

OTHER FACETS

NEWS AND VIEWS ON THE INTERNATIONAL EFFORT TO END CONFLICT DIAMONDS

Number 32

February 2010

KIMBERLEY PROCESS PLENARY IN NAMIBIA Rearranging the deck chairs?

In PAC's special edition of *Other Facets* (Number 31, October 2009), we raised seven issues that we believed needed urgent discussion at the November 2009 Kimberley Process Plenary if the Kimberley Process is to maintain its credibility as a regulatory system. First, the bad news. Only passing reference was made to a few of the issues during the Plenary in Namibia. The worse news was that many other issues were not debated at all. The outcome? Stasis and dysfunction will continue to govern the KP until further notice.

If there was some hope coming out of the Namibia Plenary, however, it lies partly in the fact that Israel was chosen to lead the KP in 2010, with the Democratic Republic of Congo being elected Vice-Chair. The choice of Israel brings the promise that it will champion some reforms in the KP. But for it to lead decisively, it will need the backing of key governments and of the diamond industry. The question remains, though, is there enough collective will among KP participants to move now to reform the KP?

A major disappointment was the Plenary's treatment of the human rights question. This key civil society concern received token reference in the Plenary communiqué, which stated that the KP took "note of ongoing discussions in the WGM (Working Group on Monitoring) on a revised proposal from Civil Society on Human Rights in the diamond sector." In an attempt to reorient the KP back to its founding principles, civil society had asked the Plenary to make explicit provisions in the minimum standards of the KPCS that upheld the rule of law and assured basic human rights in the diamond industries of member states. The Plenary deferred making any hard commitments.

But as examples like Zimbabwe show, the need to reaffirm human rights will remain a non-negotiable issue for civil society groups. In recent years there has been a troubling diminution of the central role human rights has and should play in the KP. Just how far lost this is on some participants was underscored by one country's recent musing that the KP is not a human rights organization at all!

Much time was spent on the Zimbabwe problem. The Plenary adopted a "Joint Work Plan for implementing the recommendations of the review mission to Zimbabwe (which) had found credible indications of significant non-compliance with the minimum requirements of the KPCS in Zimbabwe". Zimbabwe agreed to immediately start implementing the work plan and the KP set about identifying a KP Monitor to be responsible for monitoring the implementation (see page 2).

On the issue of monitoring, the KP was less accommodating on the more substantive issue of improving the current peer review mechanism with an arms-length monitoring and research arrangement. Prior to the Plenary, PAC had called for an arms-length scheme that would set a high standard of evaluation, avoid conflicts of commercial and political interest, and ensure timelier follow-up. The Plenary did adopt an Administrative Decision regarding KP implementation and enforcement, and one on closer monitoring of Guinea's system, but it avoided facing up to the real challenges of effectively and efficiently monitoring the certification system.

The final communiqué was also noteworthy for its absence of any mention of the words transparency, reform or sanctions. Despite last summer's review mission to Zimbabwe that found "credible indications of significant non-compliance with the minimum requirements of the KPCS", the KP took a pass on imposing any form of sanctions, largely at the urging of Southern African Development Community (SADC) members. The silence also extended to suggestions on how to strengthen the KP's organizational management structure, including better public access to information, creating a permanent secretariat and implementing the aforementioned arms length monitoring system.

Some positive news came with the announcement that all countries had submitted the required statistical data for 2008. The Working Group on Statistics, however, experienced some difficulty in getting responses from participants to queries that had been raised about their statistical reports. A third of the countries had not replied. At the Plenary it was announced that a new KP Rough Diamond Statistics web site would go online in after the Plenary. It can be accessed at: <https://kimberleyprocessstatistics.org/>

The dates for the 2010 KP meetings have already been announced by the KP Chair. The Intersessional meeting will take place from June 21-23, with the Plenary taking place from November 1-4.

Israel takes over KP leadership

Boaz Hirsch is the new chairman of the KP for 2010. Hirsch, a senior official in Israel's Ministry of Industry Trade and Labor, assumed his duties in January. There are early, and hopeful, hints that Israel will champion some reforms of the KP. "Israel will push for the creation of an arbitration committee which will settle interpretive differences pertaining to Kimberley Process decisions, thus allowing the diamond regulation process to address various issues which arise occasionally," Shmuel Mordechai, the diamond controller and head of the Kimberley Process in Israel, told a newsletter published by the Israeli Diamond Institute.

The Democratic Republic of the Congo was elected Vice-Chair of the KP for 2010.

Venezuela

After a two year hiatus from the KP, Venezuela is supposed to have begun the process to fully re-integrate itself into the Kimberley Process Certification Scheme. Venezuela "voluntarily" withdrew from the KP for two years in 2008 after it was threatened with expulsion for noncompliance with basic KP requirements, including wholesale smuggling. In the meantime, there has been little evidence that Venezuela has made any serious effort to address the concerns raised previously about its diamond industry. Diamond mining and smuggling continue unabated, and the government persists in its antagonistic stance toward civil society groups that report it. With the two-year deadline coming up, the KP will be expected to require that Venezuela demonstrate soon that it has instituted the necessary reforms to become compliant with the KPCS.

Côte d'Ivoire

Greater monitoring of Côte d'Ivoire, the only country "officially" still with conflict diamonds, was also raised at the Namibia Plenary. Recent satellite imagery and reports by the UN Group of Experts (GoE) uncovered increasing diamond mining activity in northern Côte d'Ivoire, still controlled by the Forces Nouvelles, and the continuing smuggling of this production into the legitimate diamond trade. The Plenary discussed further collaboration with the GoE, including prospects for a KP visit. Meanwhile, the annual plans for elections in Côte d'Ivoire have

collapsed, once again. Clearly the status quo is a preferred option for many of the stakeholders. And conflict diamonds remain central to the equation.

KP announces Monitor for Marange

Abbey Chikane, a former chairperson of the KP and head of the South African diamond board, has been named as the KP Monitor to Zimbabwe's troubled Marange diamond fields. Chikane's appointment was made official after the Zimbabwean government gave its approval in early February. Zimbabwe had previously rejected a proposed European monitor.

While many praised Chikane's credentials, the announcement is not without its critics. *Diamond Intelligence Briefs'* Chiam Even-Zohar called the appointment "meaningless window dressing," and "another victory for Zimbabwe in its continued defiance of the international diamond community." It also underscores, he said, the structural challenges the KP faces in enforcing an end to the trade of blood diamonds.

The reason for Even-Zohar's ire? The mandate given the Monitor at the November Plenary in Namibia is so narrow that it "will not change anything on the ground," he states.

"Witnessing human rights abuses, rapes, killings and military brutality in the mining area doesn't disqualify any diamond for certification. The Monitor's presence will not prevent smuggling. He is there solely to confirm that the administrative procedures are followed correctly," wrote Even-Zohar in the February 9th edition of *DIB*.

It didn't take long for President Robert Mugabe to reinforce Even-Zohar's fears. Days after accepting Chikane's appointment, Mugabe shrugged off a June KP deadline to rectify army abuses against civilians in Marange and threatened to defy the Kimberley Process. "We are trying to play it their way, that is following the KP, but we can do it otherwise," Mugabe said. "We can sell our own diamonds elsewhere."

Adding to Chikane's challenges will be Obert Mpfu, the Minister of Mines, and the Monitor's designated point person in the government. In recent months Mpfu has found himself at the centre of almost every aspect of the deepening crisis in Zimbabwe's diamond sector (see page 4).

Rapaport calls for Marange diamond ban

The human rights abuses occurring in Marange are not going unnoticed by industry insiders. In a letter in January 2010 to the Responsible Jewellery Council, Martin Rapaport, the founder of the Rapaport Diamond Report and early supporter of the KP, called for an immediate halt “in the purchase, sale, or manufacture of all diamonds or jewelry containing diamonds from Marange...[including] rough and polished diamonds already in the diamond distribution system.” Rapaport’s call cannot be good news for those who seek to profit from Zimbabwe’s blood diamonds. The influential New York-based entrepreneur publishes the weekly Rapaport Report, widely considered the industry standard by jewellers and diamond merchants for the pricing of diamonds.

In a toughly worded email sent to RJC CEO Michael Rae on January 19 and obtained by Partnership Africa Canada, Rapaport took issue with the “failure” of the Council to respond to the ongoing crisis. “The Marange crisis is upon us and the reputation of your organization and our industry is on the line,” Rapaport wrote. “Marange diamonds associated with murder, rape and enslavement of innocent civilians have penetrated the diamond and jewelry supply chain. The purchase and onward distribution of these blood diamonds to consumers is funding a continued cycle of horrific human rights violations.”

“Given the fact that blood diamonds from Marange have been exported with Kimberly Process (KP) certificates, the RJC’s position of merely requiring compliance in conformance with the KP Certification Scheme (KPCS) and the narrow unacceptable KP definition of conflict diamonds is fundamentally wrong and unethical. This position allows for the continued sale and distribution of blood diamonds with KP certificates,” Rapaport added.

The RJC, for its part, has so far refused to join the ban. Nonetheless, the RJC, a not for profit organization representing more than 150 companies committed to promoting ethical and environmental practices in the diamond industry, issued a statement to its members on February 2, 2010, expressing “grave concern” for rights violations occurring in Marange and advising its members to “exercise extreme caution when buying rough diamonds on the open market to ensure that they do not originate from Marange.” The RJC also promised that its auditors would “place an extra level of vigilance on the potential non-conformance” of Zimbabwean diamonds.

Civil Society under Attack by KP member states

In a shocking display of unstatesman-like behaviour, two countries used the November 2009 Namibia Plenary to declare open season on civil society organizations insouciant enough to expose their violations of the KP. The first example came from the Zimbabwean delegation, which openly mocked and shouted threats to a Zimbabwean civil society organization that had come to present evidence of government complicity in the violence in Marange. This sort of intimidation is unfortunately commonplace in Zimbabwe, but it cannot be tolerated in the KP.

The second instance came in the form of an official letter sent to outgoing KP chair Bernhard Esau from the government of Venezuela, which fired an ominous shot across the bow of civil society organizations that undertake investigative research. The letter, circulated to delegates later, states “Our Government wishes to call the attention on a situation that we consider unacceptable since it constitutes a flagrant violation of our sovereignty: the so-called ‘mission’ of investigation carried out by some organizations and allegedly done in our territory in 2006 and 2009. The information in the reports published by these organizations is absurd and is not recognized by the Government... We warn that the current national ruling shall be strictly enforced to all citizens entering our country as tourists and working on activities not allowed to that kind of visitors.”

This kind of attitude is reminiscent of the ‘denial’ from the Brazilian government following an investigation PAC undertook in Brazil in 2005, which uncovered widespread fraud in the Brazilian diamond industry. Months later, several of the leading fraudsters and a government official identified by PAC’s investigation were arrested by the Federal Police. To its credit, the Brazilian government then did the right thing and apologized to PAC and to the KP and set about seriously reorganizing its diamond regulations.

The latest examples of intimidation are unacceptable. They violate the spirit and intent of the KP, and it behoves all members of the KP’s tripartite arrangement to condemn them and reaffirm the KP’s support for the work undertaken in the KP by civil society.

From tragedy to farce: Zimbabwe flouts us still

Events of the last several weeks have been nothing short of jaw dropping. Far from being chastened by the appointment of the KP Monitor (see page 2), those behind the illegal extraction of diamonds at Chiadzwa (Marange) in Eastern Zimbabwe are showing signs of flouting every law in the book to get the diamonds to market.

In early February, there were reports in the *London Telegraph* of a secret runway being built at Chiadzwa capable of accommodating long-range jets. The construction of the runway is well underway and includes a newly built control tower, according to aerial pictures that accompanied the article. Equally troubling was photographic evidence of a tented army camp in the diamond fields, in violation of the Kimberley Process and consistent with longstanding claims made by human rights activists.

Observers note the runway serves several necessary political and economic purposes of the government of Robert Mugabe. Diplomats believe the army is using the rough diamonds from Chiadzwa to obtain goods from abroad, in particular weapons. China has long been Zimbabwe's main source of arms, but delivery has been more difficult since a shipment was blocked in South Africa three years ago. The army has also been frustrated in its attempts to buy weapons by Finance Minister Tendai Biti, a member of the MDC, who has blocked new arms purchases since

taking control of the treasury under the 2008 power-sharing deal. But this is not the only indication that ZANU insiders are illegally spiriting diamonds from the country.

Masimba Chandavengerwa, the acting head of marketing at the Minerals Marketing Corporation of Zimbabwe (MMCZ), stunned a parliamentary committee in Harare in late January by admitting Mbada Diamonds had been flying out diamonds without the MMCZ's knowledge for some time, and in violation of the KP. Mbada Diamonds is one of two companies to which the government controversially awarded the right to mine the Chiadzwa concessions. The ownership of these concessions is claimed by British-based African Consolidated Resources, whose claim was upheld by the Zimbabwe High Court in September 2009.

As a joint venture with the bankrupt state-owned Zimbabwe Mining Development Corporation, Mbada's corporate directorship includes several prominent ZANU members, including Sithengisiso Mpfu, a relative of the Minister of Mines Obert Mpfu.

As troubling as this news was, nothing was quite as bizarre as the diamond heist Obert Mpfu is alleged to have orchestrated from the Central Bank on February 4th.

At issue were 29kg of rough diamonds involved in the long running legal dispute between ACR and Minister Opufu over the rightful ownership of the Chiadzwa claims.

The contested stones were held in three strong boxes and were part of a much larger collection of diamonds that were mined by ACR

before their 2006 eviction, and afterwards by the ZMDC until late last year.

In January 2010, Supreme Court Chief Justice Godfrey Chidyausiku ordered the diamonds be kept in the Central Bank for safekeeping until the matter is resolved. But as the diamonds were being registered at the Bank, Minister Mpfu and his lawyer are alleged to have arrived with a letter from the Registrar of the Supreme Court reversing Justice Chidyausiku's earlier ruling. The deputy sheriff of Harare rebuffed the attempt, forcing Mpfu to leave.

Shortly thereafter, another senior policeman present is reported to have received several phone calls. A witness claims he then said: "There have been new developments. The letter is genuine. I am taking the diamonds." "The police robbed the central bank," ACR lawyer Jonathan Samkange told ZimNews. He also said the letter from the Registrar was "illegal" because Court officials cannot give rulings on behalf of judges. As for the diamond's current location, no one is saying, including Obert Mpfu: "I do not even know where the diamonds are kept," he said.

OTHER FACETS

Other Facets, a periodic newsletter about the international effort to end diamond-related conflict, is a publication of Partnership Africa Canada. Views expressed in *Other Facets* are those of the authors and editorial staff alone.

Supporters include: Foreign Affairs and International Trade Canada, Irish Aid, the International Development Research Centre and others.

For more information:

info@pacweb.org <http://www.pacweb.org/>
ISSN: 1496-7480