

OTHER FACETS

NEWS AND VIEWS ON THE INTERNATIONAL EFFORT TO END CONFLICT DIAMONDS

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LIMITED MARANGE EXPORTS AGREED TO IN ST. PETERSBURG

A compromise agreement allowing limited exports of diamonds from the Marange region of Zimbabwe was reached by the Kimberley Process during an extraordinary meeting of its Working Group on Monitoring (WGM) held during the annual meeting of the World Diamond Council (WDC) in St. Petersburg, Russia on July 14-15. Under the terms of the agreement, the KP Monitor for Marange will make two visits to Zimbabwe (August and September) to examine and certify for export those diamonds produced in the Mbada and Canadile concessions between May 28 and September 1, 2010.

This agreement is not a blank cheque for Zimbabwe, however. No stockpiled diamonds can be exported, and no diamonds from those parts of Marange outside of the Mbada and Canadile concessions can be exported. In addition, exports of diamonds produced after September 1, 2010 from any part of Marange are prohibited until explicit approval is granted by the KP Working Group on Monitoring (WGM). Future decisions by the WGM to allow exports from Marange will be based on their assessment of the extent to which Zimbabwe has made progress on a twelve-point Joint Work Plan (JWP) agreed to at the last KP Plenary meeting (held in Namibia in November 2009).

A key factor that will influence future decisions of the WGM will be the findings of a KP Review Mission that will visit Zimbabwe in mid-August 2010. The Review Mission, which is one element of the Joint Work Plan, will assess the progress Zimbabwe has made in the 97% of Marange that lies outside the Mbada and Canadile concessions. It will look in particular at the involvement of the military and police in illegal diamond mining syndicates and smuggling and related human rights abuses.

In addition to the provisions for a Review Mission, the JWP includes several mechanisms which the WGM can use to assess Zimbabwe's progress, including the appointment of the KP Monitor for Marange, Abbey Chikane. The Monitor's role is to assess Zimbabwe's progress towards implementing the JWP. In recognition, however, of concerns about the credibility of the KP Monitor (raised by civil society groups and some KPCS Participants - see article below), the St. Petersburg agreement also includes an enhancement to the institution of the Monitor in the form of a civil society focal point. The civil society focal point (drawn from Zimbabwean civil society groups) will collect civil society perspectives on Zimbabwe's progress in implementing the JWP.

Throughout these negotiations Zimbabwe has repeatedly emphasized the importance of allowing diamond exports so that it can generate revenue for social and economic development. Considering that Minister of Finance Tendai Biti has complained that the national treasury has not received a single dollar from Marange diamonds, the onus is now on Zimbabwe to demonstrate how revenues from diamond exports are being used to support human development. This will be a good test of how sincere the military and political elites linked to President Mugabe are about allowing all Zimbabweans to benefit from this immense resource.

THE ROAD TO ST. PETERSBURG: DEAD-LOCK NEAR THE DEAD SEA

The question of whether to allow Zimbabwe to resume exports of Marange diamonds dominated the agenda of the Working Group on Monitoring at the Kimberley Process Intersessional meeting in Tel Aviv (June 21-23). Despite several late night negotiations, including one that broke at 6 am, the meeting ended in deadlock after delegates were unable to find consensus on the issue. While it was an imperfect result, it was also a principled victory of sorts for those who feel the KP has increasingly lost touch with its founding principles of curbing the militarized control, production and trade of diamonds. In an attempt to find an agreement, KPCS Chair, Boaz Hirsch, and WDC

President, Eli Izhakoff, convened a "Mini KP Summit" on the margin of the WDC's annual meeting in St. Petersburg three weeks later (see article above).

During the WGM meeting in Tel Aviv, the KP Monitor for Marange, Abbey Chikane, presented a report based on his second fact-finding mission which took place from May 24-28, 2010. In his report, he claimed that Zimbabwe had "satisfied minimum requirements of the KPCS for the trade in rough diamonds". Accordingly, he recommended that he return to Zimbabwe to begin certifying diamonds for export, without qualification. His recommendation, if it had been accepted by the WGM, would have essentially

led to unrestricted exports of current, future and past diamond production from Marange.

Although Zimbabwe (and others) argued that the KP was bound to accept the recommendation of the Monitor, the KP Monitor himself acknowledged that his terms of reference very clearly state that he works “under the aegis and supervision of the KP Working Group on Monitoring”. It was therefore up to the WGM to take the decision. During the WGM meeting, the KP civil society coalition and some Participants expressed serious reservations about the Monitor’s report and some recommendations.

Tellingly, the report failed to note the systematic involvement of military/police in illegal mining syndicates and smuggling, and related violence, despite substantial media and civil society reporting on these issues. PAC’s subsequent June 2010 report (*Diamonds and Clubs: The Militarized Control of Diamonds and Power in Zimbabwe*, for example, found clear evidence of ongoing involvement by security forces in illegal mining syndicates, smuggling and human rights abuses (see page 4, *New Publications*). The Monitor’s report, by contrast, not only remains silent on this – it uncritically presents the views of the Government of Zimbabwe, without counter-balancing perspectives rooted in his own observations and the observations of credible third parties. These omissions were not the only controversial actions taken by the KP Monitor. In late May, while gathering information for his report, Chikane met with Farai Maguwu, the director for the Centre for Research and Development (CRD), the leading human rights organization in the Marange area. According to Chikane, Maguwu handed him a “restricted” military document that confirmed the involvement by military and police in illegal syndicates, and incidences of diamond related violence on the part of the military.

Initially Chikane told the KP that, as he “feared for [his] life” and was concerned that the document posed a legal risk, he “immediately” handed it over to government handlers. By the time he arrived in Tel Aviv, Chikane had changed his story, telling the WGM that he held onto the “restricted” document for four days, during which time he tracked down the author of the document and had him verify its contents. Discrepancies in his story aside, Chikane’s actions had a far graver consequence. Chikane chose to meet Maguwu in a very public place, in the presence of Zimbabwe security agents. A day later, Zimbabwean police raided CRD’s office and launched a manhunt for its staff members. In an effort to make Maguwu turn himself in, police detained and beat one of his relatives.

After five days on the run, Maguwu presented himself to police on June 3. He spent the next 39 days in jail before he won bail. (See page 4, *Zimbabwe Human Rights Activist Wins Bail*.) Chikane’s actions were indefensible and continue to compromise the KP’s relationship with civil society, inside Zimbabwe and abroad. Taken together, Chikane’s unprofessionalism in carrying out his duties led many members of the WGM to express a loss of confidence in the abilities to act independently, accurately or freely.

Outside of the WGM meetings, there was little opportunity to explain to other KP Participants the shortcomings of the Monitor’s report and the unprofessionalism of his conduct with respect to Maguwu. As a result, many countries that were not involved in the WGM discussions were left with a flawed understanding of the substantive, and legitimate, concerns civil society and other KP Participants had about Zimbabwe’s ongoing non-compliance in the 97% of Marange outside of the Mbada and Canadile concessions. Zimbabwe skilfully used this information gap to convince participants that Chikane’s report was legitimate, and that there was no reason to reject his recommendation that exports resume.

Aside from the shortcomings of the Monitor, discussions within the WGM were also hampered by the inflexible negotiation approach adopted by Zimbabwe. The Zimbabwe delegation was led by Mining Minister Obert Mpofo and Farai Mutangarai, who presented himself as the “Judge Advocate General” - a title, legal sources in Zimbabwe have since informed PAC, that does not exist in a civilian context. Their negotiating position was at times bullying, inconsistent, and often at odds with facts. They demanded that the WGM accept without reservation the Monitor’s report, and that he certify an initial export amount of two million carats mined since March 21, 2010. A second export would follow later, which would include all stockpiled stones going back to 2007.

Those opposed to exports argued that two conditions needed to be met before any exports could go ahead: first, the WGM had to receive a positive report from a forensic audit of all diamond stockpiles in Zimbabwe. Second, a Review Mission to Marange had to produce a positive report acknowledging that sufficient progress had been made on all aspects of the Joint Work Plan to warrant a resumption of exports. Both of these activities had been stipulated in the 2009 JWP. With both sides poles apart, Zimbabwe left Tel Aviv empty-handed, with the WGM unable to reach consensus.

And so, on to St. Petersburg...

A REFORM AGENDA: HOW TO STRENGTHEN THE KP

The KP meetings in Tel Aviv were not all about Zimbabwe. Constructive and productive debate was sparked at an “Evolution Workshop” co-hosted by the Civil Society Coalition and the World Diamond Council. It was attended by representatives from civil society organizations, private industry, and government officials from various countries, and was held one day before the formal Intersessional began. The meeting was purposely held outside of the confines of the official KP meeting to allow participants the liberty to informally discuss ways to address issues that have constrained and challenged the KP in the decade since it was created.

Discussion was helped by *Paddles for Kimberley: An Agenda for Reform*, a document written by former PAC Research Director Ian Smillie. It was released by PAC to coincide with discussions in Tel Aviv. (See document at www.pacweb.org.)

Among the topics discussed were: the obstacles posed by an annually rotating chair, particularly organizational memory; alternatives to the current consensus based decision-making process; follow up to review missions; making human rights language more explicit in KP core documents; and challenges enforcing internal controls.

Support was given to many of the reforms proposed, including the idea of creating a formal KP structure that would serve as an administrative archive, professional support team and “communication hub”. While some participants had reservations about the term “Secretariat”, the need for an entity that would allow for smoother transitions between often unevenly resourced and technically challenged KP chairs was given strong backing.

ISRAEL SPELLS OUT KP AGENDA

Better enforcement, institutional support, and creating a trade-related dispute mechanism are at the centre of Israel’s agenda as chair of the Kimberley Process. KP Chair, Boaz Hirsch, laid out the agenda during the Intersessional meeting in Tel Aviv.

Strengthening the KP’s enforcement capabilities tops Hirsch’s plans. Preliminary meetings have occurred with the World Customs Organization (WCO) with the intent to establish better collaboration between the two organizations. The WCO, through its Customs Enforcement Network, currently monitors and investigates illegal activity related to drugs, money

laundering, international property rights and cigarettes. The trade of illicit rough diamonds has now been added to that list. Possible cooperation between the KP and WCO could include intelligence gathering and sharing, and training of customs and other enforcement officers in countries with weak internal controls.

Creating an Office for Administration and Support is another initiative Hirsch is eager to advance. Hirsch told delegates such an office would “sustain the rotating position of Chair and will facilitate a smooth ‘changing of the guards’ each year, in addition to serving as the institutional memory of the KP.”

Hirsch’s last goal is the creation of a Working Group on Trade Facilitation, which would help to resolve disputes over diamond shipments held up for various reasons. All three initiatives will be brought forward at the Plenary in Jerusalem in November.

KP CONSIDERS BETTER ENFORCEMENT STRATEGIES

Diamond revenues from producer countries should theoretically go to national treasuries for the public good, but all too often black-market profiteers benefit instead. Take for example, the cases of Sierra Leone, Liberia and Côte d’Ivoire, which lose an estimated 20%, 65% and 100%, respectively, of national diamond production to smuggling.

Figures like this show that, despite KP expectations that participating countries have internal controls to track diamonds from production to the point of export, more effort is needed to stem the illegal flow of diamonds from the formal system. To this end, a one-day workshop on smuggling and enforcement was held in Tel Aviv, immediately following the conclusion of the KP Intersessional meeting.

Co-sponsored by Israel, the United States and Canada, the seminar was attended by representatives from mines ministries, customs organizations and police departments from over 15 countries, and explored ways in which the KP could improve inter-agency collaboration on diamond smuggling.

Participants agreed to set up an informal ‘Network on Enforcement’ that can identify concrete ways to improve cross-border co-operation. They also agreed to focus (at least initially) on Côte d’Ivoire.

Prior to this event, PAC worked with civil society partners in four West African countries (Liberia, Sierra Leone, Guinea and Côte d’Ivoire) to organize national multi-stakeholder workshops on diamond smuggling and enforcement. The results of these workshops will support follow-up action in the region.

HUMAN RIGHTS ACTIVIST WINS BAIL

Timing in the Zimbabwean legal system can have amazing coincidences. No more so than the case of Farai Maguwu, the Executive Director of the CRD, the leading civil society group that has exposed the smuggling and government-sponsored human rights abuses in Marange.

Maguwu was arrested ahead of the KP meeting in Tel Aviv where he would have been a thorn in the side of the Zimbabwean delegation. He was subsequently released just in time for a hastily convened KP "Mini Summit" in St. Petersburg in mid-July, where a desperate Government of Zimbabwe hoped to convince the KP to lift an export ban on Marange diamonds.

Although Maguwu won bail on July 13 - after 39 days in detention - he remains under constant watch of the authorities and has strict conditions imposed on where he can travel. Maguwu was detained in June under Section 31 of the Criminal Law Codification and Reform Act for "publishing or communicating false statements prejudicial to the State". Authorities originally stated the offending document was a "restricted" military report given to KPCS Monitor, Abbey Chikane, during a meeting with Maguwu at the Holiday Inn in Mutare on May 27, 2010 - something publicly supported by Chikane, but denied by Maguwu.

It is not hard to see why the document in question - "*Brief for Sub-National JOC by Assistant Commissioner Mawere N. On Operation Hakudzokwi Phase VII on 07/05/2010*" - would cause such alarm for Zimbabwe's military bosses. In wide circulation in South Africa, Europe and North America, the document confirmed:

- The Joint Operations Command is the de facto authority in Marange.

- The police and army are engaged in illegal syndicates with panners.
- The government has failed to demilitarize the diamond fields.
- Military personnel are involved in human rights abuses, including summary executions of civilians.
- Security forces continue to lose the battle against illegal panning or smuggling, particularly at new mining sites in Chirasika and Jesse.

It is clear the government plans to make an example of Maguwu, who faces a long legal battle ahead. Maguwu's arrest is an undeniable assault on civil society and a blunt warning to others who investigate and publicise ongoing abuses in Marange. But the government of Zimbabwe would be mistaken if it thinks it will be able to prevent civil society from continuing to monitor the situation in Marange.

NEW PUBLICATIONS

Several reports about Zimbabwe's troubled diamond industry were published in June by leading NGOs. While all of them covered the ongoing involvement by security forces in illegal smuggling, syndicates and human rights abuses, they each shed a light on different aspects of events in Marange.

Diamonds and Clubs: The Militarized Control of Diamonds and Power in Zimbabwe was published by Partnership Africa Canada. The product of on the ground research by PAC in Zimbabwe, the report argues that Marange diamonds are under the exclusive control of political and military elites close to President Mugabe and ZANU-PF, and are being used to perpetuate their control of power, including destabilizing the unity government in place since January 2009. The report maintains it is time for the KP to recognize the nature of "conflict diamonds" has changed over the last decade since the days of proxy militias fuelling

diamond strife in Africa. The KP must now contend with factions within a government (such as ZANU in Zimbabwe), which use diamonds to wage war on their own citizens and legitimate governance. See report at www.pacweb.org.

A Global Witness report focuses on the legally questionable and secretive ways in which the two joint venture companies were awarded mining rights by the Zimbabwean government. It argues that irregularities in the way the concessions were awarded open the door to state looting and corruption. *Return of the Blood Diamond: The Deadly Race to Control Zimbabwe's New Found Diamond Wealth*, can be found at www.globalwitness.org.

Deliberate Chaos: Ongoing Human Rights Abuses in the Marange Diamond Fields of Zimbabwe is a follow-up to Human Rights Watch's June 2009 report that catalogued government-sponsored abuses in Marange. The report is especially critical of how the KP Monitor, Abbey Chikane, executed his duties, including the role he played in the arrest of Farai Maguwu. It also takes exception with the narrow scope with which he carried out his monitoring duties, focussing exclusively on technical aspects of corporate compliance at the expense of ongoing human rights abuses. Visit www.hrw.org for more information.

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