

The Kimberley Process Certification Scheme

Third Year Review

2006

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Submitted by the Ad Hoc working Group on the review of the KPCS

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EXECUTIVE SUMMARY

The Kimberley Process Certification Scheme (KPCS) is an example of international cooperation at its best. In the first three years of its operation it has proved remarkably successful, to the point that now the vast majority of production and international trade of rough diamonds are moved through official Kimberley channels. The successful implementation of the KPCS is based on a flexible and pragmatic approach, where *ad hoc* solutions are adopted because they worked, and Participants and Observers have volunteered the resources necessary.

In accordance with the KPCS document, Participants agreed to undertake a review of the Scheme after three years. This first Review focuses on three major areas: first, the impact of the KPCS on the international trade in rough diamonds, and the extent to which the Scheme has been effective in preventing the flow of conflict diamonds into the legitimate trade; second, the technical provisions of the Scheme and whether they are functioning as planned or require improvement; third, the operations of the Scheme, their effectiveness and efficiency.

As to its impact, the UNGA Resolution giving a mandate for the Kimberley Process has been renewed regularly, and has gained recognition from the UN Security Council. This widespread and continued international support confers an important measure of legitimacy upon the KPCS and acknowledges the efforts of KP Participants and Observers.

As well, all available data suggest that the majority of the international trade in rough diamonds is now carried on within the KPCS. All significant diamond producing and trading centers (with the exception of Liberia, which remains under UN diamond sanctions) are implementing the KPCS. As well, the KP has contributed to substantial increases since 2003 in the proportion of rough diamonds exported through official channels in countries previously affected by conflict diamonds. Nevertheless, conflict diamonds are still being mined by rebel groups in Côte d'Ivoire and are reported to be entering the legitimate trade. There are also reports of illicit diamond extraction and trading by rebel factions and militias in the Democratic Republic of Congo.

The technical provisions of the Scheme are working well overall, and are being enforced, as indicated by a number of seizures of irregular shipments and prosecutions for infringements of KPCS regulations. As to be expected with an international scheme of such complexity, technical problems continually arise; these are addressed by the Working Group on Diamond Experts and by many suggestions of Participants enumerated in this Review in the form of recommendations. The major problem that emerged in the Review is the effective implementation of internal controls, which remains an important

challenge. This problem is addressed by a series of recommendations, which should be implemented immediately, as a major priority of the KP.

The Scheme is operating well, and the statistics and peer review monitoring systems are proving to be essential tools. However they could be improved. Participants and Observers made many recommendations in the areas of statistical requirements and the peer review monitoring system that have been included in the Review's recommendations.

Major Findings of the KPCS Review

Role of governments, industry and civil society

The inclusive nature of the KP has been a key ingredient in the success of the KPCS with each type of actor bringing their respective interests, expertise, skills and knowledge to the table. Industry and NGO observers have been involved in the working groups and in review visits and missions from the beginning. The Participants of the KPCS are very varied, ranging from alluvial to industrial producers of diamonds, to trading and cutting/polishing countries, of different sizes, in different continents, and with vastly differing stakes in the diamond industry. Nonetheless the KPCS has maintained an inclusive approach in line with the General Assembly mandate granted to it, and has been stronger as a result.

Working methods: burden sharing and flexibility

The flexible structure of the KP, including a rotating Chair, and devolution of considerable responsibilities to smaller working groups, has achieved remarkable progress in a very short time. A wide, and increasing, range of Participants and Observers have participated in review visits and missions, and diversity of leadership has been increasing. The frequent teleconferences and email exchanges utilized by working groups have ensured constant review and development in a very efficient, low-resource manner (and Participants in different time-zones have been very flexible to allow teleconferences to take place at the least inconvenient time for the majority). There has been a steady stream of innovations, developments and improvements initiated in working groups, transforming the KPCS over time. However, there are questions about the sustainability of this over the long-term.

Website and Documentation

The KP website, both Participant and public sections, could be improved to include more documentation as appropriate, and organized to show clearly what it contains. All Plenary documents should be made available in the working languages of the Plenary. Moreover all documents generated by the peer review

system should be made accessible more systematically to all Participants and Observers, and to selected international organizations, notably in the UN system.

Decision making

The most important principle of the operation of the Kimberley Process, which has proved effective and which should be retained, is that decision-making is on the basis of consensus. There are no entrenched blocs of Participants but rather a continual search for mutually acceptable solutions on the basis of mutual respect and trust. Consensus has enhanced the confidence of Participants and the sense of shared ownership and legitimacy.

Legal status

The Kimberley Process is essentially a consulting intergovernmental mechanism operating with the support of industry and civil society aimed at excluding ‘conflict diamonds’ from international trade channels. To achieve this goal, the KP Participants have adopted a Certification Scheme, established by a document which provides for the creation and development of an international certification scheme for rough diamonds, on the basis of national systems. The KPCS is not a legally binding document, as a matter of international law. However, the KP Participant countries considered it necessary to voluntarily fulfill the KPCS minimum requirements at the national level and have adopted relevant laws and/or executive acts to that effect.

International community

The KP has enjoyed a good relationship with the wider international community, notably the UN General Assembly¹ and Security Council², the WTO (which granted a waiver) and World Customs Organization (which agreed changes to its documents). The support of the United Nations has been important for the legitimacy and authority of the KP. At the same time, there is scope for enhanced co-operation with bodies working on issues of diamond sector governance from a development or conflict prevention perspective, both in the UN system and among the international financial institutions. This kind of cooperation will be carried out on the basis of approved regulations and bilateral arrangements with international organizations.

Impact

The Kimberley Process has had a very significant impact in curbing the illicit production of and trade in diamonds in countries affected by conflict

¹ Beginning with Resolution 55/56 January 29, 2001

² Security Council Resolution 1495 of January 28, 2003 endorsed the KPCS

diamonds. The countries involved, with the exception of Cote d'Ivoire have recognized this in their responses to the questionnaire (DRC, Angola, Sierra Leone). Every year since the introduction of the KP has seen significant increases in the percentage of their diamond production and trade captured by legal channels and the KPCS. However, while it is extremely difficult to accurately determine the extent of the illicit trade it is thought to remain significant in these countries, as well as in other participant countries.

Increasingly, Participants are becoming able to report cases of infringements of the provisions of the KPCS in their jurisdictions (many active cases are of course *sub judice*) demonstrating both increased awareness of KPCS requirements by law enforcement and customs officials, and increasingly effective deterrence.

Technical provisions

The technical provisions of the scheme, including the Kimberley Process Certificate, are widely considered by Participants to be appropriate and effective, without being unduly onerous. There are some difficulties in the relationship between KP definitions of technical terms and their usage in other contexts; not all Participants apply every technical provision to the full; and sometimes it takes time and/or imposes costs on industry to comply with requirements, but generally KPCS technical rules are felt to be consistent with other international and national rules, and to be proportionate.

Overall, 71% of Participants responding directly to the question agreed without any caveats that the operation of the Kimberley Process Certification Scheme been simple and workable. None could identify areas where simplification was required, although some (29%) commented that implementation of existing rules could be improved.

Implementation of internal controls

Implementation of internal controls, as envisaged in Section IV of the KPCS is a crucial element of the mechanism of the Certification Scheme. Participant countries have taken steps to implement mandatory internal control requirements, as well as optional measures contained in Annex II to the main document. Participants have agreed on the necessity to prepare a new list of internal controls which would expand the measures contained in Annex II.

Peer review

One of the most important features in the KP has been its system of peer review. The central component of this has been its system of review visits which, while remaining consensual, has enabled assessment and improvement of Participants' implementation of the KPCS. However, there are issues related to

weak or total non-compliance that would not have been discovered by the current system due to lack of time to undertake penetrating research into some of the persistent problems in the diamond industry. A number of possible improvements to this system have been identified by the Working Group on Monitoring and it is intended that these will be implemented during subsequent review visits.

Statistics

The KPCS has placed a high priority on collecting statistical reports from Participants and this has ensured that Participants are all aware of the requirement to provide bi-annual production and quarterly trade data, and the vast majority of Participants now submit their reports on a timely basis. However, some participants and observers are concerned about the accuracy of the data collected. With three years' of data collected, the emphasis now should move to analysis of the data. The Working Group on Statistics has now analyzed data and will send its analyses to Participants for comments before reporting to the Gaborone Plenary on the results.

Dispute resolution

There has so far been one occasion on which the formal provisions of the KP for dispute resolution have been invoked. These led ultimately to the removal of a Participant. By general consensus, this instance is perceived to have strengthened the KPCS by showing it has teeth. To date, all other disputes have been handled informally by the Chair or by KP working groups within the terms of their mandate. In order to make dispute resolution more transparent, however, it may be necessary to develop and adopt criteria for the removal of the countries from the list of KPCS Participants.

Participation

There is widespread agreement that the scheme has remained open on a global, non-discriminatory basis to all Applicants willing and able to fulfill its requirements, and respondents report satisfaction with the work of the Participation Committee in this regard. There is still a lack of agreement on non-compliance and the procedures for removing participants that are deemed to be in significant non-compliance with the KPCS.

Industry self-regulation

At least one Participant has a system of industry self-regulation allowing members of industry bodies 'fast track' access to KP certificates in exchange for them signing up to a number of detailed requirements to ensure that KP requirements are observed. Importantly, this self-regulation is subject to supervision and audits. Other industry systems of self-regulation, although not

universal, are in place and require trade associations to institute requirements for KP and System of Warranties compliance among their membership, in cases of known non-compliance. These requirements include providing warranties from seller to buyer of KP compliance for polishing diamonds as well as jewelry containing diamonds. Membership in these trade associations is often vital to an individual or company's successful business, thus risk of termination of membership is an effective enforcement method.

Technical assistance

Although the KP was slow to address the issue of technical assistance, it has now responded to the needs being identified by review visits and raised by Participants, by setting up an informal technical assistance co-ordination mechanism at the Moscow Plenary currently co-ordinated by the US. This has begun by drawing together a compilation of existing technical assistance programs for Participants and, in some cases, actual or potential applicant countries, drawing *inter alia* on review visit findings. This work is still in its infancy. Any Participants requiring technical assistance are invited to make their needs known to the co-ordinator of technical assistance. Furthermore, Canada, as Chair of the Working Group on Statistics, is also making available technical assistance, including workshops, specifically on statistical requirements.

General Level of Satisfaction

Most Participants, whether producing and trading, or trading only Participants, concluded in their responses that the KPCS met their requirements well.

SECTION A BACKGROUND

The Three-Year Review of the Kimberley Process Certification Scheme

Background

The Kimberley Process Certification Scheme (KPCS) was launched in a Ministerial Meeting in Interlaken, Switzerland, in November 2002. At the launch, Participants agreed to begin a simultaneous implementation of the certification scheme in January 2003.

In accordance with the KPCS Document, Participants agreed to undertake a periodic review of the scheme, with the first such review to take place within three years. In recognition of the difficulties experienced by some countries during the early months of 2003 to meet the minimum requirements for implementation, and the consequent brief delay in the full implementation of the Scheme, the Sun City Plenary (October 2003) decided that the first review of the certification scheme should take place not later than July 31, 2006.

Context

The review of the KPCS is taking place against the backdrop of a changing security environment in conflict diamonds-affected countries. A number of conflicts have come to an end. The peace agreements in Angola, the DRC and Sierra Leone and increased government control over the production and trade in rough diamonds mean the issue is no longer as acute as it was when diamonds were actively fuelling wars in all three countries. At the same time, the continuing conflict in Cote d'Ivoire, and the fragility of peace agreements in other diamond-producing countries that have recently emerged from conflict, means the issues that the KPCS was conceived to address remain highly topical from a conflict-prevention perspective.

Mandate

The mandate for the review is outlined in Section VI, Paragraph 20 of the Kimberley Process Certification Scheme (KPCS) Document, which provides for a review of the scheme after three years. "Participants intend that the Certification Scheme should be subject to periodic review, to allow Participants to conduct a thorough analysis of all elements contained in the scheme. The review should also include consideration of the continuing requirement for such a scheme, in view of the perception of the Participants, and of international organizations, in particular the United Nations, of the continued threat posed at that time by conflict diamonds..."

Make up of Review Working Group

At the Gatineau Plenary in 2004, Canada was selected to chair an *ad hoc* Working Group, to include also the Kimberley Process Chair and Vice-Chair, as well as the Chairs of the Kimberley Process Working Groups and Committees, and a representative group of Participants with equitable geographic balance as well as industry and civil society representation. Following consultations, the remaining composition of the Working Group consists of the following members: Australia, China, European Community, India, Israel, Russian Federation, Sierra Leone, South Africa, United States, World Diamond Council and Partnership Africa Canada/Global Witness.

Terms of Reference

The Moscow Plenary of 2005 gave direction to the *ad hoc* Working Group on the review of the KPCS. "In advancing its mandate, the *ad hoc* Working Group shall review the effectiveness of the different elements contained in the Scheme (including both the KPCS document and Administrative Decisions subsequently adopted by Plenary), the impact of the KPCS and the effectiveness of its organization and working methods. The review shall include recommendations as well as implications of the suggested course of action in comparison to benefits."

The Plenary then outlined in detail the criteria for the review, broken down under the following major headings: Impact, Technical Provisions of the Scheme, Organization and Working Methods. These detailed criteria formed the basis for the questionnaire which was distributed to all Participants, Observers, and interested international organizations (see attached 2006 Review at Annex1).

Sources of information

The Chair of the *ad hoc* Working Group was instructed separately to seek input from all Participants, Observers, and interested International Organizations, from the Kimberley Process Working Groups and Committees. As well it was to draw on other Kimberley Process documents, submissions related to the Kimberley Process and the diamond industry from other interested parties, as well as interviews with representatives of NGOs, governments and industry.

Timeline

The *ad hoc* Working Group was instructed to prepare a report and recommendations on the review of the KPCS, in consultation with Kimberley Process Participants and Observers. These will be presented to the Plenary in 2006, following the detailed work-plan set out by the Moscow Plenary.

The Kimberley Process Certification Scheme An Historical Perspective

The Kimberley Process Certification Scheme (KPCS) is an international certification scheme aimed at preventing conflict diamonds from entering the legitimate trade and from funding conflicts. Its roots are found in the Kimberley Process negotiations between governments, civil society and the diamond industry, which began in 2000 in Kimberley, South Africa. These negotiations gave rise to the KPCS, which was launched in Interlaken in 2002.

Background

During the 1990s and into the current decade, the illicit trade in rough diamonds fuelled armed civil wars in Angola, the Democratic Republic of the Congo (DRC) and Sierra Leone. The diamonds that financed these wars of insurgency became known as “conflict diamonds”.

The trade in conflict diamonds first came to international attention in the case of Angola with Jonas Savimbi’s UNITA. Other prominent examples were the Revolutionary United Front rebels in Sierra Leone, with the complicity of Liberia’s warlord president, Charles Taylor; and the Democratic Republic of the Congo, and Liberia. Countless thousands died in wars funded by this trade and many more died as a result of indirect causes, creating a humanitarian disaster.

In mid-1998, the UN Security Council in its resolution 1173 (1998) imposed targeted sanctions against UNITA, requiring all UN member states to prohibit the import of Angolan diamonds unless they bore a certificate of origin issued by the government. This model was replicated in the case of Sierra Leone in 2000 (SCR 1306) which imposed sanctions on the import and export of Sierra Leonean rough diamonds unless accompanied by a Sierra Leone certificate of origin. Under the Certificate of Origin regime only diamonds that were legally mined were allowed to be exported. Legally mined meant that they came only from areas under the GoSL control, and were a product of a chain of legally authorized transactions. Sanctions were subsequently imposed on Liberia on 7 March 2001 (SCR 1343) on the import/export of rough diamonds.

The Security Council also appointed Panels of Experts to monitor, inter alia, these embargoes. The Panel of Experts on Sierra Leone submitted a report to the UNSC in January 2001 making recommendations for improvements to the system. In its report, the Panel also expressed admiration for the new regulatory system and recommended that it form the basis for a global certification system on an “imperative basis”. Sanctions on Angolan diamonds were lifted in December 2002 and on Sierra Leone in July 2003. Those against Liberia remain in place at the time of writing (October 2006).

A British NGO, Global Witness, in their 1998 report “A Rough Trade”, exposed the role of diamonds in funding Angola’s civil war, popularizing the term “conflict diamonds” in describing diamonds from Angola. In January 2000 the Canadian NGO, Partnership Africa Canada, published “The Heart of the Matter” a report on the role diamonds were playing in fueling Sierra Leone’s civil war. Later that same year the Security Council issued its own experts’ report (the so-called ‘Fowler Report’³) on Angola, which was also very influential in raising awareness of the issue and prompting international response to the role played by diamonds in funding conflict.

Other important actors included the Government of South Africa, which had an important stake in the diamond industry, and became increasingly concerned that the legitimate diamond industry would be tarnished by the use of conflict diamonds and would seriously suffer as a consequence of a consumer campaign led by NGOs. Two other major players in the diamond world shared these concerns, the De Beers conglomerate, which at that time controlled more than 80% of all rough diamond production, and the Belgian Government concerned for its diamond industry: since the early 1800s, most of the world’s rough diamonds have passed through Antwerp, which was also a centre for the trade of polished diamonds.

In May, 2000, South Africa’s Minister of Minerals and Energy, Phumzile Mlambo-Ngcuka, convened a meeting on conflict diamonds in Kimberley, South Africa’s historic centre of diamond production. Invited were producer and trading countries, concerned NGOs and representatives of the diamond industry. The results of the meeting came to be known as the Kimberley Process.

In July 2000, at the joint meeting of the World Federation of Diamond Bourses and the International Diamond Manufacturing Association in Antwerp, the World Diamond Council was formed to address the prevention of conflict diamond trade and to provide expert assistance to the Kimberley Process in Formulating effective systems to end the trade.

The UN Security Council in its resolution 1295 (2000)⁴ in April 2002, had welcomed the South African proposal to convene this expert meeting to devise a system of controls to facilitate the implementation of the Angola diamond sanctions. It also called upon States and the diamond industry to develop and implement more effective arrangements.

³UN document S/2000/2003 (10 March 2000) available at <http://documents-dds-ny.un.org/doc/UNDOC/GEN/N00/335/64/img/N0033564.pdf?OpenElement>

⁴ Available at <http://daccessdds.un.org/doc/UNDOC/GEN/N00/396/56/PDF/N009656.pdf?OpenElement>

The Process

The Kimberley meeting drew on the certification system the UN required of Angola. It had been undercut by widespread smuggling of Angola diamonds to neighbouring countries, from where they were exported. European customs data recorded several non-producing countries such as Zambia, Rwanda and Gambia as countries of origin. And in the 1990s, Liberia was recorded as country of origin for diamonds worth billions of dollars! Certificates issued by a single country had proved ineffectual, but as part of a system of international certification, it was thought that they might prove effective, particularly if the system were based on good internal controls of countries involved in diamond production, trading and polishing.

The Kimberley meeting provided the broad outlines of such a system. Plans were made for a technical meeting to flesh out the details of the system, which Participants hoped would be workable within months. Ultimately, the Kimberley Process took 30 months to establish, longer than originally estimated, but nonetheless lightning speed when compared with similar negotiations in the international fora.

The NGO community responded to the Kimberley initiative by creating a coalition of more than 200 partners, including internationally known groups like Action Aid, Amnesty International, Oxfam, and World Vision, to generate media attention and pressure. A flood of articles and television news programs on conflict or blood diamonds caused concern in the diamond industry, although the NGOs had not mounted a specific campaign aimed at consumers.

For its part, in July of 2000, the diamond industry created an organization called the World Diamond Council. The WDC was a coalition of diamond mining firms, trading companies and jewelry industry representatives created to engage on the issue of conflict diamonds and to represent industry interests at Kimberley Process meetings.

The Kimberley Process held a dozen meetings in various African and European capitals and in Ottawa to work out details of the Process. Despite initial divergences, a final agreement was reached at Interlaken in November 2002.

International Support

Several other international meetings were held outside the Kimberley Process to support the Process and help participants to become familiar with the issues and possible solutions. The World Diamond Council held annual meetings in London and Milan in 2001 and 2002 respectively. The Clinton White House organized a meeting in January 2001 and the World Peace Foundation organized one at Harvard in October 2001. Two G8 meetings, in Okinawa in July 2000 and at Kananaskis in Canada in July 2002, mentioned the Kimberley Process in their official documentation.

A key meeting was that of the UN General Assembly which adopted resolution 55/56 of December 2000 endorsing the Kimberley Process and urging “the implementation of the certification scheme as soon as possible, recognizing the urgency of the situation from a humanitarian and security standpoint.”

The Security Council, too, endorsed the KPCS in its resolution 1459 (2003)⁵ which strongly supported the KPCS.

Some Participants believed that the Kimberley Process should seek a waiver from the WTO, as it could be considered incompatible with the provisions of the GATT. Before the agreement was completed, Canada, joined by Australia, Brazil, Israel, Japan, Korea, the Philippines, Sierra Leone, Thailand, the United Arab Emirates and the United States sought a waiver from the WTO. In February 2003 the WTO Council for Trade in Goods recommended that the General Council grant members a waiver for trade measures taken under the KPCS through to December 2006. The decision recognized the extraordinary humanitarian nature of this issue and the devastating impact of conflicts fuelled by trade in conflict diamonds on the peace, safety and security of people in affected countries and the systematic and gross human rights violations that have been perpetrated in such conflicts.

The Agreement

The Kimberley Process Certification Scheme was subsequently launched at a Ministerial meeting in Interlaken, Switzerland in November 2002. At the launch Participants agreed to begin a simultaneous implementation of the certification scheme in January 2003. It requires participating governments to implement import/export control regimes and to adopt control systems governing their private sectors, in order to create a documentary record of rough diamonds from mine to polished form. Rough diamonds are required to be shipped in sealed containers and must be exported with a Kimberley Process Certificate

⁵ <http://daccessdds.un.org/UN/DOC/GEN/N03/227/58/PDF/N0322758.pdf?OpenElement>

which certifies that these diamonds are conflict free. Participants are required to prohibit the entry of rough diamonds in unsealed containers or without proper certification. Participating countries are required to pass legislation to implement these procedures. To date 70 countries (45 plus the European Community, representing its 25 member states) have done so, including all major diamond producing, trading and cutting/polishing centers, and all are Participants in the Kimberley Process Certification Scheme.

SECTION B IMPACT OF THE KPCS

The KP and its UN Mandate to Combat the Threat of Conflict Diamonds

The Kimberley Process and the Kimberley Process Certification Scheme (KPCS) have been very successful and have exceeded the initial expectations of KP Participants and Observers. The positive impact and rapid evolution of the KP and the KPCS, as well as the efforts invested by KP Participants and Observers, are internationally acknowledged.

Governments, the diamond industry, and civil society have worked remarkably well together within the KP, participating fully in the work of the KPCS, including at Plenary meetings and in working groups. As a result, there is undisputed evidence of the impact of the KP in reducing the possibility of conflict diamonds entering legitimate trade. Furthermore, the KPCS has enabled Participant states to reduce illicit diamond mining and trading.

The initial mandate for the Kimberley Process was established by United Nations General Assembly (UNGA) Resolution 55/56 in December 2000. The UNGA Resolution called for several structural measures to regulate the trade of rough diamonds. It also spelled out the *raison d'être* of the KP, that is, to prevent the trade in conflict diamonds.

The Kimberley Process Certification Scheme (KPCS) defines conflict diamonds as “rough diamonds used by rebel movements or their allies to finance conflict aimed at undermining legitimate governments.”⁶

The UNGA Resolution 55/56 (December 2000) mandate for the Kimberley Process has been renewed on a regular basis by the UN through the following UNGA Resolutions: 56/263 (March 2002); 57/302 (April 2003); 58/290 (April 2004); 59/144 (December 2004); and 60/182 (December 2005). The KP has gained important recognition from the UN Security Council (UNSC) through the UNSC Resolution 1459 (January 2003). More recently the role of the KPCS has been acknowledged in UNSC Resolution 1521 (December 2003 on Liberia) and 1643 (December 2005 on Côte d'Ivoire).

The combination of the UNSC Resolutions and the series of UNGA Resolutions represent an important accomplishment because it reflects widespread and continued international support for the KP. These Resolutions also confer an important measure of legitimacy upon the KPCS in their acknowledgement of the efforts of KP Participants and Observers.

⁶ KPCS Section I.

Since the adoption of UNGA 55/56 (December 2000), the civil wars in Sierra Leone, and Angola have ended and so too has the trade in conflict diamonds from these countries. Nonetheless, there is a continuing need for the KPCS. Implementation of KPCS provisions enables Participants to implement their obligations under Security Council resolutions imposing embargoes on rough diamonds (currently Liberia and Côte d'Ivoire).

Curbing Production and Trade in Conflict Diamonds

It is difficult to quantify the exact impact of the KPCS in curbing the illicit production and trade of diamonds in countries affected by conflict diamonds, as well as on the international diamond trade. Given the difficulties posed by any attempts to regulate an international trade of such complexity, added to the problems posed by artisanal mining, porous borders, lack of infrastructure and the nature of the illicit trade itself, as it exists today the KP cannot completely control the entire trade. That being said, there is near unanimous agreement on the effectiveness of the KP in responding to its UN mandate.

However, Côte d'Ivoire disagreed, stating that the KP "has not effectively responded to the mandate given by the relevant UN General Assembly Resolution to combat the threat of conflict diamonds, because, despite the implementation of the Kimberley Process, Ivorian diamonds have been sold to the international market without any sanctions for those involved in that trade."⁷ The KP identified the problem in respect of Côte d'Ivoire in 2004 and started monitoring the illicit production of diamonds in the north of the country in January 2005. It provided an initial assessment of the scale and nature of the problem to the UN Security Council in June 2005, following a mission by a special envoy of the KP Chair in April of that year. Separate investigations carried out by Global Witness and the UN Panel of Experts on Côte d'Ivoire subsequently confirmed the production and trade of conflict diamonds from Côte d'Ivoire. The KP subsequently adopted a nine-point resolution in November 2005, with detailed provisions. The Chair reported to the KP intersessional in June 2006 on progress implementing these requirements. However, as stated by Côte d'Ivoire, these actions have not stopped Ivorian diamonds from reaching the international market.

Estimates have varied over the past decade with respect to what portion of global production of rough diamonds is conflict diamonds. At the height of the civil wars in Sierra Leone, Angola, the Democratic Republic of Congo, and Liberia⁸, the percentage of conflict diamonds is thought to have been in the range of 4 to 15 per cent between the mid-1990s and beginning of the 2000s.⁹

⁷ Source: *Côte d'Ivoire: Submission for the 2006 Review of the KPCS* (March 2006).

⁸ Liberian conflict diamonds continued to seep into the international market, at a rate of between 100,000 and 400,000 carats per year. The expert mission in March 2005 found that, while potential production could be in the range of 100,000 to 400,000 carats per year, only a small

As the wars in these countries came to a close in the early part of the present decade, the volume of conflict diamonds began to decrease. Since then, the production of conflict diamonds has consistently fallen. In 2004, KP Participants reported total production (captured by the KPCS) of 160 million carats valued at US\$ 10.3 billion. If the two estimates for current production from Côte d'Ivoire and Liberia are aggregated, this would mean that diamonds subject to UN embargoes (including, in the case of Côte d'Ivoire, conflict diamonds) currently amount to somewhere in the region of 0.2% of world production by volume. This figure does not take into account the ongoing fighting centred on diamond mines in the DRC. The figure should obviously be treated with great caution, and it does not take into account 'illicit' trade in a wider sense

The Case of Côte d'Ivoire

Rebels control two of Côte d'Ivoire's main diamond mining areas, Bobi-Séguéla and Tortiya, which are estimated to produce some 200,000 carats per year.¹⁰

From the beginning of the KP, Côte d'Ivoire has suspended the issuance of Kimberley Certificates and prohibited the export of rough diamonds from its territory through the issuance of Ministerial decree no. 0070/mme/dm of November 19 2002, following the hostilities of September 18, 2002. Thus, from the inception of the KP, Participants have been prohibited from importing Ivorian diamonds.

The Kimberley Process has taken a number of steps to objectively analyzing the situation in the Côte d'Ivoire. In April 2005, the past Chair of the KP went to Côte d'Ivoire as special envoy of the then Chair, Russia. This resulted in a report from the Chair to the Security Council, alerting the international community to the issue. Subsequently the UN Security Council nominated a diamond expert to the Panel of Experts on Cote d'Ivoire.

Investigations conducted by Global Witness and the UN Panel of Experts on Côte d'Ivoire suggested that there are a number of exit routes for Ivorian

proportion of mining sites were being worked. Specifically, the mission report notes that "during 2004, UN sanctions and Liberian Government actions appear to have reduced visible artisanal mining activity that had held the potential to circumvent sanctions from 16 to 3 mining operations". The UN Panel of Experts on Liberia, in its report of November 2005, estimated current Liberian production to be in the region of about US\$ 1.2 m per month. On the assumption that Liberian production can be valued at somewhere around US\$ 100/ct, this would be equivalent to ongoing annual production of somewhere in the region of 140,000 cts. Source: *Kimberley Process Working Group on Monitoring: Submission for the 2006 Review of the KPCS* (February 2006).

⁹ These estimates are derived from the following sources: 2002 paper by Ian Smillie, "The Kimberley Process, the Case for Proper Monitoring, (www.pacweb.org)"; and untitled paper by A.M.Coxon, De Beers, March 2000; and UN Security Council report S/2001/363, 18 April, 2001, para 54.

¹⁰ Source: *Kimberley Process Working Group on Monitoring: Submission for the 2006 Review of the KPCS* (February 2006).

diamonds, in both the north and south of the country, and smuggling routes operating through countries outside the Kimberley Process. Other routes may involve Ivorian production being laundered through Kimberley Process participants in breach of KP rules.

The Côte d'Ivoire situation was discussed at length during the November 2005 Moscow Plenary which noted "that the ongoing production of rough diamonds in Northern Côte d'Ivoire and the possible introduction of such illicit diamonds into the legitimate diamond trade threaten the integrity and credibility of the Kimberley Process Certification Scheme."

As part of a 9-point KP Resolution adopted by the Plenary, Participants and Observers were urged to "undertake all possible efforts ... to ensure that illicit Côte d'Ivoire diamonds cannot be introduced into the legitimate trade".¹¹ To this end, the resolution called for regional cooperation in countering this threat and for close cooperation with UN bodies to stop the spread of conflict diamonds. This resolution included the suggestion that the KP should offer to cooperate with the United Nations in carrying out a detailed assessment of the volume of rough diamond production in Côte d'Ivoire and of rough diamonds exported from Côte d'Ivoire. Shortly thereafter (in December 2005), the UN imposed sanctions on all Ivorian diamond exports, thus extending the KP's existing prohibition on imports from Cote d'Ivoire to all UN member states.

The KP Chair gave an interim report on implementation of the resolution in the June 2006 Gaborone intersessional. As mandated by paragraphs 1 and 4 of the Moscow resolution, and paragraph 12 of UNSCR 1643 (2005), KP experts participated in a joint field trip to Côte d'Ivoire with the UN Panel of Experts on Côte d'Ivoire in April 2006 to assess the extent of conflict diamond production in the northern part of the country under rebel Forces Nouvelles control. All KP Participants in the region (Ghana, Guinea, Sierra Leone, Togo) have agreed to record the quality characteristics of their exports on the back of their export KPCS, an optional measure, which will allow profiling (ie identifying the characteristics of diamonds produced), with a view to identifying occasions where Côte d'Ivoire diamonds could be brought into the legitimate diamond trade. The resolution also requires Participants to report to the Chair any incoming shipments of rough diamonds which they suspect of containing diamonds of Cote d'Ivoire origin, and to take appropriate action taken against any of their nationals or companies found to be involved in the production of diamonds in Cote d'Ivoire or in the trade in such diamonds, where possible, and to inform the Chair of the KP of the action taken. The resolution also specified that the Chair should make this information available to all Participants and Observers. Accordingly, the Chair has conducted a survey (which is ongoing) of Participants through e-mail, and to date, one Participant has reported confiscation of one shipment of rough

¹¹ The full name of this KP document is the 'Resolution adopted by the Kimberley Process Plenary Meeting, Moscow, 15-17 November 2005, on the subject of illicit diamond production in Côte d'Ivoire'.

diamonds whose contents were suspected to be of Cote d'Ivoire origin. The representative organizations of the international diamond industry were requested by the resolution to draw their affiliates' urgent attention to the ongoing illicit production of rough diamonds in Côte d'Ivoire, and to request the full cooperation of all sections of the international diamond industry in ensuring that rough diamonds produced in Côte d'Ivoire cannot be introduced into the legitimate trade, which they have done.

Despite greater international awareness of the problem of conflict diamonds created by the Kimberley Process, the trade in conflict diamonds has not yet been totally eradicated. The Côte d'Ivoire situation demonstrates the need for vigilance on the part of all KP Participants and Observers concerning the threat of conflict diamonds.

Information from KP Review Visits

While accurate statistics on the current production and trading of conflict diamonds are very difficult to determine, other markers provide pointers to the positive impact of the KPCS.

All available data suggest that the major proportion of the international trade in rough diamonds is now carried out within the KPCS. All significant diamond producing and trading centres (with the exception of Liberia, which remains under UN diamond sanctions) are now implementing the KPCS.

While the peer review mechanism does not by itself yield a detailed quantitative assessment of the percentage of the trade now covered by the KPCS, the reports of review visits (particularly to conflict-diamond-affected countries) do show overall trends and developments. The review visits carried out to date to the Democratic Republic of Congo, to Sierra Leone, and to Angola, countries affected in the past by conflict diamonds, together with the statistical reports and responses to the questionnaires from these Participants, point to very substantial increases in the proportion of diamonds exported through official channels as a result of KPCS implementation, alongside other factors such as overall stabilization of the countries in question and the implementation of peace agreements.

In addition to review visits, the KP has carried out *ad-hoc* monitoring activities of the two countries that are currently subject to UN embargos on their diamond exports – Liberia and Côte d'Ivoire. All diamond exports from Liberia currently have to be considered illicit, and those from Côte d'Ivoire are conflict diamonds.

The report of the KP expert mission to **Liberia** of February 2005 found that Liberia's potential production capacity lay somewhere between 100,000 and

400,000 cts/year; while it was not possible for the expert mission to give a precise estimate of ongoing (illicit) production, it noted that only a small proportion of potential mining sites were being worked on. The report specified, “during 2004, UN sanctions and Liberian Government actions appear to have reduced visible artisanal mining activity that had held the potential to circumvent sanctions, from 16 to 3 mining operations.” The UN Panel of Experts on Liberia, in its report of November 2005, estimated current Liberian production to be in the region of about US\$ 1.2 m per month. It is likely that at least a significant proportion of this production is reaching world markets by various routes.

One important but less tangible impact of the KPCS is that it has created a clear distinction between the illegal and legal markets for rough diamonds. As all reputable traders purchase only legitimate rough diamonds, with accompanying Kimberley Process Certificates, the result is that the market for illicit diamonds has decreased. Accordingly the market price of illicit diamonds has fallen, relative to the cost of legitimate diamonds, while the risks of being involved in trading illicit diamonds have greatly increased. Introduction of a requirement to certify diamonds by a KP Certificate legitimized the sales of rough diamonds.

Cases of KPCS Infringement and Responses by Participant Authorities

The effectiveness of the KPCS may also be measured in terms of the number of reported cases of KPCS infringement or violation in relation to how many of these cases are pursued through the judicial channels of respective Participants. This provides evidence that the KPCS is being enforced in Participant countries.

With respect to the KP Review Questionnaires, nearly half of all KP Participants reported that they have **not** had any cases of KPCS infringement.¹²

Among the KP Participants that did report instances of KPCS infringement on their Questionnaires, the number of cases ranged most commonly from one to five. For example, since the implementation of national legislation (to abide by the KPCS) in January 2003, Canada has recorded five cases of infringement resulting in: one conviction; two forfeitures; and two cases that are still under investigation. All five cases were investigated in accordance with Canada’s legislative and judicial provisions.

¹² China, India, Israel, Japan, the Russian Federation, and the United States did not report cases of infringement on their KP Review Questionnaires, despite having mentioned such cases in their 2003 and/or 2004 Annual Reports. For example, the US authorities seized four rough diamond shipments in 2004. Brazil and Venezuela did not submit a response to the KP Review Questionnaires.

Only three KP Participants reported more than five cases of KPCS infringement on their Questionnaires: Australia recorded 8, Sierra Leone recorded 16, and the EC recorded 26. In each country, the cases were investigated in conjunction with customs officials and in accordance with national legislative provisions and judicial means. For example, the Australian Customs Service has seized a total of 339.264 carats of rough diamonds.¹³ Sierra Leone has seized a total of 340.5 carats worth approximately US\$ 19,029. The EC has seized more than 12,000 carats worth approximately US\$ 1.5 million.¹⁴

The response of the KP Participants to instances of KPCS infringement varied from case to case. The vast majority of cases led to the seizure of the parcel or shipment of rough diamonds in question. Some parcels of rough diamonds were returned to the exporting country while others were forwarded to the intended recipient pending receipt of proper documentation. Several cases led to the imposition of fines and the commencement of criminal proceedings following a police investigation and other judicial instruments.

At present, reporting seizures and cases of infringements or violations of the KPCS is not mandatory for KP Participants, although it is recommended and can be included in Annual Reports. However, detailed information on KPCS infringements would be useful to the authorities of KP Participants both at home and abroad in efforts to identify the actors involved, the origin of the diamond shipments, and the routes taken as part of the overall effort to increase the effectiveness of the KPCS.

As part of their Annual Reports, KP Participants should be required to provide more detailed information on cases of infringement of the KPCS, which they are able to share within the provisions of their national legislation. Where possible they should include the number of seizures of rough diamond shipments along with details on the weight, value, exporter, importer, and country of origin of the parcel, as well as other details concerning the prosecution and outcome of each case. Also KP Participants should be encouraged to share this information with one another on an ad hoc basis.

¹³ Two of the seized shipments did not have a declared value; thus, a precise total value cannot be computed.

¹⁴ In the European Union, EC authorities have pursued additional cases (even when diamond shipments were not seized) based on suspect documentation on re-exports from the EU.

The KP and Peace and Security

The KPCS has made a very significant contribution to tackling one of the issues fuelling some of the most devastating conflicts Africa has seen in recent decades. Cutting the link between illicit diamond production and trade and the financing of armed groups is crucial to the long-term stability of the countries affected by conflict diamonds in the past.

Illicit diamond mining and trading has become a less viable option for rebel groups than in the past. As more diamond revenues are captured by government channels, it is hoped that this will provide the financial resources to promote post-conflict reconstruction and more stable governance in diamond producing countries.

High priority should be given to following through on the 9-points contained in the KP Resolution of 17 November 2005 on illicit diamond production in Côte d'Ivoire.

In the case of the **DRC**, for example, according to the DRC's KP statistics, the value of official diamond exports rose from US \$ 395m in 2002 to US\$ 771m in 2004 and to US\$ 896m in the first half of 2005 alone. DRC in its response to the review questionnaire pronounces itself 'totally satisfied' with the creation of the KPCS and points to these export statistics as one proof of the success of the KP in combating the illicit production and trade in diamonds in countries previously affected by conflict diamonds.

A direct result of the KPCS it is worth highlighting in this context: the exclusion of the Republic of Congo from the KPCS in July 2004. It excluded the RoC from exporting legally to any major diamond-trading centre, and that action by itself appears to have contributed to a dramatic increase in legal exports from the DRC, since illegal routes were no longer available.

In the case of **Sierra Leone**, the KP review visit found that that the certification system had facilitated greater control over the diamond industry and reduced smuggling through the monitoring and control of diamond exports. The review visit estimated that the official system is now capturing up to 80% of production. According to Sierra Leone's official export statistics, the total value of exports increased from US\$ 26m in 2001 to US\$ 155m in 2004 and US\$ 142m in 2005. As in the DRC, it can be assumed that the implementation of the KPCS has contributed significantly to this increase. In its response to the review questionnaire, Sierra Leone comments that the Kimberley Process makes it possible for countries to realize more from the export of diamonds. These funds are used for poverty alleviation and for the provision of services to mining communities, thus addressing causes of friction and conflict.

In the Republic of **Angola**, the KPCS has also seen a dramatic increase in legal exports of diamonds. KP statistics show that the value of diamonds exported by Angola was \$739 m in 2003, \$773 m in 2004, rising to \$1,089 m in 2005. In its response to the review questionnaire Angola states that it considers the KP 'efficient' and that the end of local conflict and the implementation of the KPCS has enabled it to greatly increase its control of its diamond production and trade thereby increasing state fiscal revenue and discouraging the activities of rebel groups.

Peace in and around the former conflict diamond countries of Sierra Leone, Angola, the Democratic Republic of Congo, and Liberia remains fragile. The border regions within these countries and their neighbors are particularly porous and tend to be near diamond mining areas. These border regions are also home to former rebels, militias, and other armed groups. However, the worth of the KP is seen in the fact that the KP is at the forefront of international efforts to address the continuing conflict diamond problem in Côte d'Ivoire and is contributing greatly to the comprehensive implementation of UN diamond embargoes against both Côte d'Ivoire and Liberia.

To this end, the KP should also closely monitor the situation in the Democratic Republic of Congo. The eastern part of the country is still home to sporadic fighting among armed groups. A variety of natural resources, including diamonds, fuel this fighting.¹⁵

While the KP makes illicit rough diamonds less attractive as a means of financial support for rebel groups, it is not, of course, an iron-clad deterrent. The Democratic Republic of the Congo should be encouraged to invite a second KP review visit, which would allow the KP to closely monitor the local situation. The eastern part of the country is still home to sporadic fighting among armed groups. A variety of natural resources, including diamonds, fuel this fighting.

Through the Chair, the KP should continue to work closely with the UN as well as its various branches, agencies, 'Expert Panels' and other appropriate international agencies to improve information exchange and to broaden the reach of the KP. In order to ensure maximum public transparency, detailed summaries of review visit reports, following the standard template developed by the Working Group on Monitoring, should be prepared in all cases and posted in the public area of the KP web site, consistent with KPCS data publication standards.

¹⁵ Sources: *United Nations Mission in the Democratic Republic of Congo (MONUC): Submission for the 2006 Review of the KPCS* (March 2006); and *Global Witness: Submission for the 2006 Review of the KPCS* (March 2006).

SECTION C TECHNICAL PROVISIONS OF THE SCHEME

Technical Provisions, Problems and Operations of the Scheme

Introduction

The 31 review visits, two review missions and three expert missions carried out by the KP since the inception of the KPCS, as of July 2006, as well as the annual reports submitted by Participants on their implementation of the Scheme in 2003, 2004, and 2005, and Participants responses to the review questionnaire, have generated a great deal of information regarding the implementation of the technical requirements of the Scheme. As well, this information indicates that the minimum requirements of the KPCS are being implemented in the Participant countries at the level of legislation or other acts and regulations, as was to be expected following the screening of all Participants' legislation and regulations carried out by the Participation Committee in July 2003 (and subsequently for all new Applicants).

A review of this material shows that on the whole, the requirements of the KPCS are well understood by Participants.

Technical Provisions

These are generally workable and effective in contributing to the aims of the scheme and this can be attributed to close collaboration between the different stakeholders (governments, industry and civil society) and intense consultations with other regulators during the negotiations that led to the KPCS. That being said, it is clear from the responses to the KPCS Review Questionnaire that several technical provisions and operating procedures still pose problems and challenges to implement.

The Working Group of Diamond Experts was created early in 2003 to address these implementation difficulties and to suggest improvements to existing working methods and administrative procedures, and to provide diamond expert opinion and technical assistance to all participating countries and KPCS Working Groups in order to be able to fully implement the KPCS, or to improve the data collection and reporting capabilities of the importing/exporting national authorities.

The Working Group consists of representatives of Australia, Botswana, Canada, the P.R. China, the European Community, India, Israel, the Russian Federation, South Africa and the World Diamond Council. It is chaired by the World Diamond Council and assisted by South Africa.

A very positive response to the inevitable emergence of technical problems was the establishment by the Working Group of Diamond Experts (WGDE) of a series of technical guidelines (TG). These were created to “patch” problems that required immediate solutions, and were adopted after extensive consultations.

At first, the WGDE was concerned about instances where the legitimate trade in rough diamonds was hindered because of discussions on the whereabouts of the KPC in respect to the shipment, opening of the sealed container by airport security services, the territories covered by participants and other pressing issues. Later, the attention shifted to more complicated matters such as HS classification difficulties and value discrepancies. A great deal of work and energy went into this and partial solutions were obtained amongst others, by suggesting changes to the Explanatory Notes of the HS Classification that have been adopted by the WCO HS Committee in May 2004. Some issues remain, however, and retain WGDE’s attention. Classification difficulties between rough and polished diamonds are being investigated and a possible way forward may be to illustrate these by collecting and disseminating a dedicated photographic library. An important part of the work of the WGDE has been centered on the ‘Harmonisation of Valuation Methodologies’, and this item has been discussed at different Plenary meetings. The work on this topic is ongoing and will, ideally, result in a hierarchic order of valuation methods, the identification of what constitutes an ‘unacceptable value discrepancy’, and remedial procedures to be followed in case of such an occurrence.

An issue that has remained in WGDE’s “workshop” is the issue of Samples and scientific shipments for which no workable solutions have been proposed to date. Especially concerning Samples, already a lot of preparatory work has taken place, and one “Best Practice” has been identified regarding the shipment of diamondiferous core and bulk samples to specialised laboratories. Remaining is the current impossibility to send extracted rough diamonds to countries from which they have been derived, but that are not yet Participants of the KPCS. Similarly, scientific samples of rough diamonds cannot be exchanged with research institutes located in non- Participants. Without opening loopholes to unscrupulous dealers, the KPCS may wish to explore avenues on how to overcome these difficulties in full respect of its goals and mandate. As already briefly introduced during the Moscow Plenary, the WGDE will engage in a discussion with trans-national companies such as banks, insurance and especially international courier companies, in order to investigate potential loopholes that may exist on this trans-national level and consequently to suggest remedies.]

1. Diversity in National Laws and Practice

Implementation of the KPCS relies on national laws, procedures and personnel of Participants, as mandated by the UNGA 55/56(2000) Resolution. A consequence of this 'individualized' approach is the absence of harmonization in the implementation, as Participants have interpreted the KPCS 'working document' in different ways. However, it is not certain that an 'international, harmonized' approach would have yielded fewer discrepancies when translated into national law. An example of this variance in national legislations is demonstrated by the translation of the minimum requirement that a valid and validated KP Certificate must accompany every rough diamond shipment. Some Participants have concluded that this requirement is met when the KP Certificate is packed *inside* the sealed tamper-resistant container. Other Participants have concluded that no verification of the legitimacy of the shipment is possible while in transit and consequently some attach the KPC outside the container while others add the KPC to the commercial documents accompanying the shipment.

Another consequence of differences under national legislations is that there may be a 'legislative' gap between the moment when the rough diamond shipment leaves the exporting Participant and when it arrives at its destination, depending on the scope of jurisdiction under the two legislative systems concerned. This problem was addressed at the Moscow Plenary where trans-national courier companies were invited to participate in the discussion on this issue that is continuing within the WGDE.

2. Definitions

The definitions listed in Section 1 of the KPCS document sometimes conflict with definitions used by other authorities, notably Customs. This is particularly true of the terms *import*, *export*, *transit* and *country of origin*. In the judgement of the Chair of the WGDE this conflict "may weaken the implementation of the Scheme or even jeopardise the legitimate rough diamond trade."

Transit: The KPCS considers *transit* as the physical passing of a shipment of rough diamonds through the geographical territory of a Participant on its way from the exporter to an importer. The definition that most customs services apply is slightly different. When an importer refuses to accept a shipment *before* customs clearance, customs will simply return the shipment to the sender and will consider this a *transit* shipment.

However, when a shipment contains rough diamonds, this may be considered by some Participants to be problematic, as the returned shipment is not now accompanied by a new KP Certificate. Some Participants interpret *import* literally, as stated in KPCS Definitions, as the physical entry into the geographical territory of a Participant. This interpretation requires that when the

goods are returned, they should be covered as an *export* by a new KP Certificate issued by the Participant that is returning the goods. Obviously a pragmatic approach is most cost efficient in these cases, nevertheless, some Participants have systematically blocked returned shipments accompanied only by the KP Certificates that they themselves have issued.

The WGDE suggests that a possible “way forward could consist of adapting the Definitions of the Scheme to match the terms that have been defined by customs (WCO/WTO), or, alternatively, to keep the definitions of the Scheme intact but change their names to avoid confusion with currently used customs definitions.”

There has been some progress made in clarifying other definitions:

Country of Origin: The use of the term ‘country of origin’, but with a different meaning to the same term defined by WTO/WCO/Customs, is a guarantee of confusion. To patch this problem, the WGDE issued Technical Guidelines 7,12 and 15 to address different consequences of the issue. **TG 15** recommends that KP Certificates use ‘country of origin (mining)’. A non-diamond-producing Participant should, therefore, never be recorded as country of origin (mining), only as country of provenance. The term ‘country of origin’ as specified in Section I-Definitions is really about the country of mining. **TG 12** has been issued to recommend filling the space after country of origin (mining) with asterisks when the country of mining of the diamonds is unknown, or when the diamonds are from different mining countries.

Import/Export: There is no definition of ‘exporter’ or ‘importer’ in the KPCS but **TG11** does state that the Exporter listed on the KP Certificate should have an address in the geographical territory of the Participant that issues the KP Certificate. Also an address in the geographical territory of the importing Participant should be provided on the KP Certificate. It is unacceptable to state on a KP Certificate ‘By Passenger’ or similar notation where an individual exports a shipment on his person; an address within the geographical territory of a Participant must be provided to enable follow-up on missing import confirmations and avoid KPCS loopholes such as ‘deviations’.

There is also a possibility of confusion caused by **missing definitions**.

Terms required on the KP Certificate are *importer, exporter, number of parcels, deviations* (the last occurs when shipments of rough diamonds accompanied by a KP Certificate end up in a different Participant than the one mentioned as Importer on the KP Certificate). None of these terms are defined in Section 1-Definitions of the Scheme (import/export is clarified by TG11 – see above). In the case of the term ‘number of parcels’, the issue was identified and addressed at the Gataineau Plenary (2004) where a ‘best practise’ was adopted.

The matter of conflicting definitions and missing definitions is important and is one that must be addressed by the WGDE.

3. Value

From the inception of the KPCS, the issue of value-disagreements has been and continues to be one of the most difficult problems on which the WGDE has had to advise. It has been discussed at every Plenary Meeting. Not surprisingly then, it was repeatedly raised by Participants in responses to the Review Questionnaire, who pointed out that valuation methodologies have not been standardized.

Technical Guideline (TG) 6 states that “the value in \$US on the KP Certificate remains a vital parameter for the successful implementation of the KPCS and therefore reiterates that the mention of the value in \$US on the KP Certificate IS a minimum requirement of the KPCS”. Accordingly, it is very important to resolve this issue. The WGDE is seized of this outstanding technical problem and is currently engaged in an ongoing discussion on ‘Harmonization of Methodologies’.

4. Classification (HS codes)

The apparent lack of consistency within the Scheme to classify rough diamonds using the HS codes has been problematic for some Participants. This may be a consequence of the KPCS being enacted through respective national legislations with a reliance on the KP authorities' interpretation of the HS System. For almost all Participants, the agency responsible for commodity classification issues is customs, which base their classification within the HS System (WCO/WTO).

In cases where classification is at issue any resulting action such as detaining shipments has implications for the relevant Authorities and industry.

In the judgement of the Chair of the WGDE "the value and classification disagreements have become increasingly problematic and are hampering trade." Despite the issuance of TG5 and despite amending the explanatory notes of the HS classification 7102 in May 2004, problems still remain. The WGDE is of the opinion that the way forward lies in collecting and making available a photographic library that documents and visualises the distinction between the different HS codes following the amended Explanatory Notes.

Disagreements over value and classification codes are increasingly problematic and result in hampering the trade in rough diamonds; it is recommended that the highest priority be given to resolving this issue, within the terms of reference of the WGDE.

5. The Kimberley Process Certificate

Section II of the KPCS document sets out the requirements for KP certificates, which must conform to the minimum standards provided in Annex I of the document. Technical guidelines 4, 8 and 9 provide additional requirements, and an Administrative Decision requires a maximum validity of 60 days. The Participation Committee is responsible for assessing the conformity of KP certificates of applicants with these requirements. Participants are in accordance with Section II of the KPCS document responsible for ensuring that their certificates meet the minimum standards of Annex I and for notifying other Participants of the features of their certificates for the purposes of validation.

There are many variations in type, style and duration of validity of KP Certificates, particularly in the area of security features. The KP Certificates of some Participants show minimal security features, whereas other Participants have invested in having a secure, tamper-resistant document with sets of security features. Variations have often led to confusion among authorities attempting to authenticate certificates, have led to delays while additional information was sought, and in some cases have led to the seizure of shipments when KP Certificates differed from the specimens which were on file.

It is recommended that, as an urgent priority, all KP Certificates should meet existing standards. These standards stipulate, among other requirements, that the KP Certificate be valid for a maximum of 60 days. This requirement will be implemented by the Participation Committee in the case of new members and overseen by the WGM for existing members.

Use of the KP Certificate: TG10

Although it is not required, Participants are encouraged to break down shipments with more than one HS code by carat weight/\$US value per HS code classification. As a follow-up to the Moscow Plenary Resolution on Cote d'Ivoire, diamond producing Participants, especially those with artisanal, alluvial productions, should be encouraged to list the quality characteristics of the rough diamonds in the shipment on the reverse of their KP Certificates; this procedure is recommended in Part B, Optional Certificate Elements in Annex I of the KPCS document, as it makes identification of the shipment more certain, and permits more rigorous analysis of data.

Errors in filing in KP certificates

There are some recurrent errors in filling in KP Certificates. Participants sometimes leave blank the 'country of origin (mining)' for shipments that are

mixed origin/unknown origin (mining); instead, they should be filling the space with asterisks.

The consequences of errors in KP Certificates deserve attention, particularly in deciding when it is appropriate to reject a shipment and when it is not. According to **TG 10**, Participants should not impose undue burdens on other Participants, which can arise if Participants return shipments unnecessarily, raising the question of who should pay the resulting costs. Shipments should not be blocked because there is no advance notification (or other optional features on the KP Certificate are absent). Only KP Certificates that do not comply with KPCS requirements should be rejected.

6. Mandatory Import Confirmation

Import confirmation is mandatory. What is optional is the manner in which it is confirmed; accordingly Annex I, para B suggests that the KP Certificate might include a section that could be detached and returned to the exporter to confirm the import. The alternative – or additional – method is by email.

Reports from review visits make it clear that import confirmation is taking place more and more systematically. In order to build on this trend, further consideration could be given to systematising import confirmation.

The information required on the Import Confirmation is: 1. the KP Certificate number; 2. the name of the participant confirming the import; and 3. the date.

Compliance with the mandatory requirement of import confirmation should be strengthened. Accordingly it is recommended that the WGM monitor compliance with this requirement, and if non compliance continues, the matter should be referred to the Participation committee.

a. Who should confirm?

Most Participants delegate this responsibility to their KP Authority or possibly customs. Review visits have discovered that detachable import confirmation parts of issued KP Certificates are returned sometimes bearing only the stamp and signature of private (diamond) companies. This is not adequate. The confirmation notice requires an endorsement by an importing Authority of a Participant to legalize/authenticate the confirmation.

This procedure would become routine if the number of import/export points in a country were limited, thus enabling staff at those control points to become familiar with the required procedures.

b. Advance notice of shipment

Annex II recommendation 21 of the KPCS Document suggests advance notice of shipment be sent. For security reasons this notice should be encrypted, as outlined in TG 10. However, if import confirmation becomes a routine practice, as required, there is less reason for advance notification.

Another approach to mandatory confirmation of imports is to investigate the feasibility of having an **interactive website/database** into which all Participants would enter details of exports, and confirm details of imports. Some members of the WGDE support this approach. Representatives of the industry, on the contrary, are sceptical of this proposal, as it would bring together, in real time, highly sensitive, commercially valuable, confidential information that could become an impediment to the legitimate rough diamond trade.

Such a website/data base would be effective only if it were easy to use, and kept absolutely up-to-date. These requirements would draw on resources that are currently not available to all Participants. In addition, some Participants have difficulty in gaining reliable Internet access and in accessing the already established KPCS websites. These two problems combined militate against the possibility of creating an interactive website/data base in the immediate future.

7. Distinction between Rough Diamonds and Powder: TG 13

No consensus could be reached (within the WGDE) in discriminating between 'stones' belonging to the HS Classification Codes 7102.10 – 7102.21 or 7102.31 and 'dust and powder of diamonds' belonging to HS Classification Code 7105.10. The WGDE has since tried to patch the difficulty by adopting **TG13** limiting the scope of the KPCS to rough diamonds >1mm. Unfortunately, this 'solution' did not yield the results that were expected. The WGDE is currently reviewing the situation.

Accessibility of Technical Guidelines and other Technical Reference Material

There is a repeated and widespread call for a consolidation of all technical guidelines and technical advice in one easily accessible place. This could be in an Annex to the Compilation of Kimberley Process Documents (see recommendation 53).

The consolidated Annex or location on the KP website could include all formal technical guidance – Technical Guidelines, Best Practices, Technical Recommendations in the KPCS document, Administrative Decisions and links to the HS Explanatory Notes, the WTO Valuation Agreement, the WCO and maybe also ISO and perhaps a new section of Frequently Asked Questions (FAQs) and

photographic examples of HS classifications. This technical information should be available in all KP languages.

It is recommended that a consolidated technical guidance annex be created and form part of the Compilation of Kimberley Process Documents.

Operational Problems

Review visits have provided important information as to the efficacy of Participants' systems in place. An assessment of **internal controls** has been a central concern of all review visits to date. Review visit reports highlight both that the kind of controls required vary greatly between Participants (e.g. between producers, traders and polishers), and that different mechanisms are being applied by different Participants.

Review visits have highlighted also that the nature and extent of internal controls remains a major challenge for the KP, for Participants engaged in artisanal-alluvial diamond mining.

Other observations in review visit reports relate more generally to implementation of other KPCS requirements.

1. Lack of Import Procedures

Some diamond producing Participants with very limited imports of rough diamonds have been found not to have proper procedures in place for processing imports of rough diamonds. **It is essential that all Participants have both proper import and export procedures in place, regardless of the volume of imports they deal with.**

2. Illegal Shipments

A small number of Participants, on identifying irregular shipments at import (e.g. incoming shipments without certificates), systematically return these to the sender or country of origin, rather than seizing the diamonds.

A discussion of possible procedures designed to deal with illegal shipments consistent with national legislation in recipient countries, failed to reach consensus.

3. Inadequate Annual Reporting on Internal Controls

Some Participants that have not yet received review visits fail to provide adequate information in their annual reports on the internal controls in place to prevent conflict diamonds from entering the pipeline. Notably they do not provide details on the evidence required for the issuance of a KP certificate. The WGM has requested additional details in the process of its analysis of annual reports, and review visits are another important tool to enable the KP to assess the adequacy of their internal controls.

4. Conflict-diamond-affected Countries

In all these countries substantial challenges remain with regard to implementation of the KPCS minimum requirements including organization of diamond export certification, organization of internal control system, gathering of corresponding statistical data, as well as the traceability of rough diamond production from mine to export.

In many respects these problems stem from the incapacity of some governments to fully control their territories, including diamond mining areas, as well as a lack necessary material and personnel resources.

Weak monitoring of cross-border flows of rough diamonds remain a problem. Capacity constraints on the part of customs and law enforcement, economic (tax) incentives for smuggling and the physical length and porosity of borders remain substantial challenges for curbing smuggling.

Ease of Operation of the KPCS

Most Participants responded that they consider the KPCS to be simple and workable. Some Participants believe that difficulties lie not in the complexity of the procedures but in the lack of capacity of governments, particularly at the provincial level, to implement them. This is especially true when the remit of the government does not cover the entire country.¹⁶

Participants note that some definitions of terms used in the KP differ from those used in other contexts, such as customs agreements. Others point out that the KPCS has made great efforts to ensure consistency with international standards and has contributed to changing those standards, as exemplified by amending the explanatory notes to the HS Classification 7102.

Need for Better Communication

¹⁶ Response to KP Questionnaire from World Bank and DRC (MONUC).

It is rare that Participants are unwilling to try to resolve issues concerning the KPCS with other Participants. More frequent, however, are complaints about questions that receive only late answers or no answer at all. After investigation, it appears that many of these cases are caused by difficulties in communicating with the respondent's KP contact point. This can occur where there are linguistic differences, where there is limited internet access capability, where an official moves on without notifying the KP of their successor, where government departments are reorganised or for other day-to-day reasons.

Participants are encouraged to use the whole range of communication methods to communicate with each other, including by e-mail, fax, telephone and mail.

It is essential to maintain an up-to-date register of KP focal contacts, as well as alternates. This register should continue to be available on the KP web site and could also be circulated annually with the compilation of KP documents. Participants should inform the KP Chair promptly of any change in contacts.

Peer Review Monitoring Mechanism: An Assessment

There is widespread agreement among Participants and Observers (governments, civil society and industry) that the peer review monitoring mechanism has been a great success, although civil society is concerned that it is not penetrating enough, and that timely follow up is often lacking. Over and above the examination of legal instruments and other documentary evidence of implementation, the use of review visits has allowed the KPCS to be sure its requirements are being met effectively. Thus it has functioned as a crucial 'confidence building' tool of the KPCS.

Covering the System

When it was established in November 2003, the objective (as stated by the Plenary decision adopted at Sun City) was for "the largest number of Participants possible to volunteer to receive a review visit" by the time of the KPCS three-year review. Review visits would be voluntary and carried out with the agreement of the host Participant. It is clear that this objective has been achieved.

- Between January 2004 and September 2006, review visits had been carried out to 32 Participants¹⁷; in addition, two non-Participants (Liberia,

¹⁷ United Arab Emirates; Israel; Botswana; Mauritius; Zimbabwe; South Africa; Lesotho; Canada; Democratic Republic of Congo; European Community; Switzerland; India; Sri Lanka; Sierra Leone; Guinea; Russian Federation; United States; Angola; Namibia; Ukraine; Belarus; Armenia; Ghana; Togo; People's Republic of China; Brazil, Guyana; Lebanon; Vietnam; Malaysia; Singapore; Tanzania.

- and Lebanon prior to its joining the KP) had received special expert missions, and two review missions had been carried out (to the Central African Republic and to the Republic of Congo).
- A further nine Participants¹⁸ have invited review visits (implementation of which is scheduled for 2006), and one Participant¹⁹ has invited a follow-up review visit. 42 out of 45 Participants (or 93 per cent) have thus received or invited review visits or review missions.

As of 30 October, 2006, 12 Participants have not yet received review visits: Of those, nine have invited review visits but three have not: Croatia, Indonesia, and Venezuela²⁰. Those three Participants should be encouraged as strongly as possible to invite review visits, and to do so as soon as possible.

The Chair of the WGM confirms that these Participants have been approached and are all considering inviting a review visit.

- All previously conflict diamond affected countries have received review visits; and almost all countries reporting diamond production or trade have had review visits.

Expanding the mandate

In some very specific circumstances, it may be useful for the peer review system to examine patterns of rough diamond trade in or through Participants and non-Participants, where this has a direct bearing on the ability of Participants to implement the provisions of the KPCS. Thus, **in specific circumstances, it may be useful to mandate review visits (or, where applicants are concerned, in conjunction with the approval of the Participation Committee, *ad-hoc* expert missions) explicitly to integrate a regional dimension into review visit activities.**

In cooperation with the Participation Committee, expert missions (carried out on the basis of the standard terms of reference for review visits) could, in principle, be deployed on an *ad hoc* basis, on a recommendation from the Participation Committee that circumstances make such a mission necessary or desirable for applicants applying for participation in the KPCS.

Effectiveness of Review Visits

¹⁸ Norway; Japan; Romania; Australia; Republic of Korea; Thailand; Central African Republic, Bulgaria and Laos. The review visits to Japan and Republic of Korea are scheduled for October 2006.

¹⁹ Guinea.

²⁰ One Participant has not been counted in this list, Côte d'Ivoire, which has been the subject of specific and ongoing monitoring measures since 2004.

Effectiveness was demonstrated in two ways: by considering, first, whether the system had detected the main implementation problems as and where they arose; and second, whether the peer review system had contributed to bringing about tangible improvements with regard to problems identified.

Review visits were able to establish a complete overview of the practices of individual Participants for KPCS implementation. Thailand suggested that the peer review mechanism could detect serious implementation problems only if the Participant being reviewed reported them, but Thailand has not yet had a review.

Participants that have been reviewed, as diverse as Sierra Leone and the EC, have received review visits with openness and provided access to their documentation and the whole range of activities linked to certification. This has made it possible for some review visits to identify implementation issues that would not otherwise have been apparent (in some cases) even to the Participant under review.

That being said, the thoroughness of review visits has varied. Some have gone to great lengths to examine a Participant's ability to verify exports against mining capacity. Others have not. Accordingly, **it is recommended that the report for each review visit state that the team has reviewed internal controls for effective compliance with all KPCS minimum standards, as set out in the KPCS documents, recognizing some procedures may be security sensitive.**

Review visits have played an important role in drawing to the attention of Participants under review the requirements adopted in the KP after its initial implementation (such as technical guidelines and administrative decisions, e.g. on the use of KPC-based data for statistical purposes). **Review teams should continue to identify participant country needs for technical assistance and training, in order to help Participants implement effective internal controls.**

In many cases the constructive interaction between visiting teams and Participants' authorities has helped rectify or improve specific implementation practices. Examples include:

- The adoption of proper import procedures by some (producing) Participants that did not have import procedures in place;
- The training of diamond valuers to enable them to carry out a review visit's recommendation that all imports into a Participant be subjected to a regime of physical inspection;
- The initiation of an investigation by a Participant into suspicious trading activities pursuant to the findings of a review visit.

Compliance

Review visits can support compliance and reinforce the credibility of the KPCS as a whole by responding to emerging reports or information regarding alleged gaps in the internal controls of KP Participant countries. In such instances, a timely review visit or in cases of more serious allegations, specific missions can be crafted to support and encourage compliance.

The case of Brazil provides a good example in this regard. In 2005, Partnership Africa Canada published a report detailing instances of fraud relating to illicit diamond production and exports within Brazil's diamond industry.²¹ This led Brazil's Federal Police to launch an investigation into the country's diamond industry and Brazilian authorities to suspend diamond exports. A May 2006 KP review visit to Brazil (which was scheduled before the release of the second PAC report²² and the subsequent Police investigations) found the country to be in non-compliance of the KPCS. In brief, the KP review visit found shortcomings in the way in which the KPCS is implemented in Brazil, ranging from a lack of training and experience among staff and customs officers to flaws in Brazil's KP Certificate.

It should be noted that Brazil has handled the revelation of irregularities well. On its own accord, Brazil suspended all diamond exports for 2006 well in advance of the KP review visit. The Brazilian authorities were transparent and eager to assist the KP review visit team. Furthermore, they informally stated their

²¹ *The Failure of Good Intentions: Fraud, Theft and Murder in the Brazilian Diamond Industry* (Ottawa: Partnership Africa Canada, May 2005).

²² *Fugitives and Phantoms: The Diamond Exporters of Brazil* (Ottawa: Partnership Africa Canada, March 2006); *Triple Jeopardy – Triplicate Forms and Triple Borders: Controlling Diamond Exports from Guyana* (Ottawa: Partnership Africa Canada, April 2006); and *The Failure of Good Intentions: Fraud, Theft and Murder in the Brazilian Diamond Industry* (Ottawa: Partnership Africa Canada, May 2005).

intention to implement the recommendations contained in the forthcoming *Kimberley Process Review Visit to Brazil Report* and are looking forward to receiving technical assistance as part of the overall effort to become KPCS-compliant. The review visit which took place in the wake of the emergence of the allegations of fraud was scheduled prior to the publication of the second PAC report, Brazil has invited a follow-up review visit, likely to take place in early 2007.

Composition of Teams

The formula for review visits adopted at the Sun City Plenary provided for a roster of experts to be drawn up by the Chair on a recommendation from the (WGM). The Administrative Decision on Peer Review (ADPR) further provides that in deciding on the composition of review visit teams, the Chair “would seek to ensure geographical balance and adequate balance between Participants that are primarily engaged in (i) production, (ii) trading and (iii) processing of rough diamonds”.

Since then, a substantial number of Participants and Observers have nominated experts for inclusion in the roster, which as of July 2006 comprised 97 experts representing Participants, industry and civil society. On the basis of this very positive response, it was possible in all cases for teams to be appointed corresponding to the required criteria. To date, experts from 17 different Participants, and from all major geographical regions represented in the KPCS, have participated in review visits.

Thanks in part to the generous funding by Partnership Africa Canada, one of the civil society groups represented in the KP, it has been possible for a number of experts from developing, artisanal-alluvial producer Participants to participate in review visits and review missions²³. Participation by experts from developing country Participants, and particularly artisanal-alluvial producing Participants, is of great importance because of the crucial role of review visits in disseminating best practices between Participants and in teaching participating experts. However, civil society groups do not have the capacity to continue to fund government and civil society experts to participate in every review visit. **The participation of experts from artisanal-alluvial producer Participants in as many review visits as possible should be continued and if possible further developed, above all in review visits to artisanal-alluvial producer Participants.**

As regards leadership, representatives of eight different Participants (including, for the first time in June 2006, an alluvial producer Participant, Sierra

²³ Specifically, experts from the Central African Republic, Angola, Sierra Leone, the DRC, Guinea, Ghana have participated in a total of 16 review visits.

Leone) have so far led review visits. In order to involve as many Participants as possible, (and bearing in mind the need for adequate expertise), **the KP should seek to further diversify the leadership of review visits.**

The ADPR stipulates that review visits should carry out their work in an “analytical, expert and impartial manner.” In order to further strengthen these safeguards, **the criteria in the Administrative Decision on Peer Review should be expanded to include a provision that experts are required to be impartial and highly professional and should further require members to disclose any potential conflict of interests.**

Follow-up to Review Visits

The Administrative Decision on Peer Review contains only limited provisions for follow-up to a review visit’s findings but makes provision for sending a follow-up review visit where this is deemed “necessary and appropriate”.

The provisions of the ADPR are useful; however, they are likely to be used only in specific cases, notably where there are serious concerns about a Participant’s compliance. The WGM has therefore considered additional mechanisms for ensuring adequate follow-up, and (with the endorsement of the Plenary) these are now being implemented:

As of the 2005 annual reporting exercise, Participants have systematically been requested to provide information in their annual reports on steps taken to follow up on review visit recommendations; most Participants that received review visits in 2004 did provide substantial information on their follow-up to review visit recommendations.

Participants were invited to report orally to a special session of the 2005 Plenary meeting on measures taken to implement review visit recommendations, and a large number of Participants did so. At the time, a small number of Participants did not provide reports to Plenary, and indicated in their annual reports only that the recommendations of review visits were under consideration.

For Participants that have received review visits, the KP has actively encouraged them to meet with other interested Participants, and relevant international donors, to promote proper follow-through on technical assistance in priority areas identified by the visit. Such a process is currently under way in the DRC.

Participants identified by review teams as needing technical assistance or training should communicate their needs to international donors and the coordinator for technical assistance.

It is important that the KP undertake enhanced efforts to ensure that recommendations on improving capacity (particularly in developing-country Participants) actually feed through into the delivery of technical assistance. Until now, this has not generally been the case, although in the DRC, a substantial technical assistance programme for the diamond sector is being developed by a major donor as a direct result of the review visit. While review visits have undoubtedly raised the profile of KP issues with donors, there is need for more focused follow-up with donors on priority areas identified by review visits. At the Moscow Plenary meeting a coordinating mechanism for technical assistance related to KP implementation was created. This mechanism should play a central role in ensuring that where technical assistance needs are identified, every effort is made by the KP to promote effective follow-up by donors.

Donor countries are encouraged to provide technical assistance and training to meet the needs of Participants to implement effective internal controls, as identified by review teams. The Working Group on Peer Review considered issues relating to the resources available for peer review and notably for the participation of experts in recent review visits, on the basis of a submission received from Partnership Africa Canada and Global Witness. The WG agreed in this regard to examine, jointly with the KP coordinator for technical assistance, the possibilities for individual donors to contribute to the travel expenses of experts who would not otherwise be able to participate in review visits.

Review visit teams and Participants hosting review visits are reminded of the existing deadlines for reporting and commenting on review visit findings (30 days after the completion of the visit and 30 days after receipt of the draft report respectively) and are urged to allocate adequate time to that effect. Review visit teams may wish to consider adding one or two days to review visits for preparation of reports. The leader or a designated member of review visit teams should be tasked explicitly with verifying the state of implementation of a review visits recommendations. Any such reports on verification should be maintained in a central register by the WGM which would then become an up-to-date overview of the state of implementation of the review visit recommendations.

Annual reports are an essential tool of the KP for providing information on the state of implementation of the KPCS in a Participant. Accordingly **the requirement to submit an annual report should be maintained, as should the requirement to provide feedback in the report on follow-up to review visits.**

The recommendations listed above under “Follow-up to review visits” should be integrated into the Administrative Decision on Peer Review.

Transparency of Review Visits

At present, the full reports of review visits are placed on the restricted 'Participants Only' section of the KP website, as set out in the ADPR.

It may be useful to actively draw the attention of Participants and Observers to the reports of visits once they have been agreed. This could be done by the Chair circulating a message to all Participants and Observers informing them whenever a report has been completed, with a link to the full report on the website.

It would be useful to collate the main elements relating to the review of individual Participants in their 'Participants Only' section on the KP website; this could include not only, as at present, review visit and annual reports, but a summary of review visit recommendations, information on follow-up, and the assessment of Participants' annual reports.

It is recommended that the Chair circulate a message to all Participants and Observers informing them whenever a report has been completed, with a link to the full report on the website.

Access of review visit reports by parties outside the KP

At present summaries of review visit reports are supposed to be publicly available and are supposed to be placed on the public section of the KP website.

Consideration has been given to making the full report public. Some Participants believe the confidentiality of review visit reports has been crucial in ensuring full cooperation with review visit teams and transparency on the part of Participants under review. Others argue that review visit reports should be made publicly available, and that this would bolster the effectiveness of review visits and the overall credibility of the KPCS.

Two pragmatic steps forward are possible that would address some of the concerns about transparency while also taking into account the view that full publication might be detrimental to the willingness of Participants to share information. First, it has already been agreed that detailed summaries of review visit reports, following a standard template developed by the Working Group on Monitoring, should be placed on the KP's public website. This should be done consistently for all review visit reports. Second, review visit reports should be made available much more consistently to other international organizations with an interest in diamond sector governance; - see recommendation three.

The Future of the Peer Review Mechanism

Since its creation in November 2003, the peer review mechanism has emerged as one of the foundations of the overall effectiveness and credibility of the KPCS. In addition to providing a comprehensive overview of the overall state of implementation of the Scheme, it has enabled the KP to:

- Detect and address some major compliance issues;
- Work with Participants to remedy a range of practical implementation issues; and
- Highlight areas where capacity-building assistance is required.

The Administrative Decision on Peer Review refers to the date of implementation of the 3-year review, as the target date by which the largest number possible of Participants should have invited review visits. Implicitly, therefore, it calls for a decision by the KP on whether, and in what form, the system of review visits is to be continued beyond that date.

In the context of the Third Year Review, Participants must decide whether a second round of review visits to all Participants (in line with the approach of the existing system) is desirable, or whether further review visits should take place only to some Participants identified (e.g. by the Chair, on the recommendation of the Working Group) as requiring particular scrutiny.

The *ad-hoc* Working Group – drawing on advice from the Working Group on Monitoring – believes the best way forward would be for the existing system to be renewed, albeit with some adjustments to ensure that further review visits focus on the issues that require real follow-up in every Participant.

Specifically, the formula used in Sun City – providing that review visits should be invited by the largest number of Participants (which in practice has led to near-universal coverage by the peer review system) – should be renewed. As with the first round of review visits, there should continue to be encouragement from the Chair of the KP, and ‘peer pressure’ from other Participants, for all Participants to invite a further review visit. At the same time, the duration of visits, size of review visit teams and mandate of review visits could be handled with greater flexibility during the second round than during the first round. Moreover, a more generous timeframe could be allowed for meeting the target of covering all Participants with review visits (for example, by aiming for all second-round visits to have taken place within a four-year period rather than within a three-year period as had been the case in the first round). Finally, further review visits should focus more consistently on identifying needs for technical assistance on the part of host Participants.

On the basis of the assessment set out above **it is recommended that:**

The system of peer review, with its main components as established in 2003, should be maintained, recognizing that the resource concerns of some Participants and Observers will need to be addressed.

The system of review visits to Participants should be continued. Relevant provisions in section II of the Administrative Decision on Peer Review should be amended, specifying that in further review visits, attention should be focused on follow-up to issues identified in the first visit.

In case of repeated review visits, the visits should be flexible in size and duration, to ensure scarce resources are used efficiently and are focused where there are substantial implementation issues.

The recommendations listed in this assessment of the Peer Review Monitoring System should be incorporated into a revised Administrative Decision on Peer Review.

Statistical Underpinning of the KPCS: an Assessment

Background

Since the inception of the KPCS there has been a keen understanding of the importance statistics would play in the scheme. Annex III of the Kimberley Process Certification Scheme document outlines the need for statistical information with the statement “that reliable and comparable data on the production and the international trade in rough diamonds are an essential tool for the effective implementation of the Certification Scheme, and particularly for identifying any irregularities or anomalies which could indicate that conflict diamonds are entering the legitimate trade”.

The complexity and difficulties involved in creating and managing a KPCS statistical date base, as well as providing a way forward with the analysis of the data, were enormous and were certainly underestimated at the outset. However huge strides have been made in creating the system and the statistics web site. Much of the credit for this improvement must go to the Government of Canada, which has chaired the Working Group on Statistics (WGS) since March of 2003.

The Current Status of the Work of the WGS

1. The working methods of the WGS have been organized and processes developed and increasingly documented. Participants are offered various options that may be used to submit their requisite statistical information, including direct on-line entry into the database through the internet, via the KP Rough

Diamond Statistics web site. Participants can review and edit their reported data on-line. As well, they can view the verified data submitted by all Participants. Processes are in place for providing assistance to Participants and to address any concerns brought forward by Participants. Canada is offering training on use of the statistics website, and delivered the first workshop at the Gaborone intercessional in June 2006. It is also developing a user manual which will be available in English and French, to build on the existing training CD. Formal and informal follow-up processes are invoked where necessary. Reports and updates are made to the Chair and to the Participation Committee on a systematic basis.

2. Multi-purpose tabulations of the statistical information gathered are regularly returned to Participants and are available on the KP Rough Diamond Statistics web site. These tabulations, updated regularly, are also being provided annually to the Monitoring Working Group to be integrated with each Participant's annual report.

3. The web site itself has matured into an effective tool in the collection and dissemination of statistics.

4. Statistical reviews and analyses are prepared by the WGS on an ongoing basis for all review visits. They provide opportunities to address and resolve statistical issues and assist in addressing any associated technical issues. Identification of situations potentially involving conflict diamonds can be clarified with associated statistical information.

5. The working group makes an annual report to Plenary describing its progress and current issues. As well, the WGS has brought forward a succession of administrative decisions, the latest as adopted by Plenary, recommending the use of trade statistics derived from the KP Certificates as the standard for submission of these data to the KPCS.

6. Effective relations with the KPCS Chair, the Secretariat to the Chair, and other working groups and committees have been established. Open lines of communication have facilitated ongoing cooperation between the groups. In the immediate future the WGS intends to develop stronger working arrangements with the Technical Experts Group.

7. To test the analysis methodology, a comprehensive analysis of the statistical data for 2004 was completed and an analysis of data for 2005 is underway. It is anticipated that this analysis will be completed in time to be presented to the 2006 Plenary in Botswana.

Challenges

Analysis

1. General Analyses

To complete a comprehensive analysis of the statistical database that will identify the presence of conflict diamonds or implementation issues is a task of over-riding concern. The WGS carried out one such analysis of 2004 data on a pilot basis on the basis of an agreed methodology, and building on this, has carried out a fuller analysis of 2005 data. As the Chair of the WGS outlines the problem, "Not only must we complete the analysis but we must regularize it so that it is accomplished at least once a year. We must evolve the methodology of the analysis to focus on the issues at hand and we must present a report on the overall analysis to the Chair and Plenary in a timely and meaningful way. This remains the greatest challenge for the working group. There is widespread agreement among Participants that this is the principal challenge with the statistical underpinning of the KPCS.

The inability of the WGS to complete a comprehensive analysis of the statistical data base until recently (May 2006) has been a cause for concern among Participants. Indeed it has led some Participants to call for the KPCS to create or fund a body or bodies to carry out analysis, monitor and follow-up on statistical non-compliance, manage the statistics web site and report back to the WGS and the Chair of the Kimberley Process - not all of these functions need be carried out by the same body. Others argue that Participants should be realistic about the KPCS's collective capacity to analyze and to act upon results of analysis, given that there are finite human and financial resources. They believe that statistical analysis should focus on situations where there is considered a clear risk of conflict diamonds and where there is a clear unwillingness or inability to comply with minimum standards, including referring the situation to the Participation Committee.

A possible compromise was made by the Chair of the WGS who suggested that some analyses of statistics could be undertaken or led by a body outside the office of the working group. Under this scenario, members of the WGS would review and perhaps contribute to these analyses, and would retain the responsibility for preparing other directed analyses such as, for example, the review visit statistical summaries. Clearly, if an outside organization is tasked to do analytical work, funding needs to be identified to pay for this activity. This proposed solution would considerably lessen the workload of the WGS, which could then concentrate on addressing other remaining statistical challenges. Despite detailed discussion on this issue, no consensus was reached.

As the work of statistical analysis progresses and on an on-going basis, the WGS will review strengths, weaknesses and lessons learned and consider a range of options to enhance the KPCS capacity to prepare statistical analyses.

2. Country Specific Statistical Analyses

The WGS prepares country specific, statistical analyses for review visits, which provide review teams with vital information before and during the visits. There is general agreement that these reports are a very useful tool for the purposes of the review visits. However, at times, the specific country analysis has been completed too late for useful discussion by the review team and Participant.

It is important that the WGS be involved in preparing for review visits, particularly where statistical issues are known to exist and follow-up is required. The timeliness of these reports depends, to some extent, on sufficient notice being provided of upcoming review visits.

It is recommended that the WGS continue to prepare Participant specific analyses for review visits. The WGS should be notified of any upcoming visits four weeks before it is to begin. Subject to that notification, the analyses should be prepared and circulated to the review team at least two weeks before the review visit commences, to allow for discussion among the review team and the Participant.

3. Involvement in Review Visits

A number of WGS members are on the roster of experts for review visits and have participated in review visits, and not only when there are known statistical issues. The practice should continue.

Members of the WGS should participate in review visits particularly when there are known issues with the statistics of the Participant to be reviewed.

Statistical Issues

1. Timely submission of Statistics.

At times Participants have failed to submit timely and complete data to the KPCS, despite the system of notifications and reminders now in place. To address this issue the WGS and the Participation Committee have established a documented process (as of the Moscow Plenary in November 2005) that clearly outlines the procedure and associated timelines used to remind Participants of their responsibility to submit statistical information.

The increasing involvement of the Participation Committee in addressing non-submission issues has led to an improvement in the completeness of the statistical database and in the timeliness of submissions.

2. Data Quality and Accuracy

The quality and accuracy of information provided by Participants on their data submitted and their use of trade data based on KP Certificates must constantly be monitored and, where necessary, questioned. Further, the appropriate use of the date of issuance to define the quarter in which trade occurs must be verified.

In an effort to improve accuracy, within one week after the due date, the WGS publishes preliminary comprehensive tables for all Participants. Each Participant is requested to review its own data and to verify its submissions; to engage in preliminary discussions with their trading partners, as necessary, to resolve apparent discrepancies; and, as a result, to make any necessary corrections. Based on this exercise, final tables are updated and posted on the web site.

3. Valuation Parameter

The statistics on value of production, which are required by Technical Guideline (TG) 6, should continue to be reported. They provide an important indicator of the quality of the diamonds being traded, as well as transactional levels and of orders of magnitude of the sales of rough diamonds.

Communications

Elsewhere in this report, recommendations are made to address the issue of contact with appropriate officials, which hamper reconciliation of trading statistics and efforts to ensure timely submission.

Technical Assistance

The website, Kimberley Process Rough Diamond Statistics, was developed to allow direct input of KPCS statistics directly onto the website. The site also allows Participants to confirm the data submitted, to correct their data when warranted, to view verified data for all Participants and to view statistical tabulations for all Participants from 2003 onward. When problems or errors using the website occur, the office of the Chair of the Working Group on Statistics is available for advice and, if required, to provide remedial action.

Copies of the website-tutorial CD may be obtained from the Office of the Chair of the Working Group on Statistics. It provides instruction on how to access the database, statistical tables, and global tables on the web site. Accordingly it is now possible for all Participants to view and use KPCS statistics, both in raw and aggregated form. There is also a 'help' feature on the web site and Participants are offered technical assistance at every plenary.

A user manual on how to navigate and use the KP Rough Diamond Statistics web site is being prepared and will be published and distributed in the near future.

Transparency and Publication

The Moscow Plenary directed the WGS to study various options for the publication of statistics. Work is progressing on this issue and, building on discussions at the 2006 Intersessional meeting, recommendations will be put to the Plenary in Botswana. Resolution of this issue will depend on balancing the need for transparency with the requirement to respect the commercially sensitive nature of certain data collected.

Meanwhile, the WGS recommends that, once steps necessary to protect commercially sensitive data are introduced, all data proven to be of satisfactory quality be published.

The KPCS should enhance transparency through publication of KPCS data wherever appropriate. Building on findings to be presented by the WGS at the 2006 plenary, it is recommended that the WGS devise a formula for the release of basic data as soon as possible. It is also recommended that the current debate about the current quality of KP statistics should not affect the formula for the release of statistical data but rather should be redirected into the ongoing effort to address important quality issues appearing in the published (and unpublished) statistical summaries.

Web Site

Although it seems attractive to investigate the feasibility of developing an 'internet portal' web site data base for the communication and interchange of transaction information and/or KP certificate information between Participants, at this point it appears impossible to deal satisfactorily with several major concerns, including:

- the current limited capability, technical infrastructure and capacity of some Participants;

- the requirement to have up-to-date, compatible computer software and technical expertise to use and maintain such a web site;
- the very sensitive issues of security for commercial data;
- the thorny question of financial and human resources to create, maintain and fund such a web site.

If such a web site is created, the WGS would recommend that it NOT be placed under its aegis but be independently funded.

The current web site Kimberley Process Rough Diamond Statistics should be maintained outside the WGS and preferably in concert with the main Kimberley Process site. These recommendations by the WGS are based largely on resource constraints.

Resources

The financial and human resources required to run a working group of the importance of the WGS are considerable and have exceeded all expectations. When Canada steps down as Chair of this working group, the identification of a new chair willing to undertake this role and the subsequent transfer of responsibilities may prove to be a challenge. However, the allocation of certain functions to other organizations independent of the office of the chair of the working group may reduce resource requirements and may ultimately facilitate the acceptance of the role of Chair by another Participant.

Some Participants argue that thought should be given to creating a permanent body or bodies outside of the KPCS to manage functions such as the maintenance of the website and the analysis of statistics. Although Canada has assumed these responsibilities at present, the Chair of the WGS is of the opinion that the option to explore re-allocation of the preparation of certain statistical analyses will need to be re-visited in the future. This position should be examined more thoroughly as the work of statistical analysis progresses. Similarly, the statistics web site (containing confidential information) is maintained by the Chair of the WGS; an arrangement that may be unsustainable in the long term.

The WGS should study and clarify the issue of maintenance of the KP Rough Diamond Statistics web site.

Internal Controls

While the main KPCS document requires Participants to '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', and includes certain recommendations in its Annex II, there is little detail in the document on standards of effective internal controls. For alluvial artisanal producers, the Moscow declaration on improving internal controls has gone a considerable way towards elucidating standards. However, there is as yet no recommendation or decision on what effective controls in other types of producers, trading or polishing/cutting Participants could look like.

Definition of standards and controls is only one part of the challenge. The bigger concern is how to ensure effective implementation of those controls on the ground. There is consensus among Participants and observers that this is a major challenge for the KPCS. There is no doubt that internal controls go to the very heart of the KPCS - the pledge of provenance that appears on the KP Certificate itself requires traceability. Others point out that the effective functioning of the scheme relies upon proper implementation in producing countries; it is the control over production activities (whether industrial or artisanal), as well as the first export that are decisive for ensuring a conflict free diamond trade.

Internal controls are crucial in all Participants if conflict diamonds, like those in Cote d'Ivoire, are to be prevented from entering the legitimate trade beyond the producing country. Speaking on behalf of the industry, the World Diamond Council said, "the key to success of the KPCS is in the very important movement of rough diamonds to the point of first export. It is in this area that the work of the KPCS must be concentrated in the period going forward. No more important area of improvement can be identified." As well, some Participants believe it is necessary to enhance the effectiveness of internal controls in the trading centres.

The assessment of internal controls established by Participants, in line with the requirements of the KPCS, has been a central concern of all review visits carried out to date. The reports of these visits thus yield a significant amount of information regarding the effectiveness or otherwise of internal controls.

The reasons for weak or non-existent controls are not new and are well known. They include lack of capacity, technical shortcomings and poor governance. Some governments lack political will. Borders are porous, and there is little regional cooperation to stop illicit, cross-border trading. Controls in trading centres are spotty, providing possible opportunities for conflict diamonds to be inserted into the legal trade.

The real issue facing the KPCS is how to develop appropriate, workable standards in greater detail than is currently found in the KPCS document, and how best to ensure their effective implementation by Participants.

Artisanal-Alluvial Producers

Peer review visits have highlighted that the nature and extent of internal controls in artisanal-alluvial producing Participants remains a major challenge for the KP as a whole. Poor or badly enforced internal controls are most evident in countries where alluvial diamonds are produced by artisanal miners, outside the formal sector. Countries vulnerable to conflict diamonds in the first place are often the least able to adopt and enforce strong control measures. Many studies and reports of the KP sub-groups on artisanal-alluvial production have shown this to be the case.

The 2004 Gataineau Plenary Meeting of the KP mandated the WGM to establish an *ad hoc* sub-group to address the challenges facing artisanal-alluvial producers and to promote the exchange of best practices. That sub-group submitted a detailed report to the Moscow Plenary of 2005, which outlined the challenges facing artisanal-alluvial producers, presented an overview of best practices implemented by a variety of alluvial producers and set out concrete ways in which further progress could be made towards tracing alluvial diamond production.

For Participants with artisanal-alluvial production the report included recommendations on: ensuring traceability of production from mine to export; regulating artisanal diamond mining and the trade in artisanal-alluvial diamonds; tackling illicit cross border trade; and encouraging artisanal miners to move into the formal economy. It also included recommendations for other Participants and Donors to assist in the implementation of systems and training for artisanal production. In response to this report, the Moscow Plenary meeting adopted a Declaration on enhancing internal controls in artisanal-alluvial producers, which sets out as recommendations many of the best practices identified in the report of the sub—group.

In parallel with the Review of the KPCS an additional list of internal control standards for all Participants will be prepared complementary to the recommendations contained in Annex II to the basic KPCS document. Key recommendations from the Moscow declaration on improving internal controls over artisanal-alluvial diamond mining should be integrated into this list. Implementation of the measures set out in it should be promoted as part of the peer review system. Review visits should be mandated in a revised Administrative Decision on Peer Review to assess specifically whether Participants have effective measures in place, on the basis of the

measures set out in such an additional list of internal controls. Applicants for participation in the KPCS should be invited to take into account, while designing national internal control measures, both the mandatory and the optional KPCS requirements indicated in Annex II and in the additional list of internal controls.

Review visits to artisanal-alluvial producer Participants have highlighted the importance of providing technical assistance to enable Participants to develop effective internal controls. **Donors should provide information on assistance efforts to the coordinator on technical assistance, in order to share expertise and prevent duplication of effort.**

To ensure follow-up of these recommendations, the Moscow Plenary tasked the sub-group, through the Chair of the WGM, to report to the 2006 Plenary on the implementation of the Moscow Declaration and, in the meantime, to provide four-monthly interim reports. It also called for Participants to include in their annual reports details of the steps they had taken voluntarily to implement the Declaration.

The report of the sub-group on alluvial production and the Moscow Declaration on alluvial production have proved the sub-group's usefulness as a forum for the exchange of information and best practices among artisanal-alluvial producers. It should be strongly encouraged to play an active role in promoting implementation of the recommendations of its report.

The sub-group on alluvial production should be strongly encouraged to play an active role in promoting and monitoring the implementation of the recommendations of the declaration.

Some Participants that are trading, polishing and manufacturing centers have relied on 'chain of warranties' and 'best practice principles' as internal controls; they are now calling for internal controls to be standardized among all Participants depending on their category. Other Participants that are latecomers to the KPCS are looking for direction in establishing their internal controls.

Industry Self Regulation

A number of Participants believe that industry self-regulation is making a significant contribution to the establishment of effective internal controls. Others argue that government monitoring and verification of industry compliance should be made an explicit minimum requirement of the scheme and treated equally to other obligations such as statistical submission. They call for the peer monitoring system to incorporate as an integral part of its review an evaluation of how a Participant government is monitoring and verifying industry compliance. They cite the recent arrests in Brazil, following the exposure by Partnership Africa Canada of lack of internal controls, as an example of the need for effective government vigilance.

The EC has an extensive system of industry self-regulation in place based on industry self-regulating bodies that have been recognized by the EC authorities. The system is based on regular audits by independent auditors of members of each self-regulating body, and operates under the ultimate responsibility of the public authorities. This system is subject to spot checks by the Community authorities. In return for compliance with these requirements, members of self-regulation bodies benefit from ‘fast track’ access to KP certificates.

Other Participants, particularly those with major diamond trading centers, might consider a similar system of self-regulation as a way of enhancing internal controls.

In the Russian Federation a complex monitoring and recording system of operations with rough diamonds is carried out within the framework of state control. This is done both in mining and in sales at the external and internal markets, and also in processing and sale of polished diamonds. This system guarantees full compliance with the requirements of the KPCS.

Participant governments retain responsibility for overall implementation of industry self-regulation within their territories – and government oversight consistent with national legislation is one way to ensure ‘teeth’ for such schemes. There are some examples of how governments can monitor and verify industry compliance with the self-regulation provisions of the Kimberley Process. Also, Participants are moving increasingly to ensure that industry self-regulation is maintained under the auspices of government, where appropriate and consistent with national law. Botswana’s 2003 Diamond Cutting Act is an example of how governments can effectively expand oversight and increase transparency. The law stipulates monthly submission of records regarding purchases of rough gems, and, using agreed-upon parameters of loss, requires reconciliation of figures with sales and residuals. The results can be readily used by auditors to check KPCS compliance.

The compilation of internal controls will make recommendations on effective implementation of industry self-regulation schemes within Participants.

Controls on trading, cutting and polishing

When the KPCS was initiated, the primary emphasis was on the international trade in conflict diamonds. No thought was given to the possibility that conflict diamonds might be concealed within a producer country by moving them straight from the mine to a polishing factory, thus avoiding all formal KPCS

internal control requirements. The new compendium of internal controls should address this problem.

The WGM should identify any loopholes in the implementation of the KPCS in trading, cutting and polishing centres and make recommendations to address them as needed, in accordance with its mandate.

Standards and Guidance for implementation of effective controls

In the original KPCS Document, Section IV 'Internal Controls', clause (f), Participants seeking guidance on additional internal controls are referred to Annex II of the same document, where "further options and recommendations for internal controls" are elaborated.

A number of Participants are of the opinion that the recommendations set out in Annex II, which were compiled in 2002, no longer reflect current best practices as regards internal controls and can be added to. Given that the strengthening of internal controls has emerged as a crucial issue for the review, it would therefore be useful to draw up a new compendium of internal control measures. This could draw on a variety of sources – such as the Moscow Declaration on internal controls in artisanal-alluvial producers; and any additional best practices put forward by Participants and Observers or identified by the ad-hoc Working Group.

Every effort should be made by the KP to ensure that such an additional list of internal control measures is progressively implemented by Participants. To this end, further review visits could be tasked specifically with assessing whether a given Participant is implementing key measures identified in the additional list of internal controls.

SECTION D ORGANIZATION AND WORKING METHODS

Structures and Operational Methods

Implementation of KPCS requirements is carried out by Participants under national law. The duties of the Chair, and the working bodies of the Kimberley Process, have been allocated by consensual decisions of Plenary to Participants and Observers volunteering for such roles.

Working Methods

In addressing the effectiveness and efficiency of the overall working methods of the Kimberley Process, the benefits and drawbacks of flexibility and responsiveness must be weighed against those of firm, well-understood rules and guidelines. The *ad-hoc* elements of the working methods of the KP and among its Participants, Observers, and Working Groups have, on occasion, resulted in hastily drafted administrative decisions during the Plenary meetings; however, they have provided the necessary speed to deal with issues as they arise.

With that said, it is important to consolidate the decisions of past KP Plenary meetings. Participants and Observers have noted that it has become increasingly difficult to keep track of and find documents relating to the KPCS.

The basic KPCS document and all past KPCS administrative decisions technical guidelines, best practices, and other decisions of Plenary and other addenda should be incorporated into a 'Compilation of Kimberley Process Documents'. The consolidated technical guidance annex recommended elsewhere in this Review, should be included in this compilation. It should be a clear and concise reference guide, with a Table of Contents at the beginning and an Index at the end. This Compilation should be maintained on the public web site.

Work on the 'Compilation of Kimberley Process Documents' should begin immediately after the conclusion of the Botswana Plenary and include the KP administrative decisions and other addenda from the 2006 meetings.²⁴ In subsequent years, the Compilation should be updated immediately after the KP Plenary, with a completion date of December 31 of that year.²⁵

²⁴ The first 'Compilation of Kimberley Process Documents' should be completed by 31 December 2006.

²⁵ For example, the first 'Compilation of Kimberley Process Documents' would be known as the '2006 version', the following year's edition would be known as the '2007 version', and so on.

The Chair of the Kimberley Process

The position of Chair of the KP is essential to its operation. The Chair²⁶ (which rotates each year among KP Participant countries) oversees the various operations of the KP. The Chair's duties are extensive (and may be expanded as requested), and range: from hosting, organizing, and preparing the agenda for the annual Intersessional and Plenary meetings; to communicating regularly with Participants, Observers, Chairs of the Working Groups, prospective participants, and others on KP matters; to retaining and circulating KP documents and addenda.

Thus far, the KP has enjoyed active and effective Chairs. The Chair's term was not formalized until the 2003 Plenary, when it was agreed at one year. There has been discussion ever since on the appropriate length of the term of the Chair position. Currently, there is little appetite for expanding the Chair's term and it is recognized that chairing the KP requires a substantial financial and political commitment²⁷. It has been suggested that an extended tenure could promote overall continuity in the operative capacity of the Chair, allowing each Chair a longer period of effective functioning before they had to allocate valuable time and resources to transferring the Chair. An extended term would also give the Vice-Chair more time to familiarize itself with the duties and responsibilities of chairing the KP. This issue was discussed, but no consensus was reached.

Currently, the KP Chair is also responsible for the administration of the KP secretariat during its term of office. This principally involves organization of the intersessions and Plenary meetings; circulation of documents; correspondence; and maintenance of the KP website. Recommendations made elsewhere in this report address improvements to the website, the dissemination and maintenance of KPCS documents and contact points in Participants. There is broad support for this continued flexible arrangement which enables burden sharing among Participants and allows focus on the KPCS' primary objectives.

As the KP grows, possibly becoming more detailed and increasingly complex, the position of Chair may require additional operational and administrative support. It has also been mentioned by some Participants and Observers that the KP requires a central repository for key documents and files.

²⁶ The Chair's administrative functions are carried out by a non-permanent Secretariat that is staffed by the Chair's government.

²⁷ When a prospective Participant puts its name forward for possible nomination as KP Chair, it should realize that the financial cost to Canada was more than US\$ 250,000 to fund the Chair position for the 2004 term -- a sum that does not include the allocation of full time staff (of three in this case) that are paid by the chairing country.

Some Participants have expressed interest in a dedicated, funded, administrative body to work in close collaboration with the KP Chair to support the implementation of the KPCS. Other Participants and Observers are either wary of the creation of a large, formal international organization that would replace the KP, or are satisfied with the *status quo*. International organizations tend to be highly bureaucratic, which hinders the ability to react swiftly to problems and issues as they arise. Also, it is unclear how such bodies would be funded.

The Kimberley Process Plenary

The annual KP Plenary meetings have been effective and efficient, which reflects the dedication and initiative of each Chair and staff.

Although the KP 'Rules of Procedure' states clearly that the KP Chair must circulate the provisional agenda for the Plenary at least four weeks in advance, and that documentation concerning any agenda item must be circulated at least three weeks in advance to all Participants and Observers, this has not always been observed in practice.

The deadlines for the circulation of the provisional agenda for the KP Plenary and the documentation for agenda items from Working Groups should be rigorously maintained. This would allow Participants and Observers adequate time to prepare for the Plenary.

The KP Working Groups

In general, the Working Groups have enjoyed effective working relations among themselves, with successive Chairs and between working groups. They have resulted in diversified leadership of the KP and burden sharing, and enabled the KP to draw on the different talents and expertise of the working group members. It can be difficult for those who are not working group members to be aware of all the activities of the Working Groups – Chairs should be reminded of the need to place minutes of teleconferences and meetings on the KPCS website. All decisions of the KPCS are of course taken by Plenary not by Working Groups and the suggested compilation of KPCS decisions should go a long way towards making it easier to follow recommendations and requirements. Some Participants, often representing major diamond producing, trading or polishing countries, are members of several or all the working groups whilst many Participants are only represented in the sub-group on alluvial production, or not at all.

Within each Working Group²⁸, it has become apparent that some members are relatively inactive. As a result, the more active members of each Group expend a disproportionate amount of time and resources. This is burdensome for the more active members, and particularly the Chair.

It is expected that each member of a Working Group will 'pull its weight' in sharing the operational workload. At the request of the Working Group Chair, each member should provide a rough estimate of their contribution to the operation of their group. The estimate may include financial contributions, personnel hours, participation on the drafting of various documents, administrative functions, and other outputs.

In the context of the Third Year Review, some Participants have proposed a system of rotating Participant members in and out of each Working Group on a regular basis. Specifically, two members of each Working Group would rotate out and two Participants would rotate in, either on an annual or a biennial basis.

There would be advantages to diversifying the composition of the Working Groups and relieving some of the burden on current members. At least one Participant has expressed frustration at being 'left off' the present set of Working Group rosters, where the major KP decisions are prepared.

Although the present roster of Working Group Chairs has done an admirable job, it would be desirable to have rotation too. Some respondents have proposed the creation of an Assistant Chair position for those Working Groups which do not have one, who could share some of the WG Chair's workload.

The sub-group on Alluvial Production was set up under the aegis of the Working Group on Monitoring to consider the challenges facing artisanal-alluvial producers. The sub-group has proved its usefulness but further thought should be given to its future and modalities to mainstream the outcomes of the sub-group's work into the work of existing working groups.

The Committee on Rules and Procedures is requested to examine proposals for improving procedures relating to membership and chairmanship of working groups and committees and to present proposals to Plenary 2007. The Committee should consult with all other KPCS standing bodies in this regard and is encouraged to consider, *inter alia*, procedures for electing or designating the KP and WG Chairs, proposals

²⁸ The four main Kimberley Process Working Groups are: Working Group on Statistics, Working Group of Diamond Experts, Working Group on Monitoring, and the Participation Committee. The focus of this section is on these four main Working Groups with only tangential reference to other working bodies (e.g., Sub-Group on Alluvial Production of the Working Group on Monitoring, the *ad hoc* Working Group on the Review of the KPCS, the Working Group on Rules and Procedures and the Selection Committee..

for rotating membership, the position of WG Assistant Chair, the future of the sub-group on Alluvial Production and modalities to mainstream the outcomes of the sub-group's work into the work of existing working groups. The committee is further instructed to explore limiting KP participants to chairing only one such body between KP Plenary meetings.

Physical meetings twice-per-year (e.g., Intersessional and Plenary), electronic communications, and teleconferences have served the Working Groups and Committees well as cost-effective and rapid means of fulfilling respective mandates. However, some Participants have failed to provide up-to-date contact information following administrative, legislative, and/or personnel changes within their government agencies. These omissions hinder effective communication. This is addressed by recommendation 10.

Some members of the various Working Groups have noted that time-zone differences have made some teleconferences difficult to plan and execute. This is a valid concern, which is difficult to remedy. Teleconferencing has proven to be an inexpensive and efficient means of operating within the KP.

A Global, Inclusive Membership

The KPCS has remained open on a global, non-discriminatory basis to all countries and regional economic integration organizations willing and able to fulfil its requirements. Membership now stands at some 46 Participants, or 70 countries (the 25 EU Member States being represented by the EC as a Participant). These comprise the vast majority of all states interested in the trade in rough diamonds, including small and larger alluvial producers, industrial producers and trading and polishing/cutting centres. As well, in the role of active observers, the diamond trade is represented by the World Diamond Council (WDC) and civil society by Global Witness and Partnership Africa Canada (PAC). A variety of international organizations participate on an *ad hoc* basis.

Participation Committee

The Participation Committee was established in the early days of the KPCS at the Johannesburg Plenary of 2003. It is responsible for assessing whether or not a Participant is in compliance with the minimum standards of the KPCS. As such it is the body that decides who can join the KPCS, and who should be expelled for non-compliance. Its terms of reference detail its importance to the Scheme. They were revised at the Gatineau Plenary of 2004, and amplified again at the Moscow Plenary of 2005.

The Participation Committee itself is broadly representative, and includes both civil society and industry Observers, and is required by its terms of

reference to have appropriate geographical balance and the necessary expertise. It is Chaired for a one year term by the former KP Chair. Its membership includes the Vice Chair of the KP. Unlike other Working Groups, it does not hold regular teleconferences, but rather acts through teleconference and email when it is seized of issues, whether new applications, referrals from the WGS for statistical non-submission, or other matters.

Application

Application for membership in the KPCS is the purview of the Participation Committee (PC).

The Terms of Reference of the PC require that it consider applications for membership in an expeditious manner (within 30 days), and this has generally been followed. There is often a considerable period of informal dialogue with applicants. At that time the PC should set out clearly the basis on which further inquiry is to be made, such as through expert missions or provision of additional information or studies. Also this period of dialogue should be used to make the applicant aware of the developments in KPCS rules and practices since the original KPCS document (eg relevant Administrative Decisions; Technical Guidelines; Best Practices; as well as the nuts and bolts of statistical submissions). As has been recommended elsewhere in this Review, this can be achieved simply by ensuring that these are all available on the public section of the KPCS website. The terms of reference of the PC and its internal guidelines for statistical non-submission should also be posted with these documents.

In addition, an important task of the Participation Committee is to engage, as widely as possible, with countries which deal with rough diamonds, in an effort to convince them to join the KP. In this area the Participation Committee's responsibilities are proactive, initiating correspondence with potential Participants and clarifying the Certification Scheme requirements to them.

The ad hoc working group believes that assessment of new members' applications should be made not only on the basis of documents, but also on the findings of expert missions, as was the case for Lebanon. These expert missions should assess the applicant's capacity to effectively implement the KPCS and, where appropriate, review the established systems of internal control and production capacity, particularly for countries at risk of conflict diamond trading.

Also it is suggested that the past history of new applicants be closely scrutinized to ensure that there has been no previous involvement with conflict diamonds and, if there were, that appropriate measures are in place to avoid a recurrence.

Applications for membership in the KPCS should be judged not only on paper credentials but also on the reports of expert missions sent

specifically to assess an applicant's capacity to implement the KPCS minimum requirements, where appropriate.

Also applicants should be made aware of the developments in KPCS rules and practices since the original KPCS document.

Compliance Issues

Compliance means that Participants adhere to the minimum standards of the KPCS²⁹.

The Participation Committee, in accordance with its terms of reference, must consider any relevant information submitted to it by the Working Group on Monitoring regarding compliance by a Participant. It then determines whether, in its view, the Participant in question remains able and willing to meet the minimum requirements of the KPCS. If the Participation Committee finds that the Participant in question continues to meet the minimum requirements of the KPCS, then it has to inform the KP Chair, the WG on Monitoring, and the Participant of that decision. If the Participation Committee finds that the Participant no longer meets the minimum requirements, it must notify the KP Chair in writing of the reasons for its conclusion (and may include a set of recommendations).

In order to assist the Participation Committee further in its assessment of an applicant's ability to meet the KPCS compliance standards, **the Participation Committee should draw up a list of questions on the objectives of the applicant in joining the KPCS, as well as listing the tasks required and mandatory documents and data to be submitted.**

Assessment of Work of Participation Committee

By 2002, 58 countries had stated a desire to become KP Participants. It was understood, following the November 2002 Interlaken meeting, that in order for these countries to become full-fledged Participants, they would have to meet the minimum standards as set out in the KPCS by January 2003.

At the beginning of 2003, however, it became apparent that many countries had yet to meet these minimum standards. A tolerance period was enacted, allowing prospective members an additional six months to comply. By 31 July 2003, 20 prospective members had yet to meet the prescribed set of KPCS minimum standards and were therefore removed from the list of KP ³⁰ Participants.

²⁹ KPCS minimum standards are defined in Sections II, III, IV, and V, and Annexes I, II, and III to the KPCS document.

This early round of expulsions from the KP provided the first example of the 'teeth' of the KPCS. Several countries from this initial round of expulsions were subsequently re-admitted to the KPCS, including Brazil, Czech Republic³¹, Ghana, Malaysia, Norway, Togo, and Vietnam.

Lebanon became a full-fledged Participant along with 38 other countries in July 2003. However, Lebanon's legislative changes that would enable it to adhere to the KPCS had not actually been signed into law. The KP Secretariat did not discover this oversight for several months. In April 2004, Lebanon was finally removed for non-compliance. It was then re-admitted in September 2005 once its national legislation was signed into law, thereby coming into compliance with KPCS provisions.

Another early test of KPCS compliance was the case of the Central African Republic. Following an unconstitutional change of government in March 2003, the Central African Republic invited the KP to send a review mission to the country to investigate its adherence to the KPCS. The KP Chair decided to temporarily suspend the Central African Republic and consider its invitation during the April 2003 Johannesburg Plenary meetings. At that meeting it was decided that the country would be reviewed and a KP review mission would be sent to the Central African Republic in June of that year. The KP review mission found that the Central African Republic was adhering to the minimum standards of the KPCS, which led to the country's re-instatement as a Participant shortly thereafter.

Once again, in 2004 the credibility of the KPCS was challenged by the improper issuance of Kimberley Process certificates by the Republic of Congo. The issuance of these certificates, which covered the export of 5.2 million carats of rough diamonds in the absence of visible production capacity, undermined the credibility of the Scheme, as it was a compliance shortcoming in a conflict affected region. In particular, this situation affected the integrity of the Kimberley Process certificate itself, which is the keystone of the KPCS. A KP review mission confirmed this and found that the Republic of Congo was in major non-compliance of the KPCS. A month later, on 9 July 2004, the Republic of Congo was removed from the list of Participants.

The removal of the Republic of Congo from the list of Participants received broad attention and served to enhance the reputation of the scheme by demonstrating its ability to recognize problems and address them in a transparent and decisive manner. Moreover, removing this problem served to reduce incentives for smuggling and enhance the ability of the neighbouring

³⁰ Four Participants have since ceased being individual members of the KPCS due to their accession to the European Union.

³¹ Czech Republic is one of the aforementioned four former Participants that ceased being an individual member of the KPCS due to its accession to the European Union.

Democratic Republic of Congo to control the exports of rough diamonds produced on its territory.

Statistical Non-Compliance

The collection and analysis of statistics is an important tool in KP efforts to uncover sources and flows of conflict diamonds and illicit diamonds. Nonetheless, the issue of statistical non-compliance has been particularly challenging for the KP, as discussed above

Although much progress on the issue of statistical non-compliance has been made since 2003, several Participants continue to submit their statistical reports well past the established due dates, often after much prodding by the KP Chair and the Chair of the Working Group on Statistics. As a result, the KPCS has taken steps to clarify what it means for a Participant to be in 'statistical non-compliance'. The Participation Committee developed specific guidelines together with the Working Group on Statistics to deal with the issue of statistical non-reporting, in recognition of the importance of the collection and analysis of statistics as a tool in KP efforts to uncover sources and flows of conflict diamonds and illicit diamonds. These procedures were agreed at the Moscow Plenary since then the timeliness of statistical reporting has been much improved.

Dispute Resolution and Compliance Issues

In the course of organizational interaction, disputes are inevitable. It is therefore important to have a fair and transparent mechanism through which disputes may be resolved in an equitable manner.

According to Section VI, Paragraph 16, disputes are to be communicated to the KP Chair, "who is to inform all Participants without delay about the said concern and enter into dialogue on how to address it". The KP Chair also informs relevant Observers about the dispute or concern, and Participants and Observers are expected to treat the matter with strict confidentiality. The KP Chair is responsible for mediating disputes, whether procedural or substantive in nature. There has so far been one occasion on which the formal provisions of the KP for dispute resolution have been invoked. These led ultimately to the removal of a Participant. By general consensus, this instance is perceived to have strengthened the KPCS by showing it has teeth. To date, all other disputes have been handled informally by the Chair or by KP working groups within the terms of their mandate.

Exclusion from the Scheme should only be considered in the most serious cases of non-compliance, where the maintenance of a Participant inside the KPCS would seriously jeopardize the integrity of the Scheme itself. If possible, the KP should avoid a scenario whereby a significant proportion of production or

trade is excluded from the KPCS and a ‘parallel trading circuit’ is established outside the KPCS. This, unfortunately, may be the situation in the case of the Brazil, discussed below.

The requirement for a fully delineated suspension mechanism which applied to all Participants and which included criteria and procedures for readmission was discussed. No consensus was achieved on this issue.

Transparency

The Kimberley Process strives to be transparent. However, it is concerned to balance transparency with necessary confidentiality, as for example, security requirements required when dealing with politically sensitive and/or commercially valuable information relating to the trade in rough diamonds, or information that is *sub-judice*. In its outreach to the public, the KP’s principal communication tool is its general KP web site, where it seeks to balance these concerns.

Web sites

The KP has two web sites: the first, the KP Rough Diamonds Statistics website and the second, the Kimberley Process general web site.

The KP Rough Diamond Statistics web site

This web site is an internal tool for the collection of statistics and other related information relating to the trade in rough diamonds. It is operated, maintained and paid for by the Chair of the Working Group on Statistics (Canada). It is for internal KP use only and has access by password. But the home page has an active “contact us” outlet. It is accessed through the general KP web site

Elsewhere in this Review, in the section dealing with the KP’s statistical underpinning, two recommendations relate to increased transparency:

- the first recommends that Participants which are late in submitting the required statistics should be listed on the KP web site. This action is intended to embarrass Participants into a more timely submission of required information. It also provides greater information within the Scheme on the performance of other members of the KPCS;
- the second recommendation calls for the publication of all KPCS tabulations of satisfactory quality, once steps to protect commercially sensitive data are introduced. This information could be published on the Statistics web site in an area to be accessed by the public, or made available through a link to the general KP web site.

The Kimberley Process web site.

The responsibility to operate and maintain this site moves from KP Chair to KP Chair.

The site has both a members' only section and a public section. The public section includes information on the background of the KP, its structure, and selected documents. Critics claim, correctly, that it does not include all key KP documents, such as national legislation relating to the KP, or annual reports or the full peer review reports, only summaries of those reports; that documents are not posted consistently or in a timely fashion; and that there is no obvious point of contact listed to request further information. They have suggested also that the website could benefit from some reorganization, listing information in reverse chronological order so that information on most recent developments appears first.

Some of these concerns are dealt with by recommendations in other sections of this Review:

- in several sections it is recommended that lists of contacts and officials in Participants and in working groups be posted publicly;
- in the section dealing with KPCS working methods, it is recommended that the basic documents of the KPCS be compiled and posted publicly;
- the section on Monitoring includes a recommendation which suggests a broader distribution of the peer review visits to include international organizations with an interest in the diamond sector;
- as well, the Monitoring section recommends that, in order to ensure a maximum of public transparency of the peer review process, detailed summaries of review visit reports, following the standard template developed by the Working Group on Monitoring, should be prepared in all cases.

As well, the KPCS should make available on the public site all documents concerning the Scheme that do not have confidentiality implications.

In addition, the "contact us" function should link the public to contacts who can provide additional information on a range of KPCS material.

A search function should also be added to the website

Future information posted to the website should be listed in reverse chronological order.

The three technical points above are drawn to the attention of the Manager of the Kimberley Process web site.

Role of Observers

In the Kimberley Process Certification Scheme document, observers are defined as “a representative of civil society, the diamond industry, international organizations and non-participating governments invited to take part in Plenary meetings”. In fact, representatives of the diamond industry and of civil society play an essential role in the day-to-day operation of the KPCS.

The Diamond Industry – Self-Regulation

In October 2002, when the Kimberley Process was in its infancy, the International Diamond Manufacturers Association (IDMA) and the World Federation of Diamond Bourses (WFDB) created a voluntary system of self-regulation which required its members to sign on to a System of Warranties and a Code of Conduct.

While the system is voluntary, it required the expulsion of members who violated the system, and publication of their names. It also required members to work with governments to publicize various information in support of the Kimberley Process and to “assist and provide technical support regarding government regulations and trade resolutions restricting the trade in conflict diamonds to all legitimate parties in need of such information or expertise.”

The World Diamond Council (WDC), which was established by the industry to represent its interests in the Kimberley Process, led industry efforts to spread the use within the trade of the system of warranties to support and strengthen the Scheme. The system of warranties is supposed to guarantee the provenance of diamonds and certify that the diamonds sold are conflict free.

The WDC spread the use of the system by undertaking an education program, in association with other trade organizations like the WFDB and IDMA. The program included holding numerous seminars, publishing information material, issuing a poster for use by the trade to train employees in manufacturing and retail businesses and drawing up a ‘Self-Assessment Checklist’ to assist company’s to self-monitor their compliance with the System of Warranties.

Future plans for continuing education within the trade include a program to be undertaken by a newly created WDC committee on public relations. The committee will raise the profile of the System of Warranties and further promote the system’s use by establishing a presence at prominent international trade shows. An interactive web site – www.diamondfacts.org – has been instituted by the WDC at its own expense providing information about diamond producing nations, the good that diamonds can do for producing nations, and more.

The WDC is encouraged to continue its work of educating the trade in the functioning of the KPCS and in the trade's responsibility to ensure its effective operation.

As another measure of self-regulation, the World Federation of Diamond Bourses is introducing a WFDB Mark to provide reassurance of integrity and reliability. The mark will be made available to members of the WDFB affiliated bourses that adhere to the WDFB's code of principles and confirm the Federation's ethical practices. Members who fall short of these standards will be deprived of the right to use the Mark and will be subject to sanctions by his or her bourse's judicial system.

It has been suggested that industry self-regulation could be strengthened through more rigorous monitoring and enforcement of implementation. The code of conduct and system of warranties could be developed into a mechanism to further support government efforts to track rough diamond transactions.

In accordance with its original 2002 declaration to provide technical support and expertise in support of the Kimberley Process, representatives of the diamond industry play an integral role in the functioning of the KPCS. They provide the Chair of the Working Group of Diamond Experts, who draws on various areas of the trade for expert technical advice essential to the proper functioning of the KPCS; they provide expertise on other Working Groups, they participate in peer review visits as members of visiting teams and assist with analysis of resulting reports. This assistance is fully funded by the industry. All in all, they are an integral part of the KPCS and essential to its functioning.

The Role of Civil Society

The seminal reports of two representative NGOs, Global Witness and Partnership Africa Canada, "A Rough Trade" and "The Heart of the Matter", played a vital role in the creation of the Kimberley Process, as they publicized conflict diamonds and drew international attention to the human rights atrocities that were occurring as a result of conflict diamonds. (www.globalwitness.com)

Since the origin of the Process at Kimberley in 2000, civil society representatives have played an essential role in motivating the Process, in negotiating its establishment and in its operation.

As active Observers of the Process, they continue to keep in the public eye the issue of conflict diamonds. They do this by their user friendly, up-to-date web sites, and by issuing important reports such as Global Witness' report "Making it Work" and their brochure "Are You Looking for the Perfect Diamond";

and PAC's monthly newsletter "Other Facets" and their report "Fugitives and Phantoms: The Diamond Exporters of Brazil".

They continue to champion other diamond-related activities such as the Diamond Development Initiative (DDI), which held an international convening meeting in Accra, Ghana in October 2005 and included prominent diamond organizations and companies; it should be noted that the diamond company De Beers was a founding member of the DDI initiative and attended the Accra meeting in that capacity.

Their role in the operation of the KPCS is equally important. They conduct independent NGO reviews of Participants to assess how the KPCS is functioning, and publicize their findings; these can be key to bringing problems to the attention of the Kimberley Process, as shown by their important press release on the current situation in Brazil and their recent report on diamond smuggling in Guyana, entitled "Triple Jeopardy". These NGO investigations show that they can play an effective watchdog role, monitoring systems in place and working with local authorities to ensure proper implementation and proper functioning.

The KP should cooperate with representatives of civil society, including at local levels, to promote effective KPCS implementation, especially in those countries that have weak systems, limited capacity and/or have been affected by conflict diamonds.

Civil society, supported by government grants, has funded the participation in review missions and review visits of experts from developing, artisanal-alluvial producer Participants. They point out, however, that funding for broader civil society participation, government participation in review visits, and research work cannot sustainably be borne by them and that alternative funding must be considered. Civil Society representatives participate in these reviews themselves as team members and they sit as full members on the KPCS Working Groups. They have conducted training sessions for government and civil society observers participating in peer review visits. And by their creative and active involvement in the operation of the KPCS, they ably play a full and essential role in the operations of the KPCS. More information is available at www.globalwitness.com

Links with International Organizations

The Kimberley Process' involvement with international organizations dates from its earliest days, back to the UN General Assembly resolution 55/56 of December 2000, when UNGA endorsed the Kimberley Process and urged the implementation of its certification scheme as soon as possible. Since that time, links with international organizations have been maintained, as shown by the participation in this Review by the World Bank, the IMF and by UN Missions

serving in the DRC (MONUC), Sierra Leone (UNAMSIL), Côte d'Ivoire (UNOCI) and Liberia (UNMIL). The World Bank and IMF have attended KP Plenary meetings. As well, the 2005 and 2006 KP Chairs have worked with the UNSC Sanctions Committee on Liberia and Côte d'Ivoire.

Increasingly, however, Participants are calling for a closer working relationship with international organizations which have activities that are relevant to diamond production and trade. These would include the UNDP, international financial institutions like the World Bank and other multilateral development banks, and the UN Secretariat. They should be consistently invited to KPCS Plenary meetings as Observers, and kept informed of KP decisions and reports. This would improve the exchange of information and would broaden the reach of the KP.

SUMMARY OF RECOMMENDATIONS

SECTION B IMPACT OF THE KPCS

Cases of KPCS Infringement and Responses by Participant Authorities

1. As part of their Annual Reports, KP Participants should be required to provide more detailed information on cases of infringement of the KPCS which they are able to share within the provisions of their national legislation. Where possible they should include the number of seizures of rough diamond shipments along with details on the weight, value, exporter, importer, and country of origin of the parcel, as well as other details concerning the prosecution and outcome of each case. Also KP Participants should be encouraged to share this information with one another on an *ad hoc* basis

The KP and Peace and Security

2. High priority should be given to following through on the nine points contained in the KP Resolution of 17 November 2005 on illicit diamond production in Côte d'Ivoire.

3. Through the Chair, the KP should continue to work closely with the UN as well as its various branches, agencies, 'Expert Panels' and other appropriate international agencies to improve information exchange and to broaden the reach of the KP. In order to ensure maximum public transparency, detailed summaries of review visit reports, following the standard template developed by the Working Group on Monitoring, should be prepared in all cases and posted in the public area of the KP web site, consistent with KPCS data publication standards.

SECTION C

TECHNICAL PROVISIONS OF THE SCHEME

Definitions

4. The matter of conflicting definitions and missing definitions is important and is one that must be addressed by the WGDE.

Classification (HS codes)

5. Disagreements over value and classification codes are increasingly problematic and result in hampering the trade in rough diamonds; it is recommended that the highest priority be given to resolving this issue within the terms of reference of the WGDE.

The Kimberley Process Certificate

6. It is recommended that, as an urgent priority, all KP Certificates should meet existing standards. These standards stipulate, among other requirements, that the KP Certificate be valid for a maximum of 60 days. This requirement will be implemented by the Participation Committee in the case of new members and overseen by the WGM for existing members.

Mandatory Import Confirmation

7. Compliance with the mandatory requirement of import confirmation should be strengthened. Accordingly it is recommended that the WGM monitor compliance with this requirement, and if non compliance continues, the matter should be referred to the Participation committee. (See also 'Issues not attracting consensus'.)

8. It is recommended that a consolidated technical guidance annex be created and form part of the Compilation of Kimberley Process Documents.

Operational Problems

Lack of Import Procedures

9. It is essential that all Participants have both proper import and export procedures in place, regardless of the volume of imports they deal with.

Need for Better Communication

10. It is essential to maintain an up-to-date register of KP focal contacts, as well as alternates. This register should continue to be available on the KP web site and could also be circulated annually with the compilation of KP documents. Participants should inform the KP Chair promptly of any change in contacts.

Peer Review Monitoring Mechanism

Covering the system

11. As of 10 October 2006, 12 Participants have not yet received review visits. Of those, nine have invited review visits but three have not: Croatia, Indonesia, and Venezuela. Those three Participants should be encouraged as strongly as possible to invite review visits, and to do so as soon as possible.

12. In specific circumstances, it may be useful to mandate review visits (or, where applicants are concerned, in conjunction with the approval of the Participation Committee, *ad-hoc* expert missions) explicitly to integrate a regional dimension into review visit activities.

13. In cooperation with the Participation Committee, expert missions (carried out on the basis of the standard terms of reference for review visits) could, in principle, be deployed on an *ad hoc* basis, on a recommendation from the Participation Committee that circumstances make such a mission necessary or desirable for applicants applying for participation in the KPCS.

14. It is recommended that the report for each review visit state that the team has reviewed internal controls for effective compliance with all KPCS minimum standards, as set out in the KPCS documents, recognizing that some procedures may be security-sensitive.

15. Review teams should continue to identify participant country needs for technical assistance and training, in order to help Participants implement effective internal controls.

Composition of Teams

16. The participation of experts from artisanal-alluvial producer Participants in as many review visits as possible should be continued and if possible further developed, above all in review visits to artisanal-alluvial producer Participants.

17. The KP should seek to further diversify the leadership of review visits.

18. The criteria in the Administrative Decision on Peer Review should be expanded to include a provision that experts are required to be impartial and highly professional and should further require members to disclose any potential conflicts of interest.

Follow-up to Review Visits

19. Participants identified by review teams as needing technical assistance or training should communicate their needs to international donors and the coordinator for technical assistance.

20. Donor countries are encouraged to provide technical assistance and training to meet the needs of Participants to implement effective internal controls, as identified by review teams. The Working Group on Monitoring considered issues relating to the resources available for peer review and notably for the participation of experts in review visits, on the basis of a submission received from Partnership Africa Canada and Global Witness. The WG agreed in this regard to examine, jointly with the KP coordinator for technical assistance, the possibilities for individual donors to contribute to the travel expenses of experts who would not otherwise be able to participate in review visits.

21. Review visit teams and Participants hosting review visits are reminded of the existing deadlines for reporting and commenting on review visit findings (30 days after the completion of the visit and 30 days after receipt of the draft report respectively) and are urged to allocate adequate time to that effect. Review visit teams may wish to consider adding one or two days to review visits for preparation of reports. The leader or a designated member of review visit teams should be tasked explicitly with verifying the state of implementation of review visit's recommendations. Any such reports on verification should be maintained in a central register by the WGM which would then become an up-to-date overview of the state of implementation of the review visit recommendations.

22. The requirement to submit an annual report should be maintained, as should the requirement to provide feedback in the report on follow-up to review visits.

23. The recommendations listed above under 'Follow-up to review visits' should be integrated into the Administrative Decision on Peer Review.

Transparency of Review Visits

24. It is recommended that the Chair circulate a message to all Participants and Observers informing them whenever a report has been completed, with a link to the full report on the website.

The Future of the Peer Review Mechanism

25. The system of peer review, with its main components as established in 2003, should be maintained, recognizing that the resource concerns of some Participants and Observers will need to be addressed as outlined in recommendation 20.

26. The system of review visits to Participants should be continued. Relevant provisions in section II of the Administrative Decision on Peer Review should be amended, specifying that in further review visits, attention should be focused on follow-up to issues identified in the first visit.

27. In case of repeated review visits, the visits should be flexible in size and duration, to ensure that scarce resources are used efficiently and are focused where there are substantial implementation issues.

28. The recommendations listed in this assessment of the Peer Review Monitoring System should be incorporated into a revised Administrative Decision on Peer Review.

Statistical Underpinning of the KPCS

Country Specific Statistical Analyses

29. It is recommended that the WGS continue to prepare Participant specific analyses for review visits. The WGS should be notified of any upcoming visits four weeks before it is to begin. Subject to that notification, the analyses should be prepared and circulated to the review team at least two weeks before the review visit commences, to allow for discussion between the review team and the Participant.

Involvement in Review Visits

30. Members of the WGS should participate in review visits, particularly when there are known issues with the statistics of the Participant to be reviewed.

Transparency and Publication

31. The KPCS should enhance transparency through publication of KPCS data wherever appropriate. Building on findings to be presented by the WGS at the 2006 plenary, it is recommended that the WGS devise a formula for the release of basic data as soon as possible. It is also recommended that the debate about the current quality of KP statistics should not affect the formula for the release of statistical data but rather should be redirected into the ongoing effort to address

important quality issues appearing in the published (and unpublished) statistical summaries.

32. The WGS should study and clarify the issue of maintenance of the KP Rough Diamond Statistical web site.

Internal Controls

Artisanal-Alluvial Production

33. In parallel with the Review of the KPCS, a consolidated list of internal control standards for all Participants will be prepared complementary to the recommendations contained in Annex II to the basic KPCS document. Key recommendations from the Moscow declaration on improving internal controls over artisanal-alluvial diamond mining should be integrated into this list. Implementation of the measures set out in it should be promoted as part of the peer review system. Review visits should be mandated in a revised Administrative Decision on Peer Review to assess specifically whether Participants have effective measures in place, on the basis of the measures set out in such an additional list of internal controls. Applicants for participation in the KPCS should be invited to use the indicated additional list of standards of internal controls while designing national internal control measures.

Technical Assistance to Artisanal-Alluvial Producing Participants

34. Donors should provide information on assistance efforts to the coordinator on technical assistance, in order to share expertise and prevent duplication of effort.

Implementation of Effective Internal Controls

35. The sub-group on alluvial production should be strongly encouraged to play an active role in promoting and monitoring the implementation of the recommendations of the declaration.

More General Problems

Trading, Cutting and Polishing Centres

36. The WGM should identify any loopholes in the implementation of the KPCS in trading, cutting and polishing centres and make recommendations to address them as needed, in accordance with its mandate.

SECTION D

ORGANIZATION AND WORKING METHODS

Working Methods

37. The basic KPCS document and all past KPCS administrative decisions, technical guidelines, best practices, and other decisions of Plenary and other addenda should be incorporated into a 'Compilation of Kimberley Process Documents'. The consolidated technical guidance annex, recommended elsewhere in this Review, should be included in this compilation. It should be a clear and concise reference guide, with a Table of Contents at the beginning and an Index at the end. This Compilation should be maintained on the public web site.

38. Work on the 'Compilation of Kimberley Process Documents' should begin immediately after the conclusion of the Botswana Plenary and include the KP administrative decisions and other addenda from the 2006 meetings. In subsequent years, the Compilation should be updated immediately after the KP Plenary, with a completion date of December 31 of that year.

The Kimberley Process Plenary

39. The deadlines for the circulation of the provisional agenda for the KP Plenary and the documentation for agenda items from Working Groups should be rigorously maintained. This would allow Participants and Observers adequate time to prepare for the Plenary.

The KP Working Groups

40. The Committee on Rules and Procedures is requested to examine proposals for improving procedures relating to membership and chairmanship of working groups and committees and to present proposals to Plenary 2007. The Committee should consult with all other KPCS standing bodies in this regard and is encouraged to consider, *inter alia*, procedures for electing or designating the KP and WG Chairs, proposals for rotating membership, the position of WG Assistant Chair, the future of the sub-group on Alluvial Production and modalities to mainstream the outcomes of the sub-group's work into the work of existing working groups. The committee is further instructed to explore limiting participants to chairing only one such body between KP Plenary meetings.

A Global Inclusive Membership

Terms of Application

41. Applications for membership in the KPCS should be judged not only on paper credentials but also on the reports of expert missions sent specifically to assess an applicant's capacity to implement the KPCS minimum requirements, where appropriate.

42. Also applicants should be made aware of the developments in KPCS rules and practices since the original KPCS document.

New Applications

43. The Participation Committee should draw up a list of questions on the objectives of the applicant in joining the KPCS, as well as listing the tasks required and mandatory documents and data to be submitted.

Transparency

The Kimberley Process Web Site

44. The KPCS should make available on the public site all documents concerning the Scheme that do not have confidentiality implications.

Role of Observers

The Diamond Industry – Self Regulation

45. The WDC is encouraged to continue its work of educating the trade in the functioning of the KPCS and in the trade's responsibility to ensure its effective operation.

The Role of Civil Society

46. The KP should cooperate with representatives of civil society, including at local levels, to promote effective KPCS implementation, especially in those countries that have weak systems, limited capacity and/or have been affected by conflict diamonds.

SUMMARY OF ISSUES ON WHICH NO CONSENSUS WAS REACHED

1. No agreement was reached on a proposal to the effect that, on a trial basis, the position of Chair of the KP and Vice-Chair of the KP should both be extended to two-year terms, beginning in 2008.
2. No agreement was reached on proposals to the effect that, on a trial basis, a central, permanent and professional Secretariat be created with a small yet skilled staff that would work in concert with the KP Chair, Participants, Observers, and Working Groups
3. No agreement was reached on proposals to establish a high-level ad hoc committee on financing that would consider the financial requirements of a permanent Secretariat and requirements of a larger and more complex KP.
4. No agreement was reached on proposals to mandate to a body outside the KP part of the functions of statistical analysis and maintenance of the Kimberley Process Rough Diamond web site.
5. No agreement was reached on a proposal to publish the names of Participants who habitually fail to meet KPCS requirements for submission of statistics.
6. No agreement was reached regarding the issue of possible changes to the Kimberley Process Certificate so as to require a tear-off import confirmation portion on each KP Certificate.
7. No agreement was reached regarding a proposal to require participants to demonstrate effective industry oversight, including the establishment of spot checks or third party audits on companies, or to require companies to include KPCS compliance as part of their financial auditing process.
8. No agreement was reached on how to address the evolving funding and resource requirements resulting from participation in the KPCS.
9. No agreement was reached on a proposal urging that illegal shipments be seized and not returned to the original exporter.
10. No agreement was reached on the establishment of a suspension mechanism for those in significant non-compliance.

2006 REVIEW ANNEX 1

KIMBERLEY PROCESS CERTIFICATION SCHEME QUESTIONNAIRE FOR THE REVIEW OF THE SCHEME

INSTRUCTIONS

- Please provide responses in electronic format
- Please submit replies to the questionnaire by this email address: Kimberley.process@international.gc.ca as soon as possible and in any event by **31 January 2006**.
- Please feel free to attach any additional supporting documentation to your replies as appropriate.
- Please leave blank any questions on which you have no views.

The responses will be made public on a special section of the Kimberley Process website (<http://www.kimberleyprocess.com>) unless you request otherwise (please indicate so in your reply if this is the case).

INFORMATION ABOUT RESPONDENT

Please provide contact details in case of follow-up questions:

SECTION A: IMPACT OF THE KPCS

1. In your view, how effectively has the Kimberley Process responded to the mandate given by the relevant UN General Assembly Resolutions³² to combat the threat of conflict diamonds?
2. Have there been cases of infringements of the provisions of the KPCS in your jurisdiction? What action has been taken in these cases with regard to the companies or individuals involved? Please provide information on the volume and value of the diamonds involved, if appropriate.

³² General Assembly resolution 55/56 of December 2000 (A/RES/55/56), available at http://www.kimberleyprocess.com:8080/site/www_docs/related_docs1/unga_final_text.pdf.

3. In your view, how effective is the Kimberley Process in curbing the illicit production of and trade in diamonds in countries affected by conflict diamonds?

(Supplementary question for Participants affected by conflict diamonds in the past: What percentage of your diamond production and trade is now captured by the KPCS? Has the proportion of diamonds traded legally increased since implementation of the KPCS, and what contribution has the KPCS made to this?)

4. In your view, what is the contribution of the KP to maintaining the peace in diamond producing countries which have suffered from conflict, and how effective is the KP in preventing rough diamonds from fuelling conflict elsewhere?

SECTION B: TECHNICAL PROVISIONS OF THE SCHEME, ORGANIZATION AND WORKING METHODS

5. How effective and appropriate are the technical provisions of the scheme, including the Kimberley Process Certificate? In your view, are there provisions in the scheme that have proved to be ineffective or superfluous? Is there a need to include new technical provisions in the scheme (or certificate) and if so, can you provide examples? In replying to this question, you may wish to focus inter alia on
 - Import and export procedures
 - Provisions for internal controls
 - Cooperation with other Participants in implementing the provisions of the KPCS (e.g. with regard to confirmation of shipments)
 - The use of KP certificates
6. How effectively has the KPCS dealt with technical problems as and when they have arisen? In replying to this question, you may wish to focus inter alia on
 - The adoption of and implementation of technical guidelines
 - Settlement of implementation issues with other Participants
7. In your view, how inclusive is the Kimberley Process in bringing together concerned stake holders, namely producing, exporting and importing

states and regional economic integration organizations, the diamond industry and civil society?

8. Has the operation of the Kimberley Process Certification Scheme been simple and workable and based on internationally agreed minimum standards? *(In replying to this question, you may wish to focus inter alia on*
 - Consistency with customs procedures and any other relevant international standards (WTO, WCO)
 - Any areas where the operations of the KPCS could be simplified

9. How effective are the internal controls established by Participants to eliminate the presence of conflict diamonds in the chain of producing, exporting and importing of rough diamonds within their own territories? How effective has the Kimberley Process been in bringing about change where there are problems? In replying to this question, you may wish to focus on
 - Any issues encountered in implementing the internal controls required by the KPCS
 - The ability of the KPCS to bring about improvements in internal controls where required, and its ability to mobilize assistance where necessary

10. How effective is the peer review monitoring mechanism within the Kimberley Process? In replying to this question, you may wish to comment inter alia on
 - The degree of coverage of Participants in the KPCS by the peer review mechanism (notably review visits and annual reports)
 - The ability of the peer review mechanism to detect implementation issues and, where necessary, encourage Participants to take corrective action
 - The ability of the peer review mechanism (including the Working Group on Monitoring) to detect serious implementation problems as and when they arise
 - The practical implementation of the system of review visits and review missions, including with reference to any review visit or review mission which you may have received or participated in

11. Has the Kimberley Process provided the level of transparency envisaged in the peer review mechanism? In replying to this question, you may wish to comment in particular on
- Whether the contents of annual reports, the assessment of annual reports, and the findings of review visits and review missions are sufficiently accessible to Participants and Observers within the KP
 - Whether the level of publicity given to the findings of review visits (publication of summaries on the public KP website) is sufficient.
12. How effective has the Kimberley Process been in collating and analyzing statistical reports on the production and trade in rough diamonds to identify the risk of conflict diamonds entering the legitimate market? In replying to this question you may wish to comment on
- The work of the Working Group in Statistics
 - The KP statistics website
 - Any statistical issues raised in review visits
 - The role of statistics generally in monitoring the implementation of the KPCS
 - The pilot study of 2004 data
 - Any difficulties you have encountered in compiling and submitting statistical data, and in resolving discrepancies, including through exchange of import confirmation data
13. How effective is the scheme in resolving disputes and addressing compliance issues relating to implementation (Section V of the KPCS document)?
14. Has the scheme remained open on a global, non-discriminatory basis to all Applicants willing and able to fulfill its requirements? In this context, how effective is the Scheme's mechanism for admitting new Participants? *(You may wish to comment in particular on the work of the Participation Committee, and its handling both of new applications and removal of Participants judged no longer able and willing to comply with the minimum requirements of the KPCS)*
15. How effectively has industry self-regulation contributed to the implementation of the certification scheme? In replying to this question, you may wish to provide information and comment on
- Whether a system of industry self-regulation is being applied in your jurisdiction

- Whether such systems, where they exist, are able to deal effectively with problem cases
 - Whether Participant governments are maintaining ultimate responsibility for implementation where industry plays a role
 - Whether government-industry relations are satisfactory
16. To what extent do Participants, particularly those with alluvial diamond mining, have the capacity to implement the scheme, and how can their needs be met? In replying to this question, you may wish to focus in particular on
- Any specific difficulties faced by Participants in maintaining internal controls over alluvial production
 - The response by the KP to these challenges, inter alia through the sub-group on alluvial production
 - Possibilities for enhancing the KP's ability to detect needs for technical assistance and encourage the delivery of assistance where necessary
17. How effective and efficient are the overall working methods of the Kimberley Process, including Plenary and its Working Groups? In replying to this question, you may wish to focus inter alia on
- The timing, duration, working methods and organization of annual Plenary meetings
 - The working methods of the Working Groups (in particular as regards the use of electronic communications; timing of teleconferences; and use of languages)
 - The forms of communication and consultation used by the Chair and Working Groups of the KP (including the extensive use of electronic communications)
 - The content, format and accessibility of the KP website

SECTION C: FOR PARTICIPANTS ONLY

18. How well does the KPCS meet your requirements as (as applicable):
- a producing and trading Participant
 - a trading only Participant?

2006 KPCS REVIEW ANNEX 3

List of Respondents: 2006 KPCS Review Questionnaires and Inputs

Kimberley Process Participants

Angola	22 Mar 2006
Armenia	2 Feb 2006
Australia	17 Feb 2006
Belarus	13 Feb 2006
Botswana	14 Feb 2006
Bulgaria	2 Feb 2006
Canada	2 Feb 2006
China	2 Feb 2006
European Commission	14 Feb 2006
Côte d'Ivoire	7 Mar 2006
Democratic Republic of the Congo	6 June, 2006
Ghana	27 Jan 2006
Guinea	7 Mar 2006
Guyana	17 Mar 2006
India	2 Feb 2006
Indonesia	10 Mar 2006
Israel	2 Feb 2006
Japan	16 Mar 2006
Korea	22 Feb 2006
Lebanon	16 Feb 2006
Lesotho	2 Feb 2006
Mauritius	25 Jan 2006
Namibia	15 Mar 2006
Norway	7 Mar 2006
Romania	20 Feb 2006
Russian Federation	20 Jan 2006
Sierra Leone	2 Feb 2006
Singapore	25 Jan 2006
South Africa	24 Feb 2006
Sri Lanka	2 Feb 2006
Switzerland	2 Feb 2006
Tanzania	7 Mar 2006
Thailand	14 Feb 2006
Togo	10 Mar 2006
United Arab Emirates	30 Jan 2006
Ukraine	30 Jan 2006
United States of America	14 Feb 2006
Vietnam	15 Mar 2006
Zimbabwe	13 Mar 2006

Kimberley Process Observers

Global Witness	5 Apr 2006
Partnership Africa Canada	23 Feb 2006
World Diamond Council	17 Mar 2006

Kimberley Process Bodies

Former KP Chair Tim Martin	27 Mar 2006
Participation Committee	17 Mar 2006
Working Group on Diamond Experts	8 Mar 2006
Working Group on Monitoring	15 Feb 2006
Working Group on Statistics	30 Jan 2006

United Nations Bodies and other International Organizations

International Monetary Fund	5 Apr 2006
MONUC DR Congo	13 Mar 2006
UNIOSIL Sierra Leone	13 Mar 2006
UNMIL Liberia	13 Mar 2006
UNOCI Côte d'Ivoire	13 Mar 2006
UN Sanctions Committee on Liberia	12 Apr 2006
World Bank	13 Feb 2006

Other Submissions

ALROSA	30 Dec 2005
Chinese Taipei ³³	24 Feb 2006
Wexler Report ³⁴	1 Mar 2006

Did Not Respond

Brazil
Central African Republic
Croatia
Laos
Malaysia
Venezuela

³³ The rough diamond-trading entity of Chinese Taipei meets the minimum requirements of the KPCS.

³⁴ An independent review commissioned by Global Witness and endorsed by several NGOs.