Motherhood, Apple Pie and False Teeth

Corporate Social Responsibility in the Diamond Industry

by Ian Smillie

One of the greatest ironies of this period in history is that, just as technology remakes our world, the need to maintain the human dimension of our work, and a company's sense of its social responsibility is growing at an equally rapid pace. Harmonizing economic growth with the protection of human rights is one of the greatest challenges we face today.

– Mary Robinson, UN High Commissioner for Human Rights, Davos, February 2000

In October 2002, a UN Expert Panel investigating the illegal exploitation of resources in the Democratic Republic of the Congo (DRC) issued a devastating report on the activities of companies engaged in the diamond trade and other resource extraction.[1] The report documented systemic and massive corruption in the diamond industry of the DRC, and the flagrant collusion of allied governments, notably Zimbabwe. It detailed the pillage of Congolese diamonds and other natural resources by Rwanda and Uganda. The report described systematic bribery, asset stripping, tax fraud, sanctions busting, embezzlement, extortion, the use of stock options as kickbacks and the diversion of state funds by groups that 'closely resemble criminal organizations'. The report said that in areas controlled by the Congolese government, at least US$5 billion

The Study

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This paper follows three years of Kimberley Process inter-governmental negotiating meetings, and the January 1, 2003 initiation of a system for controlling the movement of rough diamonds. The paper argues that ending the phenomenon of conflict diamonds now and in the future still requires considerable work. Corporate social responsibility in the diamond industry is not about making donations to charity, it is about how and whether private sector firms working in unstable countries can help to prevent corruption, state collapse and conflict.

The opinions in this paper are those of the author and the Project, and do not necessarily reflect the views of organizations supporting the Project.

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Series Editor: Ian Smillie

worth of state mining assets had been transferred to foreign companies, with no benefit for the state since 1999. It estimated that the Armée Patriotique Rwandaise had been 'earning' US$320 million a year from commercial operations in eastern Congo. These practices, the report said, had led to, and fueled war, human rights abuse and the end of an almost inconceivable number of human lives. Following a nationwide mortality study, the New York-based International Rescue Committee estimated that between 1998 and 2002, 3.3 million more people had died than would have been the case had the war not occurred.[2]

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The UN report concluded with three lists. The first contained the names of 29 companies, most registered in Africa. Six were involved in diamond trading and three of these were based in Antwerp. So egregious and so blatant were the transgressions of these companies that the report asked the Security Council to place financial restrictions on them, freezing their assets and suspending their banking facilities. A second list contained the names of 54 individuals the Panel wanted barred from all international travel and placed under financial restrictions. Some were local businessmen, some were arms dealers, some were serving officers in the armed forces of Uganda and Zimbabwe. The Congo's Minister of Planning and Reconstruction was on the list, as was the Chief of Military Intelligence in Uganda and the Speaker of Zimbabwe's parliament.

Other UN reports have dealt with some of these individuals and their involvement in trafficking illicit diamonds and weapons. One of them, Victor Bout, had been named as the most prominent supplier of illicit weapons to African rebel movements. The Congo report listed several of his aliases—Bont, Butte, Boutov, Sergitov and Vitali—along with five different passport numbers. Bout, however, continued to travel freely, if carefully, even appearing once in 2001 on a Moscow radio talk show to deny all allegations. The UN Panel's third list was of companies it considered to be in violation of OECD Guidelines for Multinational Enterprises. On this list were 85 firms, many of them very large and well known: Ashanti Goldfields, Barclays Bank, Bayer A.G., Standard Chartered Bank, Anglo American and De Beers.

Those on the first and second lists complained vigourously. Oryx Natural Resources stated that the allegations against it were 'completely baseless', and invited the Panel to repeat the allegations in public, outside the protection of the United Nations. Niko Shefer, a former commodities broker who had been jailed in South Africa for fraud, and who once described himself as honorary consul general of Liberia, said he had not been out of southern Africa since 2000. Asked about the Panel's claim that one of his companies had a 50 per cent stake in Thorntree Industries, a joint venture diamond-trading company with the Zimbabwe Defence Forces, Shefer said he never had any equity in Thorntree. Zimbabwean Defence Force Commander General Vitalis Zvinavashe—recommended for the travel ban—said that the claims against Zimbabwe and against him were 'meaningless'. Rwandan presidential aide Theogene Rudasingwa said that reports about his country were untrue. [The Panel] 'has no factual evidence to prove we are plundering Congolese resources,' he told Reuters, despite the extensive details laid out in the report. Ugandan Lt-Gen Salim Saleh, half brother of

The OECD

The OECD, the Organization for Economic Cooperation and Development, is a forum where governments discuss, develop, refine and coordinate their economic and social policies. There are agreements, both formal and informal, aimed at coordinating domestic and international policies—labour and the environment, codes for the free flow of capital and services, and agreements that aim to clarify the impact of national policies on the international community.

The OECD's Paris secretariat, with 2300 employees, has become one of the world's largest sources of comparable statistical, economic and social data, collecting information, monitoring trends, analyzing and forecasting economic developments, researching social change and evolving patterns in trade, environment, agriculture, technology and taxation. The OECD is a combination think-tank, monitoring agency and club for the rich countries of the world.

Ugandan President Museveni, denied charges against him. 'I have accounts in London and Geneva,' Saleh said. 'I can assure the world that they don't hold more than $10,000.' Regarding claims that he looted diamonds from the DRC, he said, 'I have never done anything like that. But why,' he added, perhaps tellingly, 'should Antwerp be the diamond market of the world when they don't even have a mine? As Africans we should be selling our own diamonds and other resources.'

The third list was more problematic, because the alleged transgressions of most of the companies named were not detailed in the report, and so most had no idea what they were being accused of. This was not the case with First Quantum, however, a Canadian firm. Here the Panel listed precise transgressions and the names of government officials involved. The company, however, said that 'all allegations included or implied within the report are categorically refuted.' The most galling thing, apart from the embarrassment, was the fact that most of the companies had never even heard of the OECD Guidelines for Multinational Enterprises.

OECD Guidelines

The OECD, the Organisation for Economic Cooperation and Development, is hardly a household name, but in some ways it carries more clout than the United Nations. It is a membership organization that grew out of the post-war Marshall Plan in Europe. Today its 30 member states include all of the Western industrialized countries of Europe and North America, as well as Japan, Korea, Mexico, Turkey and a growing number of former East Bloc nations.

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In the 1970s, amidst an international clamour of concern about the growth in size and power of transnational corporations, the OECD developed its 'Guidelines for Multinational Enterprises'. Refined over the years, the guidelines encourage 'high standards' and 'best practices' in corporate behaviour, practices that 'contribute to economic, social and environmental progress with a view to achieving sustainable development.' Its main provisions deal with labour practices, industrial relations and the environment. Of particular relevance to the diamond trade is its section on disclosure, which calls on companies to provide 'timely, regular, reliable and relevant information' on their ownership, their financial situation and performance, and 'foreseeable risk factors'. Companies are enjoined from establishing output restrictions and quotas, and from price fixing—mother's milk to parts of the diamond industry. And finally, companies are told that they should not rig bids, nor should they 'directly or indirectly, offer, promise, give or demand a bribe or other undue advantage to obtain or retain business or other improper advantage.' Some of these latter injunctions sum up in a more polite way the findings of the UN Congo Panel, practices honoured more in their absence from large parts of the diamond trade than in their application. The OECD Guidelines are, in fact, much like the Boy Scouts' solemn oath: Be clean in thought, word and deed. But the Boy Scout code does not begin with an escape clause. The very first 'principle' in the OECD Guidelines states that they are only recommendations, that they are 'voluntary and not legally enforceable'.

A tougher OECD agreement can be found in its 'Convention on Combating Bribery of Foreign Public Officials in International Business Transactions', negotiated in 1997 and put into effect in February 1999. This convention, which had been ratified by 35 industrialized countries by the end of 2002, made the bribery of foreign public officials punishable by 'effective, proportionate and dissuasive criminal penalties.' The convention and the national laws, however, have rarely been invoked, and in three years of UN Security Council investigation into weapons smuggling, diamond theft and sanctions busting, they have simply not arisen.

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The UN Congo Panel argued that 'home governments have the obligation to ensure that enterprises in their jurisdiction do not abuse principles of conduct that they have adopted as a matter of law.'[3] But in reality, there are few examples of a government attempting to regulate the behaviour of one of its companies in another country. National sovereignty is only one of a dozen problems in reaching beyond one's own border, not least because all countries have their own laws, and are responsible for implementing them accordingly. Proof is obviously essential to making a good case, and then there is the problem of politics. Few governments are likely to go eagerly into the prosecution of a corruption case involving high level officials in another country—the *very* highest in the Congo, Uganda, Rwanda, Zimbabwe and Angola. So apart from some 'naming and shaming', some momentary embarrassment, and indignation at the UN report's lack of specificity, the 85 companies charged with breaking OECD Guidelines actually had very little to fear. The behaviour that had so exercised the panel could continue with impunity.

The Corporate Social Responsibility Grab-bag

The incident, however, raises important ethical issues for the legitimate diamond industry, issues intrinsic to a growing debate in the business world on corporate social responsibility. This term, 'corporate social responsibility' has in fact become a catch phrase for a very large body of issues. In essence, it is about the overall behaviour of companies, and the responsibility they have to the societies in which they operate. A 'socially responsible' company goes beyond the interests of its shareholders, taking into account human rights, environmental concerns, and the interests of employees, customers and the communities in which it works.

But corporate social responsibility and the diamond industry are two concepts that have historically related to one another only tangentially. This is, in part, because 'the diamond industry' itself is little more than a concept. At one end of the scale is the Tiffany showroom, where the diamond is a glittering symbol of love, purity, wealth and eternity—here diamonds are *forever*. At the other end of the scale are diamonds that come and go with lightning speed. In Africa where 65 per cent of the world's diamonds, by value, are mined, the industry is characterized on the one hand by a few gigantic, well-fenced holes in the ground, and on the other by hundreds of thousands of diggers, known variously as *gareimpeiros* in Angola, *creuseurs* in the Congo and Central African Republic, *san-san boys* in Sierra Leone.

The most productive and profitable diamond mines in the world are those in Botswana, where De Beers, in 50-50 partnership with the government, digs straight down into volcanic kimberlite pipes and pulls up huge amounts of sparkling stones—26.4 million carats in 2001, producing a gross profit for Debswana of US$1.5 billion, half for the government and half for De Beers.[4] This is a capital intensive, high technology operation which employs barely 6000 people, less than three per cent of the formal labour force.

Where Africa's kimberlite pipes have been eroded by millions of rainy seasons, and the diamonds they contained have been washed away by countless changing rivers, the result is alluvial diamonds. Scattered over hundreds of square miles—along river beds, in valleys where rivers once flowed, on beaches and on the seabed where rivers eventually deposited them, alluvial diamonds are close to the surface, they are often available to individual diggers with little more than shovels, sieves and a source of water for straining gravel. This is where hundreds of thousands of *gareimpeiros*, *creuseurs* and *san san boys* dig, often illegally, always under unhealthy, unsafe and frequently unprofitable circumstances. Here the industry is essentially unregulated, unwatched and nameless. Here, the concept of corporate social responsibility exists only in its absence. Corporations as conceived in industrialized countries—even governments—barely exist in the diamond fields. The middle men, to whom the diggers sell, pass the diamonds on to other middle men and then still others. If and when the diamonds are noticed by government, they may be taxed, but few of the benefits filter back to those who dig, or to those on whose land the diamonds were found. Here, corporate social responsibility is non-existent.

A report written for Oxfam America by Michael Ross in 2001 examined the correlation between poverty and the oil, gas and mineral extraction industries in developing countries.[5] Ross found that oil and mineral dependence are strongly associated with bad conditions for the poor. Overall living standards are exceptionally low, given per capita income levels. Higher standards of mineral dependence are strongly correlated with higher poverty rates and income inequality. Oil and mineral-dependent states tend also to suffer from unusually high rates of corruption, authoritarian government, military spending and government ineffectiveness and civil war. A study the same year by the World Bank looked at dozens of conflicts and concluded that the higher a country's rate of dependence on oil and minerals, the more likely it is to find itself fighting some sort of internal war in the not-too-distant future.[6]

Southern Africa: Diamonds for Development?

Such findings certainly pertain to the states that have been afflicted by today's diamond wars, but are they universal? Do they hold in Botswana, Namibia and South Africa, where there are no 'conflict' diamonds, where the industry speaks proudly of 'prosperity diamonds', and where it operates largely within the formal economy? In its research on diamonds, Partnership Africa Canada (PAC), set out to discover the extent to which diamonds contribute to development in countries at peace. The answer is important, because concern about possible economic damage to these countries had caused NGOs campaigning against conflict diamonds to be less aggressive where consumers are concerned, than might otherwise have been the case.

Finding the answer is important, but the answer is ambiguous. The PAC report, written by Ralph Hazleton,[7] found that diamonds are extremely prominent in the economy of Botswana; less so in Namibia, and much less so in South Africa. Because the population of Botswana is small and government revenue—mainly from diamonds—is high, some statistics there take on exaggerated proportions. For example, Botswana spends less as a percentage of its GDP on health care than Senegal. But because the GDP-population ratios of the two countries are so different, the actual per capita expenditure in Botswana is more than four times that of Senegal.

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That said, overall development figures tell a mixed story. While most health-related statistics in the region are better than elsewhere on the continent, adult literacy is not appreciably better, and overall poverty rates in Botswana and Namibia are actually higher than in many other African countries. The only place where diamonds might be considered a significant plus or minus factor in development is Botswana, where the diamond contribution to GDP, total exports and tax revenue is high. Diamonds have allowed Botswana to build its infrastructure and to provide better facilities for its people. Botswana would have even more to spend on health and education if the margin between the export value of its diamonds and the resale price by De Beers in London was reduced. Poverty declined in Botswana by 12 percent between 1985 and 1994. But diamonds have so far led to 'prosperity' for a limited number. Over 60 percent of the population still lives on less than $2 a day, a figure that looks odd compared with the huge volume of diamonds that leaves the country in a year. Another way of looking at it is to compare the country's 1999 GNP per capita of $3,240 with the fact that more than 60 percent of the people live on less than $730 a year. And with the exception of Botswana, diamonds contribute little to total government revenue in the region. In addition, their contribution to employment in all three countries is small and declining. This means that diamonds cannot be identified very directly either with good development or its absence.

The characteristics of the diamond industry and its socio-economic role in the societies of Botswana, Namibia and South Africa have been defined by each country's unique history. The fact that South Africa was colonized from within and did not become 'independent' until 1994, helps to explain a tax structure which favours the industry, why there is a dearth of black-owned mining enterprises, and why black communities have received little benefit from diamond mining. The history helps explain South Africa's new Diamond Act and the Minerals Development Act. Until recently, mining legislation has been an anachronism, tied to a past which favoured a minority, exploited the majority and resulted in policies that were the antithesis of what is understood by the term 'social and economic development'. As late as the 1980s, a De Beers director tried to stop publication of a magazine article which described black South African diamond processing, 'Lest other Southern African countries get the idea that this was possible.'[8]

The diamond industry in Namibia is also tied to history. There, it took until 2000 to create a Diamond Act that was appropriately detached from the special interests of the private sector. The opening of the first Namibian diamond cutting and polishing plant in 2000 was not just the development of a new manufacturing initiative, it represented a break with a past that had been based only on the extraction of resources and the adding of value elsewhere.

De Beers

The PAC Report said that De Beers and its partner conglomerate, Anglo American, had to accept much of the responsibility for the lack of meaningful social and economic development in both South Africa and Namibia. The company was party to the contract labour system, and it thrived in an environment which held back social development and subjected labour to inhumane living conditions. The Oppenheimer family, which has controlled De Beers since the 1920s, were consistent critics of apartheid, and Harry Oppenheimer sat as an opposition Member of the South African Parliament for many years. But De Beers, if nothing else, has historically been very successful in its pragmatism.

In reaction to the PAC Report, De Beers wrote a lengthy rebuttal, detailing its positive labour record in South Africa and listing the many schools and colleges established through its charitable De Beers Fund. When Harry Oppenheimer, father of current De Beers Chairman Nicky Oppenheimer, died in 2000, Nelson Mandela said, 'The preamble to our founding constitution speaks of honouring those who suffered for justice and freedom in our country and respecting those who have worked to build and develop our country. Chief among the latter must stand Harry Oppenheimer and his family… His support for democratic and philanthropic causes was in my experience always without hesitation and reserve.'[9] President Thabo Mbeki recalled that Harry Oppenheimer 'supported and funded the organizations that sought to end white supremacy… Abroad, all too often, he was ignorantly damned for his association with South Africa's apartheid policies.'[10]

In the historical context of the day, De Beers was well ahead of the South African business sector on corporate social responsibility. While labour conditions at its mines in the middle of the last century may have been poor, they were better at De Beers mines than elsewhere. Wages too were better than elsewhere. And while the company's opposition to apartheid may in retrospect today seem tepid, it has to be seen in its historical context. De Beers did oppose apartheid openly, in a country where this was rarely done within the corporate sector. In basic corporate social responsibility terms—labour, environment, contributions to the community—De Beers today actually looks like a model citizen in some of the countries where it is a prominent player.

This view, however, is not shared by those who brought a US$6.1 billion class action suit against Anglo American, De Beers and other companies in 2003 for alleged human rights violations during South Africa's apartheid era. A South African law firm, Ngcebetsha Madlanga Attorneys, seeks to compensate an estimated 100,000 workers in the suit, although any compensation will go to black communities rather than to individuals. The case will be heard in the United States and prosecuted by Ed Fagan, a lawyer involved in a successful claim against Swiss banks that had kept the deposits of Jews killed by the Nazis in the 1930s and 1940s.

De Beers, of course, attracts attention. Because it is big, and because it dominates much of the diamond industry, it is a lightning rod for activists. Diamonds, however, are mined and traded by many companies. There are thousands of small 'junior' companies involved in diamond exploration and mining, and although many of these are listed on public stock exchanges, they fly well below corporate social responsibility radar. They are usually only noticed—as in the case of the UN Panel on the DRC—when they slip into corruption and criminality. Many diamond trading firms, however, are not public (like De Beers, since 2001). Few, in fact, of the hundreds of companies that buy and sell rough diamonds are publicly traded. Little, and often nothing, is known about their labour and environmental practices, or about whether they give anything at all back to society. And some companies, like many named in the UN report on the Congo, have been formed *only to take advantage* of war and corruption. They are fronts for warlords, neighbouring governments and criminal networks. For them, the concept of corporate social responsibility does not arise.

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Keeping Secrets

Between the mines and diamond pits of Africa and the showrooms of Cartier, Tiffany and Harry Winston, lie other diamond worlds. Diamonds have always lent themselves to theft and smuggling, and they have served a wide variety of interests as a ready alternative to both soft and hard currency. They are small; they have a high value-to-weight ratio; they hold their price. And, until recently, they have been completely unregulated. Most governments gave up long ago trying to tax diamond exports and imports in any meaningful way because diamonds have been virtually impossible to trace and to police. And the diamond trade is secretive; perhaps more secretive than any other. Multi-million dollar deals are made on a handshake, in closely guarded rooms and in crowded diamond bourses, where men gather with scales, tweezers and loupes. Until 2003, tens of millions of dollars worth of diamonds were sent across borders and across continents on approval, with little or no paper work. Some of this is traditional—a way of doing business in a trade that is heavily populated by small (and a few very large) family-run businesses, and by people who have known each other for generations. Some of it has to do with a trading and cutting industry heavily populated by Jewish families who, for generations, were persecuted and driven from one place to another, and for whom diamonds themselves—rather than the employment they generated—were often a primary form of security. Some of it has to do with security and the transportation of high value goods from one place to another.

But there have been other reasons for secrets. In order to keep its control over the market, De Beers had to deal in the 1950s and onward with a wide array of strange and incompatible bedfellows. Apartheid South Africa, the home of De Beers, was an inappropriate partner for newly independent diamond producing nations elsewhere in Africa—Congo, Sierra Leone, Guinea, Tanzania. And a South African cartel was an even more inappropriate partner for the Soviet Union after its discovery of diamonds in the 1950s. In addition, having dealt with the Portuguese colonists until the mid 1970s, and the apartheid regime of Southwest Africa until the late 1980s, De Beers had some fancy, confidential and undoubtedly expensive footwork to do in making friends with the new management in Angola. It did all of this very successfully, in part because it avoided the spotlight of public attention.

As some African diamond producing countries slipped into corruption and chaos during the 1960s and 1970s, diamond buyers remained on the scene, but they began to conduct their business in new ways. Formal diamond production in Mobutu's Congo fell from 18 million carats in 1961 to 6.5 million carats by the late 1990s. The drop reflected not so much a fall in actual production, as a drop in what was being recorded in the national accounts. The difference, and a lot of informal production as well, was being siphoned off by Mobutu and his cronies. And as the government's hold on institutions slipped, other players became involved. The same was true in Sierra Leone where the two million carats produced officially in 1970 had fallen to only 48,000 carats by 1988, courtesy of one of the most corrupt regimes on the continent's west coast. There was no drop, however, in the overall supply of diamonds reaching the world's trading centres, of which Antwerp was the most important. All that was required was a degree of secrecy, and few questions would be asked when the diamonds were declared on arrival at Belgian customs. And so, between the 1950s and the mid 1980s, the diamond scene in Africa changed dramatically. A significant proportion of the production of several countries was being hidden under a veil of secrecy, cloaking a vast network of corruption, theft and smuggling. Diamonds were also being used for money laundering—as a means of moving cash in cashless societies, or in economies where currency no longer had value. This was a hothouse in which conflict diamonds would thrive.

The question then arises: what is a legitimate company to do in a situation of encroaching corruption, conflict and state collapse? What should a company with major investments do when the president of the country asks if there might be a job for his nephew? If the company might allow him to use the company jet? If there might be an additional 'signature bonus' to sweeten contract negotiations? What if it is not about bribery or bribery by another name, but about a decaying democracy, a military takeover or ethnic cleansing? What role in this, if any, is there for a legitimate foreign company with legitimate diamond interests? And who is to say if, when and even whether a state is collapsing?

Organizations campaigning on corporate social responsibility tend to take an *ex post facto* approach to the most egregious cases of abuse. In other words, they have views on what companies should and should not do once a situation has spun out of control. The strong views expressed about foreign investment in apartheid South Africa developed long after the institutionalization of apartheid. They may have provided potential investors in the 1980s with clear alternatives, but they could not have been very helpful to those already there. New foreign investment in present-day Burma may be ill-advised, given the brutal and undemocratic nature of the regime, but at what stage should a company with established investments have taken a position, spoken up, or pulled out? What might the consequences be for shareholders in a company 'speaking out'? How is a corporate investor to calculate the risks and the cost of action, versus inaction, in a volatile political situation—which could turn better tomorrow, or worse? The OECD Guidelines are completely silent on these issues, which are made more complex by the situational ethics of various Western governments.

In 1994, for example, the Clinton administration renewed China's most favoured nation trading status with the United States, without considering the vociferous public debate about the Chinese government's suppression of dissent, its use of prison labour and its widespread human rights abuse. That year the Canadian government conducted a foreign policy review which concluded, *inter alia*, that 'The government regards respect for human rights not only as a fundamental value, but also as a crucial element in the development of stable, democratic and prosperous societies at peace with each other.'[11] The ink was barely dry on this text when the foreign minister explained that the best way to promote democratic development was through trade. Canada, he told a gathering of Asian heads of state, would 'vigorously pursue a series of [trade] initiatives in a number of countries irrespective of their human rights records.'[12] Such mixing of messages, endemic among Western politicians, leaves the private sector pretty much to its own devices.

Recognizing that its Guidelines did little to address these problems, the OECD looked at the issue again in 2002, preparing a paper on 'Multinational Enterprises in Situations of Violent Conflict and Widespread Human Rights Abuses'.[13] The study describes some of the conditions under which foreign firms operate in countries like Angola and the Congo, where fiscal frameworks and accountability are weak (to say the least), and where confidentiality is built into most government relations with the private sector.

Add to that the suppression of political and civil liberties, mix in some industrial-strength corruption, and fashionable recipes for corporate social responsibility can be relegated to the dustbin of good intentions. The IMF reported, for example, that in 2000, less than two per cent of government expenditure in the Congo was 'executed through normal procedures'. Most expenditure was from diverted revenue without any form of control, through direct orders from the central bank without prior knowledge of the treasury, and through what the IMF euphemistically called 'fast track procedures'. 'Overall, the proliferation of parallel channels deprived the Ministry of Finance of its capacity to record and control expenditure,' assuming that it actually wanted such control.[14]

Nicky Oppenheimer explains what the phenomenon means in practical terms: 'Natural resources can be a source of great good… or dreadful ill. The key element is not the resource itself, but how it is exploited. An orderly mining regime, operating within a transparent and predictable legislative and fiscal framework, can be a major source of prosperity for governments and people. Without it, mineral wealth … will be a magnet for the greedy and corrupt to line their own pockets at the expense of the people.'[15] But to the question about what is to be done—where these predictable legislative and fiscal frameworks will actually come from—Nicky Oppenheimer is as silent as the OECD.

The easiest, although not necessarily the most businesslike corporate move, might be to pack up and leave before things fall apart. De Beers did close its buying offices in the Congo in 1999, but that, of course, did not stop Congolese diamonds from reaching the world market; it simply deprived De Beers of the business. Other smaller companies simply flowed in to fill the void, caring nothing about OECD Guidelines, UN Expert Panels or anything else aside from the bottom line. In a twenty- page discussion of the problem, the OECD study, in fact, has only four pages on 'multinational enterprises in search of solutions'. These 'solutions' include the promotion of greater transparency in financial transactions (where allowed by law…), the creation of development trust funds for 'future generations'; socially responsible investment funds, and anti-corruption initiatives for industry associations. In other words, precious little. In fact another OECD survey examined 246 codes of conduct among businesses and business associations. Most addressed labour standards and environmental stewardship; some addressed bribery; all were voluntary. And none seemed to have had any effect on corporate behaviour in countries like the Congo.

The diamond industry too created a wide variety of codes as the conflict diamond issue found its way into the headlines. In July 2000, De Beers adopted 'Best Practice Principles' which committed the company not to buy or trade in rough diamonds 'from areas where this would encourage or support conflict and human suffering'. It further stated that it would require its buyers to comply with the same standard. Diamond bourses around the world announced that they would eject from their membership any diamantaire found trading in conflict diamonds. The Israel Diamond Exchange was one of the first. The Antwerp Diamond Bourse called on its 22 counterparts around the world to emulate its 'zero-tolerance policy for conflict diamonds', saying that any individual or company with links to the arms trade would be barred permanently from the diamond industry. Over the next two years, UN Expert Panels on Sierra Leone, Angola, Liberia and the Congo released many reports containing the names of dozens of individuals and companies involved in trading conflict diamonds and weapons. Not one, however, was barred from the diamond business or from a diamond bourse anywhere in the world. The standard explanation was that unless companies had broken a national law, it would be improper, and legally inappropriate, for a bourse to deprive them of their means of livelihood. In other words, the codes and the zero tolerance policies meant absolutely nothing where their transgressors were concerned.

Transparency and the Kimberley Process

It is worth going back to Nicky Oppenheimer's comment about the need for an 'orderly mining regime, operating within a transparent and predictable legislative and fiscal framework.' Too often, he said, the lack of this has led to 'public squalor and exploitation'. 'As an African, and as Chairman of De Beers,' he said on another occasion, 'I know it doesn't have to be like that; responsible companies working in a transparent, secure and predictive legislative environment, with governments that know what good governance is all about, can produce the economic growth, the jobs, the fiscal income and the social benefits... that Africa so desperately needs.'[16] In both cases, Oppenheimer used the word 'transparent' in referring to governments. It could be said, where diamonds are concerned, that what is good for the goose is good for the gander.

The Kimberley Process global certification system for rough diamonds came on stream on January 1, 2003. It was, from the beginning of the negotiations, always about shedding greater light on an industry that has hitherto done most of its business behind tightly locked doors, without much paper work and with little oversight of any kind. The G8 Heads of Government Meeting in June 2002 stated in its *G8 Africa Action Plan*, 'We are determined to make conflict prevention and resolution a top priority, and therefore we commit to… working with African governments, civil society and others to address the linkage between armed conflict and the exploitation of natural resources—including by… supporting voluntary control efforts such as the Kimberley Process for diamonds, and… *working to ensure better accountability and greater transparency with respect to those involved in the import or export of Africa's natural resources from areas of conflict.*'[17] The Kimberley Process wording on transparency, however, is as follows: 'Participants and observers should make every effort to observe strict confidentiality regarding the issue [of monitoring] and the discussions relating to any compliance matter.'[18]

In many ways, the Kimberley Process has been a pacesetter for industry, but in others it is being left behind by more ambitious and more open initiatives. An Extractive Industries Review was launched in 2001 by the World Bank Group to discuss its role in the oil, gas and mining sectors with concerned stakeholders. The aim of this independent review is to produce a set of recommendations

The Kimberley Process

The 'Kimberley Process' was initiated by the Government of South Africa in May 2000, in an effort to grapple with the problem of conflict diamonds. Concerned about how diamond-fueled wars in Angola, Sierra Leone and the Democratic Republic of the Congo might affect the legitimate trade in other producing countries, more than 35 countries met, along with NGOs and diamond industry leaders, on a regular basis to develop an international certification system for rough diamonds. The system came into effect on January 1, 2003, and some 70 countries are now participating.

Provisions for regular independent monitoring of national control mechanisms were not, however, agreed, and remain an item of serious contention for NGOs concerned about the system's credibility and effectiveness.

that will guide involvement of the World Bank Group in these industries. Its focus is on the Bank and so it is not intended to be a standard-setting exercise, but already it has set a high standard for vibrant, open and inclusive discussion of the most difficult issues of corporate social responsibility facing extractive industries.

> 'I believe that transparent verification of both government and industry procedures is essential to the credibility of the certification scheme in the eyes of the world.'
>
> – *Nicky Oppenheimer, Johannesburg, 29 April, 2003*

Amnesty International and the Prince of Wales Business Leaders Forum have published a primer which offers insights into corporate human rights strategies, operations in zones of conflict and relations with state or private security forces.[19] And as the Kimberley Process was developing, two other schemes were initiated. The first is an NGO initiative, 'Publish What You Pay', which seeks greater financial transparency on the part of international oil, gas and mining companies in the developing world.[20] The second is a governmental initiative, the Extractive Industries Transparency Initiative (EITI). The EITI was announced by British Prime Minister Tony Blair at the World Summit on Sustainable Development in Johannesburg, in September 2002. Like the NGO initiative, its aim is to increase transparency over payments by companies to governments and government-linked entities, as well as transparency over revenues by those host country governments. Bringing together government officials and the leaders of some of the world's largest companies, including Anglo American, BHP Billiton, Rio Tinto, Shell, Chevron and BP, in 2003 the British proposed a 'compact' on transparency that would make it more difficult for companies to conceal, and governments to extract, illegitimate payments. This would be, of course, in the interest of good corporate citizenship, as long as the playing field was level, and the same behaviour was required of all. But this is the rub: the companies that do not care about guidelines, do not care about laws until or unless they are enforced. So the

Publish What You Pay

International oil, gas, and mining companies pay billions of dollars a year to the governments of many less developed countries that are rich in natural resources, such as Angola and Nigeria. Few of these countries' citizens benefit from this financial windfall, however, because of government corruption and mismanagement.

The 'Publish What You Pay' campaign aims to help citizens hold their governments accountable for how these resource-related funds are managed and distributed. George Soros and a coalition of more than 80 NGOs (including the Open Society Institute, the campaign's co-sponsor, Global Witness, and Partnership Africa Canada) place the onus on wealthy countries' governments to require transnational extraction companies to publish net taxes, fees, royalties, and other payments made so civil society can more accurately assess the amount of money misappropriated and lobby for full transparency in local government spending.

For more information, go to www.publishwhatyoupay.org.

debate on the British transparency initiative turned before long to the venerable old chestnut that has bedevilled OECD Guidelines and most corporate codes of conduct: should such a compact be voluntary or mandatory?

It must be hard for those who do not attend such meetings to understand the debate. All countries have laws against theft. These are not 'voluntary'. Most countries have laws against bribery and corruption. These are not 'voluntary' either, unless those administering the laws are corrupt themselves. If officials administering laws are not corrupt, what is to be lost by making a compact on corporate transparency mandatory? This is just a rhetorical question. The truth is that many officials *are* corrupt, and they have no difficulty in finding like-minded private sector counterparts. And that is what confuses a large part of the debate about corporate social responsibility.

Where diamonds are concerned, instead of citing OECD guidelines with false teeth, the UN's DRC Expert Panel might have been better advised, where it had concrete evidence, to consult some basic definitions of war crimes. The Constitution of the Nuremberg Military Tribunal, for example, included as a war crime, the 'plunder of public or private property' and said that 'leaders, organizers, instigators and accomplices participating in the formulation or execution of a common plan or conspiracy to commit [war] crimes are responsible for all acts performed by any persons in execution of such plan.'[21] The Prosecutor for Sierra Leone's Special Court has obviously looked at Nuremberg precedents. In announcing the Court's first indictments in March 2003, David Crane quoted Robert Jackson, Chief US Prosecutor at Nuremberg: 'We are able to do away with tyranny and violence and aggression by those in power against the rights of their own people only when we make all men answerable to the law.' The Sierra Leone Court will, in due course, go deeper into the meaning of war crimes, and may set some new precedents where plunder and the traffic in 'conflict diamonds' is concerned.

> …instead of citing OECD guidelines with false teeth, the UN's DRC Expert Panel might have been better advised to consult some basic definitions of war crimes. The Constitution of the Nuremberg Military Tribunal, for example…

At the beginning of the new century, the issue for responsible diamond companies is not the level of corruption in one place or another, but in the diamond industry itself. By ignoring, condoning and even participating in the corruption of countries like the Congo, Sierra Leone and Angola, the better parts of industry allowed a long-standing infection to go septic. By condoning tax evasion and the use of diamonds for money laundering, the industry only encouraged it. By hiding details of their contracts with, and payments to corrupt governments, companies abetted graft and embezzlement. By pretending for years that diamonds had nothing to do with conflicts in Africa, they provided tacit and tangible support for human rights abuse, state collapse and war. The governments that participate in the Kimberley Process and argue for weak monitoring provisions and secrecy are no better. This is not just bad corporate social responsibility, it is ultimately bad for business and it is very bad for people.

Recommendations

In the absence of an effective Kimberley Process, momentum will build for more radical approaches to halting the scourge of conflict diamonds, now and in the future. At a minimum,

1. The Kimberley Process certification scheme for rough diamonds must make provision for regular, independent monitoring of all national diamond control systems. Without this, it will create false consumer confidence and the appearance of probity where none can be assured. It will do nothing to stop conflict diamonds where they still exist, and it will do nothing to prevent their return where controls are weak and predators are strong.

2. The United Nations Security Council must, as a matter of priority, address the issue of conflict diamonds in the DRC. It should embargo all unofficial diamond exports from the DRC, and insist that the Kimberley Process develop a more rigorous approach to statistics and monitoring.

3. Civil society organizations should take an active role in promoting the *Publish What You Pay* campaign. The sooner there is consensus on basic corporate transparency in developing countries, the sooner corruption can be diminished.

4. Governments should actively support the *Extractive Industries Transparency Initiative*. They and the OECD should strive for a mandatory, rather than a voluntary system of transparency on corporate payments. Good corporate citizens should have nothing to fear from this, while bad corporate citizens will only gain from a voluntary system.

5. The diamond industry can and should endorse all of these recommendations. Endorsements can begin with apex bodies such as the World Diamond Council, the International Diamond Manufacturers' Association, the World Federation of Diamond Bourses, the Confédération internationale de la bijouterie, de la joaillerie, de l'orfèvrerie, des diamants, perles et pierres (CIBJO), national diamond manufacturers associations, national diamond exchanges, national and international diamond mining associations.

Much has been done already. With greater commitment to an effective Kimberley Process and greater overall transparency, the diamond industry could become a world leader in corporate social responsibility.

Notes

[1] *Final report of the Panel of Experts on the Illegal Exploitation of Natural Resources and Other Forms of Wealth in the Democratic Republic of the Congo*, S/2002/1146, United Nations, New York, Oct. 16, 2002.

[2] 'Mortality in the Democratic Republic of Congo: Results from a Nationwide Survey', International Rescue Committee, New York, April 2003.

[3] *Report of the UN Panel of Experts on the Illegal Exploitation of Natural Resources and other Forms of Wealth in the Democratic Republic of the Congo*, S/2001/357, April 12, 2001, para 178.

[4] Debswana Annual Report, 2001. Gross profits were P9.4 billion, converted at Jan. 1, 2002 rate of US$1 = P6.26. Canada's Diavik mine, a joint venture between Rio Tinto and Aber Diamond Mines, began production in 2003 and may well become even more profitable than Botswana's Jwaneng.

[5] Ross, Michael, 'Extractive Industries and the Poor', Oxfam America, Washington, October 2001.

[6] Collier, Paul and Hoeffler, Anke, 'Greed and Grievance in Civil War', World Bank, Washington, 2001.

[7] Hazleton, Ralph, *Diamonds: Forever or for Good? The Economic Impact of Diamonds in Southern Africa*, Partnership Africa Canada, Ottawa, 2001.

[8] Even-Zohar, Chaim, *From Mine to Mistress: Corporate Strategies and Government Policies in the International Diamond Industry*, Mining Journal Books Ltd., Edenbridge, Kent, 2002, pg. xviii.

[9] Letter from Nicky Oppenheimer to PAC, undated, ca. June 1, 2002; posted on the PAC website with permission: www.partnershipafricacanada.org.

[10] *Ibid*.

[11] *Canada and the World*, Department of Foreign Affairs and International Trade, Ottawa, 1995.

[12] Quoted in Scharfe, Sharon, *Complicity: Human Rights and Canadian Foreign Policy*, Black Rose Books, Montreal, 1996, pg. 29.

[13] OECD Directorate for Financial, Fiscal and Enterprise Affairs, May 2002.

[14] IMF, *Democratic Republic of Congo: Selected Issues and Statistical Appendix*, July, 2001, pg. 17.

[15] Address at the Commonwealth Business Forum, Nov. 1999, quoted in 'Multinational Enterprises in Situations of Violent Conflict and Widespread Human Rights Abuses', OECD, Paris, May 2002, pg. 14.

[16] Speech on 'Africa and the G8' by Nicky Oppenheimer to the Canada-South Africa Chamber of Business, Toronto, April 26, 2002.

[17] *G8 Action Plan for Africa*, G8 Heads of Government Meeting, Kananaskis, Alberta, June 27, 2002; emphasis added.

[18] Kimberley Process Certification Scheme, effective January 1, 2003, Section VI, Para 15.

[19] *Human Rights: Is It Any of Your Business?* Amnesty International and the Prince of Wales Business Leaders Forum, London, 2000.

[20] There are other initiatives as well: TRACE (Transparent Agents and Contracting Entities), a Washington and London-based organization, set out guidelines in 2002 on the use of agents and intermediaries in corrupt practices.

[21] Nuremberg Trial Proceedings: *Constitution of the International Military Tribunal*, Article 6, Aug. 8, 1945

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