



sowing the seeds of human rights, peace and sustainable development

Mergers in Zimbabwe's diamond sector set to evade human rights due diligence

Background.

Diamond mining in Zimbabwe had been operating at a minimum level before the commencement of large scale alluvial diamond mining in Marange in 2010. According to Reserve Bank of Zimbabwe (RBZ) unpublished figures quoted in the United Nations Development Programme (UNDP) report (2009), commercial diamond exports from Zimbabwe were paid 1.7 million in 2000 increasing to a peak of 44 million in 2005 before halving to 22.6 million in 2008. Significant contributions to diamond exports during this period came from Murowa Diamonds whose kimberlitic diamonds earned an average value of \$65 per carat on the international market (UNDP 2009).

Alluvial diamond mining in Marange started at the backdrop of a violent and brutal military operation that elbowed out thousands of artisanal miners who had besieged the diamond fields in 2006 following the invalidation of Africa Consolidated Resources (ACR) mining claims by government. The executive arm of government rewarded state security organs for their role in the infamous operation Hakudzokwi with shares in mining companies that were granted mining contracts in Marange. Mining operations by these companies namely Anjin, Mbada diamonds, Marange Resources, Diamond Mining Company (DMC), Jinan, Gye Nyame, and Kusena diamonds have remained secretive over the years with government receiving insignificant revenues in spite of being the major shareholder.

Revenue loss

When the KP partially lifted the trade embargo on two mining companies in Marange in 2010, Zimbabwe moved 7 steps upwards to become the world's seventh diamond producer. The country produced diamonds worth 334 million that year but only 32 million dollars was remitted to government through taxes and dividend. About 90% of Zimbabwe's revenue in the diamond sector is derived from Mbada diamonds, Marange Resources, DMC and Anjin in Marange whilst the remainder 10% comes from companies such as Murowa diamonds, River Ranch, DTZ-OZGEO, Diamond Angel, Volksic Industries and Aurex Diamonds. According to Reserve Bank of Zimbabwe government received 41 million out of diamond sales of \$ 233.741.447 in 2011 and in 2012 export figures for all the 10 diamond companies in Zimbabwe surged to \$563.561.495 yet again government received a mere 41 million in dividend and taxes. The country was forced to reduce its budget from 4 billion to 3.4 billion after failing to meet the projected 600 million dollars from diamond sales. Diamond production slipped by 11.4% in 2013 amid allegations of depletion of alluvial diamonds in Marange. Although 466.9 million was

realised from diamond exports that year, nothing was remitted to treasury according to finance minister Chinamasa. It is widely suspected that diamond revenues earmarked for treasury were diverted to fund ZANU PF political activities prior to the July harmonised elections of 2013. A paltry 11.5 million dividend was paid in early 2014 out 1239 654 million carats sold in Antwerp. The confiscation of 500 000 carats of Zimbabwe diamonds in Antwerp in September 2014 over international law suits against government triggered the beginning of local diamond sales. More than two diamond sales have been conducted so far in Zimbabwe and government has been silent on revenue generated to fiscus from those diamond sales.

Year	Production (Carats)	Exports (US\$)	Dividend/Taxes/Royalties Remitted to GOZ
2010	8 500 000	334 000 000	32 000 000
2011	8 719 000	233 741 247	41 000 000
2012	12 000 000	563 561 495	41 000 000
2013	9 564 277.33	448 635 917.56	no dividend paid
2014(a)	1 639 654	110 500 000	15.800 000 14 000 000 taxes from Murowa
2014(b)	500 000	45 000 000	Marange diamonds returned to Zimbabwe
2015: Diamond mergers proposed, local auction of diamonds begin and figures on dividend not yet publicised.			

Sources: RBZ, Ministry of Finance, KP.

According to the official figures above, Zimbabwe realised more than 1.7 billion dollars from diamond exports from 2010 to 2014 but less than 200 million dollars in taxes, royalties and dividend was remitted to government. This abhorrent gap between revenue generated and revenue remitted to treasury is evidence that government disappropriated its 50 percent shareholding in diamond mining companies to individuals for selfish gains. Some state officials have been fingered in smuggling of Marange diamonds where over 2 billion dollars worth of diamonds are suspected to have disappeared since 2010. The reluctance by government to undertake comprehensive audits in Marange diamond mining firms before the mergers confirms government's complicity in concealing what could be described as the most heinous economic crime against the people of Zimbabwe since independence.

Human rights impact

The diamond rush of 2007 was characterised by human rights abuse as the Zimbabwe Republic Police (ZRP) battled to contain over 35000 artisanal panners that had besieged Marange after government had forcibly reclaimed the diamond fields from ACR. Cases of human rights abuse became more pronounced from 2009 when government deployed the army to flush out artisanal panners. Thousands of panners including innocent villagers were assaulted, tortured and killed during that period. Newly established mining companies such as Anjin, Marange Resources, Mbada Diamonds and to a lesser extend DMC worsened the human rights situation in the diamond fields during that period by working in cahoots with the security forces to perpetrate

gross human rights abuse on suspected diamond panners with impunity. Punitive measures imposed by the Kimberly Process (KP) in banning international trade on Marange diamonds until government met minimum KP standards from 2008 to 2012 did little to stop human rights abuse in the diamond fields. Hundreds of suspected diamond panners become victims to dog bites, assault and gunshots at the hands of mining companies over the past 6 years of mining operations. Hundreds of these victims succumbed to injuries and died. Innocent members from the surrounding communities were not spared from abuse. The state abdicated its obligatory role of protecting human rights in the diamond fields by failing to hold mining companies to account for human rights abuses. Meanwhile government is silent on how the new conglomerate will address issues of human rights violations in the diamond fields that are ongoing.

The relocation and integration exercise of 507 families affected by mining operations at Murowa diamonds in Zvishavane followed best practices laid down by the World Bank and approved by government. Today the company is revered in the community for its successful social corporate responsibility programs. The mining giant is also supporting the local cutting and polishing diamond industry by contributing 10% of its rough diamonds to the industry. The beginning of formal diamond mining operations in Marange saw the worst forms of human rights violations inflicted on the Marange community by diamond companies. More than 1500 families were forcibly removed from Chirasika, Dzoma, Muedzengwa, Tonhorai, Chiadzwa, Tenda and Zengeni villages in Marange to Arda Transau in Odzi without alternative source of livelihoods to pave way for diamond mining in 2010. Today over 3500 families from Marange are living at Arda Transau and struggling to survive on half a hectare pieces of land allocated to each family by government. Mining companies have since abandoned this relocated community without fulfilling commitments made in Marange. The relocation exercise also decimated people's social fabric and left them traumatised.

Lack of transparency in the recruitment of workers by mining companies in Marange saw an insignificant number of people from the local community getting employed. At the same time companies offered short term contracts to unskilled workers with poor remuneration. The working conditions at the mines especially at Anjin were deplorable and workers in some instances worked for long hours in the blasting and crushing sites without adequate protective clothing exposing them to a lot of dust. Several cases of assault on workers by Chinese authorities were reported at Anjin. Lack of transparency and accountability in the management of revenue generated over the years forced mining companies to downsize leading to massive retrenchment of workers and salary cuts. Today thousands of workers have been sent home without their retrenchment packages and in some companies like Mbada diamonds workers have now gone for more than 9 months without salaries.

Diamond mining companies never integrated local communities as partners in the exploitation their natural resource. Accordingly mining companies did not undertake sustainable development projects for the community other than upgrading homesteads for local chiefs and awarding them with new 4x4 vehicles for their allegiance. Only two mining companies contributed 400 000 dollars out of the targeted 50 million dollars to Zimunya –Marange community share ownership trust (CSOT). The then minister of Indeginisation Saviour Kasukuwere refused to appear before parliament to explain why his ministry failed to enforce indeginisation laws that demanded mining companies in Marange to remit 10 percent shares to the CSOT.

Environmental Impacts

Laws governing mining in Zimbabwe are not synchronised. As a result, several mining projects have started without Environmental Impact Assessment (EIA) certificates from Environmental Management Agency (EMA). EIA is an internationally accepted tool that is used to assess environmental impacts of planned projects in order to devise ways of minimising adverse impacts on the community. Mining companies in Marange impacted adversely on the environment because they started mining without EIA plans. As a result, hazardous effluent was deposited into Odzi and Save River because mining companies did not build water reticulation ponds that use the evaporation system. Over 3 thousand cattle and small livestock from surrounding communities died mysteriously from drinking contaminated water from the two rivers in the first 3 years of companies mining in Marange.

Mining companies have refused responsibility for their actions over the years, at the same time government has not been supportive of community efforts to hold mining companies to account. The EMA found it difficult to enforce mining companies to comply with environmental laws because initially they were restricted from accessing the diamond fields by state security agencies policing the area. Although corrective measures were then made through imposition of penalties and fines to mining companies, they were inadequate to ensure prevention. The water in Odzi and Save River is no longer safe for domestic use and whenever effluent is deposited in the rivers the community experience mysterious death in their livestock. Inside the mines, more of people's livestock is drowning and dying in unprotected mine dumps and open pits abandoned by mining companies.

Human Rights Due Diligence

The United Nations guiding principle on business and human rights is premised on state's international human rights law obligations to "respect, protect and fulfill people's rights including the duty to protect against human rights abuse by business enterprises". If developments in Marange are anything to go by, mining companies in Zimbabwe have committed gross human rights violations that have made host communities vulnerable at the same time impoverishing the nation through plunder of its natural resource endowment. Besides negotiating poor mining contracts government is in complicity to these violations for failing to enforce laws that require mining companies to respect environmental, economic, social and cultural rights of communities.

The consolidation of diamond mining companies provides an opportunity for government to take a leading role in forcing mining companies to undertake human rights due diligence processes before the proposed mergers. Human rights due diligence according to UN guiding principle is critical in order to identify, prevent and mitigate adverse human rights impacts that are caused by business operations. This process if adopted by government will also see human rights violations that have occurred in the diamond fields of Marange addressed through remediation. Remediation will create sustainable dialogue among concerned stakeholders and allow communities to claim their rights through restitution and compensation. The UN guiding principle recommends "operational-level grievance mechanisms" as effective means of enabling

remediation. This can be achieved by government setting up an independent commission to identify grievances and hold mining companies to account for adverse human rights impacts.

The Centre for Research and Development is on record for calling on government to suspend mining operations in Marange in order to facilitate comprehensive audits across the diamond value chain. The government did not heed the call and instead went on to set up a joint task force comprising the ministries of mine, finance and Zimbabwe Revenue Authority (ZIMRA) in 2013 to monitor all diamond revenue and present audited financial accounts for publication. It has been one and half years after the task force was established and only one financial audit on Marange Resources was carried out but the audit report has not been made public. Diamond revenues to fiscus have plummeted amid allegations announced by government that alluvial diamonds in Marange have run out.

A recent article in the financial gazette disclosed that a Chinese diamond company Jinan is under investigation for externalizing US 500 million and bringing it back to Zimbabwe as investment money. According to mines and development permanent secretary Professor Gudyanga, Zimbabwe Consolidated Diamond Company (ZCDC) will assume all assets and liabilities for companies merging moreover shareholding in this new conglomerate will be determined by companies' assets and financial injection. The implication of this directive is that government will allow the same companies accused of plundering millions of dollars from diamond proceeds to merge without undertaking due diligence process. The case of Jinan indicate that it is highly probable that these mining companies will use looted diamond funds to buy controlling shares in ZCDC in order to perpetuate the same malpractices that have deprived the country of billions of dollars in revenue and violated community rights.