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Kimberley Process: An Amnesty International Position Paper

Recommendations to the Kimberley Process (KP) participants in order to effectively strengthen the Kimberley Process Certification Scheme (KPCS)

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Background

On 1 December 2000, the United Nations General Assembly unanimously adopted a resolution on the role of the trade in diamonds in fuelling conflict. The resolution supported the creation of an international certification scheme in an attempt to break the link between the illicit trade in rough diamonds and mass human rights abuses associated with armed conflict, as witnessed in countries such as Angola, the Democratic Republic of Congo and Sierra Leone. A civil society campaign brought international attention to the problem of conflict diamonds and put pressure on the international community to take action. The adoption of a UN Resolution and the imposition of UN sanctions related to armed conflicts in several African countries galvanized the international community and the diamond industry to put in place a certification process to prevent conflict diamonds from entering the legitimate trade. That process came to be called the "Kimberley Process", named after a meeting in Kimberley, South Africa, in 2000 where several diamond producing states first met to address the issue of conflict diamonds.

The Kimberley Process brings together representatives of governments, the diamond industry and civil society. Since May 2000, Amnesty International together with other NGOs such as Global Witness, have been participating in the Kimberley Process. After lengthy negotiations over several years, the Kimberley Process Certification Scheme (KPCS) was adopted at a Ministerial Meeting in Interlaken, Switzerland in November 2002 and launched in January 2003.

The KPCS involves nearly 70 governments (including all of the major diamond trading and producing countries) and all participants have adopted and implemented legislation to prohibit the trade in conflict diamonds. Despite the progress made, three years after its establishment, the KPCS has not been able to fully address, monitor and end the international trade in conflict diamonds.

The KPCS will undertake a formal three-year review in 2006 to evaluate how effectively it is working and to identify ways in which to further strengthen the scheme. Amnesty International encourages the governments participating in the KPCS to use the Kimberley Process review to address the issues of governance, enforcement and transparency to strengthen its effectiveness. Decisive action on this review is crucial to ensure that the KPCS evolves into an effective certification system that brings about an end to diamonds fuelling conflict.

The following recommendations to KP-participating governments relate to provisions on monitoring and enforcement, participation criteria and transparency. Amnesty International emphasizes in particular the need for governments to monitor and verify the diamond industry's compliance with the KPCS and the self-regulation the industry has pledged to implement to combat conflict diamonds. The review should also identify ways to address the gaps in implementation of and compliance with diamond trade and production statistics (a critical tool to combat conflict diamond trading) and establish clear criteria for entry into and suspension from the KPCS. Amnesty International is also urging governments in the KPCS to provide funding and professional support to ensure effective monitoring and running of the KPCS and to enhance the capacity of countries to implement the KPCS.

Amnesty International considers the recommendations below a priority for KP governments. However it also encourages the KPCS to start considering moving beyond conflict diamonds and including in the certification system other human rights implications of the trade in diamonds beyond those of conflict.

Moreover, the diamond industry also has to demonstrate that it is truly committed to making the KP work by adopting third-party auditing measures and cooperating closely with law enforcement agencies to crack down on those elements of the trade that continue to engage in conflict diamond trading.

Recommendations

1) Participating governments should establish a minimum set of control measures that countries should be required to adopt and targeted efforts should be made to enhance capacity to meet these requirements.

The system of internal national controls, which is supposed to track the origin of diamonds and ensure that no conflict diamonds enter the legitimate trade, was left to the discretion of each KP participating government. After three years, the result of this is a patchy and uneven set of measures and controls, which vary in their effectiveness from country to country. In order to ensure an effective internal control mechanism, participating governments should establish a minimum set of control measures, including verification of industry compliance and ensure that each member country develops the necessary capacity to implement and enforce such measures.

2) Participating governments should improve measures for dealing with compliance issues and apply more rigorous criteria for allowing countries to join the KPCS.

Although the KPCS is based on voluntary cooperation between governments, for the certification system to be effective and credible it is important to establish more mechanisms to address non-compliance and if necessary suspend non-compliant countries. Clear policy and procedures for addressing non compliance and suspension of non-compliant governments need to be developed and applied rigorously. There is also a need to take a more consistent and thorough approach for admitting new KP participants.

3) Participating governments should enhance monitoring of the industry's compliance with the KPCS and self-regulation.

One of the major criticisms Amnesty International and other NGOs have made of the KPCS is that there are inadequate checks on the diamond industry throughout the production and distribution process to verify industry compliance with the KPCS. This creates loopholes allowing illicit diamonds to enter the trade.

A joint AI-Global Witness report and survey of the diamond industry has shown that the diamond industry continues to fall short of implementing basic measures of industry self-regulation it has promised to adopt.

As long as the industry self-regulation system relies on voluntary adherence, only those players with good intentions will implement it. In order to be effective, the industry self-regulation system must move beyond voluntarism. Therefore, participating governments should monitor the industry's compliance with the

self-regulation system by carrying out rigorous auditing and inspecting companies' performance. Government responsibility to monitor the diamond industry should be integrated into the KPCS and be made an explicit obligation for all participating governments.

4. Participating governments should increase transparency of statistical assessments and other KP documents.

Transparent statistical data assessment is essential for effectively detecting illicit trade and helping to ensure participants' adherence to the KPCS. Analysing and comparing export/import and production figures can reveal anomalies to help uncover illicit trade. Despite the importance of this data, currently the KPCS does not make this data publicly available. Making this data transparent is important to ensure accountability and integrity of the scheme and to ensure that the data can be used as part of international efforts to combat the trade in conflict diamonds. Transparent data collection is furthermore essential to improve the quality of the statistical data and ensure governments' consistent and timely data submissions. The KPCS should also make other relevant documents publicly available such as reports of visits to review countries' diamond control systems.

5. Participating governments should exercise particular vigilance where diamonds transit through customs-free zones.

Governments in countries where diamonds transit through customs-free zones should be particularly cautious in checking and monitoring the trade of diamonds. They should undertake specific statistical controls of imported, stored and exported diamonds. They should provide customs officers with clear guidance on how to carry out checks and make sure that these are regular and effective, as well as registered.

6. Participating governments should improve internal controls of diamond cutting and polishing centres.

Credible information collected by NGOs over several years (See for example Global Witness, "Making it work: Why the Kimberley Process Must Do More to Stop Conflict Diamonds", available at: <http://www.globalwitness.org/reports/show.php/en.00082.html>) suggests that a lack of regulation and oversight in cutting and polishing centres can allow conflict diamonds to enter systems of legitimate trade.

If polishing centres don't have adequate control systems, there is a risk that conflict diamonds could be smuggled into and then laundered through their factories. Once polished, these diamonds don't fall under Kimberley Process controls.

AI calls on governments of countries with cutting and polishing industries to:

- o Enable national authorities to supervise imports of rough diamonds and exports of polished diamonds to and from polishing factories, and carry out audits of polishing factories to compare stock with company records.
- o Require diamond trading and polishing companies to record their imports of rough diamonds, details of the manufacture of cut polished stones, and the remaining and residual rough diamonds for export. These figures should be submitted monthly to the government.

7. Participating governments should provide funding and professional support for the coordination and implementation of the KPCS.

To date, the KPCS has operated on the basis of volunteer working arrangements without a permanent secretariat or other professional support. However, as the KPCS moves into a critical implementation stage,

there is a need for more resources to ensure effective coordination and to increase capacity at the country level to implement the KPCS. Participating governments should consider creating a Secretariat or providing additional resources needed to increase the effectiveness of the scheme.

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