

# **KIMBERLEY PROCESS**

Certification Scheme

## **Second Fact Finding Mission Report**

By **Abbey Chikane**

KP Monitor for Marange, Zimbabwe

Monday, 24 May – Friday, 28 May 2010

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## **INTRODUCTION**

Pursuant to the mandate established by the Seventh Annual Plenary of the Kimberley Process Certification Scheme (KPCS) which met from 2-5 November 2009 in Swakopmund, Namibia, the Chairman of the Working Group on Monitoring (WGM), Mr. Stéphane Chardon, invited Mr. Abbey Chikane, the KP Monitor for Zimbabwe, to visit Zimbabwe for the second time, with a view to evaluating and reporting on all aspects of the Joint Work Plan (JWP). In terms of the Swakopmund Plenary Administrative Decision and the subsequently agreed Terms of Reference, the KP Monitor is required to “play a key role in the implementation of the JWP, including the supervised export arrangements, in close collaboration with the relevant Zimbabwean authorities”. He is also expected to work with Zimbabwe towards full compliance with the minimum requirements of the KP. A copy of the Terms of Reference and the Administrative Decision on the JWP are attached as Appendix A. The second visit of the KP Monitor for Marange occurred from 24-28 May 2010.

## **ACKNOWLEDGEMENTS**

The KP Monitor wishes to convey his gratitude to the Minister of Mines and Mining Development, Hon. Obert Mpofo, Honourable Deputy Minister, Murisi Zwizai, Permanent Secretary, Mr. Thankful Musukutwa, and to a highly competent and hard working technical team in the employ of the Ministry of Mines and Mining Development. A particular word of thanks must go to Mr. John Makandwa, Manager at the Ministry of Mines and Mining

Development. Mr. Makandwa spent five days of uninterrupted engagement with the KP Monitor and provided all the resources required to fulfill the mandate of the KP Monitor’s visit.

The KP Monitor also wishes to express his appreciation for the support he received from the technical team of Minerals Marketing Corporation of Zimbabwe, Zimbabwe Mining Development Corporation, Zimbabwe Revenue Authority, the Minerals Unit, and Commanders of Zimbabwe Republic Police and the Zimbabwe National Army.

The KP Monitor would like to thank the Cabinet Task Force on Marange for exchanging views and opinions with him on the challenges that Zimbabwe and the KP face in the implementation of the JWP. The Cabinet Task force comprises the Ministers of Mines and Mining Development, Hon. Mpofo, who is also the Chairman of the Task Force, the Minister of Finance, Hon. Biti, the Minister of Industry and Commerce, Hon. Ncube, the Minister of Defence, Hon. Mnangangwa, the Minister of Economic Development and Investment Promotions, Hon. Mangoma.

The KP Monitor thanks members of the Parliamentary Portfolio Committee on Mines and Energy for sharing their perspective on the situation in Chidzwa, Marange diamond fields.

The KP Monitor would also like to convey his sincere gratitude and a special vote of thanks to the EC Mission in Harare and civil society, who so kindly facilitated arrangements for his meetings with the Diplomatic Corps in Harare and with representatives of civil society, respectively.

It might be of interest to note that, during his first visit to Zimbabwe as KP Monitor, the KP Monitor met representatives of the Ministry of Mines and Mining Development, relevant state-owned entities, as well as two investors, Mbada Diamonds and Canadile Miners. The programme for that visit focused on government and the two critical investors.

In his second visit, the KP Monitor included meetings with industry and civil society. Consistent with the composition of the KP, which comprises Participants and Observers, the KP Monitor met representatives of the industry and civil society. He met the management of Mbada Diamonds, Canadile Miners, African Consolidated Resources and the Centre for Research and Development.

The KP Monitor's programme was aimed at covering a full range of issues, as set out in his Terms of Reference. The programme for the second visit by the KP Monitor was approved by the WGM as well as the Ministry of Mines and Mining Development. Prior to the departure of the KP Monitor, the WGM provided him with comprehensive guidelines on issues arising from his first visit to Zimbabwe, which should receive attention during this visit.

## **BACKGROUND**

In order to address the KP Monitor's mandate adequately, this report begins with a summary of the First Fact-Finding-Mission Report, its findings and conclusions, and then attempts to explain the reasons behind the inability for the KP Monitor to return to Zimbabwe on the 6-8 April 2010, as reflected in the report. Rather than structuring this report in the same format

as that of the previous report, the KP Monitor has opted for a format that is consistent with the above mentioned list of issues that were presented to him in the form of a Terms of Reference for his second visit. Following a section on the list of issues for the attention of the KP Monitor, the report presents challenges, recommendations and conclusions.

Rather than writing a lengthy report, the author has provided a number of attachments. These include a perspective on the economic ramifications of the diamond industry in Zimbabwe.

## **EVENTS LEADING TO THE 2<sup>ND</sup> VISIT OF THE KP MONITOR**

The KP Monitor first visited Zimbabwe from 1-3 March 2010, on a fact-finding-mission. The purpose of the mission was to conduct an on-the-spot assessment of the situation in Zimbabwe, particularly, in and around the Marange diamond fields. During the three-day visit, the KP Monitor was also expected to determine his approach to the assignment and confirm his operational requirements, which included his need for technical assistance. The recommendations of the fact-finding-mission are incorporated in this report and are attached as Appendix B.

Overall, the KP Monitor's fact-finding-mission report ends with a list of challenges and recommendations that may impact negatively on the implementation of the JWP, directly or indirectly, and concludes by confirming his availability to visit Zimbabwe from 6-8 April 2010. In his opinion, and in the context of his

final report, compliance with his recommendations effectively meant that his second visit of the 6-8 April 2010 would result in a further thorough examination of individual shipments and their chain of custody with a view to possibly confirming their compliance with KP requirements.

According to formal procedures agreed between the KP and Zimbabwe;

*“When the KP Monitor assesses that an export shipment has been produced and prepared in accordance with KPCS minimum requirements, the KP Monitor will confirm the certification on the relevant KP Certificate with his signature and stamp, and will digitally photograph the certificate and shipment. A specimen of the KP Monitor signature and stamp will be circulated to the KP Chair for distribution to KP Participants.”*

Following his visit of the 1-3 March 2010, the KP Monitor prepared his report and submitted it to the Chairman of the WGM and the Government of Zimbabwe, in terms of paragraph 3 (1 & 2) of the Swakopmund Administration Decision. Further, the KP Monitor was invited to take part in a teleconference of the WGM on 25 March 2010, in terms of paragraph 2 (f) of the administrative decision, which regulates procedures applicable to the supervised export mechanism. The purpose of the KP Monitors' participation was to explain his findings and conclusions. The teleconference took the form of a comprehensive discussion which lasted for approximately three hours. Both parties (KP and

Zimbabwe) took note of the findings of the KP Monitor.

The teleconference was followed by elaborate and extensive communication between and among members of the WGM. The KP Monitor is not a member of the WGM, but he was copied on some of the correspondence between members. Also, in terms of the Terms of Reference agreed between the KP and the Government of Zimbabwe, the KP Monitor is required “to perform his tasks under the aegis and supervision of the KP WGM.” The WGM informed the KP Monitor in no uncertain terms that he will not return to Zimbabwe until their consultative process was completed and a decision was made on his next visit.

Due to the length of time required for the consultative process by members of the WGM, the KP Monitor was not in a position to return to Zimbabwe on 6 April, as was originally contemplated in his report. In a letter dated 23 March 2010, the Government of Zimbabwe wrote to the KP Monitor, in terms of paragraph 2 (a) of the Terms of Reference, inviting him to examine the diamonds produced by Mbada Diamonds and Canadile Miners. In terms of the same provision, the Government of Zimbabwe copied the same to the Chairman of the WGM, dated 29 March 2010.

Despite this request, the WGM informed the KP Monitor that he should not return to Zimbabwe until further notice. The author would like to state that, if his interpretation of 2 (a) is correct; an attempt to proceed to Zimbabwe without the consent of the WGM would have been interpreted as a disregard for this provision. The KP Monitor is respectfully

mindful of the fact that he represents the KP and its interests in the process of bringing Zimbabwe to the point of full compliance with the minimum requirements of the KPCS. Amid delays, communication between the Government of Zimbabwe and a number of stakeholders continued. This included, communication with the current Chairman of the KP, Mr. Boaz Hirsch; the Deputy Chairman of the KP, as represented by the Democratic Republic of Congo, the Chairman of the WGM, Mr. Chardon; the Ministers of Mines in Angola, Democratic Republic of Congo, Republic of Namibia and South Africa, as well as the Executive Secretary of Association of African Diamond Producing Countries.

In the midst of it all, unexpectedly, rough diamond shipments originating from Marange, Zimbabwe, were intercepted in Dubai, United Arab Emirates, without certification by the KP Monitor. And Zimbabwe was requested by the Chairman of the WGM to provide a clarification on this shipment. Similar shipments took place on 27 January 2010 according to the KP Monitor's first report. These shipments, according to correspondence between Zimbabwe and the Chairmen of the KP and that of the WGM, were interpreted by the Zimbabwean Government as exempt from the KP Monitor's supervised export mechanism for Marange diamonds. The Government interpreted the Swakopmund Administrative Decision on Zimbabwe as follows;

*"... that the diamonds produced by Marange Resources from 2007-2009 are not subjected to the KP Monitor supervised export mechanism".*

The report of the KP Monitor's second visit addresses this matter under the section focusing on shipments of rough diamonds to the UAE.

On the 12 May 2010, the Chairman of the WGM invited the KP Monitor to return to Zimbabwe to conduct his second visit on terms and conditions that were addressed to the Ministry of Mines and Mining Development in a letter dated 12 May 2010. The Chairman of the WGM's email message to the KP Monitor is attached as Appendix C and the letter to the Ministry is attached as Appendix D. Further, the Chairman of the WGM provided the KP Monitor with a list of issues for the attention of the KP Monitor, dated 12 May 2010. This list, read in conjunction with the above mentioned email message and the letter to the Ministry, in the understanding of the KP Monitor, effectively constitute his complete terms of reference for his second visit to Zimbabwe.



More investors should be encouraged to invest in Chiadzwa, so as to ensure that the remaining 54 759 hectares, or a part thereof, is occupied. The financial burden of securing such a large piece of land should be transferred to the private sector. According to the Zimbabwe Mining Development Corporation, 82 potential investors have expressed interest to invest in Marange. These include local and international mining companies. The Zimbabwe Mining Development Corporation further reports that it has had an administration challenge in processing all these applications at once. Instead, it has resolved to process five applications at a time, or less.

#### **Evaluation Guidelines for Potential Investors**

Another development pertaining to the selection of prospective investors was noted with interest. In his first report, the KP Monitor recommends that the Ministry of Mines and Mining Development should consider a more transparent, credible and predictable system of investor identification and selection for consideration. Such a system will ensure credibility and accountability in a more transparent and predictable manner, the report recommends.

In response, the Zimbabwean Mining Development Corporation and its Board of Directors have resolved to subject the selection process to legal provisions in the *Zimbabwe Mining Development Corporation Act*, legislation that provides for the constitution, functions, powers and duties of the Mining Development Board to regulate the financial affairs of the Zimbabwe Mining Development Corporation. The act is attached as Appendix E.

The selection process is also handled in accordance with the *“Evaluation Guidelines for Potential Investors”* (Appendix F) with a supplementary due diligence process handled in terms of *“Pre-liminary Due Diligence Checklist”* (Appendix G). The monitoring and implementation of the legislation and supporting administrative procedures is the function of the Board of Directors and or its designated committees. The previous selection process was based on unsolicited proposals by prospective investors. Going forward, the intention is that an elaborate and transparent process will be followed.

#### **Meeting with Representatives of the Parliamentary Portfolio Committee on Mining and Energy**

The KP Monitor would like to acknowledge that even though discussions with members of the Parliamentary Portfolio Committee on Mines and Energy covered a broad range of issues, this section of the report focuses strictly on the demilitarization of Chiadzwa. Other matters raised by the honourable members were noted and have been considered by the KP Monitor.

The KP Monitor had the privilege of meeting honourable members of the Zimbabwe Parliamentary Portfolio Committee on Mines and Energy. The purpose of the meeting was to exchange views on complex matters pertaining to the Marange diamond fields. The KP Monitor briefed members on the role and scope of the KPCS. In an open and frank context, the KP Monitor shared his views on the challenges that face the KP in Zimbabwe. Among other things, he explained the KP’s position on issues that fall outside its mandate and that decision-making in

the KP is based on consensus, to accommodate divergent views but still achieve its mandate.

In turn, the KP Monitor requested members to share their views on the issue of demilitarisation of parts of Marange. The focus was on the areas that are not occupied by investors. Parliamentarians spent some time debating the costs and benefits of removing soldiers from Chiadzwa in Marange all at once and concluded that this would create “a free-for-all situation”. They noted the possibility that, if the army is withdrawn, panners and illegal diggers would return to Marange. Based on this assertion, honourable members considered that “gradual withdrawal of the army could be the best option”. The upshot of the discussions was that the army should remain in Marange until and after Government has put in place proper security measures. Other matters were raised, including the dispute between the Government of Zimbabwe and African Consolidated Resources. The Chairman of the Parliamentary Portfolio Committee, Hon. Edward Chindori-Chininga, reminded members that the Committee had agreed to allow the judicial system to deal with the matter. Other matters raised included a Parliamentary Committee visit to Marange, of which the Chairman reminded members that the Parliament of Zimbabwe has competencies and rules that govern how such arrangements are managed.

Members recommended to the KP Monitor that the army should be supported by Zimbabwe Minerals Unit to ensure that additional competences required in dealing with diamond matters are provided, so as to guarantee a professional operation. They ended their meeting with the KP Monitor stressing that

appropriate training for the army to deal with communities in areas where they operate was critical.

#### **The Dispute between Ministry of Mines and Mining Development and African Consolidated Resources Plc.**

The dispute between the Government of Zimbabwe and African Consolidated Resources remains of serious concern to the KP Monitor, since it may have an impact on the supervised export mechanism for Marange diamonds, depending on decisions and rulings of the Zimbabwean courts. As stated in the report of the KP Monitor’s fact-finding-mission, Participants and Observers in the KP agree that the matter is a subject of Zimbabwe’s national laws and its respective courts. The KP Monitor will continue to monitor the developments and how they may impact on the certification process.

The author has prepared a special file on matters involving the Ministry of Mines and Mining Development, the Zimbabwe Mining Development Corporation, the Minerals Marketing Corporation of Zimbabwe and African Consolidated Resources. The file contains a “summary report on the legal issues between African Consolidated Resources involving the Ministry of Mines and Mining Development, The Zimbabwe Mining Development Corporation, The Minerals Marketing Corporation of Zimbabwe” which was submitted by the Ministry of Mines and Mining Development to the KP Monitor.

The file also contains a submission from African Consolidated Resources, which includes High Court Judgment of February 16, 2010; Supreme

Court Judgment of February 16, 2010; Claims Cancellation Appeal by African Consolidated Resources, Copy letter to CEO of Zimbabwe Mining Development Corporation dated April 13, 2010; and most importantly, a letter to the KP Monitor dated June 3, 2010.

The KP Monitor would like to highlight African Consolidated Resources desire to settle in the interest of the people of Zimbabwe. In the letter to the KP Monitor, African Consolidated Resources states that:

“African Consolidated Resources wishes a settlement with the Ministry (Ministry of Mines and Mining Development of Zimbabwe) and to work with the Ministry to achieve full and lasting compliance. African Consolidated Resources is realistic that it may need to make concessions to achieve this. We believe that the KPCS may be able to play a role in achieving or at least encouraging that outcome. It is hoped that the KPCS will consider this”. Whilst the KP has no desire to interfere with matters of national law in Zimbabwe, the KP Monitor would like to encourage this gesture. In situations of this nature, it is also advisable to consider ‘home brewed solutions’. The KP Monitor encourages all parties involved to seek the best possible solution under the circumstances, one which would allow diamonds to play their optimum role in the sustainable development and growth of the economy of Zimbabwe.

## **ISSUE B**

### **SECURITY INFRASTRUCTURE**

#### **Zimbabwe Republic Police and Zimbabwe National Army**

The 2006 diamond incursion attracted an influx of panners and illegal traders from Zimbabwe and its neighboring countries. This development created a need for the Zimbabwe Republic Police to move in and occupy the area. However, the situation went out of control and required reinforcement by the Zimbabwe National Army, in the form of a joint operation, with police in charge of the operation. In November 2008, the number of illegal diggers swelled to an average of 30 000 in and around the Chidzwa area in Marange. In response to the situation, the Zimbabwe Republic Police invited the Zimbabwe National Army to support their attempts to secure the area.

The Zimbabwe Republic Police and the army provided 1500 officers to bring the situation under control. As the situation in Marange has improved, the police and army have reduced the number from 800, to 600, to 500 officers. The police leadership informed the KP Monitor that the current manpower levels will be further reduced as the number of investors increase and more ground is covered by diamond mining. It is contemplated that the army will eventually move out of Marange and be replaced by the police and the private security companies that will be contracted by investors.

The current deployment of the police and army is mainly on routes that lead into areas such as Muchena, Chirasika, Jese, which are not yet allocated to miners.

#### **Boarder Control Unit**

The Border Control unit is responsible for boarder security as well as escorting of diamonds from Chidzwa to their respective destinations. Trained personnel from the

Mineral Unit are deployed at key points and at Mbada Diamonds and Canadile Miners, respectively, to monitor production and curb criminal activities. In a meeting with Major General Nicholas M. Dube, Chief of Staff Joint Operations and Plans, the Ministry of Defence and senior Police Commissioners of Zimbabwe Republic Police, the Commissioners informed the KP Monitor that the police have increased joint deployments along the borders covering Forbes Border Post. The joint deployment focuses on non-official entry and exit points into Mozambique in order to curb smuggling of diamonds.

In addition to the joint operation, it was reported that the police collaborate with their Mozambican counter parts in sharing criminal intelligence and drawing up necessary strategies.

#### **Zimbabwe Republic Police reconciliation of exhibits**

The Zimbabwe Republic Police informed the KP Monitor that it holds exhibits totaling 26 116, 76 carats from recoveries made largely between the period 2006 and 2008. A total of 1824 accused persons were arrested during the same period. The Zimbabwe Republic Police reports that it faces financial constraints to build a permanent police station at Chiadzwa diamond fields. Assistance in this regard will be highly appreciated.

Zimbabwe Republic Police have deployed its officers in the following security structures:

Structure	Definition
<b>Road Block</b>	A police presence placed on strategic points.
<b>Police Post</b>	A police establishment with a minimum of 20 officers.

**Police Base** A temporary establishment whose manpower levels are determined by the situation.

**Police Station** A police establishment with a minimum of 70 officers.

*Note: There is no Police Station in Chiadzwa.*

The Zimbabwe Republic Police recommends that Mozambique should be encouraged to join the KP as a Participant, so that inter-state collaboration can be increased and sustained. It is understood that some progress is being made in this regard.

## **ISSUE C**

**Installation of physical security systems at mining site**

### **SECURITY AND CONTROL SYSTEMS**

On Tuesday 25 May 2010, the KP Monitor spent a day in the Chiadzwa area covering Mabada Diamonds, Canadile Miners and Anjin Investments, respectively. He also covered places both adjoining and outside the jurisdiction of the investors. The KP Monitor also patrolled by car areas adjoining and outside investors perimeter. In the areas that he inspected personally, there was no sign of fence cutting. However, security officers confirm that at least once a month there is always an attempt by illegal diggers to penetrate the fence. And in cases where illegal diggers were found and arrested, such cases were reported to the Zimbabwe Republic Police.

#### **Mbada Diamonds**

Mbada Diamonds security department is headed by a Security Manager who is responsible for

four mail sections, namely CCTV and X-Ray machine, dog unit and security guards. Mine security operates on a 24 hours basis and seven days a week.

#### **CCTV Surveillance and X-Ray Machine**

The CCTV surveillance in the nerve centre of mine security which is capable of remotely monitor with infra red cameras, the perimeter fence and strategic plant areas such as DMS and recovery room. This system was installed by CAMSECURE, a South African company. The Z-Ray machine, a machine used to monitor personnel exiting the plant and mining areas of the mine is used. The CCTV surveillance system and X-Ray machine are the first line of defense for mining security at the mine and are supported by the Dog unit and security guards.

#### **Dog Unit**

The dog unit has 38 dogs and 38 handlers that operate round the clock. The dogs are deployed strategically to allow easy reaction to instruction from surveillance team.

#### **Security Guards**

There are 230 security guards to cover the mine on a 24-hour basis. The guards are deployed at critical areas of the operation such as mining, plant, recovery, key entrance points to the concession as well as patrolling of the concession.

#### **Canadile Miners**

Canadile Miners security department is headed by a security manager who was on site when the KP Monitor visited the mine. Though not as complex as Mbada Diamonds, Canadile Miners

security system includes access control system, CCTV, and turnstiles. The company has basic security systems, something which is commensurate with the size of the operation.

Canadile Miners is in the process of implementing a body scanner. A quotation has been acquired and the structure for installation is complete; an insurance letter on the security system installed at the sorting and valuation facilities is to be obtained before the next visit of the KP Monitor and cameras have been installed in all areas that were identified by the KP Monitor during his previous visit. A hands-free process of dealing with concentrate tailings has been developed and is currently under construction.

Canadile Miners undertook to meet all the recommendations of the KP Monitor which are in the fact-finding-mission report. The company assured the KP Monitor that they will be fully compliant before the KP Monitor's next visit.

#### **Security infrastructure adjoining and outside investors' perimeter**

The KP Monitor evaluated areas adjoining and outside the jurisdiction of the investors. He drove through the prospective Anjin Investment concession, which includes Chirasika. At Chirasika, the KP Monitor found an army settlement which informed him that they were securing Anjin Investment concessions against illegal diggers. The officers indicated that Anjin Investment had commenced the pre-feasibility and sampling operation adjacent to where their tents were pitched.

At his meeting with the Zimbabwe Republic Police Commissioners and the Zimbabwe

National Army Chief of Staff, the KP Monitor requested the officers to brief him about developments in Chijadzwa, Marange. Among other things, the Commissioners reported that illegal panners and illegal mining syndicates continue to invade the diamond fields, but assured the KP Monitor that they continue to arrest and apprehend illegal panners.

#### **Relocation of communities**

The relocation of communities in Marange continues to be coordinated by the Government of Zimbabwe through the governor's office and the investors are expected to contribute towards the relocation expenses. Traus farm, which is approximately 25 kilometers from Mutare along the road to Harare, has been identified as one of the sites that would accommodate 1800 families. According to the government, it is envisaged that families will be relocated in groups of 44 households at a time. This approach was adopted due to the fact that at the farm there is existing habitation for 44 dwellings. The adopted plan involves the renovation of existing structures and the building of toilets and bathrooms, as well as boreholes, a school and a clinic. Upon completion, the first group of households will be relocated.

In a submission made by Mbada Diamonds, the company reports that it has pledged a financial contribution amounting to 44 renovated structures, 12 toilets, two demonstration houses and the cost of clearing 28 hectares of land for irrigation purposes

#### **ISSUE D**

Tightening of boarder controls

#### **Forbes Border Post**

The KP Monitor visited Forbes Border Post, where he met Messrs Mhondoro and Ncube, who are revenue supervisors. They informed him that, even though there are talks regarding illegal panners, there have not been incidents recently. The officers also informed the KP Monitor that their unit is supported by the Boarder Unit, Support Unit, Zimbabwe Revenue Unit, Zimbabwe National Army and Zimbabwe Republic Police. The involvement of the national army is expected to reinforce security measures already introduced by the police. The representatives of the revenue service also confirmed that they were trained to handle rough diamonds.

#### **ISSUE E**

##### **Security Companies**

The KP Monitor has gathered information regarding security companies and equipment used by investors. As indicated earlier, these companies and equipment are used by other mining companies in Zimbabwe and South Africa. The implementation of security infrastructure by investors needs to be monitored on a periodical basis to ensure compliance. Brochures of security companies providing security services to Mbada Diamonds and Canadille Miners are attached as Appendix Y.

#### **ISSUE F**

##### **Security for the entire diamond field**

On Tuesday, May 25, 2010 the KP Monitor met senior Zimbabwe National Army and Zimbabwe Republic Police commanders at the National Army headquarters. The army was represented

by the Secretary for Defence, General Martin Rushwaya, Major General Nicholas Dube, the Chief of Staff Joint Operations & Plans and General Moyo, Air Vice Marshall. The Zimbabwe Republic Police was represented by Deputy Commissioner, General Matibiri. Also represented was Commander Mada of the Office of the President.

Briefing the KP Monitor, the army and police generals explained the role their organizations play in curbing illegal panning. They explained that the national army has deployed soldiers in the Chiadzwa area of Marange at the invitation of the Zimbabwe Republic Police and in response to the diamond incursion in that area. The army was required to reinforce the police units and force illegal panners out of Chiadzwa. After many months of fighting illegal digging, panners were driven out of the area. The generals informed the KP Monitor that, following this operation, illegal diggers continue to encroach into the area. As a result, the joint operation continues to tighten security on site.

The army generals explained that, under normal circumstances, the security of Chiadzwa is the responsibility of the Zimbabwe Republic Police, and not the army. They stressed the fact that, as soon as investors move in and the police have the capacity and the resources to secure the area, the entire army formation will be removed. This position is in line with the discussion held with the Parliamentary Portfolio Committee on Mines and Energy which calls for the gradual withdrawal of the army.

## **ISSUE G**

### **Withdrawal of military personnel**

The KP Monitor would like to suggest that the issue of demilitarization should be seen in the context of the Parliamentary Committee debate and be treated as such. Also information set forth in this report should be based on information collected and observed by the KP Monitor.

## **ISSUE H & I**

### **Statistics, Discrepancies and Reconciliation**

#### **Statistics, Discrepancies and Reconciliation**

The KP Monitor spent two days with senior management of Zimbabwe Mining Development Corporation, Minerals Marketing Corporation of Zimbabwe, Zimbabwe Republic Police, Ministry of Mines and Mining Development, and Global Diamond Valuation of Namibia for the purposes of reconciling the statistics that were queried by the WGM. The queries emanated from the KP Monitor's first fact-finding report where he indicates that the stockpile of diamonds from Marange Resources production totaled 279, 726.19 carats. When in its report of April 28, 2010 letter addressed to the Kimberley Process, the Government of Zimbabwe reports that it issued Kimberley Process Certificates totaling almost 320, 000 carats. A discrepancy of 40, 000 carats was questioned.

An elaborate presentation of data was collated to clarify this matter. The conclusion reached, based on analysis of data presented to the KP Monitor is that:

- (a) The closing stock in the fact-finding-mission report and that of the ministry letter were different.

(b) The cut-off dates used in these documents is not the same and were not synchronized.

(c) When the ministry document was produced for purposes of a clarification on Zimbabwe/Dubai shipments, the author seems to have done so without diligence.

The KP Monitor has provided additional and updated statistics with a view to providing as much information as possible for purposes of future verification and validation if need be. In concluding this matter, the KP Monitor reports that there is no evidence of deliberate attempt

to mislead the KP. And he will hold this opinion until there is information that can prove to the contrary.

**Estimated monthly production**

The WGM would like to establish the estimated monthly production by investors operating in Marange. The information below provides a fairly detailed account of monthly production reported over a period of time.

PRODUCT		ROUGH SALES										BALANCE	
DATE	Marange	Total weight (ct)	DATE	KPC Number	Source	Invoice No.	Weight (ct)	Value (US \$)	Weight (ct)	Average Price (US\$/ct)			
Apr-07	2816.00	2816.00							2,816.00				
May-07	29600.90	29600.90							32,416.90				
Jun-07	52612.60	52612.60							85,029.50				
Jul-07	68544.95	68544.95							153,574.45				
Aug-07	74568.00	74568.00							228,142.45				
Sep-07	69964.00	69964.00							298,106.45				
Oct-07	70553.00	70553.00							368,659.45				
Nov-07	73146.50	73146.50							441,805.95				
Dec-07	52376.00	52376.00							494,181.95				
Jan-08	57525.50	57525.50							551,707.45				
Feb-08	72039.50	72039.50							623,746.95				
Mar-08	44577.50	44577.50							668,324.45				
Apr-08	57740.25	57740.25							726,064.70				
May-08	63473.50	63473.50							789,538.20				
Jun-08	38836.50	38836.50							828,374.70				
Jul-08	42224.50	42224.50	25-Jul-08	ZW000044	Marange	*PD007/07/0 8	3,706.93	1408633.40	866,892.27	380.00			

Jul-08	3706.93	3706.93							870,599.20	
Aug-08	13256.00	13256.00							883,855.20	
Sep-08	10817.50	10817.50							894,672.70	
Oct-08	19981.00	19981.00	16-Oct-08	ZW0000047	Marange	MS/5072/08	101,550.00	1610595.00	813,103.70	15.86
Nov-08	18696.95	18696.95							831,800.65	
Dec-08	20848.50	20848.50							852,649.15	
Jan-09	29894.50	29894.50							882,543.65	
Feb-09	29109.50	29109.50							911,653.15	
Mar-09	28606.10	28606.10							940,259.25	
Apr-09	26544.50	26544.50							966,803.75	
May-09	40718.00	40718.00							1,007,521.75	
		0.00	22-Jan-09	ZW0000053	Marange	MS/6481/08	87,307.09	525000.00	920,214.66	6.01
		0.00	27-Mar-09	ZW0000057	Kimberw orth	PD003/02/09	3,706.63	1450000.00	916,508.03	391.19
		0.00	14-May-09	ZW0000061	Marange	PD006/03/09	79.20	12449.29	916,428.83	157.19
		0.00	26-May-09	ZW0000062	MM CZ	PD09/05/09	328,305.01	1313220.04	588,123.82	4.00
		0.00	26-May-09	ZW0000063	MM CZ	PD010/05/09	64,305.44	257221.76	523,818.38	4.00
		0.00	18-Jun-09	ZW0000066	MM CZ	PD014/06/09	104,291.95	478197.67	419,526.43	4.59
		0.00	24-Jun-09	ZW0000067	MM CZ	PD015/06/09	2,445.32	557739.50	417,081.11	228.08
Jun-09	42247.00	42247.00	24-Jun-09	ZW0000068	MM CZ	PD016/06/09	2,005.34	902389.50	457,322.77	449.99

Jul-09	45246.00	45246.00	1-Jul-09	ZW000069	Marange	PD012/06/09	61,003.01	309455.47	441,565.76	5.07
Jul-09	79.20	79.20							441,644.96	
Aug-09	44412.70	44412.70							486,057.66	
			27-Aug-09	ZW000072	Marange	PD023/08/09	30,260.22	179983.11	455,797.44	5.95
			27-Aug-09	ZW000073	Marange	PD019/08/09	73,216.84	352173.00	382,580.60	4.81
Sep-09	43392.70	43392.70							425,973.30	
Oct-09	44705.30	44705.30							470,678.60	
									470,678.60	
									470,678.60	
									470,678.60	
									470,678.60	
									470,678.60	
									470,678.60	
Nov-09	34554.84	34554.84							470,678.60	
									505,233.44	
Dec-09	0.00	0.00	16-Dec-09	ZW000079	Marange	PD022/12/09	17,926.75	340672.00	487,306.69	19.00
Jan-10	0.00	0.00							487,306.69	
Feb-10	0.00	0.00	10-Feb-10	ZW000082	Marange	PD003/02/10	98,502.25	1173357.76	388,804.44	11.91
			10-Feb-10	ZW000083	Marange	PD004/02/10	92,192.27	970612.07	296,612.17	10.53
			12-Feb-10	ZW000084	Marange	PD005/02/10	3,973.81	659000.00	292,638.36	165.84
Mar-10	0.00	0.00	01-Mar-10	ZW000085	Marange	PD006/02/10	10,387.52	557000.00	282,250.84	53.62
			05-Mar-10	ZW000086	Marange (stock)	PD007/02/10	2,752.43	813000.00	279,498.41	295.38
			13-Apr-10	ZW000088	Marange (stock)	PD009/04/10	9,886.23	2872440.87	269,612.18	290.55
			15-Apr-10	ZW000089	Marange (stock)	PD013/04/10	59,143.65	1419432.32	210,468.53	24.00

	0.00		16-Apr-10	ZW0000090	Marange (stock)	PD014/04/10	2,898.40	48221.40	207,570.13	16.64
	0.00		22-Apr-10	ZW0000091	Marange (stock)	PD012/04/10	7,799.83	786618.00	199,770.30	100.85
	0.00		22-Apr-10	ZW0000092	Marange (stock)	PD010/04/10	4,772.62	2035453.98	194,997.68	426.49
	0.00		22-Apr-10	ZW0000093	Marange (stock)	PD011/04/10	9515.45	2861702.39	185,482.23	300.74
Apr-10	0.00	0.00							185,482.23	
May-10	0.00	0.00							185,482.23	
		0.00								
	1367416.42	1367416.42					1181934.19	23894568.53		17.47

Source: Zimbabwe Mining Development Corporation (2010)

In addition to information required to provide explanations to the WGM, the KP Monitor worked with the team to produce the latest production and sales statistics. These numbers will further assist in the interpretation of data provided. Additional data on statistics will enable to Working Group on Statistics to analyze information provided further.

Figure 2

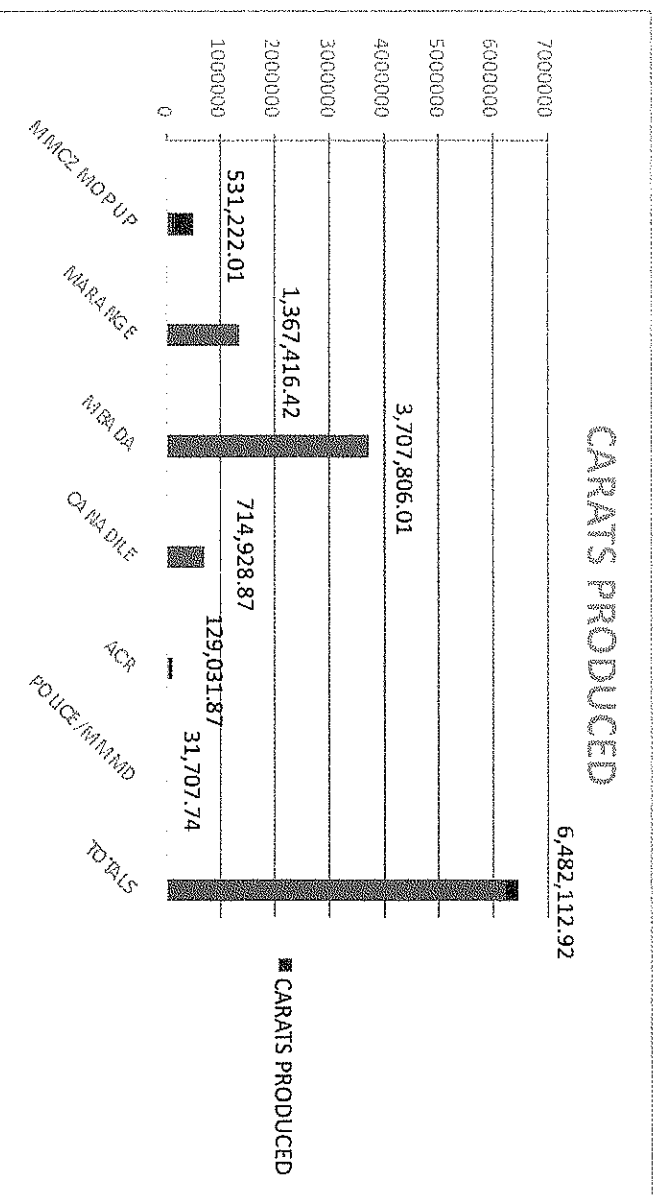
SOURCE	CARATS PRODUCED	SALES VOLUMES		STOCK
		CARATS	VALUE	
MMCZ MOP UP	531,222.01	525,167.76	5,513,134.49	6,054.25
MARANGE	1,367,416.42	1,212,218.40	25,329,683.31	155,198.02
MBADA	3,707,806.01	-	-	3,707,806.01
CANADILE	714,928.87	-	-	714,928.87
ACR	129,031.87	-	-	129,031.87
POLICE/MMMD	31,707.74	35,460.01	209,593.92	(3,752.27)
<b>TOTALS</b>	<b>6,482,112.92</b>	<b>1,772,846.17</b>	<b>31,052,411.72</b>	<b>4,709,266.75</b>
MINUS ACR				129,031.87

Source: Zimbabwe Mining Development Corporation (2010)

Notes

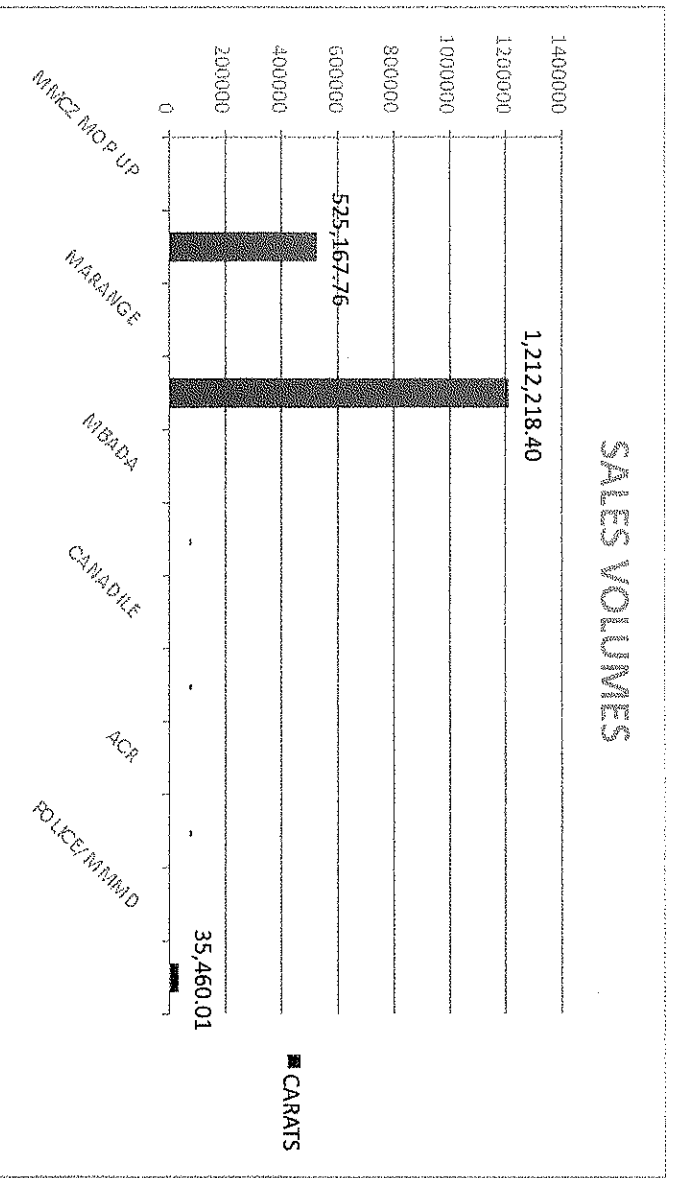
Information provided in figure 1 represents diamond stockpile accounted for between the periods of the diamond influx in 2006 to May 2010 when the KP Monitor visited Zimbabwe on his second fact-finding-mission. With the exception of Zimbabwe Republic mob-up goods and African Consolidated Resources consignment which is kept at the Reserve Bank, the KP Monitor was able to inspect all diamonds in the possession of Mbada, Canadile and the Zimbabwe Mining Development Corporation. The closing stock was confirmed to be a total of 4,580,234.88 carats.

Figure 3

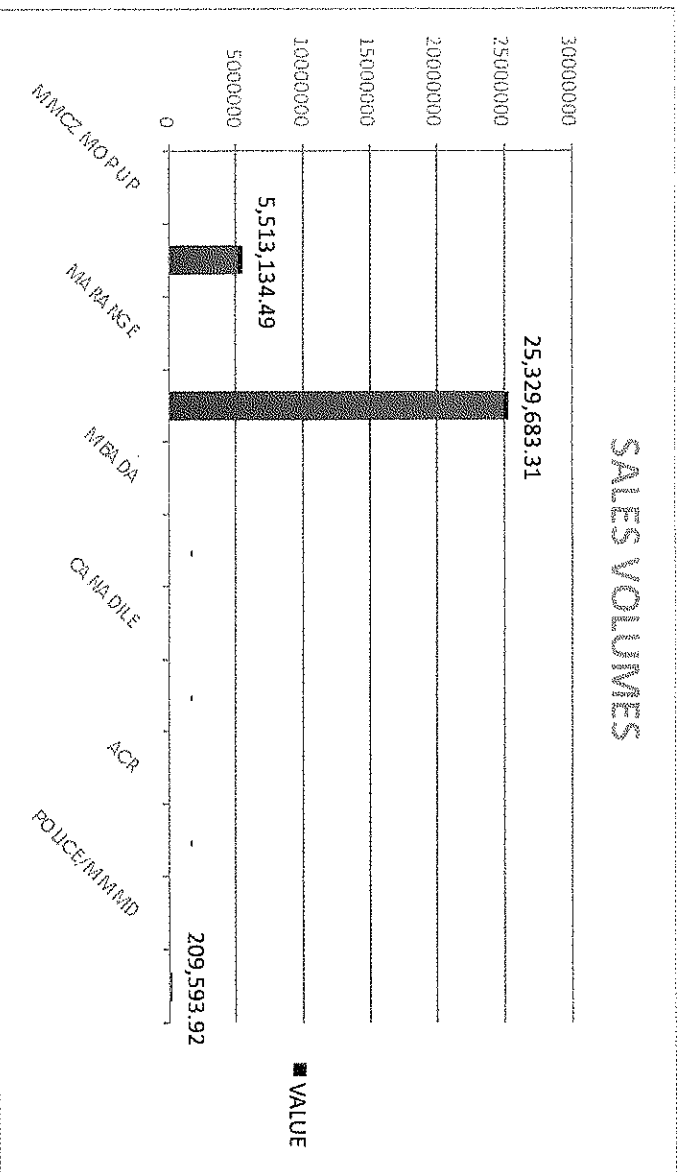


Source: Global Diamond Valuations, Namibia (2010)

Figure 4



Source: Global Diamond Valiators, Namibia (2010)



Source: Global Diamond Valutors, Namibia

#### Dubai Shipment

The WGM expressed concerns about diamond shipments that were exported from Zimbabwe and intercepted in Dubai, United Arab Emirates. The shipment was accompanied by a KP Certificate stating that the diamonds were handled in accordance with the provisions of the KPCS for rough diamonds. Unfortunately, these diamonds were not subjected to the supervision of export mechanism under which the KP Monitor should have certified them. In an intense correspondence between the Government of Zimbabwe and the WGM, Zimbabwe explained that in their discussions on the JWP in Swakopmund, it was their understanding that the diamonds produced by Marange Resources from 2007 until decommissioning in 2009 were not subject to the KP Monitor supervised export mechanism.

Zimbabwe has subsequently sent a letter to the Chairman of the WGM apologizing for the misinterpretation and undertaking to stop every shipment from export.

All future shipments from Marange will be subject to the KP Monitor supervised export mechanism.

## **CHALLENGES AND RECOMMENDATIONS**

### *Challenges*

Securing Chadzwa, Marange diamond fields

The immediate demilitarization of Chadzwa may present unintended consequences for the Government of Zimbabwe. Such consequences include the possibility that illegal diggers would return to the diamond areas. Indications are that any form of withdrawal will have to be conducted in a gradual manner. Based on this indication, the army may have to remain in Chadzwa until conditions are conducive for the withdrawal. This may mean that the Zimbabwe Republic Police and Zimbabwe National Army, in conjunction with the Ministry of Mines and Mining Development and its associated institutions, will have to produce a demilitarisation 'integrated' project plan to determine the gradual withdrawal of the army from Chadzwa.

The demilitarisation project plan will require financial and technical resources to support its implementation. The demilitarisation of Chadzwa is feasible on the following conditions

- (a) provide funding to support the integrated project plan for the withdrawal of the army; and
- (b) provide specialized competencies from the Minerals Unit as well as the Ministry of Mines and Mining Development. In the interim, the Mineral Unit will be required to support the national army by providing the necessary training and support.

### **Recommendation**

The KP Monitor recommends that KP Participants be invited to provide financial and technical support to the Zimbabwe Republic

Police, with a view to capacitate the police and expedite the process of demilitarisation. Such support should ensure that illegal mining syndicates are dealt a big blow; areas within Chadzwa that are secured by the army can be re-occupied by the police and other specialized government agencies; the security infrastructure adjoining and outside the jurisdiction of mining investors would be enhanced; and border patrols along the border with Mozambique will also be improved.

### *Private security companies*

#### **Challenge**

Private security companies operating in concessions occupied by Mbada Diamonds and Canadile are highly reputable with a track record that speaks for themselves. These companies utilize technology and equipment that is on par with that deployed in similar operations in most African countries. The challenge, which is unavoidable, is that there will always be attempts by illegal panners to penetrate their properties. In the event of such occurrences, these companies do have the necessary electronic security systems to abort the illegal entry into the mining area.

#### **Recommendation**

The KP Monitor recommends that investors should report any changes in their security infrastructure so that spot-checks can be conducted on an on-going basis by the Ministry of Mines and Mining Development. This is more relevant to Canadile Miners.

The KP Monitor can confirm that, in his considered opinion, security at Mbada Diamonds and, to some extent at Canadile Miners, is far better than most similar operations in Sierra Leone, the Democratic Republic of Congo, and

even South Africa. Having made this statement, illegal panners will always attempt penetration of the fence, much like in any mining operation in the world.

Challenges and recommendations highlighted by the KP Monitor should not be construed to constitute non-compliance.

### **Challenge**

The government of Zimbabwe faces difficulties in managing a number of challenges with regard to capacity to deal with a number of issues. On May 25, 2010, the WGM and representatives of the Zimbabwe Government held a teleconference to address the issue of technical assistance.

### **Recommendation**

The KP Monitor recommends that Southern African diamond producing countries be proactive in providing technical assistance to Zimbabwe. Such assistance could be in a form of artisanal mining, diamond valuation, security infrastructure development and more. The economic situation in Zimbabwe renders the Government incapable of dealing with some of these challenges. The KP Monitor makes an urgent appeal to neighbouring countries to demonstrate commitment to the implementation of the JWP.

### **Conclusion**

As stated above, the Plenary of the KP adopted an Administration Decision on Zimbabwe, which incorporated a JWP providing for a series of commitments by Zimbabwe to bring diamond mining in the Marange area in compliance with the minimum requirements of the KPCS, including actions to provide security and strengthen internal controls, curb illegal digging and regulate alluvial mining according to best

practice. The Government of Zimbabwe has demonstrated its commitment to meet the minimum requirements of the KP. A great deal of hard work has gone into their efforts to do just that.

The KP Monitor reports that, based on the evidence provided by the Government of Zimbabwe and private investors, and on his first-hand assessment of the situation, Zimbabwe has satisfied minimum requirements of the KPCS for the trade in rough diamonds. In terms of the Administrative Decision adopted by the Swakopmund Plenary of the KPCS, the KP Monitor is ready to supervise export arrangements, in close collaboration with the relevant Zimbabwean authorities and other relevant parties. The KP Monitor is available to visit Zimbabwe to conduct certification under the supervised export mechanism at the invitation of the Zimbabwean Ministry of Mines and Mining Development.

He awaits a notification via electronic mail or fax.

### **Other Matters**

Consistent with the composition of the KP, which comprises Participants and Observers, the KP Monitor met representatives of the industry and civil society. These are Mbada Diamonds, Canadile Miners, African Consolidated Resources and the Centre for Research and Development, respectively. In this section of the report, the KP Monitor endeavors to share some of the challenges that were encountered in the course of carrying out his duties to oversee and, where appropriate, support the Zimbabwe Government in its implementation of the JWP. The report covers incidents that involve an industry member, a Participant and a member of the civil society.

## **Industry**

### **African Consolidated Resources**

On Sunday 25 April, 2010 the KP Monitor received a telephone call from Commissioner Pule Mmutle. Mr. Mmutle is a South African Police Commissioner, responsible for the city of Pretoria in South Africa. The call was for the purpose of arranging a meeting to discuss confidential information with the KP Monitor. At the meeting, the Commissioner indicated that he had been approached by people who were concerned about the KP Monitor's next visit to Zimbabwe. These concerns related to the certification of Marange diamonds. When asked who these people were, Mr. Mmutle indicated that he could not disclose their identity. When asked about the nature of his relationship with them, he stated that a company associated with them had offered him a position as Chief of Security and that he had accepted and would be ending his contract with the South African Police Services. The KP Monitor explained to Mr. Mmutle that he was not comfortable with the manner in which Mr. Mmutle had approached him.

During the discussion, Mr. Mmutle told the KP Monitor that the people being referred to were at the same place where the meeting was taking place. He left the room after making the statement and returned with an unknown man who was introduced as Mr. Andrew Cranswick, Chief Executive of African Consolidated Resources. Mr. Cranswick expressed strong views about the KP Monitor's plans to return to Zimbabwe on Thursday, April 29, 2010, ostensibly to certify "stolen goods" from Marange. The KP Monitor informed Mr. Cranswick that the meeting was irregular and that he did not intend reflecting it in his official records. The KP Monitor also indicated that the

matter that Mr. Cranswick was referring to was sub judice and could not be discussed under the circumstances. To do so, would require both parties to sign a without prejudice agreement.

Subsequent to the abovementioned meeting, a more formal meeting was arranged on Wednesday, June 2, 2010 in Johannesburg with Mr. Cranswick. He was accompanied by his lawyer, Mr. Jonathan Samukange, and Mr. Batsirai Jambga.

The sum of the discussions was that African Consolidated Resources would provide the KP Monitor with documentation stating their position on the disputed matter between African Consolidated Resources and the Government of Zimbabwe.

## **Participant**

Unauthorized removal of documents from the KP Monitor's Briefcase

During the second visit of the KP Monitor to Zimbabwe, possibly on Monday, May 24, 2010 the KP Monitor's unattended briefcase was opened and several copies of email messages and letters from Participants and Observers, addressed to the KP Monitor relating to his visit, were taken and photocopied without the KP Monitor's knowledge or consent. One of the said documents was subsequently leaked to Zimbabwe Herald Newspaper. The Herald reported very damaging allegations about the manner in which the KP Monitor conducted his duties. The KP Monitor is in the process of establishing the facts regarding this incident before commenting further and will be requesting The Herald to provide him with an opportunity to present his side of the story. A follow-up report will be provided regarding this matter.

## Civil Society

Meeting with KP Civil Society Coalition representative, Mr. Farai Maguwu

On Tuesday, June 25, 2010, the KP Monitor was scheduled to meet Mr. Farai Muguwu, Director of Centre for Research and Development in Mutare, Zimbabwe. On arrival in Mutare, the KP Monitor reconfirmed the meeting and informed Mr. Muguwu that they would be meeting at the Holiday Inn in Mutare. Mr. Maguwu arrived very late but the KP Monitor and Mr. Maguwu were able to spend approximately 30 minutes together. During the meeting, Mr. Maguwu informed the KP Monitor that he was in possession of a document that was acquired fraudulently from the files of Zimbabwe Republic Police. He handed the document to the KP Monitor. Mr. Maguwu was aware that the KP Monitor was accompanied by officers of state agencies, including intelligence agencies. A man dressed in black and claiming to be from the 'Presidency' was seated less than a meter away from the KP Monitor and Mr. Muguwu. The KP Monitor was aware of the implications of being in possession of a fraudulently acquired document and consulted with an official of the Ministry of Mines and Mining Development about the authenticity of the document and the implications of being in possession of the document, if the document was indeed stolen.

The KP Monitor was in possession of this document for four days before he determined a course of action. Following legal advice, the KP Monitor concluded that the possession of a top secret document had criminal implications.

The KP Monitor took Mr. Maguwu's actions very seriously and felt that Mr. Maguwu could have implicated him in an unlawful action. The KP

Monitor solicited a legal position for use by the KP family, namely that:

The legislation applicable to the circumstances relating to fraudulent possession and distribution of the Joint Operation Command ("JOC") report Mr. Maguwu

1. Official Secrets Act Chapter 11.09
2. Criminal Law Codification Act Chapter 9:3
3. The above legislation is applicable and relevant to the circumstances surrounding the possession of the JOC report by Mr. Maguwu. JOC is a Council of Security Chiefs which sits regularly to discuss top secret security matters relating to the country as part of the Executive Governance of the country.
4. JOC was established by the President for the specific purpose of addressing the confidential and top secret government business which is assigned to the Security Chiefs, from time to time.
5. During the visit by the KP Monitor, Mr. Maguwu, who admitted to having fraudulently acquired a top secret JOC report, gave the KP Monitor a copy of this report. The circumstances of the acquiring of this report by Mr. Maguwu and subsequently passing it on to the KP Monitor has clear criminal implications which are outlined here.
6. The Official Secrets Act is an act of Parliament which prohibits the disclosure for any purpose prejudicial to the safety or interests of Zimbabwe, information which might be useful to an enemy. It further provides for the prevention of persons from obtaining or disclosing official secrets from Zimbabwe and further provides for the prevention

of or the making or reproduction of any documents protected by law. An enemy in terms of this Act is defined as including a hostile organization.

7. Under Section 3 of the Official Secrets Act any person who, for any purpose prejudicial to the safety or interests of Zimbabwe, obtains, collects, records, publishes or communicates to any person any model article, document or other information which is calculated to be or is intended to be useful directly or indirectly to an enemy shall be guilty of an offence and liable to imprisonment for a period of not more than 25 years.

8. It is common cause that Mr. Maguwu and indeed persons that have been questioned in relation to the circumstances relating to his unlawful possession of the JOC report have confirmed that it was fraudulently acquired. The offence of fraud in the circumstances would remain a continuing offence in relation to persons that would come into possession of the fraudulently acquired information and seek to place reliance thereon. The admission of the fraudulent acquisition of the JOC document bar the protection of its contents by virtue of the operation of the Official Secrets Act itself completely makes it unlawful for any other party to possess the same document or claim any lawful right to possess the same.

9. The JOC document was communicated to the KP Monitor as part of inputs to the process that the KP Monitor was undertaking. Inputs taken together with the admission of fraud clearly establishes the intention to falsify and to communicate such falsified statements

to the prejudice of the State in contravention of Section 31 of the Criminal Codification and Reform Act were it is provided as follows :-

Section 31(a) "...a person who whether inside or outside of Zimbabwe publishes or communicates to any other person a statement which is wholly or materially false with the intention or realizing that there is a real risk or possibility of" :-

i)" Adversely affecting the defense or economic interests of Zimbabwe

Shall be guilty of an offence-----"

10. Given the above facts and circumstances it is clear that the KP Monitor had been put into a position of unlawfully possessing a classified document protected by the Official Secrets Act and acquired fraudulently.

11. The unlawful conduct of Mr. Maguwu threatened consequences on the KP Monitor under the National Laws of Zimbabwe and a possible diplomatic row between Harare and Pretoria and could have led to the KP Monitor being questioned or arrested for possessing a document that he had no lawful right to possess.

In light of the above the KP Monitor implores the WGM, and most importantly the NGO Coalition, to see this matter in a legal context. In terms of the Officials Secret Act, the KP Monitor, if found guilty, could have been liable to imprisonment.