



FIFTH SESSION – SEVENTH PARLIAMENT

FIRST REPORT

OF THE PORTFOLIO COMMITTEE ON MINES AND ENERGY

ON

ON DIAMOND MINING (with special reference to Marange Diamond Fields)

2009 - 2013

Presented to Parliament June 2013

(S.C.4, 2012)

ORDERED: In Terms of Standing Order No. 159

- a) At the commencement of every session, there shall be as many committees Rules to be designated according to government portfolios as the Standing and Orders Committee may deem fit.
- b) It shall be the function of such committees to examine expenditure administration and policy of government departments and other matters falling under their jurisdictions as Parliament may, by resolution determine.
- c) The members of such committees shall be appointed by the Standing Rules and Orders Committee, from one or both Houses of Parliament, and such appointments shall take into account the expressed interests or expertise of the Members and Senators and the political and gender composition of Parliament.
- d) Each Select Committee shall be known by the portfolio determined for it by the Standing Rules and Orders Committee.

Terms of reference of Portfolio Committees – Standing Order No. 160

“Subject to these Standing Orders a Portfolio Committee shall:

- a) Consider and deal with all bills and statutory instruments or other matters which are referred to it by or under a resolution of the House or by the Speaker;
- b) Consider or deal with an appropriation or money bill or any aspect of appropriation or money bill referred to it by these Standing Orders or by under resolution of this House; and
- c) Monitor, investigate, enquire into and make recommendations relating to any aspect of the legislative programme, budget, policy or any other matter it may consider relevant to the government department falling within the category of affairs assigned to it, and may for that purpose consult and liaise with such department; and
- d) Consider or deal with all international treaties, conventions and agreements relevant to it, which are from time to time negotiated, entered into or agreed upon.

On Tuesday, 30th October 2013, the Speaker announced that the Committee on Standing Rules and Orders nominated the following members to serve on the Portfolio Committee on Mines and Energy

1. Hon. Chindori- Chininga
2. Hon. Dzingirayi Ivene
3. Hon. Katsande Aquilinah
4. Hon. Kay Iain
5. Hon. Makamure Ransome
6. Hon. Maposhere Dorcas
7. Hon. Mare Moses
8. Hon. Mudarikwa Simbaneuta
9. Hon. Munengami Fani
10. Hon. Mungofa Pearson
11. Hon. Munjeyi Gibson
12. Hon. Musvaire Washington
13. Hon. Muza Isheunesu
14. Hon. Navaya Eric
15. Hon. Nemadziva Naison
16. Hon. Shoko Heya
17. Hon. Marima Edmore
18. Hon. Mudzuri Elias
19. Hon. Kagurabadza Tofamangwana
20. Hon. Mudiwa Shuwah
21. Hon. Chinomona Mabel
22. Hon. Haritatos Peter

Hon. Chindori-Chininga E. to be Chairperson

1. Introduction

The Committee on Mines and Energy through its oversight responsibility conducted an enquiry into the diamond mining sector for the period 2010 to 2013. The purpose of the enquiry was basically to hold the Executive accountable for its programs, policies and actions in the sector, taking into account the fact that the financial hopes on revenue proceeds for Government, in 2012 and 2013 have been premised on the buoyant performance of the diamond sector. The findings and observations of the Committee span over a period of four years. The delay in tabling this Report has largely been due to two reasons. Firstly, there was a contestation of power between the Executive and the Legislature over access to information and entry by the Committee to carry on site visits in Marange. Secondly, the Committee was compelled to keep pace with rapid changes and developments in the sector, which made it imperative to base the findings and recommendations on relevant and accurate information.

During the enquiry the Committee was also cognisant of the fact that a lot of negative information on Marange diamonds had been churned out by both national and international media, hence it was also important for the Committee to get accurate information, which it could convey back to the citizens as their elected representatives. The enquiry was fraught with a number of challenges but there were also positive outcomes which emerged during the process such as the KP certification of most of the mining companies in Marange. The Committee unearthed a number of irregularities and loopholes at each of the different stages of the diamond value chain. Despite, these challenges, the Committee believes that if it proper mechanisms, strong administration and adherence to both national and international laws are observed, the country would be able to derive maximum benefit from its diamonds.

2. Background Information

There are number of diamond mining companies operating in Zimbabwe which include: River Ranch, Murowa Diamonds, Mbada Diamonds, Anjin, Marange Resources and Diamond Mining Company (DMC). Government, through ZMDC entered into joint venture agreements with a 50/50 shareholding in the following companies, Mbada, Anjin and DMC. Marange resource is owned 100%

by ZMDC. When the Committee began its enquiry in 2010, another company was in operation known as Canadile Miners but it has since been de-listed by government and its special grant was taken over by Marange Resources. The sector has remained largely small for a very long time until the huge discovery of deposits in Marange. It is estimated that the country now has the capacity to supply 25% of the global diamond market.

3. Methodology

The Committee held several consultative meetings and conducted three on-site visits. Two meetings were held *in camera* upon request from the witnesses. During the data gathering process, the Committee noted with concern that there was no free flow of information because some of the witnesses were either too defensive or uncooperative or unwilling to attend the Committee's meetings.

The key stakeholders in this enquiry were: the Minister of Mines, Hon. O Mpfu; the former deputy Minister of Mines, Hon M Zwizwai; the KP Monitor for Zimbabwe, Mr. A Chikane; the former Permanent Secretary of Mines and Mining Development Mr. Musukutwa, former and current Zimbabwe Mining Development Corporation (ZMDC) Board and its officials, Minerals Marketing Corporation of Zimbabwe (MMCZ) officials, ZRP Minerals Unit, Mbada Board Members, Canadile Miners Board Officials, Murowa Diamond Mining Officials, River Ranch Mine Officials, Marange Resources officials, DMC officials and Anjin Officials. The Committee also met the Taskforce on Relocation of the community affected by mining operations.

The Committee conducted its first field visit, in 2009 where it went to Murowa Diamonds in Zvishavane, River Ranch in Beitbridge and Marange Resources in Chiadzwa. During that period government had not yet signed any joint venture agreement with any company to operate in Marange. After a number joint venture agreements were signed from the period 2010 onwards, the Committee was denied entry twice to conduct on-site enquiries. The Committee was only granted entry into Marange in 2012, two years later after the enquiry had begun. The Committee had an opportunity to visit four mining companies operating in the area, that include, Anjin, DMC, Mbada

and Marange Resources. Mbada Diamonds and DMC were not very co-operative during the Committee's visit whilst Marange Resources and Anjin were forthcoming in sharing information and showing the Committee their operations. The Committee failed to conduct a public hearing with the community living in Chiadzwa and was advised that it was inappropriate due to security reasons. However, the Committee managed to visit Arda Transau where some of the re-located communities were now living.

4. Findings

4.1 Ministerial Accountability to Parliament

During the four year period of the enquiry, the Committee observed with concern that Executive and its officers were generally not willing to be held accountable by Parliament. This was evidenced through the Committee's experiences as it conducted this enquiry. This goes against the basic universal principles of Ministerial Accountability to the Legislature as enshrined in national or international law. Erskine May, the well renowned writer on Parliamentary Practice says '*Ministers have a duty to Parliament to account and be held to account for the policies, decisions and actions of their departments; it is of paramount importance that Ministers give accurate and truthful information to Parliament, correcting any inadvertent error at the earliest opportunity....*'¹ In other words, Parliament has a universal right to hold the Executive accountable and to acquire accurate information for it to effectively discharge its constitutional obligations. These were the experiences and observations of the Committee as it tried to hold the Executive Accountable:

4.1.1 Committee's Witnesses

Standing Order 167 empowers portfolio Committees to call anyone except the Head of State, to appear before it to give evidence. In 2010, on several occasions the Committee invited the mining companies operating at the time, Mbada Diamonds and Canadile Miners to appear before it to give evidence on their operations. There was resistance from the two companies and the Committee was left with no option but to invoke section 9 of the Privileges, Immunities and Powers of Parliament

¹ Erskine May: Treatise on the Law, Privileges, Proceedings and Usage of Parliament; 22nd Edition, pg 63

Act, which states that Parliament may issue summons, delivered by the police to a witness to attend before it. It was only then that the company officials attended the Committee's hearings. The Committee also observed that there seemed to be a lot of influence by the Ministry of Mines in discouraging these company officials from attending the Committee's hearings.

The second incident was where the former board Chairperson of ZMDC, Ms G Mawarire lied twice to the Committee whilst giving evidence. This was clearly in violation of section 19 of the Privileges Act which says “*any person who willfully and corruptly gives before Parliament or a Committee a false answer to any question material to the subject of enquiry ...shall be guilty of an offense*”² The Committee observed that the lack of disclosure of accurate information by some witnesses was due to fear of being reprimanded, by someone in authority in the parent Ministry. Erskine May goes on to say one of the principles of Ministerial accountability to Parliament is that *‘Ministers should require civil servants who give evidence before Parliamentary Committees ...to be as helpful as possible in providing accurate, truthful and full information in accordance with the law*’³ The Committee observed that some of the officials from the Executive and from the mining companies were not very helpful in terms of providing accurate information.

4.1.2 Denial of Entry into Chiadzwa Diamond Fields

Apart from Committee meetings, oversight over the Executive is also achieved by conducting field visits. Over a period of two years the Committee was denied entry to conduct on-site inspections of the mining companies operating in Marange. The first attempt was made in April 2010 where the Committee was denied entry when it had already camped in Mutare. The first attempt was very unpleasant because the Committee was constantly mobbed by security agents during the three day encampment in Mutare. The second attempt was in August 2010 where the Committee was denied entry before it had even left the precincts of Parliament building. On both occasions, the Committee was denied entry on the grounds that it needed clearance from the police since the area was protected under the Protected Places and Areas Act. What baffled the Committee was that while it

2 Privileges, Immunities and Powers of Parliament Act

3 Erskine May: Treatise on the Law, Privileges, Proceedings and Usage of Parliament; 22nd Edition, pg 63

was being denied entry some of its stakeholders during the enquiry that included, the KP Monitor on Zimbabwe, Mr. Abbey Chikane and other international monitoring groups were allowed free and easy access into Marange. Permission to tour Marange was finally granted in April 2012.

4.2 Financial Contribution of the Sector to both Treasury and the Economy

4.2.1 Contribution to Treasury

The Committee observed with concern that from the time that the country was allowed to trade its diamonds on the world market, government has not realized any meaningful contributions from the sector. This is despite the fact that production levels and the revenue generated from exports has been on the increase as shown on the table below. There are serious discrepancies between what government receives from the sector and what the diamond mining companies claim to have remitted to Treasury.

| YEAR | PRODUCTION (CARATS) | EXPORTS (US\$) |
|------|--------------------------|----------------|
| 2011 | 8,719,000 | 233 741 247 |
| 2012 | 12,000,000 | 563 561 495 |
| 2013 | 16,900,000 (anticipated) | – |

Table 1: Diamonds Production Levels and Revenue Generated from Exports

(Source: Budget Statement: 2013)

In June 2012, the Chairman of Mbada Diamonds, the largest producer of diamonds in the country informed the Committee that their company had remitted over US\$293 million to Treasury. The breakdown of the remittances is shown in the table below:

NB This section relates to correspondence we wrote to ZMDC and Ministry of Mines and Mining Development The committee sort to secure information from the Ministry of Finance in writing. The Ministry of Finance advised us to obtain information directly from companies and/or through Ministry of Mines. They stated that for purposes of safeguarding the confidentiality of information

received from tax payers release of such information to the Minister is restricted as provided through section 34A (3a) of Revenue Authority Act. This legislation limits the provision of information only to total as opposed to disaggregated amounts. A similar letter was written to the Ministry of Mines and no response was received.

The only company that was willing to provide this information is Mbada Diamonds which is as follows;

| Line Item | Amount US\$ |
|------------------------|--------------------|
| Royalties | 76 192 302 210 |
| Resource Depletion Fee | 33 943 338 850 |
| Marketing Fees | 5 965 412 890 |
| Dividends | 117 202 859 790 |
| Corporate Tax | 43 515 858 000 |
| Withholding Tax | 17 829 562 320 |

Table 3: Remittances submitted to Treasury by Mbada Diamonds⁴

However, the Minister of Finance in 2013 Budget Statement lamented the low proceeds to Treasury and in 2012 government only received a total dividend of US\$41 million. This was also the same amount that was remitted to the fiscus in 2011. Yet Mbada Diamonds claims it remitted a dividend of over US\$117 million which is far above what Treasury received for the combined period of 2011 and 2012. Notwithstanding these poor inflows in 2011 and 2012, Treasury still hopes in 2013 to receive US\$400 million from diamond proceeds to fund critical national programs such as the referendum, the harmonized elections and the UNWTO to be held in August this year.

These were the observations of the Committee on the financial discrepancies:

(a) Sanctions

The United States of America has placed sanctions on diamond companies operating in Marange.

4 Oral Evidence by Mbada Diamonds Chairperson

This has made it difficult for the companies to effectively market and trade their diamonds at competitive prices. Currently, the diamonds are sold at below 25% of the normal price. In the process, the sanctioned diamond companies are trading their diamonds through unconventional means because major international banks, insurance companies and couriers do not want to be associated with Marange diamonds. As a result of these financial restrictions, a number of loopholes have been created leading to fiscal leakages, promotion of corruption and national insecurity. The USA seems adamant not to remove the sanctions because a letter was written in 2011 by the Minister of Finance requesting for the removal of restrictions because of the impact it was having on the socio-economic development of the country. In an act of solidarity, the World Diamond Council also called for the removal of the sanctions at a Diamond Conference that was held in Victoria Falls in 2012.

The irony is that the companies operating in Marange were certified as KP compliant, hence should have the freedom to trade equally like all players on the world market. However, these companies have been denied that privilege based on unconfirmed allegations that they were involved in undemocratic practices aimed at undermining democracy and human rights abuses in Zimbabwe. The Committee believes if the situation remains as it is, the country will not be able to realize optimal benefits from its diamonds.

(b) Taxation System

Generally, the mining sector has a poor taxation system. This is probably one of the reasons why there are discrepancies between what Treasury claims to have received and what the mining companies would have remitted. In the past few years, the Ministry of Finance has introduced piecemeal measures to improve on revenue proceeds from the mining sector. Taxation from diamond sector is in the form of corporate tax, PAYE, VAT, royalties and other levies. The Committee observed the Ministry of Finance usually targets an increase of royalties on diamonds without necessarily looking at the other forms of taxes. In 2012, the same Minister approved a Statutory Instrument which regulated fees and levies for the mining sector. The Statutory Instrument introduced astronomical charges which is choking the growth of the diamond sector and other

sectors in mining. The Statutory Instrument was certified as invalid by the Parliamentary Legal Committee and constitutionally has to be repealed but the Executive took no action. It is the Committee's contention that revenue proceeds to the fiscus will continued to be low and irregular if the Ministry of Finance does not introduce a comprehensive taxation law.

(c) Legal and Policy Framework

Government has been procrastinating in introducing a comprehensive law to regulate the operations of the diamond sector. Such a law is critical in that it will clearly highlight the financial system to regulate the industry and to hold any offenders accountable. The Committee noted with concern that there was divided discourse within the Executive on whether to introduce a Diamond Bill or to amend the Precious Stones Trade Act as the principle law to govern the diamond sector. Such delays in introducing the law will have a negative bearing in promoting financial accountability and transparency of revenue proceeds from diamonds as well as clearly laying out the policy framework for the benefit of potential investors. Although a diamond policy was formulated in 2012, it does not have the force of law in ensuring there is compliance, transparency and accountability in the industry.

4.2.2 Investments made by Joint Venture Companies

One of the ways in which the economy grows is through direct investment. The Committee observed that government may have been prejudiced through the overstated amount of investments that were made by its joint venture partners. In 2010, the Committee was informed that the shareholders agreement stipulated that, Mbada Diamonds and Canadile Miners were to contribute US\$100 million each, for purposes of financing the operations. In 2012, Mbada Diamonds informed the Committee that it had made investments worth US\$185 million. However, ZMDC in its due diligence report expressed reservations on this matter when it stated that *'the acquisition of equipment and other assets for the joint venture company, tender procedures and valuations must be observed and values be agreed to by both parties. This is important in order to avoid overpricing by investors'*.⁵ ZMDC also told the Committee it had not done a full audit of the investments made by the two

⁵ ZMDC Due Diligence Report, pg 3

companies.

The Committee observed with concern that the true value of investments made into the country cannot be ascertained in the absence of a proper valuation from government agencies. It is possible for these companies to finance their operations from the proceeds of the mining operations which is in violation of the Companies Act. At the same time the Committee was concerned about the manner in which certain equipment was brought into the country, for instance in 2010, ZMDC was given a directive to purchase equipment at Hot Springs that belonged to J W Lotter for R5.6 million and ZIMRA was paid US\$46 000. However, the owner of the equipment demanded a further US\$125 000 for transport charges and yet under normal circumstances when duty is paid it includes transport.

4.3 Transparency and Accountability in the Diamond Sector

Since the inception of formalized mining in Chiadzwa, the Committee observed that the sector has been dogged with issues of transparency and accountability in the production, marketing, fiscal contributions and general administration. The Committee noted with concern that there was lot of work that still needed to be done to improve on transparency and accountability in the entire value chain of ~~of~~ the country's diamonds. The key areas that the Committee observed which touched on transparency and accountability include: the aborted auction sale, the selection process of joint venture partners, corporate governance systems in the joint venture companies, the smuggling and leakages of diamonds from Marange as well the mining contracts signed by Government.

4.3.1 Aborted Auction Sale

When formalised operations began in Marange in 2009, there were two companies operating, namely, Mbada Diamonds and Canadile Miners. In January 2010 Mbada Diamonds attempted to auction its diamonds, in violation of both national and international law. The aborted diamond auction sale opened a Pandora's box, revealing several irregularities and loopholes in the entire diamond value chain. These were the observations of the Committee following the aborted auction sale:

(a) Relevant government institutions that are involved in the entire diamond value chain professed ignorance about the auction sale. This was a sign that the institutions were not well coordinated in the production and marketing of the diamonds in Marange. The relevant institutions include ZMDC, MMCZ, ZRP Minerals Unit and the Ministry of Mines. It seems Mbada Diamonds took advantage of this weakness and attempted to auction the diamonds without the knowledge or presence of these institutions. At the same time, out of the ten board members of Mbada Diamonds only two members, Dr Mhlanga and Mr. Kassel admitted of having knowledge of the attempted auction sale. So a major decision of auctioning the diamonds was made by a minority board decision which is uncharacteristic of any healthy company.

(b) The relevant government institutions probably knew about the auction but because of fear of reprisals they would not admit it to the Committee. This is based on the fact that the aborted auction was announced through the State media and it is improbable that a subsidiary company of ZMDC would make such bold pronouncements without informing its overarching Board and the parent Ministry.

(c) Mbada Diamonds displayed a 'big brother' syndrome such that some of the government institutions were rendered powerless to question Mbada's decisions or actions. The Committee noted that this was emanating from the manner in which Mbada was selected to partner with government and also in the manner in which the board members were appointed to sit on ZMDC's subsidiary boards.

4.3.2 Selection Criteria of Joint Venture Partners

In 2009, government through ZMDC entered into joint venture partnerships with Reclaim and Core Mining companies, leading to the establishment of two companies, Mbada Diamonds and Canadile Miners respectively. The number of companies operating in Marange has since increased to four excluding Canadile Miners which has been de-listed. The Committee noted with concern that the selection process of the companies to operate in Marange had a number of flaws. These were the observations of the Committee:

(a) The selection of Reclaim and Core Mining to enter into joint venture partnerships with ZMDC

was not done in accordance with any known precedents, procedures or with reference to any legislation in the country. The former ZMDC board chairperson, Mrs. Mawarire tried to mislead the Committee into believing that the choice of the two investors was made through a Cabinet decision. Later she withdrew her submission when the Committee informed her that it had documentation of the Cabinet decision pertaining to that issue. The Cabinet minutes of 22nd July and 27th August 2008, simply encouraged ZMDC to enter into joint venture partnerships and did not specifically state that ZMDC should enter into joint ventures with Reclaim and Core Mining.

The Minister of Mines, Dr Mpofu, in a separate meeting with the Committee could not be drawn into revealing who chose the two investors to partner with ZMDC but stated that *'I was a new Minister and directed to go that way and that is the way it is'*.⁶ However the Minister went on to justify the selection of two joint partners on the grounds that the economic situation prior to the formation of inclusive government was untenable and very few investors were willing to risk investing in the Zimbabwe. The Committee observed with dismay that the Minister and his officials did not want to disclose who selected the joint venture partners. They created the impression that the selection process was done by an unknown person or body and this is clearly unacceptable.

(b) There were a number of potential investors, during the period when Mbada Diamonds and Canadile Miners were chosen, who were willing to invest in Chiadzwa. The Committee was informed by former Minister of Mines, Amos Midzi, that during his tenure in office there were three companies that were willing to partner with ZMDC and that Reclaim and Core Mining were not among the three suitors. The question that the Committee could not find an answer to was whether the two joint venture companies, Mbada Diamonds and Canidile Miners were the most suitable choice.

(c) The selection process created several administrative problems for ZMDC and for the parent Ministry. The ZMDC Board conducted a due diligence exercise on the two companies and the fact that the Board had to accept the two joint venture *fait accompli* would not have changed the

6 Oral Evidence by the Minister of Mines

outcome of the due diligence. ZMDC seemed to have been coerced into accepting these two companies. It was not clear who or what exerted pressure on ZMDC to accept these two companies without following the normal acceptable standards and procedures.

(d) The due diligence report by ZMDC revealed that two investors were probably not the best suitors for the country. The due diligence report highlighted that the investors *'have no diamond mining as part of their vision and growth strategy. However, the enthusiasm to enter diamond mining in partnership with ZMDC was noted.* The two investors were chosen mainly for their capacity to provide financial resources and state of the art security systems.

(e) The failure to get information on the process used to select the two initial investors was highly frustrating and could not motivate the Committee to seek further information on how the rest of the other investors, namely Anjin and DMC were selected or how future investors would be selected.

4.3.3 Corporate Governance Structures in the Joint Venture Companies

The Committee noted with concern the manner and the type of people who were being appointed to serve on ZMDC's subsidiary companies. These were the observations of the Committee:

(a) Board appointments to ZMDC's subsidiary companies were being made by the Minister of Mines, in clear violation of section 5 (2) of the ZMDC Act. In a letter written to the ZMDC Board Chairperson, the Minister stated that *'all appointments of Board members to subsidiary companies are done by the Minister of Mines and Mining Development ...Any appointments that have been done outside this procedure are null and void'*. Section 5 (2) of ZMDC Act, empowers the Minister to appoint the ZMDC Board Members only and not the board members of the subsidiary companies. The ZMDC Board then has the responsibility in consultation with the Minister, of appointing members to its subsidiary companies. The ZMDC Board was rendered powerless when it came to the selection and appointment of members who sit on its subsidiary companies. It's only function is to regularise the appointments made by the Minister. This is probably one of the reasons why the ZMDC Board has little control and information over its

subsidiary companies, namely Mbada, Anjin and DMC.

(b) Mbada Diamonds showed no respect to the ZMDC board in a number of ways. The due diligence report by ZMDC board highlighted that, '*there is need for Reclaim (Mbada Diamonds) to recognise the ZMDC Board's authority, independence and effectiveness vis-a-vis Reclaim's interaction with the Ministry of Mines and Mining Development. Reclaim as an investor should appreciate the importance of the ZMDC Board to process the investment proposal through its governance process*'.⁷ This observation was made before the investors had begun operations in Marange and this was a warning indicator that ZMDC was most likely going to face problems with its joint venture partners.

(c) Due to the unilateral appointments to the subsidiary companies by the Minister, certain individuals with a conflict of interest were appointed. The following people Obey Chimuka, Ashton Ndlovu, Cougan Matanhire and Dr Mhlanga had a conflict of interest. Dr Obey Chimuka used to be a board member of Marange Resources and yet he owned a company which traded in diamonds. Mr. Matanhire was a board member of Canadile Miners and yet he had links with MMCZ. Dr Mhlanga as Chairman of Mbada Diamonds was listed in the due diligence report of ZMDC as a shareholder of Liparm, which is part of Reclaim Group but later crosses the floor, from being on the side of the investor to represent the interests of government. However, the Committee observed that if ZMDC Board had been allowed to perform its legal mandate, such kinds of conflicts may have been avoided.

4.3.4 Smuggling and Leakages of Diamonds

In one of its hearings in 2010, the Committee was disheartened to hear that two senior security officers employed by Canadile Miners were found in possession of 57 pieces of diamonds at a ZRP road block at Hot Springs. This information came against a backdrop of disturbing articles circulated by the media concerning the historical profiles on some the investors in Marange who were being accused of underhand dealings, such as drug trafficking and diamond smuggling. In one of the Committee's meeting, the joint venture partners denied the media allegations but in another

⁷ Due Diligence Report by ZMDC, pg 3

separate Committee meeting, the Minister of Mines conceded that globally the diamond industry is run like a mafia, with very few 'clean' individuals. The Committee's worst fears were confirmed in November 2010, when Canadile miners was blacklisted by the government following revelations that the company was involved in underhand dealings such as smuggling of diamonds.

4.3.5 Mining Contracts with the Joint Venture Partners

(a) **Contract with Grandwell:** The contract with Grandwell (Reclaim) leading to the formation of Mbada Diamonds showed that government may be prejudiced in a number of ways. Of major concern is Clause 25.1 of the Shareholders Agreement where a 5% management fee will be paid to Grandwell (Reclaim) from the total turnover of the company's profits. At the same time Clause 25.5 provides a payment of 5% to Marange Resources in the form of a Resource Depletion Fee. Therefore by equating the 5% management fee with a 5% resource depletion is fundamentally flawed, unjust and not in the best interests of the country. The Committee also noted with concern that the 5% management fee on gross turnover is unrealistically high taking into consideration the fact that the same shareholders are entitled to an equal share on dividends.

(b) The Committee made a comparison of the management arrangements in the different joint venture agreements. There is was no shared management between (Grandwell) Reclaim and ZMDC whereas in Canadile which is no longer in operation there used to be shared management. In essence it implies that Mbada Diamonds has full reign of all the operational and financial activities of the mine. Whatever profits or dividends are declared by Mbada, the government has to accept it in good faith. The Committee is of the opinion that the same arrangement reached by ZMDC and Canadile Miners of shared management, should also prevail in Mbada Diamonds and in the other joint venture companies. There is no justification for different kinds of management arrangement taking into account the fact that government has similar interests and one arm of government, ZMDC which is representing its interests in all the companies.

In 2012, the Board Chairman of ZMDC Mr. Masimirembwa confirmed to the Committee that the parastatal was not involved in the day to day running of operations of most of its subsidiary companies but believed that the information that they were given was correct. On a field

visit to Marange in 2012, the Committee observed that ZMDC was more active in Marange Resources where government has a 100% ownership whilst in the other companies, such as Anjin, Mbada and DMC, ZMDC behaved more like a bystander and yet government has a 50% share ownership.

4.5 Relocation of the Chiadzwa Community

The Committee was informed that about 4 300 families will have to be relocated from Chiadzwa and about 1 800 will be relocated to Arda Transau near Mutare. Since 2010 a total of 693 families have been re-located. At least 780 households and 6 businesses have been evaluated and are set to receive compensation. The financial obligation to relocate and compensate the families and businesses has been placed on the joint venture companies and government through the Manicaland Provincial Relocation Committee headed by the Governor provides technical and logistical support. The Committee had an opportunity to visit Arda Transau farm and was impressed with the infrastructure that has been put in place, such as houses, schools, shops and clinics. The Committee observed with concern only 780 households have been evaluated and yet there are about 4 300 households that would be re-located. This will most likely prejudice the rest of the households from getting fair compensation. The Committee was also informed the Provincial Administrator for Manicaland that the mining companies were not willing to co-operate in the construction of an irrigation project at Arda Transau so as to build stable and sustainable livelihoods for the communities. The Committee would like to implore the mining companies to re-consider their positions and build an irrigation scheme for the community.

However, the Committee was disappointed in that it failed to hold a public hearing with the community to hear of their re-location experiences and to get an understanding of how the valuation of their properties for compensation purposes had been done. At the same time the Committee observed that ZMDC and the Provincial Task force did not have a clear re-location policy to guide the mining companies in the re-location program. It was left to the discretion of the mining houses. During the Committee's field visit in 2012, DMC stated that its primary purpose was to make profits and that the exhumation and re-burial of the communities' graves was secondary.

The Committee had requested to hold a public hearing to hear from the community on the impacts of the mining operations and the impending re-location program. Parliament Secretariat informed the Committee that authority to hold the hearing was refused by the relevant authorities. The Committee also noted with concern that there was lack of effective communication between the mining companies, the provincial relocation committee and the communities on the relocation program. As a result some households still living in Marange suspended most of their livelihoods such as farming on the grounds that they would be relocated. As a result this caused anxiety and food insecurity within the community.

Below, is a table of the relocation status by the mining companies.

| Company | Total number of Houses to be Constructed | Total Number of Houses Constructed | Total Number of Households Allocated |
|------------------------|--|------------------------------------|--------------------------------------|
| Anjin Investments | 474 | 474 | 474 |
| Mbada Diamonds | 487 | 100 | 100 |
| Diamond Mining Company | 114 | 30 | 30 |
| Marange Resources | 350 | 184 | 116 |
| Jinan Investments | 350 | 110 | 31 |
| Rera Diamonds | 92 | 0 | 0 |
| Total | 1947 | 989 | 751 |

Out of the construction, Anjin has done far much better than the other companies. Discrepancies in CSR mandates government to come up with a standard.

4.6 Empowerment of the Indigenous People in the Diamond Sector

The diamond industry has the potential to stimulate substantive socio-economic growth through the development of upstream and downstream industries. The Committee observed that this will be difficult to achieve in the absence of a strong policy and legal framework. These were the

observations of the Committee:

4.6.1 Cutting and Polishing Industry

The diamond policy that was adopted by government in 2012 stipulates that *'a quota of all locally produced rough diamonds as set by the Minister of Mines and Mining Development shall be reserved for local beneficiation.'*⁸ In a meeting with the association of local cutters and polishers, the Committee noted with concern that government was not very supportive in developing this sector. This was evidenced by the vague policy by government in terms of the quota and the quality of gems to be supplied to the local cutters and polishers. At the same time some local cutters and polishers lost their money to government after paying licence fees without a corresponding duty of accessing the diamonds. The Committee would like to implore government to seriously consider the development of local cutters and polishers as this has the potential to create more wealth and employment for the economy. The country's diamonds are being exported in raw form, creating more jobs and wealth for other countries. This is indeed a travesty of justice.

The Committee noted with concern that some of the diamond producers had plans to actively participate in the cutting and policy industry. This creates a conflict of interest and has the potential to stifle the growth of upcoming local cutters and polishers. The growth of the local cutters and polishers was also being impeded by exorbitant licence fees which were increased in 2012 to US\$100 thousand renewable every year and yet there was no guarantee of receiving a parcel or re-imburement if the parcel is not delivered. Although the licence fees have since been reduced to US\$50 thousand, the Committee observed that the majority of keen Zimbabweans would not be able to effectively participate in the sector. As a result a number of local cutters and polishers had to fold up their operations and yet they had invested heavily through the acquisition of machinery and training of personnel.

The third observation made by the Committee was that Ministry of Mines had the responsibility of licensing the cutters and polishers and yet other players who are involved in value addition such as

8 Zimbabwe Diamond Policy, pg 7

granite cutting and polishing and well as steel making, where under the responsibility of the Ministry of Industry. Government should come out clearly on which Ministry should spearhead value addition of the country's resources, to avoid inconsistent policies applying to the same industry.

4.6.2 Supply Based Empowerment

The upstream industry in the form of local suppliers of goods and services have not benefited much since the establishment of diamond mining companies. The Committee had an opportunity to meet the business community of Manicaland, who highlighted that it was almost impossible to supply goods and services to companies operating in Chiadzwa. As a result, there has not been much development in the Mutare, the capital city of Manicaland. However, the Committee observed with concern that the business community, through its affiliates such as the Confederation of Zimbabwean Industries (CZI) did not have a structured position on how the province could fully benefit from the resource. Some well renowned cities such as Dubai have become world centre attractions, with huge volume of business and trade following the discovery of minerals such as oil. Given that the Marange diamonds is considered to be one of the largest recent deposit discoveries in the last decade, significant socio-economic developments should overflow into the nearby towns and communities.

4.6.3 Mining Communities

The KP Joint Work plan adopted in Swakopmund in 2009 which was submitted to the Committee states that government should identify and develop small-scale mining so as to curb illegal mining by panners. The area of Chiadzwa has very low rainfall patterns and hence there is not much agriculture that takes place in the area. The Committee noted that not much progress has been made towards empowering the local communities by involving them in small-scale mining. Currently, the mining community has to rely on Corporate Social Responsibility by the mining companies, especially when their fields do not yield a good harvest. The community expressed interest in actively participating in small-scale mining. At the same time the Committee observed that the mining companies were not keen in buying directly agricultural produce from the mining communities. This was one way of promoting sustainable livelihoods of the mining communities.

4.7 River Ranch and Murowa Diamond Companies

In 2009, the Committee had an opportunity to visit River Ranch Mine and Murowa Diamonds to get an appreciation of their operations. Both companies are KP compliant. However, the Committee observed with concern the glaring absence of government officials at the two mines given Treasury's outcry of low revenue inflows from the sector. Both companies told the Committee that they would like to see a review of the Mines and Minerals Act so as to promote sector's growth through investment. There have been some changes for example the presence of ZRP Minerals Unit and Zimra Officials at the mine.

4.8 Global Monitoring Resource Groups

During the enquiry, the Committee had an opportunity to meet members of the Kimberly Review Team on Zimbabwe which comprised of NGOs and World Diamond Council Members. The Committee also had an opportunity to interact with the KP Monitor on Zimbabwe, Mr. A Chikane. The members of these global resource monitoring groups provided some insights on how the diamond sector could be developed. The Committee concurred with some of the insights which included:

- (a) allegations of human rights abuses in Marange should be handled by other internationally recognised bodies such as the SADC or the African Union and not by KPCS.
- (b) sanctions imposed on diamond producers have to be removed because the companies operating in Marange were KP compliant.
- (c) there was need to establish a tripartite relationship between government, business and civil society so as to build confidence in investors and buyers of Marange diamonds. However, the Committee noted with concern that the relationship between government and civil society groups working in Chiadzwa was still very shaky.

4.9 Future Outlook of the Diamond Sector

The Committee was informed by the mining companies that their operations had a lifespan of about 20 years. The Committee observed that the future outlook remained uncertain in a number of areas

which include:

4.9.1 Exploration Work

The committee was informed that diamonds in Chiadzwa are found in an area covering 123 thousand hectares, the greater part of which has not been fully explored. Therefore it becomes imperative for government to set aside resources for exploration work before inviting more investors into the area. This will enable government to negotiate contracts from a strong and informed position. Mining of diamonds in Chiadzwa on mining areas for Mbada Diamonds, and Marange Resources is moving from alluvial to conglomerate mining as mining of alluvial is limited in their present areas of mining. Anjin has been mining conglomerate while DMC is for now limited to alluvial diamond mining. The mining of conglomerate requires major investments in explorations, drilling, blasting and process equipment, capital, experts and labour Mbada Diamond, Marange Resources and Anjin in order to mining the diamonds and determine the potential of future diamond mining in Chiadzwa.

4.9.2 Demilitarization of Chiadzwa

A lot of land in Chiadzwa is still under the protection of the army and inadequate studies have been conducted to ascertain the presence of the diamonds. The Committee observed that demilitarization of Chiadzwa is going to take a long time and it was important that it's done in phases so as to reduce any negative perceptions about Chiadzwa.

5. Recommendations

5.1 The Executive and its officials must by law to respect the constitutional oversight authority of Parliamentary as this is one of the prerequisites for efficient and effective governance and a working democracy. All state institution has the obligation to adhere to the rule of law and promote good governance and democratic principles which must permeate through natural resource management.

5.2 The diamond industry is operating without a clear legal framework and administration to provide assurance that the people's resources are being protected. The country must have put in place all necessary institutions and regulations to improve on diamonds extraction and commercialization.

The government must desist from signing new contracts before the institutions and legal framework have been properly reformed. For this reason, the Ministry of Finance, diamond producers and the Ministry of Mines need to engage in dialogue to remove impediments that contribute to low revenue flows to Treasury.

5.3 Government must put in place an advocacy strategy to ensure that sanctions imposed by the USA on entities producing in Marange are removed taking into account the fact that the producers are KP compliant and the sanctions have resulted in low revenue inflows to Treasury. Government, mining companies and civil society, in the national interest, must work together and call for the removal of these sanctions.

5.4 The Ministry of Finance should speedily enact a comprehensive taxation law which will address some of the taxation discrepancies in the mining sector hence improve on revenue inflows to the fiscus. However, most of the discrepancies that occur in revenue collection find their origin in how mining contract were negotiated. It is now common practice for negotiation of contract to be scrutinized by the public through their parliamentarians and communities and civil society should be allowed to make comments on the contracts before they are implemented. The law should allow for mining development agreements to be overseen by Parliaments. For this reason the clause of confidentiality has lost its relevance. To enforce transparency and access to information mining contracts must be published.

Equally these ministries, including the MMCZ, ZMDC and ZRP must have sufficient capacity to manage key information, such as production figures, statistics, sales, taxes and other data in order to track the sector's performance.

5.5 Government should consider establishing a one-stop mineral administration systems with sufficient capacity to deliver on their critical mandate.

5.6 Because of the discrepancies that exists between the amount that companies pay to government and what government report to have receive, companies are encouraged to publish what they pay to government and government is equally encouraged to publish what it received from companies. It is

therefore important for government to operationalise a domesticated Zimbabwe Mining Transparency Initiative (ZMTI).

5.7 The Ministry of Mines should be encouraged to put in place a comprehensive law, whether a Diamond Bill or amendments to the Precious Stones Trade Act in order to promote legal certainty, introduce a level of predictability to lure investment [and layout the fiscal regime for the sector.

5.8 To avoid transfer pricing, an audit should be done to ascertain the true value of the capital investment injected by the joint venture companies so as to reduce the possibility of the investors financing their operations from the diamond proceeds. Equally, a proper evaluation of new investment in the project is critical to limit the overpricing by mining companies.

5.9 In many SADC countries, revenues from extractive companies are not equally distributed. Many times concession agreements are biased in favour of extractive companies due to the weak negotiation capabilities of the host government, it seems Zimbabwe is not different.

i. The Executive should clearly layout the selection criteria for joint venture partners in the mining sector. Equally, contract negotiation with venture partners must be led by a legitimate institution of the state. The principle of complete public transparency must operate prior to the awarding of contracts and the contracts themselves must be made public.

ii. Government must develop the necessary human capacity to negotiate contracts effectively. Contract negotiation must be all inclusive⁹ and cover areas such as environmental mitigation and protection measures, land use and rights, displacement and resettlement of local communities and their rights, mining closure, corporate social responsibility, disaster management and water use.

iii. Negotiations can only start after due diligence studies have been conducted to ascertain whether the company has the technical and financial capability to actually mine to avoid selecting companies with no mining experience..

5.10 Government needs to ensure that results of due diligence exercise on potential suitors are

⁹ Governments must be held accountable for all contracts they enter in, especially, when it concern non-renewable resources, the need for scrutiny is even more pressing.

taken into consideration in order to attract the best possible partners.

5.11 A law should be developed that will enable Parliament to ratify all major mining contracts. This will enable government to sign credible contracts.

5.12 Stern measures should be taken by the Ministry of Mines to discipline any company in mining of Diamonds for the illegal attempt to auction or illegally sale the country's diamonds. Government has the right to apply sanction retroactively to discipline a mining company; just as government has the right to renegotiate dubious mining companies.

5.13 The Ministry of Mines is duty bound to observe the law in the appointment of people to sit on the ZMDC board and its subsidiary companies or any state enterprise. Personnel appointed to sit on the ZMDC boards and its subsidiary companies should be thoroughly vetted, employed based on merit to ensure they do not have a conflict of interest. ZMDC needs to be more pro-active in protecting government's interests in the joint venture companies so that the country's investments are protected whilst at the same time reaping maximum benefits. ZMDC must also provide regular reports to the public on its participation in the joint venture and the health of the mining project.

5.14 A standard re-location model should be developed by the national and provincial task force on relocation of communities to reduce any inconsistencies and ensure that the communities concerns are treated in a humane manner. The development of these standards should be done in consultation with all relevant government institutions, communities and civil society.

5.15 There is need for government enact relevant legal statutory measures to reserve a quota for indigenous players to supply goods and services to diamond producers and all mining companies so as to promote the growth of upstream and downstream industries. Diamonds companies and all mining companies must prioritize the procurement of local goods and services in a transparent manner in order to promote local development and development of local industries in manufacturing, civil engineering, construction etc.

5.16 MMCZ should be encouraged to carry out a study on ways of developing the growth of local cutting and polishing industry so as to generate more wealth and employment for the country. Government should encourage local entrepreneurs to get involved and it should deliberately set favorable conditions for local entrepreneurs. Similarly investment policies and fiscal regimes must be put in place to encourage foreign investments in joint ventures with local entrepreneurs in cutting and polishing industry.

5.17 The local cutting and polishing industry should be moved from the Ministry of Mines and placed under the Ministry of Industry in line with best practices

5.18 Exploration work should be conducted by government in partnership with investors so as to ascertain the true value of the minerals. This will enable government to sign credible contracts which will benefit the country. Put differently, governments must be in possession of correct geological data on the quantity and quality of its resources before entering into negotiations.

5.19 A strategy to integrate community participation into the diamond sector should be developed by both government and the mining companies so as to empower the local communities.

5.20 There is need for tripartite dialogue between government, the diamond producers and civil society groups in order to manage the negative perceptions about the sector both nationally and internationally. The tripartite engagement must go beyond just dialogue to provide space for real consultation and participation by civil society in policy formulation and monitoring of the diamonds industries. The civil society must put national interest first in their engagement with government recognizing that government is elected and both have a national role to play in the economic development of Zimbabwe. Government must recognize that they registered and authorized civil societies operations to play a role that support national building.

5.21 Many communities are being relocated without proper resettlement plan which put communities in danger of losing their livelihood system, especially access to fertile land. Government must develop a national land use plan complimented by other laws at the relevant administrative levels, which define land use plans according to the suitability of the land and the quantity and quality of resources, in order to guide investments.

6. Conclusion

The challenges that have beset the diamond sector in the last few years are not insurmountable.

It is possible that with the presence of a modernized administration founded on the principle of transparency and accountability, and strong legal and policy framework as well as its implementation, this sector could become the bedrock of the economy, as in other countries such as Botswana. The sector also has the potential to create many jobs through the establishment of upstream and downstream industries. At the same time the Executive, the Legislature and civil society should be encouraged to work together in order to re-build the battered image of the country due the bad publicity over the diamonds in Marange. Last but not least the rights of the re-located communities should be respected and observed in line with the country's laws.

Finally, we must congratulate the Minister, the Ministry of Mines official and the Diamond Mining companies for the investment and work they have done to make diamond mining in Chiadzwa a reality and for working hard to make Zimbabwe diamond KPCS compliant. We encourage government and the diamond mining companies to take all measure necessary to properly resettle the Chiadzwa communities and provide adequate compensation to the villagers and business people.

Government should consider developing a town plan for Hot springs Business Centre and encourage companies mining diamond in Chiadzwa to build their operational and administration offices at Hot Springs as well as encourage banks, shopping centers and industry that support the mining and community to be developed. It is encouraging that Banc ABC has already built and opened operations at Hot Springs.