

# DE BEERS

FAMILY OF COMPANIES

**Dialogue 10:** Corruption, money laundering and conflict in the context of the global economic crisis

**Participants:** De Beers (Andrew Bone, Anna Klukowska, Stephen Lussier); Africa Matters (Debbie Goldthorpe); International Alert (Ulrike Joras, Diana Klein); International Business Leaders Forum/Voluntary Principles on Security and Human Rights (Tanya Barman); Maplecroft (Gus Macfarlane); Transparency International (Jeremy Carver); Transparency International UK (Robert Barrington, John Drysdale)

**Moderator:** Alyson Warhurst (Warwick University, Transparency International (UK) and Maplecroft)

Dialogues take place under the Chatham House Rule. The Chatham House Rule reads: "When a meeting, or part thereof, is held under the Chatham House Rule, participants are free to use the information received, but neither the identity nor the affiliation of the speaker(s), nor that of any other participant, may be revealed".

## The Joint Work Plan

- In Zimbabwe, there have been three key issues facing the extractive sector (in order of seriousness):
  - The human rights situation at the Marange diamond fields
  - The government's opaque management of its natural resource revenues
  - The generation of legitimate natural resource revenues that help fund a government that is accused of serious abuses outside of Marange
- The Joint Work Plan, agreed by participants, including Zimbabwe, at this year's Kimberley Process Plenary, represents a relatively robust and intrusive response to allegations of serious human rights abuses and allegations of non-compliance linked to Marange. Although it still falls short of actual suspension, which was pushed for by the US, EC, Israel and Canada, the Joint Work Plan is still expected to help remedy the situation. It is being supported (both in terms of funding and technical support) by the European Commission, Rio Tinto and the World Diamond Council.
- The Joint Work Plan does have some weaknesses, however, in terms of its relatively short time horizon of 12 months, as well as the fact that its implementation relies on the Zimbabwe government. This raises a question with respect to the independence of the process. That is not to say the government lacks enforcement capacity, however, as it is in a better position than many other states in this respect.
- There are also questions to be asked with respect to the replacement of government security forces by private security forces. It is not clear whether these private security forces will have sufficient training, capacity, supervision or independence of action. Furthermore, it is believed and assumed that the security forces alleged to have benefited from the Marange fields in the last 12 months will continue to get their money from somewhere. As a result, even if it is successful, the Joint work Plan may displace the problem elsewhere rather than solve it. Likewise, the Joint Work Plan may displace security-related corruption into other quarters – possibly including the two new joint ventures that Harare has announced it will develop in Marange.
- Some elements within Zimbabwe are reportedly seeking to outmanoeuvre the restrictions of the Kimberley Process and Joint Work Plan by establishing a diamond processing facility in an abandoned hangar at Harare's airport. Once polished, diamonds from Marange would no longer be subject to the Kimberley Process. It is not known if such plans are realistic, however, as at least 17 facets need to be put on each stone – and this is an expensive and time-consuming process.
- The next year is expected to be an important one for the Kimberley Process. If the Joint Work Plan is successful, it will boost the long-term credibility of the scheme as a whole. If not, the Kimberley Process is likely to face a crisis of confidence amongst key stakeholders.

## Engagement versus exclusion

- A key issue with respect to Zimbabwe and the Kimberley Process is the means by which multi-stakeholder initiatives are able to correct the behaviour of their members. It is a generic weakness of multilateral international organisations, such as the Kimberley Process, that they rarely suspend or exclude their members. The only other option is engagement – and this appears to be what the Joint Work Plan (see below) is attempting to do.

- Experience suggests that had the US, EC, Israel and Canada been successful in suspending Zimbabwe, this could have resulted in increased opposition to the process and support for Harare – particularly given 'anti-colonial' sentiments in some quarters.
- In some cases these sentiments were fuelled by the 'over enthusiastic' way in which some participant governments aggressively sought to garner support for Zimbabwe's suspension.

### The role of the UN

- The Kimberley Process is highly reliant on the political will of its national participants. Any enhancement of the Kimberley Process will be conditional on whether there is the political will to support it. So far this will has been lacking amongst many governments.
- This being the case, the Kimberley Process may instead need to look for increased multilateral engagement via the UN. Nonetheless, this would still be unlikely to improve the ability of the Kimberley Process to exclude participants in cases of serious non-compliance.
- Nonetheless, the Kimberley Process would benefit from 'arm's-length' political support from the UN and, in particular, support for a permanent Kimberley Process secretariat.

### The role of the extractive industry

- De Beers has been active in the Kimberley Process since its inception. Indeed, the Kimberley Process is itself very similar to a system originally proposed by De Beers in 2000.
- Furthermore, De Beers has been active in trying to enhance implementation and coverage. De Beers has:
  - Pushed for three years to establish majority voting rather than its reliance on consensus.
  - Advocated the establishment of a permanent secretariat and improved statistical capabilities
  - Supported efforts by a number of NGOs to include human rights language into the Kimberley Process
- The extractive sector may have a further role to play by establishing its own frameworks to build upon and complement the Kimberley Process. This includes the establishment of its own mechanisms to exclude illicit diamonds from Marange and elsewhere through a more proprietary and bespoke approach to individual channels of distribution. This could offer advantages in terms of brand differentiation, competitive advantage and protection of reputation. However, any such system would be reliant on the willingness of consumers to absorb the costs of assurance.
- An example can already be found in De Beers' Forevermark brand. Certification entails extra costs and is restricted to diamonds from De Beers' clients who are subject to extensive monitoring. Research suggests that, in Europe, there is growing interest in the ethical aspects of diamonds. In Asia, however, consumers are currently more concerned with questions of quality. As a result, Forevermark covers both issues.
- Any attempt to exclude suspicious stones or stones of unknown origin from differentiated brands like Forevermark would implicitly make such stones less attractive to consumers. This would diminish their value and undermine the market in diamonds that have not been subject to the relevant assurance or certification. It would not, however, eliminate them altogether.

### Statistical analysis

- The imposition of more sophisticated diamond accounting procedures has meant that participants in the Kimberley Process have been able to appreciate and quantify world rough diamond flows.
- This has resulted in better mapping (through the tracking of statistical irregularities) of illicit diamond routes – and has supported fears that, in a relatively small number of cases, illicit diamonds have been making it onto the legitimate market. There is, for example, a well-established route for illicit diamonds between West Africa and Lebanon.

### Human rights

- It is important to note that, in spite of its limitations and the views of certain vocal critics, the Kimberley Process is the only international organisation directly addressing alleged human rights violations in Zimbabwe. De Beers acknowledges that the Kimberley Process must be cognisant of the fact that it was largely initiated in response to serious human rights abuses taking place in Angola, Sierra Leone and the DRC.
- Despite this, any attempt to formally extend the mandate of the Kimberley Process into the field of human rights could undermine the broad international support upon which it currently relies.

- The situation in Marange has raised a dilemma for the Kimberley Process. For example, is it better for the Kimberley Process to keep Zimbabwe within the scheme so that it can positively engage with the country in order to try and remedy the situation in Marange? Alternatively, is it better for the Kimberley Process to expel Zimbabwe, which would diminish its influence and effectively allow the situation in Marange to take its own course? In either case, the credibility of the Kimberley Process is likely to suffer.
- The Kimberley Process has already demonstrated its ability to deal with clear cases of conflict by marginalising rebel forces in central and western Africa and restricting their access to markets and finance. In the opinion of some, the real test for the future will be how it deals with human rights situations of the kind seen in Zimbabwe.
- The recession has had a negative impact in terms of the prioritisation of human rights by some companies. Human rights are not seen as a core business issue – particularly as it tends to sit in the CSR domain. Even during favourable economic times, many companies do not have the appropriate tools to deal with human rights – with most of their activities focused on basic corporate social investment. During recession, they are not even able to use what tools they do have. Generally speaking, the private sector is much better at identifying human rights risks than it is at responding to them.

### Divestment

- Divestment from countries on human rights grounds can entail significant unintended risks. This includes increased unemployment, which can in turn fuel conflict. An example can be found in Colombia, where there is a tangible link between conflict levels on the one hand, and unemployment linked to fluctuating oil and coffee prices on the other.
- Likewise, divestment by Western companies in Burma did little to help the human rights situation there, and if anything harmed it. This was because it removed what leverage and influence such companies had in their efforts to improve human rights in the country.
- In Zimbabwe, Rio Tinto (which has a significant operation there) has reportedly been wary of divesting, partly due to concerns that this would just result in the nationalisation of their assets, the misuse of mine revenues and significant negative impacts on local communities.
- In Katanga, DR Congo, the rapid exit of Chinese companies as a result of the economic crisis has generated high levels of distrust and anger. This is due to unemployment, unpaid taxes and unfulfilled CSR promises. As a result, should China wish to re-enter this market, it would be at a high price and would require careful management.

### Organised crime and money laundering

- Experiences in places like Colombia demonstrate that a holistic approach needs to be taken in dealing with organised crime. Crop-eradication programmes, for example, were reported to increase prices and encourage further cultivation.
- The Obama administration has already suggested that it will take a different, more considered approach. Similarly, any attempt to address the criminal aspects of the international trade in rough diamonds will need to take account of related economic and social dynamics in order to forge an effective response.
- The ability of the US to tackle organised crime was arguably undermined during the Bush administration, as was the role of the Department of Justice. Likewise, there was a real opportunity for the banking network to be used to tackle organised crime and money laundering, but this was not ultimately taken.
- Even now, the international banking system has some way to go in terms of fighting money laundering. Whilst the major banks operating in well-regulated markets are unlikely to become directly involved in money laundering, they are indirectly exposed through interbank transactions.
- For example, banks in weaker jurisdictions may 'bundle' laundered money with legitimate money and transfer it on to other banks on a 'wholesale' basis. This will appear legitimate to the latter, who will likewise bundle it up with other money and transfer it onwards. As a result, this money can work its way up the chain, into the most respectable of institutions – and remain very hard to identify or trace.
- Furthermore, the impact of the recession on many banks has reportedly meant they are becoming increasingly reliant on laundered money in order to maintain their liquidity.

### The BRICs

- There are currently strong incentives in place to dissuade Western companies from participating in corrupt practices, including legislation such as the Foreign Corrupt Practices Act in the US, and the Bribery Bill in the UK.
- This is in contrast to the BRIC countries, which are often based in jurisdictions with high levels of corruption themselves. They are also relatively unhindered by anti-corruption legislation – particularly when operating abroad.

- The increased involvement of BRIC companies in the African extractive sector as Western companies face ever-stronger anti-corruption regulation represents a polarising dynamic. This presents a significant commercial and ethical challenge to Western companies.
- Despite concerns over the ethical performance of Chinese companies in Africa, however, it should be noted that:
  - The actions of Chinese extractive companies and the will of the Chinese government are not always fully aligned.
  - It is wrong to assume a lack of good intention within the Chinese government. Beijing has shown its willingness to respond positively to international concerns in some areas already – including climate change – and it is becoming increasingly engaged with the Kimberley Process.

### Summing up

- The extractive industry – and business as a whole – has a key role to play in combating corruption, money laundering and resource-related conflict.
- The Kimberley Process needs to strike a careful balance between the perceived benefits of engagement versus exclusion when faced with serious human rights abuses or other serious ethical issues.
- There has been a real change in the global economic environment that will see increased resource competition from BRIC companies in Africa – and may put pressure on ethical business practices.