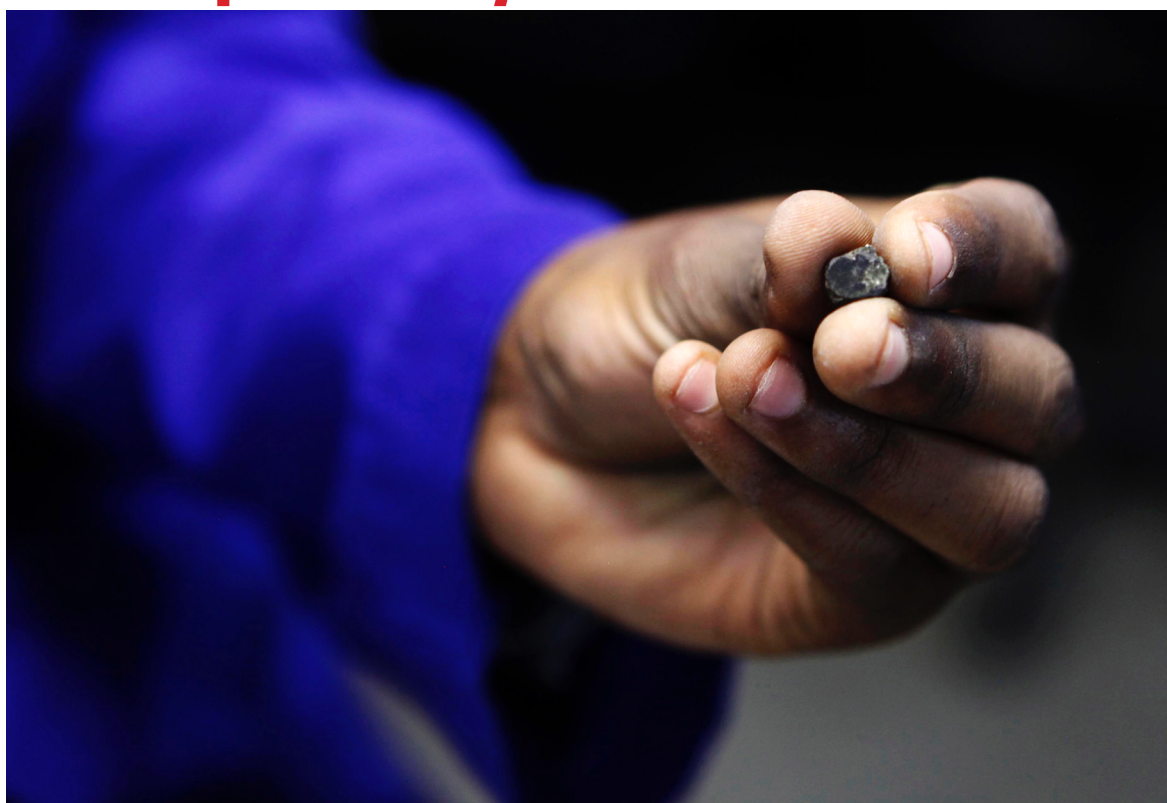




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Leave no stone unturned

Transforming Zimbabwe's Marange diamond sector through extensive transparency reforms



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INTRODUCTION

In his first year as Zimbabwe's President, Emmerson Mnangagwa has pledged to stamp out corruption and prioritise economic recovery. Future governance of Zimbabwe's valuable diamond industry, ruthlessly misappropriated under the previous Robert Mugabe led government at the expense of the Zimbabwean people, is a litmus test of the strength and credibility of these commitments. This briefing makes nine recommendations to increase transparency and improve governance in the diamond sector which, which if implemented, would signal genuine reform.

MISMANAGEMENT OF THE DIAMOND INDUSTRY HAS DEPRIVED THE ZIMBABWEAN PEOPLE OF A PRECIOUS SOURCE OF FUNDS AND JEOPARDIZED DEMOCRACY



In June 2018, Zimbabwe's Parliamentary Portfolio Committee on Mines and Energy concluded an enquiry into the country's diamond sector for the period

2009-2016 focused on 'the investors and investments made, the monitoring and tracking systems on production and revenues'. The final report¹ of the enquiry referred to the widely cited 'fifteen billion dollars' of missing diamond money. This figure relates to a 2016 statement² by former President Robert Mugabe in which he claimed that the diamond industry had generated USD 15 billion dollars in revenues but that Zimbabwe had only received around USD 2 billion. He alleged that private investors were to blame, despite the government owning a share in all of the diamond mining companies. While the credibility of this figure has been widely criticised, it is clear that mismanagement, rampant diamond smuggling, looting and corruption have prevented potentially billions of dollars in diamond money from reaching the public purse³.

The 2006 discovery of huge deposits of diamonds in Marange, an area of Manicaland Province in Eastern Zimbabwe, presented a major opportunity for increasing government revenue, stimulating economic growth and supporting the country's development. According to official statistics, between 2010 and 2017 over USD 2.7 billion worth of diamonds were exported, though this number may be dwarfed by the real value of the stones extracted. However, only around USD 300 million of this can clearly be identified in public accounts. Tracking where diamond money is going has been severely hampered by limited public reporting on revenue flows by both private companies and the government. The individuals and groups behind the industry have also been frequently obscured by opaque company structures and even false reporting by public bodies. Monitors have faced an uphill struggle to obtain information about the industry. However, research by Global Witness⁴ has revealed:

- Direct military ownership of a diamond company, that allowed access to off-budget diamond revenues thereby undermining democratic and civilian oversight of Zimbabwe's partisan armed forces;
- The Central Intelligence Organisation (CIO), Zimbabwe's feared spying agency, notorious for perpetrating human rights abuses against perceived critics of the government held a hidden stake in a diamond company. The

Zimbabwe Mining Development Corporation was used as a front for their interests, calling into question the veracity of information provided by the state's representative in the mining industry;

- Anonymous companies registered in known secrecy jurisdictions, held substantial shares in diamond companies, creating significant opportunities for corruption while frustrating meaningful oversight of the sector and its beneficiaries;
- Serving and retired members of Zimbabwe's security forces sat on the boards of diamond companies;
- Missing accounts, audits, and public reporting, impeded scrutiny and oversight of the sector;
- Lucrative mining licenses were awarded to actors with questionable track records, with no evidence of appropriate due diligence by the government;
- Recommendations made by the Auditor General of Zimbabwe to the Zimbabwe Mining Development Corporation about its dealings with private investors went unheeded;
- Recommendations made in the 'First Report of the Portfolio Committee on Mines and Energy on diamond mining (with special reference to the Marange diamond fields) 2009-2013' were not acted upon.

LOOKING TO THE FUTURE



For the first time in 2018 Zimbabwe celebrated the anniversary of its independence without Robert Mugabe at the head of government © JEKESAI NJIKIZANA/AFP/Getty Images

“As we focus on recovering our economy, we must shed misbehaviours and acts of ill-discipline which have characterised the past. Acts of corruption must stop.”⁵

–President Mnangagwa, November 2017.

The decade-long looting of Zimbabwe’s diamonds was aided by a lack of transparency and oversight. These structural weaknesses are in need of urgent reform. The reforms offer President Mnangagwa, independent monitors and the Zimbabwean people a set of benchmarks against which to check whether stated commitments are translating into meaningful change.

Wide-ranging problems in the diamond sector have prevented the Zimbabwean people from deriving meaningful benefit from their precious natural resources at a time when over half of the population is living beneath the poverty line,⁶ Zimbabwe is in arrears on most of its external debt,⁷ which stands at over USD 11 billion⁸ and the country is dependent on USD 810 million⁹ in annual aid.

A significant reform of Zimbabwe’s diamond industry would be a concrete sign of the political will to affect a real break with the past. It may also point the way towards reforms needed across Zimbabwe’s economy to combat corruption and ensure all share in its economic resources. This may reassure the international community and

responsible investors of the government's commitment to deliver a clean and accountable business environment. It would also send an important signal to companies and traders along the diamond supply chain that production and trading in Zimbabwean diamonds can be done in line with international responsible sourcing norms. Given the history of violence and abuse associated with the Marange diamond industry, meaningful reforms could begin to turn the tide on the negative impacts and reputation of the industry.

“ I want to assure investors that Zimbabwe is not only ready for business but it is politically stable.”¹⁰

-President Mnangagwa, March 2018.

President Mnangagwa has emphasised his commitment to stabilising the economy and providing a business environment which attracts international investment.¹¹ Managed responsibly, the diamond sector could support economic growth, help to fund the Zimbabwean budget and decrease dependence on international aid. Transparency is the cornerstone of an accountable diamond sector and must be prioritised in any efforts to reform the industry. Enabling public scrutiny would go a long way to stymieing some of the abuses that have plagued the industry and create the conditions to foster accountability where they do occur. It could also serve to attract more responsible investors to the diamond sector. Endemic corruption is one of the factors which has deterred responsible investors from considering Zimbabwe a viable environment in which to do business and which conversely allowed rogue actors to gain a foothold. The implementation of transparency measures will help to reassure

investors of an altered business context. Internationally, responsible investment is growing,¹² and the demand for these types of assurances is likely to increase.



An aerial view of the Marange diamond fields © DigitalGlobe via Getty Images

PRIVATE INVESTMENT

Following the discovery of diamonds in Marange in 2006, the government initially declared the diamond fields open, triggering a diamond rush of thousands of artisanal miners from Zimbabwe and beyond. However, before the end of the year the government began clamping down on small-scale mining across the country. In the diamond fields, these efforts culminated towards the end of 2008 in Operation Hakudzokwi (No Return) in which the Zimbabwean military and police unleashed a wave of brutality that saw an estimated 200¹³ people killed over a period of just three weeks. Following the violent take over, the state owned Zimbabwe Mining Development Corporation (ZMDC) began partnering with private investors to form joint venture diamond mining companies.

It was through these companies that the military and CIO were able to gain direct access to diamond revenues. In some cases private investors holding stakes in companies hid behind anonymous companies, meaning the ultimate beneficial owner of substantial shares and revenues could not be identified. Limited reporting, accounting, and auditing has frustrated efforts to hold the sector accountable and clearly identify revenues that should be reaching the Treasury and people of Zimbabwe.

The pervasive presence of the security forces in the sector is cause for significant concern on a number of fronts. In their efforts to shore up the power of Zimbabwe's ruling party ZANU-PF, the Army and CIO have played a key role in silencing dissenting voices in Zimbabwe, including through the orchestration and perpetration of campaigns of violence, particularly during political processes. The instrumental role played by the military in removing Robert Mugabe from power and installing President Mnangagwa is testament to the dominant role of the military in Zimbabwean politics. Though Zimbabwe's Constitution makes clear the requirement for political neutrality, the country's security forces are notoriously politically partisan and senior Generals have frequently voiced their loyalty to ZANU-PF.

EXPULSION OF THE JOINT VENTURE COMPANIES

In 2016, all joint venture companies mining in Marange were ordered to leave their concessions¹⁴ after the government stated that their licenses to mine had expired. According to official statements, this move was triggered by the refusal of the private investors in the existing joint venture companies to amalgamate into a single

entity. This entity was named the Zimbabwe Consolidated Mining Company (ZCDC).

According to its website¹⁵, the ZCDC was established after the government consolidated all the Marange mining concessions. This was framed as a move towards increased transparency and accountability in the diamond industry, following growing complaints about the limited revenues raised. However, local reporting¹⁶ also suggested that the eviction of diamond mining firms from Marange was a manifestation of factional divisions within the ruling party pitting the then Vice-President Emmerson Mnangagwa against former President Robert Mugabe's wife Grace, a situation which culminated in the military coup that ousted Robert Mugabe from power. The eviction of Chinese companies from the diamond fields, Anjin and Jinan was reported to have sparked a diplomatic standoff between Harare and Beijing.¹⁷

According to the company's website,¹⁸ ZCDC is entirely owned by the government through the Zimbabwe Mining Development Corporation (ZMDC), the state-run parastatal that represents the government's interests in the mining industry. However, towards the end of 2018 local reporting¹⁹ stated that an official from the Ministry of Mines told the Parliamentary Portfolio Committee on Mines and Energy that the former Permanent Secretary in the Ministry of Mines and 'another individual', whose name was not disclosed, had previously owned shares in the ZCDC. It was further stated that the government had since bought the shares held by the Permanent Secretary and the anonymous individual giving the government 100% ownership. Nevertheless, this revelation contradicted previous public

disclosures on the ZCDC's ownership, calling into further question the reliability of information put into the public domain about the Marange diamond industry.

In 2018 the future of the ZCDC looks increasingly uncertain while the role of private investors in the country's diamond industry is yet to be determined. The report of the 2018 parliamentary enquiry described the ZCDC as having been born out of 'a violent and disturbing corporate background' and suggested that, as such, it would be 'difficult to legitimise its operations'²⁰. In addition, in 2018, Zimbabwe's Supreme Court ruled²¹ that the expulsion of one former Marange diamond mining company, Mbada Diamonds, from Marange, was done without due process and the Court prohibited the ZCDC entering the Mbada concession, the largest in Marange. This judgement marks a significant departure from the way in which the industry appeared to heading under the previous government and could even pave the way for the return of companies previously mining Marange.

The report of Zimbabwe's Auditor General for the year ending December 2017 indicated that the audit of ZCDC's most recent available financial statements, for the year ending December 2016, showed a total comprehensive loss of \$7,445,606. With reference to the company's broader financial position, the Auditor General concluded that *these matters cast doubt on the Company's future ability to continue operating as a going concern for the foreseeable future*²². It appears increasingly likely that the Marange diamond fields will be opened up to further foreign investment.



President Emmerson Mnangagwa © JEKESAI NJIKIZANA/AFP/Getty Images

“ I challenge the private sector to be honest, ethical and honourable in their business dealings.”²³

–President Mnangagwa, September 2018.

In August 2018, Vast Resources, a company registered in Zimbabwe and the UK with an interest in gold mining²⁴ in Zimbabwe, announced that it had gone into partnership with the Marange-Zimunya Community Share Ownership Trust²⁵ through the Trust's company, Red Mercury, to explore and mine the 'Heritage concession'. The entry of Vast Resources into the diamond industry is particularly notable given that the company already has a history in Marange under its previous name, Africa Consolidated Resources²⁶ (ACR). ACR was the holder of registered mining claims in Marange until the

government unilaterally cancelled its claims in 2010. Despite a series of court cases²⁷ the company was unable to reclaim the concession. However, eight years on in 2018, operating under the name Vast Resources, the company appears to have made a return. This move may be the beginning of a new chapter of private investment in the Marange diamond fields. As such, it is critical that the groundwork is laid to ensure that the mistakes of the past are not repeated.

The diamond industry is undergoing a period of significant transformation with its short to medium future hanging in the balance. In light of the new government's commitment to economic turnaround, the steps outlined below are concrete measures to make the industry, and associated revenue flows, transparent and accountable. These steps can be seen as benchmarks by the international community and responsible investors that the government must meet if it is to deliver real change through a well-governed diamond sector that brings tangible benefits to the Zimbabwean people. Harnessing the potential of the diamond industry will test the resolve of Zimbabwe's new government to live up to its promises.

RECOMMENDATIONS TO THE GOVERNMENT AND AUTHORITIES OF ZIMBABWE

URGENTLY NEEDED REFORMS INCLUDE:

Make the beneficial owners of all diamond companies and any private investors, public

A 'beneficial owner' is a natural person—that is a human being, not another company or trust—who directly or indirectly either owns or controls a substantial proportion of a

company. Individuals who wish to conceal such control or benefit can use an anonymous company as a legal smokescreen. Twenty-five percent of Mbada Diamonds, one of the largest companies previously mining the Marange diamond fields, was held anonymously through a company structure ending in the British Virgin Islands. This is a serious red flag, making it difficult to determine who ultimately owns and controls the company, and what it is funding. Transparent beneficial ownership of companies extracting, trading and producing precious state resources should be seen as a condition of a company being granted a license to mine.

Take all steps necessary to ensure the Zimbabwe Consolidated Diamond Company is operating with the oversight and accountability required by the Constitution and laws of Zimbabwe

Prior to the establishment of ZCDC, the ZMDC represented the Zimbabwean State in the various joint venture companies active in Marange. Research by Global Witness²⁸ revealed that one of these companies, Kusena Diamonds, was linked to Zimbabwe's feared spying agency, the Central Intelligence Organisation (CIO). The CIO's stake in Kusena has since been confirmed by the organisation's former Director-General, Happyton Bonyongwe.²⁹ This contradicts statements by the ZMDC that Kusena was its 100% subsidiary. The use of ZMDC to shield a secret CIO stake in a diamond company is of significant concern, suggesting that the security forces were able to co-opt a state body in their efforts to evade the detection of their economic interests. The Government of Zimbabwe should publish all shareholders in ZCDC as currently constituted and clarify in publically available documentation how

shares in the company have been allocated and what the process for allocating shares to any new investors will be.

Publish detailed information about all diamond mining related revenue flows. These should, at a minimum, be disaggregated by company, year, and type of revenue stream

Billions of dollars of Zimbabwe's diamond money may be unaccounted for. Since 2010 Zimbabwe has officially exported over USD 2.7 billion in diamonds³⁰. Only around USD 300 million of this can clearly be identified in public accounts. Tracking where diamond money is going has been severely hampered by limited public reporting on revenue flows. In 2016, with reference to the progression of amalgamation of the diamond sector, the Government of Zimbabwe committed to accounting for diamond mining revenues from extraction to sales and transfers of proceeds, stating that it 'will timely publish audited financial statements of state owned mining entities'³¹. Currently, the most recent annual report published online by the Zimbabwe Mining Development Corporation is for its 2012 operations. To ensure that diamond money reaches the Zimbabwean treasury and contributes vital funding to national development, the industry's revenues must be systematically tracked and accounted for. Publication of contracts and detailed, audited public accounts should become standardised across the sector.

Publish any joint venture contracts signed with private investors

Making joint venture contracts available for public scrutiny will give Zimbabweans the opportunity to assess whether they are getting a fair deal. Contract transparency also safeguards against government officials negotiating bad deals through lack of capacity or vested economic interest. Given

the history of shadowy and unorthodox allocation of Marange diamond mining concessions,³² it is imperative that the government demonstrates a clear break with the past by opening future processes to public scrutiny. Publication of the recently announced Vast Resources/Red Mercury joint venture contract would be a positive indication of increased transparency in the industry.

Compel diamond mining companies in Zimbabwe to adhere to strict transparency measures

Private companies investing in the diamond sector in Zimbabwe are entrusted with a valuable state asset in a country in which more than 60% of the population are living beneath the poverty line³³. Companies must be compelled to manage this resource responsibly and fairly and to demonstrate the steps they are taking in this regard. This should include publishing all diamond mining contracts, shareholdings, and their ultimate beneficial owners; producing timely annual reports, including audited accounts detailing revenues raised and all payments to the Treasury, including tax payments, and all transfers to private shareholders. These types of transparency requirements can protect against rogue individuals and companies seeking to enrich themselves improperly at the expense of the Zimbabwean people. They would also provide important information to companies and traders in downstream diamond supply chains undertaking supply chain due diligence to ensure that diamonds trade are not linked to corruption or human rights abuses.

Remove the risk of the security sector receiving off-budget funding through

control or ownership positions in diamond companies



The Zimbabwean military have played a central role in the Marange diamond industry © JEKESAI NJIKIZANA/AFP/Getty Images

The second report of the Parliamentary Portfolio Committee on Mines and Energy³⁴ on the diamond sector, presented in 2018, records the involvement of the Zimbabwe Republic Police, Central Intelligence Organisation and Army in the industry. Direct access to diamond funds undermines democratic and civilian oversight over Zimbabwe's powerful security institutions, making them less dependent on government budgets and the scrutiny that accompany standard budget procedures. Both run counter to the long-term democratic interests of the Zimbabwean people. If the government is to make a real break with the past, the risk of the security forces obtaining off-budget funding that is free from parliamentary oversight must be removed.

Support efforts to promote the responsible sourcing of diamonds and other minerals from Zimbabwe by facilitating the implementation of international due diligence frameworks in line with the United Nations Guiding Principles on Business and Human Rights as recommended in other mineral-rich high risk areas, and as encouraged by key international multi-stakeholder initiatives,

including the Financial Action Task Force (FATF) and the Organisation for Economic Cooperation and Development's (OECD) Due Diligence Guidance for Responsible Mineral Supply Chains

The new government, and in particular President Mnangagwa, has indicated that Zimbabwe is open for business and seeking foreign direct investment. The reputation that Zimbabwe's diamond industry has gained in recent years for its association with human rights violations, looting and corruption, compounded by an unstable political and economic environment has deterred responsible investors from considering Zimbabwe a viable environment in which to do business. If the government wishes to secure future investment in the diamond industry by reputable and responsible investors, it must take steps to enable investors to meet international standards for responsible sourcing. This will go a long way towards providing the necessary assurances that diamonds destined for international markets are not fuelling harms. Responsible foreign investors looking to trade with local companies should be carrying out risk-based supply chain due diligence to identify potential risks and implement mitigation strategies where necessary. The government should commit to requiring that companies carry out risk assessments and due diligence on their supply chains, to the standard set out in the OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict Affected High Risk Areas to ensure they do not fuel violence and corruption and that their investments have beneficial impacts for the Zimbabwean people. The guidance is seen as the international benchmark for robust supply chain due diligence and has been employed in countries where natural resources have been

linked to funding conflict and human rights abuses. The Democratic Republic of Congo, Rwanda³⁵ and Burundi³⁶ all require companies trading in the gold and tin, tantalum and tungsten sectors to carry out due diligence on their supply chains, while Uganda has similar legislation awaiting Presidential signature. United Nations Panels of Experts on Sudan³⁷ and South Sudan³⁸ have recommended due diligence in response to concerns about gold supply chains while the United Nations Security Council³⁹ have encouraged the implementation of due diligence in Cote D'Ivoire in relation to gold. These instances demonstrate growing acceptance that application of due diligence can play an important role in mitigating risks to human rights and may offer a favorable alternative to applying blanket sanctions or export bans on producing regions, protecting and promoting responsible business rather than preventing it. International diamond industry bodies should encourage such reforms towards responsible diamond supply chains from Zimbabwe – and elsewhere. Companies promoting messages that “real” diamonds are “rare” should be able to demonstrate that they have properly assessed their diamond supply chains right along the value chain, including assessment of human rights and corruption risks. Where there is evidence that diamonds have funded off-budget income for the military, as is the case in Zimbabwe, companies should be able to demonstrate steps they have taken to mitigate this risk. Companies must be able to publicly evidence, in detail and in line with the OECD international standard, that their ‘real’ diamonds are responsibly sourced⁴⁰. Global Witness has written extensively about weaknesses⁴¹ in the Kimberly Process. Companies trading Kimberley Process certified diamonds. In addition to

compliance with the certification scheme companies must be able to evidence their supply chain due diligence.

Commit to sound economic governance and anti-corruption practices and take action against those engaged in corrupt and illegal practices, including actions to recover funds or other assets that may have been looted or stolen from the Treasury



Queues outside Harare banks have become a regular feature of Zimbabwe’s struggling economy © REUTERS/Philimon Bulawayo

Losses from the Marange diamond industry could amount to billions of dollars. Despite being one of the Zimbabwe’s most valuable industries, widespread abuses at the mercy of corrupt and unscrupulous actors have prevented the Zimbabwean people benefiting. The new government’s approach to the diamond sector says much about its commitment to the broader development of a new economic environment which implements anti-corruption mechanisms and prioritises fulfilling the needs of the Zimbabwean people. Recent statements by President Mnangagwa have focussed on the retrieval of so-called illegally externalised funds⁴². This led to the publication of a list of individuals and entities who were reported to have failed to return funds into Zimbabwe under an ‘externalisation amnesty’. While

the list received widespread criticism not least for failing to capture so-called 'big fish' it is of note that in Category 1, *Illicit Financial Flows – Funds Externalised through Non Repatriation Of Export Proceeds*, four out of the top five companies named as 'illegal externalisers' are Marange's former diamond mining companies. The government must ensure that measures to address widespread corruption and outstanding losses to the Zimbabwean people are applied even-handedly to anyone suspected of malpractice, and that investigations are carried out impartially and with independent oversight.

Support and protect local civil society organisations in order to promote effective oversight and monitoring of the extraction and trade of Zimbabwe's natural resources

In the short history of Marange diamonds, civil society has played a critical role in exposing abuses in the industry. Powerful actors associated with the diamond industry have made this high-risk work and local civil society monitors have been harassed, intimidated, arrested and detained because of their legitimate work to defend the rights of local communities and call out corruption in the industry. Despite grave risks, their sustained efforts have shone a light on an exceptionally opaque industry. Zimbabwe is bound by human rights treaties including the African Charter on Human and Peoples' Rights as well as its own Constitution to respect the right to freedom of expression. The new government's respect for these obligations will be a key marker of genuine commitment to diamond sector reform, in

recognition of the integral role that civil society has to play in this.

CONCLUSION

After nearly two decades of political instability, economic decline and international isolation, Zimbabwe's recovery will hinge on the government's commitment to implement its stated commitments. President Mnangagwa has pledged to deliver a new era of stabilisation and growth. The diamond sector may have much to offer in stimulating economic recovery and contributing to development and democracy in Zimbabwe. It is however, only through a concerted effort to overhaul the industry based on principles of transparency and accountability, that the Zimbabwean people will see real benefit from their precious natural resource. The future of the diamond industry offers a clear test of whether the government is willing to match rhetoric with action.

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