

INTERIM UPDATE TO KIMBERLEY PROCESS CHAIR AND GOVERNMENT OF ZIMBABWE

BACKGROUND

Pursuant to the Mandate established by the Working Group on Monitoring (“WGM”), a team of 10 individuals -- representing 5 Participant governments, 1 Regional Economic Integration Organization, the World Diamond Council, and civil society (“the Team”) – conducted a Review Mission to Zimbabwe from 30 June – 4 July, 2009.¹ Liberia, represented by A. Kpandel Fayia, Deputy Minister for Planning and Development in the Ministry of Lands, Mines, and Energy, served as Chair of the Review Mission.

The Team, in conjunction with the Government of Zimbabwe, established an ambitious program to cover the full range of issues set forth in the Mandate, which focused on overall compliance by Zimbabwe with the minimum requirements of the Kimberley Process Certification Scheme (“KPCS”), as well as particular assessment of the situation in and around the Marange diamond fields, located in the Chiadzwa region. The Team spent two days conducting meetings and interviews in each of Harare and Chiadzwa/Mutare (city closest to Chiadzwa); the Team also spent one day visiting both the Murowa and River Ranch mines.

The Team received complete cooperation from the Government of Zimbabwe, and all requests for meetings were granted, including with MP Shuah Mudiwa, whom the Team met in a prison in Mutare. In addition, all conditions established by the Team for certain meetings, e.g. that there be no representatives present from the Government, were respected. Further, the Team received verbal assurances that there would be no consequences for anyone who met with, or otherwise provided information to, the Team.

The Team is in the process of preparing its complete report but concluded that an interim update to the WGM and KP Chair was appropriate and necessary, given the volume of information, procedural requirements for a final report, and the urgency of -- and attention given by the international community to -- the situation. At the Review Mission close-out session, the Team also committed to provide a summary of findings and recommendations to the Government of Zimbabwe, and this update has been drafted to fulfill that commitment.

In sum, the Team assesses that, although certain operations and processes appear to continue to function in a manner consistent with KPCS minimum requirements, there are serious indications of non-compliance with the KPCS in a number of areas, primarily related to the situation at Marange but also including some of the procedures used by the Minerals Marketing Corporation of Zimbabwe (“MMCZ”). Although the Team reviewed and took note of a wide array of information prior to the Review Mission, the indications of non-compliance identified are substantiated by direct evidence that the Team gathered during the mission.

¹ The Review Mission was scheduled to take place from 29 June – 3 July, 2009, but travel delays affecting two members of the team, including the Chair, delayed the program by one day.

SECURITY, SMUGGLING/ENFORCEMENT, AND THE SITUATION AT MARANGE³

Given the size of the area and frequency of diamonds,⁴ the security measures in place at Marange are minimal and insufficient to prevent illegal panning (the term used to identify illegal diggers in the area.) The mechanical mining systems employed at the site are primitive. Although the Team recognizes the extraordinary and debilitating economic constraints that Zimbabwe has faced since at least 2007, the failure to develop effective mining mechanisms, security strategies or to put in place any tangible controls of production leakages in the area in place since the previous Review Visit was a significant cause of the crisis that began in the Fall of 2008. In addition, the Team judges that the minimal security systems in place within the Marange production site and at the MMCZ office complex (which includes ZMDC) also require immediate, substantial upgrading – a conclusion with which the Government of Zimbabwe generally agreed. The lack of effective controls, technologically advanced mining mechanisms, and security in and around the Marange mining operations constitutes a failure to meet the minimum requirements established by the KPCS.

The Team conducted extensive interviews with public security (i.e., Zimbabwe Republic Police, “ZRP,” and Zimbabwe National Army, “ZNA”) and a private security firm (Chitkem) engaged in security operations in and around Marange. The Team’s questions focused both on the operation from approximately October – December 2008 and the ongoing operations in the area. Chitkem provides security within the perimeter of the Marange mining operation, while the ZRP has been primarily responsible for security in the larger area around Marange since production began in 2007.

According to various MMCZ, ZMDC, and ZRP officials, starting in approximately October 2008, the ZRP faced a critical situation resulting from the renewed appearance of, an estimated tens of thousands of illegal panners. The ZRP reported that it requested assistance from the ZNA, which supplied manpower and equipment, including two helicopters. The Team was told by the ZRP and other officials that the ZRP remained in charge of all operations at all times, with total forces ranging from 1000-2000 officers and soldiers. The Team was told that no shots were fired during the efforts to disperse the panners, that panners faced no direct violence and that no police or army personnel experienced any injuries. The Team was also informed that the ZRP and ZNA continue to provide joint security in the area, under the authority of the ZRP, and that there is no involvement of any nature by the approximately 500-1000 officers from either force in diamond mining or trading activities.

Both ZMDC and MMCZ officials maintained that they did not receive reports of any acts of violence perpetrated against citizens by either the ZRP or ZNA from October 2008

³ Security and other measures for internal controls in place at Murowa and River Ranch will be discussed in the final report.

⁴ Production records demonstrate that the cts/ton yield of diamonds has decreased since the 2007 Review Visit. At that time, the estimate for Marange was 42-49 cts/ton; production from January – June 2009 shows an average of 19.74 cts/ton.

through January 2009. However, the Team interviewed a witness who stated that he himself had met with the MMCZ and provided specific information about these events at that time. Further, the Mayor of Mutare himself reported the increase of violence and illegal activities in the area to the authorities during this time period.

The Team assesses that the information provided by the ZRP and ZNA was not complete and could be contradicted by direct evidence. In particular, the Team observed ZNA soldiers overseeing diamond washing activities and collected consistent reports from a range of witnesses. In addition, while the ZRP confirmed that Mossbergs (a type of shot gun) were used for crowd control, they reported no injuries. However, information and documentation obtained by the Team confirmed a number of injuries and deaths of civilians resulting from gunshot wounds at the hands of the ZNA and ZRP.

Moreover, the Team interviewed and documented accounts from more than 25 victims and witnesses of violence in the Marange area at the hands of military and police personnel in the past 10 months. The information provided by them was substantiated by documentary evidence and direct observation by the Team. In general, the witnesses, with whom the Team met through the facilitation of several sources, reported consistently about the nature of serious injuries incurred (including shot gun pellet injuries, beatings, dog bites, rape, forced labor, etc.) and the types of operations undertaken, in particular by the ZNA. The Team also directly observed the ZMDC removing water from an area clinic (water being necessary to sort gravel to find diamonds) and was informed the ZNA has also done so. The Team judges that the violence undertaken by the ZRP and ZNA in removing illegal panners and then attempting to maintain control of the area is unacceptable within the KPCS framework.

According to the ZRP, nearly 2,000 panners and buyers have been arrested in and around the Marange area during the past ten months. Estimates provided by the ZRP and other officials, however, establish that there have been more than 30,000 illegal panners in the region. The Team observed pits outside the perimeter of the Marange production area where diamond mining appeared to be underway. The Team itself was able to observe individuals carrying sacks of gravel that appeared to have been removed from within the Marange perimeter; the Team further observed the washing and sorting of gravel by illegal panners. Panners interviewed by the Team indicated that such activities often involve the use of forced labor. The Team also observed the illegal sale of rough diamonds. Panners also informed the team that significant illegal diamond trading takes place in Mozambique (a bordering country that is not currently a KP Participant).

Although the constraints of human and financial resources faced by Zimbabwe are considerable, increased efforts to maintain internal controls, prevent smuggling increase security and enforcement issues in and around Marange are required, as it is clear that the current situation does not meet KPCS minimum standards.

INTERIM STEPS

The goals of the Review Mission to Zimbabwe are to both assess current circumstances and to identify a way forward. The Team believes that there must be significant,

consistent, and meaningful cooperation between the Government of Zimbabwe and the KPCS in order to bring Zimbabwe in to full compliance with KPCS minimum requirements.

In the close-out session on 4 July, the Team presented the Minister and Deputy Minister of Mines and other stakeholders with several immediate steps that could be taken to establish the commitment of the Government of Zimbabwe to rectify the situation. These recommended steps included:

- Acknowledgment by Zimbabwe that KP minimum standards have not been met and that it seeks to work with the KP to come back in to compliance.
- A suspension on production and exports from Marange, at a minimum, until effective security, internal control measures and resources are in place in a manner that indicate Zimbabwe's control and authority over the Marange fields.
- Immediate demilitarization of the Marange fields and a comprehensive investigation of the role of the ZNA, ZRP, and other officials in abuses in the Marange diamond operation.
- Acknowledgment of, and initial steps toward, the creation of an independent, multi-stakeholder monitoring body, consistent with the tripartite nature of the KPCS, that would create and oversee implementation of a workplan to bring Zimbabwe in to full compliance within a specific period of time. This body would also coordinate the request and receipt of technical assistance and support through the KPCS and its Participants and Observers.
- Consideration of the appointment of a special rapporteur or other appropriate mechanism to further document the human rights concerns.

The Government of Zimbabwe made a request during the close-out session for immediate KPCS presence in and around Marange to assist with and observe actions taken by the Government of Zimbabwe.

The Government of Zimbabwe submitted a response addressed to the Chair of the Team. The response first acknowledges "the existence of some non-compliance issues and the need to ensure that minimum standards of the Kimberley Process are met." The Government of Zimbabwe then reiterates the request for technical assistance, including the provision of advice on the independent, multi-stakeholder body and the special rapporteur. Finally, a five-step, gradual approach to the demilitarization of the Marange is proposed, including increased oversight of ZNA and ZRP activities, completion of arrangements with private investors, and development of arrangements with local communities (including a National Fund and agreed-upon terms for relocation).

RECOMMENDATIONS:

In light of the above, the Team recommends the following, immediate actions; additional recommendations will be forthcoming in the Team's final report. It must be noted, however, that many of the following recommendations, particularly those addressed to the Kimberley Process/Working Groups cannot be implemented without full discussion and action by those bodies, in accordance with established procedures. As such, the following constitute the views of the Team in the context of this interim update, rather than final decisions of the KP.

Government of Zimbabwe:

1. Acknowledgement of non-compliance with KP minimum standards. Voluntary self-suspension from rough diamond trading until KP determines that minimum standards have been met (see # 10).

The Team notes that the Government of Zimbabwe has positively addressed the first part of this recommendation in its July 14 response but did not discuss voluntary self-suspension.

2. Development of a workplan, in coordination with KPCS, to provide for improved internal controls throughout KPCS compliance system and, in particular, a sustainable and secure production environment at Marange, in line with KP minimum standards. Implementation of workplan to be undertaken in conjunction with independent monitor (see #7). The development and implementation of this workplan should be undertaken with the involvement of domestic industry and civil society, consistent with the tri-partite nature of the KPCS.

The Team notes a positive response by the Government of Zimbabwe in its July 14 response to the concepts described in this recommendation.

3. Resolution, in accordance with Zimbabwean law, of outstanding ownership disputes and land claims in and around Marange.
4. Immediate implementation of enhanced security measures at the MMCZ complex.
5. Consideration by the Government of Zimbabwe of revising the current KP compliance structure to create a simplified process that reduces the number of actors involved in the import and export processes.
6. Consideration of the appointment of a special rapporteur or other appropriate mechanism to further document the human rights concerns and violence at Marange.

The Team notes a positive response by the Government of Zimbabwe in its July 14 response to the concepts described in this recommendation].

Kimberley Process/Working Groups:

7. Facilitation by the KP of the appointment of an independent monitor to assist with the implementation of the workplan for Marange and overall Zimbabwean KP compliance system. The monitor would assist in the coordination of the request and receipt of technical assistance and support through the KPCS and its Participants and Observers (see #5).
8. Facilitation by the KP of the provision of technical and other assistance, e.g. security cameras, fencing, etc., during which time the Government of Zimbabwe implements, as part of its workplan, a security program that excludes the ZNA, and to the fullest extent possible, the ZRP from responsibilities in and around Marange.
9. Creation of a Regional Task Force, with a structure consistent with the tripartite nature of the KPCS, to provide an on-going mechanism for oversight of the independent monitor, provision of technical assistance, information sharing, and other coordination efforts throughout the region. The Task Force could work directly in conjunction with the independent monitor, or as a mechanism within the KP (e.g., initiative of the KP Chair).
10. Initiation of procedure to implement suspension of Zimbabwe from importing or exporting of rough diamonds within the KPCS for a period of at least 6 months, but until such time as a KP team determines that minimum standards have been met (see # 1).
11. Outreach by the KP and individual Participants, as appropriate, to encourage Mozambique to improve border control and consider joining the KP as a means to combat smuggling efforts.
12. Investigation by neighboring and primary importing/trading Participants of potential smuggling routes and implementation of additional measures to combat smuggling of diamonds from Zimbabwe. Reference could be made to other information produced by the KP, including the WGM Experts report, DRC and UAE review visit reports, etc.