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RETURN OF THE BLOOD DIAMOND

THE DEADLY RACE TO CONTROL
ZIMBABWE'S NEW-FOUND
DIAMOND WEALTH

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INTRODUCTION

The Kimberley Process rough diamond certification scheme (KP) is credited by some with ending the scourge of blood diamonds. However, the extreme violence that has characterised life in Zimbabwe's Marange diamond fields over the past three years has shattered this myth. Instead of expelling Zimbabwe, the Kimberley Process has repeatedly failed to take action, and state-sponsored human rights abuses and diamond smuggling in Marange continue, against a backdrop of opaque and questionable investments.

This report is an update on the situation in Marange. It calls on the Kimberley Process to take urgent and decisive action to address Zimbabwe's non-compliance with the scheme's rules, bring to an end the violence and corruption in the Marange diamond fields, and restore public faith in the diamond trade.

The Kimberley Process was set up ten years ago in the wake of brutal diamond-fuelled conflicts in countries such as Angola, Sierra Leone and Liberia. It set out to prevent the devastating trade in conflict diamonds, and address consumers' concerns that their diamond purchases were fuelling human rights abuses. The KP was founded on a commitment to stamp out "systematic and gross human rights violations" and to set in place safeguards to ensure that such diamond-

The Marange diamond fields in eastern Zimbabwe have been the scene of widespread state-sponsored violence.



related abuses could never happen again. However, the violence at the heart of Zimbabwe's diamond sector – and the KP's lacklustre response – calls that commitment into question and is undermining public confidence in the diamond trade.

Over the past three years, the Marange diamond fields in eastern Zimbabwe have witnessed a series of violent assaults by government security forces against diamond diggers and local communities. Hundreds of people have been killed, and many more have been beaten, raped and forced to mine for the army and police. In the face of overwhelming evidence, the Zimbabwean authorities continue to deny that these abuses have occurred, and no-one has been held accountable.ⁱ

In this context of grave human rights violations and militarised mining, the government has introduced two joint venture companies, supposedly to bring operations in Marange back into line with Kimberley Process standards. Yet the process of establishing these joint ventures and allocating their concessions has been dangerously lacking in transparency, and scant regard has been paid to the rules and regulations that should govern the diamond sector.

Section one of this report outlines the pattern of violence in the Marange diamond fields. It describes how the majority of the diamond fields are still under control of the army, and how state security agencies continue to commit human rights abuses against civilians.

Section two examines the Kimberley Process's failure to act. Lack of political will on the part of some participant governments, as well as weaknesses in a system in dire need of reform, have left the KP prevaricating in the face of precisely the kinds of diamond-related abuses it is supposed to prevent.

Section three reveals that the joint venture companies awarded mining rights by the Zimbabwean government in the name of improving conditions in Marange are in fact directly linked to the Zanu PF military and political elite responsible for the abuses. The legally questionable and secretive way in which these deals have been

ⁱ References for the points covered in this section can be found in the main body of the report. Some of the sources mentioned in the report remain confidential in order to guarantee their safety.



Robin Hammond/ Panos

People from all over Zimbabwe flocked to Marange to dig for diamonds as the country's economy crumbled. The government responded with a brutal military crackdown, leaving hundreds of miners dead.

done leaves the door open for state looting and corruption. Some of the most worrying aspects of the deals include the following:

- No public tender was held to form the joint venture companies assigned concessions in the Marange diamond fields. This contravenes Zimbabwean law.
- The due diligence investigations conducted by the government prior to the creation of the joint ventures were wholly inadequate. Key information about the investors concerned – which casts doubt on their suitability – was overlooked or not acted upon.
- One joint venture company awarded a concession still appears to be unregistered in Zimbabwe. This renders its contracts null and void under Zimbabwean law.
- Company documents for another of the joint venture companies appear to have been removed from the corporate registry office in Harare.
- The state-owned Zimbabwe Mining Development Corporation, a 50% shareholder in each of the joint ventures, has been consistently sidelined and appears to have little say in the running of their operations. This removes a crucial check on the activities of the private companies that control the other 50% of the concessions allocated.

- Efforts by Zimbabwean MPs to investigate these deals and shed light on events in the Marange diamond fields have been repeatedly blocked, both by representatives of the joint venture companies, and by Minister of Mines Obert Mpofu.ⁱⁱ

The efforts of the Zanu PF and military elite to seize control of Marange's diamonds through a combination of abusive military operations and suspect deal-making could have serious consequences for the peace and stability of Zimbabwe. It gives some of Zanu PF's most recalcitrant elements a means of financing renewed campaigns of political violence against their opponents if the current power-sharing arrangement with the Movement for Democratic Change (MDC) ceases to serve their interests.

In light of the systematic killing and harassment of opposition supporters following the 2008 elections, this risk should not be under-estimated. MDC leaders have recognised the danger the situation poses and have expressed concern about the lack of transparency in the management of Marange's diamonds.

By turning a blind eye to ongoing rights abuses, the Kimberley Process appears to be legitimising the situation in Marange. Moreover, by pinning its hopes on a weak compromise deal with the Zimbabwean government, the KP has tacitly supported the highly irregular introduction of joint ventures in the

ⁱⁱ Global Witness wrote to all the main parties mentioned in this report for their comment on the situation in Marange and the joint ventures operating there. Only one, Core Mining and Mineral Resources Ltd, replied to these letters; their responses have been integrated into the report.

diamond fields without considering the wider impacts in terms of governance and stability.

Over the past few years, the Kimberley Process has been largely successful in restoring public faith in the diamond trade. It is doubtful, however, that this consumer confidence can be sustained if the KP now allows diamonds produced in a context of such extreme violence to enter international markets. Full recommendations to the Kimberley Process, Zimbabwe and other actors can be found at the back of this report. A summary of key recommendations follows:

To the Government of Zimbabwe

- Suspend all imports and exports of rough diamonds for a period of at least six months, or until such time as the diamond sector is brought into line with Kimberley Process minimum requirements.
- Withdraw the army from the diamond fields immediately, launch investigations into human rights abuses carried out there since 2007 and hold perpetrators to account.
- Freeze the introduction of new companies into the Marange diamond fields, review the legality of all joint ventures currently operating there, and cancel any joint venture or concession agreements where there is evidence that the law has been broken and due process not followed.

To Kimberley Process participants

- Suspend Zimbabwe from the Kimberley Process for a period of at least six months, or until such time as the country complies with the minimum requirements of the scheme.
- Exercise vigilance to prevent imports of uncertified parcels of Marange diamonds and promptly report any breaches of the Joint Work Plan agreed at the 2009 KP plenary meeting.
- Adopt language that clarifies the KP's attitude to human rights in the diamond sector and introduce reforms that improve the scheme's decision-making process, increase transparency and enhance monitoring.

To the diamond industry

- Ensure that companies exercise vigilance to guarantee that they do not purchase uncertified parcels of Marange diamonds until human rights abuses in Zimbabwe's diamond sector cease and the country complies with KP minimum requirements.
- Industry members with operations in Zimbabwe, such as Rio Tinto, should insist that the Zimbabwean government ends human rights abuses in the Marange diamond fields, holds perpetrators to account and complies with Kimberley Process minimum requirements.

To Southern African Development Community (SADC) countries

- Use good offices to ensure that the Zimbabwean government ends human rights abuses in the Marange diamond fields, holds perpetrators to account and complies with Kimberley Process minimum requirements.
- Exercise vigilance to prevent imports of uncertified parcels of Marange diamonds and promptly report any breaches of the Joint Work Plan agreed at the 2009 KP plenary meeting.
- Support the adoption by the Kimberley Process of language that clarifies the scheme's attitude to human rights in the diamond sector and the introduction of reforms to improve the KP's decision-making process, increase transparency and enhance monitoring.

To governments that give international aid to Zimbabwe

- Put pressure on the Zimbabwean government to end human rights abuses in the diamond sector and hold perpetrators to account, and support efforts by the Zimbabwean government to comply with KP minimum requirements.
- Countries which maintain sanctions against the Zimbabwe Mining Development Corporation (ZMDC) should issue a warning to importers not to buy diamonds from companies that are partly owned by the ZMDC.

The Kimberley Process – Great expectations unmet

The Kimberley Process (KP) aims to exclude conflict diamonds from international markets and prevent diamond-fuelled wars.

It is an import-export certification scheme which requires participating governments to certify the origin of rough diamonds, and put in place effective controls to prevent conflict stones from entering the supply chain. Participant countries must enact domestic legislation to implement the scheme, and can only trade rough diamonds with other members. This creates a strong incentive for countries that want to produce, trade or process uncut stones to join. As of 2010, there are 75 governments participating in the KP.

The Kimberley Process was set up as a result of campaigning by Global Witness, Partnership Africa Canada and others that exposed the role of diamonds in funding vicious conflicts in Angola, Sierra Leone and Liberia. In the face of growing international pressure, major diamond producing and trading countries, the diamond industry and campaigners met in May 2000 in Kimberley, South Africa, to determine how to tackle the problem.

The Kimberley Process was launched in January 2003 after a contentious three-year negotiating process.

The KP's technical provisions are implemented by governments, but its tripartite structure means that non-governmental organisations and the diamond industry hold official status as observers and take part, along with member states, in all working groups and decision-making processes.

‘Lack of consistent political will, and outdated and obstructive procedures, have prevented the scheme from achieving its potential and fulfilling its mandate to prevent diamonds from fuelling violence and human rights abuses.’

The scheme relies on consensus-based decision-making, which often means slow progress or inaction on key issues.

The establishment of the Kimberley Process has heralded a new approach to regulating the trade in natural resources internationally, and has set an important precedent for schemes such as the Extractive Industries Transparency Initiative, which concerns management of revenues in the oil sector.

However, lack of consistent political will, and outdated and obstructive procedures, have prevented the scheme from achieving its potential and fulfilling its mandate – to prevent diamonds from fuelling violence and human rights abuses.

In recent years the KP has struggled with a number of problem cases, including conflict diamonds from Côte d'Ivoire being smuggled into legitimate markets, and non-compliance with the scheme's minimum requirements in Venezuela. Zimbabwe is arguably the KP's biggest test yet; one it is currently failing.¹



Brutal diamond-fuelled conflicts in countries like Sierra Leone prompted the establishment of the Kimberley Process, but today lack of political will threatens the certification scheme's effectiveness and credibility.

SECTION ONE VIOLENCE REIGNS IN THE DIAMOND FIELDS

Zimbabwe's Marange diamond fields stretch over 66,000 hectares in the east of the country. Although estimates of the reserves contained in this area vary wildly, some have gone so far as to suggest that it could be home to one of the world's richest diamond deposits.² Over the past three years, Marange has been plagued by horrific human rights abuses by state security agencies against diamond diggers and local communities, resulting in hundreds of deaths, and many more cases of assault, rape, arbitrary detention and forced labour.³

From early 2007, police officers stationed in the fields began forcing miners to work in syndicates under their control; demanding bribes and beating or killing anyone else they found mining in the area.⁴

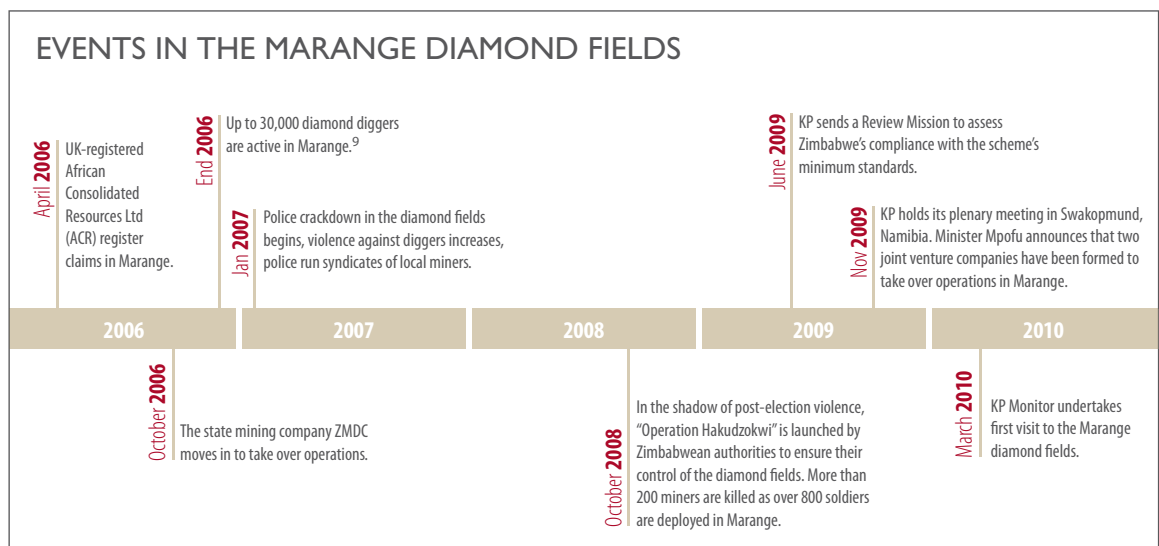
The violence in Marange reached a peak in autumn 2008, with the arrival of the army, and the launch of Operation 'Hakudzokwi', or 'You will not return'. This operation appeared to have two goals: to ensure control of the diamond deposits for the Zanu PF elite, and to reward the army for its loyalty to this clique. More than 800 soldiers were deployed alongside helicopter gunships, killing over 200 people.⁵

Following this operation, soldiers took over mining syndicates previously run by the police, and forced

local people, including children, to mine for them. The military was also central in facilitating the smuggling of these diamonds out of Zimbabwe to neighbouring countries including Mozambique and South Africa. Once again, civilians found digging for diamonds independently of the syndicates were severely beaten or killed as a warning to others.⁶

A Kimberley Process Review Mission was eventually sent to the country in June 2009 to investigate the violence and assess compliance with KP standards. The mission found evidence of grave human rights abuses, armed soldiers managing syndicates of miners and a "smuggling operation that enables rough diamonds to flow from Zimbabwe outside the KPCS [Kimberley Process Certification Scheme] [...] largely operated and maintained by official entities".⁷ This finding alone – that state agents are running diamond smuggling operations to Mozambique, a non-KP participant – is grounds for expulsion from the scheme.

In conclusion, the team, made up of government, NGO and industry representatives, "identified several areas in which Zimbabwe [is] non-compliant with the minimum requirements of the KPCS" and recommended that the country be suspended from the scheme for at least six months.⁸





Robin Hammond/ Panos

A Zimbabwe National Army truck near the Marange diamond fields – the military still controls the majority of the diamond mining areas.

In a press conference held at the end of the visit, the mission's leader, Liberian Deputy Minister of Mines Kpandel Fayia, made an impassioned plea to the Zimbabwean authorities:

"Minister, on the issue of violence against civilians, I need to be clear about this. Our team was able to interview and document the stories of tens of victims, observe their wounds, scars from dog bites and batons, tears, and on-going psychological trauma.

I am from Liberia, Sir; I was in Liberia throughout the 15 years of civil war, and I have experienced too much senseless violence in my lifetime, especially connected to diamonds. In speaking with some of these people, Minister, I had to leave the room. This has to be acknowledged and it has to stop."¹⁰

Today the situation in the Marange diamond fields remains critical. The Zimbabwean authorities claim that the joint venture companies they have

Disputed legal title – who has the right to mine in Marange?

Mining in the Marange diamond fields has been going on since 2006 in spite of a long-running court battle over the rights to operate in the area. The case concerns a UK-registered firm, African Consolidated Resources Ltd (ACR), which registered mining claims in the area in 2006. These claims were cancelled by the Zimbabwean authorities later that same year, through a series of clumsy and contradictory letters, leaving the way clear for the government-controlled Zimbabwe Mining Development Corporation (ZMDC) to take over operations in the fields.¹¹

Since that point, there have been numerous court hearings and judgements aimed at

establishing whether or not ACR's claims were cancelled illegally, with a 2009 High Court judgement ordering the cessation of all diamond mining and prospecting activities in the area.¹² The case remains unresolved, even as mining in Marange continues.

Marange is not the only Zimbabwean diamond mine that has been subject to legal battles; the River Ranch concession located on the border with South Africa, has attracted its own share of controversy. This centres on a dispute over ownership linked to senior members of Zanu PF, and allegations of smuggling.¹³

recently established and given permits to mine in Marange will help regulate the diamond sector and improve standards. However, the fact is that these companies are only operating in around 3% of the diamond fields,¹⁴ with the remaining 97% under the control of the army.¹⁵

The widespread smuggling of Marange diamonds out of Zimbabwe persists, and the army continues to operate syndicates of miners as a means of capturing the proceeds of this illegal trade.¹⁶

Although access to the Marange diamond fields has been severely restricted, testimony gathered from victims by local civil society representatives shows that serious human rights abuses, including assault and rape, are still being committed by the army and the police.

In March this year, the Centre for Research and Development, an non-governmental organisation (NGO) based in Mutare, the provincial capital, identified 26 victims of abuse in the diamond fields and the surrounding area, including two cases of rape, and one of a woman being beaten so severely she was left partially blind. In April, the same NGO recorded 24 cases of assault by the security forces against civilians.¹⁷

Some local experts believe that the actual number of assaults is much higher, but that people are

“I was in Liberia throughout the 15 years of civil war, and I have experienced too much senseless violence in my lifetime, especially connected to diamonds. [...] This has to be acknowledged and it has to stop” – Kpandel Fayia, Liberian Deputy Minister of Mines.

too afraid to report abuses, for fear of further harassment. The researchers also note that the violence often precedes visits to the area by important government delegations – an apparent attempt to clear the area of miners before the visitors arrive.¹⁸

Despite the continued violence, Zimbabwe remains a member of the Kimberley Process, the international certification body set up to prevent diamond-fuelled violence and abuses. The failure of KP member states to agree to suspend Zimbabwe has prompted deep concern among some KP participants and observers, who have begun to question the future of the scheme.

Diamond diggers and local communities in Marange have borne the brunt of state violence over the past three years.



Robin Hammond/ Panos

SECTION TWO WHEN REGULATORS FAIL TO REGULATE¹⁹

“The Kimberley Process is not a human rights organisation”

– KP Chair Bernard Esau, 2009²⁰

Over the past ten years, the Kimberley Process has had some success in strengthening controls over the international diamond trade and rebuilding fragile consumer confidence in diamonds. The scheme has meant an increase in transparency and oversight in the sector, and in some countries substantial flows of illicit diamonds have been brought into the legal trade. But this progress has been seriously jeopardised by KP participant governments' inability to deal with the crisis crippling Zimbabwe's diamond industry – and to stem the trade in blood diamonds from Marange.

Despite the fact that an official KP review team deemed Zimbabwe non-compliant with the scheme's minimum requirements and confirmed reports of “extreme violence”²¹ perpetrated by state forces in the diamond sector, Zimbabwe has been allowed to retain its membership. In fact, certain KP member states appear to consider state-sponsored killings of hundreds of diamond diggers to be acceptable under the standards laid out by the scheme.

These governments argue that because the UN defines conflict diamonds as stones “which are used by rebel movements to finance their military activities, including attempts to undermine or overthrow legitimate governments”,²² the KP should not act when a participant murders its own citizens in order to secure access to diamond wealth. Some have even implied that human rights are not a concern of the KP; former Chair Bernard Esau arguing that “The Kimberley Process is not a human rights organisation”.²³

These arguments are dangerously misplaced. The KP was set up in the wake of the very worst human rights abuses committed during diamond-fuelled wars in Angola, Sierra Leone and Liberia. The founding document of the Kimberley Process clearly states participants' determination to stamp out “systematic and gross human rights violations” associated with the diamond sector.²⁴ The



Ryan Brown/ UN Photo

Namibian Deputy Minister of Mines Bernard Esau presided over the Kimberley Process in 2009, during its disastrous response to events in Zimbabwe.

prevention of violence and abuses fuelled by the trade in rough diamonds is the underlying rationale for the KP's existence and cannot simply be cast aside when this becomes politically inconvenient.

In the case of Zimbabwe, Kimberley Process governments have not lived up to their commitment to the scheme's founding principles, undermining both the legitimacy of the Kimberley Process and the trust placed in it by the public. If the KP is to fulfil its mandate to prevent diamond-fuelled violence and avoid irrelevance in the eyes of consumers, member states must be prepared to rapidly and effectively address situations where participants are breaking the rules. The Kimberley Process should suspend Zimbabwe, until there is credible evidence that abuses have ended and the country meets the scheme's minimum requirements.

The KP should also adopt language that clarifies members' commitment to preventing human rights in the diamond sector. Members need to introduce reforms to increase transparency, enhance monitoring and improve the scheme's decision-making process. These reforms are sorely needed to reassure consumers who are increasingly concerned that the Kimberley Process no longer provides a safeguard against their diamond purchases fuelling violence and abuses.

The KP ducks the challenge

The KP's consensus-based decision-making means that a minority of participants – or even a single dissenting voice – can block progress on key issues, such as how the Kimberley Process deals with cases of serious non-compliance. In recent years, a small number of spoiler governments have thwarted the KP's response to several major challenges, placing economic interests and political loyalties above compliance with KP rules, respect for human rights and protection of the scheme's credibility.

When the Kimberley Process met for its annual plenary meeting in November 2009 in Swakopmund, Namibia, the membership was under significant pressure to act, not least from a 150,000 signature petition calling for Zimbabwe to be excluded from the KP.²⁵ However the outcome of the Swakopmund meeting was no exception to the KP's established pattern of vacillation and half measures. Rather than suspend Zimbabwe, members sought to address the problem of state-sanctioned killing of miners with a 'Joint Work Plan' aimed at bringing the country back into line with KP standards. As expected, this compromise deal has proven wholly inadequate in the face of the ongoing violence in Marange.

The Joint Work Plan does not address the full range of areas in which Zimbabwe is not compliant with

Kimberley Process requirements and fails to mention human rights at all. Six months on, little progress has been made in meeting even those targets that the plan does set: the military presence remains in the majority of the Marange fields, diamonds continue to be smuggled out into neighbouring countries and Zimbabwe has breached the agreement by exporting shipments of diamonds from Marange to the United Arab Emirates.

Many Kimberley Process participant governments appear reluctant to deal with Zimbabwe's non-compliance for fear that they might undermine the country's Government of National Unity. And yet, far from bolstering the unity government, allowing abuses and impunity to persist in Marange provides members of the Zanu PF and military elite with an opportunity for personal enrichment – and the means to buy the loyalty of the security forces – endangering the already fragile power-sharing agreement.

The MDC itself appears to recognise the risks that the situation poses, and Minister of Finance and MDC Secretary-General Tendai Biti recently called for all licences in the disputed fields to be cancelled “in the interest of transparency”.²⁶ The following section demonstrates how the introduction of joint ventures, tacitly supported by the KP, is further consolidating control of Marange's diamond wealth in the hands of an unaccountable elite.

The Joint Work Plan

After failing to reach an agreement to suspend Zimbabwe, Kimberley Process members fell back on a Joint Work Plan, negotiated “for the purposes of working with Zimbabwe toward full compliance with the minimum standards of the KPCS”. Key requirements include withdrawing the army from the diamond fields and stemming the flow of illicit diamonds. The plan also provides for a KP monitor mandated to report on implementation of the plan, and to examine Marange diamonds prior to export to ensure that they have been produced in compliance with Kimberley Process requirements.²⁷

In April, however, KP working groups learned that Zimbabwe had breached the terms of the plan by exporting twelve shipments of Marange diamonds to the United Arab Emirates before the KP monitor was even in place. These diamonds, produced and traded by the state-owned company Marange Resources Ltd,

were removed from state stockpiles prior to a forensic audit, another work plan requirement.²⁸ Such a blatant violation of an agreement reached just weeks before seriously calls into question Zimbabwe's commitment to the Kimberley Process. This commitment appears all the more shaky in light of recent reports of the Zimbabwean security services breaking into the KP monitor's luggage and removing documents during his official visit in May 2010.²⁹

There are other indications that Zimbabwe is not serious about cleaning up its diamond sector. The involvement of civil society groups is one of the cornerstones of the Kimberley Process and local human rights groups in Zimbabwe played a crucial role in sounding the alarm on conditions in Marange. However these groups – notably the Centre for Research and Development in Mutare – are frequently harassed by the authorities for reporting government abuses in the diamond fields.

SECTION THREE A SYSTEM SET UP TO FAIL

“The systems of patronage that reward the well-connected while excluding those that are able and willing to build our economy has no place in the new Zimbabwe”³⁰
 – Prime Minister Morgan Tsvangirai, June 2010

This section takes a closer look at the joint ventures that have been introduced in an apparent bid to clean up operations in the Marange diamond fields.

At the November 2009 Kimberley Process plenary session, Zimbabwean Minister of Mines Obert Mpfu announced that licences to mine in the Marange diamond fields had been awarded to two joint venture companies, Mbada Diamonds and Canadile Miners, both of which are comprised of the state mining company Zimbabwe Mining Development Corporation (ZMDC) in partnership with private investors.

Following international outcry at abuses in Marange, and a highly critical report by the KP’s Review Mission, these joint ventures were presented as the solution to the problems that had plagued the diamond fields, and a way of bringing operations there back into line with the minimum standards of the scheme.³¹

However, a closer inspection of the joint ventures reveals that they have been established in an opaque manner, with little regard for Zimbabwe’s laws and procedures. The lack of transparency at all stages of the process is hardly conducive to the good governance of a resource which, if fairly and openly managed, could contribute so decisively to the recovery of the country.

“The overall picture is one of a system that appears to favour the elite and facilitate corruption instead of benefiting ordinary citizens.”



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Minister of Mines and Mining Development Obert Mpfu has driven the introduction of joint ventures to the Marange diamond fields with little regard for Zimbabwe’s laws and procedures.

Instead, the overall picture is one of a system that appears to favour the elite and facilitate corruption rather than benefiting ordinary citizens. This raises a range of concerns, which are outlined in more detail below.

Zimbabwe’s tender laws not followed

Zimbabwe’s Procurement Act states that when a parastatal such as the ZMDC wishes to form a joint venture with a private investor, it must request that the government’s Procurement Board publicly invites bids on its behalf, in order to ensure transparency and fairness in the process.³² In the case of Canadile and Mbada, however, no such request to the Procurement Board was forthcoming.

Notes on the ZMDC CEO Dominic Mubayiwa’s testimony to the Parliamentary Portfolio Committee

Where has the money gone?

The Zimbabwean authorities have repeatedly claimed that Marange diamonds, along with the rest of Zimbabwe's rich endowment of natural resources, should be used for the benefit of the country and its citizens, and could significantly boost the national economy. However, in early 2010 the Chief Executive Officer (CEO) of the Zimbabwe mining parastatal, the ZMDC, admitted to the Parliamentary Portfolio Committee on Mines and Energy that the company had not paid a dividend to the

Zimbabwean state for over 20 years. Given that the ZMDC was the sole body charged with exploiting the Marange diamond fields from mid 2006 until the introduction of the joint ventures in late 2009, this raises big questions as to how the ZMDC managed the diamond revenues that it generated through operations in Marange over this period.³³ Global Witness wrote to the ZMDC to ask what had happened to revenues earned from diamond mining activities in Marange since 2006, but did not receive a reply.

If managed openly and fairly, Marange diamonds could make a valuable contribution to rebuilding Zimbabwe's economy.



Robin Hammond/ Panos

on Mines and Energy (PPC)ⁱⁱⁱ seen by Global Witness, reveal that the ZMDC was simply presented with the names of two investors – Mauritius-registered Grandwell Holdings Ltd, and South African company Core Mining and Mineral Resources Ltd – and told that they had already been approved by the Ministry of Mines and Mining Development.³⁴

Testifying to a closed session of the PPC on 17 March 2010, Minister Mpfu admitted that he had ignored the legal procedure in awarding the tenders, but claimed that this was warranted because of the urgency of the situation.³⁵ Global Witness wrote to Minister Mpfu to ask on what basis Grandwell and Core Mining were selected as investors, but did not receive a response.

This is not the first time that a ministry under Obert Mpfu's leadership has ignored procurement procedures. In its investigations into alleged impropriety in the introduction of a private investor to another parastatal, Ziscosteel, the Parliamentary Portfolio Committee on Foreign Affairs, Industry and International Trade found "Gross irregularities in the process used in selecting Global Steel Holdings Limited as Ziscosteel's investment partner. In his testimony, the Minister of Industry and International Trade [Mr Mpfu] professed ignorance of the requirement to follow the procedure as laid out in the guidelines [...]. The Committee expresses serious doubt over the credibility of the Minister's testimony".³⁶

The Committee also "noted with grave concern" that Ziscosteel's Board of Directors and management were not involved in selecting potential investors, much as the ZMDC has been sidelined in the formation of the Mbada Diamonds and Canadile Miners joint ventures.³⁷

Significant failings in government due diligence

Due diligence investigations into the firms behind Canadile and Mbada – Core Mining and Mineral Resources, Grandwell Holdings Ltd and Grandwell's parent company New Reclamation Group Ltd – were carried out by representatives of the state mining company, the ZMDC in August 2009. Due diligence is the process by which a government assesses the capacity of and risks associated with a potential investor. It is a crucial safeguard in any situation in which a state is allocating valuable public assets to a private sector operator. In the context of Zimbabwe's diamond sector, where a

iii A Parliamentary Portfolio Committee, or PPC, is a standing investigative committee of the Zimbabwean parliament, with a remit to examine the expenditure, administration and policy of government departments, as well as other matters delegated to them by parliament. There are currently 12 PPCs in existence, each monitoring a different strand of the government's work and composed of members of parliament. Investigations by two specific PPCs – the Parliamentary Portfolio Committee on Foreign Affairs, Industry and International Trade and the Parliamentary Portfolio Committee on Mines and Energy – have informed this report.

government minister is disregarding the law, and there are strong indications that the country is not seeing the returns on its diamond wealth that it should, the need for due diligence to be carried out to a high standard is all the more acute.

This is not what happened, however. The minutes of a ZMDC select committee meeting, seen by Global Witness, describe how the due diligence team that visited the offices of Core Mining and Mineral Resources, was “incapacitated and could not successfully do its evaluation”. The same minutes also reported that “Core Mining advised that they had a principal domiciled in Israel and that principal shall be responsible for financing the entire project. They emphasized that the principal’s name must remain confidential”.³⁸

Global Witness wrote to Core Mining to ask for their comments on this. In its response, Core Mining contradicted the ZMDC’s account, stating that “no funding is coming from a principal domiciled in Israel”.³⁹ Despite the deficiencies in the due diligence process, and the fact that the joint venture’s two partners do not seem to be able to agree on the identity of the project’s main financier, the ZMDC nonetheless declared itself satisfied that the company was a suitable investment partner.

The ZMDC gave the same positive verdict on Grandwell Holdings, even though the parastatal’s

CEO Dominic Mubayiwa later admitted to a Parliamentary Portfolio Committee that “it would have been difficult to do due diligence on Grandwell because it is a paper company, registered in Mauritius”.⁴⁰ This fact alone should have disqualified Grandwell from a joint venture with the ZMDC.

The due diligence team proceeded to assess the diamond mining experience of Grandwell’s parent company, South African recycling and scrap metal firm New Reclamation Group Ltd (Reclam), and concluded that it had none.⁴¹ The team also expressed concern about Reclam’s attitude towards its new business partner, saying “There is a need for Reclam to recognise the ZMDC board’s authority, independence and effectiveness vis-à-vis Reclam’s interaction with the Ministry of Mines and Mining Development. Reclam as an investor should appreciate the importance of the ZMDC board to process the investment proposal through its governance process”.⁴² Global Witness wrote to both Grandwell and Reclam to ask for their comments on the formation of the joint ventures, but received no response.

Despite the failure of the ZMDC either to gather basic data on the companies or to act on the information that it did obtain, the joint venture investments went ahead as planned.

Through its own investigations, Global Witness has uncovered some of the information that the



Joint venture companies mining diamonds in Marange have been introduced without sufficient due diligence.

The Zimbabwean authorities are clearing the way for more joint ventures companies by brutally evicting diggers from the diamond fields in Marange.



Robin Hammond/ Panos

ZMDC's due diligence seems to have missed. For example, two men widely reported to be senior executives of Canadile Miners, representing Core Mining,⁴³ also appear to be the directors of a recently registered mining and mineral export company, Saman Incorporated Ltd, based just over the border from Marange in the Mozambican diamond smuggling boom town, Vila de Manica, through which vast quantities of illicit Marange diamonds have been laundered in recent years.⁴⁴ These two individuals were arrested in Marange on suspicion of diamond smuggling in February 2010, although the charges against them were later dropped.⁴⁵

Thorough due diligence should have uncovered this connection, and investigated it to make sure that such an apparent link to a major destination for smuggled Marange diamonds would not pose a threat to the integrity of the joint ventures.

“Minister Mpfu told the committee hearing that he was aware of the “shady business deals” of some of the Mbada and Canadile investors, but that his own research showed that “people in the diamond business globally are drug traffickers, smugglers or plain crooks.””

Core Mining has denied that either man is employed by or affiliated with Core Mining or Canadile Miners, although they do admit that one is a minority shareholder in Core Mining, and that the other used to be married to one of Core Mining's directors. Core Mining further stated that they were not aware of any business relationship between Saman Incorporated and Core or Canadile.⁴⁶

The inadequacy of the ZMDC's due diligence is further underscored by Minister of Mines Obert Mpfu's testimony before the Parliamentary Portfolio Committee (PPC) on Mines and Energy in March 2010. When questioned about the credentials of investors in the Marange diamond fields, the Minister appeared unconcerned about the backgrounds of the companies and individuals involved.⁴⁷

According to first hand accounts obtained by Global Witness, as well as media reports, Minister Mpfu told the committee hearing that he was aware of the “shady business deals” of some of the Mbada and Canadile investors, but that his own research showed that “people in the diamond business globally are drug traffickers, smugglers or plain crooks”. He went on to warn committee members that they were mistaken to think it was possible to find a clean diamond investor; an assertion which is at odds with the ZMDC's claims to have carried out effective due diligence.⁴⁸

The Minister's comments to the parliamentary committee offer an extremely worrying insight into the thinking behind the creation of the joint ventures to mine in Marange.

In its dealings with the Kimberley Process, the Zimbabwean government has been touting the joint venture concessions as the solution to Marange's problems. Yet the man responsible for orchestrating the deals assumes that this entails turning over some of the country's most valuable public assets to "crooks".

It is difficult to avoid the conclusion that the Zimbabwean authorities themselves see their plans for Marange as little more than exchanging one form of criminality for another. This once again calls into question the Kimberley Process's efforts to remedy the situation by giving the Zimbabwean government endless second chances rather than enforcing the scheme's standards.

Unregistered companies and missing documents

Global Witness has attempted to obtain company registration documents for both joint venture companies operating in Marange from the Company Registry in Harare. In December 2009 Global Witness researchers were able to get hold of copies of Canadile's Memorandum of Association (19713/2008); however by the time they made a return visit to the registry in March 2010 this document had gone missing.

Global Witness also requested registration documents for Mbada and Condurango (Mbada's alternative name) on three different occasions; each time researchers were informed that no such companies had been registered in Zimbabwe.

The implications are serious: according to the Zimbabwe Companies Act, unless a company is incorporated through registration, it does not have status as a 'natural juridical person', and therefore no existence as a company. If Mbada has not been registered, its contracts are void, and it has no more rights in the diamond fields than the panners who were so violently expelled.⁴⁹

State shareholder sidelined

The state mining company Zimbabwe Mining Development Corporation (ZMDC), which owns 50% of both Mbada and Canadile, has been effectively sidelined within the joint ventures, in favour of individuals imposed by the Ministry of Mines. According to the ZMDC, the boards of the two joint ventures should have been made up of five representatives of the private investor and five from the ZMDC, with the ZMDC chairing each company's board.⁵⁰

However, Global Witness has seen notes of the testimony given by ZMDC CEO Mubayiwa to the Parliamentary Portfolio Committee (PPC) on Mines and Energy in which he states that board members named as ZMDC representatives were in many cases neither employed by the company nor known to him as individuals. According to Dominic Mubayiwa, they were all hand-picked by Obert Mpofu's Ministry of Mines, bypassing the ZMDC completely.⁵¹

The ZMDC chief claims that he was only sent CVs for the parastatal's designated representatives on the boards of the joint ventures four months after they were appointed. This revelation prompted one of the members of the PPC on Mines and Energy to ask "What comes first, the CV, the individual and the appointment? Is it the other way round, you appoint and then you get the CVs?"⁵²

The nominal representatives of the ZMDC include people with direct links to the military, such as former Air Force of Zimbabwe Air Vice-Marshal Robert Mhlanga, and individuals loyal to Minister Mpofu himself: one board member is reported to be one of the minister's relatives; another, his private secretary.⁵³ Global Witness wrote to both the ZMDC and Minister Mpofu to ask for further information on these appointments, but did not receive a reply.

In a similar vein, representatives from the Minerals Marketing Corporation of Zimbabwe (MMCZ), which oversees the export and sale of diamonds from Zimbabwe, revealed in Parliamentary Portfolio Committee hearings that they had only been permitted to read one clause in the Mbada



Former Air Vice-Marshal of Zimbabwe, Robert Mhlanga now chairs Mbada Diamonds, one of the joint ventures operating in Marange.

contract, relating to marketing rights, and had been denied access to the rest of the document.⁵⁴

The move to sideline state companies ZMDC and MMCZ was most apparent in the attempted auction of diamonds by one of the joint venture companies, Mbada Diamonds, in January 2010. In testimony to the Parliamentary Portfolio Committee on Mines and Energy, ZMDC and MMCZ officials admitted they only learned of the proposed sale when the Mbada Chairman, Robert Mhlanga, appeared on television to announce it. This is despite the fact that half of Mbada's board members, including Mhlanga, are supposed to be ZMDC representatives.⁵⁵

On 6 January 2010 Robert Mhlanga announced that a tender was to be held the following day for around 300,000 carats of Marange diamonds. He boasted that buyers from around the world would take part in the auction, and claimed that "The entire process of mining, transportation and marketing is being done in compliance with the requirements of the Kimberley Process".⁵⁶ In fact, this auction would have been a prima facie breach of Zimbabwe's agreement with the KP, since there was no KP monitor in place – a condition for any sale of stones from Marange. The auction was cancelled the next day by officials from the ZMDC, the MMCZ and the Ministry of Mines.

With reference to the aborted auction, ZMDC CEO Mubayiwa told the PPC enquiry that "in this particular instance, they [ZMDC representatives on the Mbada board] were not representing ZMDC's

interests".⁵⁷ This begs the question: whose interests are these individuals representing, if not those of the state shareholder? How can Zimbabwe's citizens be confident that the revenues generated by the joint ventures will be used in their interests rather than those of well-connected members of the political elite?

The sidelining of the ZMDC also has implications in terms of the oversight of the private companies involved in Canadile and Mbada: who will be checking whether these firms honour the terms of the joint venture agreements?

Official investigations and public oversight blocked

The Marange diamond fields remain shielded from public scrutiny, with reporters and members of the public barred from the area. One body that has attempted to uncover the facts on the ground is the Parliamentary Portfolio Committee on Mines and Energy.

The committee is tasked with monitoring the government's handling of mining issues, and launched an investigation into Marange diamonds following Mbada Diamonds' attempted auction in January 2010. The committee has found its investigations repeatedly blocked: certain key individuals refused its requests that they provide testimony, and its members have been refused access to the diamond fields.

The state mining company, ZMDC, appears to have little oversight of the joint ventures operating in Marange.





Global Witness

Pictures emerged in January 2010 of a new runway that had been built in the diamond fields, large enough to accommodate military transport planes, raising fears of large-scale smuggling.

Whilst representatives of the police, and of state mining bodies MMCZ and ZMDC have appeared quite willingly before the committee, Minister Mpfu repeatedly declined to do so and instructed the Directors of Mbada and Canadile to do the same. After three such rebuttals, the committee issued a warning that a further refusal would warrant prosecution for contempt of parliament. The Minister finally appeared before the committee on 17 March 2010, in closed session, and representatives from the two companies appeared on 23 March.⁵⁸

Efforts to stymie the committee's investigations did not end there, however. A few days after their hearings, committee members attempted to visit the diamond fields to inspect operations, interview local officials and meet with community representatives. They were denied access by the provincial governor, Christopher Mushowe, a close ally of Robert Mugabe, and a former Zanu PF transport minister.⁵⁹

The committee then contacted the commissioner-general of police, Augustine Chihuri, who advised them he could organise clearance if Minister Mpfu authorised it. When contacted for his authorisation, the minister is reported to have said he was in the Zanu PF offices dealing with party matters and unable to grant the committee's request.⁶⁰ It appears that the minister was unwilling to assist his parliamentary colleagues, many of whom are in the same party as him.

Responding to this obstruction of the visit, committee member Moses Mare MP said, "There is something they are trying to hide. If at all there was transparency they would have allowed us to visit [...]. They are trying to make this a mafia industry". Global Witness

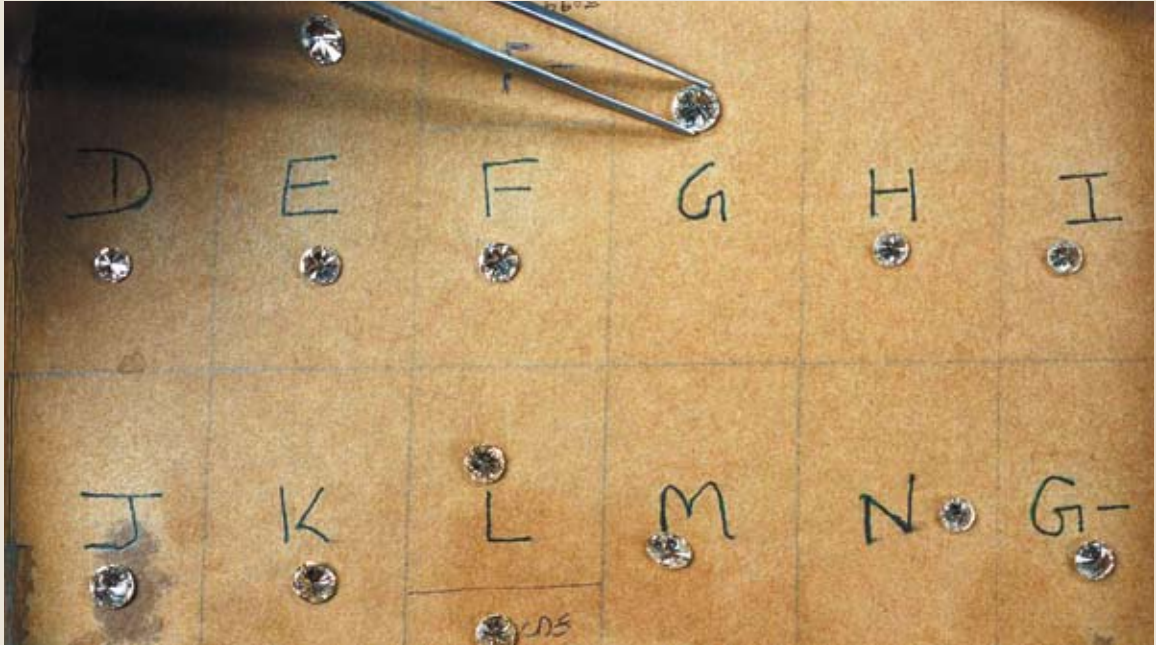
has learnt that Mr Mare has since been threatened with arrest, apparently because of his role in the PPC investigations.⁶¹ Committee Chairman Edward Chindori Chininga MP released a statement noting "concern" about the committee's "unsuccessful efforts [...] to secure approval from the Ministry of Mines to authorize police to grant them clearance." Without naming Obert Mpfu or Christopher Mushowe, the statement said that "relevant authorities should uphold the principle of separation of powers and cooperate with parliament [...] and allow the committee to exercise its oversight responsibility".⁶² A second attempt by the PPC to visit the diamond fields in April was again blocked.⁶³

Despite the information black-out, in January 2010 photos emerged of a large runway and control tower that had been constructed in the diamond fields. The runway is reportedly long enough to accommodate military transport planes,⁶⁴ and its proximity to diamond mining operations raises concerns that it could be used to smuggle diamonds out of the country, circumventing Kimberley Process controls completely.

“There is something they are trying to hide. If at all there was transparency they would have allowed us to visit [...]. They are trying to make this a mafia industry” - Moses Mare MP

CONCLUSION

The Kimberley Process is fast losing credibility over its failure to act on the crisis in Zimbabwe's Marange diamond fields, compromising consumer confidence.



Dieter Telemans/ Panos

By turning a blind eye to the appalling human rights abuses in the Marange diamond fields, Kimberley Process participant governments have betrayed the principles at the heart of the certification scheme. Their repeated failure to act has encouraged those responsible to continue their abuses and to tighten their grip on Marange's diamond wealth.

By basing its response on a weak compromise deal that links demilitarisation of the diamond fields to the introduction of private investors, the Kimberley Process is tacitly supporting legally dubious joint ventures and practices that facilitate corruption and state looting.

This has serious implications for Zimbabwe, as it could threaten efforts to maintain an increasingly fragile power-sharing government in Harare. Through the Marange diamond fields, one party in the power-sharing agreement, Zanu PF, is securing exclusive access to a substantial source of off-budget financing. This gives it the means to finance another campaign of attacks on its opponents comparable to the one that it unleashed during the 2008 national elections.

Diamonds certified by the Kimberley Process could soon be bankrolling renewed political violence in Zimbabwe.

For the Kimberley Process, the consequences of continued inaction would also be disastrous. The KP's inability to respond to the situation in Zimbabwe has already thrown its shortcomings into sharp relief. Kimberley Process governments were slow to react to the growing crisis, and unable to reach consensus on measures that would force Zimbabwe to clean up its diamond sector and preserve the credibility of the scheme.

As a result, confidence in the diamond trade is once again being undermined: consumers simply cannot understand why so many KP participants refuse to acknowledge the existence of Zimbabwean blood diamonds, even in the face of ongoing state-sponsored violence against civilians in the Marange diamond fields.

The Kimberley Process's slide towards irrelevance must be halted. The scheme still has the potential to succeed in its mission of breaking the links between diamonds and violence once and for all, but only if governments are prepared to stand up for the core standards that the scheme enshrines.

If KP participants are not willing to do this then diamonds in countries like Zimbabwe will generate suffering rather than prosperity, and the global diamond industry will once again be blighted with the taint of blood diamonds.

RECOMMENDATIONS

To the Government of Zimbabwe

- Suspend all imports and exports of rough diamonds for a period of at least six months, or until such time as the diamond sector is brought into line with KP minimum requirements.
- Withdraw the army from the diamond fields immediately, launch investigations into human rights abuses carried out there since 2007 and hold perpetrators to account.
- Allow the Parliamentary Portfolio Committee on Mines and Energy full and unfettered access to all sites, individuals and documents necessary for them to complete their investigation into events in Marange.
- During the period of withdrawal, work with the Kimberley Process to ensure operations in the diamond sector are promptly brought into line with the scheme's minimum requirements.
- Review all joint ventures formed to exploit the Marange diamond fields, to ensure contracts were awarded and operations carried out in full accordance with the relevant laws and regulations.
- Cancel any joint venture or concession agreements where there is evidence that the law has been broken and due process not followed, and hold those responsible to account.
- Freeze the introduction of any new investors into the field until all of the above steps have been completed.
- Take immediate action to stop smuggling of diamonds into neighbouring countries.
- Resolve legal disputes regarding rights to mine in the Marange diamond fields, and uphold all court rulings in this respect.

To Kimberley Process participants

- Suspend Zimbabwe from the Kimberley Process for a period of at least six months, or until such time as the country complies with the minimum requirements of the scheme.
- In compliance with the terms of the Joint Work Plan and accompanying Administrative Decision, exercise vigilance to prevent imports of uncertified parcels of Marange diamonds and promptly report any breaches of the Plan to the KP.
- Send a KP review mission to Zimbabwe at the earliest opportunity, in order to assess Zimbabwe's implementation of the Joint Work Plan and report on the situation in the Marange diamond fields.
- Adopt language that clarifies the KP's attitude to human rights in the diamond sector.
- Introduce reforms of the Kimberley Process to improve the scheme's decision-making process, increase transparency and enhance monitoring.

To the diamond industry

- Ensure that companies exercise vigilance to guarantee that they do not purchase uncertified parcels of Marange diamonds until human rights abuses in Zimbabwe's diamond sector cease and the country complies with KP minimum requirements.
- Report any cases of purchases of uncertified parcels of Marange diamonds to industry bodies and to the Kimberley Process.
- Industry members with operations in Zimbabwe, such as Rio Tinto, should insist that the government ends human rights abuses in the Marange diamond fields, holds perpetrators to account and complies with KP minimum requirements.

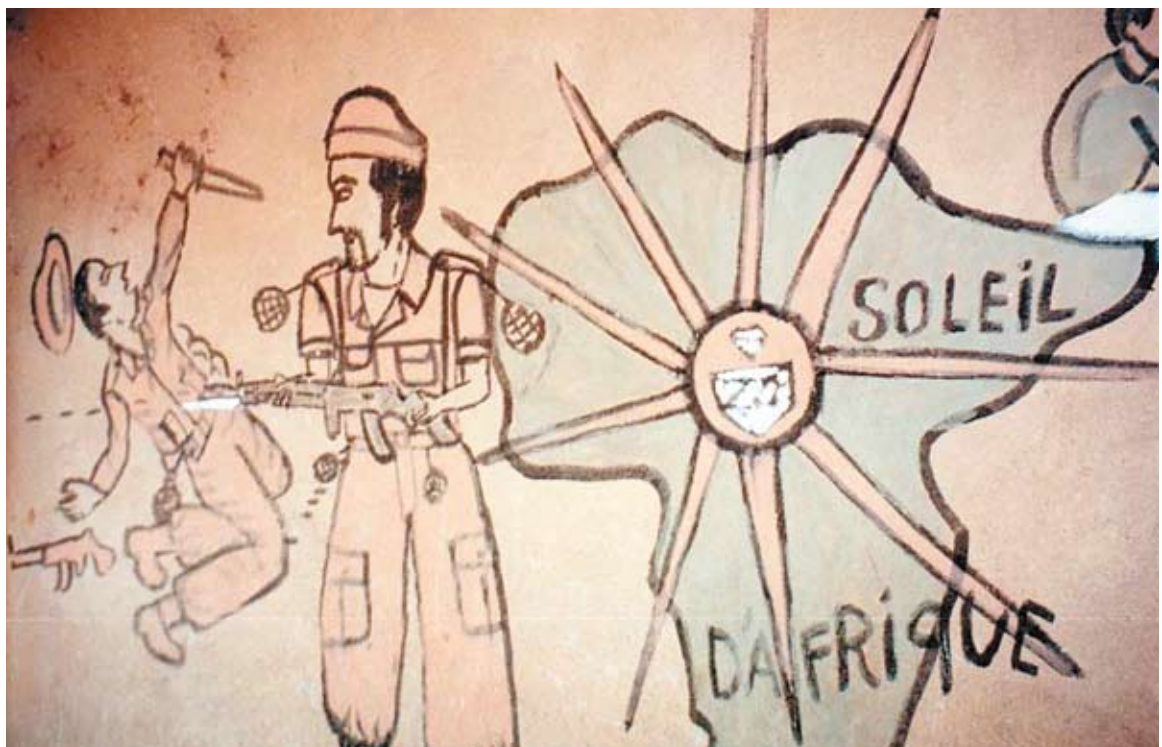
To Southern African Development Community (SADC) countries

- Use good offices to ensure that the Zimbabwean government ends human rights abuses in the Marange diamond fields, holds perpetrators to account and complies with KP minimum requirements.
- In compliance with the terms of the Joint Work Plan and accompanying Administrative Decision, exercise vigilance to prevent imports of uncertified parcels of Marange diamonds and promptly report any breaches of the Plan to the KP.
- Reinforce border controls and exercise extra vigilance to prevent smuggling of Zimbabwean diamonds.
- Urge any companies operating in the Marange diamond fields and domiciled in a SADC country to observe all laws governing investment and mining in Zimbabwe.
- Support the adoption by the Kimberley Process of language that clarifies the scheme's attitude to human rights in the diamond sector and the introduction of reforms to improve the KP's decision-making process, increase transparency and enhance monitoring.

To governments that give international aid to Zimbabwe

- Put pressure on the Zimbabwean government to end human rights abuses in the diamond sector and hold perpetrators to account.
- Support efforts by the Zimbabwean government to bring the diamond sector back into compliance with the minimum requirements of the Kimberley Process.
- Countries which maintain sanctions against the Zimbabwe Mining Development Corporation (ZMDC) should issue a warning to importers not to buy diamonds from either Canadile Miners Ltd or Mbada Diamonds Ltd, as both companies are 50% owned by the ZMDC.

If Kimberley Process governments abandon the scheme's founding commitment to break the links between diamonds and human rights abuses, then diamonds in countries like Zimbabwe will continue to generate suffering rather than prosperity.



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Global Witness Ltd
6th Floor
Buchanan House
30 Holborn
London EC1N 2HS
UK

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