

Ad Hoc Committee on KPCS Review Questionnaire for Participants and Observers

The Administrative Decision on the Periodic Review of the KPCS, approved at the Kinshasa Plenary, created an Ad Hoc Committee on KPCS Review (CKR). The CKR is tasked with “coordinating the periodic review of the KPCS, as provided by the KPCS Core Document and the 2010 Plenary AD on Efficiency.” As part of that task, the CKR is mandated to consult with all Participants and Observers. This questionnaire is intended to assist the CKR in its analysis, so your responses are vital.

Please provide your responses by March 15 to review.committee@kimberleyprocess.org as well as kpcs.chair@state.gov for posting on the Participants-only portion of the KP website. Participants are encouraged to consult with representatives of their domestic industry and civil society in the course of formulating responses.

The questionnaire covers the five priority areas that the CKR is mandated to address, at a minimum. The CKR was requested to address the first two issues by Intersessional.

Priority Area #1: What are/should be the objectives of the KP going forward?

In launching the KPCS, the governments that issued the Interlaken Declaration of 5 November 2002 reiterated their “deep concern about the international trade in conflict diamonds, which can be directly linked to the fuelling of armed conflicts, the activities of rebel movements aimed at undermining or overthrowing legitimate governments and the illicit traffic in, and proliferation of, armaments especially small arms and light weapons.” They also stated their concern “about the consequent devastating impact of such conflicts 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.” These concerns are echoed in the Preamble of the KPCS Core Document.

A. To what extent have the KP and the KPCS been successful, or unsuccessful, in addressing these original concerns?

B. Can the KP become more effective at addressing the original concerns? If so, how?

C. What other objectives (if any) do you believe the KP needs to, or should, address?

D. If you listed any objectives in response to question C, why is the KP an appropriate forum for the international community to address them?

E. If you listed any objectives in response to question C, how could the KP address them?

Priority Area #2: Revisions of definitions in the Core Document

Section I of the KPCS Core Document lists definitions for 18 terms: conflict diamonds, country of origin, country of provenance, diamond, export, exporting authority, free trade zone, import, importing authority, Kimberley Process certificate, Observer, parcel, parcel of mixed origin, Participant, regional economic integration organisation, rough diamonds, shipment, and transit. A full list of these definitions is attached for your reference, along with relevant Technical Guidelines and Best Practices.

A. Given the experience of your designated import and export authorities (as well as your Customs officials if they are not your designated KP authorities) in implementing the KPCS, would any revisions to the definition of “rough diamond” be useful?

B. At the heart of the KP and its objectives is the concept of eliminating conflict diamonds. Do you believe the current definition of “conflict diamonds” is adequate, or do you think it is in need of amendment (e.g., to include other types of conflict or violence)?¹

C. In light of advances in industry practice and the experience of implementing the scheme over the last 10 years, are changes needed to the definitions of “country of origin” or “country of provenance”? If so, what could such changes include (e.g., changing “country of origin” to “country of mining” consistent with Technical Guideline 15)?

D. Are the definitions of “Participant” and “Observer” sufficiently broad to encompass all entities that may wish to be involved in the KP? If not, which other entities would you propose be recognized?

E. Do any definitions need to be modified for purposes of harmonization with other international initiatives (e.g., using a definition of “transit” consistent with World Customs Organization practice)?

F. Please suggest any changes to other definitions that you believe would be appropriate, and explain why. Are there additional terms, beyond the current 18, that should be defined in the Core Document (such as “exporter” and “importer” per Technical Guideline 11, “number of parcels” per Best Practice 2, “deviations,” or “working groups”)?

Priority Area #3: The current composition, functions and management of the Working Groups

Currently, the KP has the following permanent Working Groups, in addition to the CKR: Committee on Rules and Procedures, Participation Committee, Working Group of Artisanal Alluvial Producers, Working Group Diamond Experts, Working Group on Monitoring, and Working Group on Statistics.

A. Should any Working Groups be eliminated, created, combined, or refocused in order to better address (and/or more evenly distribute) the work of the KP?

B. Would any changes to the composition, conduct, mandate, powers, or management of the Working Groups be useful? If so, what recommendations would you suggest?

¹ If you believe any definitions from other contexts are relevant, please address them. For example, recent OECD guidance on conflict minerals refers to “conflict affected and high-risk areas” that are “identified by the presence of armed conflict, widespread violence or other risks of harm to people.” Similarly, the International Committee of the Red Cross operates in “situations of conflict” including “international or other armed conflicts or internal strife.”

Priority Area #4: New approaches to decision-making

Currently, any Participant or Observer may propose a decision for discussion within a working group. Major decisions are discussed in Working Groups, proposed to Plenary when the Working Group reaches consensus, and then approved by consensus in Plenary (which can occur via written procedure). Other, more routine decisions have been delegated to the KP Chair or to Working Groups.

A. Should any changes be made to the current process for KP decision-making, by which all major issues are decided by the full Plenary, and consensus is required? If so, what changes would you suggest?

B. Should Working Groups, the KP Chair, or new structures be empowered to make final decisions on additional issues? If so, what method of decision-making do you suggest?

C. Do you believe any changes are needed to the role of Observers with respect to decision-making? If so, what do you believe their role should be?

Priority Area #5: How compliance monitoring could be improved (e.g. strengthening peer review system, assessing internal controls and introducing clear benchmarks/indicators by which to assess compliance)

Three working groups currently play a role in monitoring Participants' compliance with KP requirements: the Working Group on Monitoring, the Working Group on Statistics, and the Participation Committee. The WGM is responsible for coordinating overall monitoring by the KP of compliance/implementation by individual Participants. In particular, the WGM is responsible for the submission and review of annual reports and a rolling program of review visits and missions to each KP Participant. Additionally, the WGS monitors compliance through analyzing the accuracy of statistical data submitted by Participants, and the PC evaluates non-compliance, with ultimate decisions being made by Plenary. These groups share information with each other periodically.

A. Is monitoring of KP compliance sufficiently effective? Which aspects of monitoring, if any, could be improved? How?

B. Is the peer review system adequate? If not, how should it be strengthened?

C. Does your country sufficiently understand what it has to do to be KPCS compliant (particularly with regard to internal controls)? If not, what issues do you believe need to be clarified?

D. Could a system of benchmarks for assessing internal controls be useful in streamlining the KP's compliance monitoring system? If yes, what benchmarks do you think could be used?

E. Do you think the current KP minimum requirements are sufficient to ensure (if duly implemented) the effective functioning of the KPCS and the elimination of conflict diamonds from the trade? If not, what other requirements would you suggest, and why?

F. Do you think the KP currently has an adequate ability to address instances of Participants' non-compliance with KPCS minimum requirements? If not, what suggestions do you have?

Other Questions

A. For Participants only: Which other entities, if any, were consulted on the above questions?

B. Are there other priority areas that the CKR should include within its assessments of the KP?

C. Please feel free to add any further observations you think are relevant to the review currently being undertaken by the CKR and/or to the issues raised in this questionnaire.

SECTION I: Definitions (from the KP Core Document)

For the purposes of the international certification scheme for rough diamonds (hereinafter referred to as “the Certification Scheme”) the following definitions apply:

CONFLICT DIAMONDS means rough diamonds used by rebel movements or their allies to finance conflict aimed at undermining legitimate governments, as described in relevant United Nations Security Council (UNSC) resolutions insofar as they remain in effect, or in other similar UNSC resolutions which may be adopted in the future, and as understood and recognised in United Nations General Assembly (UNGA) Resolution 55/56, or in other similar UNGA resolutions which may be adopted in future;

COUNTRY OF ORIGIN means the country where a shipment of rough diamonds has been mined or extracted;

COUNTRY OF PROVENANCE means the last Participant from where a shipment of rough diamonds was exported, as recorded on import documentation;

DIAMOND means a natural mineral consisting essentially of pure crystallised carbon in the isometric system, with a hardness on the Mohs (scratch) scale of 10, a specific gravity of approximately 3.52 and a refractive index of 2.42;

EXPORT means the physical leaving/taking out of any part of the geographical territory of a Participant;

EXPORTING AUTHORITY means the authority(ies) or body(ies) designated by a Participant from whose territory a shipment of rough diamonds is leaving, and which are authorised to validate the Kimberley Process Certificate;

FREE TRADE ZONE means a part of the territory of a Participant where any goods introduced are generally regarded, insofar as import duties and taxes are concerned, as being outside the customs territory;

IMPORT means the physical entering/bringing into any part of the geographical territory of a Participant;

IMPORTING AUTHORITY means the authority(ies) or body(ies) designated by a Participant into whose territory a shipment of rough diamonds is imported to conduct all import formalities and particularly the verification of accompanying Kimberley Process Certificates;

KIMBERLEY PROCESS CERTIFICATE means a forgery resistant document with a particular format which identifies a shipment of rough diamonds as being in compliance with the requirements of the Certification Scheme;

OBSERVER means a representative of civil society, the diamond industry, international organisations and non-participating governments invited to take part in Plenary meetings; (Further consultations to be undertaken by the Chair.)

PARCEL means one or more diamonds that are packed together and that are not individualised;

PARCEL OF MIXED ORIGIN means a parcel that contains rough diamonds from two or more countries of origin, mixed together;

PARTICIPANT means a state or a regional economic integration organisation for which the Certification Scheme is effective; (Further consultations to be undertaken by the Chair.)

REGIONAL ECONOMIC INTEGRATION ORGANISATION means an organisation comprised of sovereign states that have transferred competence to that organisation in respect of matters governed by the Certification Scheme;

ROUGH DIAMONDS means diamonds that are unworked or simply sawn, cleaved or bruted and fall under the Relevant Harmonised Commodity Description and Coding System 7102.10, 7102.21 and 7102.31;

SHIPMENT means one or more parcels that are physically imported or exported;

TRANSIT means the physical passage across the territory of a Participant or a non-Participant, with or without transshipment, warehousing or change in mode of transport, when such passage is only a portion of a complete journey beginning and terminating beyond the frontier of the Participant or non-Participant across whose territory a shipment passes;

Relevant Technical Guidelines and Best Practices

Technical Guideline 11:

Exporter on the KP Certificate: *Although the KPCS does not identify “Exporter” or “Importer” in Section I Definitions, the Exporter listed on the KP Certificate should have an address in the geographical territory of the Participant that issues the KP Certificate.*

Technical Guideline 15:

Mention of Country of Origin: *The mention "Country of Origin" in Section I Definitions of the KPCS document should be read as "Country of Origin(Mining)", and is, as such, different from "Country of Origin" as defined in the 1986 Agreement on Rules of Origin (ARO). Participants are therefore requested to -wherever possible- print "(Mining)" immediately following "Country of Origin" on their KP Certificates, and instruct their relevant authorities on this distinction*

Best Practice 2: Number of parcels in shipment

In order to avoid confusion the actual number of parcels in a shipment and the actual number of separately sealed containers accompanied by a single KP Certificate, are best listed on the KP Certificate following “Number of parcels:” such as “20 parcels in 2 containers/boxes/trunks”.