

OTHER FACETS

NEWS AND VIEWS ON THE INTERNATIONAL EFFORT TO END CONFLICT DIAMONDS

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NEW MINERAL CERTIFICATION SCHEME LAUNCHED

Once upon a time, the Kimberley Process was widely considered the gold standard in the fledgling world of corporate social responsibility—both as a regulatory and certification scheme, but also for the constructive tripartite relationship between governments, industry and civil society.

How times have changed.

As the navel gazing and vacillation over Zimbabwe has shown (see pg.2), a range of new mineral certification and conflict prevention initiatives are rapidly overtaking the KP—in thought and substance.

The latest newcomer is a proposed regional certification mechanism (RCM) that was endorsed at a heads of state summit of the International Conference on the Great Lakes Region (ICGLR) in Lusaka, Zambia in December. The 11-member states of the ICGLR will now track four high-value, conflict-prone minerals—gold, coltan, tungsten, and tin—that are at the heart of the on-going conflict and plunder in Eastern Democratic Republic of Congo.

The new scheme was designed in collaboration with Partnership Africa Canada, with support from the Swiss Department of Foreign Affairs. Its architects—Shawn Blore and Ian Smillie—were guided by a desire to avoid many of the loopholes and limitations that have come to undermine the efficacy and legitimacy of the Kimberley Process Certification Scheme (KPCS).

Although a launch date has yet to be announced, the final product will raise the bar considerably for all participants in the mineral supply chain, particularly those operating in the Congo.

While several features of the ICGLR's scheme are familiar to KP Participants, many of them will go well beyond the latter's minimum standards. One key feature will be the introduction of mandatory, regular, and independent third party audits of all participants in the mineral supply chain.

Another will be to create a more sophisticated database to track mineral flows, from mine site to export, and beyond. Regional mineral flows will be transmitted monthly to the ICGLR Secretariat in Bujumbura, Burundi. For each industry participant, data will be analyzed to determine if exports equal legal imports. Where mineral flows do not balance, industry participants will be given a short grace period to explain and correct the discrepancy. If the explanation is unsatisfactory, or the imbalance continues, the participant will be declared non-compliant. Here the new scheme diverges from the KP in one significant way: burden of proof with respect to compliance falls primarily on exporters, and second on governments.

Recognizing the way stasis has too often led to paralysis in the KP, the ICGLR system has also been designed to adapt its tracking and certifying standards as events and criminality change. It's a lesson the KP continues to ignore, most notably in a persistent unwillingness to amend the definition of conflict diamonds to respond to the involvement of state actors, and not just rebel groups, in diamond-related violence.

Most importantly, the ICGLR recognizes that there must be credible sanctions for non-compliance, which are applied equally to all participants, regardless of economic or political importance. Without that as a serious possibility there is little reason for participants to follow the rules.

Despite all these factors, the ICGLR faces many obstacles, most notably the need to keep decision making open, inclusive and free of extraneous political interference. This will be no small challenge for a political body, represented by political appointees, tasked with bringing control and transparency to a region with highly contested and politically important mineral deposits.

On a more positive note the ICGLR RCM dovetails with several other complementary developments aimed at stemming the trade of conflict-minerals and regional instability, including the OECD Due Diligence Guidance and various private sector initiatives. The most notable of them, however, are efforts by the United States Securities and Exchange Commission (SEC) to meet an April 2011 deadline to implement disclosure requirements demanded of companies under the Dodd-Frank Act. Under the "Conflict Mineral" provision of the Act, which passed into law in July 2010, all publicly traded companies in the US will have to submit an annual report to the SEC declaring they have undertaken due diligence to ensure their supply chain does not include any conflict minerals.

ZIMBABWE: KP GOES SOFT, GREEN-LIGHTS MARANGE EXPORTS

Zimbabwe has 160 million reasons to celebrate the New Year, after two government owned producers in Marange won the right to what amounts to unfettered exports of their current production.

The exports come courtesy of a KP sanctioned agreement that deems Canadile and Mbada—two government joint ventures—compliant with KP minimum standards.

The deal was secured by Administrative Decision January 17, 2011 after two rounds of negotiations in November, first at the Kimberley Process Plenary in Jerusalem and subsequently in Brussels, ended in deadlock.

Other key terms of the agreement include:

- maintaining an export ban on diamonds stockpiled between 2007-2009, mined at the height of the violence and lawlessness in Marange, until full compliance with the Joint Work Plan agreed at the 2009 KP Plenary;
- a “violence clause” that would trigger an immediate export ban on learning of credible reports of new violence that were supported by three members of the KP Working Group on Monitoring—none of which would be permitted to participate in future votes to determine whether exports could resume;
- vague words of encouragement for Zimbabwe to meet long-overdue promises to regularize mining Marange.

If there was any good in the “Jerusalem Agreement” it was the strong support for increased monitoring in Marange through the civil society Local Focal Point (LFP). Previous monitoring reports by KP Monitor to Marange, Abbey Chikane, were discredited for their lack of disclosure, detail and inquiry (see Other Facets #33). There are higher hopes for the LFP, which is mandated to independently inform the KP of any irregularities or violence it witnesses in the diamond fields. Led by environmental lawyer Shamiso Mtisi, the LFP is composed of representatives of six other leading Zimbabwean NGOs.

Despite this the KP civil society coalition cannot support this agreement. For starters there are not sufficient provisions to prevent diamonds from fuelling further violence in Marange, end military involvement in diamond mining or stop smuggling.

There are also serious reservations about the dangerous precedent of shelving a founding principle of the KP that recognizes national, not corporate, compliance.

While proponents of the deal point to the so-called “violence clause” as a mechanism to keep violence in check, in reality the deal removes any significant leverage the KP had to push Zimbabwe toward regularizing

Marange by de-linking exports to progress in the diamond fields. Barring the unlikely repeat of the military’s 2008 use of helicopter gunships to quell unruly miners, there is little hope that future violence will motivate the KP to act. Indeed, the KP was largely unmoved in 2010 by reports from several NGOs, including PAC, which documented new instances of systemic and state sponsored violence.

One of the ironies of the “violence clause” is the explicit recognition of “lawlessness and violence, particularly...involving government entities.” While this goes a long way in acknowledging a longtime civil society demand that rights violations by state actors should be given the same weight as those by rebel forces, its inclusion is disingenuous considering the resistance to extend that same thinking into the KP’s core mandate (See pg. 4).

The approval of this agreement is another hit to the KP’s already sorely tested credibility. Two companies with symbiotic relationships to the worst elements of President Mugabe’s violent kleptocracy have now been given a clean bill of health. This perversity is made worse by a lack of clarity surrounding the legal ownership of one of those companies, Canadile. Recently, it suffered a high profile implosion as various ZANU factions squabbled over its riches. The timing, coming at the 11th hour of the Jerusalem negotiations, was not coincidental (See below).

The agreement still faces a few hurdles. The biggest wrinkle is that Zimbabwe has yet to make its position known. Should Harare reject the deal, the export ban will remain in effect and negotiations will have to begin afresh. If Zimbabwe takes that road it is a gamble clearly premised on thinking a more favourable result will be found under the chairmanship of the Democratic Republic of Congo—a country that openly admits it is “indebted” to Zimbabwe for the help it gave the Kabila governments during the worst days of the civil war. So far DRC, the new KP Chair, has held the line, despite a high level visit to Kinshasa by Minister Mpofu in late January.

Another not so insignificant hiccup is the continued mandate of Abbey Chikane, the KP Monitor for Marange. In December, there were calls for Chikane’s resignation after he unilaterally certified several parcels of diamonds for export. Outgoing KP Chair, Boaz Hirsch, was forced to issue a notice nullifying the certificates. Choosing a new Monitor that is acceptable to all KP Participants will be highly problematic and could take months to resolve.

The December exports were not all bad news. Zimbabwe ignored the chair’s notice and sent exports to India, China and UAE. These Participants, most associated for their defense of Zimbabwe’s right to export without restrictions, remarkably, upheld Hirsch’ decision. Zimbabwe’s bluff was called and it did not attempt further “legal” exports.

CANADILE MELTS DOWN

Canadile's collapse has resulted in the government effectively taking over the day-to-day operations of the mine.

In the process the government purged Canadile's ranks, arresting six directors and forcing others to flee. The fugitives include Robert van der Merwe, Yehuda Licht, Arnold Neil Lange, Subithry Naidoo, Kuberin Packrisamy, Marco Chiotti, Minesh Bungwadeen, Viken Arslanian, Komalin Packirisamy, Vejayanakumar Naidoo and Allan John Sawyer.

The government accused them of smuggling tens of millions worth of diamonds, and cancelled their investor residence permits.

Those that remained have signalled they will not go down without a fight, using the courts and the media to counter with accusations as lurid and greedy as those of the government. One besieged director, Lovemore Kurotwi, accused Minister of Mines Obert Mpfu of soliciting a \$10 million bribe in return for approving Canadile's mining operations.

The spat has sparked rumours and innuendo in political circles, mostly seen through the lens of the power-struggle between Solomon Mujuru and Emmerson Mnangagwa for control of a post-Mugabe ZANU. One line of thinking is Mpfu got punished by the Mujuru faction because he refused to pledge his loyalty in advance of the December ZANU Congress. Mpfu instead made headlines by publicly declaring himself Mugabe's "obedient son", earning him no friends in either camp.

Another interpretation is that Mpfu is under attack from jealous ZANU colleagues. With the national purse strings in the hands of opposition Finance Minister Tendai Biti, these ZANU ministers are said

to be sore with Mpfu leading a mysteriously funded and ostentatious lifestyle, while they are forced to make-do with their paltry \$500-a-month salaries.

Whatever the answer, the purge affirms an uncomfortable truth for those looking to sugar coat Zimbabwe's position: diamonds remain at the heart of a violent and illegitimate power struggle by ZANU insiders.

ANJIN: WHO'S BEHIND THE LATEST MARANGE PLAYER?

Details are slowly trickling out about Anjin, the mystery Chinese company awarded the third mining concession in Marange.

Perhaps because of the public outcry at the way in which Mbada and Canadile were stacked with ZANU cronies and constituted against Zimbabwean law, the Mugabe securocrats took a different tack with Anjin. The terms of the joint venture, including the company structure or any other details of public interest, are subject to a non-disclosure agreement so strict that only a handful of people know the details.

Despite this, informed industry sources claim the money and brains behind Anjin is the Anhui Foreign Economic Construction Group (AFECC), led by Jiang Qingde.

Like Mbada and Canadile, a lack of experience in the mining or diamond sector was not an impediment to winning the lucrative concession. In recent years AFECC has been a leading recipient of Beijing's largesse as an integral player in China's "Going-out" strategy to develop foreign markets, particularly in Africa. Among its recent projects are building Maputo's new international airport, an army and police barracks in Ghana, and a string of luxury hotels in Madagascar and farther afield.

Industrialist Qingde has also been a regular visitor to Zimbabwe's State House and is well known by President Mugabe's inner circle. His VIP status was underscored during a recent visit to Zimbabwe, when he was welcomed at Manyame Air Base in Harare by General Constantine Chiwenga, one of the generals who commands Marange.

AFECC, of course, is no stranger to working with politically bankrupt despots. Among its other major clients is the Myanmar regime.

PLENARY REPORT: ENFORCING THE KPCS

Under Israel's chairmanship in 2010, the KP made strengthened efforts to combat diamond smuggling a priority.

Over the course of the year, PAC supported efforts by Israel, the U.S. and Canada to conduct multi-stakeholder consultations in Guinea, Liberia, Côte d'Ivoire and Sierra Leone to better understand the scope and challenges of smuggling in the Mano River countries of West Africa. This was followed up with an Enforcement Seminar during the KP Intersessional in Tel Aviv in June 2010.

The results of these discussions, including recommendations to industry, governments and the KP itself, were later integrated into *Diamonds Without Borders: An Assessment of the Challenges of Implementing and Enforcing the KP Certification Scheme*, a report which was presented to the KP Plenary in November 2010.

Efforts to combat diamond smuggling will continue to be a priority in 2011. Find the report on PAC's website or read it here: <http://tinyurl.com/4z7lnq5>

KP TAKES PASS ON HUMAN RIGHTS

At the 2010 KPCS Plenary, the KP Civil Society Coalition introduced (for the fourth straight meeting) language clarifying the relationship between the KPCS and human rights.

The language stated that KP Participants should respect international human rights law when providing security in their diamond sectors. Civil Society, supported by the World Diamond Council and a majority of governments, argued that the credibility of the KPCS would be seriously undermined if it was not seen to be actively engaged in preventing and responding to human rights violations in the diamond sector by state agents.

Despite this support, consensus was blocked by India, China, Russia, and the DRC. Botswana and Namibia reserved judgment saying they needed more time to study the initiative.

Blood is blood. Does it matter who causes it to be spilled? In the Wonderland of the KPCS, apparently so.

DR CONGO TAKES OVER KP CHAIR, SETS OUT AGENDA

Mathieu Yamba Lapfa Lambang is the new chair of the KP for 2011.

Prior to his appointment Mr. Yamba was a director at the Centre d'évaluation, d'expertise et de certification (CEEC), the government agency within the DRC's Ministry of Mines responsible for certifying minerals.

The DRC has come out of the gate with a strong and focused agenda for the year. PAC is reliably informed that the DRC's chief priorities for the year will be to:

- Boost internal controls by developing a registration system for artisanal miners, and tracking diamonds from the point of extraction to export;

- Combat smuggling by focusing on controls in trading centres, banning the use of post boxes by importers and beefing up the capacity of local customs officials.

The DRC also appears ready to build on several initiatives championed last year by Israel, including closer cooperation with the World Customs Organization and further study of a possible permanent Secretariat.

CONFLICT WATCH: CENTRAL AFRICAN REPUBLIC, ANGOLA, COTE D'IVOIRE

While all eyes have been on Zimbabwe, new concerns are also being raised about diamond related violence in the Central African Republic.

A recent report by the International Crisis Group warns that poor governance, poverty and crime in the diamond business is feeding conflict in alluvial mining zones in the east of the country and threatening peacebuilding efforts there.

Dangerous Little Stones: Diamonds in the Central African Republic found that rampant smuggling by illicit trading networks are depriving the state of much needed revenue, while the government's refusal to distribute national wealth fairly has led jealous factions to launch rebellions. Profits from mining and selling diamonds illegally are also enabling armed groups—particularly the Union of Democratic Forces for Unity and Convention of Patriots for Justice and Peace—to collect new recruits and create a strong incentive not to disarm.

Ned Dalby, the ICG researcher who authored the report, presented preliminary findings to the KP Plenary in Jerusalem. His full report can be read here: <http://tinyurl.com/463w6dg>

CAR is not the only country of concern in Central Africa. There are reports that both Gabon and Cameroon—both non-KP countries—are mining and exporting alluvial diamonds. KP Participants have also intercepted several fake certificates

originating in Cameroon, a country whose gems are increasingly finding their way to the burgeoning, and completely unregulated, internet diamond trade.

Human rights abuses along the Angola-Congolese border also show no signs of abating. In late October, Angola deported nearly 200 Congolese citizens, according to humanitarian reports, prompting fears of a new wave of mass expulsions that saw tens of thousands displaced last year.

Dozens of men, women and children have arrived in Congo's southern Bandundu province, which lies on Angola's northern border, stripped of their clothes and some badly beaten or raped, according to humanitarian reports.

Angola and DRC were allies during the latter's 1998-2003 civil war, but relations have been strained in recent years due to rows over border demarcation and oil rights.

Ongoing post-election tensions in divided Côte d'Ivoire continue to simmer. Incumbent president, Laurent Gbagbo, refuses to step down after a recent electoral defeat at the hands of Alassane Ouattara. Reports suggest that over 250 people have died in related violence. In the meantime, diamonds continue to be mined and smuggled out of the country with little signs of abatement. The KP will be engaging Côte d'Ivoire's neighbours to upgrade enforcement activities along their shared borders, and will be coordinating efforts to strengthen the activities of customs officials and local communities in monitoring borders.

OTHER FACETS

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