

**KIMBERLEY PROCESS CERTIFICATION SCHEME**

**REVIEW MISSION TO ZIMBABWE**

**30 JUNE – 4 JULY, 2009**

**FINAL REPORT**

**MEMBERS OF THE REVIEW MISSION TEAM:**

**CHAIR:**

**LIBERIA: Represented by Deputy Minister A. Kpandel Fayia**

**MEMBERS:**

**CANADA: Represented by Abdul Omar**

**EUROPEAN COMMUNITY: Represented by Clementine Burnley**

**NAMIBIA: Represented by Kennedy Hamutenya and Desiderius Reinhold**

**SOUTH AFRICA: Represented by Martin Mononela and Garfield Chounyane**

**UNITED STATES OF AMERICA: Represented by Brad Brooks-Rubin**

**WORLD DIAMOND COUNCIL (industry): Represented by Cecilia Gardner**

**GREEN ADVOCATES (civil society): Represented by Alfred Brownell**

## **TABLE OF ABBREVIATIONS**

EC – European Commission

KP – Kimberley Process

KPC – Kimberley Process Certificate

KPCS – Kimberley Process Certification Scheme

MMCZ – Minerals Marketing Corporation of Zimbabwe

MMMD – Ministry of Mining and Mining Development

PC – Participation Committee

RBZ – Reserve Bank of Zimbabwe

RV – Review Visit

UAE – United Arab Emirates

WDC – World Diamond Council

WGDE – Working Group on Diamond Experts

WGM – Working Group on Monitoring

WGS – Working Group on Statistics

ZIMRA – Zimbabwe Revenue Authority

ZMDC – Zimbabwe Mining Development Corporation

ZNA – Zimbabwe National Army

ZRP – Zimbabwe Republic Police

## **I. INTRODUCTION**

Pursuant to the Mandate established by the Working Group on Monitoring (“WGM”), a team of 10 individuals conducted a Review Mission to Zimbabwe from 30 June – 4 July, 2009.<sup>1</sup> A copy of the Mandate is attached as Appendix A. Liberia, represented by A. Kpandel Fayia, Deputy Minister for Planning and Development in the Ministry of Lands, Mines, and Energy, served as Chair of the Review Mission. Other members of the Review Mission included: Canada (represented by Abdul Omar); the European Community (represented by Clementine Burnley); Namibia (represented by Kennedy Hamutenya and Desiderius Reinhold); South Africa (represented by Martin Mononela and Garfield Chounyane); the United States of America (represented by Brad Brooks-Rubin); the World Diamond Council (“WDC”)/industry (represented by Cecilia Gardner); and Green Advocates/ civil society) (represented by Alfred Brownell)(“The Review Team”/“the Team”).

The Team wishes to express its appreciation to the many members of the Government of Zimbabwe who facilitated the work of the Review Team, particularly Mr. John Makandwa of the Ministry of Mines and Mining Development. The size of the Review Team made the logistics alone quite a challenge, which were met with great care and cooperation. The Review Team also wishes to thank the KP Chair and WGM Chair for their significant efforts in insuring that the Review Team was formed and was able to complete its assignment.

### **A. BACKGROUND ON KP PEER REVIEW OF ZIMBABWE**

The KP has conducted two Review Visits of Zimbabwe, in 2004 and in 2007. The 2004 Review Visit (“2004 RV”), led by Canada, was undertaken prior to Zimbabwe’s commencement of rough diamond export or import activity, and at a time when Zimbabwean mines were not in production. As such, the recommendations of the 2004 RV were limited and focused primarily on certain aspects of the operations/functions of the Minerals Marketing Corporation of Zimbabwe (MMCZ)

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<sup>1</sup> The Review Mission was originally scheduled to take place from 29 June – 3 July, 2009, but travel delays affecting two members of the team, including the Chair, delayed the program by one day.

within the Zimbabwean diamond sector, including the potential for an independent audit process and issuance of a warranty to maintain compliance with the WDC system of warranties. Overall, the 2004 RV concluded that, although difficult to determine for a non-active Participant, “Zimbabwe has in place a system that is capable of fulfilling in a satisfactory manner its undertakings under the KPCS.” (2004 RV Report, p. 12).

The 2007 Review Visit (“2007 RV”), led by Russia, was undertaken in the wake of concerns stemming from the first diamond rush at Marange, which began in 2006. The 2007 RV visited each of the three production sites and met with a range of government and industry officials, as well as representatives from the United Nations Development Program and Federation of Small Miners.

The 2007 RV concluded that “the overall structure of the implementation of the KP Certification Scheme appears to be working in a satisfactory manner in Zimbabwe, and, in general, meets the minimum requirements of the KPCS.” Given that Zimbabwe was fully active at the time, the 2007 RV recommendations were more extensive than in 2004 and focused on several key areas. First, the 2007 RV recommended that Zimbabwe make its legal framework less cumbersome and more transparent and concise. Second, Zimbabwe needed to “[continue] on with its efforts to keep the situation in the diamond producing areas, first and foremost in and around Marange, under its permanent control.” Third, several technical/detail recommendations were made concerning statistics and the operation of the MMCZ. Finally, the 2007 RV recommended that the KP Plenary consider “ways and means” to combat smuggling, specifically focusing on the potential for the development of footprints to demonstrate the origin of stones.

## **B. BACKGROUND ON EVENTS LEADING TO ESTABLISHMENT AND COMMENCEMENT OF REVIEW MISSION**

A summary of the background on the basis and process for the establishment of the Review Mission is set forth in the Review Mission Mandate, as follows:

In November 2008, the Delhi Plenary ‘noted with concern the continuing challenges to Kimberley Process Certification Scheme (KPCS) implementation in Zimbabwe and recommended further monitoring and concerted actions in this respect’. The Working Group on Monitoring (WGM) further discussed reports of violence in relation to operation ‘Hakudzokwi’ and indications of renewed widespread smuggling in the Marange area and, in January 2009, adopted recommendations for KP specific actions, e.g. a public statement, regional concerted actions and the introduction of ‘enhanced vigilance measures’, based on a footprint prepared by the Working Group of Diamond Experts (WGDE), to ensure the containment of illicit diamonds from Marange.

Furthermore, WGM experts prepared a report highlighting instances of smuggling and seizures, statistical anomalies as well as widespread violence and concluding that implementation of internal controls in Marange appear to be ineffective. The WGM also considered a report by Zimbabwe authorities on the situation in Marange that refutes reports of violence and asserts that the situation ‘has now been contained’.

The KP Chair visited Zimbabwe on 16-18 March and conveyed the KP concerns at the highest level. Subsequently, the KP Chair issued a public statement to emphasise KP ‘growing concerns’ at the violence and smuggling and to urge Zimbabwe authorities to put an end to the violence in Marange and bring the area under control through adequate and proportionate measures.

The KP Chair also agreed with Zimbabwe that additional verification measures in accordance with Section VI, Paragraphs 13 to 15 of the KPCS, and Section III, Paragraph (a) of the Administrative Decision on Implementation of Peer Review in the KPCS (ADPR) would help clarify the situation. Further to its Teleconference on 7 April 2009, the WGM recommends that, consistent with the provisions outlined in Section 1 of the ADPR, the Review mission to Zimbabwe could be mandated to

- conduct an overall assessment of KPCS implementation in Zimbabwe in line with the standard provisions for review visits/missions under the ADPR;
- assess in particular concerns regarding the implementation of internal controls including related reports of violence and smuggling in/from Marange;
- discuss specific statistical issues identified by the KP (e.g. trade flows, ‘stockpile’...);
- formulate recommendations on further action as may be required.

In addition, following the conduct of written procedure by the Chair, an oral vote was taken on 25 June, 2009, at the Windhoek Intersessional to provide final authority for the commencement of the Review Mission. The decision to establish the Review Mission was approved by a unanimous vote of the Participants present at Intersessional.

At the Windhoek Intersessional, the WGM also heard a presentation from Mr. Jon Elliot of Human Rights Watch, which released a report concerning Marange during the week of the Intersessional. Both the WGM and Review Team had the opportunity to pose questions to Mr. Elliot. This WGM session prompted a focused discussion of the program for the Review Mission, which still had not been finalized. Zimbabwe indicated to the WGM that it had not come to final decisions on a number of requested meetings. Following discussions facilitated by the KP Chair, Zimbabwe and the Review Team developed a final agenda.

Deputy Minister of Mines and Mining Development Murisi Zwizwai presented remarks at the Windhoek Intersessional. A copy of his prepared remarks is attached as Appendix A. In sum, the Deputy Minister echoed the statements and assertions made in the February 2009 report from Zimbabwe to the KP Chair and in the Zimbabwe Annual Report for 2008 to the KP that: the reports of violence at Marange were exaggerated; Zimbabwean authorities had not used violent means to disperse the rush of illegal miners, and Zimbabwean authorities were not involved in on-going activity of a violent nature or that otherwise contributed to illegal diamond mining or trading activities. Deputy Minister Zwizwai also reiterated Zimbabwe's commitment to the KP, its need for technical assistance, and its interest in further commercial investment in and development of Marange.

### **C. CONDUCT OF REVIEW MISSION**

As set forth above, the Review Team, in conjunction with the Government of Zimbabwe, established an ambitious program to cover the full range of issues set forth above in the Mandate. The Team spent two days conducting meetings and interviews in

each of Harare and Chiadzwa/Mutare (Mutare being the city closest to Chiadzwa); the Team also spent one day visiting both the Murowa and River Ranch Limited mines.

A copy of the final agenda is attached as Appendix B. Meetings were held with representatives from each of the three pillars of the KP: at least 8 government agencies and parastatal companies; private industry; and civil society. A formal close-out session was held on 4 July, and the prepared points for that session were provided to the Government of Zimbabwe.

In general, the Team received cooperation from the Government of Zimbabwe, and all requests for meetings were granted, including with MP Shuah Mudiwa, whom the Team met in a prison in Mutare. In addition, all conditions established by the Team for certain meetings, e.g. that there be no representatives present from the Government, were respected. Further, prior to and during the Review Mission, the Team received verbal assurances that there would be no consequences for anyone who met with, or otherwise provided information to, the Team. As described further, however, these latter assurances do not appear to have been completely respected in at least one instance.

#### **D. BACKGROUND TO STRUCTURE AND SUMMARY OF FINDINGS OF REPORT**

In order to more directly address the Mandate of the Review Mission, the following report begins with a general discussion of internal control and statistics, as well as the particular concerns about Marange, and then is presented in sections corresponding to the minimum requirements of the KPCS. Rather than being structured in the format more typically associated with Review Visit reports, the Review Team believes that this more directly addresses the Mandate and will facilitate more fruitful discussion and analysis of the report.

In preparation for the Review Mission and in the completion of this report, the Review Team took note of reports by the WGM Experts, the European Commission, Partnership Africa Canada, and the aforementioned Human Rights Watch report. The

Team also reviewed Zimbabwe's annual reports to the KP, annual WGS statistical analyses, and a regional statistical analysis study conducted by the European Commission's Joint Research Center. During the Review Mission, the Team also received and reviewed reports prepared by the Zimbabwe Republic Police and a coalition of Zimbabwean civil society organizations. However, all information set forth in this report is based on information collected and observed by the Review Team during or, in limited cases, following the Review Mission.

In addition to comments presented to the Government of Zimbabwe during the 4 July close-out session, the Team prepared an "interim update" to the WGM and KP Chair as a means to facilitate immediate discussion of the Review Team's findings within the KP and to provide an immediate summary of findings and recommendations to the Government of Zimbabwe. Copies of the notes prepared for the close-out and the Interim Update are attached as Appendices C and D. An initial response by the Government of Zimbabwe to the close-out session dated 14 July was sent to the Review Team and is included herein as Appendix E.

In sum, the Review Team assesses that there are concerns with Zimbabwe's compliance with at least one or more aspects of three of the four sections (sections II, IV, and V) of the KP document that comprise the minimum requirements. KP document annexes expanding on these minimum requirements have been considered. Although reflected in certain discussions, the Review Team has not provided analysis of Zimbabwe's compliance with the full array of administrative decisions, technical guidelines, or other recommendations established by the KP, as these do not necessarily reflect minimum requirements. Discussion and explanation for these findings follow, as do suggested recommendations for both Zimbabwe and the KP.

## **II. FRAMEWORK AND OVERVIEW OF INTERNAL CONTROLS AND STATISTICS**

Although extensive information concerning framework and internal controls has been presented in the 2004 and 2007 RV reports, a summary is presented here as a basis for evaluating the Team's conclusions on Zimbabwe's compliance with minimum requirements. Certain updates to previous reporting are also included.

### **A. Overview**

There remain three sources for diamonds in Zimbabwe: Marange (located in the Chiadzwa area), Murowa (located in Zvishavane), and River Ranch Limited (located in Beitbridge). The Murowa and River Ranch mines are privately owned and operated. The company operating at Marange is government-owned, as further described below.

The steps in order to export rough diamonds from Zimbabwe are complex and involve at least five separate government agencies. The chronological order of the required actions by each organization is displayed by the attached flow chart, obtained from one producer and largely identical to Annex F contained in the 2007 RV report. The flow chart also references the laws, regulations, and orders that govern each activity.

The 2007 RV report recommended that amendments be made to the overall KP compliance system to make it "less cumbersome and more transparent and concise." Zimbabwe indicated in subsequent annual reports that new policy recommendations were in place; however, the Team was informed that no action on these recommendations has been taken.

### **B. Agencies and entities responsible for KP compliance**

The **Ministry of Mines and Mining Development ("MMMD")** is assigned overall administrative and management responsibility for the mining sector in Zimbabwe.

It has five regional offices and two “satellite” offices. Further, it is responsible for overall KPCS implementation and related policy. This includes supervision of compliance by individual companies operating in the diamond sector.

Individuals or companies dealing in diamonds are required to obtain an MMMD license under the Precious Stones Trade Act.<sup>2</sup> In addition to the producing companies, there are five licensed cutters and polishers in Zimbabwe; however, because of certain legal issues, they are not yet permitted to manufacture rough production from Zimbabwe and can only undertake cutting and polishing of imported goods. Government authorities own or control at least two of these licensed cutters/polishers: Aurex Ltd (a company owned by the Reserve Bank of Zimbabwe, “RBZ”) and Kimberworth Investments Ltd. (a ZMDC company). Certain subsidiaries of the ZMDC are also licensed to deal in rough diamonds pursuant to the Precious Stones Trade Act, including Marange Resources, Kimberworth Investments, and Sandawana Trading.<sup>3</sup> Marange Resources and Kimberworth Investments are described further below.

The Ministry requires mine operators to provide reports of production on a monthly basis. The reports are submitted regionally to the five regional offices. The Mining Ministry issues operating licenses and grants (depending on the size and sector) and further, facilitates the granting of export documentation, through parastatal mechanisms, further described below. Finally, the Mining Ministry issues export permits for rough diamond shipments; beginning in 2009, MMMD charges US\$3,000 for each export permit.

The **Minerals Marketing Corporation of Zimbabwe (“MMCZ”)** is a corporation wholly owned by the government and created by state legislation. This is the

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<sup>2</sup> See footnote 13 for description of one instance where it is unclear as to whether an individual to whom rough diamonds were donated, specifically “Chief Marange,” is licensed, or is subject to a licensing exception.

<sup>3</sup> The Team was informed by ZDMC officials that Sandawana has such a license but has used it only for trade in emeralds and not for rough diamonds.

KPCS exporting authority and, in addition, is mandated by statute to sell and coordinate the export for all rough diamonds, among most other minerals.

MMCZ maintains physical control of KP certificates and gathers production and export statistics. In most instances, MMCZ acts as a selling agent on behalf of a producer or related company, for which it receives a small commission (0.875% of the value of the sale). MMCZ may also purchase rough diamonds from a domestic producer outright and sell on its own behalf.<sup>4</sup> On every sale of rough diamonds, royalties are levied by the government in the amount of 10%, which is paid to the Ministry of Finance (see below).

For Marange production only, tenders are held periodically in Harare. The tenders are facilitated by the MMCZ on behalf of the operating company Marange Resources, with domestic and international buyers participating. In the May 2009 tender, MMCZ reported buyers participating from Belgium, Dubai, Zimbabwe, the Democratic Republic of the Congo, India, and South Africa. MMCZ indicated that previous tenders have included buyers from Russia and Israel.

MMCZ also coordinated the “mop-up” operation described at length in the 2007 RV report, which was designed to purchase illicit diamonds connected to the first rush on Marange. The MMCZ maintains this stockpile and has been in the process of selling it off. In most cases, MMCZ sells these diamonds on its own behalf, but in at least one instance (KP #0058, 27 March 2009), MMCZ sold mop-up stockpile diamonds to Kimberworth Investments, which in turn re-sold the stones to a purchaser in Belgium.<sup>5</sup>

The **Zimbabwe Mining Development Corporation (“ZMDC”)** is a holding company created by an act of Parliament that invests on behalf of the government in

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<sup>4</sup> The Team was informed that, in some cases, MMCZ is chosen to act as a seller and exporter where economic sanctions in importing countries may prohibit transactions involving other companies, such as Kimberworth Investments.

<sup>5</sup> The Review Team reviewed the complete documentation for this transaction. Although the MMCZ invoice prepared for the export made by MMCZ on behalf of Kimberworth contained the statement consistent with the System of Warranties, the domestic invoice for the original sale from MMCZ to Kimberworth did not contain the warranty. The WDC may wish to review this issue with MMCZ.

mining activities. It operates 26 separate companies (a mixture of wholly state owned and joint venture entities) that mine platinum, gold, uranium, chrome, emeralds, graphite, and diamonds.

In 2007, ZMDC was granted title and a series of “Special Grants,” to the mining rights for the area that includes Marange, comprising a total of 66,000 hectares. To date, a perimeter of 10 km<sup>2</sup> is partially fenced, with additional fencing of the larger 66,000 hectare area in the planning stage. The Marange production facility currently producing diamonds consists of a 2.5 km<sup>2</sup> secured area within the 10 kilometer fenced area and the larger 66,000 hectare grant.

Marange Resources, Ltd. is the ZMDC subsidiary that formally conducts mining operations at Marange;<sup>6</sup> Kimberworth Investments is a separate subsidiary used on occasion to sell Marange production. ZMDC provides marketing and selling services for Marange production, including finding customers and controlling exports. ZMDC officials indicated that efforts to subdivide, and attract private investment for Marange remain on-going and that such investments are critical to a sustainable and secure production environment at Marange.

The **Zimbabwe Revenue Authority (“ZIMRA”)** facilitates trade and collects revenues, in the form of customs fees, taxes, and royalties. It also functions as the importing authority, clearing parcels and checking for documentation, including KP certificates on import. This agency communicates with the export authority and confirms safe arrival of parcels.

ZIMRA provided the Team with schedules of imports in 2007-2009. In all but one case, imports consist of Australian origin diamonds that come through Belgian companies. Six different individuals and companies (Boart Longyear, Jacob Bethel

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<sup>6</sup> Managers at Marange technically work for another subsidiary, ZMDC Management Services, and are then seconded to Marange Resources.

Corp., Lesley Faye Marsh Corp., Parmenta Investments, and Independence Gold Mine) have imported diamonds. Both Boart Longyear and Jacob Bethel Corp. received fines in 2007 for import-related violations.

The **Reserve Bank of Zimbabwe (“RBZ”)** is the national bank, holding accounts for government ministries only and acting as a technical advisor to the government.<sup>7</sup> In connection with exports, the RBZ issues a form (CD-1) by which it authorizes exports. This form is required, and contains specific information about the export, including the beneficiary of the export, the value of the export, what price is being charged, what revenue is being paid to which government agency, any agent’s commission, the terms of payment. Multiple copies of the form are created, and sent to the client’s local commercial bank, to ZIMRA and to the exporter. A copy is also sent to several responsible areas of the RBZ, for reporting and supervising purposes. As indicated in the 2008 Annual Report, the Team was informed that RBZ issuance of the CD1 became increasingly more difficult and time-consuming in 2008, as a result, according to one interviewee, of RBZ interest in taking on a greater role in the rough diamond trade.

The RBZ, however, is not authorized to buy and sell diamonds, and reportedly has never done so. On one occasion, the RBZ was requested to store some rough diamonds that had been acquired through a “swap” program to clean up illicitly mined diamonds. It was also requested to store diamonds that had been seized from African Consolidated Resources, the company that held a claim to Marange that was subsequently revoked. After a period of time, all such diamonds were surrendered to the MMCZ – no other diamonds have been stored at the RBZ since that time.

Although the representatives of the RBZ stated that they only hold accounts for government ministry level agencies, and specifically denied holding an account for the MMCZ or any other agency engaged in rough diamond trade, representatives of the MMCZ stated that for a short period of three to four months in 2008, the MMMD

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<sup>7</sup> According to officials from RBZ, an intergovernmental group is currently working on a “draft diamond policy on a national level.” The RBZ is participating in this group.

required them to move their bank accounts from a commercial bank to the RBZ. After three or four months, the MMCZ was required by the MMMD to move their accounts back to their commercial bank.

C. Summary of Internal Controls – Source to Point of First Export

**1. Marange**

The Team concludes that the system for internal controls does not effectively capture all diamond production at Marange. As described below, the Review Team has judged that certain entities within the Government of Zimbabwe are directly involved with the removal of rough diamonds from the Marange area. The discussion following in this section concerns only the official ZMDC production that is captured through the legitimate channels established by the ZMDC, MMCZ, and MMMD.

The Marange facility started officially producing diamonds in April 2007, at which time it was declared a protected area, making unauthorized entry a criminal offense, excluding entry by the local community. As described above, the ZMDC has a Special Grant for the area, and the facility is operated by a ZMDC subsidiary.<sup>8</sup> A total of 150 people, including security personnel, diggers, sorters, and 25 private security guards (employed by Chitkem, a private security company), work at Marange.

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<sup>8</sup> As indicated in the 2007 RV Report, ZMDC assumed the rights to Marange following the cancellation of a claim to the area filed by African Consolidated Resources (ACR). The team discussed the question of the disputed claim with various Government entities and in a separate meeting with ACR and its representatives. The Review Team also took note of information that claims to the area have been filed by local community representatives.

The Honourable Minister of Mines Obert Mpofu told the Team that the Zimbabwean government plans to relocate the community in Chiadzwa in order to improve the security situation in and around Marange diamond fields. The Team learned that this community had previously been relocated from timber concessions in Manicaland. Various stakeholders met by the Team emphasized the need for the government to compensate community members adequately if they are relocated and the importance of ensuring that the community benefits from the revenues derived from diamond mining in the area.

The Team takes no position with respect to which entity should or should not have the rights to Marange. However, the Team believes that resolution of these disputes is critical in order for Marange to function properly. In addition, the Team concurs that the concerns of the local community must be addressed in a collaborative manner in order to ensure that illegal panning can be fully addressed.

ZMDC's Special Grant total area is 66,000 hectares. The road into the area from Harare has at least five (5) policed road blocks where incoming cars are halted by police and army representatives for inquiry. The team did not observe any outgoing cars being stopped for inquiry. Within the 66,000 hectare property, there is a 10 km<sup>2</sup> area that is imperfectly fenced, i.e. there are significant sections of the fencing that can easily be walked through or are simply non-existent. These concerns with the fencing have existed since formal production began in 2007.

Although this area is patrolled by the Zimbabwe Republic Police (ZRP) and the Zimbabwe National Army (ZNA), there is no effective real control or security in this area; indeed, as described in Section IV, these authorities often are the cause of the insecurity. The larger, 66,000 hectare grant area is also not secured or controlled in any manner.

The single Marange alluvial production area currently being worked is a 2.5 km<sup>2</sup> area. It is fully fenced, and the perimeter is monitored by joint ZRP-ZNA patrols. There is an elevated observation post (unmanned when the Team visited). Persons entering and leaving the facility are searched by employees. The production equipment used to process the collected gravel is low tech – the production machinery is operating on fuel power (no electricity or water source other than fuel driven generators and transported water is available at the facility.) The diggings, the production machinery and the sorting process are contiguous. The processed “waste” is also stored on site very near to the production machinery – further sorting of this soil is planned in the future.

Diamond sorters at Marange work within a smaller fenced area within the mine and are closely supervised by employees of the private security firm. Once a diamond is found by a sorter, it is handed to a security guard who places into a “non-returnable” box (i.e., diamonds can go in but not out.) This box is carried (in the company of security) to the sorting room. This room has limited access, and is monitored by the security company employees. An entry into a ledger is made for each diamond, noting carat weight. The production is then placed into secure and sealed boxes on site, and then

transported by car (accompanied by the ZRP) to MMCZ offices in Harare, where the seals are broken, the contents sorted and evaluated prior to export.

At this juncture, MMCZ undertakes to acquire all the necessary documentation (including a KPCS certificate). Once payment is received, the documents are produced and delivered to the MMCZ, which ultimately takes responsibility for the documents, the export clearances and shipment of the parcel. The MMCZ also receives confirmation from the recipient of the parcel that it has arrived at its destination.

## **2. Murowa<sup>9</sup>**

This kimberlitic mining operation is owned by Murowa Diamonds Private Limited, which is in turn majority-owned by Rio Tinto plc, a publicly traded Australian mining company. Security within the mining area at Murowa operates at a highly complete and technical level. Production from Murowa is sealed in parcels on site and transported by security and Murowa employees to Murowa headquarters offices in Harare. At this point, the MMCZ is invited to the offices of Murowa for the purpose of engaging in the valuation and export procedures. At no point do the diamonds ever leave the premises.<sup>10</sup> The required documents (KPCS certificate, invoice, packing list, bill of entry, shippers instruction and release order and CD1) are then acquired by Murowa from the MMCZ, joined with the diamonds and picked up by a Murowa contracted South Africa security company for shipment to Antwerp by air. The security company maintains physical custody of the documents and diamonds at all times through the transport to the receiver in Antwerp.

## **3. River Ranch Limited**

River Ranch Limited (RRL) is owned by Rani Investment, which is part of the Aujan Group, a Middle Eastern manufacturing conglomerate. RRL is a Zimbabwe

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<sup>9</sup> The Team visits to Murowa and River Ranch were brief, resulting in follow-up via teleconference after the completion of the Review Mission to supplement missing details.

<sup>10</sup> The Interim Update incorrectly indicated that MMCZ evaluates the parcels in Harare, resulting in broken seals.

registered mining company engaged in the extraction of diamonds, under the authority of a Special Grant. The company operates a kimberlitic mine, measuring some 16 km<sup>2</sup> in total, situated 22 kilometers from Beitbridge. RRL also has an office in Harare.

Security at River Ranch is operating at a high level. There are mounted CCTV cameras at strategic locations – and robust security measures, including X-ray, used to enter and leave the processing plant facility. Production from River Ranch has resulted in only five (5)<sup>11</sup> exports since production began in 2007. According to officials at River Ranch, this is due to a lack of demand.

When a decision to export is made, the following procedures are applied: RRL contacts MMCZ of their intention to export, and requests that representatives of MMCZ travel to the mine for evaluation procedures. The MMCZ evaluates labels and packs the diamonds in the presence of RRL at the mine. RRL informs its buyers, who then contact MMCZ to complete the terms of the sale. Once payment is made by the buyer, the MMCZ processes the export permit, which is sent to the MMMD for approval. This document is sent to the RBZ, which issues a CD-1. Once this form is acquired, a KPCS is issued by the MMCZ. All documents are submitted to ZIMRA (Customs) for final clearance. The documents are then sent back to the mine, and joined with the parcel and shipped by one of RRL's privately engaged common carriers (G4S International or Brinks Global), which makes all air cargo arrangements. These details are forwarded to RRL.

When the representative of the carrier arrives at the mine to collect the parcel, they have the documents, and their ID is checked, as is all paperwork. Under heavy guard, the courier rep is escorted to the RRL airstrip. The parcel is flown to Harare, accompanied by a representative of RRL. They are met by security personnel, and escorted to a secured area of the airport, where the parcel is loaded on to the traveling on aircraft, in the presence of RRL, airport security and the courier. It is flown to

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<sup>11</sup> Although there have only been five exports, one such export in January 2009 was divided among three KPCs, resulting in a total of seven KPCs issued for River Ranch exports since 2007.

Johannesburg, held in secure courier company facilities there, and then cleared by South Africa customs officials and the South African Diamond Board for international shipment. Once the parcel arrives at its destination, it is cleared and delivered by the courier company. When the parcel leaves Zimbabwe, a confirmation is given to the MMCZ, and the issue a copy of the KPCS to RRL. RRL's customer confirms receipt in writing.

D. MMCZ/ZMDC

The Team was able to review portions of the stockpile maintained by MMCZ and ZMDC. Timing and logistical challenges prevented an exhaustive review of the stockpile, and the Team recommends that a more thorough review of the entire stockpile be conducted by the next KP team that visits Zimbabwe. The Team was not able to review the portion of the stockpile maintained by the ZRP or other judicial authorities for purposes of evidence and can provide no comment as to the applicable security measures or quantity of rough diamonds such authorities may possess.

The security system in place at the MMCZ/ZMDC offices features a number of security cameras and locked safes inside designated areas of the building. Personnel access is controlled by security guards and requires the presence of designated personnel from the respective company that owns the stockpile. Diamonds are maintained in individual parcels with corresponding documentation included within the parcel.

E. Statistical Analysis

**1. Production statistics**

According to KP statistics, Zimbabwe has produced 695,016 carats in 2007 and 797,198 carats in 2008. They were valued at USD 31,400,904 and USD 43,825,425, respectively. Zimbabwean production comes mainly from Murowa and Marange. The Murowa mine produced 147,956 carats in 2007 and 261,850 carats in 2008. The remaining production comes from Marange and River Ranch mines, amounting to

547,060 carats in 2007 and 536,068 carats in 2008, or 79% and 67% of the total production respectively.

Daily records of diamond production in Marange provided to the Team show that during the period April – December 2007, 496,691 carats were produced. In 2008, the total production was 460,017 carats, of which 73 % were produced in the first half of the year. Production slowed in the last quarter of the year, which corresponds to the period when there were reports of an illegal diamond rush in Marange. The average production per month was 19,800 carats/month in the 4<sup>th</sup> quarter of 2008 whereas it was 58,000 carats/month in the 1<sup>st</sup> quarter of the same year.<sup>12</sup>

Diamonds from Marange accounted for at least 71% of the total production in 2007 and 58% in 2008, compared to 21% and 33% for Murowa in 2007 and 2008, respectively. The share of value for Marange diamonds in total national production is not easy to establish since the characteristics of diamonds on the three sites may differ. Export records from Murowa in 2008 indicate an average price of 114 USD/carats, whereas the average price calculated from the KP statistics is 111 USD/carats. Thus, the share of Marange production in terms of value should be similar to the one in terms of weight.

## **2. Export statistics**

Zimbabwe exports its entire production, as there is no operational cutting centre in the country.<sup>13</sup> The imports (which are actually re-imports) represent a tiny proportion, less than 1% of the trade volume. Only exports are therefore analysed in this report.

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<sup>12</sup> The Team identified slight discrepancies between a small number of the daily Marange production reports from ZMDC and the corresponding monthly reports provided to the MMMD. For example, the October 2007 daily production records state that 73,562.00 carats were produced at Marange, whereas the monthly report submitted to MMMD indicate total production of 70,553.00, or a difference of 3,009.00 carats. The November 2007 (discrepancy of 500.00 carats), June 2008 (discrepancy of 45.50 carats), and March 2009 (discrepancy of 17.50 carats) also contained minor errors. However, these discrepancies are relatively minimal, and in the vast majority of cases, the daily reports and monthly reports match.

<sup>13</sup> The Review Team identified at least one instance of domestic “disposal” of rough diamonds. In its September 2008 monthly production report submitted to MMMD, ZMDC stated that it had disposed of

In 2007, Zimbabwe declared exports of 489,171 carats to the European Community (68%), South Africa (17%), the United Arab Emirates (13%) and China (1%). In terms of value, this corresponds to a total of USD 23 377 870 that breaks down as follows: the European Community (74%), South Africa (3%), the United Arab Emirates (14%) and China (9%).

In 2008, Zimbabwe declared exports of 327,833 carats to the European Community (67%) and to the United Arab Emirates (33%). In terms of value, this corresponds to a total of USD 26,693,385, which breaks down as follows: the European Community (93%) and the United Arab Emirates (7%).

Exports to the European Community in 2008 corresponded exactly to exports declared by Rio Tinto, which operates the Murowa mine, i.e. 218,284 carats, representing 67% of total Zimbabwean exports. It can be assumed that the diamonds exported to the UAE were produced in Marange or River Ranch. In 2007, exports from Murowa accounted for 44% of the total Zimbabwean exports to the EC. The proportion of diamonds from Marange in the official exports has diminished between 2007 and 2008, and those diamonds were exported to various destinations.

KP statistics indicate discrepancies with two trading partners: the European Community in 2007 and 2008, and the United Arab Emirates (UAE) in 2008. The MMMD indicated that it had begun reconciliation processes with both the EC and UAE but had not had the opportunity to complete the processes prior to the time of the Review Mission.

A comparison of declared exports and production figures shows a gap of 205,845 carats (30% of the total production) in 2007, and 470,084 carats (59% of the total production) in 2008. Part of the discrepancy between production and exports figures is a

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32.32 carats, valued at USD 6,321.55, in a “donation for traditional rituals” to “Chief Marange.” The Team was not informed as to whether the Chief Marange has a license pursuant to the Precious Stones Trading Act or is otherwise covered by an exception to the Act.

result of the fact that police seizures were included in production, but not exported because they were used as court exhibits. The data given to the Team shows that the police seized a total of 145,510 carats in 2006, 25,655 carats in 2007, 22,945 carats in 2008, and 21,582 carats through June of 2009. With the exception of a single year (2006), the seizures represent only a small fraction of the total production and cannot explain the discrepancy between production and exports.

Finally, MMCZ statistics for 2009 indicate that Zimbabwe is exporting significantly greater quantities of rough diamonds than in previous years. In the first half of 2009, MMCZ records indicate that Zimbabwe exported 700,714 carats, already more than double the total from all of 2008, and over 210,000 carats more than in all of 2007. MMCZ explained that this was largely a result of a decision to sell off portions of the stockpile in order to improve cash reserves.

### **III. SPECIFIC CONCERNS AND FINDINGS ABOUT MARANGE**

As indicated above, the primary concern leading to the establishment of the Review Mission was the situation in and around the Marange diamond field in Manicaland in eastern Zimbabwe. Marange was also a significant focus of the 2007 RV report, as an earlier diamond rush at Marange in 2006 prompted the establishment of the RV team. The Marange field and surrounding area are described in detail in the 2007 RV report, and there has been no change in the legal status or other characteristics of the field since that report.

The 2007 RV report concluded that, following a “mop-up” rough diamond purchasing operation, transfer of Special Grant claims to the ZMDC enabling the ZMDC to begin formalized production, and other security measures, the “Government of Zimbabwe has in general managed to bring [the Marange] situation under control in the first half of 2007.” The 2007 RV report included a recommendation that the Government of Zimbabwe continue with its efforts to increase and maintain control at Marange.

In response to this recommendation, Zimbabwe’s annual reports in 2007 and 2008 provided identical updates on the status of implementation: “Implementation is ongoing; Security plan is being reviewed – security fencing and accountability system is being upgraded.” The 2008 Annual Report also included a reference to “occasional vandalism of security fencing by illegal diamond diggers” with no direct indication as to how that had impacted its implementation of the recommendation.

In a separate section of its Annual Report, Zimbabwe indicated the following:

Illegal diamond diggers and dealers posed security and accountability challenges at Marange. Occasionally, the illegal diggers pilfered diamonds from the diamond concessions where Zimbabwe Mining Development Corporation has exclusive prospecting and mining rights.

The country’s security agents endeavoured to stop the illegal activities within the diamond field, which besides illegal diamond digging and

dealing, included murder among the diggers and dealers, robberies, rape, cattle rustling etc.

In the 4<sup>th</sup> quarter of 2008 the security agents executed a special operation, which is still ongoing. The objective of the special operation was to restore order and maintain order. The operation flushed out about 30000 illegal diamond diggers from the diamond field. There were three (3) reported deaths from among the illegal diggers and dealers, which resulted in eight (8) deaths [sic – should be arrests/prosecutions].

In conducting its work, the Team visited the area in and around the Marange diamond fields, conducted extensive interviews with the victims of the reported violence in the fall of 2008. In addition to meetings with Zimbabwean authorities, the Team held meetings with the Mayor of Mutare, the former Deputy Mayor of Mutare, the administrative staff of the Mutare Provincial Hospital, the Member of Parliament for Mutare Central, the Member of Parliament for Mutare West, the Chiadzwa Chieftain, the manager of Chiadzwa's medical clinic as well as the civil society organization, Center for Research and Development.

During the field visit, the interviews, and the meetings, the Team collected evidence that contradicted the accounts given by the Zimbabwean authorities in the Annual Report section above and in separate interviews with the Team on the involvement of the security forces in illegal mining activities and on the reported violence in and around the Marange diamond fields.

The Team was told by a number of interviewees, including the ZRP, ZNA, ZMDC, MMCZ, and others that, starting in approximately October 2008, the ZRP faced a critical situation resulting from the renewed appearance of an estimated tens of thousands of illegal diamond miners. Earlier police operations, which included mass arrests, had failed to stem mining activities by illegal miners.

The ZRP told the Team that it requested assistance from the ZNA in October 2008 in response to an increased presence of approximately 35,000 illegal miners in the Marange diamond fields. The Team was told that that the ZRP remained in charge of all

operations in Marange at all times, with total forces of approximately 1,500 police officers and military personnel under its command.<sup>14</sup> Both the ZRP and the ZNA told the team that no shots were fired during the efforts to disperse the illegal miners, that the illegal miners faced no direct violence, and that no police or army personnel experienced any injuries.

The Team was also informed that the ZRP and the ZNA continue to provide joint security in the area, under the authority of the ZRP, and that there is no formal involvement of any nature by the approximately 900 officers from both forces in diamond mining or trading activities. The ZRP and ZNA provided information on individual instances of misconduct by soldiers and officers, which resulted in deaths in 5 cases, but which were claimed to be unrelated to rough diamond activity.

During its visit to the Marange area, members of the Team observed soldiers with uniforms using civilians to conduct illegal diamond-mining activities. Members of the Team observed three ZNA personnel overseeing the washing of diamond gravel by illegal diamond miners. On two occasions, when members of the Team tried to approach them, the military personnel and the illegal miners disappeared into nearby bushes. On one occasion, members of the Team spoke to a group of eight illegal miners, including women with small children, who had stayed behind; however, this group was not forthcoming.

In addition to observing diamond-washing activities, members of the Team saw several groups of illegal diamond miners, some digging diamonds, and some carrying sacks of gravel. These activities took place outside the perimeter of ZMDC's current mining area, but still within the Special Grant area of 66,000 hectares. The Team also observed the ZMDC truck removing water from the facilities of the Chiadzwa medical clinic (Water is often used by diamond mining companies for pumps and as a means to sort through gravel to identify diamonds. ZMDC's mining techniques are quite basic, and water is used by ZMDC for these purposes.)

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<sup>14</sup> The Team received a range of estimates on the number of officers involved, from 900 to 2,000.

The Team was able to speak to a group of seven illegal miners who initially started running when a vehicle used by the Team approached them. All of the individuals were carrying sacks containing diamond gravel, some of which they left behind while running away. After explaining to them the Team's interest in contributing to the improvement of the situation in and around Marange and providing assurances that their identity would not be shared with the security forces, the illegal diamond miners returned and shared their experiences. This group told the Team that they are regularly engaged by military personnel who allow them to collect gravel from the area that the ZMDC is currently mining. The group mentioned that the military officers they work for usually allow them to take 10% of the proceeds from the diamonds they recover. They also told the Team that the military forcibly uses them to refill the land where diamonds have been extracted without providing them any compensation.<sup>15</sup>

These reports correspond to other evidence presented to the Team, and the Team judges as credible the proposition that the system of ZNA/ZRP syndicates operating to smuggle rough diamonds has been in place since approximately November 2008, and likely since formal production began at Marange in 2007. The Team concludes that the Government of Zimbabwe authorities are aware of these syndicates and on-going smuggling operations and have permitted them to continue.

The Team received consistent reports that diamonds removed from Marange in this manner generally exit Zimbabwe through the nearby border with Mozambique, where significant illicit buying and trading operations are underway.<sup>16</sup> The Team

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<sup>15</sup> This group reported that they had had better arrangements when they dug on behalf of ZRP officers between 2007 and late 2008, prior to the deployment of the military in the area. These illegal miners highlighted that ZRP officers treated them better and gave them 50% of the earnings.

<sup>16</sup> The 2007 RV noted that illegal buying operations were established in Mutare, close to the border with Mozambique. A review of KP statistics and the draft report from the Review Visit to the Democratic Republic of the Congo (DRC) conducted in March 2009 points to the possibility that a substantial quantity of Marange diamonds smuggled in 2006 and 2007 transited through the DRC. The Team recommends that the Working Group on Statistics look into this matter and follow up with the DRC and UAE, as necessary, and consider review of 2009 statistics to determine whether there have been similar trends.

received reports from one organization subsequent to the Review Mission indicating that buyers from Lebanon, Israel, Belgium, and Dubai are present in the Mozambican towns of Manica and Chimoio. In general, the reports indicate that rough diamonds travel from Mozambique directly – and illegally -- to cutting and polishing factories, likely without obtaining KPCs along the way.

Members of the Team asked the aforementioned group of seven illegal miners about deaths and violence during the October 2008 -- January 2009 operations to evict illegal miners from the Marange diamond fields. Each one of these illegal miners reported seeing people killed and the numbers they cited ranged from one to seven.<sup>17</sup> This group also told members of the Team that they observed extreme violence against illegal miners and that the ZRP and ZNA used two helicopters, “AK” rifles, dogs, horses, shotgun pellets, batons, and tear gas. The Team found that the equipment listed by this group largely corresponded with the ZRP and ZNA’s own accounts of equipment present during their operations.

Including the individuals indicated above, the Team interviewed more than 20 victims in Mutare and Chiadzwa. The victims included women who reported that, while under the custody of the security forces, they were raped repeatedly by military officers and that they have been forced to engage in sex with illegal diamond miners. One victim told the Team that she tested HIV positive after she had been forced to have sex with two men and then raped by a military officer.

During the interviews of victims, the Team heard accounts of beatings of men and women by the security forces, and saw wounds and scars from dog-bites and batons.

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<sup>17</sup> The Team inquired into the existence of mass graves of the victims of the operations in the Marange diamond fields. Concerning this issue, the Team was able to verify that the Mutare City Council received two requests for a burial site from the Mutare Provincial Hospital, that this hospital’s morgue had been overcrowded during the operations in Marange (which coincided with the outbreak of cholera in Zimbabwe), and that the city was not able to grant a site due to legal concerns resulting from the hospital’s failure to follow properly the procedures for post-mortem burials. The Team met with a source who indicated knowing the location of two mass graves in Dangamvura. The Team did not undertake a visit to such mass graves, as it did not have the expertise to exhume bodies and conduct forensic analysis and as this work is well beyond the mandate and scope of the Kimberley Process.

A substantial number of the victims and witnesses interviewed by the Team reported a rampant use of violent dogs by the Zimbabwean security forces. The team found that the medical clinic in Chiadzwa village treated many of the victims of the violence in Marange. Some of the victims, including petty traders, reported that they were denied access to medical facilities in Mutare by the government. The Team also received documentation from the Mutare Clinic documenting individual cases treated there, a significant number of which included assaults, dog bites, and gunshot wounds sustained during October and November 2008. The Zimbabwean Physicians for Human Rights told the Team that it assisted four cases of people who were denied medical treatment.

The Team asked the ZMDC and the MMCZ if they received reports of violence perpetrated against citizens by either the ZRP or the ZNA from October 2008 through January 2009. Both the ZMDC and the MMCZ maintained that they did not receive reports of any acts of violence. However, the Team interviewed a witness who stated that he himself had met with the ZMDC and provided specific information about these events at that time. Further, the Mayor of Mutare and the Member of Parliament for Mutare West reported the increase of violence and illegal activities in the area to the authorities during this time period.

The Team assesses as credible the general details set forth in the reports gathered from victims and through other meetings. The Team does not view as credible the general details provided by the ZRP, ZNA, and other authorities concerning the conduct of security operations in October-December 2008, and in the period since January 2009. The Team judges that an on-going operation is in place through which illegal mining and smuggling of rough diamonds from the Marange area is coordinated and conducted by the ZNA and was previously coordinated by the ZRP. The Team assesses that, at a minimum, the ZMDC is aware of and may also participate in some aspects of this operation. The Team judges as likely that the MMCZ and MMMD are aware of the operation.

Prior to the departure of the Team from Harare, the Minister of Mines, the Honourable Obert Mpofu, announced that Zimbabwe would demilitarize the area and that the military would be withdrawn in phases. The Minister invited the Kimberley Process to observe the demilitarization process. According to information provided to the Team following the visit, as well as numerous media reports, however, this does not appear to have occurred; indeed, the Team is aware of reports that the military presence in the area may actually have increased.

#### **IV. THE KP CERTIFICATE**

Section II of the KP Document provides that each Participant should ensure that:

- (a) a Kimberley Process Certificate (hereafter referred to as the Certificate) accompanies each shipment of rough diamonds on export;
- (b) its processes for issuing Certificates meet the minimum standards of the Kimberley Process as set out in Section IV;
- (c) Certificates meet the minimum requirements set out in Annex I. As long as these requirements are met, Participants may at their discretion establish additional characteristics for their own Certificates, for example their form, additional data or security elements;
- (d) it notifies all other Participants through the Chair of the features of its Certificate as specified in Annex I, for purposes of validation.

The Review Team notes concern with subsection (a), finding Zimbabwe generally compliant with subsections (b), (c), and (d). The Team notes one area of concern with respect to subsection (c), further described below.

First, concerning subsection (a), the Review Team notes that, in general, the process for issuance of KPCs remains the same as set forth in the 2007 RV report, as elaborated upon above. In general, the Review Team judges that this process, though remaining procedurally cumbersome, is, in and of itself, sufficient to meet KP minimum standards.

However, the process, at least vis-à-vis Marange, is not implemented in a manner sufficient to ensure that the requirement of subsection (a) is fulfilled. Specifically, as explained above and in the 2007 RV report, the process for issuance of KPCs for export requires interaction by an exporter with the MMCZ, MMMD, and RBZ prior to the granting of a KPC by MMCZ. Information gathered by the Review Team indicates that this does not occur consistently on the ground at Marange, as certain government authorities enable rough diamonds to leave the Marange area without going through the required processes. Specifically, the weak security measures in place within both the formal production area and larger Special Grant territory at Marange, in conjunction with

the consistent, on-going level of facilitated smuggling, results in the failure of Zimbabwe to ensure that each shipment of rough diamonds from Zimbabwe will have a KPC.

Although normally considered more of a matter of internal controls, the Review Team also judges failure to ensure the issuance of a KPC for each export of rough diamonds to be a concern with respect to Section II (a). During its visit to Marange, the Team witnessed a sale of rough diamonds by illegal miners to an unlicensed buyer. That this incident could be witnessed openly by the Team underscores the extent of the problem and explains why reference is made to concerns about compliance with Section II(a).

Second, with respect to subsection (c), the Review Team notes that, as indicated in the 2004 RV and 2007 RV reports, the Zimbabwe KP Certificates continue to reflect an error in HTS classification number, i.e. 7102.20 vice 7102.21. The 2004 RV report recommended that a manual change of the HTS number be made on each KPC until the original stock is exhausted; the 2007 RV report indicated that this recommendation had been adopted and implemented.

However, based on the Team's review of copies of 43 of the final KPCs issued by Zimbabwe from 1 January 2007- 24 June 2009, it appears this change was made on only five, primarily on KPCs issued in 2009. Notwithstanding the question this raises with respect to the finding in the 2007 RV Report, particularly in light of the counterfeit Guinean KPCs identified in 2009, at least some of which featured an analogous error in HTS classification number, the Review Team reiterates the recommendation of the 2004 RV report that this change be made manually on each KPC issued by Zimbabwe until the printed stock is exhausted.

**V. UNDERTAKINGS IN RESPECT OF THE INTERNATIONAL  
TRADE IN ROUGH DIAMONDS**

Section III of the KP document sets forth:

- (a) with regard to shipments of rough diamonds exported to a Participant, require that each such shipment is accompanied by a duly validated Certificate;
- (b) with regard to shipments of rough diamonds imported from a Participant:
  - require a duly validated Certificate;
  - ensure that confirmation of receipt is sent expeditiously to the relevant Exporting Authority. The confirmation should as a minimum refer to the Certificate number, the number of parcels, the carat weight and the details of the importer and exporter;
  - require that the original of the Certificate be readily accessible for a period of no less than three years;
- (c) ensure that no shipment of rough diamonds is imported from or exported to a non- Participant;
- (d) recognise that Participants through whose territory shipments transit are not required to meet the requirement of paragraphs (a) and (b) above, and of Section II (a) provided that the designated authorities of the Participant through whose territory a shipment passes, ensure that the shipment leaves its territory in an identical state as it entered its territory (i.e. unopened and not tampered with).

In general, Zimbabwe appears compliant with the provisions of Section III. However, the Review Team notes some concern with respect to a possible interpretation of subsection (c). As indicated above, credible information gathered by the Team indicates that a substantial quantity of rough diamonds smuggled away from Marange exit Zimbabwe to Mozambique, a KP non-Participant. This has been a known issue for the Government of Zimbabwe since at least 2007, when the 2007 RV report indicated that illegal dealers had established themselves in Mutare, “a few kilometers from the border with Mozambique.” The Review Team was not presented with any information by the Government of Zimbabwe concerning specific efforts to prevent the continuous exit of diamonds from Zimbabwe to Mozambique. Given the length of time that this appears to have been occurring, and the potential quantities of rough diamonds exiting Zimbabwe to Mozambique, the Team notes that subsection (c) may require further elaboration from the KP as to the applicability to a situation like that of Zimbabwe.

## **VI. INTERNAL CONTROLS**

Section IV of the KP document sets forth:

- (a) 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;
- (b) designate an Importing and an Exporting Authority(ies);
- (c) ensure that rough diamonds are imported and exported in tamper resistant containers;
- (d) as required, amend or enact appropriate laws or regulations to implement and enforce the Certification Scheme and to maintain dissuasive and proportional penalties for transgressions;
- (e) collect and maintain relevant official production, import and export data, and collate and exchange such data in accordance with the provisions of Section VI;
- (f) when establishing a system of internal controls, take into account, where appropriate, the further options and recommendations for internal controls as elaborated in Annex II.

### **Principles of Industry Self-Regulation**

Participants understand that a voluntary system of industry self-regulation, as referred to in the Preamble of this Document, will provide for a system of warranties underpinned through verification by independent auditors of individual companies and supported by internal penalties set by industry, which will help to facilitate the full traceability of rough diamond transactions by government authorities.

The Review Team notes concerns with subsections (a), (d), and (f).

With respect to subsection (a), the Team concludes that Zimbabwe's system of internal controls, particularly at Marange, does not necessarily eliminate the presence of conflict diamonds from diamonds exported from its territory. The Team views as a necessary precondition to fulfill this provision a system that controls rough diamonds from the point of production to the point of export. While illicit mining and smuggling can rarely, if ever, be fully eliminated, the Team views as distinct a situation where a Participant faces individualized cases of illegal smuggling, and that of Zimbabwe, where

the smuggling and operation that enables rough diamonds to flow from Zimbabwe outside the KPCS is largely operated and maintained by official entities.

The involvement of government entities in these flows, rather than solely the usual black market actors, should result in direct implication of the overall system of internal controls that Zimbabwe is responsible for. That is, the Team judges that the smuggling operation out of Marange should be deemed to be “on the account of” Zimbabwe itself. As a result, the Team assesses that the flaws in Zimbabwe’s system of internal controls makes possible the introduction of conflict diamonds into the legitimate trade because it maintains an on-going level of smuggling that does not provide for imposition of the required elements of the KPCS or a mechanism to control particular rough diamonds from point of production to point of export. Without such elements, a system cannot be deemed to be “designed to eliminate the presence of conflict diamonds...”

While there are currently no indications that this is the case, an established smuggling channel as exists from Marange could easily be viewed as a feasible mechanism for a trafficker of conflict diamonds. And because the system of internal controls established for Marange only applies to a portion of the production, such conflict diamonds could easily be introduced and further smuggled by this system without detection or control.

The Team observed a significant level of basic lawlessness in and around Marange, which, according to numerous reports provided to the Team that were deemed to be credible, carries over to the neighboring areas of Mozambique, from whence rough diamonds are reportedly smuggled onward into the territories of a number of Participants. As a result, illicit rough diamonds appear to be able to flow in and out of the Marange area with little impediment. Lawlessness, particularly when combined with violence and largely overseen by government entities, should not be the hallmark of any system of internal controls deemed to be compliant with the provisions of subsection (a).

Further, the general situation in and around Marange not only prevents Zimbabwe from insuring that rough diamonds are not introduced into the trade through its territory, but the level of smuggling out of Marange also jeopardizes the ability of other Participants to be sure that their own system of internal controls is sufficient.

The Team judges that the relatively minimal security measures in place at the official mining operations at Marange also do not eliminate the potential for introduction of conflict diamonds into the system, as required by subsection (a) and as set forth in Paragraph 10 of Annex II of the KP document (referred to by subsection IV(f)). The Team determined and demonstrated that it was quite simple to breach the fence – where the fence exists – surrounding the mining operation at Marange. Moreover, the lack of coverage of security cameras and manner in which the sorters process diamond production makes it quite possible for conflict diamonds to be mixed in with the general Marange production. Neither ZMDC nor MMCZ appear to have a system in place to evaluate the origin of the diamonds contained in Marange production.

With respect to subsection (d), the Team notes with concern the manner in which the ZNA and ZRP have undertaken security operations to deal with transgressions of the Precious Stones Trade Act and other relevant laws. As set forth in extensive detail in the 2007 Annual Report, Zimbabwean law provides for appropriate and dissuasive penalties; indeed, the laws were enhanced following the first rush on Marange. The Team judges that the use of extreme violence to counteract illegal mining does not correspond to the principle set forth in this minimum requirement. Although the KP does not instruct, nor does the Team intend to provide such instruction to, Zimbabwe or any other Participant as to how to implement sovereign decisions to undertake security operations, the Team concludes that the manner in which the security operations were conducted contradict the nature of this provision of the KP document.

The Team fully appreciates the challenges facing the Government of Zimbabwe in administering the Marange mine, as well as with respect to the larger economic and political issues facing the country. Nevertheless, the Government authorities must rely

on the very laws they have set forth to combat illegal mining. Although they clearly do so to some extent, in light of the number of arrests in the past year, there is a concern that the authorities do not solely rely on these penalties, but also implement extrajudicial actions that the Team views as representing a concern with respect to subsection (d).

## **VII. COOPERATION AND TRANSPARENCY**

Section V of the KP sets forth:

- (a) provide to each other through the Chair information identifying their designated authorities or bodies responsible for implementing the provisions of this Certification Scheme. Each Participant should provide to other Participants through the Chair information, preferably in electronic format, on its relevant laws, regulations, rules, procedures and practices, and update that information as required. This should include a synopsis in English of the essential content of this information;
- (b) compile and make available to all other Participants through the Chair statistical data in line with the principles set out in Annex III;
- (c) exchange on a regular basis experiences and other relevant information, including on self-assessment, in order to arrive at the best practice in given circumstances;
- (d) consider favourably requests from other Participants for assistance to improve the functioning of the Certification Scheme within their territories;
- (e) inform another Participant through the Chair if it considers that the laws, regulations, rules, procedures or practices of that other Participant do not ensure the absence of conflict diamonds in the exports of that other Participant;
- (f) cooperate with other Participants to attempt to resolve problems which may arise from unintentional circumstances and which could lead to non-fulfilment of the minimum requirements for the issuance or acceptance of the Certificates, and inform all other Participants of the essence of the problems encountered and of solutions found;
- (g) encourage, through their relevant authorities, closer co-operation between law enforcement agencies and between customs agencies of Participants.

The Review Team assesses that Zimbabwe is generally compliant with subsections (b)-(f). However, the Team believes that information provided by Zimbabwe in response to the KP Chair's queries in February 2009 and in its Annual Report for 2008 (submitted in March 2009), as well as in reports and information presented to the Team itself during the Review Mission, was false, and likely intentionally so. Although perhaps more squarely an issue with respect to compliance with the ADPR, the Team notes its concern in this regard vis-à-vis subsection V(a).

As indicated above, the Team assesses as credible the information provided by witnesses and in the report prepared by Zimbabwean civil society concerning the intense period of violence of October-December 2008 connected with Operation Hakudzokwi, as well as the on-going nature of ZNA/ZRP facilitation of on-going illegal smuggling operations. The Team witnessed ZNA soldiers overseeing illegal diamond operations, observed an illegal sale of rough diamonds from members of a “syndicate,” and interviewed numerous witnesses who described being the victims of extreme violence in connection with the illegal mining and smuggling of diamonds. The Team also received consistent reports from regional government officials that corroborated these accounts.

In each of its presentations to the KP, whether to the Chair, WGM, or Review Team, the Government of Zimbabwe has categorically denied the use of any violent measures against illegal miners or the involvement of ZNA, ZRP, or other entities in illegal diamond mining and smuggling operations. The Team does not consider these denials to have been made in good faith and views with concern the notion that a Participant would provide false information to the Chair, WGM, and other Participants. Zimbabwe has had a significant period of time during which to provide the necessary updates on its practices, particularly when a request for such information was posed directly by the KP Chair, upon recommendation of the WGM.

Although the information identified by the Review Team may not have been particularly welcome reports for Zimbabwe to make to the KP, it is the Team’s view that only through such open and transparent cooperation can the KP be successful in achieving its Mandate.

Finally, while it may not fit squarely within this section, the Team also expresses concern with respect to the treatment of at least one of the individuals with whom the Team worked during its time in Zimbabwe. Newman Chiadzwa did meet with members of the Team and provided extensive access to the Chiadzwa area. In late July 2009, in apparent contravention of the commitments made by Zimbabwe to the KP Chair, Review

Team, and entire Intersessional, actions have been taken against Newman Chiadzwa, including forced removal from his home and seizure of property.

The Team is aware of on-going legal matters against Newman Chiadzwa, dating from 2007, including some actions related to illegal diamond activities. Certainly, to the extent Zimbabwe is undertaking action through the normal legal processes vis-à-vis Newman Chiadzwa, the Team has no specific comment. However, the Team would like to receive confirmation of this from the Government and ensure that a body of the KP, such as the WGM, rather than the Review Team, remains seized with this matter.

## **VIII. CONCLUSIONS AND RECOMMENDATIONS**

As indicated above, although some aspects of the Zimbabwean system of internal controls and KP compliance do appear to function without concern, the Team has identified several areas in which it finds Zimbabwe non-compliant with the minimum requirements of the KPCS. In addition to the numerous recommendations presented below, the Team echoes the findings of a previous KP Review Mission to another Participant:

The review mission is mindful of the implications of the findings for both the integrity of the KPCS as well as for Zimbabwe. Clearly, the current state of affairs in [Zimbabwe], in terms of the level of compliance with the KPCS, cannot be allowed to continue. When a Participant fails to fulfill the obligations it has committed itself to and satisfactorily adhere to the minimum requirements for compliance, the objectives of the KPCS are undermined. Urgent corrective action is required if the integrity and effectiveness of the KPCS are to be preserved...

Thus, the Team believes that these matters should be reviewed as a matter of urgency by the WGM and Participation Committee for necessary action, with respect to individual issues and overall action with respect to the status of Zimbabwe. The Team remains prepared to assist with whatever actions the KP or its subsidiary bodies deem necessary.

Although this report has focused almost exclusively on Zimbabwe, the Team believes it critical that coordinated action be taken by other KP Participants in the region – particularly South Africa, Namibia, and Botswana – to act against smuggling. Moreover, these Participants boast many best practices and other aspects of their KP compliance systems that Zimbabwe could benefit from understanding and implementing. For example, the Karas Region in Namibia (Namibia’s diamond producing region) and Northern Western Province in South Africa, jointly collaborate on matters related to illicit diamond trade and share information on a regular basis. This has been a “results-based” system of co-operation, and illicit diamond trade has been rooted out. Namibia and South Africa still conduct joint operations along their common borders.

Further, the Team urges KP Participants from outside the region whose nationals have been connected to illicit buying and smuggling – the European Community (Belgium), Israel, Lebanon, and the United Arab Emirates – continue to practice “enhanced vigilance,” as previously recommended by the WGM, and focus more resources on preventing the entry of illicit Marange diamonds into their territories. If necessary, these Participants should undertake diplomatic outreach to Mozambique to pursue the exchange of law enforcement information that Mozambique may have on the illicit operations underway in its territory.

**As set forth in the Mandate, the Team has developed a number of recommendations for further action, addressed to Zimbabwe and to other entities within the KP, as follows:**

Government of Zimbabwe:

1. Acknowledgement of non-compliance with KP minimum standards. Voluntary self-suspension from rough diamond trading until KP determines that minimum standards have been met.

The Team notes that the Government of Zimbabwe has positively addressed the first part of this recommendation in its July 14 response but did not discuss voluntary self-suspension.

2. Development of a workplan, in coordination with KPCS, to provide for improved internal controls throughout KPCS compliance system and, in particular, a sustainable and secure production environment at Marange, in line with KP minimum standards. The development and implementation of this workplan should be undertaken with the involvement of domestic industry and civil society, consistent with the tri-partite nature of the KPCS.

The Team notes a positive response by the Government of Zimbabwe in its July 14 response to the concepts described in this recommendation but is not aware of further action in this regard.

3. Because of the Team’s findings that the presence of ZNA soldiers both participate in illicit diamond trading activities and actually contribute to the general situation of lawlessness in and around Marange, the Government of Zimbabwe should follow-up on its commitment to

withdraw military personnel from the area in and around Marange, including Chiadzwa village.

4. Resolution, in accordance with Zimbabwean law, of outstanding ownership disputes and land claims in and around Marange. The local community in Marange area should be formally represented/involved in any decision-making processes regarding future use of the area, including relocation and beneficiation.
  - a. In conjunction with the claims resolution, an education/awareness campaigns is needed to educate local residents about the negative impact that illicit diamond trade can have on the economy. Local residents in and around Marange should be encouraged to resist smuggling and preserve diamonds for local development opportunities, as has largely been the case at Murowa, for example.
5. Immediate implementation of enhanced security measures at Marange and the MMCZ complex.
  - a. Construction of the fencing around Marange must be completed, and all areas where the fence can be penetrated must be mended. The plan developed by the ZRP for the necessary fencing and equipment measures should be reviewed carefully and implemented, to the extent possible.
  - b. A more detailed profile system must be introduced in order to prevent suspected illicit diamond traders from entering the diamond areas or from being employed in any diamond mine.
  - c. At Marange, employees sort diamonds with safety gloves. When Diamonds are manually-sorted, tweezers should be used to pick up the diamonds and scrapers to shift or separate gravel, rather than by bare hands or with safety gloves. Diamond sorters should also not wear long boots.
  - d. Diamonds at Marange are sorted under an open shade, and one can see the diamond box from a distance. This is a security risk. The sorting area must be sealed off. A diamond register must be introduced where diamonds are sorted, so that the contents of the box may be recorded before it is taken elsewhere. There must be access control into recovery and only authorized persons must enter the recovery. There must be only one single entry point.
  - e. Method of diamond sorting at Marange is very outdated. There is a possibility that only 60-70% of diamonds are retrieved. There is a

need to control access to tailings as they still contain a lot of diamonds.

- f. The security officials at Marange observe the sorting of diamonds but appear to be absent when the diamonds are counted and weighed in. Security officials on site must have clear job descriptions. There do not appear to be specific tailings, gravel, or sorting handling procedures.
  - g. The Government of Zimbabwe should ensure that any efforts to increase security in and around Marange are carried out in a manner that respects human rights and does not contribute to further smuggling.
  - h. Once the proper systems are in place at Marange, Zimbabwe may consider development of a well-trained Diamond Detective Branch (undercover agency, similar to one in Namibia and South Africa) to vigorously deal with the illicit diamond trade at Mutare and other border areas. The branch must share information with neighboring states and collaborate in obtaining full information on particular suspects and networks.
- 6. Study ways to improve recording and quantification of illegal trade in diamonds, i.e. distinguish foreign nationals in the police seizures database.
  - 7. Provision of a full assessment of the total unsold production in order to reconcile production, stockpile, and exports. This must include diamonds subject to judicial process, which the Team was not able to review.
  - 8. Ensure that necessary manual changes to the HTS classification error on pre-printed KPCs are made consistently.
  - 9. As recommended in the 2007 RV report, consideration by the Government of Zimbabwe of revising the current KP compliance structure to create a simplified process that reduces the number of actors involved in the import and export processes.
    - a. Given the particular needs demanded by the KP, Zimbabwe may consider removing production and administration of diamonds from the MMCZ and ZMDC and instead develop an entirely separate diamond office.
  - 10. Review of previous submissions to the KP concerning Marange for possible revision.

11. Presentation to the KP of relevant information concerning the actions taken against Newman Chiadzwa, as well as a renewed commitment to refrain from retaliation against Newman Chiadzwa or any other individuals with whom the Review Team met.
12. Consideration of the appointment of a special rapporteur or other appropriate mechanism to further document the human rights concerns and violence at Marange. The Team notes a positive response by the Government of Zimbabwe in its July 14 response to this concept.
  - a. Competent authorities should institute an investigation that will further look into the issue of violence against civilian populations emerging from the operations in Marange.
  - b. The KP Chair should contact the Office of the United Nations High Commissioner for Human Rights and provide a summary of the findings of this report, as well as summaries of interviews/ photographic evidence.
  - c. As stated above, the Government of Zimbabwe should ensure that any efforts to increase security in and around Marange are carried out in a manner that respects human rights and does not contribute to further smuggling.

Kimberley Process/Working Groups/WDC:

13. In light of Zimbabwe's non-compliance with the minimum requirements, the Participation Committee should consider the full range of options set forth in the Interim Measures Guidelines, including suspension of Zimbabwe for a period of at least six months, or until such time as a KP team determines that minimum requirements have been met. If Zimbabwe opts to self-suspend, as suggested by Recommendation #1, then the KP should undertake the necessary processes to implement the self-suspension.
14. Facilitation by the KP of the appointment of an independent monitor to assist with the implementation of the workplan for Marange and overall Zimbabwean KP compliance system. The monitor would assist in the coordination of the request and receipt of technical assistance and support through the KPCS and its Participants and Observers (see #5).
15. Facilitation by the KP of the provision of technical and other assistance, e.g. security cameras, fencing, and other measures set forth in Recommendation #5, during which time the Government of Zimbabwe implements, as part of its workplan, a security program that excludes the

ZNA, and to the fullest extent possible, the ZRP from responsibilities in and around Marange.

16. Creation of a Regional Task Force, with a structure consistent with the tri-partite nature of the KPCS, to provide an on-going mechanism for oversight of the independent monitor, provision of technical assistance, information sharing, and other coordination efforts throughout the region. The Task Force could work directly in conjunction with the independent monitor, or as a mechanism within the KP (e.g., initiative of the KP Chair).
17. Review by WGS of 2009 statistics from the DRC and other regional diamond producing Participants, as well as the EU, UAE, India, Israel, and Lebanon to determine if illicit Marange diamonds have entered the legitimate trade.
18. Development by the WGM of additional measures for “enhanced vigilance” by all KP Participants to ensure that illicit Marange diamonds do not enter legitimate trade. Participants whose nationals have been implicated in the smuggling of Marange diamonds should investigate these claims further and provide detailed results to the WGM.
19. Expedited review and consideration of the revised proposal concerning the provision and administration of security in diamond mining areas.
20. Outreach by the KP and individual Participants, as appropriate, to encourage Mozambique to improve border control and consider joining the KP as a means to combat smuggling efforts.
21. The WDC should work with MMCZ to ensure full compliance with and implementation of the System of Warranties.