CHAINS OF ABUSE

The global diamond supply chain and the case of the Central African Republic.

AMNESTY INTERNATIONAL

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Cover photo: The vast majority of diamond mining in the Central African Republic (CAR) is done by artisanal miners and the sector is mostly informal and uncontrolled, and vulnerable to abuse. Carnot, CAR, May 2015. © Amnesty International

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GLOSSARY

AWDC: Antwerp World Diamond Centre, an industry-established foundation that supports the diamond industry in Belgium.

BECDOR: *Bureau d'évaluation et de contrôle de diamant et d'or* (Office for the Evaluation and Control of Diamonds and Gold), a CAR government body responsible for tax and export control, including overseeing the implementation of the Kimberley Process by CAR's Permanent Secretariat for the Kimberley Process (*Secrétaire Permanent du Processus de Kimberley, SPPK*).

CAR: Central African Republic.

Diamond Office: The centre for the import and export of all rough and polished diamonds in Belgium as well as other EU countries that use it as their import/export centre, overseen by the Belgian Ministry of Economic Affairs.

DMCC: Dubai Multi-Commodities Centre, a Dubai-government owned entity that is the centre for the import and export of all rough diamonds in the UAE.

DRC: Democratic Republic of the Congo.

Illegal: Activities related to the diamond industry may be illegal for a number of reasons, depending on the law of the country involved; these illegal activities may also amount to crimes under the law of that country. For example, if a diamond is smuggled into or out of a country, this could be illegal because it evades taxes or other import / export customs duties. Under UN Chapter VII sanctions on CAR, it is unlawful to make funds or economic resources available to persons or entities designated by the UN (e.g., by buying diamonds from them). If the country is a member of the Kimberley Process, it will be illegal under national law for any rough diamonds to be imported or exported without a Kimberley Process certificate.

Kimberley Process: The Kimberley Process Certification Scheme, a global initiative set up to stop "conflict" or "blood" diamonds from entering international supply chains. Under the Kimberley Process, each export of rough diamonds from a participating State must be accompanied by a Kimberley Process certificate confirming that the diamonds in that shipment are not "conflict diamonds". "Conflict diamonds" are narrowly defined under the Kimberley Process as "diamonds used by rebel movements or their allies to finance conflict aimed at undermining legitimate governments".

MINUSCA: The United Nations Multidimensional Integrated Stabilization Mission in CAR.

OECD: Organisation for Economic Cooperation and Development.

OECD Due Diligence Guidance: The *OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas*, a supply chain due diligence framework that covers all minerals including diamonds and sets out a five-step framework for companies to use to ensure they respect human rights and avoid financing conflict when sourcing minerals.

UAE: United Arab Emirates.

1. EXECUTIVE SUMMARY

The tragedy of countries that are richly endowed with mineral resources and yet riven by poverty, conflict and corruption is widely documented. Armed groups, criminal gangs, corrupt elites and unscrupulous companies all feed off the mineral trade and have removed vast wealth from developing economies over the years through a range of illegal and/or unethical practices. Consequently local people rarely see significant benefits from mineral extraction but often have to live with the human rights impacts of pollution, conflict and exploitation. Many of the minerals mined in these contexts end up in well-known consumer goods – from diamonds in jewellery to coltan in smartphones.

This report focuses on the diamond supply chain, looking at human rights abuses and other unlawful and unethical activities linked to the extraction of and trade in rough diamonds. It begins by looking at the case of one diamond-producing country that has been embroiled in conflict since late 2012 – the Central African Republic (CAR) – and moves along the supply chain from CAR to the international diamond trading centres of Dubai and Antwerp.

The report is based on extensive desk research on the international diamond supply chain, including reviewing documents on the import and export of diamonds. Desk research was augmented by field research in four countries: CAR, the United Arab Emirates (UAE), Cameroon and Belgium. Amnesty International researchers spoke with or wrote to all four governments as well as a number of companies named in this report, offering an opportunity to comment on the organization's findings.

Members of anti-balaka militia, participating in burning down a mosque and looting property nearby in PK 26 area, north of Bangui, 23 January 2014.
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CAR'S INTERNAL DIAMOND MARKET: FUNDING ABUSE AND CONFLICT

CAR is one of the poorest countries in the world. In December 2012, a rebel alliance known as the Séléka – predominantly from CAR's Muslim minority – began a military offensive, overthrowing the then government in March 2013. In mid-2013, armed militia groups known as anti-balaka – who were mainly Christian or animist – began to emerge around the country. The anti-balaka were not only determined to drive out the Séléka but also targeted Muslim civilians. Both the Séléka and anti-balaka have carried out horrific human rights abuses throughout the conflict. More than 5,000 people have died so far. While an interim government was established in January 2014, it lacks the military capacity and power to stop the violence. International peacekeepers have provided a degree of security in some areas but armed groups remain active in many parts of the country.

Prior to the Séléka government taking power, the diamond industry made a significant contribution to CAR's economy – representing about half the country's total exports and 20% of its budget receipts. In May 2013, two months after the Séléka took power, the Kimberley Process imposed a ban on the export of CAR's diamonds. The Kimberley Process is an inter-governmental diamond supply chain initiative, which was established in 2003 in an effort to stop the international trade in "conflict diamonds".

The Kimberley Process export ban did not prohibit the trade of diamonds within CAR. Throughout the conflict, thousands of small-scale artisanal miners have continued to mine for diamonds and sell them to traders. Traders have then sold them to the diamond export companies (known as buying houses) in the capital, Bangui, where they remain. The continuation of the diamond trade within CAR was inevitable in a country where many tens of thousands of people rely on diamonds for their livelihood.

The Séléka and anti-balaka profit greatly from CAR's internal diamond trade. In some cases they take over mine sites. More commonly, they demand "taxes" or "protection" money from miners and traders. They have perpetrated vicious attacks against artisanal miners and traders. The exact extent to which the Séléka and anti-balaka finance their operations through diamonds is unclear. They do not control the diamond trade entirely, and by its nature extortion is hard to measure. Both groups also obtain funds from "taxing" other commodities such as gold and agricultural goods.

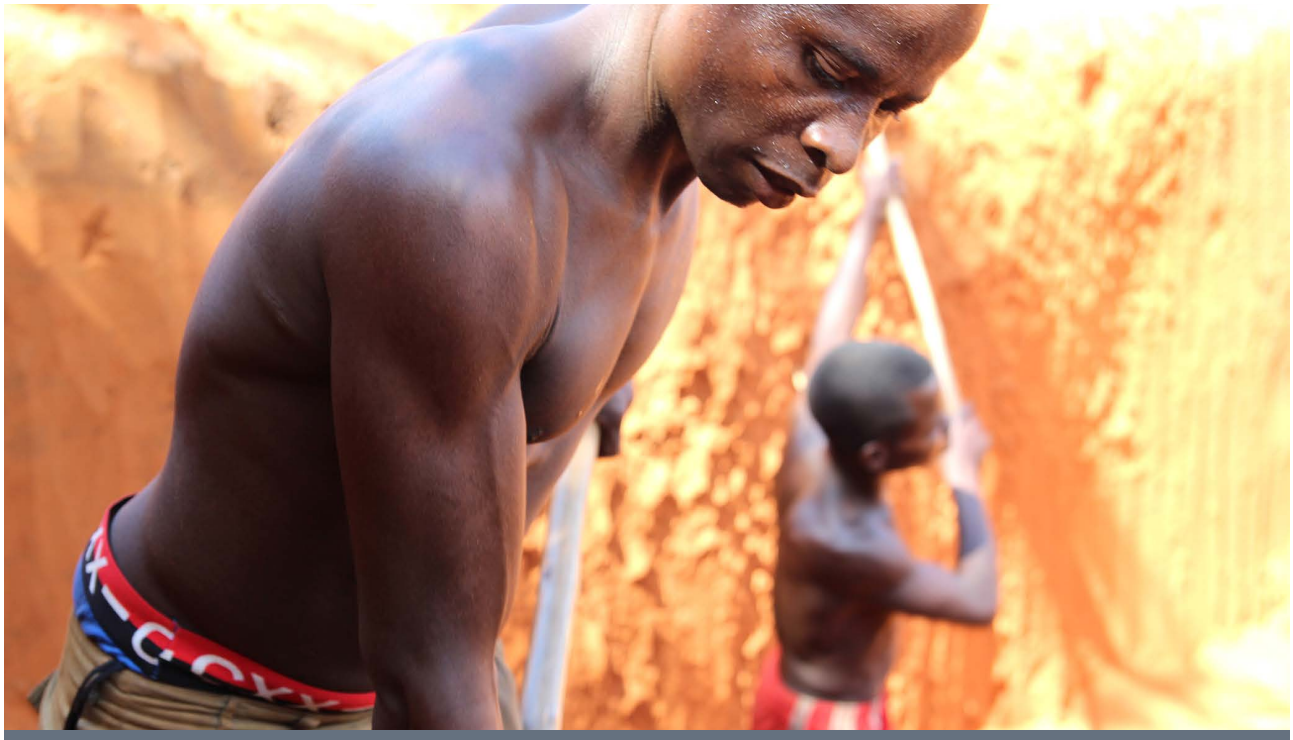
The involvement of armed groups is not the only human rights concern in CAR's diamond sector. Artisanal miners often work in dangerous conditions and the State – even when functioning – provides little in the way of protection. Miners are exposed to serious health and safety risks at unregulated mine sites. They are frequently trapped in exploitative relationships with the middlemen who trade diamonds, and therefore carry out backbreaking work for very little money. Non-governmental organizations have reported child labour at diamond mines, and Amnesty International found several children, including an 11 year-old boy, working in hazardous conditions at a diamond site. However, the scale of the child labour problem has never been examined.

A man displays a rough diamond, from the Boda region, for sale in Bangui, 1 May 2014. Despite a 2013 ban on diamond exports by the Kimberley Process, rough diamonds are still commonly offered for sale in Central African Republic. © REUTERS/Emmanuel Braun

As noted above, CAR's buying houses have stockpiled some diamonds in Bangui since the export ban came into force. Two of the main diamond buying houses – Badica and Sodiam – have together purchased diamonds worth several million dollars during the conflict, including diamonds from areas where the Séléka and anti-balaka are known to be extorting money from diamond miners and traders. While both companies deny buying conflict diamonds, Amnesty International believes they have purchased diamonds without adequately investigating whether they have funded armed groups. The UN has recently imposed sanctions on Badica and its Belgian sister company Kardiam for providing support to the Séléka and anti-balaka through their diamond purchases.

In July 2015, the Kimberley Process agreed that CAR could resume diamond exports from some areas once certain terms and conditions have been fulfilled (as of the date of publication of this report, these requirements had not been met and the export ban still stands). CAR's transitional government had lobbied for this move because the country desperately needs the revenue from diamond exports. The Kimberley Process has also agreed that the diamonds stockpiled by the buying houses in CAR can be exported subject to a "forensic audit". While it is unclear what this involves, without a full investigation into whether these diamonds have in any way funded armed groups, there is a clear danger that once the ban is lifted from these areas "conflict diamonds" could be exported into international markets and sold to consumers. Buying diamonds from Badica and Kardiam would in any event violate UN sanctions on CAR.

Amnesty International has called for a process that will allow the people of CAR to benefit from the diamonds held in Bangui, but which will sanction companies where there is evidence that they knowingly purchased diamonds that funded armed groups or failed to carry out reasonable checks to prevent their business operations supporting armed groups. The UN Security Council has specifically stated that supporting illegal armed groups through the exploitation of CAR's diamonds undermines peace, security and stability and expressed its intention to impose targeted sanctions against those involved.



Most diamond mining in CAR is done by artisanal miners. The work is difficult, poorly paid and dangerous. Carnot, Central African Republic, May 2015.
© Amnesty International

THE INTERNATIONAL DIAMOND MARKET: TURNING A BLIND EYE TO ILLEGAL AND UNETHICAL PRACTICES

While some diamonds have been stockpiled by the buying houses, many other diamonds mined and traded during the conflict have been smuggled out of CAR and into neighbouring countries – including the Democratic Republic of the Congo (DRC) and Cameroon. Diamond smuggling was a significant issue in CAR even before the current conflict, but most industry experts agree that smuggling has increased since it began. The UN has estimated that an additional 140,000 carats have been smuggled out of CAR since mid-2013. However, very few diamonds have been seized internationally as suspected CAR diamonds. It is therefore highly likely that most of them have entered global markets and been bought by consumers.

Those countries directly connected to CAR by land and air are unlikely to be the ultimate destination of smuggled diamonds; diamonds generally only realise their true value when they are sold in global trading centres. Two of the world's biggest diamond trading centres are in Belgium and the UAE. Both are members of the Kimberley Process and therefore supposed to have effective systems in place to regulate diamond imports and exports. However, researchers found a number of weaknesses that could enable smuggled diamonds to enter the supply chain at these points. The sheer number of traders, diamonds and documents involved makes controlling the trade and checking paper trails difficult and there are loopholes in the monitoring and sanctioning of diamond traders who do not follow the rules.

Additionally, researchers found that certain practices in the global supply chain enable some international diamond traders (often multinational companies) to make massive profits at the expense of poor diamond-producing countries. For example, companies may manipulate the prices at which they buy or sell diamonds so as to avoid tax. This can include under-valuing diamonds being exported from developing countries. Experts have estimated that African countries lose billions of dollars every year to activities such as smuggling and tax abuse. The loss of these revenues undermines the ability of governments to fund essential services necessary for the realisation of human rights, such as education and health care. UN human rights bodies have increasingly acknowledged the illicit movement of wealth out of developing countries in Africa as a serious human rights challenge.

These tax practices appear commonplace in the UAE, where diamond trading is predominantly carried out in zones in which no tax is payable on corporate profits. However, the authorities in Dubai have not only failed to crack down on such practices but appear to be indifferent to the issue. Amnesty International considers that the UAE Government may be complicit in the illicit flow of wealth out of Africa.

ENDING ABUSES IN THE DIAMOND SUPPLY CHAIN

In looking along the diamond supply chain this report exposes how the legal, ethical and human rights risks associated with diamonds extend beyond conflict. From the conditions at mine sites to the illicit out-flows of wealth from developing economies linked to diamond pricing and smuggling, various actors – including armed groups, smugglers and companies – are profiting from poverty, human rights abuses and unlawful activities. Smuggling and abusive tax practices deprive poor countries of revenues, while the actors involved reap unjust financial benefits. The transnational nature of the diamond supply chain facilitates these abuses.

The Kimberley Process is one of the few mineral supply chain initiatives that is backed up by international cooperation and an enforcement mechanism. But it has several significant limitations and weaknesses and does not address many of the abuses identified in this report.

One key limitation of the Kimberley Process is its narrow scope – it focuses only on "conflict diamonds" thereby excluding other human rights concerns associated with the mining of and trade in diamonds and diamonds that have financed abusive government forces. Additionally, it tackles only the international trade in conflict diamonds, not the internal trade within countries. Even in relation to its core focus on stopping diamonds that have funded rebel groups from entering the international market, this report exposes a number of problems in the context of CAR – not only do armed groups within CAR continue to exploit the diamond trade to fund their operations but smuggling is believed to have increased since the Kimberley Process ban.

Another limitation of the Kimberley Process is that it does not place any responsibility on companies to check their supply chains. Under international standards on business and human rights, companies have a responsibility to respect human rights throughout their operations and should have in place a human rights due diligence process to identify, prevent, mitigate and – where necessary – redress human rights abuses connected to their operations. There are thousands of companies involved in the global diamond supply chain and, while this report has not examined all of their practices, it is clear that key players in the industry are not addressing the issues raised in this report in accordance with these international standards. For example, companies that engage in abusive tax practices are breaching international standards on business and human rights. These standards make clear that the responsibility to respect human rights exists whether or not States require companies to act responsibly. That some of these tax practices may be legal is no defence when a company knowingly uses them to evade tax and extract substantial profits at the expense of developing economies.

The failures – by States and companies – documented in this report mean that, ultimately, diamonds are circulating in international and consumer markets that are associated with conflict and abuses. The wider work of Amnesty International and other NGOs indicates that issues similar to those identified in this report occur within other mineral supply chains. As such, Amnesty International is calling on States and relevant regional bodies to adopt laws that require companies to investigate and report publicly on their mineral supply chains in accordance with international standards such as the *OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas.* The report also makes a number of other specific recommendations to address conditions at mine sites, smuggling and abusive tax practices and to improve the oversight of traders in the key trading centres of Dubai and Antwerp. These include:

- Calling on States to introduce a new corporate crime or equivalent administrative offence of failing to prevent dealing in minerals linked to illegal acts such as serious human rights-related crimes, financing of armed groups, money laundering and smuggling.
- Calling on CAR to put in place mechanisms to support safe artisanal diamond mining without imposing onerous administrative or financial requirements, and to seek international cooperation and assistance to this end, if needed.
- Calling on the UAE to take action to stop the practices of abusive transfer pricing and large price-changes between import and export of rough diamonds into and from the UAE, including by challenging significant under-valuations from developing economies, and by reporting these under-valuations to the relevant government and the Kimberley Process.
- More robust and transparent systems in Belgium and the UAE to check the records and processes of diamond traders.

Additionally, this report and its findings contribute to wider work being done by Amnesty International to expose the human rights impacts of tax abuse with a view to mobilizing international momentum for reform of the systems that enable abuse.

2. METHODOLOGY

This report is based on extensive desk research on the Central African Republic (CAR), the diamond industry and the international diamond supply chain, including reviewing Kimberley Process data and documents on the import and export of diamonds. Desk research was augmented by field research in four countries: CAR, the United Arab Emirates (UAE), Cameroon and Belgium as well as conversations with various members of the diamond industry, Kimberley Process and civil society.

Amnesty International researchers visited CAR in October and November 2014 and May 2015. During these visits researchers travelled extensively in western CAR and interviewed diamond miners and traders in the towns of Boda, Carnot and Berberati. Researchers observed mining and trading operations in situ. None of the diamond miners or traders wished to be identified by name; in some cases this was due to concerns about security while in others it was apparent that traders did not wish their business operations identified.

During a mission to Cameroon in December 2014, researchers met with the Kimberley Process office for Cameroon in Yaoundé, as well as Customs officials in Douala. Researchers also interviewed civil society activists and journalists involved in monitoring Cameroon's extractive industries.

In October 2014, Amnesty International researchers visited Dubai to investigate the way in which the UAE implements the Kimberley Process. Amnesty International's visit was facilitated by the Ministry of Economy, and researchers met with representatives from the Ministry of Economy, Customs, the Dubai Multi Commodities Centre (DMCC), the UAE's Kimberley Process Office and the Dubai Diamond Exchange (both part of the DMCC). The DMCC is the centre for the import and export of all rough diamonds in the UAE, with an import office at Dubai Airport and an export office at the DMCC. Researchers were able to observe the import and export processes for diamonds at these locations. Amnesty International wrote to the UAE Kimberley Process office to present the findings of our report with respect to the UAE. No response was received by the time of publication.

In March 2015, Amnesty International visited Antwerp to investigate the way in which Belgium implements the Kimberley Process. Amnesty International's visit was facilitated by the Antwerp World Diamond Centre (AWDC), and researchers met with representatives from AWDC and the Ministry of Economic Affairs (which oversees Belgium's Diamond Office). The Diamond Office is the centre for the import and export of all rough and polished diamonds in Belgium as well as other EU countries that use the Diamond Office as their import / export centre. Amnesty International researchers were able to observe the import and export processes for diamonds at the Diamond Office. Amnesty International wrote to the AWDC to present the findings of our report with respect to Belgium. Their response is attached in the annex to this report.

The report also draws on two reports by the UN Panel of Experts for CAR and the International Commission of Inquiry on CAR, established under UN Security Council Resolution 2127(2013); research done by a number of NGOs involved in monitoring the global diamond trade and events in CAR, including International Crisis Group, International Peace Information Service, Global Witness, Partnership Africa Canada (PAC) and the Enough Project; and research done by the Financial Action Task Force on illicit financial flows and diamonds.

Amnesty International wrote to the governments of CAR and the DRC seeking additional information on the implementation of the Kimberley Process and diamond export controls in both countries. Amnesty International also wrote to the government of Cameroon to present the findings of our report with respect to the country. In response, the DRC sent two memorandums distributed to government agencies and other actors involved in the diamond industry in the DRC, in which it called for enhanced vigilance to identify diamonds from CAR. Amnesty International did not receive any response from CAR or Cameroon by the time of publication of this report.

Finally Amnesty International wrote to both Sodiam and Badica/Kardiam, two of the main diamond exporting companies in CAR, and presented the findings of our research as they related to their operations. Both companies responded directly or through their legal representatives, denying any wrongdoing. Their responses are reflected in this report and the full correspondence is attached in the annex to this report.

3. BACKGROUND: HUMAN RIGHTS AND GLOBAL MINERAL SUPPLY CHAINS

In May and June 2014 Belgian authorities seized in Antwerp three shipments of diamonds believed to include diamonds from the Central African Republic (CAR).[1] CAR is one of the poorest countries in the world[2] and, since December 2012, has been riven by a conflict in which thousands have lost their lives.[3] According to UN experts some of the diamonds came from an area in CAR controlled by an armed Séléka faction, which "taxes" and extorts money from diamond traders.[4] The Séléka are responsible for serious abuses of human rights and humanitarian law, including war crimes and crimes against humanity.[5] The diamonds were seized because there is a ban on the international trade of diamonds from CAR, imposed after the country was suspended from the Kimberley Process, an initiative that was set up to stop "conflict" or "blood" diamonds from entering global supply chains.[6]

Flow chart of diamond supply chain

1. *Final report of the Panel of Experts on the Central African Republic established pursuant to Security Council resolution 2127 (2013)*, UN Doc S/2014/762 (28 October 2014), para. 115 (hereafter UN Panel of Experts, *Final Report*).
2. The World Bank, *Countries: Central African Republic*, available at www.worldbank.org/en/country/centralafricanrepublic/overview (accessed 19 August 2015).
3. Amnesty International, *Central African Republic: Human rights crisis spiralling out of control* (Index: AFR 19/003/2013), available at www.amnesty.org/en/documents/AFR19/003/2013/en/ (hereafter Amnesty International, *Human rights crisis spiralling out of control*); Amnesty International, *Ethnic cleansing and sectarian killings in the Central African Republic* (Index: AFR19/004/2014), available at www.amnesty.org/en/documents/afr19/004/2014/en/ (hereafter Amnesty International, *Ethnic cleansing and sectarian killings*); International Federation for Human Rights (FIDH), *Central African Republic: They Must All Leave or Die*, June 2014, available at www.fidh.org/International-Federation-for-Human-Rights/Africa/central-african-republic/15618-central-african-republic-they-must-all-leave-or-die (hereafter FIDH, *They Must All Leave or Die*) (all accessed 19 August 2015).
4. UN Panel of Experts, *Final Report*, para. 127.
5. Amnesty International, *Central African Republic: Urgent Action Needed to Tackle Escalating Violence in the Central Regions* (Index: AFR 19/010/2014), available at www.amnesty.org/en/documents/afr19/010/2014/en/ (hereafter Amnesty International, *Urgent Action Needed*); Amnesty International, *Central African Republic: Time for Accountability* (Index: AFR 19/006/2014), available at www.amnesty.org/en/documents/afr19/006/2014/en/ (hereafter Amnesty International, *Time for Accountability*); Human Rights Watch, *Central African Republic: Civilians in Danger*, 15 September 2014, available at www.hrw.org/news/2014/09/15/central-african-republic-civilians-danger (hereafter HRW, *Civilians in Danger*) (all accessed 19 August 2015).
6. For further information about the Kimberley Process, see www.kimberleyprocess.com (accessed 23 August 2015).

Many of the world's poorest countries are also the richest in mineral resources.[7] A significant number of mineral-rich countries are characterised by widespread poverty, conflict and corruption as well as human rights abuses linked to mineral extraction, such as labour exploitation and environmental pollution. This phenomenon – sometimes termed the "resource curse" – has been widely documented by NGOs and academics.[8] The underlying causes of this phenomenon are multi-faceted and include governance failures and illegal or unethical conduct by corporations and individuals.

Minerals such as diamonds are generally extracted by mining, then exported from the country where they are mined to international markets. They are subject to various manufacturing and other processes, moving along a complex chain of actors and through multiple countries before ending up in consumer or industrial goods. The trade in minerals frequently connects the poorest of miners to some of the wealthiest individuals and corporations in the world. However, the transnational nature of the minerals trade and supply chain obscures the connections; few people know where the minerals in their jewellery, smartphones or other goods originated, or the conditions under which they were extracted.

Re-establishing the connections between mineral extraction at the top of the supply chain and the companies and consumers at the bottom of that chain is a vital element in addressing the resource curse and the human rights violations linked to it. If companies do not know where their minerals come from, they have neither the knowledge nor the incentive to take action to avoid causing or exacerbating human rights abuses.

Human rights abuses in mineral supply chains are not only an issue for companies. As minerals move along supply chains they enter and leave numerous countries, subject to import and export controls and other regulations. Most regulation pertaining to the international trade in minerals is piecemeal, focusing on only one part of the supply chain and ignoring human rights issues. Some regulatory frameworks – discussed in this report – unintentionally facilitate illegal or unethical activity by non-State actors, including individuals and companies, who directly or indirectly contribute to human rights abuses in the mineral-producing country through those activities.

The challenges associated with the global trade in minerals are so pervasive that they have generated international attention and efforts to clean up mineral supply chains. Some initiatives focus on States, others on companies. Some focus on a particular mineral or sub-group of minerals. Most of the initiatives that exist are not legally binding – although States can incorporate elements of them into domestic law.

Many of these initiatives use a concept known as "supply chain due diligence". This is a process whereby companies that buy or use minerals put in place systems to proactively assess the risks associated with the extraction of and trade in these minerals (such as the risk that their extraction involved child labour or their trade is funding armed groups), take action to mitigate the risks identified and report publicly on the steps they have taken. Responsible sourcing through supply chain due diligence is a well-established and widespread practice in many sectors (for example, in the food and beverage industry, where consumer pressure and health and safety laws require companies to disclose a range of data about the content and origin of our food). Due diligence is most effective when it involves all companies along the supply chain – they can share information, develop best-practices, and collectively influence and leverage suppliers. However, the type and level of due diligence expected of companies differs depending on their position in the supply chain as well as their size and influence.

7. The World Bank, *Extractives Industries: Overview*, available at www.worldbank.org/en/topic/extractiveindustries/overview (accessed 19 August 2015).
8. See, for example: Brookings Institution, *Poverty in the Midst of Abundance: Governance Matters for Overcoming the Resource Curse*, 13 September 2012, available at www.brookings.edu/research/opinions/2012/09/13-poverty-governance-kaufmann; Global Witness, *Oil, Gas and Mining*, available at www.globalwitness.org/campaigns/oil-gas-and-mining/#more (both accessed 19 August 2015).

In relation to minerals, one such initiative is the Organisation for Economic Cooperation and Development (OECD)'s *Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas*, a broad supply chain due diligence framework that covers all minerals including diamonds.[9] The Guidance focuses on companies throughout the mineral supply chain and sets out the practical steps they should take to ensure they respect human rights and avoid financing conflict when sourcing minerals from conflict-affected or high-risk areas. The Guidance was adopted by OECD member States in 2011. Although the Guidance itself is not legally binding on companies, companies can be required to comply with it under national law. For example, under 2012 rules, US-listed companies are legally required to investigate their supply chains in accordance with the OECD Due Diligence Guidance to check if certain minerals in their products are funding armed groups or fuelling human rights abuses in the DRC and surrounding countries (including CAR).[10] The European Union (EU) is currently considering legislation that could require companies in Europe to undertake due diligence in accordance with the OECD Due Diligence Guidance.

As noted above, diamonds are the subject of a specific international initiative – the Kimberley Process Certification Scheme (Kimberley Process). The Kimberley Process was established by governments, industry and civil society groups in 2003 in an effort to stop the international trade in "conflict diamonds", following the exposure of how diamonds were financing violence and human rights abuses by armed groups in countries such as Angola and Sierra Leone. In total 81 countries,[11] including all of the major diamond-producing countries, are members of the Kimberley Process and account for approximately 99.8% of the global production of rough diamonds.[12] The Kimberley Process focuses on States – members are required to establish and enforce an effective import and export control system to prevent "conflict diamonds" from entering the international supply chain. It is not a due diligence scheme; instead each export of rough diamonds from a participating State must be accompanied by a Kimberley Process certificate confirming that the shipment is "conflict-free" and participants can only trade rough diamonds with other participants.

Under the Kimberley Process, "conflict diamonds" are narrowly defined as "diamonds used by rebel movements or their allies to finance conflict aimed at undermining legitimate governments".[13] The Kimberley Process does not therefore cover diamonds mined or traded in circumstances involving human rights abuses or diamonds that have financed abusive government forces. The Kimberley Process places responsibility solely on the State, absolving companies of any responsibility to investigate their own supply chains to discover if they are linked to human rights abuses or financing of armed groups.

The diamonds seized in Belgium in May and June 2014 had been imported from Dubai in the United Arab Emirates (UAE) as Kimberley Process certified diamonds. They had entered Dubai as Kimberley Process certified diamonds, meaning they had been exported from countries that are members of the Kimberley scheme. According to industry experts some of the diamonds in the seized packages were imported from the Democratic Republic of the Congo (DRC) – a country neighbouring CAR that is not

9. OECD (2013), OECD *Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas: Second Edition*, OECD Publishing, available at www.oecd.org/corporate/mne/GuidanceEdition2.pdf; OECD, 'Recommendation of the Council on Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High Risk Areas', C(2012)93 (17 July 2012), available at webnet.oecd.org/OECDACTS/Instruments/ShowInstrumentView.aspx?InstrumentID=268&InstrumentPID=302&Lang=en&Book=False (both accessed 29 August 2015). This OECD Due Diligence Guidance also includes detailed supplements on due diligence for tin, tantalum, tungsten and gold supply chains.
10. U.S. Securities and Exchange Commission, *Fact Sheet: Disclosing the Use of Conflict Minerals*, available at www.sec.gov/News/Article/Detail/Article/1365171562058 (accessed 19 August 2015).
11. The European Union (EU) is represented as a bloc. The Kimberley Process has 54 participants representing 81 countries.
12. Kimberley Process, *Participants*, available at www.kimberleyprocess.com/en/participants (accessed 19 August 2015).
13. See Kimberley Process Certification Scheme, available at www.kimberleyprocess.com/en/kpcs-core-document (accessed 23 August 2015) (hereafter Kimberley Process, *Core Document*).

subject to a ban on diamond exports.[14] As such, officially at least, none of the diamonds seized in Belgium came from CAR.

Any supply chain initiative is only as effective as the system of controls at each point in the chain. The fact that the diamonds seized in Belgium were exported from the DRC and then through the UAE raises questions as to whether smuggled diamonds can enter the Kimberley supply chain at these points. Amnesty International examined the global diamond supply chain that connects diamond-producing countries like CAR to the major global trading hubs of the UAE and Belgium. The report looks at three specific points in the chain, starting with diamonds in CAR, moving to two of CAR's neighbours into which its diamonds are smuggled, and ending at diamond exchanges in the UAE and Belgium. It looks beyond the Kimberley Process and conflict diamonds at a range of issues along the chain which can impact the enjoyment of human rights.

This report is part of wider work being done by Amnesty International on mineral supply chains, looking at both State and corporate actors and their responsibilities. The aim of this work is to break the link between the trade in minerals and human rights abuses, including through effective regulation that requires companies to clean-up their supply chains and source minerals responsibly and transparently.

An artisanal miner from Berberati shows his wounds from a machete attack by anti-balaka militia, November 2014. © Amnesty International

14. UN Panel of Experts, *Final Report*, para. 118.

4. FUNDING ABUSE AND CONFLICT IN THE CENTRAL AFRICAN REPUBLIC

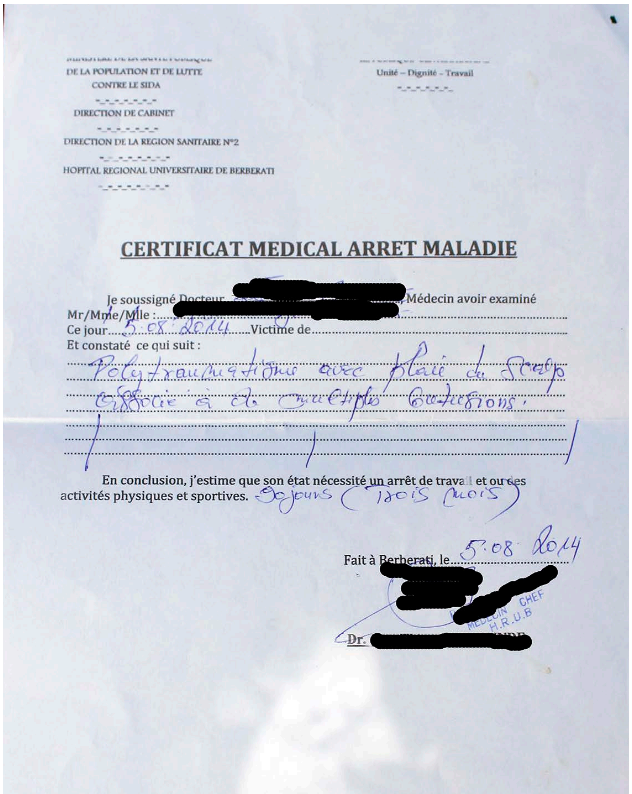
"I'm from Berberati; I've lived here all my life. I've always been an artisanal miner: I work digging and sometimes buying and selling diamonds. I had a site [on the] river that my wife owned... I worked on that site for 25 years... When the crisis exploded in February [2014] I left the site and hid in the forest. A group of men took over the site, with an anti-balaka commander making himself the head of the site.

"I started to develop another mining site later in the year... Then, on August 1, the anti-balaka showed up with machetes; they almost killed me. A group of them attacked and took over the site. I spent a week in the hospital – they hit me on the head and body with machetes. They wanted to kill me, but I escaped. They thought I was dead; I was on the ground, lying still. But after an hour I got up and made it back to Berberati.

M.A., an artisanal miner, Berberati, western Central African Republic, 7 November 2014

Prior to 2013, CAR was ranked 14th among the world's producers of rough diamonds by volume, and 12th by value.[15] Under the Kimberley Process, CAR exported rough diamonds with a value of US$60.8 million in 2011 and US$62.1 million in 2012,[16] representing about half of CAR's total exports and 20% of its budget receipts.[17] Since the start of the conflict diamond mining has ceased or decreased in some areas, at least temporarily. In other areas, however, mining has increased, linked to the activity of armed groups.

This chapter examines how the conflict in CAR intersects with the diamond industry. In particular, it looks at the armed groups involved in the sector, the serious human rights abuses they have committed during the conflict (including against diamond traders and miners) and how they are benefitting from the continuing internal diamond trade in CAR. It also looks beyond the conflict to wider human rights concerns associated with the mining of and trade in diamonds in CAR even before the current crisis.


DE LA POPULATION ET DE LUTTE CONTRE LE SIDA
DIRECTION DE CABINET
DIRECTION DE LA REGION SANITAIRE N°2
HOPITAL REGIONAL UNIVERSITAIRE DE BERBERATI

Unité – Dignité – Travail

CERTIFICAT MEDICAL ARRET MALADIE

Je soussigné Docteur [redacted] Médecin avoir examiné
Mr/Mme/Mlle : [redacted]
Ce jour 5.08.2014 Victime de
Et constaté ce qui suit :
Polytraumatisme avec plaie de scalp
associée à de multiples contusions.

En conclusion, j'estime que son état nécessité un arrêt de travail et ou des activités physiques et sportives. 90 jours (trois mois)

Fait à Berberati, le 5.08.2014
[redacted]
MEDECIN CHEF H.R.U.B
Dr. [redacted]

Medical certificate of the artisanal miner from Berberati injured in a machete attack by anti-balaka militia, November 2014. © Amnesty International

15. Extractive Industries Transparency Initiative (EITI), 'Central African Republic', available at www.eiti.org/CentralAfricanRepublic (accessed 19 August 2015) (hereafter EITI, *CAR*).
16. Kimberley Process: 'Annual Global Summary: 2011 Production, Imports, Exports and KPC Counts' and 'Annual Global Summary: 2012 Production, Imports, Exports and KPC Counts', available at www.kimberleyprocessstatistics.org/public_statistics (accessed 23 August 2015).
17. EITI, *CAR*.

THE CONFLICT

In late March 2013, a coalition of armed rebel groups known as the Séléka captured CAR's capital, Bangui, and forced then-President François Bozizé from power. Séléka leader Michel Djotodia declared himself president.[18]

The Séléka forces were made up of nationals from CAR – predominantly from CAR's Muslim minority – but also included foreign mercenaries and poachers, particularly from Chad and South Darfur in Sudan. (Séléka leader Michel Djotodia had worked as a government consul in Nyala, South Darfur's regional capital.)[19]

Even before taking power, during their military offensive through northern CAR the Séléka had looted and pillaged countless villages and killed numerous civilians. After they entered Bangui, and during the months that followed, they engaged in serious human rights violations, including summary executions, rape, enforced disappearances and widespread looting. Although Michel Djotodia disbanded the Séléka in September 2013, this formal change had little practical impact in curbing the abuses.[20]

The violent and arbitrary nature of the Séléka government's brief rule helped give rise to a high level of sectarian hostility. In mid-2013, armed militia groups known as anti-balaka, working with former soldiers loyal to ousted President Bozizé, began to emerge around the country. The members of these groups, who were mainly Christian or animist, were not only determined to drive out the Séléka; they also expressed virulently anti-Muslim views. Their attacks often targeted unprotected Muslim civilian communities rather than Séléka bases.

The worsening violence, clear sectarian hostility, and concern that worse was yet to come drew international attention to the situation in CAR. On 5 December 2013, the day that anti-balaka militia carried out a co-ordinated attack on Bangui, the UN Security Council adopted a resolution on CAR under its Chapter VII mandate.[21] In accordance with this resolution, French military forces began to deploy in greater numbers in CAR, and the regional African peace-keeping force already based there was strengthened and put under the authority of the African Union (AU).[22]

On 10 January 2014, under forceful international pressure, particularly from France and Chad, Michel Djotodia resigned as president. Immediately after his resignation, and during the weeks that followed, the Séléka began abandoning town after town in the western third of the country, leaving a power vacuum that was filled by the anti-balaka militia. The anti-balaka committed a series of massacres of Muslims in villages and towns across the western region, forcing hundreds of thousands of Muslims to flee to neighbouring countries including Chad, Cameroon and the DRC.[23] As the UN International Commission of Inquiry concluded in a report published in December 2014, the goal of the anti-balaka was to remove the Muslim population from CAR, constituting a pattern of "ethnic cleansing".[24]

18. Amnesty International, *Human rights crisis spiralling out of control.*
19. *Interim Report of the Panel of Experts on the Central African Republic established pursuant to Security Council resolution* 2127 (2013), UN Doc S/2104/452 (26 June 2014), paras. 27 and 29 (hereafter UN Panel of Experts, *Interim Report*); International Crisis Group, *Dangerous Little Stones: Diamonds in the Central African Republic*, 16 December 2010, p. 16, footnote 151, available at www.crisisgroup.org/en/regions/africa/central-africa/central-african-republic/167-dangerous-little-stones-diamonds-in-the-central-african-republic.aspx (hereafter International Crisis Group, Dangerous Little Stones); International Crisis Group, *The Central African Crisis: From Predation to Stabilisation*, 17 June 2014, pp. 13-15, available at www.crisisgroup.org/en/regions/africa/central-africa/central-african-republic/219-the-central-african-crisis-from-predation-to-stabilisation.aspx (hereafter International Crisis Group, *From Predation to Stabilisation*) (both accessed 19 August 2015).
20. *Final report of the International Commission of Inquiry on the Central African Republic established pursuant to Security Council resolution 2127 (2013)*, UN Doc S/2014/928 (22 December 2014), paras. 26 and 44 (hereafter UN Commission of Inquiry, *Final Report*); *Preliminary report of the International Commission of Inquiry on the Central African Republic, submitted pursuant to Security Council resolution 2127 (2013)*, UN Doc. S/2014/373 (26 June 2014), paras. 42-44 (hereafter UN Commission of Inquiry, *Preliminary Report*).
21. UN Security Council, *Resolution 2127 (2013)*, UN Doc S/Res/2127(2013) (5 December 2013).
22. A small peacekeeping force under the auspices of the Economic Community of Central African States (ECCAS) had already been deployed to CAR. On 19 December 2013, it was placed under the auspices of the AU and its numbers were increased. See J. Fortin, 'Africa Prepares for Central African Republic Deployment', Inter Press Service (10 December 2013), available at www.ipsnews.net/2013/12/africa-prepares-central-african-republic-deployment/ (accessed 19 August 2015). In September 2014, this force was re-hatted as a UN peacekeeping force, and again its numbers were increased.
23. Amnesty International, *Ethnic cleansing and sectarian killings*; FIDH, *They Must All Leave or Die*.
24. UN International Commission of Inquiry, *Final Report*, paras. 293-296 and 451-453.

Although Catherine Samba-Panza was sworn in as the transitional president on 23 January 2014, her government lacked a military force and had little power to stop the violence. French and AU peacekeepers, though militarily strong, were slow to deploy outside of the capital and a few major towns, and were only partially effective in containing the widespread violence.[25] More than 5,000 women, men and children died in the conflict.[26]

In September 2014, the United Nations Multidimensional Integrated Stabilization Mission in the Central African Republic (MINUSCA) – consisting of the former AU force bolstered by additional troops – took over peacekeeping operations in CAR. While MINUSCA's deployment has improved security conditions in some parts of the country, it has not fully ended the violence in CAR.[27]

The Séléka, having retreated to their strongholds in the central and north-eastern regions of the country bordering Chad and Sudan, have split into factions. Once thought to have numbered up to 20,000, the alliance divided into several smaller armed groups with limited co-ordination.[28]

Although Séléka and anti-balaka factions have signed several ceasefire agreements, the violence continues, and irregular armed groups remain in control of, or exercise substantial power over, almost all inhabited areas of CAR.[29] Both anti-balaka and Séléka factions have continued to carry out serious abuses of human rights and humanitarian law, including war crimes and crimes against humanity.[30]

Since leaving power, Séléka factions have carried out massacres, summary executions, torture, burning of houses and villages, and enforced disappearances.[31] Anti-balaka militia have carried out similar abuses. Besides continuing to attack Muslims in Bangui and in the western part of the country, they have conducted violent raids against primarily Christian areas.[32] The anti-balaka militias have also repeatedly clashed with AU and French peacekeeping troops, especially since March 2014.[33]

In February 2015, the UN reported that surging violence in CAR had forced tens of thousands to flee their homes since the beginning of the year to escape killings, rape and pillaging by militias.[34] The violence is most prevalent in the region between the western third of the country and the region in which ex-Séléka still maintain a large degree of power: the areas surrounding Bambari, Batangafo, Kaga Bandoro and Kouango.[35]

25. Amnesty International, *Ethnic cleansing and sectarian killings*, p. 8.
26. K. Larson, 'More than 5,000 dead in C. African Republic', Associated Press (12 September 2014), available at bigstory.ap.org/article/ap-more-5000-dead-c-african-republic (accessed 19 August 2015).
27. See, for example, Amnesty International, *Urgent Action Needed*, which draws attention to the escalating violence in Ouaka prefecture that killed dozens of civilians and displaced thousands more.
28. The main groups include the Union for Peace in the Central African Republic (UPC) led by Ali Daras, the Popular Front for the Renaissance of Central Africa (FPRC) led by Nourredine Adam, and the Patriotic Assembly for the Renaissance of Central Africa (RPRC) led by Zacharia Damane and Joseph Zoundeko. See: Armed Conflict Location & Event Data Project (ACLED), *Country Report, Central African Republic*, January 2015, available at www.acleddata.com/wp-content/uploads/2015/01/ACLED-Country-Report_Central-African-Republic.pdf; and Enough Project, *Behind the Headlines: Drivers of Violence in the Central African Republic*, May 2014, p. 8, available at www.enoughproject.org/files/CAR%20Report%20-%20Behind%20the%20Headlines%205.1.14.pdf (both accessed 19 August 2015).
29. Amnesty International, 'Central African Republic' in *Amnesty International report 2014/15: The state of the world's human rights* (Index: POL 10/0001/2015), available at www.amnesty.org/en/countries/africa/central-african-republic/ (accessed 19 August 2015).
30. Amnesty International, *Time for Accountability*; HRW, *Civilians in Danger*.
31. Amnesty International, *Urgent Action Needed*; HRW, *Civilians in Danger*.
32. See, for example, J. Mariner, 'Central African Republic: Fear and Loathing in Bangui', 24 October 2014, available at www.amnesty.org/en/latest/campaigns/2014/10/central-african-republic-fear-and-loathing-in-bangui/ (accessed 19 August 2015) (describing an anti-balaka attack on the Nguingo neighbourhood of the Ouango area, a suburb of Bangui).
33. Amnesty International, *Time for Accountability*.
34. UN News Centre, 'Central African Republic: surge in violence triggers new displacement, including into DR Congo', 24 February 2015, available at www.un.org/apps/news/story.asp?NewsID=50160#.VaOMnPlVhHy (accessed 19 August 2015).
35. See, for example, Yahoo News, 'At least 20 killed in C. African sectarian violence: police', 25 August 2015, available at news.yahoo.com/least-20-killed-c-african-sectarian-violence-police-152147825.html (accessed 26 August 2015).

THE DIAMOND INDUSTRY IN CAR[36]

All known diamond deposits in CAR are alluvial, spread across two river systems: the Mambéré and Lobaye Rivers in the southwest and the Kotto River in the east. The scattered nature of the deposits makes the region unsuitable for industrial-scale mining, and most diamond mining is done by artisanal miners who either work on their own or in small groups.

Some artisanal miners operate in designated artisanal mining zones or own mine sites themselves. Some are "pre-financed" by intermediary traders known as *collecteurs* (collectors), who pay for the mining equipment and supervise the exploitation of mining sites in return for all of the mine's production.[37]

Artisanal miners are not legally allowed to export diamonds and they therefore typically sell their diamonds to traders – either the "collectors" or *agents acheteurs* (buying agents) for the local buying offices of the exporting companies in Bangui. Particularly at present, many diamond miners work as small-scale entrepreneurs, choosing sites to mine, digging for the diamonds, and then selling them to freelance traders who subsequently sell the diamonds to the exporting companies (traders are also not legally allowed to export diamonds). Historically Muslim businessmen dominated the diamond trade while many of the artisanal miners were Christian.

State involvement in the diamond industry is limited. The General Directorate of Mines and Geology is responsible for administering the entire mining sector. The General Director is based in Bangui and there are regional directors in Berberati, Bouar, Bria and Bangassou. The other main State agencies involved are:

- The Office for the Evaluation and Control of Diamonds and Gold (*Bureau d'évaluation et de contrôle de diamant et d'or*, BECDOR), which is responsible for tax and export control (including checking diamond valuations and overseeing the implementation of the Kimberley Process by CAR's Permanent Secretariat for the Kimberley Process (*Secrétaire Permanent du Processus de Kimberley, SPPK*)). Both BECDOR and the SPPK are based in Bangui.
- The Special Anti-Fraud Unit (*l'Unité Spéciale Anti Fraudes*, USAF), under the authority of the Minister of Mines, which is responsible for law enforcement with respect to the mining industry.

While CAR's 2009 Mining Code provided for the Mining Brigade (or *Brigade Minière*) (which numbered about 100 police officers) to be replaced by USAF (intended to be a force of around 1,000), USAF has only recently become operational and its level of operation during the conflict is unclear. Even before the conflict, both BECDOR and the Mining Brigade had limited staffing capacity and were unable to conduct regular site visits to mining areas.

36. UN Panel of Experts, *Interim Report*, paras. 58 and 65; International Crisis Group, *Dangerous Little Stones*, pp. 1, 2 and 7-11; US Geological Survey, *Alluvial Diamond Resource Potential and Production Capacity Assessment of the Central African Republic*, Scientific Investigation Report, 2010 – 5043, p. 7, available at pubs.usgs.gov/sir/2010/5043/; IPIS, *Gold and Diamonds in the Central African Republic: The country's mining sector, and related social, economic and environmental issues*, March 2013, pp. 13-18, available at www.ipisresearch.be/publication/gold-diamonds-central-african-republic-countrys-mining-sector-related-social-economic-environmental-issues/ (hereafter IPIS, *Gold and Diamonds in CAR*); CAR, *Rapport Annuel 2014 d'Activites du Secretariat Permanent du Processus de Kimberley (SPPK) en Republique Centrafricaine* (2014 Annual Report on Implementation of the Kimberley Process in CAR), p. 3, available at www.kimberleyprocess.com/en/system/files/documents/2014_kpcs_annual_report_central_african_republic_0.pdf (hereafter CAR, *2014 Kimberley Process Report); Loi no. 9-005 du 29 avril 2009 portant code minier de la Republique Centrafricaine* (all accessed 19 August 2015).
37. Prior to the current conflict, these collectors either financed the operations themselves or were financed by the official exporting companies in the capital Bangui.

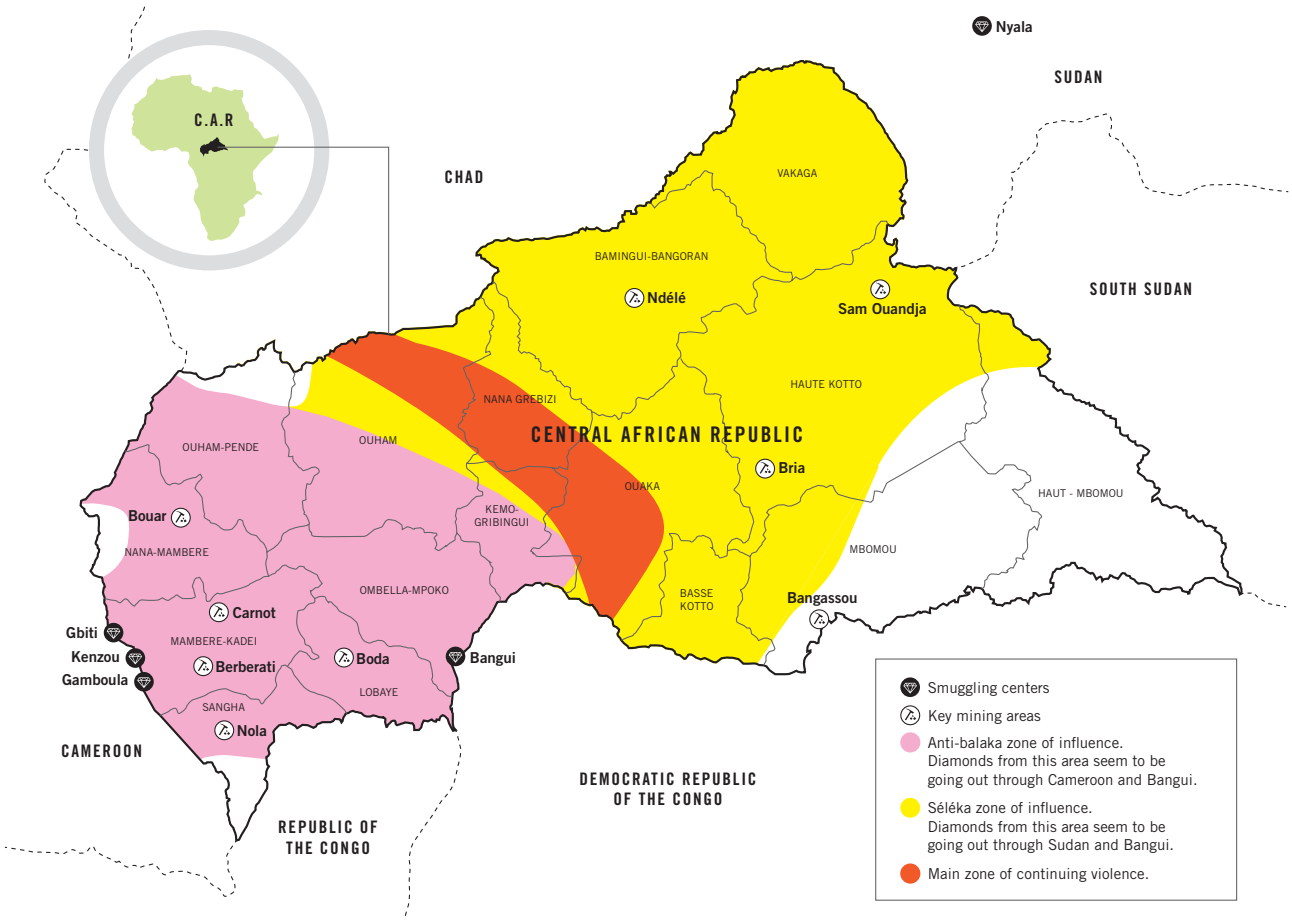
THE INVOLVEMENT OF ARMED GROUPS IN THE DIAMOND INDUSTRY

The main armed groups linked to the diamond industry during the conflict have been Séléka factions and anti-balaka militia. The precise extent to which these groups profit from the diamond trade and to which that trade sustains the conflict is unknown. They do not control the full trade and therefore do not get the full value of the diamonds being traded.[38] Additionally, both groups obtain funds from other sources, including extortion linked to gold and other economic activity.[39]

THE ANTI-BALAKA AND DIAMONDS

In October and November 2014 and again in May 2015, Amnesty International researchers visited a number of diamond mining areas in the west of CAR – including Boda, Carnot and Berberati. Artisanal mining around these areas was severely disrupted by fighting and the wave of ethnic cleansing that swept the western region following the January 2014 withdrawal of the Séléka, as it forced many Muslim collectors to flee either to diamond areas in the east under Séléka control or to neighbouring Cameroon to try to continue business from there.[40] The exit of so many collectors (and therefore financing for diamond mining) resulted in the partial breakdown of the

A map showing zones of influence of main armed groups, key mining areas, and smuggling points



38. In reality, the value of the diamonds is irrelevant to the armed groups – the money paid to them in "taxes" or for "protection" is not linked to the value of diamonds passing along the supply chain inside CAR and it is doubtful that armed groups have any significant knowledge of the actual value of the stones being bought and sold.
39. IPIS, *Mapping Conflict Motives: The Central African Republic*, November 2014, pp. 29-41 and 56-60, available at www.ipisresearch.be/publication/mapping-conflict-motives-central-african-republic-2/ (accessed 19 August 2015) (hereafter IPIS, *Mapping Conflict Motives*).
40. Amnesty International, *Ethnic cleansing and sectarian killings*; UN Panel of Experts, *Interim Report*, para. 63.

diamond industry in western areas, although some collectors remain active (both foreign nationals and CAR nationals) and the anti-balaka have also become involved in the trading of diamonds. However, the anti-balaka lack the knowledge, experience, connections and financing necessary to carry out the trade and overall levels of diamond mining in the western region of CAR remain below pre-conflict levels.[41]

Although the conflict disrupted mining activity, Amnesty International saw evidence of ongoing mining in most diamond centres in the west, both in late 2014 and May 2015. In the towns of Berberati and Carnot, researchers saw many signs of diamond mining – men with sifting pans and shops selling mining equipment – and interviewed several diamond traders still operating in these centres. Driving through rural areas around Berberati, Carnot and Gadzi, researchers saw functioning diamond mining sites and large numbers of miners on their way to and from those sites. Many of the people interviewed in these regions said that diamond mining was their main economic activity.[42]

In interviews with a range of sources in Boda, Carnot and Berberati, including miners and traders, Amnesty International was told that there is significant variation in how anti-balaka groups engage with the diamond industry due to the decentralized way in which they operate. Some anti-balaka operate as miners or take control of mine sites (see case on page 15). In other cases, anti-balaka militias demand "taxes" or "protection" payments from miners and traders.[43]

Diamond sifting boxes on sale in Berberati, 7 November 2014. © Amnesty International

41. Amnesty International interviews with artisanal miners and traders, Boda, Berberati and Carnot, October and November 2014 and May 2015. See also UN Panel of Experts, *Interim Report*, paras. 63-65.
42. Amnesty International interviews with artisanal miners and traders, Boda, Berberati and Carnot, October and November 2014 and May 2015.
43. Amnesty International interviews in CAR, October and November 2014 and May 2015; UN Panel of Experts, *Interim Report*, paras. 64-65.

A group of anti-balaka on the road between Bossemptele and Bozoum. Central African Republic, 28 January 2014. © Amnesty International

A well-placed source in Berberati for example stated that many businesses in the town, including businesses involved in the diamond trade, were paying a "tax" to local anti-balaka.[44] A diamond trader in Boda, who had established his business after the conflict began, claimed that he did not pay "taxes" to the anti-balaka but admitted that he gave them a substantial "gift" when he first opened his business.[45] A long-time trader in Carnot stated:

> *"It is now the anti-balaka who control the diamond trade."*[46]

In some cases, anti-balaka simply rob miners of their diamonds or their earnings. In May 2015, Amnesty International interviewed a miner in Carnot who said that he was robbed by anti-balaka in March, just after being paid for diamonds that he had mined, and that they took his entire earnings. He said that this happens frequently; miners have no security.[47] A trader in Carnot also spoke of the anti-balaka robbing mining sites. He said they frequently wait until after the workers (including workers that this collector was paying) had done all the necessary digging at the site:

> *"After the site starts functioning they arrive with guns, kick out the workers, and steal the diamonds."*[48]

The anti-balaka are also involved in the trading of diamonds. The UN Panel of Experts highlighted the increased presence of anti-balaka elements in the diamond trade along the Boda-Guen-Carnot axis, which the Panel said followed "attacks based on ethnicity and religion and targeting diamond collectors."[49] The Panel also named anti-balaka commanders who were operating as diamond traders.[50]

44. Amnesty International interview, Berberati, May 2015.
45. Amnesty International interview with trader in Boda, May 2015.
46. Amnesty International interview, Carnot, November 2014.
47. Amnesty International interview, Carnot, May 2015.
48. Amnesty International interview, Carnot, May 2015.
49. UN Panel of Experts, *Final Report*, para. 129; UN Panel of Experts, *Interim Report*, para. 63.
50. UN Panel of Experts, *Interim Report*, para. 63.

CAR AND THE KIMBERLEY PROCESS

CAR became a member of the Kimberley Process in 2003. Its membership was suspended in May 2013. According to the administrative decision that explained the suspension, the Kimberley Process concluded that armed groups were operating in certain diamond producing areas of the country. It found evidence that information received on the situation in CAR:

> *"could constitute non-compliance with the minimum requirements of the certification scheme, in particular Section IV of the KPCS document, according to which each participant should 'establish a system of internal controls designed to eliminate the presence of conflict diamonds from shipments of rough diamonds imported into and exported from its territory'."* [51]

In July 2015, the Kimberley Process agreed to partially lift the suspension if certain terms and conditions were fulfilled, paving the way for CAR to resume some rough diamond exports once those requirements are met (as of the date of publication of this report, these requirements had not been met and the export ban still stands).[52]

THE SÉLÉKA AND DIAMONDS

In early 2013 when the Séléka were advancing towards Bangui, they moved into diamond-rich areas such as Bria and Sam-Ouandja in the eastern region of CAR. After the Séléka seized power in CAR's capital Bangui in March 2013, they also took control of areas across the west of CAR, remaining there until January 2014.[53] Under Séléka rule, CAR continued to export diamonds into the legitimate international supply chain until it was suspended from the Kimberley Process in May 2013.[54]

Séléka factions have obtained funds from the diamond industry through a variety of methods.[55] In the east they took systematic control over diamond areas, imposing "taxes" and mining "fees" as well as "protection" payments. Their activities in the west appeared less systematic, involving mainly extortion – demanding "protection" payments from miners and collectors as well as companies involved in transporting diamonds. They also took control over the main border crossing between the diamond-producing areas of Berberati in CAR and Kenzou in Cameroon and started imposing "taxes" on those transporting goods across the border.

Even after the Séléka was pushed back from Bangui and withdrew from the west of CAR, fighters remained in diamond rich areas in Séléka strongholds in the central and north-eastern regions. The UN Panel of Experts on CAR described some of the ways in which Séléka factions continued to benefit from the diamond trade in the east.

The Panel described the "taxation" processes in Bria and Sam-Ouandja:

51. Kimberley Process, 'Administrative Decision on the Central African Republic [temporary suspension]', available at www.kimberleyprocess.com/en/2013-administrative-decision-car (accessed 19 August 2015).
52. Kimberley Process, 'Administrative Decision on Resumption of Exports of Rough Diamonds from the Central African Republic', available at www.kimberleyprocess.com/en/2015-administrative-decision-car; Kimberley Process, 'Annex: Operational Framework for Resumption of Exports of Rough Diamonds from the Central African Republic', available at www.kimberleyprocess.com/en/2015-administrative-decision-car-annex (both accessed 19 August 2015) (hereafter Kimberley Process, *Partial Lifting of CAR Suspension*).
53. IPIS, *Mapping Conflict Motives*, pp. 30-34.
54. According to its 2013 Kimberley Process report, CAR exported around 119,000 carats between January and May 2013, with a value of over US$20,000,000. Roughly 67% of these diamonds were exported to the European Union and 31% to the UAE. See the UN Panel of Experts, *Interim Report*, para. 58.
55. International Crisis Group, *From Predation to Stabilisation*, pp. 9-11 and 15; IPIS, Mapping Conflict Motives, pp. 30-34 and 40.

Séléka militants sit in a truck as they are escorted out of Kasai military camp in Bangui on their way to another camp outside the city on January 28, 2014. © ISSOUF SANOGO/AFP/Getty Images

> *"...prior to the arrival of international forces in April 2014, former Séléka forces had levied $75 in landing taxes at the Bria airstrip. In Sam-Ouandja ... no international forces are present. Former Séléka forces under zone commander Beya Djouma levy $100 in aircraft landing taxes."*[56]

It also described the protection payments paid to Séléka factions in Bria and Sam-Ouandja:

> *"Collectors (intermediary diamond traders) in Sam-Ouandja also provide daily allowances to former Séléka soldiers guarding their premises. In May 2014, the Panel observed former Séléka soldiers in Bria guarding the premises of principal collectors and businessmen. A commander of the Special Anti-Fraud Unit confirmed that former Séléka forces in Sam-Ouandja benefit from the diamond trade through their security arrangements with collectors."*[57]

The Panel stated in its October 2014 report that it believed that some of the diamonds seized in Antwerp in May and June 2014 came from Sam-Ouandja and Bria.[58] In that report, the UN Panel also presented satellite images of Sam-Ouandja showing how rough diamond production in the area had been rapidly increasing in preceding months.[59] The NGO International Peace Information Service (IPIS) suggests that the increase in mining around the key diamond production areas of Sam-Ouandja and Nzako as well as in areas such as the Manovo-Gounda national park may be because Séléka factions are now pre-financing mining operations.[60] Both the UN Panel and IPIS also note that the Séléka have been involved in smuggling diamonds out of CAR.[61]

56. UN Panel of Experts, *Final Report*, para. 123.
57. UN Panel of Experts, *Final Report*, para. 124 (footnotes omitted).
58. UN Panel of Experts, *Final Report*, p. 3.
59. UN Panel of Experts, *Final Report*, para. 123.
60. IPIS, *Mapping Conflict Motives*, p. 31.
61. UN Panel of Experts, *Interim Report*, para. 67; IPIS, *Diamonds in the Central African Republic*, December 2014, pp. 6-8, available at www.ipisresearch.be/wp-content/uploads/2014/12/20141222_Insight_diamonds1.pdf (accessed 21 August 2015) (hereafter IPIS, *Diamonds* in CAR).

The UN Panel has reported on the efforts of CAR mining authorities to re-establish control in diamond-producing areas around Bria and Sam-Ouandja but noted that individual Séléka commanders "have captured part of the trade, taking diamonds to the Sudan instead".[62] IPIS also noted in November 2014 that many of those mining authorities have now returned to Bangui and the work of the remaining mining police is hindered due to the volatile security situation.[63]

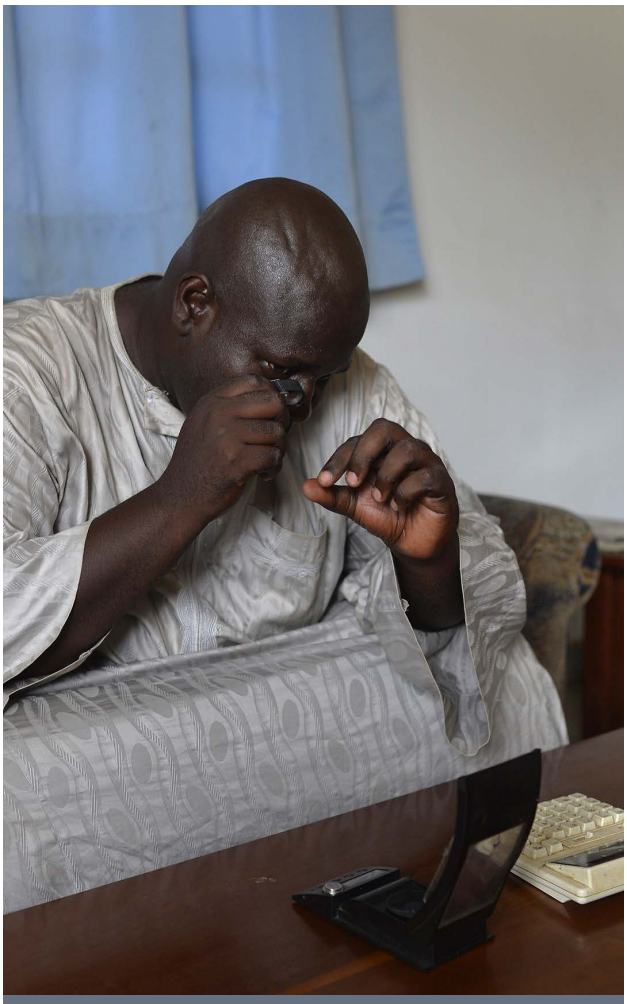
The precise extent to which Séléka factions have profited, and continue to profit, from the diamond trade is not clear. It is also unclear to what extent these profits have funded their armed campaigns or just been used for personal enrichment.[64] Nor are diamonds the only commodity from which the Séléka have benefitted. Local fighters as well as Chadian and Sudanese mercenaries joined the Séléka in exchange for access to looting and ivory poaching.[65] In its preliminary report, the UN International Commission of Inquiry described looting by Séléka factions as sustained, widespread and carried out in a systematic manner – essentially part of its overall strategy.[66]

THE INTERNAL MARKET FOR DIAMONDS DURING THE CONFLICT

Evidence gathered by the UN Panel of Experts, Amnesty International and other NGOs demonstrates that diamonds have been mined, bought and sold within CAR throughout the conflict, both in Séléka and anti-balaka controlled areas. Although the Kimberley Process banned exports of diamonds from CAR in May 2013, diamond mining and trading is not illegal within CAR. This section looks at the internal diamond market that has operated during the conflict and the extent to which it has benefitted the Séléka factions and anti-balaka militia.

TRADERS (COLLECTORS AND BUYERS)

As noted above, some diamond traders left CAR following the outbreak of conflict; others stayed and continued to buy and sell diamonds, and new traders (both CAR and foreign nationals) have emerged. As also noted above, while there has been a decline in diamond production in the west of CAR, there has been an increase in production in some areas in the east.



Mahamat Adoum, a representative of Badica, examines a diamond in Boda, Central African Republic, 7 April, 2014. © MIGUEL MEDINA/ AFP/Getty Images

62. UN Panel of Experts, *Interim Report*, p. 2.
63. IPIS, *Mapping Conflict Motives*, p. 30.
64. IPIS, *Mapping Conflict Motives*, p. 34.
65. IPIS, *Mapping Conflict Motives*, pp. 34 and 40-41.
66. UN Commission of Inquiry, *Preliminary Report*, para. 74.

Amnesty International interviewed a number of traders in 2014 and 2015, all operating in areas in the west of CAR in which the anti-balaka were present. During a visit to the office of a diamond trader in Carnot in May 2015, an Amnesty International researcher observed packages of diamonds and money, and the trader confirmed his ongoing business.[67] While none of the traders to whom Amnesty International spoke admitted to buying stones directly from the anti-balaka, none appeared to have any means of screening their purchases to ensure that the anti-balaka were not benefitting directly or indirectly from the mining or trading of those diamonds. In fact, most of the traders who spoke to Amnesty International researchers in Boda, Berberati and Carnot were aware of the anti-balaka "taxing" miners or stealing from them.

According to the UN Panel:

> *"The main diamond collectors in Berberati … told the Panel that they could not give assurances that their diamond purchases did not benefit armed groups, since anti-balaka forces were present in most mining areas as diggers and intermediary traders. Another collector in Berberati … told the Panel he never visited any mining site to verify the security conditions."*[68]

Amnesty International received similar testimony in May 2015 from a trader in Carnot, who said that due to insecurity in the area he was unable to visit the mine sites from which he was purchasing diamonds. He described how he "has to work like a blind man," managing operations from the safety of his office.[69]

For many smaller diamond traders, any attempt to screen out diamonds that may benefit the anti-balaka would be both practically difficult and potentially dangerous. Even for the larger and more powerful traders, it would be difficult to operate in these towns if they were actively excluding purchases that benefit anti-balaka.

Sources in Berberati and Carnot told Amnesty International researchers that some diamond traders bought directly from the anti-balaka and received protection from anti-balaka elements, but it was not possible to verify these claims.[70]

The UN Panel of Experts also found that collectors continue to buy and sell diamonds in the east of CAR and, as noted earlier, pay "taxes" and "protection" payments to Séléka fighters in this region. In its interim report of June 2014, the UN Panel reported that the collectors claim to sell all their diamonds legally to buying houses in Bangui (but that in reality the collectors smuggle at least some of their diamonds abroad).[71]

Anti-balaka militia in Bossembélé. One individual is dressed as a Muslim, wearing clothing that was looted from Muslims who fled the town, January 2014. © Amnesty International

67. Amnesty International interview, Carnot, 14 May 2015.
68. UN Panel of Experts, *Final Report*, para. 130.
69. Amnesty International interview, Carnot, 14 May 2015.
70. Amnesty International interviews in Berberati and Carnot, October and November 2014.
71. UN Panel of Experts, *Interim Report*, para. 67.

A local Badica buying house in Berberati, May 2015. © Amnesty International

BUYING HOUSES

Buying houses are the only companies in CAR authorised to export diamonds. They operate in the capital Bangui as well as through local buying houses (*bureaux d'achat*) in diamond-producing areas. Two of the main buying houses that have operated during the conflict are Badica and Sodiam. These companies, and their operations since the start of the conflict, are discussed below.

BADICA (BUREAU D'ACHAT DE DIAMANTS EN CENTRAFRIQUE)

Badica is a diamond trading and export company based in Bangui. Its sister company, Kardiam, is based in the international diamond trading centre of Antwerp, Belgium. Minair, another sister company based in CAR, operates an air transport service. Both Minair and Badica are part of Groupe Abdoulkarim, which is headed by Abdoul-Karim Dan Azoumi.[72]

The UN Panel of Experts has stated that diamonds from areas under the control of Séléka factions in the east have been purchased by or on behalf of Badica.[73] The UN Panel described how Badica bought diamonds in Sam-Ouandja and Bria and transported these diamonds on flights run by its sister company Minair. As noted earlier, prior to the arrival of international forces in April 2014, the Séléka imposed a $75 landing "tax" at Bria airstrip. At Sam-Ouandja Séléka factions levied $100 landing "taxes". Taxes are generally paid by the company that charters the aircraft.[74]

In an April 2014 interview with the UN Panel, the Managing Director of Badica claimed that the company had stopped purchasing diamonds.[75] However, the Panel noted that:

72. UN Panel of Experts, *Final Report*, para. 122; The International Consortium of Investigative Journalists, 'Diamond Dealers in Deep Trouble as Bank Documents Shine Light on Secret Ways', available at www.icij.org/project/swiss-leaks/diamond-dealers-deep-trouble-bank-documents-shine-light-secret-ways (accessed 9 September 2015). Groupe Abdoulkarim's website is no longer active but can be accessed through the Wayback Machine internet archive service, available at web.archive.org/web/20141008035530/http://www.groupeabdoulkarim.com/ (see 8 October 2014) (accessed 17 August 2015).
73. UN Panel of Experts, *Final Report*, para. 122.
74. UN Panel of Experts, *Final Report*, paras. 122-123.
75. UN Panel of Experts, *Final Report*, para. 172.

"[A] second stock-taking exercise at Badica in April 2014 found that the company had purchased another 1,698 carats, valued at $292,917 from Bria and Sam-Ouandja."[76]

"By 2 July 2014, Badica had officially purchased a total of 2,896 carats, mostly from Bria and Sam-Ouandja… those rough diamonds are stocked in Bangui."[77]

The Enough Project, based on data from State agency BECDOR, stated that Badica held 3,966 carats in stock as of April 2015, with a total value of nearly US$550,000 (see the table on page 28 for details).[78]

The UN Panel additionally stated that it "obtained detailed testimonies from industry and government sources claiming that Badica is also dealing in diamonds from the Central African Republic that are trafficked abroad".[79] The UN report included allegations that an agent for Badica is operating in Cameroon and buying diamonds smuggled from areas around Nola and Berberati in the western region of CAR.[80] Badica's sister company Kardiam was implicated in the May and June 2014 seizures in Antwerp of diamonds suspected to have been illegally exported from CAR (see "Global Trading Centres" below for more detail).

The UN Panel concluded in its October 2014 report that:

"Badica's legal and illegal purchases from those areas provided sustainable financial support for the former Séléka, in violation of the United Nations sanctions regime."[81]

Amnesty International contacted Kardiam by letter in June 2015 and asked it to comment on the allegations made about Badica and Kardiam.[82] Kardiam responded stating that Kardiam and Badica denied all of the allegations made against them in the UN Panel of Experts' October report, and that it had provided a counter-report to the Panel demonstrating that Badica's trade was lawful and transparent, and highlighting the mistakes made by the Panel in the course of its enquiries and material errors contained in the Panel's report.[83] A copy of this letter is attached in the annex to this report.

On 20 August 2015, under its Chapter VII mandate, the UN imposed economic sanctions on Badica and Kardiam for "providing support" to both the Séléka and the anti-balaka "through the illicit exploitation or trade of natural resources, including diamonds … in the CAR".[84] According to those sanctions:

"[A]ll UN Member States shall, through 29 January 2016, freeze all funds, other financial assets and economic resources which are on their territories, which are owned or controlled, directly or indirectly, by the individuals or entities designated by the Committee, or by individuals or entities acting on their behalf or at their direction, or by entities owned or controlled by them, and decides further that all Member States shall continue to ensure that any funds, financial assets or economic resources are prevented from being made available by their nationals or by any individuals or entities within their territories, to or for the benefit of the individuals or entities designated by the Committee."[85]

The U.S. added Badica and Kardiam to its sanctions list on 21 August 2015 and the European Union on 2 September 2015.[86]

76. UN Panel of Experts, *Interim Report*, para. 60.
77. UN Panel of Experts, *Final Report*, para. 122.
78. K. Agger, *Warlord Business: CAR's Violent Armed Groups and their Criminal Operations for Profit and Power*, Enough Project, June 2015, p. 18, available at www.enoughproject.org/files/Warlord%20Business%20061615.pdf (accessed 19 August 2015) (hereafter Enough Project, *Warlord Business*).
79. UN Panel of Experts, *Final Report*, para. 125.
80. UN Panel of Experts, *Final Report*, para. 126.
81. UN Panel of Experts, *Final Report*, para. 127.
82. Amnesty International letter to Kardiam (Index: AFR/1845/2015), 10 June 2015.
83. Letter from Kardiam to Amnesty International, 12 June 2015 (attached to this report in the annex).
84. UN Security Council Committee established pursuant to resolution 2127(2013) concerning the Central African Republic, 'The List established and maintained by the 2127(2013) Committee', available at www.un.org/sc/committees/2127/2127.htm and 'Narrative Summaries of Reasons for Listing', available at www.un.org/sc/committees/2127/CE.001.shtml (both accessed 21 August 2015).
85. UN Security Council, *Resolution 2196 (2015)*, UN Doc S/Res/2196(2015), para. 7 (22 January 2015).
86. U.S. Department of the Treasury, 'Treasury Sanctions Individuals and Entities Fueling Violence in the Central African Republic', 21 August 2015, available at www.treasury.gov/press-center/press-releases/Pages/jl0150.aspx (accessed 26 August 2015); Council Implementing Regulation (EU) 2015/1485 of 2 September 2015 implementing Article 17(1) of Regulation (EU) No 224/2014 concerning restrictive measures in view of the situation in the Central African Republic, available at eur-lex.europa.eu/legal-content/EN/TXT/?qid=1441295065241&uri=OJ:JOL_2015_229_R_0001 (accessed 4 September 2015).

DIAMONDS HELD IN STOCK IN BANGUI BY THE BUYING HOUSES AS OF APRIL 2015[87]

	Badica	Sodiam	Sud Azur	TOTAL
Carat weight	3,966.240	60,776.380	1,468.380	**66,211.00**
Price per carat (CFA)	68,918	57,856	85,690	**59,136**
Value (CFA)	273,345,328	3,516,278,241	125,825,482	**3,915,449,051**
Value (US$)	546,688	7,032,521	251,650	**7,830,859**

A local Sodiam buying house in Carnot, CAR, May 2015. © Amnesty International

87. Enough Project, *Warlord Business* (using BECDOR statistics), p. 18.

SODIAM (SOCIÉTÉ CENTRAFRICAINE DU DIAMANT)

Sodiam is also a diamond buying and exporting business based in Bangui, with local buying offices in Berberati, Carnot and Nola.[88] The company has been operating throughout the conflict, purchasing diamonds mainly in the west of CAR.[89] In October and November 2014, individuals involved in the diamond industry in Boda and Carnot told Amnesty International that Sodiam had "mobile" buyers operating in the area, purchasing diamonds from different traders.[90] One man, involved in the diamond trade in Carnot since 1961, told Amnesty International:

> *"Sodiam has a buyer who comes here. He recently spent a month here; he left three days ago. They've sent lots of them; he was at least the third to come."*[91]

In May 2015, Amnesty researchers spoke to a Sodiam representative in Carnot. He confirmed that Sodiam has been operating continuously in Carnot since the outbreak of violence in early 2014. He claimed that the company is buying diamonds and sending them to Bangui to be put in a strongbox to await the lifting of the Kimberley Process suspension.[92]

According to the June 2014 interim report of the UN Panel of Experts, Sodiam had 40,576 carats in stock in Bangui as of March 2014, 90 % of which were bought after CAR was suspended from the Kimberley Process in May 2013.[93] The October 2014 final report of the UN Panel states that Sodiam bought another 7,655 carats between March and July 2014 (bringing its total to 48,231). Of this amount, 442 carats were bought in Berberati between May and July 2014.[94] The Enough Project, based on data from BECDOR, stated that Sodiam held 60,776 carats in stock as of April 2015, with a total value of over US$7 million (see the table on page 28 for details).[95]

In May 2015, Amnesty International visited the office of a trader in Carnot and observed his operation. The trader, whose premises were guarded by a number of young men, was buying and selling diamonds: envelopes of diamonds and bundles of cash were visible. He showed researchers receipts for sales to Sodiam. He stated that he could not go out of town to visit the sites where the diamonds are mined for security reasons.[96]

The UN Panel of Experts received similar information from other collectors operating in the west of CAR. In its June 2014 report, the Panel stated that they were told by diamond collectors from Carnot, Guen and Boda that Sodiam continues to buy diamonds from them.[97] In its October 2014 report, the Panel stated that the two main diamond collectors in Berberati "could not give assurances that their diamond purchases did not benefit armed groups, since anti-balaka forces were present in most mining areas as diggers and intermediary traders".[98] The Panel also reported that a collector in Berberati "never visited any mining site to verify the security conditions".[99] Another collector operating along the Boda-Guen-Carnot axis told the Panel that he purchases from an anti-balaka leader in Sasele in the west of CAR. The Panel's report stated that this collector as well as the two main diamond collectors in Berberati, all of whom were named in their report, sold diamonds to Sodiam and the Panel published documentary evidence of their May and June 2014 sales to Sodiam.[100]

88. See Sodiam Diamonds, sodiam.cf/ (accessed 19 August 2015).
89. UN Panel of Experts, *Final Report*, para. 128.
90. Amnesty International interviews, Boda and Carnot, November 2014.
91. Amnesty International interview, Carnot, 8 November 2014.
92. Amnesty International interview, Carnot, May 2015.
93. UN Panel of Experts, *Interim Report*, para. 59.
94. UN Panel of Experts, *Final Report*, paras. 128 and 132.
95. Enough Project, *Warlord Business*, p. 18.
96. Amnesty International interview, Carnot, May 2015.
97. UN Panel of Experts, *Interim Report*, para. 59.
98. UN Panel of Experts, *Final Report*, para. 130.
99. UN Panel of Experts, *Final Report*, para. 130.
100. UN Panel of Experts, *Final Report*, paras. 129-131 and Annex 28.

When the UN Panel of Experts contacted Sodiam about this issue, the company's managing director told them that Sodiam's policy is to exclude purchases from military personnel and from members of armed groups, and that the company is instructing its collectors to do the same, "in order to avoid incidents of indirect purchases from alleged anti-balaka members".[101] The UN Panel concluded that:

> *"Sodiam's purchases have incidentally financed anti-balaka members, but that the risk of such financing is now being mitigated by the company with the implementation of due diligence procedures."* [102]

The Panel continues to monitor whether Sodiam's purchases are indirectly financing the anti-balaka.[103]

In light of the information above, and the level of involvement of anti-balaka in diamond mining and trading in western towns like Berberati and Carnot, Amnesty International believes there is a high risk that Sodiam has purchased and is still purchasing diamonds that have financed the anti-balaka.

Amnesty International wrote to Sodiam in June 2015 to ask for details of the process that the company told the UN Panel it was using, in particular how they identified anti-balaka, or people who had bought from anti-balaka, and how they discovered whether anti-balaka had "taxed" miners or collectors.[104] Sodiam's legal representatives, the UK law firm Carter Ruck, responded that it was possible for Sodiam to purchase diamonds that were not supporting the armed group and that the small scale of Sodiam's current operations meant it could manage its operations so as to avoid purchases from suspicious sources.[105] The correspondence from Carter Ruck also stated that, while Sodiam had previously bought from one of the collectors in Berberati (who was named in the UN Panel of Expert's report), it no longer did so. It further stated that Sodiam had never "purchased anything that could reasonably be described as a conflict diamond".[106]

On the issue of due diligence, Carter Ruck provided a link to a document on Sodiam's website. This document, entitled "Sodiam C.A.R., Company Principle and Procedures, Last Updated June 2015" is attached in the annex to this report.[107] It provides no details of any due diligence process, as the term would commonly be understood, beyond stating that Sodiam will not buy diamonds from mines under the control of rebel groups or collectors known to associate with rebel groups and that it would be on the alert for several individuals named in UN sanctions.

Carter Ruck also told Amnesty International that Sodiam is arranging for a third-party audit of the diamonds it has in stock in Bangui with a view to "double-checking the efficacy of its due diligence procedures".[108] This audit was completed in September 2015. It provides no detail of any due diligence procedures, but is simply a confirmation that Sodiam has "taken effective measures to ensure that all goods the company has purchased in the east of CAR have been kept separate from those goods it has purchased in the west".[109]

In Amnesty International's view, the company has not demonstrated that it exercises adequate due diligence to prevent its collectors or buyers from purchasing diamonds that have financed the anti-balaka.

Carter Ruck also expressed concern about Amnesty International's research methods. The full text of the exchanges between Amnesty International and Carter Ruck are included in the annex to this report.

101. UN Panel of Experts, *Final Report*, para. 131.
102. UN Panel of Experts, *Final Report*, para. 131.
103. Email to Amnesty International from member of the UN Panel of Experts, 7 July 2015.
104. Amnesty International letter to Sodiam, 22 June 2015.
105. Letters from Carter Ruck to Amnesty International, 3 July 2015 and 28 July 2015.
106. Letter from Carter Ruck to Amnesty International, 28 July 2015.
107. Also see sodiam.cf/sodiam-c-a-r-company-principles-and-procedures/ (accessed 19 August 2015).
108. Letter from Carter Ruck to Amnesty International, 28 July 2015.
109. Martello Risk, *Independent Third-Party Forensic Audit and Verification: Separation of Eastern "Red Zone" Goods from Western Goods*, 2 September 2015, p. 10, available at sodiam.cf/wp-content/uploads/2015/09/sodiam.pdf (accessed 9 September 2015).

BEYOND THE CONFLICT: HUMAN RIGHTS ISSUES IN CAR'S DIAMOND SECTOR

The vast majority of diamond mining in CAR is done by artisanal miners. Over the years, CAR authorities have made some effort to formalise the artisanal mining sector through registration. However, this has had limited success and the sector remains mostly informal and uncontrolled as well as vulnerable to abuse. In 2010, the NGO International Crisis Group estimated that there were between 80,000 and 100,000 artisanal miners in CAR, supporting at least 600,000 family members. Only an estimated 5% of artisanal miners are formally registered.[110]

The work of most artisanal miners is difficult, poorly paid and dangerous. In its 2010 report, International Crisis Group highlighted what they described as "the hazardous conditions" in which artisanal miners in CAR live and work:

> *"The hard physical labour causes hernias and exhaustion, and injuries are common. Miners die under collapsed pit walls, and divers sometimes do not resurface. Many miners and their families leave their villages to live in makeshift camps near the mines,*

An Amnesty International researcher visited a mine in the Carnot region in May 2015. Children as young as 11 were engaged in mining work instead of attending school. Miners were digging deep into the earth, with no equipment to shore up the pit walls to prevent collapse. They were camping in very tough conditions on site, both to avoid spending time travelling back and forth to their village, and to protect the mine from being looted or taken over. Although they expressed confidence that this site would yield diamonds, they pointed to a nearby site where they had worked for some time, saying that their efforts there had been entirely unsuccessful, May 2015. © Amnesty International

110. International Crisis Group, *Dangerous Little Stones*, pp. 8-9.

> *where they are even more vulnerable to malaria and often contract parasites by drinking from streams dirtied by their own excrement... Education suffers, because parents encourage their children as young as eleven to dig or sieve instead of going to school."*[111]

Child labour in the artisanal diamond mining sector has been reported by several NGOs but no formal study to assess the extent of the problem has been undertaken.[112]

As well as the difficult and hazardous working conditions in which they work, artisanal miners can get caught in exploitative relationships with traders and middlemen in a system that does not protect their rights. May 2015. © Amnesty International

In addition to the difficult conditions under which they work, CAR's artisanal miners are subject to exploitation in a system in which there is no meaningful protection of their rights. Most miners are highly dependent on the middlemen (generally the collectors) who buy their diamonds and sell to the exporting companies. According to an IPIS study published in February 2013:

> *"Miners often experience high levels of control by 'their collector', who only offers uncompetitive prices for their production. If a miner is discovered to have sold to another collector, harassments are quite common."*[113]

International Crisis Group noted that:

> *"Earnings are limited, primarily because miners are mostly ignorant of a diamond's real value and, even if they know it, they are obliged to sell at the price offered, sometimes by written contract, to the collector who financed the work. A collector might buy a one-carat diamond from a miner at 80,000 CFA francs ($160) and sell it to a buying office for 200,000 to 300,000 CFA francs ($400 to $600). If the miner has hired equipment from the collector, a water pump for example, the fee is deducted from the miner's earnings."*[114]

Whether artisanal miners work for a collector or sell independently to a trader, they receive relatively little for the diamonds they mine because they lack both the knowledge of their worth and have few options in terms of buyers. Most of the traders move around the country, rather than settling in any particular place. As such, this system of low reward for miners and capital flowing out of towns with traders also hinders development in mining communities.[115]

111. International Crisis Group, *Dangerous Little Stones*, p. 9.
112. IPIS, *Gold and Diamonds in CAR*, p. 29; Center for International Forestry Research (CIFOR), *Impacts of artisanal gold and diamond mining on livelihoods and the environment in the Sangha Tri-National Park landscape*, 2009, pp. 28 and 34, available at www.cifor.org/publications/pdf_files/books/bchupezi0901.pdf (accessed 19 August 2015) (hereafter CIFOR, *Impacts of artisanal gold and diamond mining*).
113. IPIS, *Gold and Diamonds in CAR*, p. 15.
114. International Crisis Group, *Dangerous Little Stones*, pp. 2 and 9.
115. International Crisis Group, *Dangerous Little Stones*, p. 10.

Though the work is difficult and hazardous, artisanal miners receive relatively little for the diamonds they mine, May 2015. © Amnesty International

Although artisanal miners complain about the harassment and undervaluation of the diamonds they mine, there is no authority to which they can turn for help or to make a complaint. According to IPIS:

> *"The mining brigade employs about 100 policemen and gendarmes – far too few to control the vast territory; in addition to this, they are poorly equipped … A major problem experienced by all the state' mining authorities is a lack of means. Consequently, state agents cannot conduct a sufficient number of field visits to closely supervise the mining sector."*[116]

In addition, a 2009 CIFOR study claimed that government agents are perceived as a significant source of harassment by the miners.[117]

This situation is exacerbated by the costs artisanal miners must pay to the government if they wish to operate in the formal sector. In 2010, an artisanal miner was legally required to pay fees of around US$132 per year to the State, at a time when the average estimated annual earning of an artisanal miner was US$723. If a miner wants to take title to land, the costs are considerably higher and include a one year prospecting licence and a two year exploration permit at a cost of 100,000 CFA each (US$224 each as of 2010).[118] The costs discourage miners from joining the formal sector and therefore open them to further abuse by diamond traders, government agents and the illegal smuggling networks that operate within CAR.

In its 2010 report, International Crisis Group noted that successive CAR governments have benefitted from the exploitation of natural resources while failing to distribute that wealth for the long-term benefit of mining communities.[119] A July 2015 World Bank report on CAR sums up the situation:

> *"Under the political-economic 'rules of the game,' profits from natural resource exploitation have been divided among members of the elite. At the same time, the lives and working conditions of the population in areas producing diamonds has increasingly worsened. This implies significant grievances for the local population and has further undermined public trust in the state."*[120]

116. IPIS, *Gold and Diamonds in CAR*, p. 18.
117. CIFOR, *Impacts of artisanal gold and diamond mining*, p. 35.
118. USAID, *Property Rights and Artisanal Diamond Development (Pradd) Project, Comparative Study: Legal and Fiscal Regimes for Artisanal Diamond Mining*, October 2010, pp. 9 and 29, available at www.estellelevin.com/wp-content/uploads/2013/12/PRADD-Fiscal-and-Legal-Regimes_final.pdf (accessed 19 August 2015). For a miner operating in a designated artisanal mining area, this includes: (a) the cost of a one year artisanal mining card (or patente) at a cost of 46,850 CFA (US$105 as of 2010); (b) a production book at a cost of CFA 2,000 (US$4.50 as of 2010); and (c) five mine worker's cards at a cost of 2,000 CFA each (US$4.50 each as of 2010).
119. International Crisis Group, *Dangerous Little Stones*, p. 5.
120. World Bank, *Country Engagement Note for the Central African Republic: FY2016-2017*, 13 July 2015, pp. 25-26, available at www-wds.worldbank.org/external/default/WDSContentServer/WDSP/IB/2015/07/19/090224b08300b8de/1_0/Rendered/PDF/Central0Africa0e0period0FY201602017.pdf (accessed 30 August 2015).

CONFLICT, HUMAN RIGHTS ABUSES AND THE KIMBERLEY PROCESS

As a certification scheme, the Kimberley Process has one objective – to provide assurance that diamonds purchased by the consumer are not "conflict diamonds" (defined as "diamonds used by rebel movements or their allies to finance conflict aimed at undermining legitimate governments"). The Kimberley Process does not therefore cover diamonds mined or traded in circumstances involving human rights abuses or diamonds that have financed abusive government forces. It also does not require companies involved at any point in the global trade of rough diamonds, from the point of extraction to the point of sale, to carry out supply chain due diligence. The Kimberley's State-based, certification scheme in fact absolves companies of any responsibility to investigate their own supply chains for human rights abuses or financing of armed groups. As a result, risks within supply chains do not need to be identified and addressed or publicly reported on by the companies involved (the human rights responsibilities of companies operating in the diamond sector, including their responsibility to undertake supply chain due diligence, are explored in more detail in Chapter 7 below).

This means that abuses can continue undetected and consumers remain in the dark about the conditions in which the diamonds they buy were mined. For example, as a member of the Kimberley Process, CAR has never had to address the ongoing human rights abuses in its diamond sector, described above. Additionally, without any legal requirement to carry out supply chain due diligence, diamond companies operating in CAR or buying CAR diamonds further down the chain had no obligation to check if those diamonds were linked to human rights abuses. Before the May 2013 export ban, CAR diamonds associated with human rights abuses were therefore freely circulating in the "legitimate" Kimberley Process supply chain and consumer markets.

The Kimberley Process's narrow focus also means that it deals only with the international trade in diamonds, not domestic markets; while member States are supposed to have effective internal controls in place (and there are "recommendations" on licensing mines, artisanal miners and traders for these purposes), the aim of these controls is to stop conflict diamonds from entering the international market. For example, the May 2013 ban has done nothing to address the illegal elements of the internal diamond industry within CAR. In particular, despite the ban, both Séléka factions and anti-balaka militia have obtained, and continue to obtain, funding from the internal trade in diamonds in CAR, as outlined above.

The situation on the ground in CAR has led to further questions about the efficacy of the Kimberley Process. Some commentators note that the export ban has led to an expansion of smuggling.[121] The extent to which the ban itself has impacted diamond mining and trading is unclear – while there were declines in mining and trading, particularly in the west of CAR, this appears to have been due to the impact of the conflict rather than the ban itself; diamond mining has actually increased in some areas in the east of CAR such as Sam-Ouandja.[122] The ban on exports has deprived the government of revenue and for artisanal miners not involved in the current armed conflict livelihoods have become even more precarious during the crisis.

Concern about the loss of revenues led the transitional government of CAR to lobby for a partial lifting of the export ban, based on a concept whereby the government (subject to Kimberley Process approval) would identify certain diamond-producing areas that were not affected by "systematic" armed group activities.[123]

121. UN Panel of Experts, *Final Report*, para. 111; Amnesty International interview, Antwerp, 17 March 2015.
122. IPIS, *Mapping Conflict Motives*, p. 30. IPIS has said that there was a drop in production in the east of CAR immediately after the export ban but that production subsequently increased in some areas after October 2013 (IPIS, *Mapping Conflict Motives*, p. 31).
123. For example, see abangui.com, '*Centrafrique: une éventuelle levée partielle de l'embargo sur le diamant*', 31 May 2015, available at: news.abangui.com/h/26894.html (accessed 29 August 2015); and CAR, *2014 Kimberley Process Report*, p. 3.

In July 2015, the Kimberley Process formally approved the partial lifting of CAR's suspension. This move will allow CAR to restart exporting rough diamonds from certain areas of the country (the so-called "compliant zones") once certain terms and conditions are fulfilled.[124] To be considered compliant an area must, among other things, be under "appropriate and sufficient CAR government control" and there must be "no evidence of systematic rebel-based or armed group activity impacting internal control in the diamond production or trade". A committee within CAR (consisting of government as well as civil society representatives) will choose these areas. They are then subject to approval by a Kimberley Process committee. Amnesty International understands that the areas currently being considered are in the west of CAR, particularly around Berberati and Nola.[125] The framework for the partial lifting of the export ban also provides for the setting up of an institutional structure to implement and monitor compliant zones. This includes a Kimberley Process team to monitor proposed exports and statistics from the compliant zones, special measures to ensure enhanced traceability of diamonds from those zones and support from the *Unité Spéciale Anti Fraudes* (USAF) and MINUSCA.

The decision to let a country that has been suspended from the Kimberley Process for non-compliance resume exporting diamonds from certain "compliant" areas within that country is unprecedented. The framework for compliant areas requires a level of oversight of the diamond-producing areas that Amnesty International considers would be hard to achieve in practice, and which has never been achieved previously. In particular, even with the tracing and security measures set out in the framework, it is not clear whether it will be possible to prevent diamonds from non-compliant zones being mixed with diamonds from compliant zones.[126] The fact that the framework looks at "systematic" armed group activity impacting internal controls is also of concern – it suggests that an area would be compliant if an armed group profited from but did not control the trade in that area. In Berberati for example, which is one of the potential "compliant zones", the anti-balaka continue to operate out of the surrounding villages as well as the town itself. Anti-balaka groups, by their nature, operate in a decentralized way – but they can still "tax" or demand "protection" payments from traders without controlling the mining area itself.

However, given the questionable value of the Kimberley Process ban in preventing diamonds from funding armed groups and fuelling human rights abuses within CAR, the partial lifting of the ban, if coupled with increased and effective monitoring of diamond production areas, may both generate much-needed State revenue and provide greater security for artisanal miners striving to make a living. It is vital that any such revenues are used for the benefit of both the State and the public good. Much remains to be seen as the process evolves.

The operational framework for the partial removal of the export ban also provides that current stockpiles of diamonds held in CAR (i.e., diamonds bought by buying houses within CAR but not exported) can be exported, subject to a "forensic audit".

Given the evidence that Sodiam and Badica continued to purchase diamonds from areas controlled by the Séléka and anti-balaka, including areas where those groups are known to be directly or indirectly involved in diamond mining, it is likely that some of the stockpiled diamonds have contributed to funding armed groups. They would therefore constitute "conflict diamonds" under the terms of the Kimberley Process. The purchase of any diamonds from Badica or its sister company Kardiam would also violate UN

124. Kimberley Process, *Partial Lifting of CAR Suspension*.
125. Amnesty International interview with the Chief Officer Business Intelligence, AWDC, Antwerp, 17 March 2015; Amnesty International interview with government and UN representatives in Paris, June 2015.
126. Amnesty International interview with industry experts in Paris, June 2015.

sanctions with respect to CAR – the UN added both companies to the sanctions list in August 2015. In accordance with the UN sanctions, various member States have made it illegal to make funds or economic resources available to Badica and Kardiam (i.e., by buying diamonds from them).[127] The President of the World Diamond Council, which represents the diamond industry within the Kimberley Process, has said that any diamonds bought during the ban should not be exported as they are "contaminated goods".[128]

It is also unclear how this audit process would work. CAR's system for tracing diamonds relies on miners and traders keeping a record of all the diamonds they find or buy.[129] This system is central to CAR's Kimberley Process controls.[130] Even before the conflict, however, NGOs expressed concerns about how effective this system was in preventing conflict diamonds from entering the Kimberley Process supply chain. For example, International Crisis Group noted that BECDOR let through diamonds that had funded armed groups operating around Sam-Ouandja and had no systematic way of checking the information on the documents provided for links to rebel groups.[131] As such, while there are clearly some traders in CAR who are known to have links to armed groups, it is not clear how this process would establish if an armed group was involved somewhere along that chain or whether a miner or trader in the supply chain paid "taxes" or other "protection" payments to an armed group – something the individuals themselves would be unlikely to want to admit to the authorities.

Sodiam recently published a "forensic audit and verification" of its diamond stock.[132] This audit merely confirms that Sodiam had taken "effective measures" to separate its stock from the east of CAR from its stock from the west of CAR. Although the audit includes some supporting documentation for the 6,419 carats that Sodiam purchased from the east, the records for only 750 carats include the name of the trader who sold those diamonds to Sodiam (and, even then, the records do not include the trader's full name, the mine of origin or the supply chain from mine to trader).

It is also unclear what would happen to the diamonds and to the buying houses if the diamonds in stock are found to have funded armed groups as a result of the "forensic audit" required by the Kimberley Process.

Amnesty International wrote to CAR authorities in July 2015 setting out its key findings in this chapter as well as its concerns about the loopholes in the documentary system for tracing diamonds from mine site to export and the "compliant zones" framework.[133] The organization did not receive any response from CAR by the time of publication of this report.

127. See, for example, Executive Order 13667 of May 12, 2014 Blocking Property of Certain Persons Contributing to the Conflict in the Central African Republic, s. 1(a), available at www.treasury.gov/resource-center/sanctions/Programs/Documents/car_eo.pdf; U.S. Department of the Treasury, 'Treasury Sanctions Individuals and Entities Fueling Violence in the Central African Republic', 21 August 2015, available at www.treasury.gov/press-center/press-releases/Pages/jl0150.aspx (both accessed 29 August 2015).
128. A. Krawitz, 'Kimberley Process Presents Roadmap for CAR Compliance', Rapaport, 30 June 2015, available at www.diamonds.net/News/NewsItem.aspx?ArticleID=52695&ArticleTitle=Kimberley+Process+Presents+Roadmap+for+CAR+Compliance (accessed 29 August 2015).
129. Miners are supposed to record all finds in a production book (or *cahier de production*), including where they were sold, the amount sold and the buyer. When collectors buy a diamond, they give the seller a receipt (*bordereau*). Collectors should make four copies of that receipt for every diamond purchased. One copy goes to the seller, one is kept by the collector, and two copies should go to the buying office to which the collector sells the diamond. The buying office then hands one of those receipts to BECDOR when it applies to export those diamonds. That receipt should set out the name of the seller and buyer, the quality of the diamonds, the mining site, the amount bought, the price, and the date and place of the purchase. Buying offices do not have to show receipts for purchases from miners.
130. International Crisis Group, *Dangerous Little Stones*, pp. 13 and 17.
131. International Crisis Group, *Dangerous Little Stones*, pp. 18 and 22.
132. Martello Risk, *Independent Third-Party Forensic Audit and Verification: Separation of Eastern "Red Zone" Goods from Western Goods*, 2 September 2015, p. 10, available at sodiam.cf/wp-content/uploads/2015/09/sodiam.pdf (accessed 9 September 2015).
133. Amnesty International letter to the Minister of Mines (Index: TG AFR/19/2015.004), 16 July 2015.

5. SMUGGLING OF DIAMONDS OUT OF CAR

The previous chapter looked at how the conflict intersects with the diamond industry in CAR. This chapter looks at how diamonds are being smuggled out of CAR. The problem of diamond smuggling in central Africa is not new and neither are the smuggling routes used. These have been in existence for many years and are well known to governments, traders and others in the diamond industry inside and outside CAR. Despite this, little has been done to effectively tackle this illegal trade that exists in parallel to the trade under the Kimberley Process. Below we explore the human rights implications of smuggling and the failure to prevent this illicit outflow of wealth, particularly from developing countries such as CAR.

SMUGGLING AROUND CENTRAL AFRICA

Diamond smuggling has been a persistent problem in CAR for many years. The country's Kimberley Process office estimated that some 30% of diamonds left the country illegally before the outbreak of the 2013 conflict.[134] A 2010 World Bank study found that up to 50% of CAR's diamonds – mostly higher value diamonds – may be smuggled out of the country illegally.[135]

Smuggling has also been a continual challenge in other diamond-producing countries in the region. Sources involved in both the diamond trade and regional customs control operations point to smuggling into and out of several diamond-producing countries in the region, including smuggling of CAR and Cameroon diamonds into the DRC, and smuggling of diamonds from the DRC into both countries.[136] For example, according to UN trade statistics from 2000, CAR reported official rough diamond exports of US$52 million to Belgium, while Belgium reported official rough diamond imports from CAR of US$168 million.[137] This discrepancy is thought to be due to armed groups smuggling DRC diamonds out through CAR during the armed conflict in the DRC.[138] A senior source in international customs, speaking about the central Africa region, stated:

> *"Diamond trafficking has been rife through parallel circuits for 20 to 30 years – it is nothing new. The Kimberley Process does not mean that trade will be totally re-directed."*[139]

In December 2012 and again in April 2013, the Kimberley Process called on all participating governments and members of the diamond industry to conduct "enhanced vigilance measures" with regard to the illicit introduction by armed groups (including the Séléka and its allies) of CAR diamonds into the international supply chain.[140] It also asked Cameroon, the Republic of the Congo and the DRC to share their export data and photos of all shipments with expert and monitoring groups within the Kimberley Process.[141] Despite this, and CAR's suspension from

134. International Crisis Group, *Dangerous Little Stones*, p. 7.
135. The World Bank Oil Gas and Mining Policy Division, *A Comprehensive Approach to Reducing Fraud and Improving the Contribution of the Diamond Industry to Local Communities in the Central African Republic (Final Draft)*, November 2010, p. 17, available at www.ddiglobal.org/login/resources/central-african-republic-communities-fraud-diamonds.pdf (accessed 19 August 2015).
136. Source from international customs organization who asked not to be identified.
137. Figures from UN COMTRADE, available at wits.worldbank.org/ (accessed 21 August 2015) (requires registration).
138. I. Smillie, *Blood on the Stone: Greed, Corruption and War in the Global Diamond Trade*, 2010, p. 133.
139. Source from international customs organization who asked not to be identified.
140. Kimberley Process, 'Letter of 28 December 2012 from the Chair of the Kimberley Process to all Kimberley Process Participants and Observers', available at www.kimberleyprocess.com/en/2012-dec-car-kp-vigilance (hereafter KP Letter of 28 December 2012); Kimberley Process, 'Letter of 18 April 2013 from the Chair of the Kimberley Process to all KP Participants and Observers', available at www.kimberleyprocess.com/en/2013-apr-car-kp-vigilance (hereafter *KP Letter of 18 April 2013*) (both accessed 21 August 2015).
141. Kimberley Process, 'Final Communiqué from the Kimberley Process Plenary Meeting', 22 November 2013, available at www.kimberleyprocess.com/fr/system/files/documents/Johannesburg%20Plenary%20Communique%202013.pdf (accessed 21 August 2015) (hereafter *KP Final Communiqué of November 2013*).

the Kimberley Process in May 2013, even the Kimberley Process acknowledges that CAR diamonds have subsequently reached international markets.[142]

There is general consensus, including among those involved in the international diamond industry, that smuggling has increased since the conflict began and since CAR was suspended from the Kimberley Process. In October 2014, the UN Panel of Experts stated:

> *"[T]he suspension added about 140,000 carats of diamonds, representing a potential value of $24 million, to the amount already smuggled out of the country prior to the suspension."*[143]

An industry expert in Antwerp told Amnesty International:

> *"Diamonds from CAR are being smuggled out or kept by the local population as an investment because of the currency uncertainty. Most, however, are going out of the country."* [144]

A trader Amnesty International interviewed in Carnot summed up the situation:

> *"Even though it's fraudulent, it's easy to do because the state is very weak, and customs mechanisms are very weak."* [145]

HOW MANY DIAMONDS ARE BEING SMUGGLED OUT OF CAR?

By its nature, smuggling does not allow for any precise measurement. As noted above, it is believed that around 30% of CAR's diamonds were smuggled illegally out of the country before the conflict; the UN Panel of Experts estimates that an additional 140,000 carats were smuggled out after CAR was suspended from the Kimberley Process.

Under the Kimberley Process, CAR exported rough diamonds with a value of US$60.8 million in 2011 and US$62.1 million in 2012. Prior to its suspension from the Kimberley Process in May 2013, the country exported some $21 million worth of diamonds in 2013.[146]

	2011	2012	2013 (January to May)
Carats	323,575	365,916	118,946
Total Value (US$)	60,843,286.76	62,129,596.70	20,722,118
Value per carat (US$)	188.09	167.05	174.21

The official exports in 2013 and the Panel's estimate of diamonds smuggled out of the country after CAR's suspension from the Kimberley Process take into account a 30-40% slow-down in production since the beginning of the crisis.[147] The subsequent increase in diamond production in some areas in the east of CAR raises questions as to whether smuggling is in fact far more of an issue than thought.

142. Kimberley Process, 'Administrative Decision on ensuring that diamonds from the Central African Republic are not introduced into the legitimate trade', 17 July 2014, available at www.kimberleyprocess.com/en/system/files/documents/20140717%20AD%20CAR%20.pdf (accessed 21 August 2015).
143. UN Panel of Experts, *Final Report*, para. 111.
144. Amnesty International interview, Antwerp, 17 March 2015.
145. Amnesty International interview with a trader in Carnot, 14 May 2015.
146. Kimberley Process, 'Annual Global Summary: 2011 Production, Imports, Exports and KPC Counts' and 'Annual Global Summary: 2012 Production, Imports, Exports and KPC Counts', available at www.kimberleyprocessstatistics.org/public_statistics (accessed 21 August 2015); UN Panel of Experts, *Interim Report*, para. 58 (based on CAR's 2013 Kimberley Process report).
147. UN Panel of Experts, *Final Report*, para. 111, footnote 77.

THE SMUGGLING ROUTES

Amnesty International researchers found that rough diamonds leave CAR illegally through a number of smuggling routes, and the existence of these routes is widely acknowledged by those involved in the diamond industry inside and outside CAR. For example, an industry source in Antwerp showed researchers a map of the main diamond production areas in CAR and how the diamonds are flowing out of the country. The routes shown on this map largely corresponded to information provided by other, unconnected, sources in CAR and information gathered by the UN Panel of Experts and civil society groups.[148]

CAMEROON

From the western region of CAR, diamonds are taken across the land borders with Cameroon, to places such as Kenzou and then out through its international ports and airports.[149] According to the UN Panel of Experts:

> *"[D]iamond collectors in Berberati and Bangui acknowledged that the larger share of diamonds produced in the west of the Central African Republic close to the Cameroonian border is trafficked through Gamboula and Gbiti (Mambéré – Kadeï Province, Central African Republic) to Kenzou and Kette (East Province, Cameroon) and then further on to Batouti, Bertoua, Yaoundé and Douala."*[150]

A Republic of Cameroon Kimberly Process Certificate. In order to legally export rough diamonds, international shipments of rough diamonds must be accompanied by a Kimberly Process certificate guaranteeing that they are conflict-free. © Amnesty International

148. UN Panel of Experts, *Final Report*, paras. 132-134; International Crisis Group, *From Predation to Stabilisation*, pp. 11-13; IPIS, *Mapping Conflict Motives*, pp. 30-32 and 58-60; Enough Project, *Warlord Business*, pp. 2 and 17; Amnesty International interviews in Berberati and Carnot, November 2014 and Antwerp, 17 March 2015.
149. UN Panel of Experts, *Final Report*, paras. 132-134; Amnesty International interviews in: Berberati, CAR, November 2014; Carnot, CAR, November 2014 and May 2015; Yaoundé and Douala, Cameroon, December 2014; and Antwerp, Belgium, 17 March 2015; L. Charbounneau, 'Cameroon involved in Central Africa 'blood diamond' trade: UN experts', Reuters, 2 September 2015, available at af.reuters.com/article/topNews/idAFKCN-0R20KM20150902?sp=true (accessed 2 September 2015).
150. UN Panel of Experts, *Final Report*, para. 132.

The diamond collectors operating around the border towns include Muslim traders who fled CAR during the conflict, as well as Cameroon nationals. The Panel provided details of buyers operating in that area, including an agent for Badica who was purchasing diamonds that had been trafficked from Nola and Berberati in the west of CAR. The UN Panel of Experts noted in its October 2014 report that:

> *"[S]ome of the rough diamonds in the pictures of [the shipments] seized [in Antwerp] … display characteristics typical of diamonds originating in Nola (Sangha Mbaéré Province) in the west of the Central African Republic."*[151]

Badica denies the allegations in the Panel's report.[152]

The UN Panel also reported that a sub-office of the Cameroonian buying house Gems Africa is believed to be located in Kenzou and buying diamonds from the Berberati area of CAR. The Panel stated that Gems Africa had exported 815 carats of rough diamonds to Dubai in March 2014 through Cameroon's Kimberley Process office.[153] The Kimberley Process office in Cameroon also told Amnesty International that Gems Africa has since exported further diamonds through the office.[154] Amnesty International wrote to Gems Africa seeking additional information on its Kenzou operation, including whether Gems Africa was purchasing diamonds from CAR.[155] No response was received by the time of publication of this report.

CAMEROON AND THE KIMBERLEY PROCESS

Cameroon joined the Kimberley Process in August 2012 but is a relatively small diamond producer and exporter:[156]

	Carats produced			Carats exported				
	1st half	2nd half	**TOTAL**	1st quarter	2nd quarter	3rd quarter	4th quarter	**TOTAL**
2013	944.40	1,777.54	**2,721,94**	752.62	27.77	62.05	1,578.44	**2,420.88**
2014	1,633.50	2,084.66	**3,718.16**	1068.25	19.28	43.87	2,468.75	**3,600.15**

Under the Kimberley Process, Cameroon is required to establish and enforce effective internal controls to prevent conflict diamonds from entering the international supply chain. Additionally, as a member of the Kimberley Process and a neighbouring country to CAR, it is expected to exercise "enhanced vigilance measures" with regard to the introduction of CAR diamonds into the international supply chain and to share its export data and photos of all shipments with expert and monitoring groups within the Kimberley Process.[157] In June 2014, Cameroon's Kimberley Process office confiscated 23.78 carats of rough diamonds that it believed to have come from CAR.[158]

151. UN Panel of Experts, *Final Report*, paras. 121 and 125-126.
152. Letter from Kardiam to Amnesty International, 12 June 2015 (attached to this report in the annex).
153. UN Panel of Experts, *Final Report*, paras. 125-126 and 133 and Annex 30.
154. Amnesty International telephone interview with the National Permanent Secretary of the Kimberley Process in Cameroon, 6 July 2015.
155. Amnesty International letter to Gems Africa (Index: AFR 19/2015.002), 22 June 2015.
156. Kimberley Process, 'Annual Summary Tables', 'Semi-Annual Production Tables' and 'Quarterly Export Tables', all available at www.kimberleyprocessstatistics.org/public_statistics (accessed 21 August 2015).
157. KP Letter of 28 December 2012; KP Letter of 18 April 2013; KP Final Communiqué of November 2013.
158. UN Panel of Experts, *Final Report*, para. 134.

Amnesty International visited Cameroon in December 2014 to look at how the country is addressing diamond smuggling and whether diamonds from CAR may be entering the Kimberley Process supply chain through Cameroon. Cameroon faces three particular issues.[159] Firstly, there is a strong similarity between diamonds from Cameroon and CAR – diamonds from Cameroon are mined along the Kadeï river, which runs into the diamond-producing Mambéré river in western CAR. Secondly, this river forms a natural border between parts of CAR and Cameroon, posing a challenge to anti-smuggling efforts. Thirdly, to determine the origin of diamonds, the Kimberley Process office relies on the production book (*cahier de production*) of the relevant artisanal miner – with 20,000 artisanal miners in Cameroon and limited ability to monitor those miners, it is impossible to be sure where each diamond recorded in that book has come from.

According to Jean Kisito Mvogo, Cameroon's Director of Mines and the National Permanent Secretary of the Kimberley Process in Cameroon, CAR diamonds are not entering the Kimberley Process supply chain in Cameroon. He cites the June 2014 seizure of diamonds by his office as proof of the system's efficacy. The seizure was made when a parcel of diamonds was presented, without the relevant documents, to the Cameroonian Kimberley Process authorities for certification. He said that a further seizure of 160 carats had been made by the Kimberley Process office since then because there was no proof of where the diamonds had come from.[160] According to a report on the seizure, the diamonds were valued at around US$28,000 and had been carried by two individuals who had recently visited CAR's capital Bangui.[161]

Jean Kisito Mvogo also points to the "the small amounts exported", arguing that if diamonds were coming in from CAR, Cameroon's small export numbers would be rising. Sources in the international diamond trade as well as civil society echoed this view.[162] A source in Antwerp stated:

> *"If people were trying to get the diamonds into the [Kimberley Process], they wouldn't use Cameroon, as it is too visible and obvious as production there is so low."*[163]

Jean Kisito Mvogo also stated that Cameroon has various measures in place to prevent smuggling. This included 31 Kimberley Process "focal points" located along the border with CAR, at Yaoundé airport and at Douala airport and port. Additionally, in accordance with the enhanced vigilance measures called for by the Kimberley Process, Cameroon systematically photographs all diamonds exported or confiscated and sends them to working groups within the Kimberley Process.[164]

Publicly available statistics for Cameroon (as set out on page 40) show significant fluctuations in the production and export of rough diamonds since Cameroon became a member of the Kimberley Process in August 2012, making it difficult to assess from this information whether CAR diamonds are being smuggled into the Kimberley Process supply chain through Cameroon. For example, the statistics show significant increases in both production and export between the beginning of 2013 and the end of 2014. IPIS suggests that production may have increased due to the number of refugees from CAR that are now operating in Cameroon's diamond sector. Given this, it questions why Cameroon recorded a drop in production and exports between the end of 2013

159. Amnesty International interview with the National Permanent Secretary of the Kimberley Process in Cameroon, by telephone, 6 July 2015; Amnesty International interview with the Chief Officer Business Intelligence, AWDC, Antwerp, 17 March 2015; IPIS, *Mapping Conflict Motives*, p. 74.
160. Amnesty International interviews with the National Permanent Secretary of the Kimberley Process in Cameroon in Yaoundé, 9 December 2014 and by telephone, 6 July 2015.
161. L. Charbounneau, 'Cameroon involved in Central Africa 'blood diamond' trade: UN experts', Reuters, 2 September 2015, available at af.reuters.com/article/topNews/idAFKCN0R20KM20150902?sp=true (accessed 2 September 2015).
162. Amnesty International interview with Chief Officer of Business Intelligence, AWDC, Antwerp, 17 March 2015; IPIS, *Diamonds in CAR*, p. 11.
163. Amnesty International interview with Chief Officer of Business Intelligence, AWDC, Antwerp, 17 March 2015.
164. Amnesty International interviews with the National Permanent Secretary of the Kimberley Process in Cameroon in Yaoundé, 9 December 2014 and by telephone, 6 July 2015.

and beginning of 2014 – although it notes that this may simply imply that smugglers find it easier or more lucrative to sell CAR diamonds through the parallel, illegal trade that operates alongside the Kimberley Process. A number of forged Cameroon Kimberley Process certificates have been intercepted in the past few years, including as recently as 2013.[165]

This illegal trade is something Jean Kisito Mvogo acknowledges:

> *"I cannot deny that there is leakage. There are Central African diamonds in Cameroon. But they cannot be exported. If diamonds are circulating, it is through other means, not through us."*[166]

The Kimberley Process office in Cameroon does not have any significant role in dealing with the illegal trade in diamonds. Jean Kisito Mvogo told Amnesty International:

> *"I cannot know what is circulating in the bars of [Cameroon's largest city] Douala, but they would never be given a Kimberley Process certificate. 'If something is brought to our attention we act, but otherwise, we cannot do anything."*[167]

Even when the Kimberley Process comes across smuggled diamonds their role is limited. Amnesty International asked Jean Kisito Mvogo about the penalties for attempting to subvert the Kimberley Process and was told that cases are referred to the police and his office is not involved in following-up. He did not know what happened to the individuals, referred to earlier, who had tried to export suspected CAR diamonds without paperwork.[168]

While the police may become involved if a suspected smuggler is identified, the first line of defence in identifying the illegal movement of diamonds is Customs. Diamonds can enter and exit Cameroon from CAR overland, but also by air – there are six commercial flights per week between Bangui and Douala airport.[169] Sources involved in Customs in Cameroon named Douala as a key location in the movement of smuggled diamonds – whether the diamonds are from CAR or Cameroon. Douala airport has connections to diamond trading centres such as Dubai as well as other diamond-producing countries such as Angola. In addition, Douala is a major port. Under the Kimberley Process in Cameroon, diamonds can only be exported through Yaoundé airport – although there are Kimberley Process "focal points" at Douala port and airport as well as other locations in Cameroon.[170]

In an effort to understand how Cameroon deals with the smuggling of diamonds Amnesty International met with Customs officials at Douala port and airport. One customs official at the airport acknowledged that diamonds could be fraudulently exported, but said that such diamonds had not passed through his operation. He went on to say that he has responsibility for searching packages that go into the holds of planes. Anything carried by individuals, he said, was a matter for the police.[171] Amnesty International spoke to another senior Customs official in Douala who did not wish to be named. He expressed the view that Customs staff in general had limited knowledge of the Kimberley Process, and therefore might not be in a position to implement it effectively.[172]

165. IPIS, *Diamonds in CAR*, p. 11.
166. Amnesty International interview with the National Permanent Secretary of the Kimberley Process in Cameroon, Yaoundé, 9 December 2014.
167. Amnesty International interview with the National Permanent Secretary of the Kimberley Process in Cameroon, Yaoundé, 9 December 2014.
168. Amnesty International interview with the National Permanent Secretary of the Kimberley Process in Cameroon, by phone, 6 July 2015.
169. A number of other private flights also run between the two countries.
170. Amnesty International interviews with the Kimberley Process office, Yaoundé, 9 December 2014 and with customs officials, Douala, 11 December 2014.
171. Amnesty International interview with customs official, Douala airport, 11 December 2014.
172. Amnesty International interview, Douala, 11 December 2014.

THE DEMOCRATIC REPUBLIC OF THE CONGO

Diamonds from the Basse Kotto region in the south of CAR are moving across the porous border with the DRC.[173] According to one expert:

> *"Rough diamonds from the production zone of "Basse Kotto" in CAR have similar physical characteristics as those from the other side of the Oubangui-river. On the Congolese-side, these are called "Kisangani goods". The diamonds from the CAR side originate from alluvial deposits in Alindao, Kembé and Dimbi along the Kotto-river."*[174]

The expert explained that these diamonds are thought to have passed through the DRC's regional Kimberley Process office in Kisangani in the north of the DRC, where they were "tagged" as coming from the DRC's Isiro diamond-producing area. Because they were already "tagged" as "Isiro" diamonds, they would have been subject to less vigilance at the DRC's Kimberley Process main export point in Kinshasa. The same expert told Amnesty International that there had been an increase in "production" from Isiro since CAR was suspended from the Kimberley Process.[175]

As noted above, at least some of the diamonds seized in Antwerp in May and June 2014 are thought to have been imported into Dubai under DRC Kimberley Process certificates. Following that seizure, mining authorities in the DRC acknowledged that CAR diamonds may have entered the formal supply chain in the DRC, but argued that the diamonds intercepted in Antwerp could also have been smuggled into the UAE and then swapped for the diamonds that had actually come in under those DRC certificates.[176]

THE DRC AND THE KIMBERLEY PROCESS

The DRC has been a member of the Kimberley Process since 2003 and, in 2014, was the third largest producing country in the world:[177]

	Carats produced			Carats exported				
	1st half	2nd half	**TOTAL**	1st quarter	2nd quarter	3rd quarter	4th quarter	**TOTAL**
2012	11,506,310	10,017,956	**21,524,266**	5,704,246	3,917,070	4,406,879	5,530,723	**19,558,919**
2013	7,273,896	8,408,088	**15,681,984**	3,175,703	3,565,878	4,343,588	4,601,331	**15,686,501**
2014	8,289,471	7,362,543	**15,652,014**	4,114,939	4,131,055	2,647,668	4,022,082	**14,915,745**

As a member of the Kimberley Process, the DRC should have effective internal controls in place to prevent conflict diamonds from entering the international supply chain. Additionally, as a member of the Kimberley Process and a neighbouring country to CAR, it is expected to exercise "enhanced vigilance measures" with regard to the introduction of CAR diamonds into the international supply chain and to share its export data and photos of all shipments with expert and monitoring groups within the Kimberley Process.[178] Based on information provided by DRC authorities to Amnesty International, it appears that the DRC has not intercepted any CAR diamonds since the Kimberley Process ban (see below).

173. Amnesty International interviews in Antwerp, 17 March 2015.
174. Email to Amnesty International from Chief Officer Business Intelligence, AWDC, 6 July 2015.
175. Amnesty International interview with Chief Officer Business Intelligence, AWDC, Antwerp, 17 March 2015; Email to Amnesty International from Chief Officer Business Intelligence, AWDC, 6 July 2015.
176. UN Panel of Experts, *Final Report*, para. 120.
177. Kimberley Process, 'Annual Summary Tables', 'Semi-Annual Production Tables' and 'Quarterly Export Tables', all available at www.kimberleyprocessstatistics.org/public_statistics (accessed 21 August 2015).
178. KP Letter of 28 December 2012; KP Letter of 18 April 2013; KP Final Communiqué of November 2013.

It is well known within both the Kimberley Process and the international diamond trade that the DRC has had issues with smuggling for a number of years.[179] Civil society groups monitoring the country's diamond industry have also questioned the effectiveness of the DRC's controls over diamond trading and exports. According to Partnership Africa Canada (PAC), an NGO that has been involved in the Kimberley Process since its inception,[180] the DRC's poor internal controls make it "highly vulnerable to smuggled goods from conflict-affected areas, most recently the Central African Republic".[181]

The large number of rough diamonds exported from the DRC would, in theory at least, make it easier to smuggle CAR diamonds through the DRC rather than a smaller producing country such as Cameroon. However, the current lack of detailed, publicly available information concerning the DRC's diamond production and export statistics make investigations into the level of smuggling within the DRC difficult to verify. Additionally, the production statistics that are publicly available either only show production for the whole of the DRC or show considerable variation in production and export over many years, making it difficult to assess the extent of the smuggling on the basis of publicly available information alone.

These variations in production and export appear to be due to a range of factors, some known and some unknown. For example, as indicated in the table on page 43, there was a significant drop in production and exports in the DRC between 2012 and 2013. Analysts attributed this to various industrial mines reducing or stopping production and a 2010 law that requires DRC diamonds to be "cleaned" before they are exported through the Kimberley Process to try and improve their export value (leading some producers to apparently choose to smuggle diamonds rather than incur the expense of the cleaning process).[182] Monthly artisanal production statistics from 1998 to 2003 for the Orientale province of which Kisangani forms a part also show large variations over the months (for example in February 2003 production was 25,622 carats whereas in May 2003 it was 12,405).[183] The reasons for those variations are unclear.

Amnesty International understands that, in response to concerns around the smuggling of CAR diamonds into the DRC, the UN Panel of Experts has requested detailed regional production statistics from the DRC authorities and the Kimberley Process has been authorised to undertake a detailed analysis of the DRC's production and trade statistics (although it is not clear if and when this will happen).[184]

Amnesty International asked the DRC's *Centre d'Évaluation, d'Expertise et de Certification des substances minérales précieuses et semi-précieuses* (CEEC), which is responsible for implementing the Kimberley Process, to provide details of the enhanced due diligence measures it has put in place, and whether the authorities had identified any diamonds from CAR in the DRC.[185] In response, the CEEC said that it had issued two memorandums to relevant divisions within the DRC government.[186]

179. Ad Hoc Working Group on the Review of the Kimberley Process Certification Scheme, *The Kimberley Process Certification Scheme: Third Year Review*, November 2006, pp. 2, 24, 43 and 68, available at www.worlddiamondcouncil.org/download/resources/documents/Kimbeley%20Process%20Third%20Year%20Review%20(1-11-2006).pdf (accessed 21 August 2015) (hereafter Kimberley Process, *Third Year Review*).
180. PAC, 'PAC and the Kimberley Process: A History', available at www.pacweb.org/en/pac-and-the-kimberly-process (accessed 9 September 2015).
181. PAC, *All That Glitters is not Gold: Dubai, Congo and the Illicit Trade of Conflict Minerals*, May 2014, p. 1 (hereafter PAC, *All That Glitters*).
182. Business Wire, 'Research and Markets: Democratic Republic of the Congo, Precious Metals Mining Market to 2010 – A Focus on the Diamond Industry', available at www.businesswire.com/news/home/20140909005900/en/Research-Markets-Democratic-Republic-Congo-Precious-Metals#.VdeDFPlViko; The Chamber of Business of the DRC Chamber of Mines, *Mining Industry Annual Report 2014*, p. 13, available at www.congomines.org/system/attachments/assets/000/000/626/original/Annual-Report-2014-Eng-FEC.pdf?1430929427 (both accessed 21 August 2015).
183. DRC Ministère du Plan (Unité de Pilotage du Processus DSRP – Kinshasa / Gombe), *Monographie de la Province Orientale*, available at www.ruralcongo.cd/minider/images/pdf/monographie_province_orientale.pdf, pp. 81-82 (accessed 9 September 2015).
184. Amnesty International interview with Chief Officer Business Intelligence, AWDC, Antwerp, 17 March 2015; Email to Amnesty International from Chief Officer Business Intelligence, AWDC, 6 July 2015; Email to Amnesty International from a member of the UN Panel of Experts, 7 July 2015.
185. Amnesty International letter to the CEEC (Index: TG AFR 62/2015.009), 3 July 2015.
186. Letter to Amnesty International from the CEEC, 22 July 2015.

The first of these memorandums, dated 27 May 2013, instructs various government ministries and agencies involved in the mining and diamond sector to redouble their vigilance at relevant points in the supply chain to avoid the illegal infiltration of rough diamonds from CAR into the Kimberley Process supply chain. The memorandum asks them to focus particularly on border crossings / frontier posts, diamond buying and selling houses, the entities that "clean" or deoxidize diamonds before export and the "technical room" of the CEEC that analyses rough diamonds for export. The memorandum does not, however, say what particular steps they should take to enhance vigilance or prevent CAR diamonds from entering the Kimberley supply chain.

The second of these memorandums, dated 29 July 2013, is addressed to the Head of the Diamond Division, Head of the Certification Division as well as diamond evaluators and diamond sorters. It attaches a report providing details of monthly exports and photos of exported diamonds, as sent to various Kimberley Process working groups (this report was not attached in the letter sent to Amnesty International). The memorandum also provides assurances that no diamonds presented for export have included the characteristics of CAR diamonds according to a Kimberley Process document providing a "footprint" analysis of CAR diamonds.

CHAD AND SUDAN

Diamonds from the main production areas in the east of CAR – around Bria and Sam-Ouandja – are being smuggled into Chad and Sudan (notably to Nyala), neither of which are Kimberley Process members.[187] As noted earlier, the UN Panel of Experts stated in its October 2014 report that:

> *"[D]iamonds illegally traded from Bria and Sam-Ouandja, areas under former Séléka control … have ended up in the shipments seized in Antwerp [in May and June 2014]."*[188]

IPIS reported in December 2014 that diamond trafficking into Sudan had increased since CAR was suspended from the Kimberley Process, with "85-90% being high to medium gem quality" diamonds representing "sizeable gains for armed groups".[189]

BANGUI AIRPORT

Those with knowledge of the diamond trade in CAR and internationally also stated that a significant number of diamonds are being smuggled out through Bangui airport, including through flight crews.[190] While people leaving CAR are subject to a second security check for diamonds, this is not very thorough so diamonds could be taken out by person.[191] Diamonds could also be hidden in cargo.[192] There is a weekly connection with Paris, as well as regular flights to Cameroon and twice-weekly flights to Angola.

THE KIMBERLEY PROCESS AND AN AGE-OLD PROBLEM

The Kimberley Process is a voluntary initiative – States choose to participate and then implement the Kimberley's certification scheme through their own internal controls and domestic law. While the Kimberley Process sets out some minimum requirements for these purposes, the standards for internal controls are voluntary recommendations for

187. Amnesty International interview with Chief Officer Business Intelligence, AWDC, Antwerp, 17 March 2015; UN Panel of Experts, Interim Report, para. 67; International Crisis Group, *From Predation to Stabilisation*, pp. 12-13. As noted earlier, Michel Djotodia, the ex-leader of Séléka, has links with Nyala in Sudan (International Crisis Group, *Dangerous Little Stones*, p. 16 (footnote 151)).
188. UN Panel of Experts, *Final Report*, para. 127.
189. IPIS, *Diamonds in CAR*, p. 12. An expert in Antwerp confirmed that diamonds from the eastern region of CAR are of better quality than other areas (Amnesty International interview with Chief Officer Business Intelligence, AWDC, Antwerp, 17 March 2015).
190. Amnesty International interview with Chief Officer Business Intelligence, AWDC, Antwerp, 17 March 2015; Email to Amnesty International from a member of the UN Panel of Experts, 7 July 2015.
191. Based on the experience of an Amnesty International researcher.
192. Amnesty International interview with Chief Officer Business Intelligence, AWDC, Antwerp, 17 March 2015.

participants to take into account rather than definitive obligations. Additionally, while the Kimberley Process allows for regular review visits (at the invitation of the relevant participant) as well as review missions to countries with "significant" compliance issues, these mechanisms lack credibility and recommendations are not followed up in an effective or timely manner to check implementation. While different countries have different approaches to meeting the Kimberley Process standards, the lack of definitive obligations and effective enforcement has led to uneven implementation and loopholes in the process, with internal control systems varying in their effectiveness from country to country.[193]

The historical and continuing smuggling of diamonds out of CAR provides evidence of these implementation and enforcement issues. In a study of CAR's diamond sector, published in 2010, International Crisis Group observed that:

> *"There is a high level of illegal diamond mining and trading in the CAR because there are strong economic incentives and little risk."*[194]

International Crisis Group attributed this not to a lack of laws, but to a weak enforcement mechanism in CAR. Although CAR, as a member of the Kimberley Process, is supposed to have effective internal systems in place to control diamond exports, it has long been recognised that it lacks control over mining areas and its borders and that rebel groups operate close to mining zones.[195]

In June 2003, shortly after President Bozizé came to power in a *coup d'état*, the Kimberley Process undertook a review mission to CAR (CAR was initially suspended following the coup but reinstated after providing assurances that it would implement the Kimberley Process and allow a review mission to evaluate the country's Kimberley system).[196] The Kimberley Process also undertook a review visit to CAR in April 2008, as part of its regular peer review mechanism. While the Kimberley Process has not made the reports of these reviews publicly available, some details have been made available by third parties.

According to the International Monetary Fund (IMF), the report of the 2003 review mission concluded that CAR could implement the Kimberley Process "satisfactorily" but "encouraged the further strengthening of internal monitoring and controls".[197] This is echoed by International Crisis Group:

> *"The Kimberley Process' two assessment teams … were generally satisfied with the internal controls, though they noted technical irregularities, the mining authorities' incomplete coverage of mining areas and risks linked to porous borders and the proximity of rebel groups to diamond zones. For these reasons, the CAR "occupies a particular place … in the fight against conflict diamonds" [a quote taken directly from the 2008 review report]."*[198]

The IMF report also noted that reducing illegal exports from CAR depended on efforts not just by the CAR government but also by its neighbouring countries.[199]

193. Amnesty International, *Kimberley Process: An Amnesty International Position Paper* (Index: POL 30/057/2006), available at www.amnesty.org/download/Documents/80000/pol300572006en.pdf; Global Witness, *Making it Work: Why the Kimberley Process Must Do More to Stop Conflict Diamonds*, November 2005, available at www.globalwitness.org/archive/making-it-work-why-kimberley-process-must-do-more-stop-conflict-diamonds-0/ (both accessed 29 August 2015).
194. International Crisis Group, *Dangerous Little Stones*, p. 12.
195. International Crisis Group, *Dangerous Little Stones*, pp. 12-13.
196. Kimberley Process, '2003 Administrative Decision: Central African Republic', available at www.kimberleyprocess.com/en/2003-administrative-decision-central-african-republiccompendium (accessed 17 August 2015). A Kimberley Process "mission" is designed to assess "credible indications of significant non-compliance" (see Kimberley Process, '2012 Administrative Decision: KPCS Peer Review System', Sections II and III at www.kimberley-process.com/en/2012-administrative-decision-revised-peer-review-system-washingtoncompendium (accessed 17 August 2015)).
197. International Monetary Fund, *Central African Republic: Selected Issues and Statistical Appendix*, IMF Country Report No. 04/167, 23 June 2004, p. 50, available at www.imf.org/external/pubs/ft/scr/2004/cr04167.pdf (accessed 24 August 2015) (hereafter IMF, *CAR*).
198. International Crisis Group, *Dangerous Little Stones*, p. 13 (footnotes omitted).
199. IMF, *CAR*, p. 50.

While various governments and international organisations have provided technical assistance and capacity building efforts to CAR over the years to improve its internal controls,[200] International Crisis Group noted in its report 2010 that:

> *"Such a diplomatic approach and the Kimberley Process' competing priorities – Zimbabwe in particular – have allowed the weakness of the CAR's internal controls to escape international scrutiny and consequences."*[201]

Just as the problem of diamond smuggling in the region is not new, neither are the smuggling routes used. In its 2010 report on the diamond sector in CAR the International Crisis Group noted that:[202]

> *"Most diamonds smuggled overland cross the western border into Cameroon, where there is a strong illegal market … Authorities in western mining towns also sell diamonds to foreign buyers in Cameroonian towns close to the border, and the markets at* ***Kentzou [Cameroon]*** *and Gbiti are well-known gold and diamond trading hubs."*
>
> *"CAR diamonds are smuggled in smaller quantities to* ***the Republic of Congo*** *and the DRC, where export tax is significantly lower, and there is little risk of detection because the stones look much the same as local ones."*
>
> *"Smugglers likewise sell diamonds in* ***Sudan, mostly in Nyala****, the capital of South Darfur."*
>
> *"Individuals smuggle diamonds either through* ***Bangui airport*** *or overland across largely uncontrolled borders. At the airport, mining brigade officers have little hope of finding such small stones, and the mines ministry suspects some are complicit with smugglers, who range from small-scale opportunists looking to supplement their legal income to professionals."*

The fact that the weakness of CAR's internal controls and these smuggling routes were well-known as far back as 2003 raises a number of questions about the effectiveness of the Kimberley Process in tackling and intercepting smuggled diamonds and its mechanisms for non-compliance by participants. The outbreak of conflict has almost certainly weakened CAR's internal controls further and there is general consensus that smuggling has increased since the conflict began. The Kimberley Process itself admitted that diamonds from CAR have reached international markets. Yet there are only a handful of reports of CAR diamonds being intercepted within the Kimberley Process (in Antwerp) or in attempting to enter the Kimberley Process (in Cameroon). These seizures do not amount to anywhere near the amount estimated to have been smuggled out of the country in the last two years.

Countries such as CAR have a clear responsibility to improve their internal controls and tackle issues such as smuggling – including by establishing systems that encourage and support artisanal miners to work within the formal rather than informal sector and that encourage a legal rather than illegal trade, and by investing the resulting revenues for the public good. However, members of the Kimberley Process also have a responsibility to ensure that participants put these measures in place and to take action if they do not. That action can and should include technical and financial assistance to strengthen internal

200. Email from AWDC to Amnesty International, 6 July 2015; US State Department, 2009 *U.S. Annual Report to the Kimberley Process*, available at www.state.gov/documents/organization/141941.pdf?_sm_au_=iVVQRPrSF7qF274j (accessed 21 August 2015).
201. International Crisis Group, *Dangerous Little Stones*, p. 13.
202. International Crisis Group, *Dangerous Little Stones*, pp. 13-14.

controls, but it is also vital that the Kimberley Process implements and enforces strong and effective policies and procedures for non-compliance, including suspension. While suspension should be seen as a last resort (particularly in countries such as CAR where it would have a devastating impact on the artisanal mining sector), countries need to know that suspension is a genuine risk so they have an incentive to tackle weaknesses in their internal systems.

Yet, even if all participants had in place strong and effective enforcement measures, the Kimberley Process has its limitations. As noted in the previous chapter, it is a certification scheme that absolves companies of any responsibility to check their own supply chains and, while certification may form part of supply chain due diligence, the Kimberley Process is not in and of itself a due diligence scheme. As such, even if the Kimberley Process addresses its limitations, companies in the diamond supply chain should still be undertaking supply chain due diligence in accordance with international standards such as the *OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas* – this means proactively assessing the risks associated with the diamonds they purchase (such as the risk that those minerals have been illegally smuggled out of a country), taking action to mitigate the risks identified and reporting publicly on the steps they have taken. The human rights responsibilities of companies in the diamond sector, including their responsibility to undertake supply chain due diligence, are explored in more detail in Chapter 7.

ILLEGALITY AND SMUGGLING AS HUMAN RIGHTS ISSUES

Smuggling is an illegal activity that can contribute to or exacerbate human rights violations and abuses. In the case of CAR, diamond smuggling circumvents the Kimberley Process export ban. While the export ban has been of questionable value in the CAR context, evidence that the Séléka are involved in diamond smuggling suggests this is providing a revenue stream for the group. The anti-balaka's involvement in smuggling is less clear and may be limited to extortion of those who are smuggling diamonds out of the country into Cameroon.

Smuggling of minerals such as diamonds contributes to the illicit outflows of wealth from developing countries. When minerals are smuggled out of a country, the State cannot collect taxes such as those due on trading profits and exports. The transitional government of CAR argued for the Kimberley Process ban to be partially lifted because the country so desperately needs revenues from diamonds to support its economy. However, ongoing smuggling will continue to undermine CAR's ability to secure the financial benefits of its diamond industry and support the economy. While an analysis of the impact of diamond smuggling on CAR's economy and the ability of the transitional government to fund essential services is beyond the scope of this report, the country is heavily dependent on foreign aid to fund its core budget.[203] The issue of tax and human rights is addressed in more detail in Chapter 7.

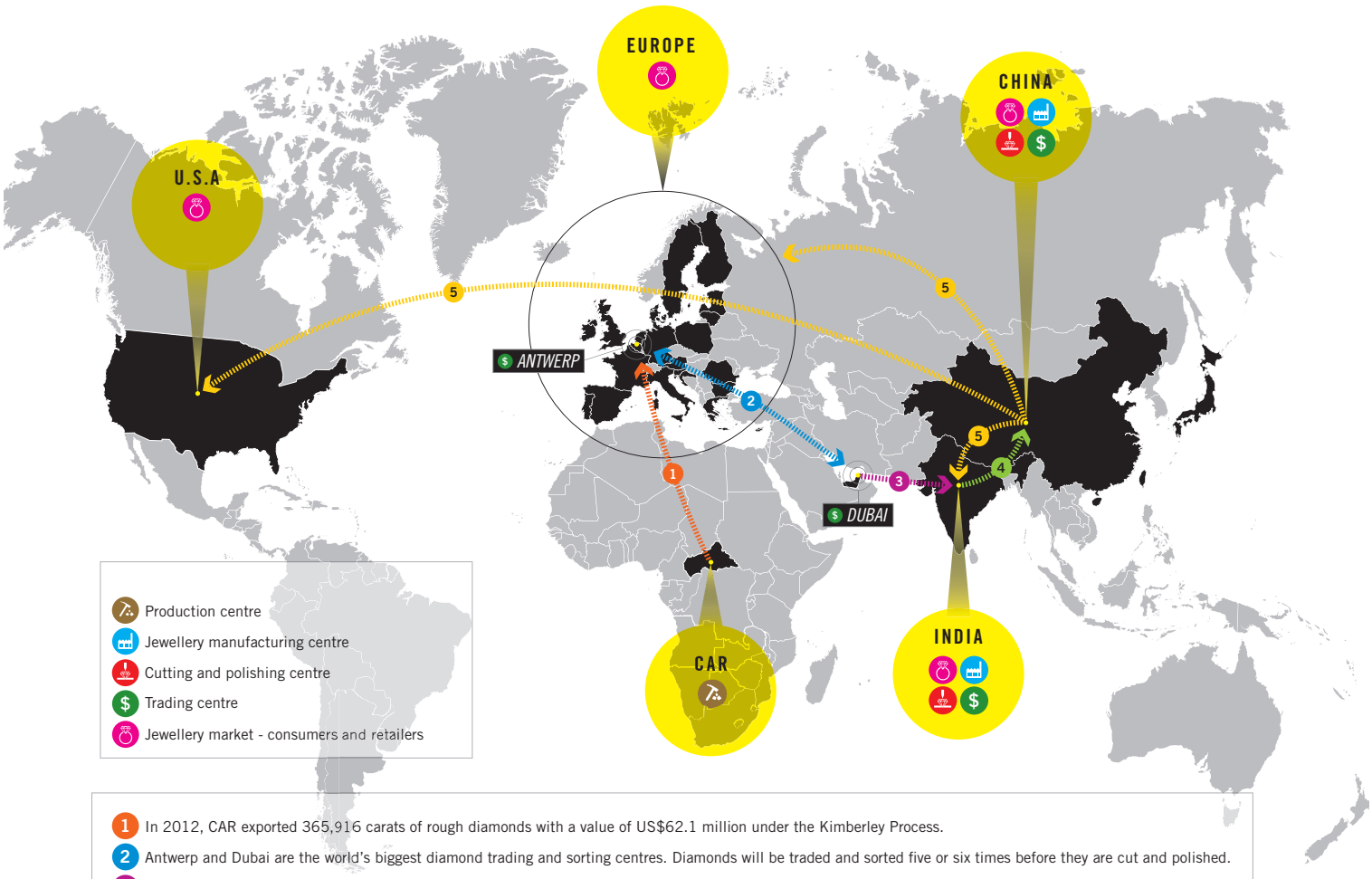
203. Reuters, 'Central African Republic sets budget dependent on foreign donations', 11 June 2014, available at af.reuters.com/article/topNews/idAFKBN0EM1E320140611 (accessed 11 September 2015).

6. GLOBAL TRADING CENTRES

Although the smuggling routes out of CAR are known, there is little or no information on what happens to the stones after they enter countries neighbouring CAR or countries to which CAR is connected by air. In order to sell the diamonds, smugglers must move them to a country where there is a market for them. Given their small size and the lack of controls in the countries neighbouring CAR, it appears relatively easy to move diamonds into other countries where they can be traded, exported or cut and polished.

In May and June 2014, authorities in Antwerp seized three shipments of rough diamonds believed to be from CAR. These diamonds had moved into and out of Dubai in the UAE and then into Antwerp in Belgium while CAR was suspended from the Kimberley Process and no exports could legally take place. The diamonds seized had been exported by diamond

Example supply chain from mine to market for a diamond from the Central African Republic prior to its suspension from the Kimberley Process



1. In 2012, CAR exported 365,916 carats of rough diamonds with a value of US$62.1 million under the Kimberley Process.
2. Antwerp and Dubai are the world's biggest diamond trading and sorting centres. Diamonds will be traded and sorted five or six times before they are cut and polished.
3. Over 60% of the world's diamonds are cut and polished in India. India is also a key manufacturing centre.
4. China is the world's largest diamond jewellery producer. China is also a major cutting and polishing centre.
5. The US, China, India and Europe are the world's largest diamond jewellery markets.

Source: Kimberley Process: 'Annual Global Summary: 2012 Production, Imports, Exports and KPC Counts', available at www.kimberleyprocessstatistics.org/public_statistics; AWDC and Bain & Company, *The Global Diamond Report 2014 – Diamonds: Timeless Gems in a Changing World*, available at www.awdc.be/en/diamonds-timeless-gems-changing-world

traders in Dubai to a company called Kardiam, the Belgian branch of the CAR buying house Badica. After examining digital images of the diamonds, the Kimberley Process Working Group of Diamond Experts (WGDE) stated that it was highly probable that the diamonds originated in CAR.[204] In particular, they thought that some of the diamonds were likely to have come from Sam-Ouandja and Bria in the east of CAR, where members of an armed Séléka faction fund their activities by imposing "taxes" and "protection" payments on diamond miners and traders. If so, the diamonds seized would be "conflict diamonds". They would also represent an illicit movement of wealth out of a poverty-stricken country. Amnesty International understands that Belgian authorities have begun criminal proceedings against Kardiam and suspended its registration as a diamond dealer.[205]

While the fact that Belgian authorities stopped the diamonds suggests effective controls exist, the failure of Dubai to intercept them raises questions about the UAE's system of controls (Dubai itself has questioned whether the diamonds were from CAR).[206] The fact that so few CAR diamonds have been intercepted despite the numbers that appear to be smuggled out of the country also raises questions about the system of controls in Antwerp as well as wider import / export controls in other diamond trading countries.

Amnesty International researchers visited the diamond exchanges in Dubai and Antwerp, held meetings with officials responsible for implementing and enforcing the internal controls on diamond imports and exports under the Kimberley Process, and were able to see some parts of the process in action. The purpose of these investigations was not specifically to trace CAR diamonds, but to examine the controls in place and how far they could prevent illegal diamonds from entering the Kimberley supply chain. This chapter also looks beyond smuggling, using the example of the diamond trade to highlight other supply chain issues – in particular the illicit movement of wealth from developing countries like CAR using practices such as transfer pricing. Looked at from these perspectives, several features of the systems in operation in global trading centres – under the Kimberley Process and otherwise – present challenges.

MIXED-ORIGIN DIAMONDS: LIMITING SCRUTINY AND FACILITATING ILLEGAL ACTIVITY

Dubai and Antwerp are two of the world's major diamond exchanges or trading centres. Thousands of diamond dealers operate in both locations – they are generally companies incorporated or registered in Belgium or the UAE. Neither Dubai nor Antwerp has a large cutting and polishing industry, so the dealers there import rough diamonds from various countries, sort them by colour, carats (size), cut and clarity, and then sell them on to other dealers or to cutters and polishers in other countries. Once diamonds are cut and polished, they no longer fall within the Kimberley Process. This makes the system of controls in trading centres vital to the effective operation of the Kimberley Process.

The diamonds seized in May and June 2014 in Antwerp passed through both of these key trading centres. The seizure highlights one of the most challenging aspects of the diamond supply chain and the Kimberley Process – the sorting process in these trading centres typically mixes diamonds from various countries together and thereby obscures the identity of the country in which those diamonds were originally mined. This is a process that is specifically permitted under the Kimberley Process – if a trader mixes just one diamond mined in a particular country with diamonds mined in another country,

204. UN Panel of Experts, *Final Report*, para. 121 and Annex 21.
205. Amnesty International interviews, Antwerp, 17 March 2015. See AWDC, 'Registered Belgian Diamond Companies', available at www.registereddiamondcompanies.be/ (accessed 8 September 2015).
206. R. Bates, 'Dubai Under Fire', JCK (2 July 2014), available at www.jckonline.com/blogs/cutting-remarks/2014/07/02/dubai-under-fire (accessed 23 August 2015).

that shipment can be exported under a "mixed origin" Kimberley certificate rather than a certificate that details the specific origin of all of the diamonds in that shipment. Between extraction and final cutting and polishing, the average diamond goes through this process around five or six times if not more. And each time a shipment of diamonds is exported, a new Kimberley Process certificate is issued and the old one becomes obsolete.
There are legitimate reasons for repackaging diamonds from different countries into a mixed origin parcel. Key amongst them is to give manufacturers a steady supply of similar grade diamonds to polish. There is also a legitimate reason for this process to take place in countries such as the UAE and Belgium – diamond-producing countries generally do not sort diamondsbefore export because this is a highly skilled process that is only available in certain locations.

The Kimberley Process considers the use of "mixed origin" certificates to be unproblematic – trading centres such as Dubai and Antwerp are only supposed to issue export certificates when the various diamonds in a mixed batch are shown to have been imported in accordance with the Kimberley Process. From the perspective of the Kimberley Process, therefore, this guarantees that each diamond in that shipment is conflict-free regardless of where it was mined.

However the seizure in Antwerp raises questions as to the efficacy of the import and export process and the use of mixed origin certificates under the Kimberley Process. These diamonds were imported into the UAE from various different countries and mixed together. Dubai then issued a "mixed origin" Kimberley Process certificate on their export. According to the UN Panel of Experts on CAR and sources in Dubai, at least some of the diamonds seized in Antwerp originally entered Dubai on a Kimberley Process certificate issued by the DRC.[207] The DRC itself argues that the diamonds intercepted in Antwerp could also have been smuggled into the UAE and then swapped for the diamonds that had actually come in under those DRC certificates.[208] An industry expert in Belgium also suggested to Amnesty International that Kardiam had previously imported several suspicious packages into Antwerp before the decision was made to seize the diamonds.[209]

Amnesty International researchers observed the vital checking processes being undertaken in Dubai and Antwerp, looking in particular to see if this system could allow smuggled diamonds into the Kimberley Process supply chain.

A jewellery shop selling diamonds in the Dubai gold souk, October 2014. © Amnesty International

207. UN Panel of Experts, *Final Report*, paras. 118-120; Amnesty International interview with the Chairman of Dubai Diamond Exchange, Dubai, 22 October 2014.
208. UN Panel of Experts, *Final Report*, para. 120.
209. Amnesty International interview, Antwerp, 17 March 2015.

DUBAI

In Dubai the export process is based on checking paperwork. The exporter must provide an invoice with each shipment of diamonds to be exported, including details such as the value and weight of each package in the shipment and its total value and weight. The Kimberley Process office weighs the shipment and checks it against the amount stated on the invoice. They may also undertake random inspections and valuations of parcels in that shipment. The invoice must specify the numbers of all of the Kimberley Process certificates under which the diamonds entered Dubai (each Kimberley Certificate has a unique country of export identifier and number). The trader must provide copies of those certificates as well as invoices for any local purchases within Dubai. The certificates and invoices will specify the exporter and importer (in the case of the certificate) and buyer and seller (in the case of the invoice).

When Amnesty International researchers asked how the Kimberley Process office checks that diamonds being exported were actually imported under the Kimberley Process certificate numbers specified on the invoice, the Director of the UAE Kimberley Process said that they do random checks of the Kimberley Process numbers and random audits of annual stock declaration forms (around one in every hundred for both although the office hopes to check all in the future through an automated process). These stock declaration forms are prepared by the diamond traders on a yearly basis and show their imports, exports, local trades and remaining stock. The audit process involves checking the information in the stock declaration forms against all relevant paperwork such as Kimberley Process certificates and invoices. The potential loopholes in this process are discussed below.

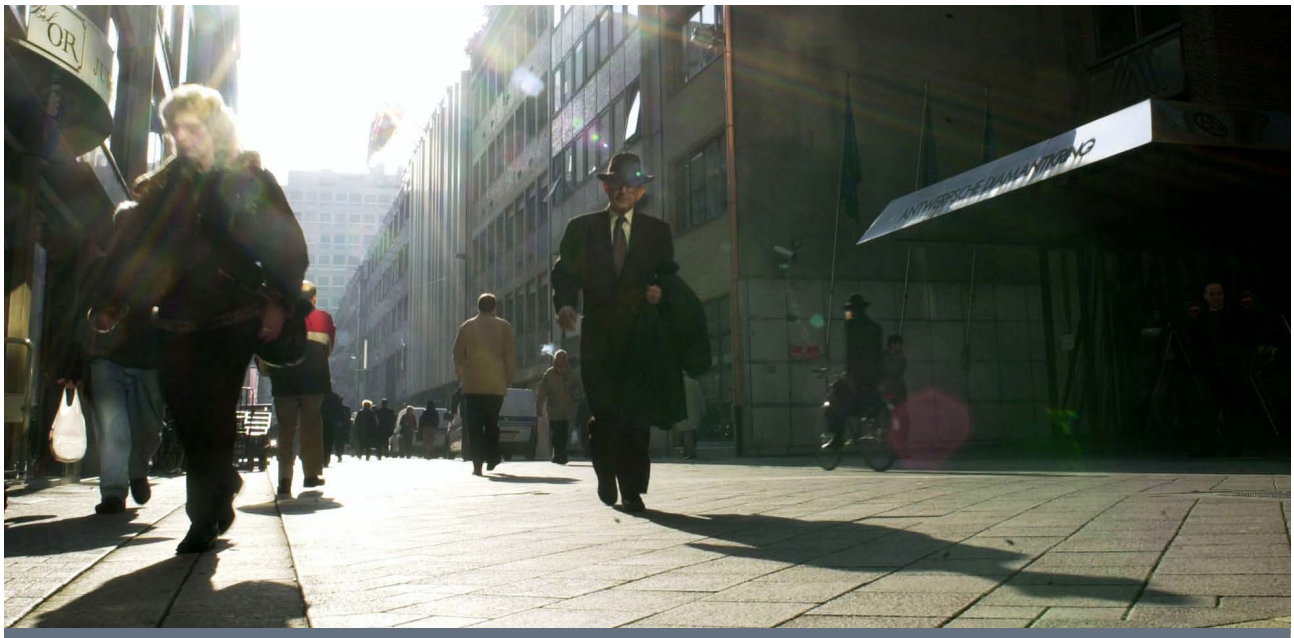
Dubai Skyline and Almas Tower. The Almas Tower houses facilities that provide a wide range of services for the region's diamond industry, including the Dubai Diamond Exchange, and the Kimberley Process Certification offices. © CC / Citizen59

ANTWERP

In Antwerp, the exporter must also provide an invoice with each shipment of rough diamonds to be exported, including details such as value and weight. Each parcel in the shipment is subject to a physical inspection and verification against the information provided by the exporter (the same process is used on import). The exporter must also provide "conclusive evidence" that the diamonds in the package have been legally imported into Belgium in accordance with the requirements of the EU's Kimberley Process law or bought by them within Belgium. According to the EU's 2014 Kimberley Process Report, this "conclusive evidence" would include documentary evidence such as invoices from the original import certificate onwards (i.e., not necessarily the Kimberley Process certificate itself).[210] Traders must also prepare an annual stock declaration form, showing imports, exports and local trades of diamonds.[211]

However, a parallel system of "industry self-regulation" also operates within Antwerp (and other EU member States) under which members of the four diamond bourses or trading exchanges in Antwerp[212] do not need to provide documentary evidence when exporting diamonds – they instead simply sign a general declaration on the exporting invoice that they have complied with the EU's import requirements under the Kimberley Process. They then benefit from a fast-track procedure for obtaining a Kimberley Process certificate because their shipments are only subject to a physical inspection. Around 800 traders in Antwerp are members of the bourses.[213]

Under EU law and Belgian rules, bourse members must also keep diamond sale and purchase invoices for three years, prepare stock declaration forms and submit to an independent audit every year to check that these records have been created and maintained accurately.[214] The purpose of this audit is to underpin the system of industry self-regulation. The members must provide the audit report to the Ministry of Economic Affairs.



People walk through the centre of the diamond district in Antwerp, Belgium, 31 October 2002. © Paul O'Driscoll/Getty Images

210. Kimberley Process Certification Scheme, *European Union Annual Report 2014*, p. 6, available at www.kimberleyprocess.com/en/2014-annual-report-eu (accessed 23 August 2015).
211. Amnesty International interview with the Ministry of Economic Affairs' adviser, Antwerp, 17 March 2015.
212. AWDC, 'Registration with the Diamond Bourses', available at www.awdc.be/en/registration-diamond-bourses-0 (accessed 28 August 2015).
213. Amnesty International interview with the Ministry of Economic Affairs' adviser, Antwerp, 17 March 2015.
214. Council Regulation (EC) No 2368/2002 of 20 December 2002 implementing the Kimberley Process certification scheme for the international trade in rough diamonds (OJ L 358), Art. 17 (hereafter *EU Kimberley Process Law*).

The Ministry of Economic Affairs also conducts random spot checks or audits of bourse members who have filed reports as well as traders who are not members of the bourses. The audit involves checking stock declaration forms against information held on the Diamond Office's Kimberley Process database and the company's records (such as invoices and Kimberley Process import and export certificates), as well as tallying the ingoing and outgoing diamonds with those that are still in stock.[215]

WHAT ARE THE LOOPHOLES?

In theory, the export checks and audits described above should allow Dubai and Antwerp to ensure that any diamond exported was legally imported into the country under the Kimberley Process. In practice, however, the system could be open to abuse because of the sheer number of diamonds and traders involved as well as a lack of effective oversight.

In 2014, the European Union exported over 116 million carats of rough diamonds and the UAE exported over 66 million. There are over 1,000 dealers in each of Belgium and the UAE. In Belgium alone, around 600 of those traders import and export rough diamonds on a regular basis and the Kimberley Process office checks around 600 parcels a day.[216]

For one shipment that Amnesty International researchers saw being exported in Dubai, there were over 10 Kimberley Process certificates and five local purchasing invoices connected to the diamonds in that package. The number of diamonds, imports and exports involved makes it difficult at a practical level to verify that diamonds being exported were actually imported under the certificate numbers provided. Additionally, the use of spot-checks raises concerns about the robustness of the system and the likelihood of uncovering any wrongdoing. In light of the above it appears to be possible, in theory at least, to smuggle diamonds into Antwerp and Dubai and then export them under the Kimberley Process by "exchanging" them for diamonds imported into those centres under the Kimberley Process – as the DRC alleges (see above).

There are also questions in both Dubai and Antwerp as to what would happen if any wrongdoing was uncovered.

As noted above, EU law allows registered diamond bourses or exchanges throughout Europe to operate a system of self-regulation under both the Kimberley Process and a parallel initiative called the "System of Warranties".[217] Under this system (which is provided for under the Kimberley Process), the bourses adopt and implement their own rules and regulations, which require members to undertake to comply with the Kimberley Process and require the bourses to expel any member found (after due process) to have "seriously violated" those rules and regulations.[218] Five exchanges in Europe benefit from this system – the four in Antwerp and the London Diamond Bourse.[219]

NGOs such as Global Witness and Amnesty International have previously strongly criticised the implementation and enforcement of the industry self-regulation system, and called for more rigorous audits and inspections by governments, on the basis that self-regulation can create loopholes that allow conflict diamonds to enter the Kimberley supply chain.[220] As such, although the European exchanges are required by law to implement the industry self-regulation scheme and members must submit to regular independent audits of their records, it remains of concern that Antwerp authorities only

215. Amnesty International interview with the Ministry of Economic Affairs' adviser, Antwerp, 17 March 2015.
216. Email to Amnesty International from the Chief Officer Business Intelligence, AWDC, 8 July 2015; Amnesty International interview with the Ministry of Economic Affairs' adviser, Antwerp, 17 March 2015.
217. The System of Warranties requires all traders of rough and polished diamonds as well as diamond jewellery to guarantee on all invoices that the diamonds are "conflict free". See World Diamond Council, *System of Warranties*, available at www.worlddiamondcouncil.org/download/resources/documents/System%20of%20Warranties%20WDC%202014.pdf (accessed 28 August 2015).
218. *EU Kimberley Process Law*, Art. 17.
219. European Commission, *Guidelines on Trading with the European Union (EU): A practical guide for Kimberley Process Participants and companies involved in trade in rough diamonds within the EU*, January 2014, available at eeas.europa.eu/blood_diamonds/docs/guidelines-on-trading-with-the-european-community-012014_en.pdf (accessed 28 August 2015) (hereafter European Commission, *Kimberley Process Guidelines*).
220. Amnesty International and Global Witness, *Déjà Vu: Diamond Industry Still Failing to Deliver on Promises: Summary of UK and US Results of Global Witness and Amnesty International Survey* (Index: POL 34/008/2004), available at www.amnesty.org/en/documents/document/?indexNumber=pol34%2F008%2F2004&language=en; Amnesty International, *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)* (Index: POL 30/024/2006), available at www.amnesty.org/en/documents/POL30/057/2006/en/ (both accessed 28 August 2015).

undertake irregular audits (or spot checks) to make sure these requirements have been complied with. In a 2010 report, Partnership Africa Canada stated:

> *"Belgium may be the only country that has actually carried out such audits in connection with KPCS [Kimberley Process] provisions, and even there it is not done with great frequency."*[221]

Additionally, it is unclear how often traders are suspended or expelled as members of bourses, particularly given that expulsion need only be used if rules are "seriously violated" and there is a lack of publicly available information about members and suspensions. For example, although an archived version of Kardiam's website says that it is a member of the Antwerp Diamond Bourse of Antwerp (*Bours Voor Diamanthandel*), it is not clear if it has been suspended from the bourse as a result of the investigation in Belgium.[222] Guidelines issued by the European Commission in 2014 note that a small number of companies have been suspended from the bourses for failing to provide confirmation from the auditors of the accuracy of their records.[223] The Antwerp World Diamond Centre (AWDC) told Amnesty International that bourse members do not see conflict or Kimberley Process diamonds as the critical issue for them – they are most concerned with their diamonds being switched (i.e., if they send a package of diamonds to a client to view, the client may say that it does not want to buy the diamonds and is sending them back to the trader; the client could then send different, lower quality diamonds back).[224]

Audits by authorities in Dubai are also infrequent and traders are not required to obtain any independent audit of their annual stock declaration forms. When Amnesty International researchers asked about the process for the auditing of stock declaration forms by the Dubai Multi Commodities Centre (DMCC), the UAE Kimberley Process office said that if there was a problem with a stock declaration this may be because the company "forgot" to include an invoice for some diamonds.[225] This highlights an additional concern about enforcement in Dubai in the event of any wrongdoing – priority is essentially given to ensuring that "trade proceeds smoothly".[226]

During their visit to Dubai, Amnesty International researchers were given several examples of "mistakes" by traders that were forgiven with no action taken. For example, although various Dubai companies were involved in importing and exporting the diamonds seized in Antwerp in May and June 2014, when the DMCC looked into these companies they were told by them that it was an "honest mistake" (i.e., they believed they were buying DRC diamonds) and no further action was taken.[227] The Kimberley Process office also told researchers that, if a diamond was brought into the UAE without a Kimberley Process certificate, that person or company could go to the Kimberley Process office and declare the diamond – this would be considered a minor breach.[228]

The Director of the UAE Kimberley Process told researchers about a 100 carat diamond that a trader tried to export through the UAE's Kimberley Process office despite not having the Kimberley Process certificate under which that diamond was brought into Dubai.[229] The Kimberley Process office had no record of having imported this diamond (for larger diamonds, photographs are taken and their unusual size means those in the office normally remember them) – this ultimately means it was smuggled into

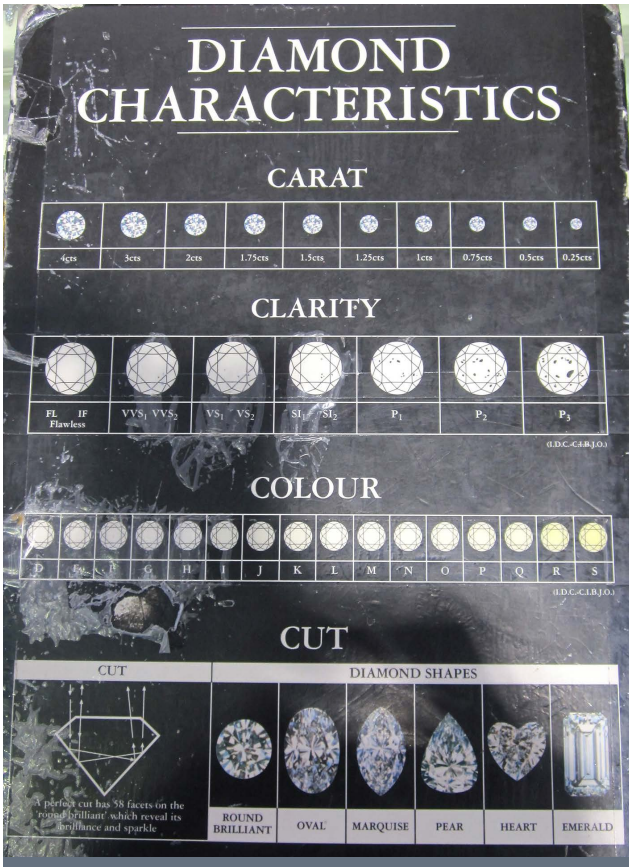
221. Partnership Africa Canada, *Lessons from Existing Certification Schemes for the Regional Certification Mechanism of the International Conference on the Great Lakes Region*, June 2010, available at www.pacweb.org/Documents/icglr/PAC_Great_Lakes_Final_Report_to_Swiss_DFA.doc (accessed 28 August 2015).
222. See web.archive.org/web/20141008035530/http://www.groupeabdoulkarim.com/ (8 October 2014) (accessed 17 August 2015). The *Bours Voor Diamanthandel* in fact recently issued a statement to clarify that Kardiam was a different firm from a similarly named company that is also a member of the bourse (see Rapaport, 'Antwerp Bourse Clarifies Name of Sanctioned Trading Firm', available at www.diamonds.net/News/NewsItem.aspx?ArticleID=53359&ArticleTitle=Antwerp%2BBourse%2BClarifies%2BName%2Bof%2BSanctioned%2BTrading%2BFirm (accessed 11 September 2015)).
223. European Commission, *Kimberley Process Guidelines*, p. 15.
224. Amnesty International interview with Chief Officer Business Intelligence, AWDC, Antwerp, 17 March 2015.
225. Amnesty International interview with the Director of the UAE Kimberley Process, Dubai, 22 October 2014.
226. Amnesty International interview with the Assistant Undersecretary of Industrial Affairs, Ministry of Economy, Dubai, 20 October 2014.
227. Amnesty International interview with the Chairman of Dubai Diamond Exchange, Dubai, 24 October 2014.
228. Amnesty International interview with the Director of the UAE Kimberley Process, 23 October 2014.
229. Amnesty International interview with the Director of the UAE Kimberley Process, 23 October 2014.

the UAE. The diamond was simply given back to the exporter. It was then smuggled out of Dubai and later came back into the country under a Kimberley Process certificate from Antwerp. Although DMCC fined the company that imported the diamond from Antwerp, the diamond would not have been smuggled out in the first place if DMCC had confiscated it – the UAE Kimberley Process law provides for any smuggled diamonds to be confiscated.[230] When asked why the diamond had not been confiscated in the first place, the Director of the Kimberley Process said the exporter was a "known trader".

In fact, Amnesty International was told that no company has ever been prosecuted under the UAE's Kimberley Process law or Customs law for smuggling rough diamonds (although some individuals have been prosecuted under Customs law).[231] As noted above, this lack of prosecution seems to stem in part from the focus on ensuring that "trade proceeds smoothly". However, Amnesty International believes it also stems from the fact that the body that facilitates the trade in diamonds (the Dubai Diamond Exchange) as well as the body that is supposed to enforce the Kimberley Process (the UAE's Kimberley Process office) are both part of the DMCC – which is itself a "free zone" designed to "enhance commodity trade flows through Dubai".[232] Although the Ministry of Economy has general supervision of the Kimberley Process in the UAE, day-to-day work is done by the DMCC and it is up to the DMCC to raise any concerns about suspicious shipments to the Ministry.[233] The DMCC's dual role in facilitating and regulating the diamond trade therefore creates a conflict of interest that risks affecting the robust implementation and enforcement of the Kimberley Process in the UAE.

Other organisations, such as the inter-governmental body the Financial Action Task Force (FATF), have also raised concerns that the use of "mixed origin" certificates increases the risk of non-Kimberley Process diamonds entering the Kimberley supply chain as diamonds are mixed, bought, sold, and mixed again. According to a 2013 FATF study on diamonds, money laundering and terrorist financing, Belgian police are concerned about the process because it produces "new" documents (i.e., the new Kimberley Process export certificate) to hide the origin of the diamonds and facilitate the diversion of payments:

> *"Belgian investigators have noticed that shipments are being diverted to one of the billion dollars trade centres where the original certificate and invoice were, still in accordance with the rules of the Kimberley Certificate, turned into a new KP certificate (origin: mixed or unknown) with a higher price and sent further to a trading centre."*[234]



An old chart showing the characteristics for determining the quality and value of polished diamonds, October 2014. © Amnesty International

230. *Union Law No(13) of 2004 Regarding Supervision of Import / Export and Transit of Rough Diamonds*, Art 23(1).
231. Amnesty International interviews with the Assistant Undersecretary of Industrial Affairs, Ministry of Economy, Dubai, 20 October 2014 and Director of Legal Affairs Department, Dubai Customs, 23 October 2014.
232. See DMCC, 'Who we are', available at www.dmcc.ae/dmcc-who-we-are (accessed 7 September 2015).
233. Amnesty International interview with the Assistant Undersecretary of Industrial Affairs, Ministry of Economy, Dubai, 20 October 2014.
234. Financial Action Task Force (FATF), *Money Laundering and Terrorist Financing Through Trade in Diamonds*, October 2013, available at www.fatf-gafi.org/media/fatf/documents/reports/ML-TF-through-trade-in-diamonds.pdf, p. 61 (accessed 23 August 2015) (hereafter FATF, *Trade in Diamonds*).

The report also stated:

> *"A trend was noted whereby diamonds and funds formerly flowed from Africa directly to Antwerp; however, more recently both diamonds and funds transit through the United Arab Emirates."*[235]

The FATF report additionally notes that there has been an increase in the number of times diamonds have been re-exported in the last five years, meaning rough diamonds are now changing hands more often before they reach the end of the supply chain. This suggests an increasing use of "mixed origin" certificates; but the extent to which Kimberley Process participants use these certificates is unknown because members of the Kimberley Process are not required to report on how many of their import or export certificates are "mixed origin".[236] The Director of the UAE's Kimberley Process told Amnesty International researchers that, in September 2014, of 690 shipments exported from Dubai, 180 specified the country of origin on the Kimberley Process certificate; 510, or 75%, specified that they were of mixed origin.[237]

The use of "mixed origin" certificates is also problematic from a due diligence and vigilance perspective. It means that companies and other actors in the supply chain do not know where the diamonds they buy come from. This limits their ability to investigate their own supply chains in accordance with international due diligence standards and to consider other human rights issues in the supply chain. It also limits the ability of Kimberley Process participants to prevent smuggled diamonds from entering the Kimberley supply chain.[238] Since 2013, the Kimberley Process has called on all participant countries and members of the diamond industry to conduct "enhanced vigilance measures" with regard to the introduction of CAR diamonds into the international supply chain. Even though Dubai and Antwerp are aware that diamonds from CAR are smuggled into neighbouring countries such as the DRC, if those diamonds come into these centres under a mixed origin certificate there will no specific trigger for enhanced vigilance because it will not be clear from the certificate where the diamonds are from.

Additionally, Amnesty International's own research revealed concerns about the way in which Kimberley Process participants are exercising vigilance with regard to CAR diamonds. During its visit to the UAE's Kimberley Process office, Amnesty International researches observed the importing of a mixed-origin parcel of diamonds into Dubai. The diamonds arrived from India, with a Kimberley certificate issued on 20 October 2014. Although the UAE Kimberley Process Director said that some of the diamonds could have been from the DRC, Amnesty International did not observe any enhanced checks on the diamonds.[239] Researchers also observed the export of one "mixed origin" shipment to Antwerp and was shown the various Kimberley Process certificates and invoices for local purchases associated with the diamonds in the shipment. According to those invoices, the exporter had bought some of those diamonds from a company in Dubai that had imported them from the DRC. That company was named in the UN Panel of Experts reports as one of the traders that had imported from the DRC and then exported to Kardiam some of the diamonds seized in Antwerp in May and June 2014. Despite this, Amnesty International did not observe any enhanced checks on the diamonds.[240]

The import and export processes described to (and witnessed by) Amnesty International in Dubai appear to be nothing more than a tick-box exercise – checking that the details on the invoice match the information on the Kimberley Process certificate.

235. FATF, *Trade in Diamonds*, p. 128.
236. Kimberley Process, *Core Document (Annex III (Statistics))*.
237. Amnesty International meeting with the Director of the UAE Kimberley Process, 22 October 2014.
238. KP Letter of 28 December 2012; KP Letter of 18 April 2013.
239. Amnesty International observation of the UAE's Kimberley Process import procedure, Dubai, 21 October 2014.
240. Amnesty International observation of the UAE's Kimberley Process export procedure, Dubai, 22 October 2014.

UNJUST ENRICHMENT: TRANSFER PRICING AND TAX EVASION

Chapter 5 examined the human rights implications of smuggling, in particular how it deprives countries of revenue they could use to fund basic services necessary for the realization of human rights, and how smuggling routes can expand during conflict. Within the diamond supply chain, however, smuggling is not the only means by which actors such as traders and companies can unjustly enrich themselves at the expense of diamond-producing countries. A central issue is the way diamonds are valued and the phenomenon of transfer pricing. This is particularly evident in diamond trading centres operating in low tax or no tax jurisdictions.

"Transfer pricing" refers to the way companies within a corporate group (such as subsidiaries and affiliates) set the price for goods and services sold between themselves. While transfer pricing can be unproblematic, it can also be abused to enable companies to avoid tax and make very substantial profits. For example, a company can buy a particular good – such as a diamond – at a relatively low value from one company in the corporate group and then sell to a third company in the same group at a much higher price. The selling company has made a major profit on the sale. This process enables multinational companies to choose where they declare and pay tax on those profits – companies can ensure profit is made in a low tax or no-tax jurisdiction (such as a free trade zone). By so doing, it is possible to shift profits from a company in a high tax jurisdiction to a related company in a low tax jurisdiction, and thus avoid taxes. It is a mechanism that deprives countries of tax revenue and allows companies to generate higher profits at the expense of those countries. The phenomenon of transfer pricing between companies in the same group has been widely criticized.[241]

In the context of the global diamond trade, transfer pricing is often linked to under-valuation – a practice whereby diamonds are assigned a low value in the country where they are mined, often by the company that is exporting them. Minimizing export taxes by undervaluing diamonds means that diamond-producing countries receive far less revenue from taxing diamond exports than they would if the diamonds were exported at their market value. Many of these States are developing countries with a high dependency on aid and foreign loans.[242] Transfer pricing has also been linked to over-valuation – a practice whereby a company operating in a low or no-tax jurisdiction over-values a diamond when it sells it to another group company in a higher tax jurisdiction, so that the other group company makes less profit when it sells the diamond on to a third party. The Kimberley Process requires that all Kimberley certificates state the value of each package of diamonds in any shipment. This should have helped to address these issues. Yet problems persist at several points in the supply chain.

Dubai has come in for particular criticism because of the significant difference in the value of its rough diamond imports and exports (as shown in the table on page 59) and the fact that it does not tax diamond traders.[243] Diamond traders in Dubai benefit from various free trade zones, including the DMCC and the Dubai Airport Free Zone Area (or DAFZA).

241. See, for example, Tax Justice Network, 'Transfer Pricing', available at www.taxjustice.net/topics/corporate-tax/transfer-pricing/; Christian Aid, *Transfer Pricing, and the Taxing Rights of Developing Countries*, available at www.christianaid.org.uk/images/CA_OP_Taxing_Rights.pdf (both accessed 9 September 2015).
242. For example, see U.S. State Department, 2015 *Investment Climate Statement – Sierra Leone*, May 2015, p. 3, available at www.state.gov/documents/organization/241947.pdf ("Sierra Leone remains largely dependent on foreign aid even though it has large deposits of iron ore and other minerals"); U.S. State Department, 2015 *Investment Climate Statement – South Sudan*, May 2015, pp. 3-4, available at www.state.gov/documents/organization/241956.pdf; IMF, *Central African Republic*, IMF Country Report No. 14/164, available at www.imf.org/external/pubs/ft/scr/2014/cr14164.pdf (all accessed 28 August 2015).
243. Amnesty International interview with Chief Officer Business Intelligence, AWDC, Antwerp, 17 March 2015; PAC, All That Glitters, p. 18; World Policy Institute, *Kimberley's Illicit Process*, available at www.worldpolicy.org/journal/winter2013/kimberleys-illicit-process; R. Bates, 'The New Voice of Kimberley Reform: Dubai?', 1 July 2015, available at www.jckonline.com/blogs/cutting-remarks/2015/07/01/new-voice-kimberley-reform-dubai (both accessed 24 August 2015).

As such, a company could export a diamond at a low value from a developing country; the diamond could then enter Dubai where the importing company marks-up the price and exports it to a related company in another trading or cutting / polishing centre. No tax is payable in the free trade zones in Dubai, so the company in Dubai makes a substantial non-taxable profit.

AVERAGE IMPORT / EXPORT PRICES IN THE UAE (NO TAX), EU (HIGHER) AND SWITZERLAND (LOW TAX)[244]

	Price per carat on import (US$)	Price per carat on export (US$)	Percentage difference
2014			
UAE	86.69	124.37	43.5%
EU	133.08	135.38	1.7%
Switzerland	262.42	289.83	10.4%
2013			
UAE	75.79	107.45	42.7%
EU	132.74	137.49	3.6%
Switzerland	273.40	302.67	10.7%
2012			
UAE	76.40	112.85	47.7%
EU	134.52	140.46	4.4%
Switzerland	228.70	257.62	12.6%
2011			
UAE	71.56	124.64	74.1%
EU	138.76	143.20	3.2%
Switzerland	222.11	276.75	24.6%

Partnership Africa Canada (PAC), an NGO involved in the Kimberley Process since its inception, has examined the issue of under-valuation and subsequent price increases within the diamond industry:

"...prior to the advent of the KP [Kimberley Process], African diamonds were routinely bought at bargain prices, and re-priced more accurately as they passed through the

244. Kimberley Process, 'Annual Summary Tables', available at www.kimberleyprocessstatistics.org/public_statistics (accessed 23 August 2015). For a comparison of corporate tax rates, see Deloitte & Touche, *Corporate Tax Rates 2015*, available at www2.deloitte.com/content/dam/Deloitte/global/Documents/Tax/dttl-tax-corporate-tax-rates-2015.pdf (accessed 24 August 2015).

diamond supply chain. Doing so minimized export taxes and disguised the margins between the purchase and market price of the stones."[245]

According to PAC:

"...in practice the 'trades' taking place in Dubai are effectively just revaluations occurring within the same family of companies ... Often this re-evaluation comes with little or no value addition being done to the diamonds themselves. In 2013 alone, this price manipulation generated in excess of $1.6 billion in profits in the UAE, and represents a major deprivation for African treasuries."[246]

Amnesty International raised the issue of valuations and transfer pricing with the UAE's Kimberley Process office and with the Dubai Diamond Exchange. One of the voluntary recommendations of the Kimberley Process is that, on import, the participant should "open and inspect the contents of the shipment to verify the details declared on the [Kimberley Process] Certificate" – each certificate and accompanying invoice will include details of the value of the shipment and each parcel within it.[247]

Amnesty International was told that the Kimberley Process office checks the value allocated to diamonds by doing random visual inspections of the stones on import and export.[248] If, on import, the Kimberley Process office suspects the valuation on a package is not correct, they will conduct an independent valuation of the diamonds. However, if they find a discrepancy in the value of a package, they would only raise an issue if the overall value of the shipment is very different from what is stated on the invoice. If they conclude the diamonds have been under-valued, they will contact the exporting authority to confirm the value of the diamonds. Most of the time, the exporting authority will give that confirmation. The Director of the Kimberley Process said that undervaluing was very common in 2003 but there were very few issues now. However, Amnesty International found the problem persists as discussed below.

The Kimberley Process office will also do random valuation checks of export packages. However, the Director of the UAE's Kimberley Process office told Amnesty International that the office would not raise a concern unless it believed the exporter had over-valued the diamonds by around 40% or more.[249] Another concern is that the Kimberley Process Office can only compare the value of diamonds being exported if they know the value at which those diamonds were imported – something that is made more difficult by the mixing of diamonds. As noted above, Dubai is a sorting centre and most diamond exports from Dubai contain mixed parcels of diamonds.

The Kimberley Process office said that, if diamonds had been overvalued, they would hold the shipment and ask the exporter to re-issue the invoice. No other action is taken. The Director told Amnesty International:

"We can never understand value as well as companies do, so that is why we only examine extremely overpriced diamonds."[250]

"[Dubai has] no issues with tax evasion because there is no tax."

Chairman, Dubai Diamond Exchange

Amnesty International researchers also raised the issue of valuations and transfer pricing with the Chairman of the Dubai Diamond Exchange. He stated that the increase in the value of diamonds imported and exported in Dubai in 2013 was 31% (although note that the table on page 59 states a

245. Partnership Africa Canada (PAC), 'UAE country page', available at www.pacweb.org/en/united-arab-emirates (accessed 24 August 2015) (hereafter PAC, *UAE Country Page*).
246. PAC, *UAE Country Page*.
247. Kimberley Process, *Core Document*, Annex II, para. 23.
248. On import, diamonds can come in paper packages or clear plastic bags. For smaller shipments, each paper parcel will be opened for inspection and some of the packages will be weighed; for larger shipments, diamonds in plastic bags are inspected without opening the bags and random checks are made inside paper parcels. Larger, good quality diamonds inside a package may also be individually weighed.
249. Amnesty International interview with Director of the UAE Kimberley Process, Dubai, 21 October 2014.
250. Amnesty International interview with Director of the UAE Kimberley Process, Dubai, 21 October 2014.

much higher difference in value based on Kimberley Process statistics). He attributed this as follows:

> *"The issue arises because there is an undervaluation of the diamonds in African countries. Transfer pricing makes up about 15% of [the 31%], so there is a gap of around 16%. The company price increase also takes into account the costs of office and staff as well as pricing increase [this includes 3-4% in value added through the sorting process]. Profit is around 5-6% on top of that."*[251]

In its 2013 report on the diamond trade, FATF analysed the Kimberley Process data on Dubai and noted:

> *"These are the same rough stones going in and out only they are sold at a much higher price, an increase that perhaps includes more than the entire production chain mark-up. A small part of the difference may be explained by 'sorting', which may produce 10–15% mark up. Since the United Arab Emirates is not a polishing centre the added value for the diamonds going in and out of the country is unclear and would merit further investigation."*[252]

The FATF report also stated:

> *"The combination of a lack of transparency in the diamond trade with a lack of transparency in a FTZ [free trade zone] provides an excellent atmosphere to conduct large volume transactions without being detected... Transfer pricing can occur during different stages of the trade, such as rough diamond trading from African mining countries to diamond trade centres whereby African countries will be losing huge amounts of due tax to FTZs."*[253]

This is exactly the problem that the Chairman of the Dubai Diamond Exchange discussed with Amnesty International. However, despite acknowledging that the under-valuation of rough diamonds leaving Africa was a problem, and effectively acknowledging that transfer pricing was common practice in Dubai, he did not believe Dubai had any role to play in addressing this issue:

> *"Our principle is that we make sure diamonds leave the country at the right value. It's not our job under the [Kimberley Process] to ask DRC about [under-valuation]."*[254]

While the UAE appears to disregard abusive transfer pricing, it is multinational companies that profit from it as FATF noted in its report, quoting from earlier research on Dubai by a diamond expert:

> *"In essence, diamond multinationals will channel their rough diamond purchases … through Dubai. Often, the parcels are not even opened and, after re-invoicing, are shipped to the final destination, often Belgium, India or far-east cutting centres. The invoice will inevitably provide a higher figure … As a result, the local company produces a profit – which is a purely paper profit, because it generally remain a transaction between affiliated companies."*[255]

The UAE's tax free zones clearly attract companies keen on minimizing their tax liabilities. Furthermore, companies appear to be given a significant amount of leeway in the value they give to diamonds, with no repercussions if they over-value diamonds. Despite this, as noted by the Chairman of the Dubai Diamond Exchange, the Kimberley Process does not address these issues. Consequently, valuations and transfer pricing are critical issues for an ethical mineral supply chain.

251. Amnesty International interview with the Chairman of Dubai Diamond Exchange, Dubai, 22 October 2014.
252. FATF, *Trade in Diamonds*, p. 32.
253. FATF, *Trade in Diamonds*, p. 61.
254. Amnesty International interview with the Chairman of Dubai Diamond Exchange, Dubai, 22 October 2014.
255. FATF, *Trade in Diamonds*, p. 32.

TAX ABUSE AS A HUMAN RIGHTS ISSUE

Although no international human rights treaties explicitly mention tax, all treaties with resource implications are based on the assumption that governments will marshal resources to meet their human rights obligations. For example, under the UN International Covenant on Economic, Social and Cultural Rights (ICESCR) States parties have an obligation to achieve, progressively, the full realization of the human rights in that treaty using the "maximum of available resources".[256] This means that States that are parties to the ICESCR have a legal obligation to use all resources legitimately available to the State in order to ensure the realization of human rights.

While States use a range of mechanisms to mobilise resources, most States' revenues typically come from taxes – tax receipts are therefore a critical factor in a State's ability to maintain sufficient and long-term social spending to discharge their obligations under human rights treaties.[257] The loss of these revenues undermines the ability of governments to fund and provide critical services necessary for the realisation of human rights, from schools to justice systems.

In resource-rich countries the "maximum available resources" include revenues from those resources. Where a State fails to secure the legitimate revenues from natural resources this may or may not amount to a violation of the State's obligations under international human rights law. The facts of each case must be examined.

If any State claims that lost tax revenues are the reason for its inability to deliver on human rights obligations, that State must demonstrate it has tried to find alternative means to uphold its obligations – including by seeking international cooperation and assistance. The fact that a State is deprived of tax revenues will not, in itself, absolve the State of responsibility for failure to deliver on human rights obligations. The UN Committee on Economic, Social and Cultural Rights has noted that, even where available resources are demonstrably inadequate, the obligation remains for a State to strive to ensure the widest possible enjoyment of the relevant rights under the prevailing circumstances.[258]

The State should also put in place mechanisms to end practices such as smuggling, under-valuation of resources and corporate tax avoidance. The UN Special Rapporteur on Extreme Poverty and Human Rights, in a 2014 report on the issue of tax, has noted that a "State that does not take strong measures to tackle tax abuse cannot be said to be devoting the maximum available resources to the realization of economic, social and cultural rights".[259] However, developing countries like CAR can face a catch-22 situation: they do not have the resources to adequately police their borders, combat smuggling or detect tax abuse. Donor aid rarely provides much support on these issues, leaving countries with the greatest need to marshal resources with the most limited means to do so.

In addition, while no State can simply point to tax abuse by companies to avoid legal obligations, the long-term negative impacts of lost tax revenues on developing countries have been widely recognised in recent years. The UN and the Economic Commission for Africa[260] have both highlighted massive loss of development financing due to tax avoidance practices in Africa, particularly the tax practices of multinational companies.[261] The UN Special Rapporteur on Extreme Poverty and Human Rights has underlined the human rights impacts:

256. *International Covenant on Economic, Social and Cultural Rights*, Art 2(1).
257. R. Balakrishnan, D. Elison and R. Patel, *Rethinking Macro Economic Strategies from a Human Rights Perspective*, 2010, p. 34, available at rajpatel.org/wp-content/uploads/2009/11/balakr-elson-patel-2010.pdf (accessed 30 August 2015).
258. UN Committee on Economic, Social and Cultural Rights, 'General Comment No. 3: The nature of States parties' obligations (art. 2, para. 1, of the Covenant)', 1 January 1991, available at tbinternet.ohchr.org/_layouts/treatybodyexternal/TBSearch.aspx?TreatyID=9&DocTypeID=11 (accessed 11 September 2015).
259. Human Rights Council, 'Report of the Special Rapporteur on extreme poverty and human rights', 22 May 2014, UN Doc A/HRC/26/28, para. 60, available at www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session26/Pages/ListReports.aspx (accessed 11 September 2015) (hereafter *Report of the Special Rapporteur on Extreme Poverty and Human Rights*).
260. United Nations, *Africa Renewal*, December 2013, available at www.un.org/africarenewal/sites/www.un.org.africarenewal/files/Africa-Renewal-Dec-2013-en.pdf (accessed 11 September 2015).
261. See Tax Justice Network, 'UNCTAD: multinational tax avoidance costs developing countries $100 billion+', 26 March 2015, available at www.taxjustice.net/2015/03/26/unctad-multinational-tax-avoidance-costs-developing-countries-100-billion/ (accessed 11 September 2015).

"Tax abuse is thus not a victimless practice; it limits resources that could be spent on reducing poverty and realizing human rights, and perpetuates vast income inequality. While the rich benefit from this practice, the poor feel the negative impact on their standard of living, their unequal political power and the inferior quality of health and education services for themselves and their children."[262]

If the State has been cheated out of revenues by criminal or unethical activity – such as smuggling or corporate tax avoidance strategies – then the criminal and/or human rights responsibilities of other actors, including companies, individuals and other States, must be examined.

Companies that engage in transfer pricing for the purposes of tax abuse and profiteering are breaching international human rights standards. The UN Guiding Principles on Business and Human Rights not only require companies to respect human rights, but clarify that the responsibility exists whether or not States require companies to act responsibly. The fact that tax planning strategies such as transfer pricing are legal is no defence when a company knowingly uses the practice to evade tax and extract substantial profits at the expense of developing economies.

States that encourage or facilitate tax abuse may also be violating their international human rights obligations, particularly with respect to economic, social and cultural rights. Under the ICESCR, States have an obligation of international cooperation and technical assistance to support the realisation of human rights globally. Facilitating tax abuse and illicit financial flows from developing economies runs counter to this obligation. The UN Special Rapporteur on Extreme Poverty and Human Rights has noted that individual countries, particularly developing countries, are often severely constrained in the measures that they alone can take against tax abuse.

"Illicit financial flows are international in nature and therefore beyond the capacity of one State alone to tackle. The availability of offshore financial centres (tax havens) that offer low or no taxes and secrecy is a major factor … Tax havens enable large-scale tax abuse (as well as illicit activities, such as corruption) and deprive other countries of the revenue they need to fulfil their obligations. In addition, given that most tax havens are located in – or under the jurisdiction of – wealthy countries, the global flow of money to these centres exacerbates global inequalities."[263]

The Special Rapporteur has recommended that States should therefore take concerted and coordinated measures against tax evasion globally as part of their domestic and extraterritorial human rights obligations and their duty to protect people from human rights abuses by third parties, including business enterprises.

262. *Report of the Special Rapporteur on Extreme Poverty and Human Rights*, para. 59.
263. *Report of the Special Rapporteur on Extreme Poverty and Human Rights*, para. 61.

7. HUMAN RIGHTS: WHO IS RESPONSIBLE

From the mining of rough diamonds to their final sale within jewellery or for industrial use, the global diamond supply chain stretches across many countries and involves a wide range of actors. This chapter examines the human rights responsibilities of States and companies at various stages of the chain.

States and companies are involved at all stages of the diamond supply chain. States may grant licences for mining and regulate activities such as mining, polishing, cutting, manufacturing and trading. Companies are involved in activities such as mining, cutting, polishing, manufacturing and trading. They may trade diamonds on their own behalf or, as with the exchanges and bourses in Dubai and Antwerp, may facilitate trade by others. The companies involved may be private, public or State-owned companies – for example, the Dubai Multi Commodities Centre (DMCC) (which implements the Kimberley Process in the UAE) and the Dubai Diamond Exchange (which facilitates the trade in rough diamonds in the UAE) are owned by the Dubai Government.

THE RESPONSIBILITIES OF STATES

Under international law, States have an obligation to respect, protect and fulfil human rights. The obligation to respect requires States to refrain from interfering directly or indirectly with the enjoyment of human rights. The obligation to protect requires States to take measures to ensure that third parties (such as armed groups and companies) do not undermine or violate human rights. The obligation to fulfil requires States to take legislative, administrative, budgetary, judicial and other steps towards the full realization of human rights.[264]

The duty to protect requires States to take appropriate measures to prevent human rights abuses by third parties and to respond to such abuses when they do occur by investigating the facts, holding the perpetrators to account and ensuring effective remedy for the harm caused. In the context of the diamond industry, for example, prevention would involve the State establishing adequate and effective systems for regulating business activity, such as legislative measures to ensure that the trade in diamonds does not involve criminal activity or that the extraction, manufacturing, cutting or polishing processes do not involve human rights abuses. Regulation must be backed by appropriate enforcement mechanisms and penalties.

States are expected to take additional steps to protect against human rights abuses by companies they own or control (as in the case of Dubai-government owned DMCC and Dubai Diamond Exchange).[265] The conduct of a State-owned entity may also amount to a violation of a State's obligations under international human rights law.[266]

In the context of business activity, the scope of the State duty to protect human rights also includes an extraterritorial dimension. The UN Committee on Economic, Social and Cultural Rights has clarified that States have a duty to prevent third parties – such as companies – from violating human rights abroad, if they are able to influence these third parties by legal or political means.[267] This means that States should take measures to prevent

264. See, for example, UN Committee on Economic, Social and Cultural Rights, 'General Comment No. 15 (2002): The right to water (arts. 11 and 12 of the International Covenant on Economic, Social and Cultural Rights)', 20 January 2003, UN Doc E/C.12/2002/11, paras. 20-29, available at tbinternet.ohchr.org/_layouts/treatybodyexternal/TBSearch.aspx?TreatyID=9&DocTypeID=11 (accessed 14 August 2015) (hereafter CESCR, *General Comment 15*).
265. This has been articulated in the UN Guiding Principles on Business and Human Rights. See UN Office of the High Commissioner for Human Rights, *Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework* (2011) UN Doc HR/PUB/11/04, Principle 4, available at www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf (accessed 14 August 2015) (hereafter *UN Guiding Principles on Business and Human Rights*).
266. International Law Commission, *Draft articles on Responsibility of States for Internationally Wrongful Acts, with commentaries*, 2001, pp. 40-43, available at legal.un.org/ilc/texts/instruments/english/commentaries/9_6_2001.pdf (accessed 19 August 2015).
267. CESCR, *General Comment 15*, paras. 31-36.

companies incorporated or headquartered in their jurisdiction from causing or contributing to human rights abuses in other countries.

This extraterritorial dimension of the State duty to protect is particularly important in the context of business activity. Companies operating across borders can undermine human rights in different jurisdictions in numerous ways. For example, the decisions of a parent company operating in one country could lead to human rights abuses by one of its subsidiaries in another country. Or a company trading in diamonds in one country could benefit financially from selling diamonds that have been mined in another country in circumstances involving serious human rights abuses. In reality however, while companies operate across borders with ease, those same borders often present institutional, political, practical and legal barriers to ensuring corporate accountability.

THE RESPONSIBILITIES OF COMPANIES

There is a clear international consensus that companies have a responsibility to respect all human rights wherever they operate. This responsibility was expressly recognised by the UN Human Rights Council on 16 June 2011, when it endorsed the UN Guiding Principles on Business and Human Rights, and on 25 May 2011 when the 42 governments that had then adhered to the Declaration on International Investment and Multinational Enterprises of the OECD unanimously endorsed a revised version of the OECD Guidelines for Multinational Enterprises.[268]

To meet that responsibility, companies should have in place a human rights due diligence process to identify, prevent, mitigate and – where necessary – redress human rights abuses connected to their operations. The responsibility extends not only to the company's own activities but also to its business relationships (such as with business partners or any other entity directly linked to its business operations, products or services, for example through its supply chain). The corporate responsibility to respect is independent of the State's own human rights responsibilities and exists over and above compliance with national laws and regulations protecting human rights.[269]

In the context of the diamond industry this means that, regardless of State-based initiatives such as the Kimberley Process, companies at all stages of the diamond supply chain should respect human rights and conduct due diligence on their supply chains in accordance with widely-endorsed international standards such as the OECD Due Diligence Guidance and the UN Guiding Principles on Business and Human Rights. This involves, amongst other things, checking that the diamonds that they trade or use have not financed armed groups or been mined in conditions involving exploitation or other human rights abuses and that diamond producing countries are not being cheated out of tax revenues through smuggling or the illicit movement of wealth out of a country.

For example, the Model Supply Chain Policy under the OECD Due Diligence Guidance states that a company will not tolerate or by any means profit from or contribute to serious human rights abuses and will not tolerate direct or indirect support to non-State armed groups (for example by procuring minerals from or making payments to armed groups or their affiliates who illegally control mine sites or other transportation routes or have illegally "taxed" or extorted money or minerals at other points in the supply chain). If a company identifies a "reasonable risk" that it has sourced from or is linked to any party that has committed human rights abuses or has provided support to armed groups, it must immediately suspend trade (temporarily while it pursues mitigation measures within a reasonable timescale) or discontinue engagement with that party.[270]

268. Human Rights Council, Human Rights and Transnational Corporations and other Business Enterprises, Resolution 17/4, UN Doc A/HRC/RES/17/4, 6 July 2011; OECD, *OECD Guidelines for Multinational Enterprises, 2011*, OECD Publishing, available at www.oecd.org/corporate/mne/ (accessed 10 September 2015).
269. *UN Guiding Principles on Business and Human Rights*, Principles 11, 13, 15 and 17.
270. OECD Due Diligence Guidance, *Annex II (Model Supply Chain Policy for a Responsible Global Supply Chain of Minerals from Conflict-Affected and High-Risk Areas) and Supplement on Tin, Tantalum and Tungsten*.

8. CONCLUSION AND RECOMMENDATIONS

For over a decade, the diamond supply chain has been regulated by the Kimberley Process, a global initiative that aims to stop diamonds that have funded rebel groups (known as "conflict diamonds") from entering the international market. While the Kimberley Process has substantial State buy-in and support, it has significant limitations and weaknesses. In the case of the Central African Republic (CAR), the Kimberley Process has failed to prevent armed groups involved in the conflict from profiting from the continuing internal diamond trade. It has also failed to prevent CAR diamonds from entering the international diamond supply chain, in part because of failings in the systems States have in place to control diamond imports and exports and in part because the Kimberley Process ignores the parallel trade in smuggled diamonds.

In looking along the diamond supply chain this report exposes how the legal, ethical and human rights risks associated with diamonds extend beyond the narrow conflict focus of the Kimberley Process. From the conditions at mine sites to the illicit outflows of wealth from developing economies linked to diamond pricing and smuggling, various actors – including companies, smugglers and individuals – are profiting from poverty, human rights abuses and unlawful activities. These activities deprive poor countries of revenues, while the actors involved reap unjust financial benefits. The transnational nature of the diamond supply chain facilitates these abuses. The Kimberley Process does not address these issues.

Another key limitation of the Kimberley Process is that, as a State-based certification scheme, it enables diamond trading companies to operate with a veneer of corporate responsibility while, at best, ignoring non-conflict human rights issues in their supply chain, and, at worst, using the Kimberley Process to obscure illegal or unethical conduct. Companies in the supply chain are exposing themselves to significant legal risks by relying on the Kimberley Process and not checking if they are trading in diamonds linked to conflict financing, criminal activities or serious human rights abuses.

These failures – both by States and companies – mean that, ultimately, diamonds are circulating in international and consumer markets that are associated with conflict and abuses. Despite more than a decade of the Kimberley Process, diamond supply chains are characterised by opaqueness, abuse and unjust enrichment.

The challenges within the Kimberley Process are well known and, although NGOs have for many years made recommendations as to how it can be improved, members of the Kimberley Process have on the whole not addressed them. This report does not therefore repeat those recommendations. It argues instead for a more comprehensive approach to mineral supply chains based on making the requirements of the *OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas* mandatory, backed up by appropriate criminal sanctions.

The report makes a number of other specific recommendations to address conditions at mine sites, smuggling and abusive tax practices and to improve the oversight of traders in the key trading centres of Dubai and Antwerp. It also calls on the government of CAR to confiscate and sell for the public interest any diamonds held in stock by buying houses in Bangui that have funded directly or indirectly armed groups involved in the conflict.

RECOMMENDATIONS

To the government of the Central African Republic:

- In the context of operationalising the Compliant Zones under the July 2015 Kimberley Process decision:
  - Ensure that no area is considered a Compliant Zone until the government is confident that it has re-established security in the area at issue, and that armed groups are not able to profit directly or indirectly from diamond mining and exports in that area.
  - Establish an effective system to prevent the smuggling of diamonds into and out of the Compliant Zones and ensure that diamonds are properly valued and subject to export tax before leaving CAR.
  - Ensure that law enforcement, Customs officials and Kimberley Process officials work together and with international partners in establishing these systems.
  - Publish all data provided to the Kimberley Process Monitoring Team under Section II(c) of the Operational Framework for the Compliant Zones as well as details of all exports, exporters and taxes paid.

- Confiscate all diamonds held by Badica, Sodiam and other buying houses in stocks in Bangui, unless the companies can show reasonable evidence that the diamonds they have purchased since May 2013 did not fund armed groups either directly or indirectly (for these purposes, it is not sufficient simply to provide evidence that the diamonds are from the east or west of CAR). Any diamonds confiscated should be sold and the full proceeds used in the public interest. The government should publish accounts to show how the proceeds of diamond sales were used. Any forensic audits of these stocks should be transparent, detailed (including supporting documentation showing information such as mine of origin, date of extraction, the supply chain from mine to the buying house and due diligence procedures undertaken to ensure the diamonds have not funded armed groups directly or indirectly) and made publicly available.

- With respect to artisanal miners:
  - Put in place mechanisms to support safe artisanal diamond mining. Any system to support artisanal miners should have as a primary objective the right to livelihood, and therefore should not impose onerous administrative or financial requirements.
  - Put in place a system to prevent exploitation of artisanal miners by traders. The mechanism should be developed through a consultative process and be tested to ensure that it is robust and does not result in unintended consequences.
  - Take steps to address child labour in the sector consistent with the best interests of the child.

To the governments of diamond- producing and trading States (including CAR, Cameroon and the DRC) and relevant regional bodies (including the European Union):

- Establish laws requiring companies headquartered or domiciled in your country / region to investigate and report publicly on their supply chains in accordance with international standards such as the OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas and the UN Guiding Principles on Business and Human Rights. Any such laws should be backed up by measures to address the underlying drivers of instability and poverty in mineral-rich countries (particularly developing economies).

- Introduce a new corporate crime or equivalent administrative offence of failing to prevent dealing in minerals linked to illegal acts such as

serious human rights-related crimes, financing of armed groups, money laundering and smuggling (i.e., a strict liability offence with a due diligence defence similar to section 7 of the UK Bribery Act 2010).

- With respect to smuggling (of CAR diamonds in particular):
  - Put in place enhanced vigilance measures (including at key entry and exit points) to identify diamonds from CAR, as required under the Kimberley Process.
  - Seek and provide support and cooperation to end diamond smuggling and to improve tracing of smuggling routes and money flows, including through the UN and other relevant bodies such as the World Customs Organization, the Kimberley Process and the Financial Action Task Force (FATF).
  - Ensure all Customs officials operating at airports and relevant border crossings are fully trained on the Kimberley Process and conduct rigorous checks to identify and prevent the trade in conflict diamonds and prevent diamond smuggling.
  - Prosecute those responsible for smuggling in a manner that is fully consistent with international human rights law and standards.
  - Increase transparency within the diamond trade, including through publishing detailed statistics on production (potential and actual capacity by region as well as country), imports and exports as well as details of any seizures.

To the Organisation for Economic Cooperation and Development (OECD)

- As part of the OECD's Implementation Programme for its *Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas*, produce a specific piece of work on the diamond supply chain and launch a consultation process with countries producing and trading diamonds as well as other stakeholders with a view to developing sector specific guidance on diamonds. In this work, priority should be given to enabling and encouraging companies to identify, manage and publicly disclose the risks in their supply chain, particularly so as to enable an assessment of the impact of these measures in preventing conflict financing and human rights abuses.
- In order to ensure the effective implementation and impact of the OECD's Due Diligence Guidance, encourage States and relevant regional bodies to:
  - Adopt the Guidance into law and take other complementary measures to ensure companies undertake supply chain due diligence (for example, by making it a condition to the award of public contracts and export credit); and
  - Support efforts to address the underlying drivers of instability and poverty in mineral-rich countries (particularly developing economies).

To the government of the UAE:

- Require traders to submit to an annual, independent audit of their stocks, imports, exports, local purchases and records. Perform regular and rigorous spot-checks of those audits and stocks, with increased monitoring of traders deemed to be of particular risk.
- Ensure the robust monitoring of diamond imports, exports and trading by placing the UAE's Kimberley Process office under the direct oversight of the Ministry of Economy rather than the Dubai Multi Commodities Centre (DMCC).
- Take the following measures with respect to the practices of misvaluation, abusive transfer pricing and large price changes between import and export of rough diamonds:
  - Substantially increase the capacity of the UAE Kimberley Process office to value diamonds, hiring experts if necessary, with a view to ending the practice of under-valuation and over-valuation. In any case where experts

believe the value of diamonds is over or under-valued by 15%, they should institute an investigation. Sanction companies that under or over-value diamonds – using progressive deterrent measures, such that a first offence attracts a relatively mild sanction while multiple offences can result in the loss of a licence to operate.

– Require that diamond sales between all companies in a multinational group be disclosed, including the extent of any changes in value. This process should include the sales to a polishing and cutting business if within the same corporate group. Collusion between companies to evade the process and engage in abusive transfer pricing should be made a criminal offence.

– Take action to stop the practices of abusive transfer pricing and large price changes between import and export of rough diamonds into and from the UAE, including by challenging significant under-valuations from developing economies, and by reporting these under-valuations to the government and the Kimberley Process.

To the government of Belgium:

- Require all traders (not just bourse members) to submit to an annual, independent audit of their stocks, imports, exports, local purchases and records. Perform regular and rigorous spot-checks of those audits and stocks, with increased monitoring of traders deemed to be of particular risk.
- Ensure that any member of a bourse that is deemed to be of particular risk by authorities, but has not been suspended or expelled from the bourse, does not benefit from the fast track export procedure (i.e., it must be required to provide "conclusive evidence" that any diamonds it exports have been legally imported into or traded within Belgium in accordance with the requirements of the EU's Kimberley Process law).

To companies operating in the diamond industry:

- Publicly commit to respecting human rights throughout the company's operations including through the disclosure of human rights due diligence policies and practices.
- In accordance with international standards such as the *OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas and the UN Guiding Principles on Business and Human Rights*, put in place adequate systems to enable the company to become aware of, prevent and address human rights abuses linked to its operations and to source its diamonds and products containing diamonds responsibly. Publicly report in accordance with such standards on the steps taken by the company.

ANNEX

Letter from Kardiam

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Madame Audrey GAUGHRAN
Directrice, Questions Thématiques
Mondiales
Amnesty International
Londres – Royaume Uni

Anvers, 12 Juin 2015

Objet : Votre lettre AFR /1845/2015

Madame,

Je prends connaissance de votre lettre du 10 juin et de votre demande.

Je vous remercie pour votre démarche d'enquêter directement auprès de Kardiam au sujet des affirmations contenue dans votre lettre.

Je regrette cependant le délai très court pour y apporter une réponse utile, ce d'autant plus que vous faites référence à des éléments de preuve que vous ne nous communiquez pas.

Cela étant, nous constatons que vous faite longuement référence au rapport des experts des Nations Unies du 28 octobre 2014.

La société Kardiam, ainsi que sa société sœur Badica, contestent l'ensemble des affirmations contenues dans le rapport des experts auquel vous faite référence.

Les avocats de Badica ont déposé un contre-rapport circonstancié auprès de la Présidente du Comité 2127 des Nations Unies le 11 mars 2011.

Ce contre-rapport est appuyé d'éléments de preuves importants qui démontrent que Badica exerce un commerce licite et transparent. Il démontre en outre les fautes commises par les experts des Nations Unies dans le cadre de leur enquête et les erreurs matérielles contenues dans leur rapport. Ce contre-rapport ajoute un élément important au dossier des Nations Unies et nous avons appris qu'il est pris au sérieux dans ces instances.

Pour toute information complémentaire, je vous engage à contacter nos avocats, Me David Luff (luff@appletonluff.com) et Me Lucette Defalque (ld@dalvel.be).

Il est essentiel enfin que vous exerciez la transparence dont votre organisation se réclame en nous communiquant les documents qui résultent des recherches documentaires et sur le terrain dont vous faites état dans votre lettre.

Je vous prie de croire, madame, en l'expression de mes sentiments distingués.

Pour Kardiam

Mahamat Aboubakar

Letter from Carter-Ruck. Page 1

Direct Email: cameron.doley@carter-ruck.com
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Our Ref: CD/MP/15798.2

3 July 2015
By post and email: amnestyis@amnesty.org

F.A.O. Audrey Gaughran
Global Thematic Issues Director
Amnesty International
International Secretariat
Peter Benenson House
1 Easton Street
London, WC1X 0DW

Carter-Ruck

Dear Madam

Sodiam

We act for Sodiam (Société Centrafricaine Du Diamant) which has consulted us with reference to your letter addressed to it dated 22 June 2015.

Before we address the detail of your said letter, we must register three specific concerns to which it gives rise - concerns which, taken together, cause us to fear that Amnesty International may not be minded to treat our client in a manner that is both fair and reasonable. While Amnesty International is of course entitled to hold whatever reasonable views it considers appropriate regarding matters of general policy, it is simply not entitled to ride roughshod over the legitimate reputational interests of individuals and other legal persons in its advocacy of such views.

The three specific concerns in question are as follows:

1. It is clear from the terms of your letter that the research on which you base your allegations concerning our client dates from no later than May 2015 and, in certain respects, from as long ago as October and November 2014 (i.e. seven or eight months ago). However, you have waited until 22 June 2015 to put a series of points to our client and have purported to require a response within nine working days, notwithstanding that the points in question relate to events said to have occurred in remote and under-developed parts of the world where, as you are well aware, communications are extremely poor. This is wholly unreasonable and your actions are, we regret to say, not those of a party which is genuinely committed to hearing both sides of the story and to then providing a balanced account.

2. Linked with this first concern is the fact that it is clear from the terms of your letter that your report has already been written (*"In this report we note the following"*) and that your mind had already been made up in relation to our client before your letter under reply was even drafted. There are numerous parts of your letter which evidence the fact that you have already closed your mind to all possible alternatives, but a particularly striking instance is to be found in the words *"Those who buy Sodiam's diamonds when CAR re-joins Kimberley will be unable to undertake due diligence on the conditions under which Sodiam's diamonds were mined, or whether AB were involved <u>because it is clear Sodiam itself did not do this</u>"* (our emphasis). While the truth of the underlined assertion is, in fact, anything but clear, one must ask why you have even bothered asking for details of Sodiam's due diligence process (as you do in the paragraph immediately preceding these words) if you have already reached so absolute a conclusion on the subject. It is very difficult to see, in these

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Carter-Ruck

circumstances, what you mean when you say that you will take account of our client's responses in your planned publication/s.

3. Our third concern relates to the extraordinary leaps of logic that you engage in towards the middle part of your letter in seeking to get to what is self-evidently your pre-determined conclusion that *"Sodiam knowingly purchased, and is now stock-piling, diamonds that funded armed groups"*. The most troubling paragraph of this nature is that which straddles the first and second pages of your letter, on which we have the following observations (in bold typeface):

"Amnesty International carried out research in Carnot and Boda in October and November 2014 and May 2015 and found that anti-Balaka involvement in diamond mining in the area was ad-hoc but widespread. **[i.e. was widespread but not universal, meaning that at least some mining in the area was not subject to anti-Balaka involvement]** *Anti-Balaka fighters were directly involved in mining, took over control of* <u>some</u> **[our emphasis]** *mine sites and/or "taxed" miners and collectors.* **[i.e. again the picture is one of some, but not universal, anti-Balaka involvement or control]** *A number of collecteurs in those towns* **[but again, by necessary implication, not all]** *were repeatedly cited as buying from anti-Balaka elements. None of the collecteurs who spoke to Amnesty International* **[but again it is not suggested that these were all the collecteurs who operate in the relevant areas or that the collecteurs with whom you spoke included some or all of those who might have connections with Sodiam]** *appeared to have any process for identifying whether anti-Balaka had been involved in the mining of diamonds – and indeed* <u>some</u> **[our emphasis]** *collecteurs were clearly connected to the anti-Balaka in the area".*

Thus, even on your own case, you describe a situation in which anti-Balaka involvement in diamond mining in Carnot and Boda is widespread but not universal (with some but not all mines being controlled by anti-Balaka elements) and where some but not all collecteurs buy from anti-Balaka elements or have anti-Balaka connections. It follows from this – your own description – that there are parts of Carnot and Boda where diamond mining does <u>not</u> involve anti-Balaka elements and where mines are <u>not</u> controlled by such elements and that there are collecteurs who do <u>not</u> buy from anti-Balaka elements and/or who do <u>not</u> have anti-Balaka connections and it in turn follows that parties in our client's position are indeed able – provided appropriate care is taken - to purchase diamonds that have <u>no</u> anti-Balaka connections and which have played <u>no</u> role in funding armed groups.

This much was, of course, recognised by the extremely well-resourced UN Panel of Experts in the part of its Report from which you quote in the final bullet point that appears on the second page of your letter. However, disregarding that very finding and the fact that you have, using your own words, depicted a scenario in which a plausible alternative is undoubtedly present, you instead leap to a conclusion which, although couched in absolute terms, is actually unsupported by your own evidential framework, namely that our client cannot be undertaking any meaningful due diligence and is knowingly purchasing diamonds that have funded armed groups. This is as stark an example of a pre-determined conclusion being arrived at regardless of the available evidence as we have seen for a very long time.

Notwithstanding these very serious concerns, our client is prepared to engage with you (through ourselves) regarding the specific matters you have raised; it is confident of being able to demonstrate that its conduct has at all times been lawful and ethical. However, in order for it to undertake any meaningful engagement, you will have to provide something resembling particularisation and clarity in relation to your allegations. As things stand, you have put matters forward in so opaque a manner as to make it near impossible for our client to respond. Whether this is intentional on your part or otherwise we cannot tell, but we would invite you please to give our client the specific detail necessary to enable it to provide a detailed and particularised response to your allegations.

Letter from Carter-Ruck. Page 3

Carter-Ruck

The details we require (all of which must, given the terms of your letter, be readily accessible to you) are as follows:

a) The names of anti-Balaka members and collecteurs to whom you are referring when you say *"In the west, Sodiam has bought diamonds from anti-balaka members or from collectors who had bought from anti-Balaka"* and, unless you say that you have no such detail, the dates of the relevant transactions and the quantity of diamonds purchased in each instance.

b) The names of the *"mobile buyers"* who you say you have been told operated in Boda and Carnot for Sodiam as at October and November 2014.

c) The names of the persons (including *"collecteurs who were buying from anti-Balaka"*) from whom these *"mobile buyers"* are said to have purchased and, again unless you say that you have no such detail, the dates of the relevant transactions and the quantity of diamonds purchased in each instance.

d) The name of the source in Carnot to whom you refer at the end of the third paragraph of your letter and/or the basis on which you conclude he or she is a reliable and trustworthy source of the relevant information.

e) The name of the buyer and his or her two predecessors referred to by that source.

f) Whether you are saying that this source stated in terms that Sodiam, through these buyers, purchased from anti-Balaka elements or whether you are simply conflating what he/she told you about the presence of these buyers in Carnot with his/her very general comment regarding anti-Balaka *"control"*.

g) The actual extent and nature of the *"ad hoc but widespread"* anti-Balaka involvement in diamond mining in Carnot and Boda which you say was revealed by your research of October and November 2014 and May 2015.

h) The mines which you say were taken over by anti-Balaka fighters in Carnot and Boda.

i) The names of the collecteurs in Carnot and Boda who you say were *"repeatedly cited"* as buying from anti-Balaka elements, and of the persons responsible for such *"citing"*.

j) The names of the collecteurs who spoke with you and who you say appeared to have no process for identifying whether anti-Balaka had been involved in the mining of diamonds.

k) The names of the collecteurs who you say were clearly connected to the anti-Balaka in the area.

l) Confirmation as to whether you are saying that, as a matter of demonstrable fact (as opposed to the kind of deduction which generally characterises your letter under reply), Sodiam has a connection with the mines and/or collecteurs identified by you in response to h), i), j) or k) above.

m) If the answer to l) above is in the affirmative, full details of the connections and transactions in question (including the names of all those individuals said to be involved and all relevant dates).

We should be most grateful if you could please provide these details to us as a matter of urgency. In the event that you are unable to provide any of the details in question because they are not within your knowledge, we would ask that you please confirm this in unequivocal terms.

Letter from Carter-Ruck. Page 4

Carter-Ruck

Your letter under reply does descend to detail at a single point, where you mention the name Ali Hassan Fawaz. This reference is advanced in characteristically opaque fashion and it is extremely strange that you say absolutely nothing as to why Mr Fawaz should be of interest to you. However, the fact that you have gone so far as to use a proper noun at this point does enable us to provide you with a substantive response and this is that our client did purchase diamonds from Mr Fawaz in the past but no longer does so, having ceased to view him as an acceptable supplier on grounds of links he has apparently developed with anti-Balaka elements. This, in itself, demonstrates the care that our client takes to avoid purchasing diamonds that might fund armed groups and it is confident of being able to show the general application of such an approach once you have provided the necessary details identified above.

We look forward to hearing from you.

Yours faithfully

Carter-Ruck.

Carter-Ruck

PCR1-1852074.1 4

Letter from Amnesty International. Page 1

Ref: TC AFR 19/2015.003

Cameron Doley
Carter-Ruck Solicitors
6 St Andrew Street
London
EC4A 3AE

AMNESTY INTERNATIONAL

AMNESTY INTERNATIONAL INTERNATIONAL SECRETARIAT
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17 July 2015

Dear Carter-Ruck

SODIAM (REF: CD/MP/15798.2)

Thank you for your letter of 3 July 2015. We welcome that Sodiam is prepared to engage with Amnesty International regarding the matters we raised in our letter of 22 June 2015.

You suggest, however, that your client can only engage with Amnesty International if we provide the information requested at the end of your letter. We would make the following observations in response:

1. In our letter of 22 June 2015, we requested information regarding Sodiam's due diligence process for purchasing diamonds in CAR. Providing information on (in your own words) "the general application of [its] approach" to due diligence does not require any of the information you ask for.

2. You do not say in your letter what "appropriate care" is being taken by Sodiam, and it is not clear to Amnesty International why Sodiam is not transparent about its due diligence process. We therefore cannot but regard Sodiam's response – through lawyers – and its failure to answer our questions on this issue as obfuscation. We would also note that, if Sodiam's response to our questions is to be included in the report, this is its final chance to respond. Sodiam has now had our letter for three weeks, ample opportunity to put together full details of a due diligence scheme that it says it already implements throughout its operations in CAR.

3. In any event, we would not provide you with the names of people interviewed – many sources do not wish to be named for fear of reprisals. Amnesty International reports the interviews, dates and locations. In countries affected by conflict and crisis this is standard practice of many human rights groups to protect individuals, and one we and other human rights organisations have used for decades. It is based on our more than 50 years of experience carrying out human rights investigations.

We are happy to publish the letter you sent to us in full as an annex to our report, as well as any further response regarding Sodiam's due diligence process. We do not, however, propose to respond in detail to your concerns about the logic underpinning our findings and our draft conclusions. There is a clear difference of opinion between Carter-Ruck and Amnesty International as to the conclusions to be drawn from our findings, which we doubt will be resolved by further engagement on these issues.

Letter from Amnesty International. Page 2

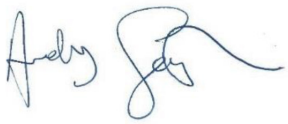
We would, though, make the following observations:

1. Amnesty International's investigations in CAR found – using well-established human rights investigative methods – that the anti-balaka are widely involved in the mining and trading of diamonds in towns where Sodiam has purchased diamonds. Amnesty International did not find any evidence that traders in these towns had undertaken any form of due diligence to check whether the diamonds they purchased had funded the anti-balaka – whether as a result of the anti-balaka's direct involvement in mining, control over mine sites or "taxing" of miners and traders. Moreover, the "extremely well-resourced" UN Panel of Experts reached the conclusion that Sodiam's purchases had indirectly financed anti-balaka members. While the UN Panel noted that the risk of such financing was – according to Sodiam – being mitigated by due diligence, no information on its exact due diligence process was provided.

2. In view of this, and the absence of any information to the contrary from Sodiam, our conclusion is that it is implausible for Sodiam to have any way of knowing whether or not the diamonds it purchases fund the anti-balaka. Given our findings on the context in western CAR in 2014/15, we therefore consider it inevitable that Sodiam has purchased diamonds that support the anti-balaka.

We look forward to receiving Sodiam's response to our questions of 22 June 2015. Please provide this response by 31 July 2015, so that we may appropriately reflect it in our report.

Yours sincerely



Audrey Gaughran
Global Thematic Issues Director

Letter from Carter-Ruck. Page 1

Direct Email: cameron.doley@carter-ruck.com
Direct Fax: 020 7353 5553

Our Ref: CD/MP/15798.2

28 July 2015
By post and email: amnestyis@amnesty.org

F.A.O. Audrey Gaughran
Global Thematic Issues Director
Amnesty International
International Secretariat
Peter Benenson House
1 Easton Street
London, WC1X 0DW

Carter-Ruck

Dear Madam

Sodiam

We thank you for your letter dated 17 July 2015.

Our client remains willing to engage with Amnesty International in relation to the matters you have raised. However, we regret that we must register our concern at the overbearing, if not downright high-handed, manner in which you are approaching our client. While this reveals itself throughout your letter under reply, we would focus on two particular respects:

1. You continue to impose wholly arbitrary deadlines for our client's compliance with your demands, giving our client a mere 10 working days – during the height of the holiday season – in which to provide its 'final' response. This deadline must, of course, be viewed in the light of the fact (a) that it took you exactly the same amount of time to write your letter under reply, notwithstanding that your said letter provides not one piece of information additional to that which appeared in your original letter of 22 June and (b) that your original letter was, as we have already pointed out, sent seven or eight months after much of the research you tell us Amnesty International has carried out was actually conducted. You say nothing as to why the application of such a short deadline is necessary and, in the absence of any such explanation, we can only assume that it is intended to limit our client's ability to defend itself and to marshal details that will disprove a pre-determined thesis (see below).

2. Although the thrust of your attack upon our client must self-evidently be based entirely upon transactions to which you say it has been party, you have flatly refused to engage with our client regarding those specific transactions, purporting instead to dictate that our client should only provide you with details of its policies in relation to due diligence. It might suit Amnesty International to address matters in such a broad-brush fashion, as we suspect it may not actually have the detail of any transactions which involved our client purchasing *"diamonds that funded armed groups"*. However, that is no proper basis on which to publish the kind of serious and highly defamatory allegations you appear to have in mind.

On the subject of your refusal to descend to detail, we note that you seek to justify this by reference to the fact that *"many"* (though you do not say all) of your sources wish not to be named for fear of reprisals. We will not comment upon the validity or otherwise of such concerns, but would observe that the overwhelming majority of the details we sought at lettered sub-paragraphs a) to m) of our letter dated 3 July 2015 could be provided without giving rise to the slightest possibility of any source being

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Letter from Carter-Ruck. Page 2

Carter-Ruck

identified. Indeed, we would suggest that, of the 13 categories of information sought in the said sub-paragraphs, only two (namely those referred to at sub-paragraphs d) and j)) involve any question of source sensitivity – and the meat of one of these (sub-paragraph j)) could be provided without there being any risk of any source being disclosed. We regret to say that we must conclude that your wholesale failure to descend to detail has nothing whatsoever to do with source protection and can be explained on only one of two alternative bases, namely either (i) that you are withholding information from our client so as to prevent it from defending itself against your intended allegations or (ii) that you have no evidence and no detailed knowledge of any transaction(s). In the either case your publication of the kind of allegations you have put to our client would be wholly indefensible both ethically and legally.

In this context, it is important that you recognise the scale on which our client currently operates in the Central African Republic ("the CAR"). It is correct that, prior to the suspension of the Kimberley Process, Sodiam was one of the principal buying houses trading in diamonds in the CAR. However, following the suspension of the Process Sodiam's operation was reduced to a skeleton level. Whereas Sodiam was purchasing upwards of 132,000 carats per annum during the currency of the Process, since the suspension its purchases have fallen to an average of less than 30,000 carats per annum. Sodiam's present operation is loss-making; the only reason it did not close its operation down altogether is that it remained hopeful that the situation in the CAR would improve and had no wish in the meantime to put people out of work with whom it had had dealings for many years. The practical consequence, for present purposes, of the small-scale nature of our client's operations following the suspension of the Kimberley Process is that a detailed transaction-by-transaction review of its specific activities is perfectly manageable (see further below) and the more broad-brush approach you seem to favour, based on hearsay discussions with a limited number of sources no doubt having their own axes to grind, is simply inappropriate and unnecessary.

We would, at this point, refer you also to the enclosed copy of a letter sent to our clients on 28 May 2015 by the Minister of Mines and Geology of the CAR. It is clear from the terms of this letter that the purchases made by Sodiam since the suspension have been made with the approval and active encouragement of the Government of the CAR. The terms of the Minister's letter are also such as would never have been written had the Government of the CAR had even the slightest suspicion that our client had purchased diamonds, whether directly or indirectly, from rebel elements or armed groups or in areas of the country that are under the control or influence of such elements or groups.

You should also be aware that the purchases made by our client since the suspension of the Kimberley Process have not only been made in accordance with the terms of the suspension but in addition with the knowledge and approval of the Kimberley Process authorities. Indeed, in October 2014 it was Sodiam that Kimberley Process officials approached in order to request that it purchase various sample diamonds from the relevant diamond producing regions of the CAR for export to the Mintek laboratory in South Africa where they were to be examined and analysed for comparative monitoring purposes (These samples are the only diamonds that have been exported by our client since the suspension of the Process in the CAR and their export was, of course, authorised both by the Process officials themselves and by the Government of the CAR). Whatever view Amnesty International might hold of the Kimberley Process, the fact remains that the Process is the regime which governs the industry in the region for the time being and our client cannot be censured in any way for cooperating with it and/or abiding by its rules and regulations. Furthermore, the fact that the Kimberley Process's officials approached Sodiam to obtain these necessary samples clearly suggests that they, like the Government of the CAR, have absolutely no reason even to suspect it of ever having traded in conflict diamonds or otherwise unlawfully.

In all these circumstances, we would reiterate our request that Amnesty International agrees to engage with the detail of the transactions conducted by our client over the period in question, in the first instance by providing us with the information requested

Letter from Carter-Ruck. Page 3

Carter-Ruck

in lettered sub-paragraphs a) to c) and e) to m) of our letter dated 3 July 2015. This is not a question of *"obfuscation"* but one of fairness and of ultimately arriving at the truth of matters.

Pending your provision of such detail, we are compelled to engage with you in the same unsatisfactory broad-brush manner that characterises your correspondence to date. With this in mind, and lest it be said that Sodiam has been equivocal in its response, we confirm that Sodiam's activities since the suspension of the Kimberley Process in the CAR have at all times been in keeping with the terms of the suspension; paragraph 128 of the UN Panel of Experts' Report dated 29 October 2014 makes it clear that the Kimberley Process authorities in the country are satisfied that this is the case. Furthermore, and more fundamentally, neither before nor after the suspension of the Process has Sodiam ever purchased anything that could reasonably be described as a conflict diamond; it knows the market better than anyone (having operated in the CAR for 42 years) and has at all times been scrupulous in avoiding purchases from any suspicious source.

In the latter regard, we refer you to the relevant principles and procedures adhered to by our client, which are published on its website at http://sodiam.cf.

You should also be aware that, following the lifting of the relevant embargo, our client is arranging for a full independent third-party audit to be conducted of all purchases made by it since the suspension of the Kimberley Process in the CAR with a view to double-checking the efficacy of its due diligence procedures and to ensuring that that nothing meeting the generally accepted definition of a conflict diamond has been purchased by it inadvertently. It is anticipated that the results of this audit will be to hand on or around 10 August; they will be published shortly after they have been received and will, of course, establish the correct position once and for all in a far more conclusive manner than the largely speculative and extrapolatory thesis with which (at your second set of numbered paragraphs 1. and 2.) you end your letter under reply. We would conclude with the very clear statement that hurried publication of your said thesis, at a time when you know that a thorough, detailed and independent audit of all relevant transactions is pending and will be available in the very near future, would be wholly indefensible, both ethically and at law.

Yours faithfully

Carter-Ruck

Enc. Copy letter to Sodiam from the Minister of Mines and Geology of the Central African Republic dated 28 May 2015

PCR1-1867545.1

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Letter from Carter-Ruck. Page 4

MINISTERE DES MINES
ET DE LA GEOLOGIE

DIRECTION DE CABINET

N° 135 /2015/MMG

REPUBLIQUE CENTRAFRICAINE
Unité – Dignité - Travail

Bangui, le 28 mai 2015

MONSIEUR VIKEN ARSLANIAN
PRESIDENT DIRECTEUR GENERAL
SODIAM
BANGUI

Objet : Lettre de Remerciement et d'Encouragement.

Monsieur le Président,

La Mission de Revue du Processus de Kimberley, qui a dernièrement séjourné en République Centrafricaine, m'a fait parvenir un rapport préliminaire dont les conclusions sont encourageantes et me semblent aller dans le sens des souhaits unanimement exprimés ici.

Membre du Comité de Suivi de la Feuille de Route pour la Levée de la Sanction du Processus de Kimberley, la SODIAM a apporté une contribution appréciée dans toutes les réunions.
C'est aussi parce que vous avez bien voulu collaborer avec l'équipe de la Mission de Revue, en lui présentant vos produits en stock, qu'un des points importants de ce contrôle a pu être satisfait.

Je mesure le prix du sacrifice consenti par la SODIAM dans des conditions où il fallait immobiliser des fonds importants, à travers un stock interdit de vente, tout en continuant à assumer les charges inhérentes au maintien d'activité.

En espérant que cette patience puisse enfin trouver sa juste récompense à travers une décision de levée partielle de sanction que nous espérons tous dans les temps à venir ; je voudrais vous dire merci et vous témoigner ma reconnaissance pour votre adhésion aux exigences de la Feuille de Route, établie par le Gouvernement, pour la levée de l'interdiction de la commercialisation à l'export de diamants bruts Centrafricains, imposée depuis plus de deux ans.

Vous souhaitant une bonne réception de la présente,

Je vous prie de croire, Monsieur le Président, en l'assurance de ma parfaite considération.

Joseph AIGBO
Ministre des Mines et de la Géologie
LE MINISTRE

Copie: S.E. Monsieur le Premier Ministre, Chef du Gouvernement (ATCR)

Sodiam C.A.R. Company principles and procedures

SODIAM C.A.R.

COMPANY PRINCIPLES AND PROCEDURES

LAST UPDATED JUNE 2015

General Company Principles and Procedures

At all times, SODIAM C.A.R. will abide fully by the requirements expected of the Kimberley Process Certification Scheme, both broadly and specifically with regard to the Central African Republic. The focal point for KPCS compliance will be the CEO of SODIAM C.A.R., Viken Arslanian.

SODIAM C.A.R. will not purchase diamonds from mines under the control of rebel groups, specifically but not limited to Seleka, anti Balaka, Janjaweed and the Lord's Resistance Army, nor from *collecteurs* known to associate with these groups. Information regarding the activities of these groups within the diamond sector will be continuously updated and will determine the areas and individuals in which, and from which respectively, that SODIAM C.A.R. will purchase diamond production.

In particular, SODIAM C.A.R. will maintain the highest vigilance regarding the involvement in the diamond sector of FRANÇOIS YANGOUVONDA BOZIZÉ, NOURREDINE ADAM and LEVY YAKETE who are each currently the subject of United Nations sanctions regimes. Further information on these individuals can be found in the annex at the end of this document.

Information regarding the activities of proscribed groups and individuals within the diamond sector will be made available to the Kimberley Process and other legitimate companies operating in Central African Republic.

SODIAM C.A.R. will ensure that all cash purchases of rough diamonds are routed through official banking channels, supported by verifiable documentation required by the KPCS.

SODIAN C.A.R. will assist the Kimberley Process in the analysis of Central African Republic's diamond production by providing samples and data to MINTEK South Africa in order to determine:

- Characteristics of diamonds produced
- Actual production

Purchasing Procedures and data management

SODIAM C.A.R. will only purchase diamonds from artisanal and informal diamond miners who are fully licensed by the Government of Central African Republic.

SODIAM C.A.R. employees will at all times check the licensing status of diamond vendors before purchasing goods.

All diamond purchases by SODIAM C.A.R. will be accompanied by the issuance of an official, serial numbered *bordereau d'achat* which will include:

- The name of the seller
- The name of the SODIAM C.A.R. buyer
- The date
- The license number of the seller
- The quantity and quality of the goods
- The amount paid
- The location of the transaction

Each *bordereau d'achat* will be filed and the data entered into the SODIAM C.A.R. stock situation database.

As goods are classified, sorted and added to the physical stock, the data will again be entered into the physical stock database by class of goods. This database will be updated continually.

SODIAM C.A.R. will fulfill and maintain its licensing obligations to the Government of C.A.R. at all times.

SODIAM C.A.R. will keep for a period of five years daily buying, selling and exporting records listing the names of buying or selling clients, their license number and the amount and value of diamonds sold, exported or purchased.

All information gathered in relation to diamond trading will be entered into a computerized database to facilitate the presentation of detailed information relating to the activities of SODIAM C.A.R. and its relationship with individual rough diamond buyers and sellers.

Export Procedures

In normal circumstances outside the current suspension of C.A.R. from the Kimberley Process, SODIAM C.A.R. will submit all rough diamond shipments for evaluation and royalty payments to the *Bureau d'evaluation et de controle de diamants et or (Becdor).*

For each shipment, and prior to the issuance of a KP Certificate, SODIAM C.A.R. will provide Becdor with a declaration that the rough diamonds being exported are not conflict diamonds.

All rough diamonds will be sealed in a tamper proof container together with the KP Certificate or a duly authenticated copy. Becdor will then transmit a detailed e-mail message to the relevant Importing Authority containing information on the C.A.R.at weight, value, country of origin or provenance, importer and the serial number of the KP Certificate.

SODIAM C.A.R. expects Becdor to record all details of its rough diamond shipments on a computerised database.

Obligations for importers

The Importing Authority will receive an e-mail message either before or upon arrival of a SODIAM C.A.R. rough diamond shipment. The message should contain details such as the C.A.R.at weight, value, country of origin or provenance, exporter and the serial number of the KP Certificate.

The Importing Authority should inspect the shipment of SODIAM C.A.R. rough diamonds to verify that the seals and the container have not been tampered with and that the export was performed in accordance with the Certification Scheme.

The Importing Authority should open and inspect the contents of the shipment to verify the details declared on the Certificate.

Where applicable and when requested, the Importing Authority should send the return slip or import confirmation coupon to Becdor.

The Importing Authority should record all details of rough diamond shipments on a computerised database.

Sodiam C.A.R. Company principles and procedures

ANNEX

FRANÇOIS YANGOUVONDA BOZIZÉ

LAST NAME: BOZIZÉ

FIRST NAME: François Yangouvounda.

ALIAS: Bozize Yangouvonda

DATE OF BIRTH/PLACE OF BIRTH: 14 October 1946 / Mouila, Gabon

PASSPORT/IDENTIFYING INFORMATION: Son of Martine Kofio

DESIGNATION/JUSTIFICATION:

Engaging in or providing support for acts that undermine the peace, stability or security of C.A.R.:Since the coup d'état on 24 March 2013, Bozizé provided financial and material support to militiamen who are working to destabilize the ongoing transition and to bring him back to power. François Bozizé, in liaison with his supporters, encouraged the attack of 5 December 2013 on Bangui. The situation in C.A.R. deteriorated rapidly after the 5 December 2013 attack in Bangui by anti-Balaka forces that left over 700 people dead. Since then, he has continued trying to run destabilization operations and to federate the anti-balakas militias, in order to maintain tensions in the capital of C.A.R.. Bozizé tried to reorganize many elements from the Central African Armed Forces who dispersed into the countryside after the coup d'état. Forces loyal to Bozizé have become involved in reprisal attacks against C.A.R.'s Muslim population. Bozizé called on his militia to pursue the atrocities against the current regime and the Islamists.

NOURREDINE ADAM

LAST NAME: ADAM

FIRST NAME: Nourredine

ALIAS: Nourredine Adam; Nureldine Adam; Nourreldine Adam; Nourreddine Adam

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DATE OF BIRTH/PLACE OF BIRTH: 1970 / Ndele, C.A.R.

Alternate dates of birth: 1969, 1971

PASSPORT/IDENTIFYING INFORMATION:

DESIGNATION/JUSTIFICATION:

Engaging in or providing support for acts that undermine the peace, stability or security of the Central African Republic (C.A.R.): Noureddine is one of the original leaders of the Séléka. He has been identified as both a General and the President of one of the armed rebel groups of the Séléka, the Central PJCC, a group formally known as the Convention of Patriots for Justice and Peace and whose acronym is also acknowledged as CPJP. As former head of the "Fundamental" splinter group of the Convention of Patriots for Justice and Peace (CPJP/F), he was the military coordinator of the ex-Séléka during offensives in the former rebellion in the Central African Republic between early December 2012 and March 2013. Without Noureddine's involvement, the Séléka would likely have been unable to wrest power from former C.A.R. President François Bozizé. Since the appointment as interim president of Catherine Samba-Panza on 20 January 2014, he was one of the main architects of the ex-Séléka's tactical withdrawal in Sibut with the aim of implementing his plan to create a Muslim stronghold in the north of the country. He had clearly urged his forces to resist the injunctions of the transitional government and of the military leaders of the African-led International Support Mission in the Central African Republic (MISCA). Noureddine actively directs ex-Séléka, the former Séléka forces that were dissolved by Djotodia in September 2013, and directs operations against Christian neighborhoods and continues to provide significant support and direction to the ex-Séléka operating in C.A.R..

Involved in planning, directing, or committing acts that violate international human rights law or international humanitarian law, as applicable: After the Séléka took control of Bangui on 24 March 2013, Nourredine Adam was appointed Minister for Security, then Director General of the "Extraordinary Committee for the Defence of Democratic Achievements" (Comité extraordinaire de défense des acquis démocratiques — CEDAD, a now-defunct C.A.R. intelligence service). Nourredine Adam used the CEDAD as his personal political police, C.A.R.rying out many arbitrary arrests, acts of torture and summary executions. In addition, Noureddine was one of the key figures behind the bloody operation in Boy Rabe. In

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August 2013, Séléka forces stormed Boy Rabe, a C.A.R. neighbourhood regarded as a bastion of François Bozizé supporters and his ethnic group. Under the pretext of looking for arms caches, Séléka troops reportedly killed scores of civilians and went on a rampage of looting. When these raids spread to other quarters, thousands of residents invaded the international airport, which was perceived as a safe place because of the presence of French troops, and occupied its runway.

In early 2013, Nourredine Adam played an important role in the ex-Séléka's financing networks. He travelled to Saudi Arabia, Qatar and the United Arab Emirates to collect funds for the former rebellion. He also operated as a facilitator for a Chadian diamond-trafficking ring operating between the Central African Republic and Chad.

LEVY YAKETE

LAST NAME: YAKETE

FIRST NAME: Levy

ALIAS: Levi Yakite; Levy Yakite

DATE OF BIRTH/PLACE OF BIRTH: 14 August 1964 / Bangui, C.A.R.

Alternate date of birth: 1965

PASSPORT/IDENTIFYING INFORMATION: Son of Pierre Yakété and Joséphine Yamazon.

DESIGNATION/JUSTIFICATION:

Engaging in or providing support for acts that undermine the peace, stability or security of C.A.R.: On 17 December 2013, Yakete became the political coordinator of the newly formed People's Resistance Movement for Reforming of the Central African Republic anti-Balaka rebel group. He has been directly involved in decisions of a rebel group that has been involved in acts that have undermined peace, stability and security in the C.A.R., in particular on and since 5 December 2013. In addition, this group has been explicitly singled out by resolutions 2127, 2134 and 2149 for such acts. Yakete has been accused of ordering the arrest of people connected to the Séléka, calling for attacks on people who do not support President Bozizé, and recruiting young militiamen to attack those hostile to the regime with machetes. Having remained in the entourage of François Bozizé after

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March 2013, he joined the Front for the Return to Constitutional Order in C.A.R. (Front pour le Retour à l'Ordre Constitutionnel en CentrAfrique — FROCCA), which aimed to return the deposed president to power by whatever means necessary. In late summer 2013, he travelled to Cameroon and Benin, where he attempted to recruit people to fight against the Séléka. In September 2013, he tried to regain control over operations led by pro-Bozizé fighters in towns and villages near to Bossangoa. Yakete is also suspected of promoting the distribution of machetes to young unemployed Christians to facilitate their attacks on Muslims.

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Letter from AWDC. Page 1

Attn: Mrs. Lucy Graham
Legal Adviser, Business and Human Rights Team
Amnesty International

Antwerp, September 24 2015

Dear Mrs. Graham,

Analyzing the report, which was drafted following a visit from Amnesty International to the Antwerp World Diamond Centre, we conclude there still are a few misconceptions on the exact nature of the controls that are performed in Antwerp. With this letter, we wish to clarify those issues, hoping these clarifications will be taken into account in the final Amnesty International Report.

First and foremost, we feel it is necessary to point out Antwerp and Dubai reacted in entirely different manners on the potential shipments for the Central African Republic (CAR). The very moment a suspicious parcel, potentially originating from CAR, was presented for import at the Antwerp Diamond Office, this shipment was immediately intercepted and blocked by the experts of the Federal Public Service Economy within the Diamond Office.

These experts from the Diamond Office succeeded in intercepting and blocking this shipment because of, on the one hand, a foolproof systems of controls, through which 100% of shipments is verified on value, weight, classification and documented origin. On the other hand, the immense expertise and knowledge of these experts allows them to determine, even in the case of a shipment of 'mixed origin', if this parcel contains diamonds that could originate from KP banned areas such as the CAR. Consequently, the two blocked shipments never entered the Antwerp diamond market.

Secondly we would like to point out that the parallel system the report mentions, through which members of accredited bourses trade via the so-called 'Fast-Track' is by no means a black or grey circuit, as the reports seems to imply. The Fast-Track system through which Bourse members can trade within the European Union is clearly defined

in the Council Regulation (EC) No 2368/2002 of 20 December 2002 implementing the Kimberley Process certification scheme for the international trade in rough diamonds.

The Fast-Track procedure exempts diamond-trading companies – if they comply with a set of clearly defined criteria – of providing "conclusive evidence" when requesting a KP certificate

Diamonds love Antwerp

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Letter from AWDC. Page 2

for exports of rough diamonds. However, this does not change the fact the Diamond Office will enact physical controls. In other words, goods that are exported by a company using the Fast-Track procedure are equally subject to the physical controls performed by the Diamond Office.

Diamond Office is responsible for the declaration and assessment of diamond shipments imported or exported to and from Belgium, through a unique model of import and export controls. Each and every shipment that enters or leaves is being controlled, verified and declared by sworn experts. Diamond Office executes these controls in close collaboration with and under the supervision of the Belgian Government; the FPS Economy and the FPS Finance – Customs. The FPS Economy is the competent authority for the implementation of the Kimberley Process Certification Scheme for rough diamonds, as appointed by the European Commission.

Last but not least, we want to stress the Diamond Office performs a 100% check of all shipments, not spot-checks.

We sincerely hope that through this letter we have been able to clarify these matters and remain at your disposal if you would have any further questions.

Sincerely,

Mark Van Bockstael
Chief Officer Business Intelligence AWDC

Ari Epstein
Chief Executive Officer AWDC

Diamonds love Antwerp

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CHAINS OF ABUSE

THE GLOBAL DIAMOND SUPPLY CHAIN AND THE CASE OF THE CENTRAL AFRICAN REPUBLIC

At multiple points along the global diamond supply chain a range of actors are profiting from illegal and unethical practices that cause or contribute to human rights abuses. States are failing to effectively address these issues. The absence of proper controls and safeguards means that these actors – including armed groups, smugglers and companies – can unjustly enrich themselves at the expense of people in poverty and developing economies. It also means that consumers may be buying diamonds linked to human rights abuses and other unlawful and unscrupulous activities.

This report sheds light on the abuses in the diamond supply chain, beginning with the case of one diamond-producing country – the Central African Republic (CAR) – and moving along the supply chain to the international trading centres of Dubai and Antwerp.

CAR is one of the poorest countries in the world and has been embroiled in conflict since late 2012. Prior to the crisis, diamonds made a significant contribution to CAR's economy; but the small-scale artisanal miners who typically mined for diamonds were subject to widespread exploitation and hazardous conditions of work. Although CAR was banned from exporting its diamonds shortly after the conflict began, an internal diamond trade has continued. Armed groups involved in the conflict profit greatly from this trade by extorting "taxes" and "protection payments" from miners and traders – at the same time they have carried out serious human rights abuses against the civilian population. Amnesty International believes that the diamond exporting companies that operate in CAR's capital city have bought diamonds without adequately investigating whether they have funded armed groups (something they deny doing).

Beyond CAR, as diamonds move along the global supply chain to international trading centres, a range of illegal and unethical activities are contributing to human rights violations. Amnesty International found practices such as smuggling, undervaluation of diamonds from developing economies and strategies by companies to avoid paying tax while making substantial profits. These activities strip wealth from poor countries and pose a significant human rights challenge; they allow companies to profit from poverty and unlawful activity while depriving countries of revenues that could – and should – fund essential services.

There is one international initiative that regulates the diamond industry – the Kimberley Process. It is failing to address the issues raised in this report and it places no responsibility on companies, enabling them to operate with a veneer of corporate responsibility while ignoring human rights abuses and other unscrupulous practices in their supply chains. It is time for companies to stop hiding behind the Kimberley Process and start investigating and responding to risks in their supply chains. States need to take action to ensure companies do so.

This is the first in a series of reports by Amnesty International on mineral supply chains, looking at the roles and responsibilities of States and companies. Amnesty's aim is to break the link between the trade in minerals and human rights abuses, including through effective regulation that requires companies to clean-up their supply chains.

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