



AN ANALYSIS OF ZIMBABWE'S DIAMOND POLICY BY

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1.0 Executive Summary

In November 2012 the Zimbabwe government unveiled a diamond policy whose main objective was 'to promote the sustainable development of the diamond industry for the benefit of all Zimbabweans'. The policy tackles a number of critical issues which, if properly implemented and supported by progressive legislation, can improve the governance of the diamond industry in Zimbabwe. The government of Zimbabwe is hereby commended for responding to the concerns of stakeholders by taking the first step towards an overhaul of the policy, legislative and institutional framework governing the extractive sector in general and the diamond value chain in particular.

The Centre for Natural Resource Governance (CNRG) has carried out an in-depth analysis of the Diamond Policy in order to assess whether the policy addresses key concerns that have been raised by various stakeholders and experts regarding diamond mining in Zimbabwe. The analysis identifies strengths and gaps in the policy and offers recommendations for improvements.

Further, whilst the policy is a positive step towards regulating the diamond sector in Zimbabwe, CNRG reckons that the success of any policy depends on the political will to implement it without fear or favor. Further, government should continue to review the policy in consultation with other stakeholders which include academics, civil society, industry and the mining communities.

1.1. Problem Statement

Zimbabwe is ranked among the top 7 diamond producers in the world. It is estimated that Zimbabwe produced over 14.5 million carats in 2012, including production from River ranch and Murowa mines. However, despite these staggering statistics, the contribution of diamonds to the fiscus remain insignificant

due to a plethora of reasons. In 2012 the Finance Ministry received less than \$100 million from diamonds; the figure varies depending on who is speaking. In government the Minister of Mines and Mining Development and the Minister of Finance have repeatedly clashed over diamond revenues. The public conflict between the two ministers is the summary measure of the degree to which a diamond policy, backed by a strong legislative and institutional framework, is paramount if the country's fledgling diamond sector is to make an impact on the economy.

1.2. Objectives of the policy analysis

- To examine whether the diamond policy addresses the governance challenges inherent in Zimbabwe's diamond sector
- To inform stakeholders and stimulate debate on the merits and demerits of the diamond policy
- To recommend improvements to the policy

1.3. Significance of the diamond policy

Although the policy has some loopholes, to be expounded below, it is a welcome development as it touches, though inadequately, on a number of governance challenges inherent in Zimbabwe's diamond sector. The policy was long overdue. It is unfortunate that Zimbabwe has come up with a diamond policy 6 years after the discovery of diamonds in Marange and after the country has already incurred heavy financial losses due to its weak policy, institutional and legal framework governing the diamond sector. Nevertheless, given that Marange diamonds may last for the next 25-35 years, the policy has a major role to play in ensuring that diamonds contribute to economic growth and sustainable development in Zimbabwe. Below we unpack and analyse major highlights in the policy.

4. Ownership and Mining Rights

The policy acknowledges sovereign ownership of diamonds by the Zimbabwean people through the state. According to the policy 'the State shall hold 100% ownership of the country's placer diamond', adding that it may choose to partner investors though it retains a controlling stake. This provision is very crucial. If the people of Zimbabwe are to maximize benefits from the country's diamond wealth it is important for the state to hold a controlling stake in all diamond ventures so as to widen its revenue base and minimize exploitation by foreign interests.

Given the lack of technical expertise in diamond mining by the Zimbabwe government, partnering investors can unlock a world of possibilities as has happened in Botswana where Debswana, the venture between the Botswana government and De Beers has resulted in diamonds becoming the mainstay of the economy. Nevertheless transparency is key to ensure that 'predatory elites', as mentioned by former South African President Thabo Mbeki during Zimbabwe's first diamond conference in Victoria Falls in November 2012, do not manipulate the system to advance their narrow personal interest at the expense of the collective national interests of all Zimbabweans. Learning from past mistakes, the policy ought to have highlighted the criteria for choosing investors. Qualifications such as a proven track record in diamond mining and sound financial standing should be stated in the policy to ensure the country does not award tenders to bogus or controversial mining corporations.

According to the policy 'the Mines and Minerals Act (CAP 21:05) provides for the administration of the diamond industry together with other supporting legislations such as the Precious Stones Trade Act (CAP 2106) and the Minerals Marketing Corporation of Zimbabwe Act (CAP 21:04). The Mines and Minerals Act, enacted in 1961 and amended several times since then, has proven to be outdated and inadequate to deal with contemporary challenges in the mining sector. The Act gives the Minister of Mines excessive power to make unilateral decisions which may have far reaching consequences for the country. The overreliance of the

policy on a weak, outdated and complicated piece of legislation will ultimately prove to be its biggest weakness.

For instance the Mines and Minerals Act makes a provision for the creation of a Mining Affairs Board. According to the Act the Board performs 'such other functions and duties as may from time to time be required of it by the Minister, adding that 'the (Mining Affairs) Board shall NOT have power to approve or refuse an application, but instead shall make recommendations thereon to the Minister, and any reference in those sections to an approval or refusal of an application by the Board shall be construed as a recommendation by the Board to the Minister that the application should be granted or refused, as the case may be' (Mines and Minerals Act, 21:05). The Act gives the Minister the ultimate power to approve or reject applications, thereby making the role of the Mining Affairs Board ceremonial.

The Mines and Minerals Act (Ch 21:05) also makes provisions for the issuance of special mining lease (grant) if the Mining Affairs Board consider such a move 'desirable in the interests of the development of Zimbabwe's mineral resources'. Incidentally, all the companies mining in Marange acquired special grants without going through normal tender procedures. This resulted in one of the licences being revoked and spilling into the courts with the Minister claiming that the company directors submitted false information in their application whilst the company directors accuse the Minister of demanding a bribe. If the board had been mandated to meticulously and professionally select investors and conduct all the verification procedures, such scenarios could have been avoided.

Further, majority of the diamond mining companies in Marange lack a proven track record in diamond mining, lending credence to the need for a more prudent and inclusive process of identifying investors in the diamond sector. The policy should have articulated a more nuanced criteria for identifying investors.

According to the policy 'the issuance of a mining title shall be in accordance with the Mines and Minerals Act (CAP21:05) as amended and upon the Ministry of Mines and Mining Development being satisfied with exploration results'. There is no role of the parliamentary portfolio committee on Mines and Energy or any other stakeholder. This lack of parliamentary oversight in issuance of mining titles leaves room for corruption and underhand deals. There ought to be enough checks and balances to ensure transparency in the selection process.

5. Good Corporate Citizenship

One of the most contentious issues about Marange diamonds is the failure by companies to initiate sustainable development projects in Marange District and the relocation area. Under Community Participation and Development, the Policy states that the relocation and compensation expenses of displaced communities from the diamond mining areas 'shall be the responsibility of the investor and shall meet government accepted standards.' There is no methodology or criteria set by the policy on how relocation and compensation should be negotiated or carried out. The phrase 'government accepted standards' is too vague to be taken seriously, especially in light of the haphazard manner in which Marange families were relocated and given that the families are yet to be compensated three years after the beginning of the relocation process. Marange families' homesteads were destroyed by bulldozers before valuation, making fair compensation impossible.

Government has a responsibility to ensure that affected communities are fairly compensated and resettled in line with the Vancouver Declaration of Human Settlements (UN Conference on Human Settlements, 1976). Further, government has a responsibility to ensure that its citizens are treated with respect and dignity and protected from unfair practices by extractive industries.

The policy also calls on the investor to develop and maintain infrastructure and amenities in the relocation areas 'over a period of time agreed on with

government'. We argue that the development and maintenance of infrastructure should continue throughout the lifespan of the mining venture. As long as mining is taking place the corporation owe the community a percentage of its profits for developmental purposes.

However the concept of development, as enunciated in the policy, need expansion. Sustainable development is more than developing and maintaining infrastructure. The policy ought to call on mining corporations to invest in livelihoods, education, healthcare, food security and environmental management. The overall objective of corporate social responsibility should be to improve the quality of life in a way that alleviates poverty and improve the human security in the host community. Projects that alleviate poverty and suffering among disadvantaged groups such as women, children, people living with HIV & AIDS and the elderly ought to be encouraged

6. Role of Traditional Leadership

The Diamond Policy is silent on the role of traditional leaders. Diamonds are mainly found in rural and semi rural areas which fall under traditional leaders' jurisdiction. The Traditional Leaders Act states that one of the key responsibilities of traditional leaders is *'ensuring that the land and its natural resources are used and exploited in terms of the law and generally preventing the degradation, abuse or misuse of land and natural resources in his area.'* The omission of the role of traditional leaders in the policy affects the whole value chain. For instance how can a company enter a rural community without permission of traditional authorities? And how can traditional leaders participate in decision making if they have not been consulted? By default this omission also means local communities are not consulted and ultimately have no voice in decision making.

However if they are not contaminated by party politics, traditional leaders can be the link between mining companies, government and the communities. In cases of

relocation of communities traditional leaders are key in facilitating an orderly and consensual relocation process. Most rural communities live in clans that have evolved over centuries. It is crucial that these traditional / cultural cleavages be respected if a relocation process is to take place. For instance the relocation of families from Marange to Arda Transau has affected traditional clanship since the new settlement is structured more like an urban or peri-urban settlement with limited land. As mentioned above, one of the main duties of traditional leaders is land allocation and maintenance. Thus the takeover of land by investors results in total collapse of cultural, geographical and spiritual domain of traditional authority. This can result in psychological trauma and post traumatic stress disorder in the whole community. Engaging traditional leaders in decision making will minimize such negative consequences

7. Transparency and Accountability

Transparency and accountability ought to be a cross cutting theme throughout the policy. The following have been identified as gaps which need urgent attention

7.1 Access to Information

According to the policy 'all exploration information and data belongs to the State.' The policy further states that 'there shall be access to diamond trade and financial records of all companies involved in diamond activities by the Ministry of Mines and Mining Development or its appointed agents...' There is no provision for making this information available to the general public upon request or otherwise. Mining information in Zimbabwe has been scarce. Anti-press freedom legislation such as Access to Information and Protection of Privacy Act (2002) has been used in the past to muzzle the press and deny citizens access to information that is of public interest. Absence of official information on the operations of extractive industries has led to suspicion, tension among stakeholders and arrest of civil society activists for allegedly 'publishing or communicating falsehoods that are

prejudicial to the economic interests of the State'. It is therefore important that availing information to the public is embedded in the policy rather than leaving it to discretion. Availability of information is essential given that diamonds, like all other minerals are vested in the State. This makes diamonds a public good. To deny the citizens access to information which government jointly shares with foreign investors reduces public confidence in the diamond sector. It is difficult for the public to have confidence in a sector where information, ranging from contract negotiations to revenue statistics, is a closely guarded secret.

7.2 Beneficiation

The policy mentions the need to promote diamond beneficiation so as to add value before export. Beneficiation is essential if Zimbabwe is to get full value for its diamonds. However, the policy is silent on the criteria for the issuance of permits or certificates to players in the cutting and polishing industry. This leaves room for patronage where the well connected and privileged few, howbeit unqualified, benefit at the expense of those qualified and experienced. If the cutting and polishing sector is not regulated properly this may fuel corruption and concomitant problems such as smuggling and illicit dealings throughout the value chain.

7.3 Marketing

The Diamond Policy states that all rough diamonds shall be sold through a Government appointed agency. This is essential since diamonds, being of low volume and high value, are lootable resources subject to smuggling if not properly controlled. This is also in line with the minimum standards of the Kimberly Process Certification Scheme which thrives to ensure that legitimate governments are in full control of diamond exports to minimize chances of diamonds funding conflict.

The policy further states that the sale of rough diamonds shall either be by tender or auction or negotiation or 'by any other system approved by government'. The

ambiguity of this provision creates serious transparency and accountability problems. A predictable and straightforward method of selling diamonds is required if revenues are to be properly accounted for. Currently Zimbabwe is auctioning its diamonds secretly, resulting in squabbles between the Ministry of Finance and the Ministry of Mines and Mining Development. For many years stakeholders have called on the Zimbabwe government to commit itself to best practices of marketing and selling diamonds.

Further, there is need to widen government ministries and departments involved in diamond sales for the sake of increasing checks and balances. The role of various government actors such as the Ministry of Finance, Zimbabwe Revenue Authority, Minerals Marketing Corporation of Zimbabwe, Zimbabwe Mining Development Corporation, Reserve bank of Zimbabwe, Zimbabwe Republic Police, etc, should be made clear to avoid duplication of duties, enhance security and improve transparency and accountability

8. Security and Monitoring

The policy makes provision for security and monitoring 'in compliance with the country's laws and international best practices'. There is lack of clarity on which ministry or government department is responsible for security. Currently Marange diamond fields are guarded by the Zimbabwe Republic Police and the Zimbabwe National Army. The presence of the army in Marange has been controversial due to easily verifiable evidence of human rights abuses committed by the army since 2008. Workers have also complained of uneasy relations with the military, with some alleging being taken to a military base for punishment for allegedly stealing diamonds.

The security plan must emphasize a strict adherence to the rule of law, punishment to both illicit diggers and law enforcement agents who commit human rights abuses in the discharge of their duties.

9. Offences and Penalties

The policy only mentions offences and penalties without elaborating on the penalties for various diamond related offences. There is no reference to other legislations or instruments where such provisions are listed. On offences and penalties there is need to harmonize the policy with Zimbabwe's criminal law for its provisions to be enforceable. There is also need for the country to revisit its laws with regard to tightening the security of natural resources, in particular diamonds. Tough laws are a deterrent to would be offenders whilst vague laws are difficult to enforce. The judiciary must also be called upon to compliment the efforts of the Ministry of Mines by imposing stiff penalties on those engaging in illicit diamond deals.

10. Gender

The policy makes no mention of any intentions by government to open up the diamond sector to women, either as stakeholders in the mining activities or as industry players in cutting and polishing. Women and children have had their lives severely affected by diamond mining activities through relocation leading to loss of livelihoods and food insecurity. It is therefore essential that the policy empowers women to benefit from diamond mining activities.

11. Mine closure and land rehabilitation

The policy is silent on what happens to the land when diamonds have been exhausted. Yet in other mining regions of the world a mine closure plan is a prerequisite to issuance of a mining licence. This is essential because mining disturbs the ground, flora and fauna. The communities, as represented by their traditional, sectarian and elected leaders, should decide how they want to use the land in the post mining era. Replanting indigenous trees and bringing back the

original animal and bird species to the affected area should be clearly laid out in the mine closure plan. It is also advisable that corporations are mandated by law to make an annual financial commitment to cover for land rehabilitation since most companies will be focussing on their next mining ventures as opposed to rehabilitating an area of no economic interest to them. Alternatively companies can use bonds to cover land rehabilitation after mine closure. Highlighting these requirements in the policy would have shown government commitment to environmental justice as well as the wellbeing of communities affected by diamond mining

12. Governance

12.1 The Diamond Board

The policy states that a Diamond Board shall be appointed by the Minister of Mines and Mining Development. The Board shall be responsible for advising the Minister of Mines and Mining Development on issues relating to the diamond industry. This is also applauded as the Minister may need technocratic advice on how to deal with the governance issues concerning mineral extractives. Nonetheless, the appointment and functions of the board renders it powerless to deal with transparency and accountability issues.

The board is only advisory and has no decision making powers. The procedure for appointing the Diamond Board is also questionable. The policy states that the Minister of Mines and Mining Development will appoint the Board in consultation with relevant stakeholders who are not stated. Thus the Board members owe their appointment to the discretion of the Minister, making it highly unlikely that it can hold the Minister accountable. Zimbabwe needs institutions which provide more checks and balances in the diamond sector.

The policy does not specify how many people shall constitute the Board and does not outline key positions in the board. It only states that the Secretary of Mines shall chair the Board. Questions also arise concerning the credibility of the Board and its ability to undertake its mandate if the Chair of the Board is a subordinate to the Minister. The board should have some degree of autonomy and independence from the Ministry of Mines.

12.2 Exploration

The policy does well to demand quarterly reports on explorations and mining. Further the policy bans exports of samples so as to ensure that diamond mining companies do not prejudice the government under the guise of perpetual scientific investigations.

12.3 Precious Stones Commissioner

The policy makes a provision for a department within the Ministry of Mines to be headed by a Precious Stones Commissioner who is to be appointed by the Public Service Commission. The appointment by an independent body should be applauded as it grants the commissioner some degree of independence. However the functions of the Commissioner are unclear. The policy only states that the commissioner shall 'be responsible for the implementation of the amended Precious Stones Trade Act' and shall be an ex-officio member of the Diamond Board and shall provide secretarial services to the Diamond Board. The Precious Stones Commissioner ought to contribute to more checks and balances regarding exploration, licensing of miners and jewellers, compliance with the Precious Stones Trade Act and revocation / cancellation of licences.

12.4 International Standards and Norms.

The policy states that 'all diamond mining companies will be deemed compliant once the country is approved as compliant by ratified international conventions such as the KPCS'. This is contrary to the policy adopted by the KPCS on Zimbabwe. In light of various problems associated with diamond mining activities in Marange and given that different diamond mining companies are at various stages of the implementation of the KPCS minimum standards, the KPCS adopted a company by company certification mechanism. It is also important to call on the diamond mining companies to be members of the World Diamond Council, a coalition of diamond and jewellery industries established in 2000 'to represent the diamond industry in the development and implementation of regulatory and voluntary systems to control the trade in diamonds embargoed by the United Nations or covered by the Kimberley Process Certification Scheme.'

12.5 A Diamond Act

The diamond policy will not achieve much without a corresponding legislation. Zimbabwe is in urgent need of a diamond act which addresses the shortcomings identified in the current Mines and Minerals Act (20:05) of 1961. It is through loopholes in the Act that the awarding of mining licences was shambolic, laying a platform for transparency and accountability problems which have dogged Zimbabwe's diamond sector since discovery of Marange diamond fields in 2006. A diamond act, backed by political will, can help to regulate the sector in a manner that can significantly benefit the Zimbabwean economy.

13. Recommendations

- 13.1 An inter ministerial committee should appoint the Diamond Board instead of the Minister of Mines.
- 13.2 There is need for a more nuanced distinction between the functions of the Diamond Board and the Precious Stones Commissioner
- 13.3 The functions of Precious Stones Commissioner should be widened to include continuous monitoring of exploration, mining, valuation and marketing
- 13.4 Apart from contributing to the diversification of the economy, the Sovereign Wealth Fund should be used to mitigate against any negative impacts caused by mining, including environmental rehabilitation after mine closure
- 13.5. NGOs, community interest groups, mining consultants and interested citizens should be enabled by law to obtain mining information. Information availability is essential for transparency and accountability.
- 13.6 All diamond mining companies should be compelled by law to publish their contracts, MOUs and any other agreements entered into with government and local authorities. This will enable the local community to monitor implementation of the agreements and demand accountability
- 13.7 All diamond mining companies should be compelled by law to publish their financial information, including revenues they pay to government.
- 13.8 The policy should compel diamond mining companies to have a mine closure plan approved by government before commencement of mining
- 13.9 The policy should be strong on community participation in contract negotiation, mining activities and marketing of diamonds.

14. Summary

The policy is a good starting point to improve governance in Zimbabwe's diamond industry. However the policy needs to be revised so as to address issues of investor identification, revenue transparency, community participation, mine closure, environmental impacts and access to information, among other things. A professional, transparent and consistent criteria for identifying investors and awarding licences is the bedrock upon which a strong diamond sector can be established in Zimbabwe. The powers of the Minister and the President regarding the identification of investors and issuance of licences must be drastically reduced and diffused to various institutions such as the Parliamentary Portfolio Committee on Mines, the Diamond Board and the Precious Stones Commissioner.

The policy relies on a defective Mines and Minerals Act (CAP 21:05) for its implementation. The ACT has proved to be grossly inadequate in addressing the governance problems in the diamond sector. It gives too much power to the Minister at the expense of institutions, making it largely responsible for the governance challenges in the diamond sector at the moment.

A corresponding law, a Diamond Act, is urgently required for the policy to be effective. The Diamond Act should address the shortcomings inherent in the Mines and Minerals Act as well as to specifically deal with issues peculiar to the diamond industry. In coming up with a Diamond Act, Zimbabwe should seek technical support from stakeholders such as the Kimberly Process Certification Scheme, Zimbabwe Chamber of Mines, mining experts, civil society and other countries that have excelled in managing their diamond industries such as Botswana, Namibia and South Africa.

The oversight role of parliament is strongly recommended. In the spirit of separation of powers, parliament should be granted unfettered access to diamond mines and to all information pertaining to diamond mining activities.