

A Tale of Two Countries

A comparison of Botswana and Zimbabwe's
Diamond Industries



CENTRE FOR NATURAL RESOURCE GOVERNANCE



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1.0 Introduction

In 2012, the Southern African Development Community (SADC) region produced 56.1%¹ of the global production of rough diamonds. However this region remains one of the poorest in the world. Within SADC, 45.4 %² of the production came from Botswana and Zimbabwe. These two countries paint contrasting pictures of the SADC region as shown in Table 1.



Fig 1: Southern African Development Community (Source: ABOT Technology)

Table 1: A comparison of social and economic indicators in Zimbabwe and Botswana³

| Botswana | Indicator | Zimbabwe |
|----------------------|--------------------------------|-----------------------|
| 2.1 (July 2013 est.) | Population (millions) | 13.2 (July 2013 est.) |
| 30.3% (2003) | Poverty rate (% of population) | 68% (2004) |

¹ Kimberly Pcess Statistics 2012,

https://kimberleyprocesstatistics.org/static/pdfs/public_statistics/2012/2012GlobalSummary.pdf

² Kimberly Pcess Statistics 2012,

https://kimberleyprocesstatistics.org/static/pdfs/public_statistics/2012/2012GlobalSummary.pdf

³ World Factbook, <https://www.cia.gov/library/publications/the-world-factbook/>

| | | |
|----------------------|---|---------------------------|
| 17.8% year | Unemployment Rate | 95% (2009 est.) |
| 85.1 | Literacy Rate (%) | 83.6 |
| 54.47 | Life Expectancy at Birth (years) | 53.86 |
| 9.9 | Infant Mortality Rate (per 1000) | 27.25 |
| \$17,100 (2012 est.) | GDP per Capita | \$600 (2012 est.) |
| 14.4% (2012 est.) | Public debt | 187.3% of GDP (2012 est.) |
| 0.8% of GDP | Budget Surplus | na |
| 24.8% | HIV / AIDS Prevalence rate | 14.7% |
| 30th | Position on the Transparency International Corruption Perceptions Index | 163rd |
| 56 | Ease of doing business rank | 170 |

On one side is Zimbabwe, a nation well-endowed with mineral wealth which is slowly recovering from a decade long economic meltdown epitomized by the highest inflation rates ever recorded in a nation not at war. On the other is Botswana which basically survives on its diamond wealth and yet recorded the highest economic growth rate in the world over the past 37 years at an average of 9% annually.

Since its independence in 1980, Zimbabwe has been on a downward spiral from one of the biggest food exporters in the region to a country dependent on food aid. The country's once vibrant manufacturing industry has all but disappeared resulting in a high rate of unemployment which has led to the immigration of an estimated 3 million people to South Africa, the United Kingdom, United States, Australia and Botswana itself. Zimbabwe has a debt of almost \$10 billion and its currency has become useless and was replaced by a multi-currency system which ironically includes Botswana's Pula.

Botswana is a nation that has been depicted as an exceptional success story in a region full of economic and political turmoil. At Independence in 1966, Botswana was a poor, undeveloped and seldom heard of part of the world. Forty years later, it is regarded as a growth miracle (Samatar 1999), a sign of hope for sub-Saharan Africa, and as an exemplar of prosperity and success. The country experienced a staggering GDP per capita increase of 13% per annum in the years 1980–89 (Mpabanga 1997), and a long-run growth over the last four decades that even surpasses the performance of the Pacific Asian tigers (Leith 2005: 4, Table 1.1).

The explanation for the success story is found mainly in limited colonial influence, good laws, functioning state institutions, visionary leadership and prudent economic policy. Since its independence in 1965, Botswana has had the highest average economic growth rate in the world. Growth in private sector employment averaged about 10% per annum over the first 30 years of its independence. The government has consistently maintained budget surpluses and has extensive foreign exchange reserves. The Botswana government established a Revenue Stabilisation Fund (RSF) and a Public Debt Service Fund (PDSF) in 1972, when the first mine was being constructed. Through these funds, the government saved a large fraction of revenues, and sustained high recurrent surpluses. When a downfall in diamond export earnings occurred in 1981/82 and in 1994, public expenditure levels could be maintained by using existing government surpluses. Around two-fifths of the mineral rents were sterilised in offshore investments. By the mid-1990s the interest earned by these rents had reached 12% of GDP and made a significant annual contribution to government revenue. The accumulation of international reserves avoided real appreciation of the local currency. This allowed tradable goods other than minerals to maintain competitiveness on world markets, and hence encouraged economic diversification into small and medium manufacturing enterprises (aided by tax concessions), cattle industry and vehicle assembly.⁴

2.0 Background

In 2012, Botswana produced the most diamonds by value, worth \$ 2,979,400,296.54⁵. Zimbabwe on the other hand lies at seventh having produced \$ 644,033,522.30⁶ worth of diamonds (It is however important to note that Zimbabwe produced the fifth highest number of diamonds by volume and the value of its diamonds per carat is lower than that of Botswana due to the quality of diamonds and the restrictions that the Zimbabwe Mining Development Corporation was under from the western countries.

Since independence Botswana has been ruled by one party, the Botswana Democratic Party (BDP). Botswana has consistently held elections every five years which are regarded as the most free and fair on the continent. The BDP's founding leader, Sir Seretse Khama, had an enlightened mineral

⁴ Case Botswana

⁵ World Factbook, <https://www.cia.gov/library/publications/the-world-factbook/>

⁶ World Factbook, <https://www.cia.gov/library/publications/the-world-factbook/>

policy at the time of independence. Botswana's mineral sector had two pertinent issues which required special attention. Firstly, the land and the minerals beneath it were vested in individual ethnic groupings. This meant that a chief in whose territory a major mineral discovery happened to lie would have considerable economic and political power, at the expense of the state. In the early 1960s most of the known mineral deposits and the major initial finds were located in the territory of Khama's own Bamangwato ethnic group, forcing Khama to choose between his own people and the nation. Secondly, some mineral rights had, in the past, been ceded to private companies. Khama's choice was made clear in the BDP Election Manifesto of 1965:

*"...leaving mineral rights vested in tribal authorities and private companies must necessarily result in uneven growth of the country's economy, as well as deprive the Central Government of an important source of revenue for developing the country. ...It will be the policy of the BDP Government to negotiate with all parties concerning the takeover of the country's mineral rights by the Central Government, and subsequently expand the present mining operations and step up prospecting activities throughout the territory."*⁷

When De Beers discovered diamonds the land and minerals were owned by the State and it was thus in a good bargaining position. Initially, the government took a 15 % stake in the diamond mines, but once De Beers revealed the true scale and value of the diamonds, the government renegotiated the contract to the current equal and joint ownership of Debswana⁸. Further, in 1987 the government actually purchased five per cent of the shares of De Beers itself as a way to diversify the economic base away from its own diamond mining industry. DeBeers has formed partnerships with the Botswana government. The first area is actual mining and the second is sorting, cutting, polishing, aggregating, and marketing diamonds through the Diamond Trading Company (DTC). Currently Botswana has four principal diamond mines that are expected to last another twenty years, though exploration is ongoing. These four mines are all owned by Debswana and are Jwaneng, Orapa, Letlhakane and Damtshaa.

Zimbabwe too has been ruled by one party, ZANU-PF since independence (albeit the five year Government of National Unity when ZANU-PF shared power with the two MDC formations). At independence, the ZANU-PF manifesto had thirteen fundamental rights and freedoms, of which

⁷ Originally found in the BDP manifesto, these quotes comes from Leith (2001) and Hazelton (2001).

⁸ Ralph Hazleton, 2001. Diamonds: Forever or For Good? *The Economic Impact of Diamonds in Southern Africa*

Number 12 was the right to personal property. The government kept the Mines and Minerals Act in its entirety which vested all minerals in the President.

Until the 'discovery' of diamonds in Marange, Zimbabwe had two diamond mines: the Rio Tinto (British-Australian) owned Murowa in Zvishavane and River Ranch in Beitbridge. Murowa's diamonds are sorted in Belgium⁹. With the discovery of the Marange diamonds Zimbabwe has become one of the largest diamond producing countries in the world.

3.0 Six stages of diamond production

The diamond supply chain has six stages:

1. Exploration
2. Mining
3. Sorting
4. Cutting and Polishing
5. Jewellery Manufacturing
6. Retailing

The state of these six stages in Botswana and Zimbabwe is discussed and compared below:

3.1 Exploration

Botswana

The Department of Geological Survey offers the prospecting licenses that the Botswana Mines and Minerals Act (BMMA) controls. The Department also offers a reconnaissance permit that allows the holder to survey the entire country without financial obligation. Generally, the Department of Geological Survey is responsible for gathering data on Botswana's mineral wealth, and the Department has received significant technical aid from foreign countries. The World Bank significantly credits the Department of Geological Survey for the mineral development in Botswana. One of the World Bank's subsidiaries, the International Finance Corporation (IFC), has invested \$ 5 million in Tsodilo Resources Limited, a diamond, base and precious metal exploration company concentrating its exploration efforts in northwest Botswana.¹⁰

⁹ www.riotintodiamonds.com>Home>Our mines

¹⁰ <http://www.mmegi.bw/index.php?sid=4&aid=3332&dir=2010/June/Tuesday29#sthash.GjLwdA38.dpuf>

Botswana continues to explore for new diamonds. The government encourages companies other than De Beers to participate, although De Beers is involved in almost all the present exploration. De Beers' Prospecting Botswana Pty Limited (Debot) started exploring in the 1950s, and is currently working on prospecting licenses covering more than 55,000 square kilometres, either on its own or in joint venture partnerships with other companies. Other prospecting companies partnering with De Beers have included TNK, Billiton, Ampal, SouthernEra, Repadre Corporation, Cratonic Resources and AfriOre.¹¹

Zimbabwe

Prospecting is the first step in obtaining mining rights in Zimbabwe. According to the Zimbabwe Mines and Minerals Act (ZMMA), prospecting can only be carried out by an individual approved by the Ministry of Mines and Minerals Development. A prospecting licence is purchased from the Ministry of Mines and Minerals Development. The licence entitles one to prospect one block of claims on any land open to prospecting i.e. communal land, state land and privately held land. A block of claims is a group of claims that have been registered under one certificate of registration. A standard block of precious metal/stone claims should be a parallelogram 500 metres long and 200 metres wide. There are two types of base metal blocks:

- a) Ordinary base metal block which constitutes of up to 25 claims
- b) Special base metal block which constitutes of up to 150 claims where one claim is one hectare of land.

If an investor intends to prospect a certain area exclusively, they must obtain an Exclusive Prospecting Order (E.P.O). An EPO is an order issued to a prospector which gives the right to exclusively prospect a certain area. The area covered by an EPO is called an exclusive prospecting reservation. In order to prospect on land which is not open to prospecting, one must obtain a Special Grant (it is important to note that there are two types of Special Grants, one for prospecting and the other for mining).

Diamonds have been recently discovered in Bikita and Chimanimani. Mr Mark Mabhudhu, the chief operating officer of Marange Resources (Private) Limited (Marange) recently

¹¹ Mmegi, World Bank Subsidiary invests in Botswana mining firm,
<http://www.mmegi.bw/index.php?sid=4&aid=3332&dir=2010/June/Tuesday29>

divulged that they are planning exploration activities in Buhera and Chimanimani. The Zimbabwe Mining Development Corporation (ZMDC) wholly-owned subsidiary is also reportedly in talks with Mbada Diamonds to enhance their cooperation in exploration. In March 2013 four kimberlitic pipes rich in diamonds were discovered in Budzi communal lands in Bikita near the border with Manicaland Province.¹² The Russian diamond mining giant, Alrosa is also believed to be prospecting in Zimbabwe.

3.2 Mining

3.2.1 Legislation

Botswana

The principal act that controls and regulates exploitation of minerals in Botswana is the *Mines and Minerals Act* of 1999. According to the Act a mineral concession must first be obtained before one can engage in any exploration or mining activity. In this regard, for an individual to conduct exploration or mining one has to have a mining concession issued by the Minister of Minerals, Energy and Water Resources.

There are two other subsidiary pieces of mining legislation which apply specifically to the protection and the cutting of diamonds. These are the *Precious and Semi Precious Stones Protection Act* and the *Diamond Cutting Act*. The former prohibits unlawful possession of rough diamonds and requires submission to the Minister responsible for minerals, monthly returns detailing precious stones won, recovered, received, manufactured, purchased or imported into a precious stones protection area. With the advent of Kimberly Process Certification Scheme (KPCS), further regulations were issued under this Act prohibiting, any import or export of rough diamonds without the Kimberly Process (KP) certificate.

The Diamond Cutting Act regulates the beneficiation of diamonds. This Act sets out how diamond – cutting licenses can be obtained and the conditions that go with such licenses. Holders of the diamond cutting license have to comply with the provisions of the Precious and Semi Precious Stones Protection Act with regards to security and the KPCS.

¹² Daily News, *Marange in diamonds exploration*, <http://www.dailynews.co.zw/articles/2013/07/26/marange-in-diamonds-exploration>

The penalty for unlawful dealing in rough diamonds or unlawful possession of rough diamonds is imprisonment for a period of between 5 and 15 years¹³. There also exists the Import and Export of rough diamonds regulations. In terms of law enforcement, the Botswana Police Service through the division of Diamond and Narcotics Squad advise on diamond security among other things as well as deal with the prevention of illegal diamond dealings.¹⁴

Zimbabwe

Zimbabwe's mineral sector is regulated through several Acts of Parliament and Statutory Instruments. This presents a complex scenario for the public and potential investors who have had to interpret Zimbabwe's Mineral Policy from these diverse sources of information. In March 2013, the Government released a Draft Mineral's Policy which seeks to map the way forward for the Zimbabwean mining industry. However unless the policy is translated into the appropriate laws and regulations its provisions are not enforceable at law.

Zimbabwe's mining law is based on the Canadian mining law system, and was first introduced at the turn of the century. Soon after colonization, The British South Africa Company was given a mandate to administer the country and as such owned all the mineral rights with a few exceptions. Any person who wanted to mine, had to purchase these rights from the Company. In 1923 the mineral rights were sold to the Government and all the rules applying were then taken over by Government. As such, today, the mineral resources of Zimbabwe are vested in the President.

Zimbabwe's Mines and Minerals Act (ZMMA),(Chapter 21:05, 1961), is the principal Act governing the mineral sector. It defines minerals as any precious metal, precious stone, coal or base metal. This does not include mineral oils, natural gases, sand clay and stone including limestone, which are required and used for construction. Diamonds are classified as a precious stone. The Mines and Minerals Act governs the mechanics of claiming a piece of land and lays the ground rules for beginning to mine from it. It has provisions for different types of mining titles, i.e.

1. **Mining location:** a block of claims which has been registered for mining
2. **Mining lease:** the title given when the miner has many blocks of claims and wants to register them all under one mining title.

¹³ Precious and Semi-Precious Stones (Protection) Act, Chapter 66:03 (Botswana)

3. **Special mining lease:** this is the title given to a company/individual which holds two or more blocks which lie side by side, intends to invest over US\$100 million and whose mining output will be exported.
4. **Special grant:** the mining title that gives the right to mine coal, mineral oils or natural gases.

3.2.2 Comparison of Zimbabwe's and Botswana's Mining Legislation

1. The Zimbabwe Mines and Minerals Act vests the minerals in the President whereas the Botswana Mines and Minerals Act (BMMA) vests the minerals in the Republic. While largely symbolic, the ZMMA misplaces the benefit of mineral rights in the Presidency and the government rather than in the people. The BMMA requires that the Minister act in the public's interest whereas the ZMMA requires that the Minister act according to the orders of the President. Rarely does the BMMA refer to the President, and the Department of Mines carries all decisions related to mining.
2. The ZMMA vests authority in upper government members. This coupled with ambiguous criteria to make decisions, results in corruption in the awarding of mining contracts, a disconnection and direct conflict between mining interests of government and extractive industries on one hand and the Zimbabwean public on the other and lack of revenue transparency. The BMMA on the other hand has specific requirements that low-level officials can monitor. It uses template forms and bullet-list requirements which make it a more transparent law. This allows lower-level officials to make the majority of findings, allow potential investors to understand their rights and obligations and allow courts to review decisions.
3. Botswana does not have ownership requirements but the BMMA permits the government to acquire a 15 percent stake in any mining license, unlike in Zimbabwe where the Indigenization Act requires 51% local ownership of any mining venture. While this is a noble venture to empower the people of Zimbabwe it has been abused to benefit an elite. The ordinary, apolitical Zimbabwean does not know how to participate in the indigenization program.
4. Botswana organizes administration of mining differently from Zimbabwe. The Minister of Minerals, Energy and Water Resources oversees the Botswana's Departments of Mines, of Geological Survey, and of Water Affairs, as well as the government's electric and water utilities. Mine prospecting is generally covered by the Department of Geological Survey while mining leases are covered by the Department of Mines. Zimbabwe has three ministries that oversee mining, energy and water resources i.e. Ministry of Mines and Minerals

Development, Ministry of Energy and Power Development and the Ministry of Water Resources and Development. It is also interesting to note that minerals such as coal bed methane and petroleum are under the mandate of the Minister of Energy and Power Development.

5. ZMMA gives the Minister the discretion to set royalties while the BMMA requires royalties to be fixed percentages of gross market value. The BMMA (Section 66(2)) contains the percentages for different types of minerals, while Section 66(3) defines gross market value. If problems arise with this procedure, the BMMA permits the Minister to rely on industry norms subject to judicial review. The BMMA thus contains objective criteria subject to judicial review which results in a transparent law that provides investors with a clear understanding of the potential benefits and costs of mining in Botswana.
6. The BMMA requires that disputes resort to the court systems whereas the ZMMA requires that appeals be made to the President, Minister or Secretary whose decisions are final which creates a highly politicized and patronized mining system.
7. In Botswana the Export and Import of Rough Diamond Regulations effectively codifies the Kimberley Process. The Precious and Semi-Precious Stones (Protection) Act provides penalties for the smuggling of precious and semi-precious stones. In Zimbabwe the formulation of the Diamond Act which codifies the Kimberley Process has been delayed. However Section IV of the KPCS Core Document states that 'each participant shall, as required, amend or enact appropriate laws or regulations to implement and enforce the Certification Scheme and to maintain dissuasive and proportional penalties for transgressions'.
8. The ZMMA confuses mining law with property law. Contained within the ZMMA are regulations governing the construction of fences when mines are adjacent to pastures. There are regulations governing how liquor is sold near mining locations. Additionally, there are several sections in ZMMA regulating the use of water despite having a separate Water Act. This underscores the need for a new Mines and Minerals Act which does not contain such colonial overtones.

3.3 Sorting

Botswana's diamonds were all sorted in London since the beginning of diamond mining in the country. However Diamond Trading Company (DTC), a subsidiary of De Beers, has relocated its London-based sorting and sales activities to Botswana from November 2013. Botswana held its first sale of rough diamond boxes between November 11 and 14 2013. As a part of an agreement between De Beers and Botswana government, the rough diamonds will be sold from Gaborone. It is

estimated that around \$6 billion worth of rough diamonds will be sold from Gaborone to the DTC sightholders in the 10 sale sights throughout the year. Indian DTC sightholders constitute around 50 per cent of the total sightholders across the world and many are expected to set up offices in Botswana.¹⁵

It is believed Zimbabwe's diamonds are sorted in Harare but due to the opaque nature of the diamond industry, it is difficult to establish where exactly the sorting is done.

3.4 Cutting and Polishing

Historically, De Beers was an opponent of downstream processing in Africa and has only recently shifted its position to one which is largely supportive. One argument against beneficiation in SADC has been the cost of cutting and polishing. In 2009 the government of Botswana estimated this cost to be about \$100/carat. In 2011 it revised this cost down to between \$35 and \$60 per carat compared to India (US\$ 10 per carat), China (US\$ 17 per carat) and Thailand (US\$ 20 per carat). There is nothing to suggest this cost is less in Zimbabwe.

The normal industry rule of thumb for cutting and polishing is that the cost of cutting and polishing should not exceed 10% of the value of the rough. The World Bank has funded many researches that have shown that Beneficiation will not profit the SADC region. However this begs several important commercial questions that bear upon the development of one of SADC's most important export industries. The first question is that if the cost differentials are as large as suggested between that of SADC producers and lower cost cutting and polishing countries in Asia then why are there beneficiation activities beginning to occur throughout the SADC region? Second, if costs are such an important factor in determining the location of where diamonds are processed why are so many diamonds still cut in countries like Israel, Belgium and the USA where costs are considerably higher than in India or in Southern Africa?¹⁶

In Botswana sight-holders are selected on the following:

¹⁵ Times of India, *Diamond Trading Company clients will fly to Botswana for roughs*, http://articles.timesofindia.indiatimes.com/2013-11-10/surat/43885082_1_sightholders-diamond-trading-company-botswana

¹⁶ Professor Roman Grynberg, Masedi Motswapong and Diana Philimon, *Diamond Beneficiation and the WTO*, 2012.

- global competitiveness criteria which assesses technical; marketing and distribution efficiency
- local criteria which seeks to promote skills development; job creation; and local manufacturing.

India has created a cutting and polishing industry which did not exist 40 years ago with employment of some 800,000 workers with no rough diamond production in the country whatsoever. Thus the argument against cutting and polishing in SADC, coming mainly from outside the region, must not be taken seriously. Rather SADC countries should start investing in skills development and declare that a quota of diamonds produced in the region will be cut and polished locally. Alternatively SADC must impose taxes on miners who export diamonds in the rough.

In 2012, Zimbabwe's government announced that it had produced a quota system where 10 percent of Zimbabwe's diamonds would be cut and polished locally. The President revealed that in 2011 only 0.1 percent of diamonds produced in Zimbabwe were cut and polished locally. It is important to note that the quota system announced by the President is not backed by policy or legislation. The Zimbabwe Diamond Policy which was unveiled in November 2012 does not stipulate what percentage of diamonds will be set aside for beneficiation locally. It says 'a quota of all locally produced rough diamonds as set by the Minister of Mines and Mining Development shall be reserved for local beneficiation'. The policy also promises that 'government shall offer incentives to players in the local cutting and polishing industry'. However government pushed many players out of the sector by increasing the licencing fees from \$20,000 to \$100,000 in 2012. In 2013, only 6 out of 29 companies managed to reapply whilst others were delisted. This fee was later reduced to \$50,000. Whilst there are laws on prospecting, exploration, mining and marketing of rough diamonds, Zimbabwe has no law on cutting and polishing of diamonds. This lack of legislation makes it difficult to enforce the quota system.

3.5 Jewellery Manufacturing and Retailing

Both Botswana and Zimbabwe have jewellery manufacturers and retailers to cater for their local markets. These markets usually are for small stones which in turn leads to the local cutting and polishing of smaller, low-value stones. The two countries can make efforts to package jewellery shopping in their tourism industry to attract higher spending buyers. Local cutters and polishers, and jewellery manufacturers can also set up retail stores in the top retail locations such as New York, London, Paris and Tokyo.

4.0 De Beers in Zimbabwe

De Beers Private Company prospected in Marange from 1963 – 1965. At the time the company was controlled from London. In 1965, De Beers submitted a misleading report to the Rhodesian Government on Marange to avoid cooperation with the illegal UDI regime under Ian Smith. The Report concluded that there was a red conglomerate rock in Marange that sometimes harbored diamonds and that this phenomena was unique because throughout Southern Africa diamonds had only been found in Kimberlite rocks. The report concluded that diamond mining in Marange was not a viable investment.

From 1965 to 1980 Zimbabwe underwent a Liberation Struggle that resulted in a black majority government in 1980. From 1980 to 2006 De Beers kept a tight lid on the Marange discovery. In 1994 De Beers won an EPO for Marange diamond fields and prospected for 12 years (1994 – 2006).

An Affirmative Action law enforced in the late 90s required that exclusively white owned companies employ locals and this forced De Beers to employ black Zimbabwean geologists for the first time. However they were not given access to Marange. During this time De Beers employees set up a small clandestine diamond processing plant at Bezel Bridge near Marange while De Beers submitted another report to the government similar to the 1965 report claiming that Marange is not a viable investment option, but it nevertheless continued “Prospecting”.

Villagers and local geologists began pressurizing government to act on the clandestine operations and in 2006 De Beers notified the government that it would not seek to have its EPO extended. On 29 March 2006, De Beers license expired and De Beers officially pulled out of Marange. Some former De Beers employees instructed locals to start panning for diamonds which they would buy once every fortnight, marking the beginning of illegal panning activities. The borderline criminal activity of De Beers in Zimbabwe is in stark contrast to its role as a development partner in Botswana.

5.0 Corporate Social Responsibility

Botswana

Debswana manages a fund for development activities. During 2000, the Debswana Donations Fund allocated approximately \$562,000 to a variety of projects in Botswana. Approximately one third of the Fund was donated to organizations that care for and rehabilitate disabled children and adults. The donations take the form of cash for specific projects and ‘in-kind’ donations of equipment and vehicles. An additional one third of the Fund in 2000 went to various community development

projects in small rural communities. The remaining third of the Fund was divided between environmental and HIV/AIDS projects.

However CSR has not been all rosy in Botswana. In January 2002 several hundred Basarwa, or San people living in the Central Kalahari Game Reserve were about to be evicted from their land by the government. 'The government says it wants to protect the wildlife, and cannot afford to keep track of the Bushmen,' reported the BBC. 'But many believed that they were motivated by the huge mineral wealth the Kalahari is believed to possess, including diamonds and possibly uranium.' De Beers issued a statement saying that its interests in the area are limited to a 45km² fenced area in which no families live. 'It is unlikely that any mining will take place in the foreseeable future,' De Beers said.¹⁷ Survival, a London-based NGO with offices not more than two blocks from De Beers' own London headquarters, says 'the Botswana government is trying to drive the "Bushmen" out of the area to make way for tourism and diamond mining. Over a thousand have been coerced into moving out.' By early 2002, the government had closed health clinics in the area and stopped food trucks, and had dismantled the only water pump.

Zimbabwe

De Beers obtained an Exclusive Prospecting Order for Marange in 1993 and held the claim till 2006. The company claimed they did not find Marange viable for investment. However when De Beers left Marange in March 2006 artisanal miners flooded Marange where they made fortunes within a short space of time. In November 2008 the government of Zimbabwe sent in troops to drive out the estimated 35 000 artisanal miners in Marange. Human Rights Watch and local civil society estimate that over 200 artisanal miners were gunned down during the cleanup operation.¹⁸ After securing the diamond fields government began issuing special grants to private companies for diamond mining in Marange.

In 2010 government started relocating families living in and around the diamond fields. Arda Transau, a government farm about 60km north of Marange was identified for the relocation of over 4100 Marange families. Each company was asked to build houses and resettle families affected by its operations. Over a thousand families have been relocated so far. Although these are families which survived on subsistence farming in Marange, no land for cultivation was set aside for them, thereby

¹⁷ Sources: De Beers, Survival, BBC and other news sources.

¹⁸ Diamonds in the Rough. Human Rights Abuses in the Marange Diamond Fields of Zimbabwe.

creating a perennial food crisis. Companies such as Mbada diamonds have given the relocated families quarterly food hampers but there is no long term solution to the food crisis. The relocated families were not compensated for the loss of their ancestral homeland and livelihoods. No valuation of properties was carried out before demolition of the homesteads in Marange, thereby diminishing the bargaining power of the communities when negotiating compensation.

6.0 Diamond Financial Flows

6.1 Taxation

In Botswana over 70 per cent of the profits of the diamond industry are paid to the government. This is in contrast to Zimbabwe where only 6 per cent of diamond revenues in 2012 was paid to the government (source). In Botswana, two other large sources of government revenue are also largely diamond dependent. Customs fees from the Southern Africa Customs Union (SACU) are generated to a large extent from the export of diamonds, and interest on foreign investment and bank accounts is also derived mainly from diamond profits. In all, approximately 85 per cent of Botswana's revenue is derived from diamonds. In 2008 Diamond Dividends contributed 78.27% of Mineral Revenues while Diamond Royalties contributes 19.54%.

Zimbabwe

Statutory Instrument 11 of 2012 increased fees for registering diamond claims from \$1 million to \$5 million with a new ground rental fee of \$3,000 per hectare per year. The fees go to the Ministry of Mines. However, there is lack of transparency in the utilisation of the revenue as this is not being paid directly to the Treasury¹⁹.

| Botswana | Taxation | Zimbabwe |
|-----------------------------------|------------------------|------------------|
| | Fee to register claim | \$5 million |
| 10% (based on gross market value) | Royalty | 15% (ad valorem) |
| 25% of taxable income | Corporate tax | 25% of income |
| | Resource depletion fee | 2.5% of revenue |
| | Marketing fees | 1.2% of revenue |
| Variable* | Dividends | 50% of profits |

¹⁹ Zimbabwe Environmental Law Association, *An Outline Of The Mining Taxation Regime In Zimbabwe*

| | | |
|--|-------------------|---|
| | Withholding tax | 10% of foreign investor's dividends that leave Zimbabwe |
| | Ground Rental Fee | \$ 3,000 |

Table : Comparison of Botswana and Zimbabwe diamond mining taxation models

*The amount of the dividend is calculated so as to bring government's aggregate revenue up to a contractually agreed share of positive net cash flow. The dividend paid to the private shareholder (De Beers) essentially consists of whatever cash remains after the government has received the amount due to it. It is the variable dividend which enables the government to take in excess of 70 percent of the profits of Debswana, rather than the 35 percent or so that would result from statutory tax and royalty. The dividend arrangement is a function of the profitability of the business, which means that both the government and De Beers have an interest in making the industry successful²⁰

6.2 Illicit financial flows

Botswana has a good regulatory framework, and is considered by many not only to be the least corrupt country in Africa, but as on par in this regard with Western Europe²¹. A clear national vision, rule of law, good governance, and a strong adherence to the KP minimum standards have played a strong role in preventing Botswana from becoming both a source of origin and a transit country for conflict diamonds. On the Transparency International 2001 Corruption Perceptions Index (CPI), Botswana is ranked 26th out of 91 in terms of 'clean' government. It ranked higher than any other country in Africa, all countries in Asia except Taiwan and Singapore, and all countries in South and Central America, except Chile. It also surpassed many European countries, including Italy, Hungary, Greece, Poland, the Czech Republic and Russia.

Zimbabwe should monitor the export destinations for its diamonds. Kimberly public statistics in 2012 show the United Arab Emirates, which produces no diamonds, imported 59 million carats of rough diamonds at \$ 4.6 billion. In the same year UAE exported 60 million carats of rough diamonds at \$ 6.8 billion. In other words 46% of the 2012 world rough diamond production transited the UAE without processing and over \$ 2.2 billion (31%) was added to its value in a jurisdiction where there is no tax. The former chairman of the Minerals Marketing Corporation of Zimbabwe, Christopher Mutsvangwa was quoted as saying, "Dubai was our saviour". In 2011, Dubai imported \$408 million of Zimbabwean diamonds. The Herald of 7 August 2012 carried an article titled "UAE top buyer of Zim gems" praising the emirates for buying Zimbabwe diamonds.

²⁰ Botswana Investment Guide

²¹ Robinson & Parsons 2006

6.3 Employment

Botswana

The Botswana diamond industry employs nearly 6,000 workers, and although this represents slightly less than three per cent of the formal labour force, it is still the largest sector of employment. Compared with workers in other sectors, diamond workers are the 'labour aristocracy'. Debswana pays a minimum wage of Pula 900 (US\$169) a month, compared with the national minimum wage of Pula 475 (US\$89) per month. Diamond workers also receive medical benefits (70-80 per cent paid), and 20 per cent of salary contribution to a pension fund. Housing is provided free and is typically not in hostels but in semi-detached houses with electricity, water-borne sewage, in-house water taps and gas. All electricity and water costs are subsidized, and gas is generally free. All wages and other basic conditions of employment are negotiated in the Debswana Negotiating Forum.

Zimbabwe

No official figures for employment are available in Zimbabwe's diamond sector but it is estimated that there are over 6,000 employees.

7.0 Lessons for Zimbabwe

1. Legislation

- a) Currently, Zimbabwe does not have sufficient regulation to harness the economic strength that could come from diamond mining (Robb 2012). Diamond mining needs certain requirements: the expertise and capital of a foreign corporation to bring heavy mining equipment, foreign investors need to be attracted by profits to invest, workers need to be paid salaries sufficient to attract them to the fields, and government officials and police need to be incentivized toward legal taxation rather than toward taking bribes. Zimbabwe should increase transparency by creating concrete requirements rather than vesting decision-making authority in ambiguous terms. Zimbabwe currently vests authority in the discretion of upper level government officials. Instead, it should create specific requirements that low-level officials can monitor. Using template forms and bullet-list requirements, like Botswana did in the BMMA, would result in a more transparent law. This would allow lower-level officials to make the majority of findings, allow potential investors to understand their rights and obligations and

- b) allow courts to review decisions.

It is interesting to note that Botswana already has a Petroleum (Exploration and Production) Act despite having no known petroleum reserves. This prepares it for the discovery of such. Had Zimbabwe had a Diamond Act in place, it would have avoided the confusion that has shrouded diamond mining and marketing.

- c) Zimbabwe should add technical requirements for licenses found in the BMMA. These requirements allow Zimbabwe to verify that the companies licensed to mine alluvial deposits are technically capable of handling the monumental task of mining the diamonds.

Zimbabwe should add surveying laws similar to Botswana's reconnaissance license granted by their Department of Geological Survey. Identifying additional diamond mines expands the natural resource wealth of Zimbabwe. In the short-term, this leads to the hiring of additional workers and brings investment as surveying companies enter Zimbabwe. In the long-term, this encourages investors to mine from a variety of resources, and reduces the speculation risk to companies. If Zimbabwe knows the extent of its mineral wealth it will be in a better position to auction them.

2. Beneficiation

Cutting, sawing, cleaving and polishing of rough diamonds should be carried out locally. Critics have viewed Botswana's decision to proceed with beneficiation as very late in the economic life of the country's known diamond deposits. Grynberg, Motswapong and Philimon have observed that had this decision occurred in the 1980's after the initial development of Jwaneng, Botswana workers would have had 20 more years to develop the cutting and polishing skills needed in the industry. Zimbabwe should learn an important lesson from Botswana and immediately make steps to ensure the local beneficiation of diamonds.

3. Public Auctions

Both Zimbabwe and Botswana should publicly auction all diamonds mined in their countries. It remains one of the very few commodities where there is no international benchmark price upon which one can judge whether a rough diamond transaction has been *arms length* or not. It is for this reason that the government of Botswana has insisted upon a public auctioning of a portion of its diamonds

8.0 References

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