

“tripartite conference” comprised of member governments implementing regulatory laws, non-governmental organizations (“NGO”) advocating against human rights abuses, and the World Diamond Council (“WDC”) representing the interests of the industry’s most powerful diamond producers, jewelers, and exchanges (collectively “KP Participants”).²⁶ KP Participants meet twice a year under a rotating chairmanship.²⁷ KP decisions are made by unanimous consensus amongst KP Participants.²⁸

The KP is not an enforceable international treaty or legislative instrument,²⁹ but instead its legal force derives from a KP Participant’s voluntary adoption of the KPCS recommendations through domestic legislation.³⁰ Including the United States, eighty-two governments have enshrined the KPCS into law.³¹ Shortly after the creation of the KP in 2003, the United States implemented the international KPCS framework through the Clean Diamond Trade Act, 19 U.S.C. §§ 3901-3913.³² Implementing the KPCS requires KP Participants to: (1) satisfy “minimum requirements” and “establish national legislation,

Desmarais ed., 2015), <https://traffickingculture.org/app/uploads/2016/01/2015-ICOM-Do-we-need-a-Kimberley-Process.pdf>.

²⁶ See MACKENZIE, *supra* note 10, at 107; see also *What is the Kimberly Process?*, *supra* note 5 (“The Kimberley Process welcomes all countries who are willing and able to implement its minimal requirements.”).

²⁷ See *What is the Kimberly Process?*, *supra* note 5 (stating that participants and civil society observers meet twice annually at “intercessional and plenary meetings”); Hans Merket, *Belgium’s Fight Against Conflict Diamonds*, INT’L PEACE INFO. SERV., 1, 27 (2021), <https://ipisresearch.be/wp-content/uploads/2021/05/Belgiums-fight-against-conflict-diamonds.pdf> (noting that the chairmanship of these meetings rotates among participants).

²⁸ See CORE DOCUMENT, *supra* note 7, at 2, 9 (“Participants are to reach decisions by consensus. In the event that consensus proves to be impossible, the Chair is to conduct consultations.”); see also Merket, *supra* note 27, at 27, 50 (“Decisions in the KP are based on consensus amongst the participating states . . . [D]ecisions are only taken if none of the 56 participants express disagreement.”).

²⁹ See FIN. ACTION TASK FORCE, *supra* note 13, at 24.

³⁰ MACKENZIE, *supra* note 10, at 108. The KP does not include all nations involved in the diamond trade. See FIN. ACTION TASK FORCE, *supra* note 13, at 24.

³¹ *Working Together to Halt Conflict Diamonds*, KIMBERLY PROCESS, <https://www.kimberlyprocess.com/en/kp-action> (last visited October 22, 2022). KP Participants include nations involved in the production, trade, and retail sale of diamonds. See generally *What is the Kimberly Process?*, *supra* note 5.

³² See The Clean Diamond Trade Act, 19 U.S.C. 3901 §§ 3901-3913 (2003).

institutions, and import/export controls;” (2) “commit to transparent practices and to the exchange of critical statistical data;” (3) trade only with fellow KP Participants who also satisfy the fundamentals of the agreement; and (4) “certify shipments of rough diamonds as ‘conflict-free’ and provide the supporting certification.”³³ Participating governments must submit annual reports to the KP and are encouraged to engage in “voluntary self-regulation initiatives” in their respective nations.³⁴ The KP optimistically estimates that 99.8% of the world’s diamonds come from “conflict-free sources.”³⁵

Criminologists and industry experts disagree.³⁶ The KP’s narrow definition of “conflict diamond” fails to capture diamonds linked to corruption, crime, and conflict facilitated by state actors, armed groups, terrorists, or transnational organized crime groups.³⁷ The Central African Republic (“CAR”) is the only country in the world that currently meets the KP’s definition of a conflict diamond-

³³ See *What is the Kimberly Process?*, *supra* note 5. The KPCS framework sets out “minimum requirements” and voluntary commitments that prospective participants must make to gain membership. *Id.*

³⁴ See CORE DOCUMENT, *supra* note 7, at 7 (“Participants understand that a voluntary system of industry self-regulation . . . will provide for a system of warranties underpinned through verification by independent auditors of individual companies and supported by internal penalties set by industry . . . to facilitate the full traceability of rough diamond transactions by government authorities.”); see generally DEP’T OF STATE, U. S. ANNUAL REPORT TO THE KIMBERLEY PROCESS 7 (2020), https://www.kimberleyprocess.com/en/system/files/documents/united_states_us_annual_report_2020_0.pdf (discussing KP self-regulation through “a system of warranties”).

³⁵ See *What is the Kimberly Process?*, *supra* note 5. In 2019, the total value of diamonds traded through the KPCS was \$13,574,417,964.86. *Id.*

³⁶ See INTER-GOVERNMENTAL ACTION GROUP AGAINST MONEY LAUNDERING (GIABA), MONEY LAUNDERING AND TERRORIST FINANCING LINKED TO THE EXTRACTIVE INDUSTRY / MINING SECTOR IN WEST AFRICA 16–17 (2019) https://www.giaba.org/media/f/1104_pkbat_41745%20ENG-ML%20-%20TF%20IN%20EXTRACTIVE.pdf [hereinafter GIABA].

³⁷ See *Transnational Organized Crime*, FED. BUREAU OF INVESTIGATION (FBI), <https://www.fbi.gov/investigate/organized-crime> (last visited Jan. 1, 2022) (Transnational organized crime groups are “self-perpetuating associations of individuals who operate, wholly or in part, by illegal means and irrespective of geography. . . they vary from hierarchies to clans, networks, and cells” and “protect their activities through corruption, violence, international commerce . . . exploiting national boundaries.”).

producing nation.³⁸ Consistent with widespread criticisms of the KP's weaknesses as the industry's primary tool for regulating the diamond trade, the KP will fade into obsolescence if this definition is not expanded.

C. *KPCS Certification and Vulnerabilities in the Global Diamond Supply Chain*

An understanding of the unique complexity of the diamond supply chain is necessary to appreciate the vulnerabilities of the KP and the dangers of permitting industry self-regulation. A single diamond will pass through thousands of hands, across many borders, and generate several transactions before reaching its retail destination. Rough diamonds are cut, polished, and sold in a series of transactions known as the "diamond pipeline" where dealers mix freshly polished stones with their existing diamond stock, sometimes obscuring the origin of the stones by the time the diamonds reach their final retail destinations.³⁹ Each stage of the diamond pipeline multiplies the risks of unscrupulous or criminal exploitation.⁴⁰

In nations like the DRC, nongovernment forces and "regionally dominant warlords" are complicit in illicit diamond exportation, tainting the legitimate diamond supply.⁴¹ These groups abuse their access to arms, seize control of the mines, and beat the local

³⁸ See GIABA, *supra* note 36.

³⁹ See Siegel, *supra* note 17, at 188–190. Criminologists identify four stages of the diamond pipeline: (1) production (mining); (2) trading of rough stones; (3) cutting and polishing rough stones; (4) and retail sales of polished stones—each of these stages is prone to criminal exploitation. *Id.* ("One of the characteristics of the diamond market is the parallel movement of licit and illicit diamonds, which can merge at every stage of the pipeline").

⁴⁰ See *id.* at 195 ("There are numerous risks in the diamond pipeline, but the most common relate to stealing, hiding, and smuggling raw diamonds"). For example, "one of the popular ways for African criminal groups to steal from mines is by avoiding local dealers and bringing rough diamonds . . . directly to Europe." *Id.* at 189.

⁴¹ MACKENZIE, *supra* note 10, at 104. For example, rebel warlord, Charles Taylor, became President of Liberia through insurgency and funded his militia forces through a "commodities-for-arms exchange network." *Id.* at 102. He controlled neighboring mines in Sierra Leone, where he fomented insurrection, plundered diamonds, and diverted the proceeds to arms dealers. *Id.*

population into forced labor.⁴² Conflict in developing origin nations is not limited to local actors.⁴³ International capital markets hire private mercenaries to compete for control of the diamond mines.⁴⁴ In an industry that exploits global instability, large multi-national companies with foreign mining interests contribute to the instability of nations with weak governance.⁴⁵

KP certificates do not list individual mining companies or identify a mine of origin.⁴⁶ Many origin countries have a “mixed export stream” where certified stones and undeclared conflict diamond export streams comingle.⁴⁷ Criminologists identify “shadow facilitators” responsible for covertly lubricating this system by expert documentation forgery, money laundering, and bribery of border agents, corrupt officials, and shipping agents.⁴⁸ This practice gives origin countries an appearance of international regulatory compliance, while the shadow economy generates a “self-supporting system” of corruption, violence, and rampant arms and diamond smuggling.⁴⁹ Once diamonds are shipped from their place of origin into another country, the second country is replaced on the KP certificate as the exporter—further interrupting the traceable provenance of a diamond in the global pipeline.⁵⁰ The success of the shadow economy requires illicit actors to transform rough diamonds

⁴² See *id.* at 104.

⁴³ See *infra* Section IV.D. (discussing weaknesses in the international diamond supply chain and concerns following investigative journalist leaks implicating powerful industry players in corruption across the globe).

⁴⁴ See IAN SMILLE ET AL., *THE HEART OF THE MATTER, SIERRA LEONE, DIAMONDS, & HUMAN SECURITY*, 6-7, 54 (2000).

⁴⁵ MACKENZIE, *supra* note 10, at 106. “[I]f you steal and smuggle a diamond as a private individual, you are a trafficker; but if you strongarm a weak government into allowing you and your mercenaries to take thousands of diamonds, you are at the cutting edge of global commercial entrepreneurialism in the mining industry.” *Id.*

⁴⁶ See CORE DOCUMENT, *supra* note 7, at 12 (noting KPCS “minimum requirements” include “country of origin”).

⁴⁷ See MACKENZIE, *supra* note 10, at 104. Low-level trafficking also contributes to the diamond shadow economy. See *id.* An informant described the ease by which individual traffickers contribute to the diamond shadow economy: “You can wear [diamonds], hide [diamonds] in a bag, put [diamonds] in your boots.” See *id.*

⁴⁸ See *id.* at 100.

⁴⁹ See *id.* at 104.

⁵⁰ See generally CORE DOCUMENT, *supra* note 7, at §§ II(a), IV(a)-(e).

into retail-worthy condition by infiltrating the legitimate diamond supply chain.⁵¹

A diamond's beauty is revealed through the lapidary process of cutting, faceting, and polishing.⁵² The market value of a polished diamond stone varies from "tens of dollars per carat to tens of thousands per carat."⁵³ Once cut and polished, diamonds no longer qualify for KP certification, thus they become even more difficult to track.⁵⁴ International diamond brokers connect the illicit supply of cut diamonds to the "later stage trade" responsible for moving diamonds to retail consumers in "distant markets."⁵⁵ Licit and illicit rough diamonds are exported to the world's diamond centers and mixed on an "industrial scale[.]" often condoned or facilitated by corrupt regional officials.⁵⁶ Rough diamonds are sold wholesale between dealers in monopolized diamond centers in Antwerp, London, New York, Tel Aviv, and Dubai.⁵⁷ Dealers "handle hundreds of millions of dollars' worth" of diamond inventory and sell diamonds to other dealers, wholesalers, and jewelry manufacturers.⁵⁸ Global trading centers are also used "as a meeting place for divergent criminal entrepreneurs" seeking anonymity to discuss logistics and plans to smuggle diamonds "from areas of conflict."⁵⁹

The world's largest diamond hub, Antwerp, Belgium, is a longtime player in the global diamond trade and reports over seventy nationalities represented in rough diamond transactions.⁶⁰ In the early 2000s, suspicions of the role of Antwerp in transnational conflict diamond smuggling led to a gradual "tightening of controls" and

⁵¹ See discussion *generally infra* Section II.

⁵² See FIN. ACTION TASK FORCE, *supra* note 13, at 18.

⁵³ *Id.*

⁵⁴ See *id.* at 19. The KPCS only covers "rough diamonds." See *generally* CORE DOCUMENT, *supra* note 7, at 1-16.

⁵⁵ See MACKENZIE, *supra* note 10, at 103.

⁵⁶ See *id.* at 105.

⁵⁷ See *id.* at 100, 106.

⁵⁸ See FIN. ACTION TASK FORCE, *supra* note 13, at 19.

⁵⁹ See Siegel, *supra* note 17, at 206.

⁶⁰ See Merket, *supra* note 27, at 13.

“intensified actions by law enforcement.”⁶¹ These “strict Belgian controls” deterred criminals, dispersing illicit activity to diamond trading hubs with less government oversight.⁶² The KP did little to prevent the movement of criminal activity to “producer countries with weak internal controls[,]” which allowed conflict diamonds to enter the legitimate supply chain and receive KP certification without detection.⁶³ Under the current regulatory framework, “there is little KP [P]articipants can do to detect” these abuses of the legitimate supply chain intended to hide conflict diamonds, “no matter how strict [a country’s] controls” are.⁶⁴ The global diamond industry has long functioned as a “family . . . business” based on trust, often sealing million dollar deals with a handshake.⁶⁵ The industry is experiencing trends in scaling, internationalization, and vertical integration, “increasingly dominated by big multinational companies” that are closely-held “family-owned enterprises” raising corporate governance and transparency concerns.⁶⁶ The diamond industry is a world of family names, world leaders, and bad actors—sometimes one in the same—hidden behind a veil of secrecy and operating in the shadows.

Despite Belgium’s reputation for excellence in oversight of its diamond trade, Belgian banks “have withdrawn from the diamond industry, largely to avoid risks of money laundering and tax evasion.”⁶⁷ Belgium’s tightened controls, along with American sanctions, act as a “balloon” squeezing unscrupulous actors in the diamond sector to countries with a more *laissez-faire* regulatory approach.⁶⁸ These

⁶¹ *Id.* at 4-5. In the ultimate paradox, Belgium’s heightened regulation may cause the nation to lose its dominance of the industry as experts predict that Dubai is poised to become the globe’s primary diamond trading hub. *See id.* at 5.

⁶² *See id.*

⁶³ *See id.*

⁶⁴ *See id.* at 4.

⁶⁵ *See* FIN. ACTION TASK FORCE, *supra* note 13, at 21 (noting industry knowledge passes from one generation to the next, making it exceedingly difficult to enter the diamond trade as an outsider).

⁶⁶ *See* Merket, *supra* note 27, at 14.

⁶⁷ *See id.* at 21 (citing *When Are Diamonds Truly Conflict-Free?*, KINGDOM OF BELGIUM FED. PUB. SERV. (Mar. 5, 2020), <https://diplomatie.belgium.be/en/policy/policy-areas/highlighted/when-are-diamonds-truly-conflict-free>).

⁶⁸ *See* Merket, *supra* note 27, at 5 (noting Dubai and other trading hubs have lured diamond businesses away by employing relaxed regulations); *see also* Clay R. Fuller,

jurisdictions serve as tax havens and provide “legal and financial secrecy.”⁶⁹ Trade concentrated in Dubai, which is poised to overtake Antwerp as the globe’s primary diamond trading hub, increases the challenges for “authorities to detect and prosecute conflict diamond smuggling networks” that abuse loopholes in weak jurisdictions and contaminate the global diamond trade.⁷⁰

III. DIAMOND TRAFFICKING AND RISKS ARISING FROM THE KIMBERLEY PROCESS

The “resource curse” is a widely documented phenomenon that occurs when countries rich in mineral resources remain extremely poor and the local populations receive no benefit from the trade.⁷¹ The mineral extraction industry is plagued by “armed groups, criminal gangs, corrupt elites and unscrupulous companies” that siphon untold value from developing economies through illicit activities, often exposing the locals to the “human rights impacts of pollution, conflict, and exploitation.”⁷² The sheer scope of illegal activities linked to the rough diamond industry underscores the reality that KP certification is not a guarantee of ethical practice or true compliance with KPCS protocols or the purpose behind the KP.

The extractive mining sector is particularly susceptible to illicit activities like money laundering and terrorist financing. The precious minerals and diamond trade is “linked to illicit financial flows, corruption, drug trafficking, arms smuggling, terrorist

Unraveling the Web: Dismantling Transnational Organized Crime Networks, AM. ENTER. INST. (2018) (“[T]hink of it as a balloon—U.S. sanctions are squeezing the balloon and it’s forcing the wealth and capital [of criminal actors] to move in-between [nations lacking strong rule of law protections] and around the world . . . creating cover for transnational organizations and terrorist organizations.”).

⁶⁹ See Khadija Sharife & John Grobler, *Kimberley’s Illicit Process*, WORLD POL. J. (2014) <http://worldpolicy.org/kimberleys-illicit-process/>. A three-month investigation revealed that through the under voicing of rough diamonds in Dubai, criminals “managed to subvert and cleanse several billion dollars’ worth of African diamonds of questionable origin.” See *id.*

⁷⁰ See Merket, *supra* note 27, at 5.

⁷¹ See Sjöström, *supra* note 11, at 17.

⁷² See AMNESTY INT’L, CHAINS OF ABUSE: THE GLOBAL DIAMOND SUPPLY CHAIN AND THE CASE OF THE CENTRAL AFRICAN REPUBLIC 2 (2015), https://www.es.amnesty.org/fileadmin/noticias/Diamond_Report__final__01.pdf.

financing” and a multitude of other illegal enterprises.⁷³ Diamonds, one of the most valuable commodities in the world, are sold to finance terrorism, insurgency, and war efforts.⁷⁴ Post-Civil War Africa remains plagued by “a vicious triangle of crime, corruption, and conflict” surrounding the extractives sector “engulfed by international bribery scandals, involving a complex web of multinational corporations, as well as political, business and military elites.”⁷⁵ The United States treats the exploitation of natural resources as a matter of national security and a grave threat to economic and political stability in mineral-rich countries.⁷⁶ Improved governance of the diamond mining sector is necessary to combat the corruption, illicit criminal enterprises, and gross human rights violations plaguing these nations.

A. *Diamond Trafficking*

The intelligence community reports that diamonds are “one of the most illicitly trafficked and traded products in the world.”⁷⁷ Rough diamonds are associated with “war crimes, murder, corruption, complex organized crime, and a variety of other lesser crimes.”⁷⁸ Like other types of trafficking, estimating the scope of the illicit diamond trade is difficult due to “misdeclaration and under-reporting” of rough

⁷³ GIABA, *supra* note 36, at 14.

⁷⁴ *See id.* at 8 (stating reports suggest that terrorist cells, insurgent groups, and organized crime groups continue to “benefit from the illicit proceeds generated from mines operated in conflict zone[s]”).

⁷⁵ *See id.* at 17 (“From the perspective of law enforcement, such understanding [of possible illicit financial flows from extractive industries in West Africa] is sine qua non to developing patterns and trends in money laundering associated with the industry, such as would enable appropriate AML measures.”).

⁷⁶ *See* The Clean Diamond Trade Act, 19 U.S.C. § 3901 (2003); *see also* 22 U.S.C. 2656 § 1262(2), 1263(a)(1)–(2) (noting that the United States issues sanctions against individuals and companies due to corruption and gross human rights abuses).

⁷⁷ *See FBI Counters Illicit Diamond Trafficking and Trade*, FED. BUREAU OF INVESTIGATION, <https://www.fbi.gov/video-repository/ftwdiamondinternetyoutubesharingmp4.mov/view> (last visited Nov. 5, 2022).

⁷⁸ *See id.* Gemologists traditionally evaluate diamonds by four criteria, known as the “Four C’s.” Supervisory Special Agent Eric Ives, leader of the FBI’s Diamond Trafficking Program, explains that in the FBI, there are “five Cs: color, cut clarity, carat, and *criminals*.” *Id.* (emphasis added).

diamond exports.⁷⁹ Global trafficking experts compare imports in “market countries” to declared exports from origin countries with “known legal and illegal diamond mining activities[,]” revealing a “sizable global illicit marketplace” for rough diamonds.⁸⁰

Within the KP framework, the diamond pipeline presents many weak points for criminals to “steal, hide, and transport rough diamonds.”⁸¹ Crimes in the diamond sector span from local smuggling to complex transnational trafficking.⁸² Leading criminologists identify three primary types of trafficking in the diamond sector.⁸³ First, “smuggling for survival” occurs when individual impoverished miners steal the diamonds they extract in the mines and sell them directly to local dealers.⁸⁴ In many mines, earnings from a single diamond may be divided amongst ten to fifty workers, tempting miners to smuggle stones to improve their family’s situation.⁸⁵ Second, “smuggling by organized crime groups” involves falsifying KP certificates to create “legal cover” for diamonds originating from conflict regions.⁸⁶ Individual smugglers or couriers employed by organized crime syndicates smuggle stones into Europe with a tourist or business visa.⁸⁷ Smugglers are often intercepted at airports with diamonds in their stomachs or hidden in double-bottom suitcases.⁸⁸ Third, “diamond whitewashing” occurs when criminals smuggle stones from conflict regions into neighboring nations with a legitimate diamond trade.⁸⁹ Even unsophisticated traffickers can misrepresent a diamond’s point of discovery or slip it into the legitimate supply with relative ease.⁹⁰ Despite tremendous strides in gemology technologies and significant political pressure, the origin of

⁷⁹ MACKENZIE, *supra* note 10, at 71.

⁸⁰ *Id.*

⁸¹ Siegel, *supra* note 17, at 201.

⁸² *See id.*

⁸³ *See id.* at 204.

⁸⁴ *See id.*; *see also* MACKENZIE, *supra* note 10, at 102.

⁸⁵ *See* Siegel, *supra* note 17, at 205.

⁸⁶ *See id.*

⁸⁷ *See id.* at 205.

⁸⁸ *See id.*

⁸⁹ *See id.* at 206.

⁹⁰ *See* MACKENZIE, *supra* note 10, at 102.

a specific diamond is difficult to verify with mineralogical analysis.⁹¹ Combined with lack of KP oversight and “weak state control” in these conflict nations, diamond trafficking is an easy and lucrative enterprise for local smugglers and sophisticated criminals alike.⁹²

B. Money Laundering

As liquid as cash, rough diamonds are nearly impossible to trace and provide bad actors unique anonymity in transactions.⁹³ The “diamond sector” is a Designated Non-Financial Business and Profession (“DNFBP”), an industry with a high risk of criminals and terrorists abusing the legitimate trade for the purposes of money laundering and terrorist financing.⁹⁴ Distinguishable from DNFBPs in trade-based industries, the diamond sector is especially high-risk for money laundering and terrorist financing abuses because diamonds are also used as a form of currency.⁹⁵ The diamond market is a “dynamic international trading sector” with trades occurring in financial institutions across the globe.⁹⁶ Unlike the strict regulations of financial institutions, the global diamond trade lacks uniform regulation and monitoring.

The untraceable and anonymous nature of diamonds presents unique anti-money laundering (“AML”) and counter-terrorist financing (“CFT”) challenges for law enforcement.⁹⁷ The Financial Action Taskforce (“FATF”), an intergovernmental agency integral to developing global AML/CFT standards, recognizes that the unusually high per gram value of diamonds makes the commodity “particularly vulnerable to illegal division” and exploitation by criminals.⁹⁸ Described as leakage, experts estimate that 5-10% of the annual West

⁹¹ See Siegel, *supra* note 17, at 204, 206.

⁹² See *id.* at 204.

⁹³ See FIN. ACTION TASK FORCE, *supra* note 13, at 6, 49, 74.

⁹⁴ See *id.* at 9, 73.

⁹⁵ *Id.* at 9.

⁹⁶ *Id.*

⁹⁷ See *id.* at 3, 9, 55.

⁹⁸ See FIN. ACTION TASK FORCE, REPORT ON MONEY LAUNDERING TYPOLOGIES 1, 21–22 (2003), https://www.fatf-gafi.org/media/fatf/documents/reports/2002_2003_ML_Typologies_ENG.pdf; see FIN. ACTION TASK FORCE, *supra* note 13.

African diamond production is lost in the illicit diamond market through theft or pilferage.⁹⁹ Notably, the KP does not contemplate money laundering or terrorist financing activities.¹⁰⁰ Without security and enforcement measures in each phase of the diamond supply chain, the illicit diamond market will remain an international money laundering and terrorist financing security threat.

The portable nature of this high-value commodity allows criminals to easily move and conceal value from their illicit enterprises and to facilitate diamond trade-based money laundering.¹⁰¹ Diamonds are used as “an alternate currency” and illegally exported as a “means of moving cash in economies where currency no longer [has] value.”¹⁰² Criminal enterprises continue to evolve the sophistication of their money laundering efforts to conceal and disguise the profits of illicit activity and the origin of their profits.¹⁰³ Foreign nationals smuggle diamonds out of conflict-ridden countries as a means of “repatriating profits, or of obtaining hard currency needed to buy and import goods.”¹⁰⁴ Common methods of transferring value involve double invoicing and the undervaluation of rough diamond exports.¹⁰⁵

Developing effective AML strategies in the diamond sector requires “analysis that systematically captures the methods and techniques used to launder the illicit financial proceeds.”¹⁰⁶ The Inter-Governmental Action Group against Money Laundering in West Africa (“GIABA”) compiled red flags in the diamond market that confirm how the weak regulatory framework of the KP contributes to “perpetuating corruption, money laundering, and illicit financial flows.”¹⁰⁷ GIABA reports that existing analysis does very little to assist

⁹⁹ FIN. ACTION TASK FORCE, REPORT ON MONEY LAUNDERING TYPOLOGIES, *supra* note 98, at 21.

¹⁰⁰ See FIN. ACTION TASK FORCE, *supra* note 13, at 24.

¹⁰¹ GIABA, *supra* note 36, at 60.

¹⁰² See *id.* at 13.

¹⁰³ See FIN. ACTION TASK FORCE, *supra* note 13, at 9.

¹⁰⁴ See GIABA, *supra* note 36, at 13.

¹⁰⁵ See *id.*

¹⁰⁶ See *id.* at 17.

¹⁰⁷ GIABA, *supra* note 36, at 58-59. These indicators include: (1) false declaration of diamonds for export; (2) complicity of state officials in issuing diamond export licenses without payment of tax; (3) weak oversight in the artisanal mining sector;

law enforcement with combatting money laundering in the mineral extraction sector.¹⁰⁸

C. *Terrorist Financing*

The illegal diamond trade, like any illicit enterprise, can be used to finance terrorism.¹⁰⁹ Documented cases of terrorist organizations using diamonds are extremely limited. FATF published its typologies research into the diamond trade, aptly cautioning that it “should not be assumed that terrorist utilization is uncommon because of the limited case examples.”¹¹⁰ Indeed, rough diamonds are a high-value and hard-to-trace commodity that allows criminals to remain anonymous and operate with relative ease within the existing soft legal framework.¹¹¹ Money laundering and terrorist financing through the diamond trade remains a pressing international security issue simply because in the world of terror, corruption, and crime, there is no parallel to the value and opportunity a diamond presents.

Diamond terrorist financing statistics remain elusive because law enforcement and the intelligence community do not release information about diamond crimes unless the use or possession of a diamond was integral to an arrest or criminal charges.¹¹² FATF recognizes that terrorist financing information related to diamonds is not made public due to ongoing “national security concerns.”¹¹³ Within the international intelligence community, INTERPOL supports “high-level policies” to “disrupt[] the flow of terrorist

(4) bribery of public officials; (5) bulk cash payments for diamonds at overvalued or undervalued prices; (6) security officers living unexplained lifestyles incommensurate with known income; (7) large transfers made from an offshore country; (8) government officials openly involved in illegal mining; (9) use of escrow accounts to receive funds for diamond sales; (10) and large amounts paid on a regular basis without a reported business transaction. *See id.*

¹⁰⁸ *See id.* at 17.

¹⁰⁹ *See Tracing Terrorist Finances*, INTERPOL, <https://www.interpol.int/en/Crimes/Terrorism/Tracing-terrorist-finances> (last visited Dec. 15, 2021).

¹¹⁰ *See* FIN. ACTION TASK FORCE, *supra* note 13, at 10.

¹¹¹ *See* GIABA, *supra* note 36, at 60.

¹¹² *See id.* at 124.

¹¹³ *See id.*

funding” as a means of curtailing terrorist attacks.¹¹⁴ INTERPOL cooperates with a network of international bodies like FATF to achieve these goals.¹¹⁵ The proceeds from mining and smuggling diamonds, gold, and other critical mineral resources, “have become the largest source of income for non-state armed groups and terrorist organizations.”¹¹⁶ INTERPOL estimates that transnational organized crime groups operating in the DRC exploit \$338–478 million annually (with actual exploitation likely much higher) from illegal diamond smuggling operations.¹¹⁷ Armed groups in the region retain 2% of these smuggling proceeds to maintain “at least 8,000 armed fighters a year” which enable the armed groups “to continually resurface and destabilize the region.”¹¹⁸

The United States contributed several Suspicious Activity Reports (“SARs”) to FATF’s typologies research into the diamond trade.¹¹⁹ These SARs reported “suspected terrorist financing activities, including overall transactions [totaling] over USD 3 billion.”¹²⁰ The reports identified transactions implicating “individuals who have since been designated as terrorists by the US Department of the Treasury, Office of Foreign Assets Control” and transactions “that enabled Hezbollah fundraising” efforts.¹²¹ In addition to its support of international ATF efforts, the United States issues sanctions against individuals and companies involved in the diamond trade due to

¹¹⁴ See *Tracing Terrorist Finances*, *supra* note 109.

¹¹⁵ See *id.* INTERPOL cooperates with FATF to set international AML/CFT standards; FATF-style regional bodies (“FSRBs”) that promulgate best practices in their respective regions; and The Egmont Group, an international network of 159 financial intelligence units. *Id.*

¹¹⁶ See C. NELLEMAN ET AL., WORLD ATLAS OF ILLICIT FLOWS 8 (2018), <https://globalinitiative.net/wp-content/uploads/2018/09/Atlas-Illicit-Flows-FINAL-WEB-VERSION-copia-compressed.pdf>.

¹¹⁷ See *id.* at 44 (“The illicit exploitation of natural resources in eastern DRC is valued at over US\$1.25 billion a year; this falls to between US\$722 and US\$862 million if diamonds are excluded from the picture . . .”).

¹¹⁸ See *id.*

¹¹⁹ See FIN. ACTION TASK FORCE, *supra* note 13, at 127.

¹²⁰ See *id.*

¹²¹ See *id.*

suspected money laundering, terrorist financing, bribery, and gross human rights abuses.¹²²

D. *Transnational Organize Crime*

Transnational organized crime “transcends cultural, social, linguistic, and geographical boundaries and . . . knows no borders or rules.”¹²³ Rough diamonds remain highly attractive to transnational organized crime operating outside of the formal banking system.¹²⁴ Though the patterns and methods of criminal activity within the diamond industry change over time, the impact on economic stability, social stability, and state security remain an enduring problem in many diamond-rich nations. The current global supply chain enables “international diamond traders (often multinational companies) to make massive profits at the expense of poor diamond-producing countries.”¹²⁵ Companies “manipulate the price of diamonds to avoid paying tax, often involving under-valuing diamonds exported from developing countries.”¹²⁶ Authorities in Dubai show indifference to these types of tax practices in the United Arab Emirates (“UAE”), where the diamond trade is conducted in zones where corporate profits are not taxed.¹²⁷ African countries lose billions annually through illicit activity like smuggling and tax evasion, undermining the rule of law and perpetuating corruption.¹²⁸ The “illicit movement of wealth out of developing countries” is a critical threat to human rights conditions and the viability of developing nations.¹²⁹ Without improved transparency and oversight within the supply chain, bad

¹²² See generally Global Magnitsky Human Rights Accountability Act, 22 U.S.C. 2656 §§ 1262(2), 1263(a)(1)-(2) (“The President may impose sanctions [for] . . . gross violations of internationally recognized human rights . . . acts of significant corruption, including . . . the extraction of natural resources, [and] bribery . . .”).

¹²³ U.N. OFF. ON DRUGS AND CRIME, TRANSNATIONAL ORGANIZED CRIME – THE GLOBALIZED ILLEGAL ECONOMY 1 (2012), https://www.unodc.org/documents/toc/factsheets/TOC12_fs_general_EN_HIRES.pdf.

¹²⁴ See FIN. ACTION TASK FORCE, *supra* note 13, at 3–4.

¹²⁵ AMNESTY INT’L, *supra* note 72, at 3.

¹²⁶ *Id.*

¹²⁷ See *id.* at 4 (noting Amnesty International published a report criticizing the UAE government for its complicity in the “illicit flow of wealth out of Africa”).

¹²⁸ See *id.* at 3.

¹²⁹ *Id.*

actors will continue to operate in the shadows perpetuating violence and accentuating the “curse of resource endowment” in diamond-rich but poverty-stricken nations.¹³⁰

E. *Child Labor and Human Trafficking*

Diamonds rank third in the list of extractive mineral industries responsible for “the worst forms” of child and forced labor, closely following gold and coal.¹³¹ Humanitarian concerns abound in the international jewelry industry as child labor and forced labor can be “found at every step along the jewelry supply chain.”¹³² In a 2020 report, the U.S. Department of Labor found child labor and human rights abuses in diamond producing countries such as Angola, CAR, DRC, Guinea, Liberia, and Sierra Leone.¹³³ The report noted similar abuses in countries producing precious gemstones such as Tanzania and Zambia.¹³⁴ The U.S. Department of Labor subsequently recognized the DRC’s prosecution of a few isolated cases of child labor, human trafficking, and commercial sexual exploitation, despite the reality that “the children in the [DRC] are subjected to the worst forms of child labor” in the mineral extraction trade.¹³⁵ In conflict-affected regions, children laborers are recruited by threat of violence, or abducted by non-state armed groups and forced to labor in illicit mines, extracting and transporting diamonds and gold.¹³⁶

Child labor is most prevalent in the informal and illicit “artisanal and small-scale mining (ASM) sector, which operates with

¹³⁰ See GIABA, *supra* note 36, at 6, 9, 16.

¹³¹ See U.S. DEP’T OF LAB., LIST OF GOODS PRODUCED BY CHILD LABOR OR FORCED LABOR REPORT 16 (2018), <https://www.dol.gov/sites/dolgov/files/ILAB/ListofGoods.pdf>.

¹³² *Id.* at 25.

¹³³ U.S. DEP’T OF LAB., LIST OF GOODS PRODUCED BY CHILD LABOR OR FORCED LABOR REPORT 10–24 (2020), https://www.dol.gov/sites/dolgov/files/ILAB/child_labor_reports/tda2019/2020_TV_PRA_List_Online_Final.pdf.

¹³⁴ *Id.*

¹³⁵ BUREAU OF INT’L LAB. AFF., CHILD LABOR AND FORCED LABOR REPORTS, DEMOCRATIC REPUBLIC OF THE CONGO 1–8 (2020), https://www.dol.gov/sites/dolgov/files/ILAB/child_labor_reports/tda2020/Congo-Democratic-Republic-of-the.pdf.

¹³⁶ *Id.* at 2.

minimal oversight” and leaves children “uniquely exposed to hazardous working conditions.”¹³⁷ Laborers in unlicensed and small-scale mines suffer from a range of injuries and illnesses, including “diamond lung[,]” tuberculosis caused by the continued inhalation of microscopic diamond particulates.¹³⁸ The high value of diamonds along with “weak and opaque governance and regulatory oversight” are the “driving force[s] behind dictators and revolutionaries, especially in Africa, using slave and child [labor] to mine diamonds to fund conflicts.”¹³⁹

Another form of conflict-trafficking occurs when armed groups exploit the local population into forced labor in diamond mines as “an integrated part of the war effort.”¹⁴⁰ In regions “without advanced technology” and with “weak institutional controls,” human trafficking provides armed groups with an endless supply of diamonds and free labor.¹⁴¹ Victims are prevented from leaving and forced to pay a share or all of their daily wages to their traffickers.¹⁴² If a victim attempts to escape, they face certain beatings, imprisonment, or death.¹⁴³ In Sierra Leone, victims of conflict-trafficking are exploited to labor in diamond mines and live in “guarded settlements functioning as detention camps.”¹⁴⁴ Mining occurs in remote locations “where law enforcement and social control is weak,” offering endless opportunities for armed groups to exploit the vulnerable population.¹⁴⁵

¹³⁷ See *id.* at 3.

¹³⁸ See MACKENZIE, *supra* note 10, at 72.

¹³⁹ GIABA, *supra* note 36, at 12.

¹⁴⁰ See U.N. OFF. ON DRUGS AND CRIME, GLOBAL REPORT ON TRAFFICKING IN PERSONS IN THE CONTEXT OF ARMED CONFLICT 13 (2018), https://www.unodc.org/documents/data-and-analysis/glotip/2018/GloTIP2018_BOOKLET_2_Conflict.pdf.

¹⁴¹ See *id.* at 13.

¹⁴² See *id.* at 14.

¹⁴³ See *id.* at 13–14.

¹⁴⁴ See *id.* at 14.

¹⁴⁵ See U.N. OFF. ON DRUGS AND CRIME, GLOBAL REPORT ON TRAFFICKING IN PERSONS 2020, 110 (2021), https://www.unodc.org/documents/data-and-analysis/tip/2021/GLOTiP_2020_15jan_web.pdf.

Human trafficking in the extractive diamond sector shadow economy generates income for armed groups to finance their operational costs.¹⁴⁶ The Special Court for Sierra Leone heard testimony from the Tongo Fields, where one of the region's largest armed groups ran an operation with "hundreds of civilians in open fields mining diamonds" while being "watched over by armed guards holding AK-47s."¹⁴⁷ These laborers were essentially prisoners of war in a work camp. The captive labor force was comprised of "locals of the area who had been captured during the fighting[.]" who labored without pay.¹⁴⁸ Since 2019, the U.S. Customs and Border Protection Forced Labor Division has combated these abuses by prohibiting "artisanal rough-cut diamonds" mined in Zimbabwe's Marange Diamond Fields from entering the United States because of suspected use of forced labor.¹⁴⁹

Competition over the control of the diamond mines through forced labor remains a central feature to armed conflict.¹⁵⁰ Security risks arise when corrupt military officials obtain control of a mine and exploit it for personal gain.¹⁵¹ Rebel groups are often "integrated into national security forces as part of peace negotiations" creating an extreme conflict of interest between the security forces and the nation's development.¹⁵² Despite the United States' leadership in de-incentivizing these abuses through import controls and sanctions, many developing diamond origin nations continue to face critical threats to their long-term political and economic stability.

¹⁴⁶ See U.N. OFF. ON DRUGS AND CRIME, *supra* note 140, at 20.

¹⁴⁷ *Id.*

¹⁴⁸ See *id.*

¹⁴⁹ See *CBP Issues Detention Orders Against Companies Suspected of Using Forced Labor*, U.S. CUSTOMS & BORDER PROT. (Oct. 1, 2019, 12:00 PM), <https://www.cbp.gov/newsroom/national-media-release/cbp-issues-detention-orders-against-companies-suspected-using-forced>.

¹⁵⁰ See U.N. OFF. ON DRUGS AND CRIME, *supra* note 140, at 14.

¹⁵¹ See KIMBERLEY PROCESS CIV. SOC'Y COAL., *REAL CARE IS RARE: AN ON-THE-GROUND PERSPECTIVE ON BLOOD DIAMONDS AND THE FIFTH "C"* 11 (2019), <https://www.kpcivilsociety.org/wp-content/uploads/2019/10/Report-real-care-is-rare-FINAL-web.pdf>.

¹⁵² *Id.*

IV. ANALYSIS OF THE “LOUPE”-HOLES WITHIN THE KIMBERLEY
PROCESS FRAMEWORK

The closing session of the 2021 global KP Intersessional Meeting ended by predicting that without immediate efforts to reform the KP, the diamond industry would be left with “two value chains—one with consumer demand and one without.”¹⁵³ Aptly questioning the readiness of KP Participants to bring improved transparency and governance to the diamond sector, industry leaders warned that nonconforming diamond producers would be left behind.¹⁵⁴ WDC President Edward Asscher warned that producers unwilling to reform the KP would “become obsolete.”¹⁵⁵ These remarks expose a widening divide between Participants and industry stakeholders seeking to effectuate change and those preventing reform and denying the inadequacy of the KP framework. Countries tainting the diamond pipeline with the most blatant corruption and “conflict” within the meaning of the KP are unsurprisingly the most reluctant to KP reform, alleging that their countries have adequate legal frameworks and transparency within the diamond sector.¹⁵⁶ Without legislative action, the existing “soft law” voluntary KP framework continuously facilitates the unethical branding of diamonds as “conflict-free” and “clean” to consumers, while these dirty diamonds fuel conflict, finance crime, and human rights abuses throughout the diamond pipeline.

¹⁵³ Edward Asscher, *Address to Closing Session of 2021 KP Intersessional*, WORLD DIAMOND COUNCIL (June 25, 2021), https://www.kimberleyprocess.com/en/system/files/documents/2021_intersessional_closing_remarks_world_diamond_council_wdc_edward_asscher.pdf.

¹⁵⁴ See *WDC President Asscher: Those Unwilling to (KP) Change Will Become Obsolete*, THE DIAMOND LOUPE (June 29, 2021), <https://www.thediamondloupe.com/finance-and-trade/2021-06-29/wdc-president-asscher-those-unwilling-kp-change>.

¹⁵⁵ See *id.*

¹⁵⁶ See GIABA, *supra* note 36, at 20–21. GIABA conducted a survey of stakeholders in the industry regarding the adequacy of legal frameworks in the extractive mining industry. See *id.* Côte d’Ivoire—a country with a troubled past with the KP and under embargo until it could certify the origin of its rough diamonds in 2014—and Togo expressed that they have adequate legal frameworks. See *id.*; see also *Cote d’Ivoire Kimberley Process – Review Mission, Kimberly Process* (October 4, 2013), https://www.kimberleyprocess.com/en/system/files/documents/2013%20Cote%20d%27Ivoire%20Review%20Mission%20Report_0.pdf.

A. *Critical Weaknesses of the Soft Law Framework*

The KP's international soft law framework lacks legal force to regulate critical threats within the global diamond trade. The KP is a "voluntary system of industry self-regulation" and represents eighty-five countries.¹⁵⁷ The voluntary nature of the regulatory framework and lack of enforcement mechanisms make the KP susceptible to exploitation. Following confirmed reports of nations involved in the trade of diamonds that are tainted by conflict, corruption, and human rights abuses, the KP failed to take substantive action.¹⁵⁸ The KP endorses diamond exportations from Marange mines despite a mountain of evidence of mass killings, sexual abuse, exploitation, and human rights abuses in Zimbabwe by the hands of the National Army.¹⁵⁹ Consistent refusal to address the use of diamonds to fuel violence and human rights atrocities precipitated the 2011 departure of Global Witness, an international NGO and co-founder of the KPCS, from the KP.¹⁶⁰

To enjoy KP import and exportation privileges, KP Participants must maintain KPCS "minimum requirements."¹⁶¹ The KP expelled several nations, only to later re-admit those nations back into the KP.¹⁶² The Republic of Congo ("Congo") was dropped from the KP for failing to prove the origin of its diamonds.¹⁶³ The Congo

¹⁵⁷ See CORE DOCUMENT, *supra* note 7, at § IV; see *What is the Kimberley Process?*, *supra* note 5 ("There are 59 participants representing 85 countries, with the European Community counting as a single participant").

¹⁵⁸ See Penelope Gooch, *Why We are Leaving the Kimberley Process*, GLOBAL WITNESS (Dec. 3, 2011), <https://www.globalwitness.org/en/archive/why-we-are-leaving-kimberley-process-message-global-witness-founding-director-charmian-gooch/>.

¹⁵⁹ See *id.*

¹⁶⁰ See *id.* (stating the KP's "decision to endorse unlimited diamond exports from named companies in the Marange region of Zimbabwe" influenced Global Witness' decision to leave the KP).

¹⁶¹ See CORE DOCUMENT, *supra* note 7, at § V(f).

¹⁶² See THE KIMBERLEY PROCESS CERTIFICATION SCHEME THIRD YEAR REVIEW 5, 63 (2006), <https://2001-2009.state.gov/documents/organization/77156.pdf> (identifying Brazil, Czech Republic, Ghana, Malaysia, Norway, Tongo, Vietnam, and later, the Republic of Congo) [hereinafter REVIEW].

¹⁶³ See *The Kimberley Process Gets Some Teeth: The Republic of Congo is Removed from the Kimberley Process for Failing to Combat the Trade in Conflict Diamonds*, GLOBAL WITNESS (July 9, 2004),

subsequently pledged to take steps to restore order in its diamond trade and now enjoys legitimate exportation rights within the international diamond community after it was welcomed back into the KP.¹⁶⁴ Participants raise concerns about the KP’s voluntary nature and seemingly low bar of entry.¹⁶⁵ By maintaining KP membership, tax havens like Dubai “legitimately obtain the right to obfuscate the origins of African diamonds.”¹⁶⁶ The legitimacy of the KP framework relies on the integrity of diamond producing and exporting nations, dealers, and “conduit countries” like the UAE—actors proven to be less than scrupulous.¹⁶⁷ If Belgium, the “world’s leading example” in implementing KPCS controls and best practices, “is not achieving the [KP’s] desired results,” it is time for a rethinking of the KP and its ability to address abuses within the global diamond trade.¹⁶⁸

The KPCS itself is not binding international law.¹⁶⁹ The KP operates as a system of domestic laws implemented by KP Participants.¹⁷⁰ Many of the KP’s principles are “effectively unenforceable[,]” raising concerns about the system’s integrity and independence from the influence of powerful industry behemoths like the WDC.¹⁷¹ Consequently, KP oversight in the diamond sector only remains as strong as each KP Participant’s political strength and integrity. Since the KP’s implementation in 2003, KP Participants consistently express concerns about the soft law framework and effectiveness of KPCS monitoring and enforcement mechanisms.¹⁷²

<https://www.globalwitness.org/en/archive/kimberley-process-gets-some-teeth-republic-congo-removed-kimberley-process-failing-combat/>.

¹⁶⁴ See *Congo Republic Sheds “Blood Diamond” Tag*, REUTERS (Nov. 8, 2007),

<https://www.reuters.com/article/uk-congo-diamonds/congo-republic-sheds-blood-diamond-tag-idUKL0856113820071108>.

¹⁶⁵ See generally, Merket *supra* note 27, at 58.

¹⁶⁶ See Sharife, *supra* note 69.

¹⁶⁷ See *id.*; see also Merket, *supra* note 27, at 69.

¹⁶⁸ See *id.* at 64.

¹⁶⁹ See A GUIDE TO THE KIMBERLEY PROCESS, *supra* note 3, at 5 (“The KPCS is not a legally binding document, as a matter of international law. However, the KP Participant countries considered it necessary to voluntarily fulfill the KPCS minimum requirements at the national level and have adopted relevant laws and/or executive acts to that effect.”).

¹⁷⁰ See CORE DOCUMENT, *supra* note 7, at § IV(d).

¹⁷¹ See MACKENZIE, *supra* note 10, at 79.

¹⁷² See *id.*

KP Participants are broadly required to “maintain dissuasive and proportional penalties for transgressions,” leading to both rigorous and laissez-faire approaches to domestic legislation.¹⁷³ The United States recognizes the threats posed by the diamond “shadow economy” and seeks to protect the legitimate diamond trade through customs and border protection and sanctioning corrupt actors, but these actions are diluted when nations undermine the rule of law by condoning or facilitating criminal activity.¹⁷⁴ The KP is further damaged by the improper issuance of KP certificates by KP Participant governments.¹⁷⁵

Similarly, the KP lacks an adequate enforcement mechanism within its internal monitoring and reporting system. KP Participants are required to compile “a report on the results of compliance verification measures” to be confidentially submitted to the rotating KP Chair.¹⁷⁶ Undermining the purpose of the KP’s monitoring and reporting system, KP Participants resist publishing information within this internal reporting system.¹⁷⁷ KP Plenary Meetings exposed KP Participant nations for failing to implement annual reporting on internal controls.¹⁷⁸ Despite this revelation, the KP did not take action to strengthen its monitoring system, further undermining the actions of KP Participants like Belgium and the United States. The KP must go beyond welcoming “voluntary self-regulation initiatives” and mandating minimum requirements proven to be ineffective.¹⁷⁹ The KP has potential for broad participation and collaboration to effectuate change, but government and industry stakeholders resistant to transparency and reform threaten the legitimacy of the KP. Without amendment or legislative intervention, the KP will continue

¹⁷³ See CORE DOCUMENT, *supra* note 7, at § IV(d).

¹⁷⁴ See Siegel, *supra* note 17, at 206; *see, e.g.*, Merket, *supra* note 27, at 5 (comparing Belgium’s tightened controls to the UAE’s relaxed regulations).

¹⁷⁵ See REVIEW, *supra* note 160, at 63. Distinguishable from the criminal forgery of KP certificates, the Republic of Congo was exposed for improperly issuing certificates for the export of 5.2 million carats of rough diamonds. *See id.*

¹⁷⁶ See CORE DOCUMENT, *supra* note 7, at 10.

¹⁷⁷ See REVIEW, *supra* note 162, at 63.

¹⁷⁸ *See id.* at 34.

¹⁷⁹ See CORE DOCUMENT, *supra* note 7, at 2.

to lack the legal force to address the conflict, corruption, and crime pervading the global diamond sector more broadly.

B. Kimberley Certified “Conflict-Free” Diamonds are Hardly Conflict-Free

In July 2021, the global KP Plenary Meeting ended in controversy as delegates clashed on the issue of updating the definition of “conflict diamonds.”¹⁸⁰ WDC President, Edward Asscher, addressed Plenary delegates and implored for the expansion of the definition of conflict diamonds.¹⁸¹ He questioned why the KP has not made progress on this issue, “especially if all stakeholders understand the necessity of expanding the conflict diamonds definitions.”¹⁸² The KP invites scrutiny from critics with its underestimate that only 0.2% of the world’s diamonds constitute conflict diamonds under the KP’s current definition.¹⁸³ Ian Smillie, an “early architect” of the KP and a global authority on conflict diamonds, estimates that conflict diamonds realistically comprise 5-10% of the world’s diamond supply.¹⁸⁴ The KP’s narrow definition of conflict diamonds exclude “many instances of what consumers would, using common sense, think of as a conflict diamond.”¹⁸⁵

For example, the 2008 massacre of over 200 diamond miners in eastern Zimbabwe during an army seizure of a diamond deposit was not considered a violation of the KP.¹⁸⁶ Under the current definition of conflict diamond the KP fails to promote “a trade of traceable diamonds” free from criminal enterprise, corruption, and human

¹⁸⁰ See Media Note, Off. of the Spokesperson, U.S. Dep’t of State, Conclusion of the 2021 Kimberley Process Plenary (Nov. 17, 2021), <https://www.state.gov/conclusion-of-the-2021-kimberley-process-plenary/>.

¹⁸¹ See Marleny Arnoldi, *WDC Calls for Action to Expand Conflict Diamonds Definition* (Nov. 9, 2021), https://www.miningweekly.com/article/wdc-calls-for-action-to-expand-conflict-diamonds-definition-2021-11-09/rep_id:3650.

¹⁸² See *id.*

¹⁸³ See *What is the Kimberley Process?*, *supra* note 5.

¹⁸⁴ See Aryn Baker, *Blood Diamonds*, TIME, <https://time.com/blood-diamonds/> (last visited Aug. 10, 2022).

¹⁸⁵ See *id.*

¹⁸⁶ See *id.* (“Thousands had been killed, raped, injured and enslaved in Zimbabwe, and the Kimberley Process had no way to call those conflict diamonds because there were no rebels.”).

rights abuses.¹⁸⁷ Diamond mining experts described the KP as a “fig leaf” disguising the reality of the diamond trade by creating “confusion and a false sense of security” for consumers and companies that rely on the certification scheme as an indicator of ethical diamonds.¹⁸⁸ The current KP structure makes it “difficult, if not impossible, to maintain clean supply chains” from small-scale diamond extraction to multinational companies and global elites.¹⁸⁹ The KP is surrounded by a growing cacophony of voices calling for the “urgent revision” of the KP’s scope and definition of what constitutes a conflict diamond.¹⁹⁰

C. *Criminal Exploitation of Critical “Loupe”-holes in the Kimberley Process*

Under minimal scrutiny, the KP is anything but “flawless.”¹⁹¹ The existing KP framework acts as a cover in nations with weak governance and little accountability. Notably, the KP does not recognize the illicit diamond trade.¹⁹² Illegal smuggling of “non-registered” diamonds was not “mentioned as a possibility” at the birth of the KP, so it does not exist in the present day KPCS.¹⁹³ The complexity of the supply chain and corporate structures within the

¹⁸⁷ See Sjöström, *supra* note 11, at 56; see also FIN. ACTION TASK FORCE, *supra* note 13, at 13.

¹⁸⁸ See Sjöström, *supra* note 11, at 56.

¹⁸⁹ See GIABA, *supra* note 36, at 57.

¹⁹⁰ See *id.* Frustrated co-founder of the KP, Global Witness, dropped out of the KP warning that “the KP will not achieve its aim of stamping out diamond-fueled violence for good without the introduction of far-reaching reforms or a serious injection of political will.” Otto Faludi, *Conflict Minerals and the Kimberley Process: 15 Years of Questionable Progress*, IAFFAIRS (Jan. 25, 2016), <https://iaffairsCanada.com/2016/conflict-minerals-and-the-kimberley-process-15-years-of-questionable-progress/>; see *The Kimberley Process*, GLOBAL WITNESS (Apr. 1, 2013), <https://www.globalwitness.org/en/campaigns/conflict-diamonds/kimberley-process/>; see generally DEP’T OF STATE, *supra* note 34; see Sjöström, *supra* note 11, at 57.

¹⁹¹ See Valentine, *supra* note 10. Using a loupe, gemologists evaluate a diamond to look for inclusions—internal features or irregularities in the stone’s crystalline structure as unique as a human fingerprint. See *id.* Diamonds without inclusions are graded as “flawless” and are exceptionally rare, comprising less than half a percentage of all diamonds. See *id.*

¹⁹² See A GUIDE TO THE KIMBERLEY PROCESS, *supra* note 3 at 7; see also CORE DOCUMENT, *supra* note 7, at § I-VI.

¹⁹³ See Siegel, *supra* note 17, at 205.

diamond trade—often transnational in nature—make it easy for “smugglers to hide malpractices and assure that the paperwork presented in [countries with a legitimate trade] satisfies controls.”¹⁹⁴ Large companies in the diamond industry are linked to “private security forces, criminals and armed groups” using “widespread or systematic violence to secure their economic interests in diamond exploitation.”¹⁹⁵ These pressing issues fall outside of the KPCS, “due to its singular focus on preventing only diamonds that are fueling civil wars” by “rebel movements.”¹⁹⁶

Despite two decades of KP amendments and regulations, criminal enterprise continues to thrive in the shadows of the diamond industry because the KPCS “self-regulation initiatives” and narrow definition of “conflict” do not address the expansive criminal exploitation of the diamond trade.¹⁹⁷ The coronavirus pandemic, for example, revealed “the fragility of global supply chains” within the extractive minerals sector.¹⁹⁸ The pandemic crippled the legitimate diamond industry and simultaneously created opportunities for illicit actors to expand their illegal mining operations.¹⁹⁹ Forced into quarantine, miners, cutters, and polishers could not leave home, stalling production and sending ripple effects throughout the supply chain of the legitimate diamond industry.²⁰⁰ Amidst this global crisis, consumer demand dropped, and retailers shut their doors.²⁰¹ Mining

¹⁹⁴ See Merket, *supra* note 27, at 4.

¹⁹⁵ See *id.*

¹⁹⁶ See *id.*

¹⁹⁷ See CORE DOCUMENT, *supra* note 7, at § I; see generally, A GUIDE TO THE KIMBERLEY PROCESS, *supra* note 3.

¹⁹⁸ See SPARKLING JEWELS, OPAQUE SUPPLY CHAINS: JEWELRY COMPANIES, CHANGING SOURCING PRACTICES, AND COVID-19, HUMAN RIGHTS WATCH 4 (2020), https://www.hrw.org/sites/default/files/media_2020/11/jewelry1120_insert_LOWRE_S_WITH_COVER.pdf.

¹⁹⁹ See *id.* at 7; see e.g., Mathew Nyaungwa, *COVID-19 Restrictions Give Rise to Illegal Diamond, Gold Mining, and Trading* - HRW, ROUGH POLISHED (Nov. 26, 2020), <https://www.rough-polished.com/en/news/119496.html> (reporting increases in illicit mineral mining in Africa and Latin America following pandemic restrictions and reduced government oversight).

²⁰⁰ See Thomas Biesheuvel, *The Great Diamond Glut: Miners Stuck with Gems Worth Billions* (June 7, 2020, 12:00 AM), <https://www.bloomberg.com/news/articles/2020-06-07/the-great-diamond-glut-miners-stuck-with-gems-worth-billions>.

²⁰¹ See *id.*

companies experienced weakened prices as retailers faced a sharp decline in sales.²⁰² The pandemic also exacerbated the existing criminal and human rights issues within the diamond industry by exposing vulnerable populations at the bottom of the supply chain to further exploitation.²⁰³ An industry insider reported that illegal diamond mining rose when local law enforcement stopped monitoring diamond mines during pandemic lockdowns.²⁰⁴ Meanwhile, companies previously committed to investing in responsible diamond sourcing, redirected their “attention and resources to more immediate crisis management measures” related to the pandemic.²⁰⁵ As international attention was diverted from weak points in the diamond supply chain, accountability plummeted, and illicit mines and criminal actors flourished.²⁰⁶

The case illustration of Belgium’s successful deterrence of criminals through increased controls, undermined by the UAE’s relaxed regulations, further exposes critical flaws in the KPCS framework.²⁰⁷ Dubai’s failure to stop “mixing practices that serve to mask mining origin” attracts money laundering, terrorist financing, and other criminal activity.²⁰⁸ Poised to overcome Belgium as the world’s leading diamond center, the UAE is “heavily exposed to cash

²⁰² *See id.*

²⁰³ *See* HUMAN RIGHTS WATCH, *supra* note 198, at 4, 7 (reporting increases in illicit mineral mining in Africa and Latin America following pandemic restrictions and reduced government oversight).

²⁰⁴ *Id.* at 7.

²⁰⁵ *Id.*

²⁰⁶ *See e.g.*, Nyaungwa, *supra* note 199. An industry watchdog reported that “due to restrictions on the legal movement of resources and reduced government monitoring of laws and regulations[,]” there was an identifiable “increase in illegal gold and diamond mining and trading in several countries in Africa and Latin America.” *Id.* This placed “mining communities [] under heightened risks of exploitation, abuse, and environmental damage by illegal mining operators.” *Id.* Given “the increased risk of abuse,” an industry insider recommended that, “companies should conduct human rights due diligence to ensure that they do not cause or contribute to rights abuses in their supply chains.” *Id.*

²⁰⁷ *See generally*, Merket, *supra* note 27, at 22-25, 49-50.

²⁰⁸ *See id.* at 49 (citing FIN. ACTION TASK FORCE, ANTI-MONEY LAUNDERING AND COUNTER-TERRORIST FINANCING MEASURES: UNITED ARAB EMIRATES MUTUAL EVALUATION REPORT 285 (2020), <https://www.fatf-gafi.org/media/fatf/documents/reports/mer4/Mutual-Evaluation-Report-United-Arab-Emirates-2020.pdf>).

transactions” and shadowy corporate activity.²⁰⁹ FATF reports that the UAE exports \$8.22 billion worth of diamonds annually, categorizing the UAE’s diamond sector as “high-risk” for money laundering and terrorist financing.²¹⁰ A recent report exposed UAE officials engaged in circumventing KPCS protocols by preventing KP authorities from questioning the validity of KP certificates.²¹¹ Diamonds can be re-exported under a “KP Certificate of Mixed Origin” that only lists the “country of last export.”²¹² FATF recognizes the exploitation of the legitimate KPCS procedure is a fundamental weakness to the KP because “the actual origin of the rough diamonds is often concealed and practically impossible to retrieve,” providing cover for criminal organizations, individual smugglers, and corrupt state actors.²¹³ Exasperated officials in KP compliant nations describe this as “the bankruptcy of the KP.”²¹⁴ Critics allege that the “KPCS was not designed to enhance traceability of diamonds, but rather to avoid having to deal with it.”²¹⁵

Even if the KP expands its definition of conflict diamonds, the existing KPCS does little prevent the flow of dirty diamonds from the diamond pipeline into weak jurisdictions. Producer countries and trading hubs with weak internal controls facilitate the largescale influx of conflict diamonds into the supply chain.²¹⁶ These hubs allow the unethical “certification” of these diamonds as “legitimate”—all but

²⁰⁹ See FIN. ACTION TASK FORCE, ANTI-MONEY LAUNDERING AND COUNTER-TERRORIST FINANCING MEASURES: UNITED ARAB EMIRATES MUTUAL EVALUATION REPORT 28 (2020), <https://www.fatf-gafi.org/media/fatf/documents/reports/mer4/Mutual-Evaluation-Report-United-Arab-Emirates-2020.pdf>.

²¹⁰ See *id.*

²¹¹ See Merket, *supra* note 27, at 49.

²¹² See *id.* (citing FIN. ACTION TASK FORCE, *supra* note 13, at 57-58). In 2018, the KPC amended diamond certificates by replacing “Country of Origin” by “Country of Mining Origin.” See *id.* at 49 n.204. Experts argue that “where the parcels consist of rough diamonds from more than one mining origin country, the field for Country of Mining Origin on the Certificate should be filled with asterisks.” See *id.*

²¹³ See *id.* at 49 (citing FIN. ACTION TASK FORCE, *supra* note 13, at 57-58).

²¹⁴ See *id.* (reporting January 9, 2020, interview with Belgian officials monitoring the diamond sector who reported frustration to diamond shipments).

²¹⁵ See Merket, *supra* note 27, at 49.

²¹⁶ See *generally id.* at 4 (“When trade hubs or producer countries with weak internal controls allow conflict diamonds to enter the legal supply chain, these receive the KP quality mark and there is little other KP participants can do to detect this . . .”).

preventing other KP Participants from detecting the true origins of the stones—even if the nations have implemented strong domestic controls.²¹⁷ Without increased accountability amongst KP Participants including heightened AML/CFT strategies, expulsion of noncompliant KP Participants and embargoed diamond exports, the KP and the diamond industry at large will remain complicit in the political corruption, economic and political destabilization, finance of criminal activity, and severe human rights abuses so pervasive in the global diamond pipeline.

D. *The Diamond Industry's "Shadow Economy" Exposed*

Investigative journalism sheds light into “the inner workings of a shadow economy,”²¹⁸ implicating international jewelers and world leaders who control diamond mines—shadows into which few have seen. The International Consortium of Investigative Journalists’s (“ICIJ”) 2016 publication of the Panama Papers exposed “dubious transactions” linked to the extractive mining sector in West African countries.²¹⁹ ICIJ’s 2020 “Luanda Leaks” implicated the luxury jeweler De Grisogono in the laundering of billions of dollars from the Angolan government and into the pockets of the former Angolan first family.²²⁰ The United States designated Isabel dos Santos, former head of Angola’s state oil company and purported self-made billionaire, “for her involvement in significant corruption by misappropriating public funds for her personal benefit[,]” making her “Africa’s wealthiest woman” and leaving “diamond-rich Angola one of the poorest countries on the Earth.”²²¹ In 2021, notable figures in the diamond

²¹⁷ See *id.* at 4, 39, 40, 42, 45, 62.

²¹⁸ See *Offshore Havens and Hidden Riches of World Leaders and Billionaires Exposed in Unprecedented Leak*, ICIJ (Oct. 3, 2021), <https://www.icij.org/investigations/pandora-papers/global-investigation-tax-havens-offshore/>.

²¹⁹ See GIABA, *supra* note 36, at 13.

²²⁰ See Sydney P. Freedberg et al., *Luanda Leaks: How Africa’s Richest Woman Exploited Family Ties, Shell Companies and Inside Deal to Build an Empire*, ICIJ (Jan. 19, 2020), <https://www.icij.org/investigations/luanda-leaks/how-africas-richest-woman-exploited-family-ties-shell-companies-and-inside-deals-to-build-an-empire/>.

²²¹ See Press Statement, Antony J. Blinken, Sec’y of State, Elevating Anti-Corruption Leadership and Promoting Accountability for Corrupt Actors (Dec. 9, 2021),

industry appeared in ICIJ’s publication of the Pandora Papers.²²² Denis Sassou-Nguesso, longtime President of the DRC, is listed among ICIJ’s “Power Players” implicated in the leak.²²³ ICIJ alleges that a complex corporate structure was designed to conceal Sassou-Nguesso’s ownership of the real estate firm that controls DRC’s diamond mines.²²⁴ ICIJ notes that, while not illegal, offshore banking and tax havens operate “in every corner of the planet” and attract illegal activity like money laundering and tax evasion, obscuring the wealth of world leaders and prominent industry names.²²⁵

E. Model of United States Foreign Policy and Protection of the Diamond Trade

The United States provides a workable example for monitoring and policing the diamond trade within its own borders, and the KP is in dire need of a model from which to build accountability into the diamond trade. It is not perfect by any measure, but the United States demonstrates continued leadership in the war against human rights abuse and corruption related to the diamond industry by regulating rough diamond movement across its borders, imposing sanctions, barring bad actors from its financial system, and voicing concerns about the weakness of the current international legal framework. In its decades of efforts protecting the legitimate diamond industry from threats posed by illicit activity, the United States’s message is clear: there is a “steep price to pay” for “those who abuse human rights, perpetrate corruption, and undermine American ideals.”²²⁶ KP Participant governments must send a similar message.

<https://www.state.gov/elevating-anti-corruption-leadership-and-promoting-accountability-for-corrupt-actors/>; see also Freedberg et al., *supra* note 220.

²²² See *The Power Players: Congo President Denis Sassou-Nguesso*, ICIJ (2021), <https://www.icij.org/investigations/pandora-papers/power-players/>.

²²³ *Id.*

²²⁴ See *id.*

²²⁵ See *Offshore Havens and Hidden Riches of World Leaders and Billionaires Exposed in Unprecedented Leak*, *supra* note 218.

²²⁶ Press Release, Steven T. Mnuchin, United States Sanctions Human Rights Abusers and Corrupt Actors Across the Globe (Dec. 21, 2017), <https://home.treasury.gov/news/press-releases/sm0243>.

United States Customs and Border Protection (“CBP”) plays an integral role in protecting the legitimate diamond trade.²²⁷ Rough diamond import shipments to, or export shipments from, the United States must be sealed in a “tamper-resistant container” accompanied by a KP Certificate authenticated by a CBP official who verifies the contents of the shipment against the packing list.²²⁸ In addition to inspections, seizures, and detentions, CBP thwarts the importation of conflict diamonds by issuing Withhold Release Orders (“WROs”) by the Forced Labor Division of CBP’s Office of Trade for rough diamonds mined in regions believed to be using forced labor.²²⁹ The most recent example is a WRO issued against rough diamonds mined from forced labor in Zimbabwe in 2019.²³⁰ CBP collaborates with “stakeholders, the media, and private sector businesses” to educate importers on United States compliance standards and to investigate the use of forced labor in global supply chains.²³¹

In 2017, the Trump Administration implemented the Global Magnitsky Act, a sanctions regime targeting corrupt actors engaged in corruption, bribery, and “gross violations of internationally recognized human rights.”²³² Under this regime, the United States targeted Israeli businessman, Dan Gertler, with sanctions in 2017 and

²²⁷ See *Did You Know . . . CBP Protects Legitimate Diamond Trade, Thwarts Importation of ‘Blood Diamonds’?*, U.S. CUSTOMS & BORDER PROT. (Dec. 20, 2019), <https://www.cbp.gov/about/history/did-you-know/diamond-trade>; see AMENDMENTS TO ROUGH DIAMOND CONTROL REGULATIONS, U.S. CUSTOMS & BORDER PROT., <https://www.cbp.gov/trade/programs-administration/kimberley-diamonds-process-certification/amendments-rough-diamond-control-regulations> (last updated Apr. 2, 2020) (amending the Rough Diamond Control Regulations with additional requirements to aid the collection of rough diamond importation and exportation statistics).

²²⁸ 31 C.F.R. § 592.301(a)(1)-(2) (2018); see also *Importation Requirements under the Kimberley Process Certification Scheme*, U.S. CUSTOMS & BORDER PROT., <https://www.cbp.gov/trade/programs-administration/kimberley-diamonds-process-certification/importation-requirements> (last updated Sept. 21, 2015).

²²⁹ See *CBP Issues Detention Orders Against Companies Suspected of Using Forced Labor*, *supra* note 149.

²³⁰ See *id.*

²³¹ See *id.*

²³² 22 U.S.C. §§ 1262(2), 1263(a)(1)-(2).

2018 for corrupt mining deals in the DRC.²³³ In two years, the DRC lost over \$1.36 billion “in revenue[] from the underpricing of mining assets that were sold to offshore companies linked to Gertler.”²³⁴ In 2021, the U.S. Department of State cited Gertler’s “extensive public corruption” as the reason for revoking his general license, further stating that his behaviors were contrary to the United States’ efforts “to counter corruption and promote stability” in the DRC.²³⁵ Most recently, the Office of Foreign Assets Controls (“OFAC”) sanctioned Alain Mukonda for supporting Gertler and twelve entities linked to Mukonda in the DRC.²³⁶

Consistent with United States foreign policy and the 2019 Privileged Partnership for Peace and Prosperity—a joint commitment between the United States and the DRC—the United States continuously demonstrates commitment to countering corruption and promoting stability in the DRC.²³⁷ The U.S. Agency for International Development (“USAID”) is also involved in promoting stabilization, democracy, and economic growth.²³⁸ The United States fosters Security Sector Reform (“SSR”) through improving the “effectiveness, transparency, and accountability” in the national-level security systems and civilian justice system of the DRC.²³⁹ The United

²³³ See Press Release, U.S. Dep’t of the Treas., Treasury Targets Corruption Linked to Dan Gertler in the Democratic Republic of Congo (Dec. 6, 2021), <https://home.treasury.gov/news/press-releases/jy0515>.

²³⁴ *Id.*

²³⁵ See Press Statement, Ned Price, Dep’t Spokesperson, U.S. Dep’t of State, Revocation of License Granted for Dan Gertler (Mar. 8, 2021), <https://www.state.gov/revocation-of-license-granted-for-dan-gertler/>; see *OFAC Licenses*, U.S. DEP’T OF THE TREAS. (Oct. 8, 2013), <https://home.treasury.gov/policy-issues/financial-sanctions/faqs/topic/1506> (stating a “general license” is an authorization from OFAC to engage in a transaction that otherwise would be prohibited).

²³⁶ See Press Release, U.S. Dep’t of the Treas. *supra* note 233.

²³⁷ See U.S. Dep’t of State, Bureau of African Affairs, *U.S. Relations with Democratic Republic of the Congo* (Apr. 15, 2020), <https://www.state.gov/u-s-relations-with-democratic-republic-of-the-congo/>.

²³⁸ See *id.*

²³⁹ *Id.*

States supports DRC efforts to combat corruption, strengthen the judicial system, and investigate and prosecute illicit activity.²⁴⁰

As part of its commitment to protecting the legitimate diamond trade, the United States expressed concern that the KP definition of a conflict diamond “does not sufficiently address consumer concerns related to human rights and other important standards.”²⁴¹ Following the 2021 KP Plenary, the U.S. Department of State vocalized its disappointment that “despite genuine willingness from many [KP] participants and observers, the [Plenary] did not reach consensus on an expanded conflict diamond definition that would better reflect these pressing concerns.”²⁴² Citing international endorsements for “due diligence and responsible sourcing” from the Organization for Economic Cooperation and Development (“OECD”), the United States encouraged its KP partners to join its call for improved due diligence and operational procedures in the KP.²⁴³

The CAR is the only country producing diamonds that falls within the KP’s narrow definition of conflict diamonds.²⁴⁴ While KP-compliant zones have increased in the CAR despite the global healthcare crisis, the United States “remains gravely concerned” about this reality, and is working “tirelessly to balance the need for legitimate CAR exports with the [KP] mandate to prevent conflict diamonds from entering the commercial supply chain.”²⁴⁵ The U.S. Department of State calls upon the CAR and Russian governments to investigate and prosecute the responsible criminal parties.²⁴⁶

²⁴⁰ See *id.*

²⁴¹ See Media Note, Off. of the Spokesperson, U.S. Dep’t of State, *supra* note 180.

²⁴² *Id.*

²⁴³ See *id.*

²⁴⁴ See *id.*

²⁴⁵ *Id.*

²⁴⁶ See *id.* (“The United States is deeply concerned by reports of human rights abuses by elements of the Wagner Group, Russia’s proxy force, as well as members of the CAR security services, including in connection to diamond production. We call on the CAR and Russian governments to investigate these allegations thoroughly and hold perpetrators accountable, where appropriate.”).

V. RECOMMENDATIONS

The KPCS and industry self-regulations must be strengthened to address the variety of ways unscrupulous actors, large and small, exploit the diamond pipeline at a devastating financial and human cost. Reengaging civil society and welcoming private sector due diligence is critical to supplementing domestic legislation and enforcement efforts in KP nations. The KP must hold KP Participants accountable for implementing KPCS enforcement mechanisms to prevent the corruption of the KPCS in weak jurisdictions. To prevent against the exploitation of the KPCS by less scrupulous KP Participants, the KP must support the implementation and oversight of AML/CFT initiatives through governance and institutional structures within the diamond pipeline.

A. *Expanding KPCS Legal Force and Definition of “Conflict Diamond”*

The KP must be given greater legal force to support the efforts of nations like Belgium and the United States to protect the legitimate diamond trade and prosecute corrupt actors. KP Participants must call for the expansion of the KP definition of conflict diamond to give teeth to the domestic legislation in their respective nations. With only one nation falling under the KP’s self-proclaimed limited purview of conflict diamonds related to “rebel movements,” this statist definition is all but obsolete.²⁴⁷ KP Participants must hold the KP accountable when KP Participant governments undermine the integrity of the system. Legislative overhaul of the KPCS and its internal enforcement mechanisms must address the potentials for gridlock in the KP’s internal consensus voting requirement.²⁴⁸ The integrity and effectiveness of the KP is dependent upon legitimate efforts to prevent corruption and eliminate tainted diamonds from the supply chain. KP Participants must recommit to this mission and expel KP Participants unwilling to uphold the rule of law. Without broadening the scope of conflict diamond and the legal force of the KP to address the root

²⁴⁷ See Media Note, Off. of the Spokesperson, U.S. Dep’t of State, *supra* note 180; see also CORE DOCUMENT, *supra* note 7, at 3.

²⁴⁸ “Participants are to reach decisions by consensus.” See generally CORE DOCUMENT, *supra* note 7, at § VI(9).

issues in the diamond pipeline, democracies around the world will continue to fight an endless stream of security threats posed by human trafficking, money laundering, terrorist financing, transnational organized crime, and fraudulent import/exports of dirty diamonds linked to conflict, corruption, and crime.

B. Civil Society and Private Sector Supply Chain Due Diligence

The strength of the KP's oversight and influence in the diamond sector can be improved by reengaging influential NGOs and embracing civil society's supplemental role to government KPCS monitoring and enforcement. The KP lost significant legitimacy and accountability when two of its founding members—Global Witness and the NGO Civil Society Coalition—boycotted the KP in protest of the scheme's failure to address egregious human rights abuses.²⁴⁹ Global Witness was the first NGO to expose the international blood diamond trade and played an integral role in the creation of the KP.²⁵⁰ Global Witness's Founding Director described the KP as a "cynical window dressing exercise for a complacent diamond industry," citing the complacency of KP Participant governments unwilling to "defend the principles on which the KP was founded."²⁵¹ Critical to establishing accountability within KP nations, NGOs represent tremendous influence over consumer perceptions and oversight of industry self-regulation through information sharing and investigations.²⁵² The tripartite structure of the KP must be protected by renewed commitment to engaging with civil society through improved information sharing and transparent reporting. Heightened accountability between civil society and KP Participant governments requires no alterations to the existing KPCS,²⁵³ however,

²⁴⁹ See Press Release, Penelope Gooch, Founding Director, Global Witness, Global Witness Founding Director's Statement on NGO Coalition Walk-Out from Kimberley Process Meeting (June 27, 2011), <https://www.globalwitness.org/en/archive/global-witness-founding-directors-statement-ngo-coalition-walk-out-kimberley-process/>; see also Gooch, *supra* 156.

²⁵⁰ See Gooch, *supra* note 242.

²⁵¹ See *id.*

²⁵² See Gooch, *supra* note 156.

²⁵³ See CORE DOCUMENT, *supra* note 7, at §VI (10) ("Participants intend to invite representatives of civil society, the diamond industry, non-participating

it requires KP Participants and stakeholders to take seriously critical threats to the industry.

The United States’s legislation of corporate social responsibility (“CSR”) in the conflict minerals sector provides a timely example of domestic law keeping corporations accountable for their supply chains and motivating corporate-led reforms in the artisanal minerals sector. In 2010, Congress passed the conflict minerals provision of the Dodd Frank Act (“Act”), requiring U.S. publicly listed companies to perform supply chain due diligence relating to minerals—primarily tin, tungsten, tantalum, and gold—originating in the Congo or neighboring conflict nations.²⁵⁴ The Act ensures that the corporations are not directly or indirectly funding armed groups, corruption, or human rights abuses.²⁵⁵ Making headlines around the world, Apple, Google, and Microsoft were among the tech giants named in lawsuits over the maiming and deaths of Congolese children laboring in cobalt mines.²⁵⁶ Since exposure of the gross human rights violations in the technology supply chain, these corporate behemoths have made substantial ground in CSR efforts.²⁵⁷

Under the Act, corporate entities must submit specialized disclosure reports to ensure supplier responsibility.²⁵⁸ The OECD—an international leader in fighting against tax base erosion and profit sharing in the diamond industry, promoting best-practices, and

governments and international organizations to participate in Plenary meetings as Observers.”).

²⁵⁴ See Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. No. 111-203, § 1502, 124 Stat. 1376, 2213 (2010), (codified as 15 U.S.C. § 78m note); 15 U.S.C. § 78m(p).

²⁵⁵ See Dodd-Frank Wall Street Reform and Consumer Protection Act, § 1502, 124 Stat. at 2213-14; 15 U.S.C. 78m(p).

²⁵⁶ See Annie Kelly, *Apple and Google Named in US Lawsuit Over Congolese Child Cobalt Mining Deaths*, THE GUARDIAN (Dec. 16, 2019, 5:28 AM), <https://www.theguardian.com/global-development/2019/dec/16/apple-and-google-named-in-us-lawsuit-over-congolese-child-cobalt-mining-deaths>.

²⁵⁷ See, e.g., Apple Inc. Specialized Disclosure Report (Form SD) (Feb. 10, 2021), <https://www.apple.com/supplier-responsibility/pdf/Apple-Conflict-Minerals-Report.pdf>.

²⁵⁸ Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. No. 111-203, § 1502, 124 Stat. 1376, 2213 (2010), (codified as 15 U.S.C. § 78m note); 15 U.S.C. § 78m(p).

recommending public policy—implemented the international standard for supply chain due diligence.²⁵⁹ The United States’s adoption of OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas (“Guidance”) must be modeled by other KP Participants.²⁶⁰ The Guidance is the “first example of a collaborative government-backed multi-stakeholder initiative on responsible supply chain management of minerals from conflict-affected areas.”²⁶¹ Effective CSR and accountability within the extractive mining sector *must* include diamonds. The adoption of similar domestic reforms in KP Participant nations will provide the accountability critical to legislating CSR in the supply chains of corporate actors engaged in the global diamond trade. Enhanced CSR in the diamond industry is the most effective tool to eliminating the root causes of instability and corruption in origin nations.

C. Implementation of FATF Recommendations

Some countries have made significant AML/CFT progress by overhauling governance and institutional structures, regulatory policy, and legal frameworks.²⁶² Obstacles to improving AML/CFT and governance initiatives in the economies and governments most vulnerable to money laundering and terrorist financing remain unaddressed by the KP. The KP’s ability to address criminal

²⁵⁹ See *Who We Are*, ORG. FOR ECON. CO-OPERATION & DEV., <https://www.oecd.org/about/> (last visited Jan. 5, 2022). OECD recognizes the challenges African countries face in the tracking and valuation of diamond production and the dependency of these nations on the “millions of dollars” in tax base at stake in diamond-rich nations. *Diamonds: Uncut. The Base Erosion and Profit Shifting Challenges*, ORG. FOR ECON. CO-OPERATION & DEV. (Feb. 15, 2018), <https://www.oecd.org/countries/kenya/diamonds-uncut-the-base-erosion-and-profit-shifting-challenges.htm>.

²⁶⁰ See ORG. FOR ECON. CO-OPERATION & DEV., OECD DUE DILIGENCE GUIDANCE FOR RESPONSIBLE SUPPLY CHAINS OF MINERALS FROM CONFLICT-AFFECTED AND HIGH-RISK AREAS (3d ed. 2016), <https://www.oecd.org/daf/inv/mne/OECD-Due-Diligence-Guidance-Minerals-Edition3.pdf>.

²⁶¹ *Id.* at 3. The Guidance was developed with the collaborative efforts of Angola, Burundi, Central African Republic, Republic of Congo, Democratic Republic of Congo, Kenya, Rwanda, Sudan, Tanzania, Uganda and Zambia, industry, civil society, as well as the United Nations Group of Experts on the DRC. See *id.*

²⁶² See generally FIN. ACTION TASK FORCE, *supra* note 13, at 38-39.

exploitation of the diamond supply chain must be strengthened and complemented by SSR efforts—as modeled by the United States—to improve the national-level security systems and justice systems in developing diamond producing nations.²⁶³

The United States, through entities like USAID, demonstrates a continued commitment to counter corruption and promote stability in the DRC.²⁶⁴ The “large informal nature” of economies based on cash transactions, “porous borders and weak border management, as well as rampant corruption,” require careful monitoring of the diamond pipeline to mitigate money laundering and terrorist financing at the source.²⁶⁵ The United States’s implementation of programs designed to promote stabilization, democracy, and economic growth by supporting DRC efforts to combat corruption can be a model for other KP nations.²⁶⁶ Countries involved in the diamond pipeline must prioritize implementing the FATF AML/CFT standards to improve transparency and combat corruption.

“The primary objective of implementing an AML/CFT framework is to detect and/or deter the occurrence of predicate crimes such as fraud, drug trafficking, arms smuggling or corruption.”²⁶⁷ To effectively address the vulnerabilities in the current regulatory framework, nations must: (1) apply AML/CFT requirements to diamond dealers;²⁶⁸ (2) “[d]esignate competent national authorities to supervise [diamond] dealers and monitor compliance with AML/CFT requirements”;²⁶⁹ (3) initiate legislation in mining sector nations to address AML/CFT compliance obligations;²⁷⁰ (4) establish interagency mechanisms for countering money laundering and terrorist financing

²⁶³ See Media Note, Off. of the Spokesperson, U.S. Dep’t of State, *supra* note 180.

²⁶⁴ U.S. Dep’t of State, Bureau of African Affairs, *supra* note 237.

²⁶⁵ See GIABA, *supra* note 36, at 60.

²⁶⁶ See U.S. Dep’t of State, Bureau of African Affairs, *supra* note 237; see also *supra* Section IV.E.

²⁶⁷ See GIABA, *supra* note 36, at 6, 13.

²⁶⁸ See FIN. ACTION TASK FORCE, RBA GUIDANCE FOR DEALERS IN PRECIOUS METALS AND STONES 7 (June 17, 2008), <https://www.fatf-gafi.org/media/fatf/documents/reports/RBA%20for%20Dealers%20in%20Precious%20Metal%20and%20Stones.pdf>.

²⁶⁹ GIABA, *supra* note 36, at 8.

²⁷⁰ *Id.* at 61.

and predicate offenses linked to the diamond industry; (5) designate roles to agencies—including customs, law enforcement, intelligence—to improve information sharing; and (6) create a network of officials to develop expertise on diamond related security matters.²⁷¹

Implementation of FATF standards in all KP nations will contribute to improved transparency, oversight, and regulatory supervision in jurisdictions impacting the diamond pipeline.²⁷² KP Participants must strengthen cooperation with domestic and international financial intelligence units by reporting suspicious transactions, enhancing vigilance of money laundering and terrorist financing threats, and sharing information.²⁷³ KP Participant support of global initiatives to improve the regulation and oversight of the diamond supply chain is critical to effectively combating money laundering and terrorist financing, and improving governance of the diamond mining sector, the rule of law, and mitigating crime and corruption.

VI. CONCLUSION

Without broadening the scope of “conflict diamond” and the legal strength of the KP, the United States, and other democracies, face real and present national security threats posed by the diamond shadow economy. Despite adherence to KPCS requirements, illicit diamonds connected to human trafficking, money laundering, terrorist financing, and transnational organized crime, flow across

²⁷¹ See *id.*; see *FBI Counters Illicit Diamond Trafficking and Trade*, *supra* note 77; *Did You Know . . . CBP Protects Legitimate Diamond Trade, Thwarts Importation of ‘Blood Diamonds’?*, *supra* note 227.

²⁷² See FIN. ACTION TASK FORCE, *supra* note 13, at 23-24.

²⁷³ In collaboration with the U.S. Department of the Treasury’s Offices of Terrorist Financing and Financial Crimes, Foreign Assets Control, Intelligence and Analysis, and federal regulators, the United States Financial Crimes Enforcement Network demonstrates continued leadership in implementing AML/CFT policies relevant to combating the threats posed by the global diamond shadow economy. *E.g.*, FIN. CRIMES ENF’T. NETWORK, ANTI-MONEY LAUNDERING AND COUNTERING THE FINANCING OF TERRORISM AND NATIONAL PRIORITIES (June 30, 2021), [https://www.fincen.gov/sites/default/files/shared/AML_CFT%20Priorities%20\(June%2030%2C%202021\).pdf](https://www.fincen.gov/sites/default/files/shared/AML_CFT%20Priorities%20(June%2030%2C%202021).pdf) (establishing national priorities to fight issues pervasive in the diamond sector including corruption, terrorist financing, fraud, transnational criminal activity, and human trafficking).

sovereign borders and into the retail marketplace with ease. This Comment explored the failed soft law attempt of the diamond industry to self-police. Even if the legal force of the KP is improved, without support from civil society and internal supply chain due diligence, a breakdown will occur. Without a multi-national legislative overhaul and increased transparency and oversight of the international global supply chain, the existing KP framework will continue to encourage criminal activity and human rights abuses around the globe.

This Comment recognizes the difficulty, and perhaps impossibility, of eliminating all tainted diamonds from the retail marketplace. However, the KP must involve modernized approaches to address the root issues of conflict, corruption, and human rights abuses. A “conflict-free” diamond industry must begin with the first step in the global supply chain: *mining*. Efforts must be made to support developing origin countries and protect against the self-perpetuating “resource curse” felt by so many diamond-rich nations.

The focus of the KP needs to shift from catering to consumer perceptions to treating the root issues and cruelties tainting the industry. Modeled by Belgium and the United States, enhanced domestic controls in KPCS nations are critical to adapting to the dynamics of the industry and trends in criminal activity. Reflective of the transnational cooperation of the international intelligence community in identifying threats posed by the diamond shadow economy—intergovernmental cooperation and transnational support of efforts to promote stable economies, justice systems, and effective law enforcement are essential to the future of the KP. Perceptions will only change through enforced compliance and verifiable transparency. “A diamond is forever”²⁷⁴—but the exploitation of the diamond industry must be expeditiously eviscerated.



²⁷⁴ See De Beers, *supra* note 1.