ADMINISTRATIVE DECISION

Terms of Reference Ad hoc Working Group on the Review of the KPCS

I. Context

The illicit trade in rough diamonds fuelled armed conflict in a number of countries in Africa, including Angola, the Democratic Republic of Congo and Sierra Leone. The Kimberley Process, which brings together the governments of diamond producing and trading countries, industry and civil society in a tripartite partnership, began in May 2000, with a view to developing an international certification scheme for rough diamonds aimed at preventing conflict diamonds from entering the legitimate trade. In its resolution 55/56 of December 2000, the UN General Assembly endorsed the development of the certification scheme, which was subsequently 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 Kimberley Process Certification Scheme (KPCS) Document, Participants agreed to undertake a periodic review of the scheme every 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.

The review of the KPCS will take 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 which the KPCS was conceived to address remain highly topical from a conflict-prevention perspective.

II. Mandate

At the Gatineau Plenary of the Kimberley Process (October 2004), Participants and Observers discussed the three-year review of the Kimberley Process Certification Scheme set out in Section VI, Paragraph 20 of the KPCS Document: “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…”

Plenary discussion resulted in the creation of an ad hoc Working Group tasked with the responsibility of managing the review of the Scheme. Plenary specifically mandated the ad hoc Working Group to develop options for the three year review process for consideration at the 2005 Plenary Meeting. The ad hoc Working Group was further mandated to carry out the review and provide a report of the findings and recommendations in advance of July 31, 2006 as set out in the Sun City Plenary Final Communiqué.

III. Composition of the ad hoc Working Group

Plenary selected Canada to chair the ad hoc Working Group. Plenary also decided that membership of the Working Group shall include the Kimberley Process Chair and Vice-Chair, as well as the Chairs of the Kimberley Process Working Groups and Committees. Plenary further mandated that the remaining members of the Working Group shall reflect an equitable geographic and industry balance as well as civil society representation and shall be determined through consultations by the Chair.

Following consultations, the remaining composition of the Working Group shall therefore consist 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.

IV. Criteria for 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 based on the following criteria. The review shall include recommendations as well as implications of the suggested course of action in comparison to benefits.

Impact:

Y How effectively has the Kimberley Process responded to the mandate given by the relevant UN General Assembly Resolutions to combat the threat of conflict diamonds?

Y What percentage of the international trade in rough diamonds is effectively captured by the KPCS, and how many cases of infringement of its provisions have
been reported (and where appropriate, pursued by judicial means) by the authorities of Participants?

Y How effective is the Kimberley Process in conflict diamonds-affected countries?

Y How effectively is the Kimberley Process contributing to conflict prevention?

**Technical provisions of the Scheme, organization and working methods:**

Y How effective and appropriate are the technical provisions of the scheme, including the Kimberley Process Certificate?

Y How effectively has the KPCS dealt with technical problems as and when they have arisen?

Y How effectively have the provisions of the KPCS been enforced, as indicated (for example) by the number of seizures of irregular shipments carried out by national authorities?

Y How inclusive is the Kimberley Process in bringing together concerned stakeholders, namely producing, exporting and importing states and regional economic integration organizations, the diamond industry and civil society?

Y Has the operation of the Kimberley Process Certification Scheme been simple and workable and based primarily on national certification schemes and on internationally agreed minimum standards?

Y 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?

Y How effective is the peer review monitoring mechanism within the Kimberley Process?

Y Has the Kimberley Process provided the level of transparency envisaged in the peer review mechanism?

Y 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?

Y How effective is the scheme in resolving disputes and addressing compliance issues relating to implementation?
Y 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?

Y How effectively has industry self-regulation contributed to the implementation of the certification scheme?

Y 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?

Y How effective and efficient are the overall working methods of the Kimberley Process, including Plenary and its Working Groups?

V. Sources of Information

The ad hoc Working Group shall conduct the review of the KPCS in accordance with the modality proposed in the attached Annex A. Key sources of information for the review of the KPCS shall include the following:

- Survey of the views of Participants with disaggregated attention to the special requirements of production, export and import of rough diamonds,
- Survey of the views of industry and civil society Observers,
- Survey of the views of relevant international organizations (e.g. United Nations, UNDP, World Bank and IMF),
- Inputs from the current and former Chairs of the Kimberley Process,
- Inputs from the Working Groups and Committees,
- Official Kimberley Process documents, annual reports of the Kimberley Process Participants, reports of the Kimberley Process review visits and review missions, and
- Submissions related to the Kimberley Process and the diamond industry from other interested parties.

All inputs and submissions will be posted on a special section of the Kimberley Process website.
VI. Work-plan

The ad hoc Working Group shall conduct its business through electronic correspondence and teleconferences. Members of the ad hoc Working Group may hold a meeting should the need arise. The ad hoc Working Group shall fulfill its mandate in accordance with the following work-plan:

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<th>Date</th>
<th>Activities</th>
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<tr>
<td><strong>September 2005</strong></td>
<td>Request inputs from the current and former Chairs of the Kimberley Process and from the Working Groups and Committees</td>
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<td>Develop survey for the collection of the views of Participants and Observers and for seeking the views of international organizations</td>
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<td><strong>November 2005</strong></td>
<td>Report to Plenary and submit a recommendation for the review of the KPCS to Participants and Observers</td>
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<td>Seek Plenary approval of the terms of reference of the review of the KPCS</td>
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<td>Send surveys to Participants, Observers and international organizations</td>
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<td>Invite submissions from other parties interested in the review of the KPCS</td>
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<td><strong>January 2006</strong></td>
<td>Receive inputs from the current and former Chairs of the Kimberley Process and from the Working Groups and Committees</td>
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<td>Receive surveys and submissions from Participants, Observers and international organizations</td>
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<td><strong>February - April 2006</strong></td>
<td>Prepare a draft report on the review of the KPCS, including recommendations</td>
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<td><strong>May 2006</strong></td>
<td>Finalize and agree the report within the ad hoc Working Group</td>
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<td><strong>June 2006</strong></td>
<td>Undertake consultation with Participants and Observers</td>
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<tr>
<td><strong>July 2006</strong></td>
<td>Finalize the report for submission to the Plenary in 2006</td>
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(Annex A)

A Modality for the Review of the KPCS

The ad hoc Working Group will draft the following: i) terms of reference for the Review of the KPCS, ii) methodology, and iii) a survey for seeking the views of Participants and Observers.

The ad hoc Working Group will invite submissions from Kimberley Process Participants, Observers, and other interested parties on the effectiveness and impact of the Kimberley Process Certification Scheme.

The Chair of ad hoc Working Group will separately seek input from the Kimberley Process Working Groups and Committees on the effectiveness of the KPCS and its working methods with particular regard to issues in their respective mandates.

The ad hoc Working Group will prepare a report and recommendations on the review of the KPCS, in consultation with Kimberley Process Participants and Observers, which will be presented to the Plenary in 2006.

Moscow, 16 November 2005