

DE BEERS

FAMILY OF COMPANIES

Dialogue 11: Kimberley Process Credibility, Zimbabwe and the Joint Work Plan

Participants: De Beers (Nicky Black, Anna Klukowska, Stephen Lussier, James Suzman); Africa Matters (Baroness Chalker); Business and Human Rights Resource Centre (Malena Bengtsson), Deloitte (Debbie Thomas), Global Witness (Annie Dunnebacke), International Alert (Diana Klein); Maplecroft (Gus Macfarlane); Resource Consulting Services (Simon Gilbert, Mathieu Tromme), Transparency International UK (John Drysdale)

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

Chair: Andrew Bone, Director of International Relations, De Beers Family of Companies

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".

1 Introduction

- The Tel Aviv intersessionary meeting of the Kimberley Process (KP) produced an ill-tempered impasse as participants tried to reach consensus as to whether Zimbabwe had met the minimum requirements of KP in the Marange diamond fields – and so whether it should be able to export rough diamonds from Marange or not.
- The debate centred around the recent report of the Special Monitor appointed under the Joint Working Plan, which recommended a resumption of rough diamond exports from one of the concessions in the Marange region. His findings conflicted with ongoing allegations of human rights abuses, corruption and smuggling connected to the Marange diamond fields of Zimbabwe outside the formal concession areas, as detailed in reports from Global Witness, Partnership Africa Canada, Human Rights Watch and others.
- Zimbabwe received the support of Botswana, South Africa, the BRICs countries and others, whilst countries such as Canada, the US and Australia opposed any resumption of rough diamond exports from the country – as did members of civil society.
- Zimbabwe's Mines Minister Obert Mpofu linked Western opposition to a resumption of diamond exports to a desire for "regime change" and threatened to continue rough diamonds with or without KP authorisation. In addition, Mpofu made the point that revenues from these diamonds would help ensure sufficient food supplies for the broader population. This contrasted with NGO and media reports of systematic, high-level corruption surrounding the trade of Marange diamonds and who ultimately benefits.

2 Issues

2.1 African solidarity

- The Tel Aviv meeting demonstrated the strong politicisation of the KP, which represents a serious challenge to its future credibility.
- It appears that Zimbabwe was successful in shoring up its support amongst the Southern African Development Community (SADC) countries in advance of the meeting. As a result, these governments presented a united front in protecting Zimbabwe's position in the face of perceived 'neo-colonial' interference by the West.

2.2 Mobilising African support for the Kimberley Process

- Despite publicly stated support for Zimbabwe, a number of the SADC countries' representatives did express concern about the Zimbabwean position in private and the effect the present 'impasse' would have on the Kimberley Process. The challenge is how to mobilise this concern as regional politics dictate solidarity.
- In part, this may be an issue of expressly de-linking two issues: 1) non-compliance with the KP and 2) the general political and human rights situation in Zimbabwe. This would address perceptions that the KP is being used as an extension of US and UK sanctions/policy.

- In addition, efforts should be made to improve African participation in the KP at a political and working group level (i.e. beyond implementation). This would help deal with perceptions that decisions are being made 'behind closed doors'.
- Nonetheless, there remains the challenge that individual SADC countries are often unwilling to reveal their position early on in debate. This can sometimes result in a relatively reactive stance that discourages constructive debate.
- In addition, there appears to be limited awareness of what is happening on the ground in Zimbabwe. This is despite overwhelming evidence of ongoing human rights abuses perpetrated by the state, open and highly lucrative corruption, and the smuggling of rough diamonds through Mozambique. There is also limited political prioritisation.
- As a result, there is scope for better communicating the underlying issues to KP member governments in Africa in order to enhance their active engagement.

2.3 Reaction to the KP Special Monitor's report

- The report of the Special Monitor, Abbey Chikane, received a mixed reaction amongst attendees at the meeting. In part, this was due to perceptions that it was presented as a *fait accompli*, with little questioning or debate of his findings in advance outside the KP working group.
- Chikane's latest report also caused surprise in some quarters, and has raised questions about his credibility amongst, for example, the NGOs. In part, this is due to perceptions that his report does not necessarily take into account some of the ongoing issues surrounding corruption and smuggling – as well as allegations that it represents a significant shift from his earlier reports.
- As a result, Chikane's report did not receive consensus support. This was reflected in NGO opposition, as well as the fact that countries such as Liberia, Ghana and others appeared to abstain from supporting its findings.
- Further criticism followed the arrest of Farai Maguwu, director of the Centre for Research and Development (CRD), after a meeting with Chikane in Zimbabwe. The CRD has played a key role in exposing human rights abuses in Marange. During the meeting, Maguwu reportedly told Chikane that he had seen no improvement in the human rights situation and provided details regarding the ongoing smuggling of rough diamonds to Mozambique.

2.4 Zimbabwean implementation of the KP

- There was some debate in Tel Aviv regarding the definition of 'conflict diamonds' (i.e. in terms of the degree to which serious, non-conflict related human rights abuses are included). Nonetheless, NGOs argue that it is fundamental to their position that Zimbabwe is not in fact meeting the minimum requirements of the KP in terms of basic management systems and legal procedures – and that it is on this basis that it should be suspended.
- Given the relatively broad terms in which the KP is framed – and the differing interpretations that attend them – it could be argued that Zimbabwe is in fact technically meeting minimum KP requirements. There are, for example, other countries (e.g. DR Congo, Liberia, Sierra Leone and Guinea), where implementation is arguably weaker. Although this was acknowledged, there is a view that the difference is the approach taken by other governments to recognise deficiencies and deal with them in a spirit of co-operation with the KP.
- In this context, it may be worth ensuring that a consistent approach is applied to all non-conforming countries. Nonetheless, it is the nature of Zimbabwe's open disdain for the KP, combined with strong evidence of widespread smuggling for the personal gain of members of the country's political and military elite, that critics say makes it a special case.

2.5 NGO demands

- A key NGO position is that if one area of a country is in non-conformance, then the whole of the country is in non-conformance. It is because the Joint Working Plan did recognise a national/sub-national distinction that it received little NGO support.
- NGOs have made it clear that they are not necessarily looking for the total resolution of all issues. Instead, they require real, on the ground progress in meeting KP minimum standards before legitimate exports are resumed. This is because promises of action are no longer credible. It also means moving away from 'peripheral' technical discussions (e.g. the height of fences, the efficacy of security lights etc), towards more substantive improvement.
- In addition, NGOs have demanded acknowledgement of the human rights abuses that reportedly took place in Marange – as well as a degree of accountability and effective remedy.
- Some of the NGOs have already put forward detailed recommendations in their reports, but it might be useful for them to provide a specific 'post-Tel Aviv' list of concrete actions that would collectively demonstrate 'positive progress' from their perspective.

2.6 KP enforcement and the broader value chain

- There is over-focus on African non-compliance and mining. Stakeholders need to look at proper KP enforcement within the broader value chain (including the main manufacturing centres). This is why key industry voices have pushed for the integration of the value chain 'System of Warranties' into the KP from its inception.
- It appears, for example, that Dubai has acted as a key conduit for illicit diamonds from Zimbabwe (and possibly other countries), although they are currently holding two non-compliant parcels from Zimbabwe. Nonetheless, there are certain challenges when using this route to address the problem. Many of these diamonds are likely to go through Dubai's 'free port', which has limited regulation and monitoring. Even if this were addressed, the new Djibouti 'free port' would provide an alternative route.
- In addition, there is no legal basis for stopping the export of rough diamonds from Zimbabwe that have not been signed off by the Special Monitor. Although Dubai currently holds two suspect packages of diamonds, this is on the basis of goodwill and informal pressure alone.
- There is also no legal reason why Zimbabwe could not export Marange diamonds to China and India, for example. Although Beijing and Delhi are likely to prefer to do this under KP auspices, such a stance may be undermined by a desire to access other mineral reserves in Zimbabwe – and so give Harare leverage in the matter.
- The ability of industry to restrict the entry of illicit diamonds from Zimbabwe into the global value chain is likely to be limited by competition law. This could result in companies with a large market share being sued if they pressurise clients to eschew the purchase of such diamonds.

2.7 External engagement

- More attention needs to be paid to the role corruption and money laundering plays in the illicit diamond trade. There appears to be significant scope for engagement with external players, including border agencies, Interpol, national law enforcement bodies, banks, the European Commission etc.
- Such an approach would strengthen arguments in favour of a permanent KP secretariat to act as a focal point for coordinated action. The results could be positive, as demonstrated by Israel's recent approach to the World Customs Organization in order to improve KP cooperation.

2.8 The inherent challenges of multi-stakeholder initiatives and suggested actions

- The KP is experiencing similar difficulties to the Voluntary Principles on Security and Human Rights. The diverse nature of stakeholders inevitably means they have differing expectations. This requires the refining of key definitions and internal processes in order to ensure consensus understanding. Indeed, one of the positive aspects of the Tel Aviv meeting were two events looking at the evolution of the KP (including its definitions), as well as enforcement.
- Although it is unlikely that the basic KP definitions can be changed in the short-term, there is scope for clarification as to interpretation – particularly with respect to human rights.
- Another approach would be to reduce emphasis on consensus decision-making within the KP. This could include a shift towards 75% voting in certain areas – or other similar measures to increase flexibility and adaptability.
- The two events in Tel Aviv (see above), as well as other areas of positive progress such as the KP review missions and the exchange of statistics, shows that improvement is still possible.

2.9 KP scope

- It is potentially important to acknowledge some of the latent limitations of the KP. Many NGO aims (for example relating to the broader human and civil rights situation in Zimbabwe) arguably fall outside its scope.
- The danger is that if potentially 'unrealistic' expectations are placed on the KP, it will ultimately undermine the successes that it has achieved within its more narrowly interpreted boundaries.
- As an alternative, NGOs and other critics of Zimbabwe might consider focusing on other tools, initiatives and avenues to address broader political and human rights issues – and so not undermine the KP itself.
- Nonetheless, NGO critics maintain that human rights are in fact within its remit – and that it is a pure issue of basic KP implementation and compliance.

2.10 The dilemma posed by enforcement

- If Zimbabwe is excluded from the KP at a national level, then the diamonds will simply be smuggled out instead. This is one of the reasons why a 'sub-national' approach to enforcement may in fact be the 'least worst' choice.

- Given allegations regarding the involvement of senior Zimbabwean officials in illicit diamond smuggling, it is hard to see what incentives they have for improving KP enforcement. As a result, it is important to examine how such individuals can be incentivised in order to change the status quo.

2.11 Regional security risks

- The Marange situation has implications for regional security. For example, illicit diamond revenues are likely to provide a substantial 'war-chest' for Zanu PF, improving its ability to resist democratic change.
- It is not clear if South Africa – the main regional power – is fully aware of the risk that this could pose to the region (for example in terms of broader instability and refugee flows).

3 Recommendations

- Recommendations included the following:
 - Enhanced enforcement of KP implementation, including minimum standards and formal auditing
 - Improved transparency and a focus on anti-corruption
 - Establishment of a permanent KP secretariat, or professional assistance
 - Engagement with emerging markets such as India and China – both at a political and consumer level
 - Encouragement of African governments to work with Zimbabwe towards a negotiated solution
 - Continued engagement of Zimbabwe, maintaining a balance between flexibility and credibility
 - Work on KP definitions and interpretations (procedural and conceptual) to minimise ambiguity
 - Improve engagement and coordination with external players and initiatives, including the new UK government

4 Key takeaways

- Key takeaways included the following:
 - Support for the continuation and improvement of the KP is broad and strong regardless of the tensions demonstrated in Tel Aviv
 - Improving the level and quality of member participation in high-level KP processes and decision-making will help improve both strategic decision making as well as 'on the ground' implementation
 - There is a need to acknowledge and remedy human rights abuses in Zimbabwe in order to re-establish trust between stakeholders, particularly with respect to the arrest of Maguwu by the Zimbabwean authorities
 - Revenues generated through the export/smuggling of illicit diamonds may contribute to a Zanu PF 'war chest' – and so could increase the risk of conflict. Mechanisms need to be found to divert such revenues to address hunger and poverty within the country
 - Focus needs to be maintained on the basic implementation of the KP – minimum standards are still not being met in key countries