

Preface

The year 2017 will be the one that Australia assumes the duty of being Chair of the Kimberley Process Certification Scheme (KP). The KP is an international organisation that regulates the world's diamond trade. Diamonds are a symbol of love, purchased to celebrate marriage in many parts of the world, but this trade has been linked with warfare and human rights violations committed in African producer countries such as Sierra Leone, Côte d'Ivoire and Angola. Graphic accounts of murder and mayhem, fuelled by the diamond black market, continue to emerge from the Democratic Republic of Congo, Zimbabwe, and the Central African Republic, posing an existential threat to the multibillion dollar industry. These human rights violations fall under the legal categories of war crimes, crimes against humanity, and genocide, the most serious crimes under international law. In response to the grim reality of the blood diamonds trade, De Beers and other major corporate players joined with non-governmental organisations and national governments to create the Kimberley Process Certification Scheme in 2002. The objective of the Kimberley Process is to distinguish the legitimate rough diamond trade from the trade in diamonds linked to serious human rights abuses, known as conflict diamonds or blood diamonds. The Kimberley Process involves a system of export and import certificates attesting to the clean character of rough diamonds, and is backed up by a peer review system to monitor compliance. The Kimberley Process has been supported through the regulatory action of national governments at the domestic level, as well as the United Nations Security Council (UNSC) and the International Criminal Court (ICC) internationally.

The first research question considered by this book is: to what extent has the conflict diamonds governance system achieved its objectives? In response, it can be said that the conflict diamonds governance system has made significant progress in its core mandate. The quantity and

value of the international legitimate diamond industry, once the very paradigm of secrecy, has become more transparent through publicly available Kimberley Process statistics. Based on these statistics, the Kimberley Process estimates that the blood diamond trade now constitutes less than 1 per cent of the world's rough diamond trade. However, it has not always been smooth sailing for the Kimberley Process, which has recently arrived in particularly stormy waters. The integrity of the system has been endangered by the seeming inability of the Kimberley Process to take appropriate action in the face of serious non-compliance by three important national government stakeholders: Venezuela, Zimbabwe, and Angola. Commentators are asking whether the Kimberley Process lion has forgotten how to roar.

The second research question is: does an application of the networked pyramid regulatory model to the system provide descriptive or normative insights into its effectiveness? In considering the relative success, and the current challenges facing the conflict diamonds governance system, important insights may be gained by looking at the system with reference to the networked pyramid regulatory model. Before applying the model, the book suggests a modification, dubbed the dual networked pyramid model (DNPM), whereby the micro-regulatory system at the national level is seen as a networked pyramid within the greater networked pyramid of the international system. The relative success of the Kimberley Process to date, when analysed against this theoretical hybrid of network and pyramid models, is largely linked to its self-conscious incorporation of insights from networks theory. At the international level, the Kimberley Process can be seen as the central node, or command centre, in which information is gathered, and regulatory action coordinated, from networks of corporations, national governments, and non-governmental organisations. Its relative success to date can largely be attributed to a process of socialisation whereby big business and most national governments have become key supporters.

It is, however, in the theoretical domain of the regulatory pyramid that the Kimberley Process might find a way out of its current deadlock. Pyramid theory recognises the primacy of soft power, such as dialogue and socialisation, but demands escalation to more coercive measures where regulated parties are unresponsive or recalcitrant. It is suggested that improved procedures for managing serious non-compliance, combined with an agreed pathway to expulsion from the Kimberley

Process in such cases, would bring the Kimberley Process into better alignment with the pyramid model and help it to move out of the log jam in which it currently finds itself. A more defined pathway of escalation to the UNSC and the ICC would bolster the ongoing efficacy of the conflict diamonds governance system. A recommended mechanism for doing this would be to amend the Statute of the ICC to include a crime of trafficking in conflict diamonds, to be defined in terms of contravening a UNSC diamond embargo.

Beyond breaking the current deadlock, the Kimberley Process has an opportunity to reinvent itself by embracing the concept of development diamonds. First suggested by non-governmental organisations, this label might be applied to diamonds from the informal sector that are not merely free from the taint of international crime, but also comply with other human rights standards, most notably freedom from child labour. A further modification to the DNPM, assisted by insights from the pyramid of rewards theoretical model, reveals that the Kimberley Process has the chance to systematically ratchet up human rights, and health, safety and environmental standards in the artisanal sector, thereby buttressing the industry against the return of blood diamonds.

This book is a revised version of a thesis submitted towards the degree of Doctor of Juridical Science at The Australian National University. I was awarded the degree in July 2012, but the material in the manuscript has been updated to reflect developments as at the end of December 2015.

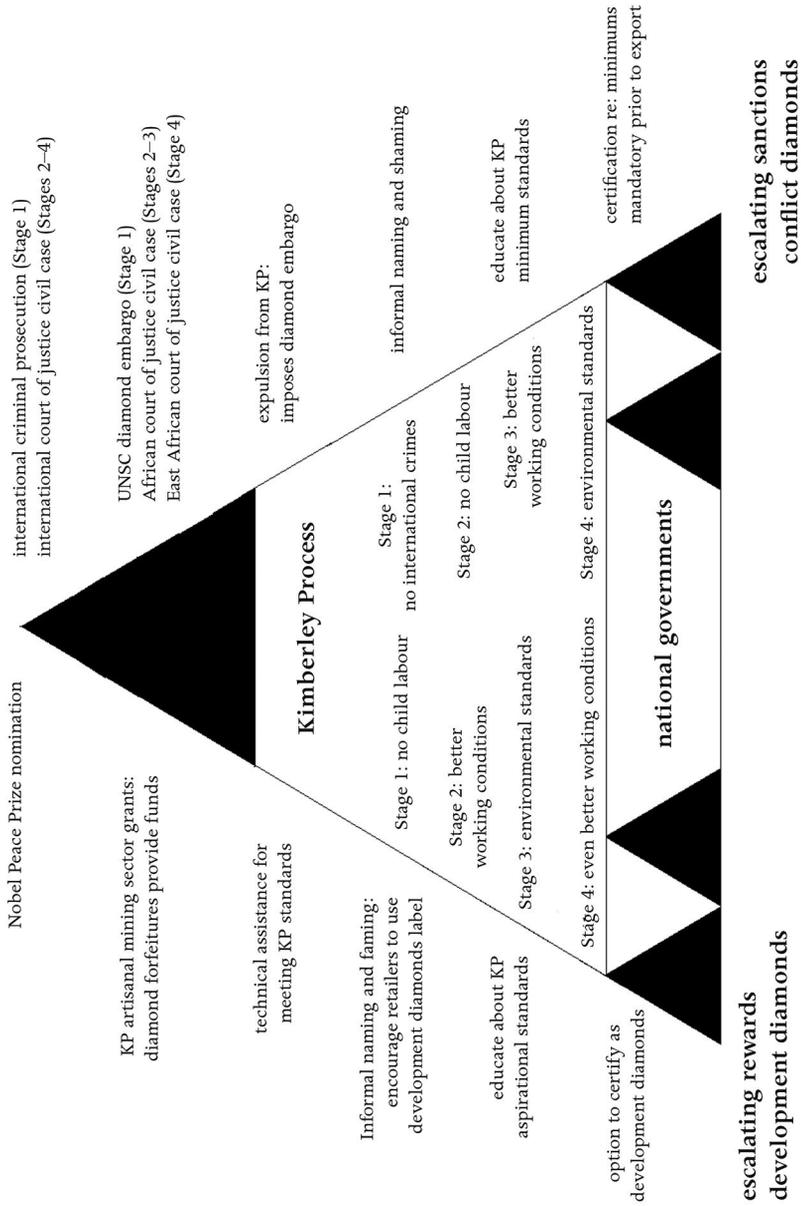


Figure 1: The Dual Networked Pyramid Model as Applied to the Conflict Diamonds Governance System

Source: Author's research.

This text is taken from *The Lion that Didn't Roar: Can the Kimberley Process Stop the Blood Diamonds Trade?*, by Nigel Davidson, published 2016 by ANU Press, The Australian National University, Canberra, Australia.