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## Kimberley Process: An Amnesty International Position Paper

### Update on the Kimberley Process Plenary Meeting of November 2006 and Recommendations to Kimberley Process Participants

This paper contains an update on developments since Amnesty International's previous Kimberley Process position paper of 21 June 2006 (AI Index: POL 30/024/2006); including the outcome of the Kimberley Process plenary meeting held in Botswana in November 2006; together with Amnesty International's recommendations to Kimberley Process participants.

#### Background

In December 2000 the United Nations General Assembly unanimously adopted a resolution on the role of the trade in rough diamonds in funding and fuelling conflict. This resolution supported the creation of an international certification scheme to end the link between the illicit trade in conflict diamonds and human rights violations associated with armed conflict as witnessed in several African countries. Pressure on governments and the diamond industry from NGOs, including Amnesty International and Global Witness, culminated in the launch of the Kimberley Process Certification Scheme (KPCS) in 2003.

The KPCS is an international certification scheme which requires that any shipment of rough diamonds to or from a participating state is accompanied by a Kimberley Process certificate guaranteeing that the rough diamonds are "conflict-free". The diamond industry committed to a system of self-regulation to support the KPCS system including establishing a code of conduct to prevent trade in conflict diamonds, implementing a system of warranties requiring that all invoices for sales of diamonds warrant in writing that the diamonds are conflict-free, keeping records of warranty invoices and having these audited and informing company employees of government regulations and industry policies to prevent the trade in conflict diamonds.

Although the KPCS and the industry's system of self-regulation are designed to prevent the trade in conflict diamonds, Amnesty International and other NGOs have highlighted weaknesses which permit conflict diamonds to infiltrate the diamond trade. The KPCS participants held a plenary review meeting in Botswana in November 2006 to evaluate how effectively the KPCS has been to date and how it needs to be strengthened.

#### 1. Conflict Diamonds From Cote d'Ivoire Infiltrating the Diamond Trade via Ghana

In October 2006, a report of a UN Group of Experts on Cote d'Ivoire concluded that conflict diamonds from Cote D'Ivoire were infiltrating the legitimate diamond trade through Ghana, a Kimberley Process participant. Conflict diamonds worth up to \$23 million have been smuggled from the rebel controlled areas in Northern Côte d'Ivoire into Ghana where they have been certified as conflict-free due to Ghana's weak system of internal controls. The evidence of the UN Group of Experts corroborated Amnesty International's longstanding criticism that the KPCS was too weak to prevent the trade in conflict diamonds and that weak internal controls in any one participant state threatened the integrity of the entire system. In a joint letter delivered to the Chair of the Kimberley Process dated 3 November 2006, Amnesty International, Global Witness and other NGOs requested that Ghana voluntarily suspend all of its diamond exports until adequate controls endorsed by the Kimberley Process could be put in place and, if Ghana refused to do so, that Ghana be suspended from the Kimberley Process.

**Update:** At the KPCS November 2006 plenary meeting, the participating governments concluded, partly on the basis of the report of the UN Group of Experts on Côte d'Ivoire, that there could be "credible indications of significant non-compliance with the requirements of the KPCS". However, the participating governments did not call for Ghana to immediately voluntarily suspend all of its rough diamond exports. Instead the participating governments welcomed a commitment by Ghana to prepare an action plan subject to agreed criteria and decided that Ghana's compliance with the minimum requirements of the KPCS should be verified in a review mission to Ghana which should take place by 28 February 2007.

**Recommendation:** Amnesty International continues to call for suspension of rough diamond exports from Ghana and

Ghana's suspension from the KPCS until such time as controls are in place to prevent any further illicit trade in conflict diamonds and these controls have been verified as meeting KPCS requirements.

## **2. Minimum Internal Controls**

In advance of the KPCS November 2006 plenary meeting, Amnesty International called on participating governments to require all participating states to establish a common set of minimum internal control measures. Amnesty International considers that one of the principal weaknesses of the KPCS is the level of discretion that is left to participating governments to select their own internal control measures. This discretion results in uneven standards of control between participating states and opens the way for conflict diamonds to infiltrate the legitimate diamond trade via the states which have the weakest internal control measures.

**Update:** At the KPCS November 2006 plenary meeting, participating governments approved further guidance on internal controls for participating states with:

**Rough diamond production:** ensuring that all diamond mining operations are subject to licensing, that a register of licensed mines is made publicly available, that full production records are kept, and that aggregate reported production is regularly cross-checked against aggregate actual capacity as estimated by geological surveys.

**Artisanal diamond mining:** establishing cadastre systems to maintain accurate and up-to-date information on production areas and mining licenses granted, conducting periodic random spot checks to verify that all miners are licensed and implementing a system which ensures traceability of production from artisanal mine to export.

**Cross-border trade in rough diamonds:** ensuring that international payments for purchases are routed through banks and conducting physical inspections of imports and exports through comprehensive or random checks. The guidance for exports of rough diamonds includes seeking a declaration that the diamonds being exported are not conflict diamonds together with supporting evidence.

**Trade in rough diamonds in free trade zones:** licensing diamond buyers, sellers, exporters, cutters and polishers intending to deal in rough diamonds in such zones and requesting details of any stocks of rough diamonds in such zones. Participating governments requested that future peer review visits to participating states should assess implementation of all internal controls including the further guidance on internal controls agreed at the KPCS November 2006 plenary meeting.

**Recommendation:** Amnesty International welcomes the issuing of further guidance on internal controls but believes the problem of uneven standards of internal controls will remain for as long as minimum control measures remain non-binding. Until such measures become binding, Amnesty International urges all participating governments to systematically implement the recommended internal control measures, including the further guidance on internal controls agreed at the KPCS November 2006 plenary meeting, as without systematic implementation by all participating states, the threat of conflict diamonds infiltrating the diamond trade will continue to exist.

## **3. Verification of Industry Compliance with the KPCS and Self-Regulation**

Prior to the KPCS November 2006 plenary meeting, Amnesty International called on participating governments to strengthen government checks of the diamond industry's compliance with the KPCS and the industry's system of self-regulation including increased audits and inspections. Amnesty International has strongly criticized the inadequacy of government checks on the diamond industry for creating loopholes which allow conflict diamonds to enter the legitimate diamond trade at various stages of the production and distribution process. For example, *Deja Vu*, a joint survey of leading diamond retailers in the US and UK published by Amnesty International and Global Witness in 2004, showed that fewer than one in five companies that responded in writing provided a meaningful account of their conflict diamond policy and less than half of diamond jewellery retailers visited in stores were to provide consumers with meaningful assurances that their diamonds were conflict-free.

**Update:** The further guidance on internal controls agreed by participating governments at the KPCS November 2006 plenary meeting includes some recommendations regarding industry self-regulation with government oversight.

These recommendations include: membership of self-regulatory bodies by individuals and companies in the rough diamond trade, adoption by such bodies of internal codes of conduct enforced by internal disciplinary mechanisms, a requirement for members of such bodies to have their records subjected to regular independent auditing to ensure that all rough diamonds traded by them can be traced to imports with valid Kimberley Process certificates and spot-checks by the supervising authority to ensure that audit requirements are respected.

However, participating governments did not reach consensus on how governments demonstrate adequate verification of industry compliance with the KPCS and they agreed to make the issue of credible government oversight of industry one of the four priority issues for the KPCS in 2007.

**Recommendation:** Amnesty International urges participating governments to agree comprehensive common

standards on how governments verify industry compliance with the KPCS and the industry's system of self-regulation without delay, encompassing mandatory audits and inspections of industry compliance, including spot-checks.

#### **4. Suspension from the KPCS for Non-Compliance**

Before the KPCS November 2006 plenary meeting, Amnesty International called for clear policies and procedures to address the failure of participant governments to comply with the KPCS including credible policies and procedures for suspension from the KPCS for non-compliance. Amnesty International argued that a system which is based on voluntary cooperation between governments but which lacks the teeth or the will to deal strongly with states which fail to comply with the KPCS cannot prevent the trade in conflict diamonds.

**Update:** Participating governments agreed that they should develop proposals related to interim measures including possible suspension in cases of significant non-compliance.

**Recommendation:** Amnesty International urges participating governments to follow through on this commitment by establishing, without delay, and implementing credible policies and procedures for addressing situations of non-compliance, including suspension of KPCS membership, in order to ensure the integrity of the KPCS.

#### **5. Transparency of Statistical Data**

In its June 2006 position paper, Amnesty International called for greater transparency of statistical data from KPCS participating states and the diamond industry. Amnesty International argued that greater transparency of statistical data is a prerequisite for comparing estimates of diamond production capacity based on geological surveys against figures for production, export and import in order to identify anomalies which help to uncover an illicit trade in conflict diamonds.

**Update:** Participating governments agreed to furnish annual aggregated data on exports, imports, production and Kimberley Process certificate counts. These aggregated data will be provided on an annual basis, six months after the end of the calendar year. It was agreed that summary data for 2004 and 2005 would be released immediately. Participating governments agreed to publish the names of states which are habitually late in submitting agreed statistics on time. Participating governments agreed that improving statistical gathering and analysis would be one of four priority issues for 2007.

**Recommendation:** Amnesty International urges participating governments to strengthen the capacity of states to gather and analyze these statistics which are a critical means of detecting trade in conflict diamonds.

#### **6. Controls of Diamond Cutting and Polishing Centres**

In its June 2006 position paper, Amnesty International called for tighter controls of diamond cutting and polishing centres. Amnesty International argued that if adequate controls of cutting and polishing centres are not put in place, conflict diamonds may infiltrate the legitimate diamond trade by being smuggled into these centres and laundered through them.

Amnesty International made two specific recommendations to governments having cutting and polishing industries. First, they should supervise imports of rough diamonds to cutting and polishing centres and exports of polished diamonds from such centres and conduct audits of such centres to compare stocks against company records. Second, they should require diamond cutting and polishing companies to record details of their imports of rough diamonds, their manufacture of polished stones and their residual rough diamonds for export and to submit these details to the government periodically.

**Update:** The further guidance on internal controls agreed by participating governments at the KPCS November 2006 plenary meeting include some suggested controls relating to cutters and polishers. These include recommendations for governments to account on an annual basis for the overall volume of rough diamonds used for cutting and polishing in their jurisdiction, to require information on any criminal convictions from a person applying for a licence, to make the names of licence-holders publicly available, to ensure that rough diamond buyers and sellers maintain verifiable records, and, where possible, to conduct checks to reconcile invoices with Kimberley Process certificates and to compare trade with annual stock declarations.

**Recommendation:** Amnesty International continues to call for the more stringent measures recommended in its June 2006 position paper. In the meantime Amnesty International urges all participating governments to systematically implement the recommended (non-binding) control measures relating to cutting and polishing centres contained in the further guidance on internal controls agreed by participating governments at the KPCS November 2006 plenary meeting.

#### **7. Funding and Professional Support**

In its June 2006 position paper, Amnesty International called for participating governments to provide funding and professional support for the coordination and implementation of the KPCS. Amnesty International argued that more resources were required to raise the capacity at country level to implement the KPCS including enabling civil society to

participate in the oversight of the KPCS.

**Update:** Although participating governments did not agree to establish a KPCS Secretariat, individual countries agreed to provide funds for civil society participation in KPCS country review visits. Participating governments agreed that funding and resources requirements should be made one of four priority issues for 2007.

**Recommendation:** Amnesty International urges participating governments to secure effective coordination of the KPCS. Measures for securing effective coordination may include establishing a Secretariat or allocating other resources for the effective coordination of the KPCS. Amnesty International also urges governments to adopt targeted measures to raise capacity at country level to implement the KPCS.

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