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Implementing the Kimberley Process

5 years on – how effective is the Kimberley Process and what more needs to be done?

The five-year anniversary of the Kimberley Process marks an important time to assess how the Kimberley Process is working to prevent the trade in conflict diamonds, and what more needs to be done to ensure that the process is credible and effective. This briefing document reflects on some of the accomplishments of the Kimberley Process while highlighting that much more work remains to be done to ensure that it is effectively implemented and strengthened to prevent diamonds from ever again fuelling conflict. It is hoped that these key challenges will be addressed by the Kimberley Process Plenary in 2005 and that the Russian Federation, as the chair of the Kimberley Process in 2005, will take a leadership role in addressing these issues.

Some progress has been made

It is clear that the creation and implementation of the Kimberley Process was a significant step in addressing the important humanitarian and security problems associated with conflict diamonds. The major accomplishments are:

- ◆ There are a total of 67 countries, including those represented by the European Commission, currently participating in the Kimberley Process. This includes all the major diamond producing and trading countries. All Participants have passed national laws to establish export/import control regimes aimed at keeping out conflict diamonds.
- ◆ The Republic of Congo, a hub for illicit diamond trading, was removed from the Kimberley Process in July 2004 because it was found to be non-compliant with the Kimberley Process. Analysis of Republic of Congo's diamond production data was key to identifying major flaws in their system and taking action. Their removal was urgently needed to help ensure the credibility of the Kimberley Process and to prevent conflict diamonds from entering the legitimate diamond trade.
- ◆ There is now a Kimberley Process monitoring program in place aimed at reviewing how Participants' diamond control systems are working and identifying ways to strengthen these systems. To date, 16 review visits to a total of 15 countries and the European Community have been carried out to evaluate how individual country systems are working and to identify ways to strengthen these systems (review visits are comprised of experts from government, civil society and industry). An additional 16 countries have volunteered to host a review visit.¹
- ◆ A group has been established within the Kimberley Process to focus on the problems implementing systems of controls in alluvial diamond producing countries. All Participants with alluvial diamond production are members of this group, which also includes civil society and industry. The group aims to address the challenges facing alluvial producers and promote the exchange of best practices.

Much more needs to be done

While considerable progress has been made on a number of fronts, the Kimberley Process still has a long way to go before being able to effectively prevent diamonds from fuelling conflict. Diamonds continue to fuel conflict and are vulnerable to being used to launder money and for financing terrorism. United Nations Security Council sanctions on diamonds from Liberia are maintained because the government does not have control over diamond production areas and border regions. Despite the fact that the DRC is a Participant in the Kimberley Process, diamonds in eastern DRC continue to fuel conflict and human rights abuses. In Cote d'Ivoire, civil war broke out in 2002 killing thousands and the Cote d'Ivoirian government halted official diamond exports in 2003. However, large scale diamond mining is underway, with diamonds flowing out of Cote d'Ivoire and being exported from surrounding countries in the region.² Although a peace process has been negotiated, it is extremely fragile. If diamonds from Cote d'Ivoire are being exported from Kimberley Process Participants this would jeopardize the whole system, questioning its effectiveness in stemming the trade in conflict diamonds.

The major challenge facing the Kimberley Process is in ensuring that diamond control systems, which look good on paper, are effectively implemented and enforced on the ground. Kimberley Process certificates must be backed by strong diamond control systems, if not, the process will be neither credible nor effective and diamonds will continue to be exploited and used to fund conflict.

At the 5 year anniversary of the Kimberley Process, urgent focus is needed to ensure that all Participants have effective diamond controls in place and that the Kimberley Process as a whole has robust mechanisms to monitor and improve these systems. The effectiveness of the system relies on its implementation. In particular, focus must be on ensuring an effective monitoring program, statistical reporting and analysis; crucial tools in detecting conflict diamond trading. Greater focus and attention is also needed on building strong diamond controls in alluvial-diamond producing countries, where diamonds are vulnerable to be exploited and used for conflict, and on building strong controls in major trading centers to help keep conflict diamonds from entering legitimate channels.



To ensure the credibility and effectiveness of the Kimberley Process, the following problems must be addressed:

1) Ensure the timely and complete collection and analysis of statistics which represent one of the most serious challenges facing the Kimberley Process, threatening to undermine the effectiveness of the entire Scheme.

According to the Kimberley Process Certification Scheme, “Reliable and comparable data on the production and the international trade in rough diamonds are an essential tool for the implementation of the Certification Scheme and particularly for identifying any irregularities or anomalies that could indicate that conflict diamonds are entering the legitimate trade.”³ Despite the importance of statistics, statistical reporting and analysis have been plagued by many problems, meaning that the Kimberley Process hasn’t been able to fully utilise one of its key tools for detecting conflict diamond trading.

There have been major problems in getting Participants to submit required statistics on time. A significant number of Participants have been consistently late in reporting data and are therefore in non-compliance with the statistical reporting requirements. Currently, Tanzania has submitted no statistical data. 10 other countries: Bulgaria, Central African Republic, China, Guinea, Ghana, Guyana, Laos, Lesotho, Malaysia and Venezuela have outstanding, limited or incomplete data. So far, there have been no consequences for Participants that are non-compliant with statistical submissions even though this means that they are failing to meet the minimum requirements of the Kimberley Process.

Such a serious breach should be met with a consistent and strong response – temporary suspension from the Kimberley Process until the required data is submitted. There should be a simple, standard procedure for removing a Participant from the Kimberley Process if it has failed to submit data after a 60 day period and has been notified of this. A similar procedure should be implemented for those Participants that are late in submitting annual reports, another requirement

In May 2000, major diamond trading and producing countries, civil society and representatives of the diamond industry convened in Kimberley, South Africa to determine how to combat the trade in conflict diamonds. Hosted by the South African government, this meeting was in response to an international NGO campaign that brought attention to the devastation caused by conflict diamonds. Conflict diamonds have fuelled wars in Angola, Sierra Leone, Liberia and the Democratic Republic of the Congo (DRC), displacing and killing millions of people and causing widespread devastation. Diamonds have also been used to finance terrorism and launder money.

The Kimberley meeting was the start of a 3-year negotiating process that led to the establishment of the Kimberley Process Certification Scheme (KPCS). The KPCS is an international diamond certification scheme aimed at preventing the trade in conflict diamonds and protecting the legitimate diamond trade. It was launched in January 2003 and has been endorsed by the United Nations General Assembly and the United Nations Security Council. Participants in the Kimberley Process must pass national laws establishing export/import control regimes to keep out conflict diamonds. Another important requirement is the submission of rough diamond trade and production statistics, a key tool to detecting conflict diamond trading. Representatives of civil society and the diamond industry are active in the process.

that all must comply with. Currently four Participants, Guyana, Lesotho, Sri Lanka and Tanzania have failed to submit an annual report for 2004⁴. Monthly reports identifying those Participants that have failed to submit statistics should be prepared by the Chair of the Kimberley Process and should be circulated to all Participants and observers and made public.

There are other serious problems with statistical reporting. A significant amount of data submitted is of poor quality or cannot be compared to other Participants’ data. Some Participants, including Canada and the United States (US), are not recording data from Kimberley

Process certificates because they have other procedures in place for recording trade data. This means that their data is not comparable and skews efforts to analyze data between Participants. While Canada plans to change its law so that it can record Kimberley Process Certificate-based data, the US has made no commitments to modifying its system. Given that the US is the largest consumer of diamond jewellery, it must urgently address this problem so that its statistics can be compared in order to identify any anomalies. In addition, some other Participants are submitting inaccurate data.

Another major problem is the lack of regular analysis of statistics that is needed in order to identify illicit trade. Statistical analysis is crucial for highlighting irregularities and discrepancies that could indicate the infiltration of conflict diamonds into the legitimate trade. This was the case for the Republic of Congo, where statistical analysis uncovered their non-compliance with the Kimberley Process. Currently, an in-depth analysis of a country's Kimberley Process data is only undertaken prior to a review visit and in most cases this analysis has shown significant discrepancies. To rectify this problem, an annual analysis of statistical data should be carried out by a professional, private sector auditing firm to ensure the detection of any problems in an effective and timely manner.

2) Improve the monitoring system to ensure that all Participants' systems are evaluated and are strengthened to be effective.

Although a total of 31 countries and the European Community have received or are going to receive a review visit to assess the effectiveness of their diamond control systems, the monitoring system must be strengthened to ensure that all Participants' systems are reviewed and that any weaknesses identified are addressed. Review visits are not always as thorough and probing as they could be, nor are they of a consistent quality.⁵ The peer review system adopted by the Kimberley Process is voluntary, meaning that countries have to volunteer for a review visit. There are still 8 Participants that have not volunteered to receive a review visit: Bulgaria, China, Croatia, Korea, Laos, Namibia, Thailand and

Venezuela. Namibia is the only major diamond producing Participant that has not volunteered to host a review visit, which it should do to ensure the credibility of the Kimberley Process. China, emerging as a huge diamond market, is also a key Participant that has not volunteered to be reviewed. The Kimberley Process should aim to review all Participants for the first time by the end of 2006. Review visits that have been carried out have found that some systems are very good, others need to be improved upon and some have serious weaknesses that should urgently be addressed.

For each review visit, the review team prepares a report outlining the major findings of the visit and puts forward concrete recommendations to strengthen the Participant's system. The Kimberley Process has not adequately focused on ensuring that recommendations laid out in review visit reports are implemented by the government that was reviewed. Although Participants are now asked to report on the status of implementing recommendations in their annual reports, the Kimberley Process should review and follow-up with Participants every 6 months to assess whether recommendations have been implemented and ascertain what more needs to be done to address any weaknesses in their systems.

Participants that have received review visits should also be required to report back to the Kimberley Process Plenary on how recommendations are being taken up and implemented, and what progress has been made since they received a review visit. Each Participant could be given a brief spot at each Plenary meeting to provide an update on action taken since the review visit – this should be included in the agenda for the 2005 Kimberley Process Plenary. Questions raised by statistical analysis should also be addressed.

Although summaries of review visit reports are supposed to be made public, this has been done with varying degrees of success. In order to ensure transparency and credibility of the process, all review visit reports should be placed in full on the public section of the Kimberley Process website.

One of the major weaknesses in many Participants' systems that the working group on

monitoring should address is the lack of internal controls and checks to ensure that all rough diamonds exported are conflict-free. This underpins the Kimberley Process system but Participants are not always able to provide conclusive evidence of this. There is a particular difficulty in artisanal diamond producing countries which face so many challenges in enforcing effective controls over a largely informal and diverse sector. Also, Participants with trading centers have not given enough attention to government oversight of the diamond industry, and should carry out spot checks and audits to verify compliance with the Kimberley Process.

The Kimberley Process has recognized the problems specific to alluvial producing countries and established a working group comprising all alluvial producing Participants to focus specifically on difficulties implementing internal controls in

artisanal diamond mining countries. This group is currently surveying alluvial producing Participants about the problems they face in implementing the KPCS and this information should be used to strengthen their internal controls in a realistic and meaningful way and inform any technical assistance provided to these countries. Results of this group's work should be presented and taken up at the 2005 Plenary meeting in Russia.

The diamond industry has also signed up to a system of self-regulation aimed at supporting the Kimberley Process but this is not being systematically monitored and assessed by the industry, and review visits do not always focus on this. The diamond industry has committed to a system of warranties, and while some are working hard to move forward on this issue, others must do more than simply require a statement on an invoice from suppliers.⁶



3) Appoint an independent evaluation team to conduct a credible, effective and transparent review of the Kimberley Process.

The Kimberley Process Plenary formed a working group to develop options for carrying out the 3 year review of the Kimberley Process. There is currently a debate about whether such a review should be internal or external. The Kimberley Process technical document states that the review should be “a thorough analysis of all elements contained in the scheme.” It is crucial that an external review be undertaken to ensure that the review is conducted objectively and in a manner that provides useful and practical recommendations for strengthening the Kimberley Process.

Independent evaluation is a standard and widely-accepted practice used in the private sector and in government and non-governmental organizations in order to gather views and to increase transparency. There is no reason why the Kimberley Process should be any different. The Working Group should manage the review by developing Terms of Reference for the team, overseeing the selection of the team members and the process for carrying out the review. The evaluation team would be responsible for carrying out interviews and surveys with Kimberley Process Participants and chairs of the working groups to assess how the process is working and it would outline and analyze its recommendations in a report. These recommendations should be considered by the Kimberley Process review working group and the Plenary.

An internal review could not be objective or thorough because it would involve Participants and observers who are enmeshed in the process. It is not something that should be done with a few conference

calls and meetings, but merits the time and resources required to do it thoroughly. The review must not be taken lightly – it provides a crucial milestone for evaluating whether the Kimberley Process is achieving its goals. Given the millions of lives lost and devastation caused by conflict diamonds, it is important for the review working group and the Kimberley Process as a whole to have an objective, comprehensive external review backed by adequate resources and expertise.

4) Implement coordinated activities to provide technical assistance and capacity building to countries that need assistance.

Some of the Participants that are not complying with statistical and monitoring requirements may need technical assistance, particularly developing countries with limited capacity. However, although a technical assistance component is incorporated in Section V of the KPCS document, to date little assistance has been provided. *Ad hoc* assistance has been provided to some Participants, particularly in statistical matters, but there have been no coordinated efforts or resources devoted to address capacity issues to help improve accuracy of statistical reporting or other problems.

An evaluation exercise should be carried out in order to ascertain the level of assistance that is required, based on review visit recommendations, annual reports, statistical reporting and any requests that have been made. Offers of assistance, along with a Participant’s area of expertise, could also be identified, and incorporated in a paper providing an overview of assistance and capacity building needs. A matrix could be created which would inform an assistance function, initially prepared by the Working Group on monitoring and taken over by the Chair.



Recommendations To the Kimberley Process:

- ◆ Ensure the effective collection and analysis of statistics on trade in rough diamonds, an important tool for detecting conflict diamond trading. A significant number of countries have failed to submit data or have submitted incomplete, inaccurate or extremely late data. The Kimberley Process should:
 - develop an automatic procedure to suspend countries after 60 days that are late in submitting required data and have been notified of this.
 - require all countries to submit Kimberley Process Certificate-based data.
 - ensure that Kimberley Process Certificates continue to record the value of rough diamonds.
 - appoint a professional, private sector auditing firm to gather and analyze each Participant's data at least on an annual basis to identify discrepancies.
 - provide capacity and technical assistance via donor countries to those countries that need assistance to meet statistical requirements.
 - the Kimberley Process Chair should make a monthly report listing countries outstanding in providing statistical data and make this list public.
- ◆ Ensure a thorough review of all Participants' diamond review systems is made and that follow-up action is taken to address any weaknesses identified in the reviews. The Kimberley Process should:
 - Follow-up every six months with countries to assess the status of efforts to improve diamond control systems and any further assistance needed to do this.
 - Make all review visit reports public.
 - Require that Participants that have received a review visit report back to Plenary detailing how they have acted on any recommendations made or questions asked following review visits.
- ◆ Carry out an impartial, independent review of the Kimberley Process to assess how it is working and identify concrete ways in which to improve the process. A team of independent evaluators should be appointed to carry out the review and make a report and concrete recommendations on how the

process should be strengthened. The review working group should manage the process including preparing Terms of Reference for a team of experts to undertake the evaluation as well as for how the review is to be carried out.

- ◆ Identify specific needs that can be addressed with technical assistance and capacity building and identify donor governments that can provide the assistance that is needed.
- ◆ Establish a permanent secretariat dedicated to monitoring, analyzing and coordinating the effective implementation of the Kimberley Process Certification Scheme. Increase the length of the chairmanship of the Kimberley Process from one to two years to maximize benefits from built-up experience and maintain continuity.

To governments participating in the Kimberley Process:

- ◆ Kimberley Process Participants should carry out rigorous auditing and inspections of diamond companies' compliance with the Kimberley Process and the self-regulation that the diamond industry has committed to implement in support of the process. Adequate government oversight of the diamond industry is an important way to prevent diamonds from being used illicitly and for money laundering purposes.
- ◆ Participants with alluvial diamond mines should implement strong controls to ensure adequate control of diamond mining areas. Accurate daily records should be kept at each production site, and official monitors should be present to record production and sales. All information should be shared between all those responsible for oversight of diamond mining and sales and the implementation of the Kimberley Process.

To the diamond industry:

- ◆ Diamond companies should fully comply with the Kimberley Process and implement the self-regulation and system of warranties in a manner that goes beyond simply requiring a warranty from suppliers. Strict criteria should be applied in the selection of suppliers and third-party auditing procedures should be adopted to ensure that policies are working effectively.

Endnotes

- ¹ Participants that have hosted a review visit are: United Arab Emirates, Israel, Botswana, Mauritius, Zimbabwe, South Africa, Lesotho, Canada, Democratic Republic of Congo, European Community, Switzerland, India, Sri Lanka, Sierra Leone, Guinea and the Russian Federation. Additional countries that are scheduled to have a review visit are: United States, Ghana, Togo, Tanzania, Brazil, Guyana, Angola, Belarus, Armenia, Vietnam, Singapore, Malaysia, Norway, Romania, Australia and Japan.
- ² Africa Mining Intelligence No 109, *Ivory Coast Gems in Bamako*, 25 May 2005
- ³ Annex III of the KPCS technical document
- ⁴ Draft consolidated matrix of the Kimberley Process Working Group on Monitoring assessment of annual reports, 30 May 2005.
- ⁵ Partnership Africa Canada's recent report *The Failure of Good Intentions* shows that weak controls in one country undermine the entire KPCS but a 3 day review visit would have been unable to uncover all this information. http://www.pacweb.org/e/images/stories/brazil%20report%20_final_electronic%20version.pdf
- ⁶ For more information on the need for the diamond industry to more effectively implement the self-regulation, please see Global Witness report *Déjà Vu*: <http://www.globalwitness.org/reports/index.php?section=diamonds>

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