

DIAMONDS: A GOOD DEAL FOR ZIMBABWE?

Who controls revenues from Marange diamonds?
A case study of Mbada and Anjin companies



global witness

Executive Summary

In 2008 the Zimbabwean army took control of the Marange diamond fields using troops and helicopter gunships, killing and wounding many small scale miners in the process. Since then diamond mining concessions have been allocated to several companies in questionable circumstances.

Anjin and Mbada are two such companies. Anjin claims to be the world's biggest diamond company. It is a joint venture between an obscure Zimbabwean firm called Matt Bronze and a Chinese construction company. Mbada is a joint venture between a South African scrap metal company and the state-owned Zimbabwe Minerals Development Corporation.

Anjin's Zimbabwean board members include senior serving and retired military and police officers, and the Permanent Secretary at the Ministry of Defence. Control by the military and police over a major diamond mining company creates opportunities for off-budget funding of the security sector. There is a real risk of these revenues being used to finance violence during a future election.

In the last financial year 25% of Mbada was passed to a third party, Transfrontier, which has an opaque company structure based in secrecy jurisdictions and tax havens. The beneficial owners of Transfrontier are unknown. However the firm is named as a 'sister company' by a South African firm, Liparm Corporation, whose sole director is former Air Vice Marshal Robert Mhlanga, who is also the chair of Mbada. Mr. Mhlanga was a prosecution witness in the 2003 treason trial of then MDC opposition leader Morgan Tsvangarai. Mhlanga is reported to have been Chief of Staff

Operations at the National Command Centre which controlled the announcement of poll results in the disputed 2002 presidential election. The presence of Mbada, Transfrontier and associated companies in countries with zero rates of corporation tax such as Mauritius, Hong Kong, British Virgin Islands and Dubai in the United Arab Emirates, raises the questions of where these companies pay their taxes and whether these arrangements are a good deal for Zimbabwe.

Complex legal structures and secrecy jurisdictions can be used to hide who benefits from natural resources. Such secrecy is inappropriate for national assets and has the potential to conceal corruption, tax avoidance or off budget government spending.¹ Global Witness has repeatedly called for transparency over the ownership of concessions, such as those controlled by Mbada. Revenues from the Marange diamond fields represent a potentially large windfall to support development in Zimbabwe. The country's citizens have a right to know how these revenues are managed.

Key Recommendations

Zimbabwe's Government of National Unity (GNU) should pass legislation banning serving members of security services from control over, or beneficial ownership of, mining companies.

The GNU should immediately review all contracts in the Marange diamond fields, and audit concession allocation procedures and operations conducted so far, to see whether they represent a good deal for Zimbabwe.

Mbada and Anjin should publish details of their ultimate beneficial owners, and those of related companies such as Transfrontier and Matt Bronze.

Background

After diamonds were discovered in the Marange fields in 2006 up to 30,000 diamond panners converged on the region. In the autumn of 2008 the government launched Operation 'Hakudzokwi' or 'You will not return' – designed to secure the mines. Soldiers, police and helicopter gunships were deployed, resulting in the killing and wounding of many small scale miners.²

Operation Hakudzokwi followed the intense election violence of June 2008 which was designed to intimidate civil society and supporters of the opposition Movement for Democratic Change (MDC).

This involved widespread and systematic abuses, which "led to the killing of up to 200 people, the beating and torture of 5,000 more, and the displacement of about 36,000 people," and was perpetrated by, among others, members of the ZANU PF controlled security forces.³

After the election, and following mediation by the Southern African Development Community (SADC), a Government of National Unity was formed. ZANU PF retained control of key security ministries such as the President's Office (responsible for the Central Intelligence Organisation (CIO)), Defence, Home Affairs (with co-ministers from ZANU PF and the MDC) and the Ministry of Mines and Mining Development. The MDC took control of the Prime Minister's office and the Ministry of Finance, among other ministries.

Figure 1. Marange diamond fields, concession blocks, as of 2010.



Key

- Anjin's operates in block C. There are unconfirmed reports that Anjin also has the right to mine in concession blocks 'J', 'K' and 'Eii'.
- Mbada operates in block 'A'. There are unconfirmed reports that Mbada has also gained concession block 'P' and the top half of concession block 'I'.

Who are Anjin?

The Anjin Investments (Pvt) Ltd diamond mine is located in block 'C'⁴ (see figure 1) and there are unconfirmed reports that Anjin also has the right to mine in concession blocks 'J', 'K' and 'Eii'.⁵

Kimberley Process monitors have noted that at present five independent processing plants are in operation, with a further two plants under construction. When fully operational, Anjin's production capacity may reach two million carats per month. The monitors have also noted Anjin's claims that it has invested already US\$380 million in its operations.⁶ A director of Anjin is reported to have claimed that it is now the world's largest diamond company: "We are now the largest diamond company in the world and this has been confirmed by KPC [Kimberley Process Certification scheme]. We are the largest mining diamond company in the world because we have surpassed the KPC minimum requirements. We are the largest in terms of the size of our area of operation and the amount of ore we are capable of processing every day. We are also large in terms of the field, we have got the largest deposits in the world."⁷ These claims have not been independently verified.

Anjin is a joint venture between a Chinese firm, the Anhui Foreign Economic Construction Group (AFEC(G)), and a Zimbabwean company, "Matt Bronze".

AFEC(G) is a large, well established Chinese company involved in many overseas construction projects. These include a US\$124 million⁸ renovation of the Akii Bua national stadium in Uganda; and a renovation of Mozambique's Maputo International

Airport – a US\$106 million project⁹ funded by China's Exim bank.

In Zimbabwe AFEC(G) is building a new National Defence College. The deal is financed by a US\$98 million loan from the Chinese state-owned Exim Bank¹⁰ and it has been reported in the press that the terms of the loan include a provision for repayment of the debt using revenues from Anjin.¹¹ The MDC Finance Minister was highly critical of the terms of this loan:

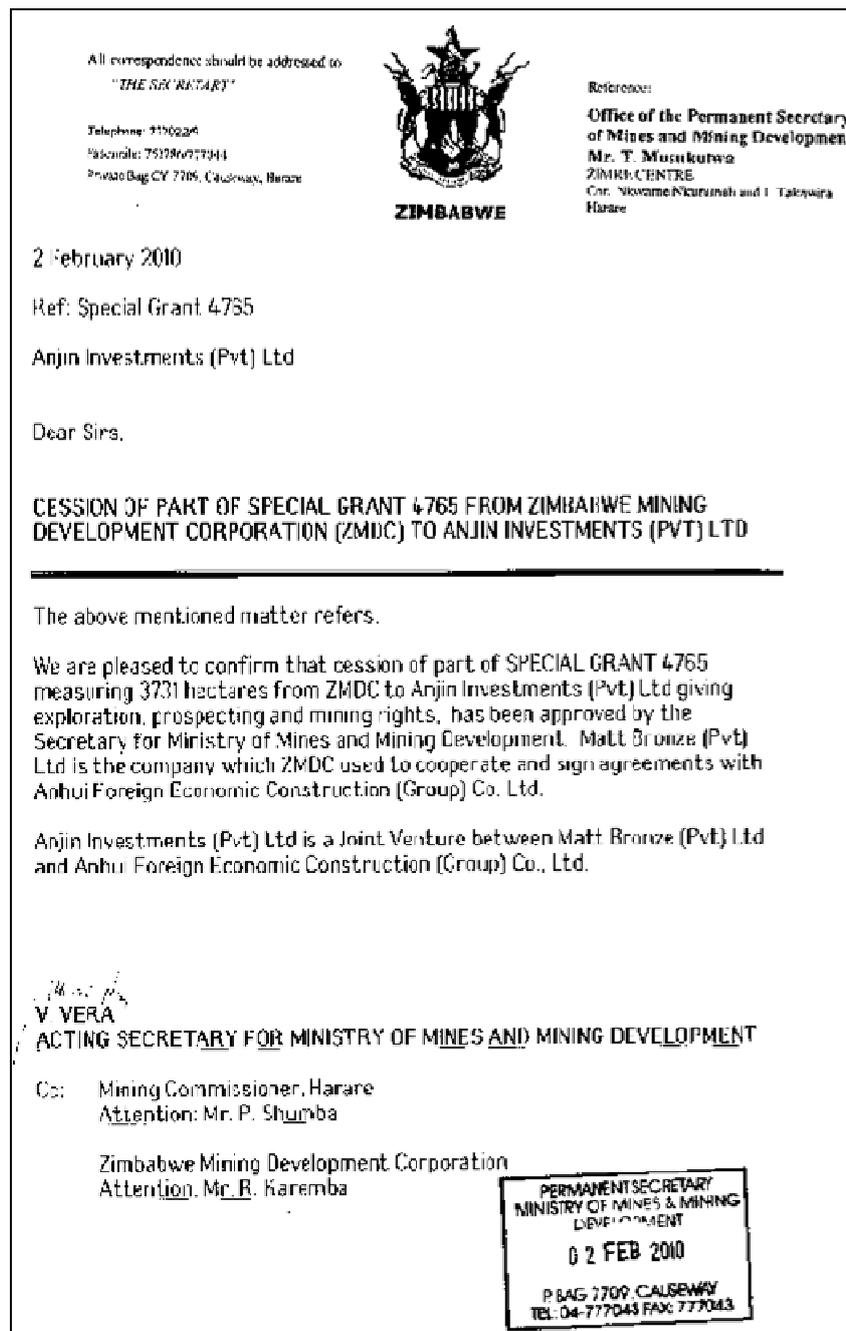
Hon. MR. CHINYADZA:

“ “ My supplementary question Hon. Minister, in view of the extent of our indebtedness, can we afford to continue to borrow funds for non-productive investments in Zimbabwe?

Hon. MR. BITI:

“ “ No we cannot. Let me be very clear, when you are in debt, the precarious position that we are at the moment, you cannot contract other debts. If you are going to contract other debt, it has to be concessionary debt. I want to make reference to the Chinese Agreement [sic] that was ratified by this Parliament. It is criminal Mr. Speaker for a country like Zimbabwe to enter into an agreement with a rate of interest like 2%, 4% or 5%. I want to say that there are friends, let me put "friends" in inverted commas, "friends and countries", that have been prepared to give Zimbabwe money. Mr. Speaker Sir, but when you look at the agreement, the agreements are levying interests in the name of concessions of 2% and above. A country like Zimbabwe does not have the capacity to repay this interest. It does not have the capacity of paying such amounts.¹²

Figure 2. Letter from Ministry of Mines to Anjin, 2010



This letter from the Zimbabwean Ministry of Mines describes Matt Bronze as the company "which the Zimbabwe Minerals Development Corporation (ZMDC) used to cooperate and sign agreements with Anhui Foreign Economic Construction Group". The Zimbabwe Mining Development Company is a parastatal directly engaged in mining diamonds,

either directly through their company Marange Resources, or through 50:50 joint ventures. The directors of Matt Bronze are listed in the Zimbabwean companies registry as Mr. Shelton Wandai Kativhu and Ms. Penelope Rujeko. The beneficial owners of Matt Bronze are not known.

Zimbabwean military involvement in Anjin

Global Witness has obtained information showing that several of Anjin's Zimbabwean directors are drawn from the military and police. This raises serious questions about who controls the company and the profits it generates – questions serious enough to justify cancellation of the contract.

The Chinese executive directors of Anjin are Mr. Jian Qingde, Mr. Jiang Diaru, Mr. Tian Shiyue, Mr. Jian Zhaoyao, and Mr. Li Renfu, and non-executive board members are Mr. Zhang Shibin and Ms. Lu Qingxia.¹³

The Zimbabwean members of Anjin's Executive Board are:

- Mr. Martin Rushwaya, the permanent secretary in the Ministry of Defence;¹⁴
- Mr. Oliver Chibage, a commissioner in the Zimbabwe Republic Police (ZRP);¹⁵
- Ms. Nonkosi M. Ncube, a commissioner in the ZRP;¹⁶
- Mr. Munyaadzi Machacha, a ZANU PF director of publications;¹⁷
- Mr. Mabasa Temba Hawadi, a director of Marange Resources (Pvt) Ltd, a subsidiary of the ZMDC.¹⁸

Non-executive board members are:

- Mr. Morris Masunungure, a current or retired officer in the Zimbabwe Defence Forces (ZDF);¹⁹
- Mr. Romeo Daniel Mutsvunguma, a retired colonel in the ZDF alleged by Human Rights Watch to have participated in violence in 2008 (see box overleaf).²⁰

The principal officer and company secretary of Anjin is Mr. Charles Tarumbwa. The current EU restrictive measures (sanctions) list includes Brigadier Charles Nathaniel Tarumbwa

alongside the notation "Manicaland and Mutare South. Directly involved in the terror campaign waged before and during the elections."²¹

It has been alleged by an MDC parliamentarian that Anjin's mining concession was granted by Defence Minister Emmerson Mnangagwa when the minister of mines was on leave and Mnangagwa was acting minister of mines.²²

Despite the establishment of a Government of National Unity, the security services remain unreformed. The upper echelons of the Zimbabwe Defence Force, Central Intelligence Organisation, and the Zimbabwe Republic Police remain partisan, their loyalties appearing to lie with ZANU PF ministers and President Robert Mugabe rather than the Government of National Unity as a whole.²³

A key component of security sector reform in Zimbabwe will be establishing democratic control of the budgets of the security forces. A democratically elected government should set national security strategy, and collect taxes in order to fund these priorities, through a budget-setting process carried out by the Ministry of Finance on behalf of the Cabinet in the Government of National Unity. This process should be scrutinized by Parliament, which holds the Government to account.

Direct control of a source of funding (such as a diamond company like Anjin) by the police, armed forces or the Ministry of Defence directly cuts across this democratic process. It enables the Zimbabwean military to set and fund their own agenda, with little control or scrutiny exercised by elected politicians. Diamond revenues

should flow into the Ministry of Finance, which would allow the Zimbabwean Cabinet to decide on its public expenditure priorities.

The partial control exercised by the Zimbabwean security establishment over Anjin raises the question:

Do Anjin or Matt Bronze make any payments direct to the Ministry of Defence, Ministry of Home Affairs, Zimbabwe Republic Police, Zimbabwe Defence Force, Central Intelligence Organisation or the Office of the President and Cabinet?

Mr. Romeo Daniel Mutsvunguma, non-executive board member of Anjin. Testimony from MDC supporter, reported by Human Rights Watch:

An MDC supporter and two others who were victims in an alleged violent incident identified one of the armed "war veterans" as Retired Colonel Daniel Romeo Mutsvunguma, now a board member of Anjin. Mutsvunguma allegedly fired the shot that fatally wounded Tabeth Marume. MDC chairperson Stephen Chigori told Human Rights Watch, "Retired Colonel Daniel Mutsvunguma shot her. I saw Mutsvunguma fire his gun. I know him very well." The MDC supporter told Human Rights Watch that:

"When we got to the base, we were confronted by more than 50 war veterans and ZANU PF youths, 12 "war veterans" had guns, AK-47 guns. They ordered us to sit down. We refused and said we had come to seek the release of our colleagues. I went into a room where our colleagues were being beaten, with hands tied at the back, lying facing the ground, I only managed to untie one colleague when the "war veterans" fired into the air. Most of my colleagues began to run away, some escaped. The second round of fire was directed at us, and Tabeth Marume was shot in the stomach. Two of my colleagues were also shot, one in the thigh and the other in the calf.

Other "war vets" caught me before I could escape and began to beat me with iron bars, one blow was delivered on my left arm and I heard my arm snap and knew straight away that my arm was broken. The bone was protruding through the skin but I forced myself to run away. The next day we organized transport to take us to Mutare Provincial Hospital because there was no medication at Rusape Hospital. At this point Tabeth was alive but her bleeding was too much. In the truck that we used to travel to Mutare I held Tabeth's head in my lap, she was in great pain. As we approached Mutare, about 20 kilometres from Mutare she asked me for a glass of water. I gave her just a few drops, then she began to roll her eyes. An old woman with us in the truck simply said, "She is gone," and that is how she died."²⁴

The Democratic Republic of Congo and Indonesia: Precedents for demilitarising Zimbabwe's mining sector?

The Congolese armed forces have been heavily involved in mining and other businesses, particularly in the east of the country. However, article 27 of the DRC's mining code includes members of the military in its list of 'non-eligible persons': "The following are not eligible to apply for and obtain mining and/or quarry rights, artisanal miners' cards, traders' cards, as well as the approval as authorised traders for mineral substances from artisanal mining: a) government employees and civil servants, magistrates, members of the Armed Forces, the Police and the security Services, the employees of public entities which are authorized to carry out mining activities. However, this incompatibility does not affect their ability to participate in the capital of mining companies; ..."²⁵

Indonesia's armed forces own and control businesses, cooperatives and foundations which were worth at least US\$350 million in 2007. These long standing business interests have undermined civilian control of the military, undermined military professionalism and led to conflicts of interest. In 2004 the President signed Law No. 34/2004 which prohibited military businesses and required the government to take over all firms by 2009. Other provisions include a complete prohibition on soldiers taking part in business activities.²⁶

Given the scale of their militaries' involvement in mining and business activities both the DRC and Indonesia have faced significant challenges in implementing these laws. Both laws are far from perfect. In particular, the ownership of shares in companies, permitted by the DRC law, is problematic in the case of Anjin. Nevertheless, these two examples offer a precedent for legislation addressing the role of the military in the mining sector.

Figure 3. At the occasion of the granting of the mining licence Anjin executives meet President Robert Mugabe and Minister of Defence Hon. Emmerson Mnangagwa. The presence of Commander of the Defence Forces, Constantine Chiwenga, is possibly indicated by the presentation folder.

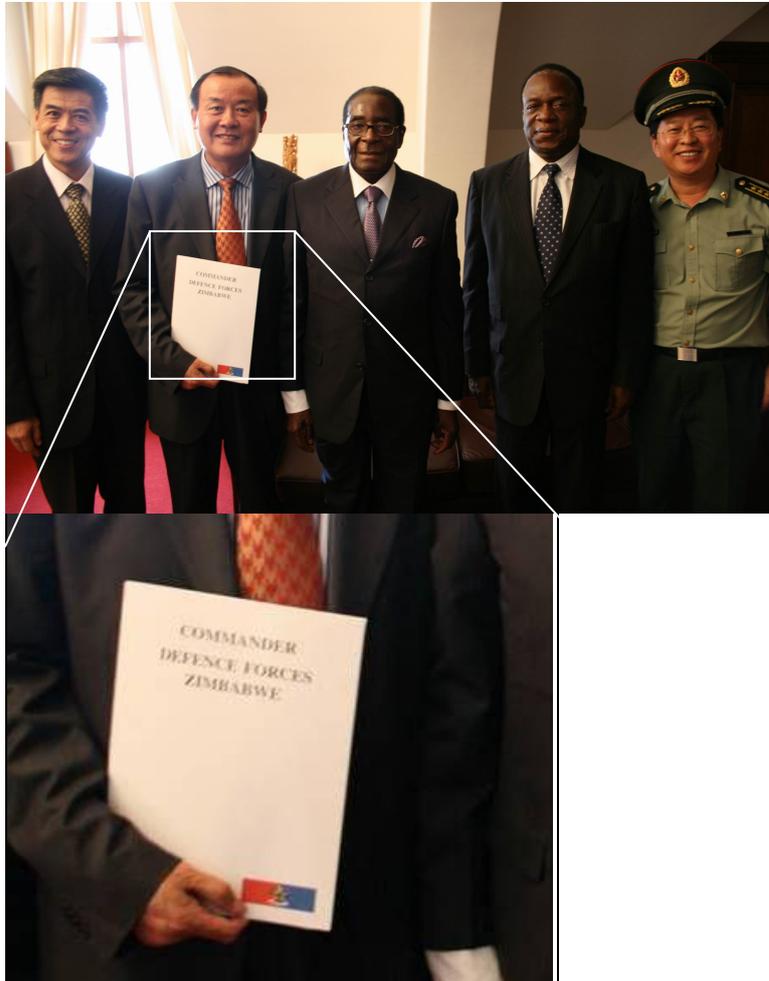


Figure 4. Anhui Foreign Economic Construction Group Chairman Jiang Qingde meeting President Robert Mugabe and an officer in the Zimbabwe Republic Police.



The silence of the Kimberley Process

Zimbabwe is a member of the Kimberley Process (KP), a government-to-government certification scheme for rough diamonds set up in 2003 to prevent diamond-fuelled conflict and human rights violations. Over the past three years, the Kimberley Process has faced one of its biggest challenges in trying to address state-sponsored violence and abuses in the Marange diamond fields. In a succession of weak deals between Zimbabwe and the KP, the international scheme has given the green light to diamond exports from several opaque joint venture companies operating in the area.

The KP Marange monitoring team visited the Anjin facilities in November 2011. The team found that Anjin's policies and procedures on security, anti-smuggling and traceability of rough diamonds to be fully 'KP compliant'.²⁷ This is likely to be the prelude to the full authorization of exports from Anjin's mines by the KP.

The KP monitoring team report makes no comment on the ownership of Anjin, and the beneficial ownership of Matt Bronze. The report is also silent on the involvement of senior defence and security personnel in the management of the company. Finally, the report offers no observations on the flow of diamond revenues. This is entirely consistent with the practice of the Kimberley Process so far. The KP's definition of conflict diamonds ("rough diamonds used by rebel movements or their allies to finance conflict aimed at undermining legitimate governments") excludes diamonds linked to human rights abuses by state security forces. The KP is also generally silent on the flow of diamond revenues, as opposed to the flow of rough diamonds themselves.²⁸

The KP scored some successes early in its existence, notably in helping African producer countries to increase their tax revenues from diamond exports. However, in recent years it has proved unable to evolve with the times and has stumbled from one crisis to the next. These have included the KP's failure to deal with the trade in conflict diamonds from Côte d'Ivoire and its refusal to take serious action in the face of serial breaches of the rules by Venezuela. In Zimbabwe the concern is no longer just smuggling and violent attacks on diamond panners but also the risk that diamond revenues may be used to finance violence committed by state security forces in the run up to an election in 2012 or 2013. Authorization of Anjin diamonds would represent further proof that the Kimberley Process is not fit for purpose. Global Witness left the KP in 2011.

Global Witness believes that consumers should not buy diamonds originating from the Marange mines until they can be certain they will not fund human rights abuses.

Who is behind Mbada?

Mbada Diamonds is another large diamond mining firm operating in block 'A' in Marange (see figure 1). There are unconfirmed reports that Mbada has also gained concession block 'P' and the top half of concession block 'I'.²⁹ Global Witness has uncovered a complex and opaque legal ownership structure for Mbada, including companies in Hong Kong and the British Virgin Islands, as well as a string of what appear to be nominee company officers.

Mbada is a joint venture between the state owned Zimbabwe Minerals Development Company (ZMDC), which owns Marange Resources (Pvt) Ltd, and Grandwell Holdings, a company registered in Mauritius and a subsidiary of New Reclamation Group ("Reclam"), a South African scrap metal recycling company.

Until last financial year Grandwell was wholly owned by Reclam. However, in its 2011 annual report, Reclam stated:

“ During the financial year ended 30 June 2011, the company transferred 4,999 shares in Grandwell comprising 49.99% of the share capital of Grandwell to Transfrontier in consideration for the procurement and introduction of mining and resource opportunities and associated funding in southern Africa for the benefit of the issuer including, for example, coal, gold, chrome, diamond, iron ore and platinum. Transfrontier is a company incorporated in Hong Kong and is focused on resource-related business opportunities in southern Africa. ...”

“ The original Mbada Concession Area covers approximately 1,100 hectares of land. As a consequence of the endeavours

of Transfrontier and pursuant to an application by Mbada for an extension of the concession area, in April 2011 the Mining Development Board of Zimbabwe advised Mbada in writing that original Mbada concession area had been re-aligned and increased in size by a further 6440 hectares to 7540 hectares which has substantially further enhanced the life of mine and expected production levels.”³⁰

It is possible that the transfer of almost 50% of Grandwell to a third party such as Transfrontier Mining Company Limited was foreseen in the original 2009 Memorandum of Agreement between Marange Resources and Grandwell, which states: “Grandwell is a company in which at least 50% of the issued share capital shall be held by Reclam...”³¹

This six-fold increase in the size of the concession area follows irregularities in the initial concession allocation process, documented in a previous Global Witness report.³² These irregularities included a refusal to hold a public and transparent tendering process, a failure to properly register³³ Mbada as a company in Zimbabwe, inadequate due diligence investigations into Mbada, and a failure to properly appoint ZMDC members to the joint venture board.

According to Zimbabwean law mineral rights are vested in the president.³⁴ The above statement by Reclam raises the following questions:

Was the transfer of 50% of Grandwell Holdings to Transfrontier Mining Company Ltd made in return for the grant of an extra 6,440 hectares concession area? If so, why was 50% of Grandwell transferred to Transfrontier, registered in Hong Kong, rather than to the Presidency of Zimbabwe, in whom mineral rights are vested?

Who is behind Transfrontier?

Transfrontier Mining Company Limited now owns almost 25% of Mbada, a major diamond mining company, through Transfrontier's almost 50% shareholding in Grandwell Holdings (see figure 5 overleaf).

Transfrontier Mining Company Limited is, on paper at least, owned by a network of linked companies and individuals in Hong Kong and the British Virgin Islands. Half of Transfrontier Mining is owned by Quorum Nominees, and half by Golden Universe. Quorum Nominees is owned by Leslie Chang. Golden Universe is half-owned by Mehta Nominees and half by Billy Li. Fifty per cent of Mehta Nominees is owned by Vibury and fifty per cent by Connetty Nominees. Finally, two companies registered in the British Virgin Islands (Express Agents and Leisure Star) each own half of Vibury and Connetty Nominees.

A survey of Hong Kong corporate documents reveals that an accountancy and secretarial services firm based in Hong Kong called Chang Leung Hui & Li CPA Ltd (CLHL), established all of the Hong Kong based entities. In addition they set up Transfrontier Mining, Transfrontier Group Company, Transfrontier Airlines, Transfrontier Energy, and Transfrontier Telecommunications.

The Corporate Secretary for all of these companies is listed as CLHL Secretaries. The two individuals named in figure 5 (Lesley Chang and Billy Li) are directors of CLHL and are unlikely to be the true beneficial owners of Transfrontier. All the Hong Kong entities (including CLHL, Transfrontier, Vibury, Connetty, Mehta, Quorum and Golden Universe) are registered at 12/F 3 Lockhart Road, Wanchai, Hong Kong, which is the address of CLHL. As can be seen from table 1 below, the Hong Kong entities have interlocking directors and shareholders.³⁵

The ownership structure of Transfrontier Mining, Transfrontier Group, and Transfrontier Energy can be seen in figure 5 overleaf. (Transfrontier Telecommunications and Transfrontier Airlines have slightly different structures: the ownership of both is split between Quorum Nominees and Mehta Nominees).

Ownership of these companies partly rests in two corporations registered in the British Virgin Islands (BVI). The BVI companies – Express Agents and Leisure Star – have registered offices at a company registration agent: Offshore Incorporations Centre.³⁶

Figure 5. Ownership of Mbada

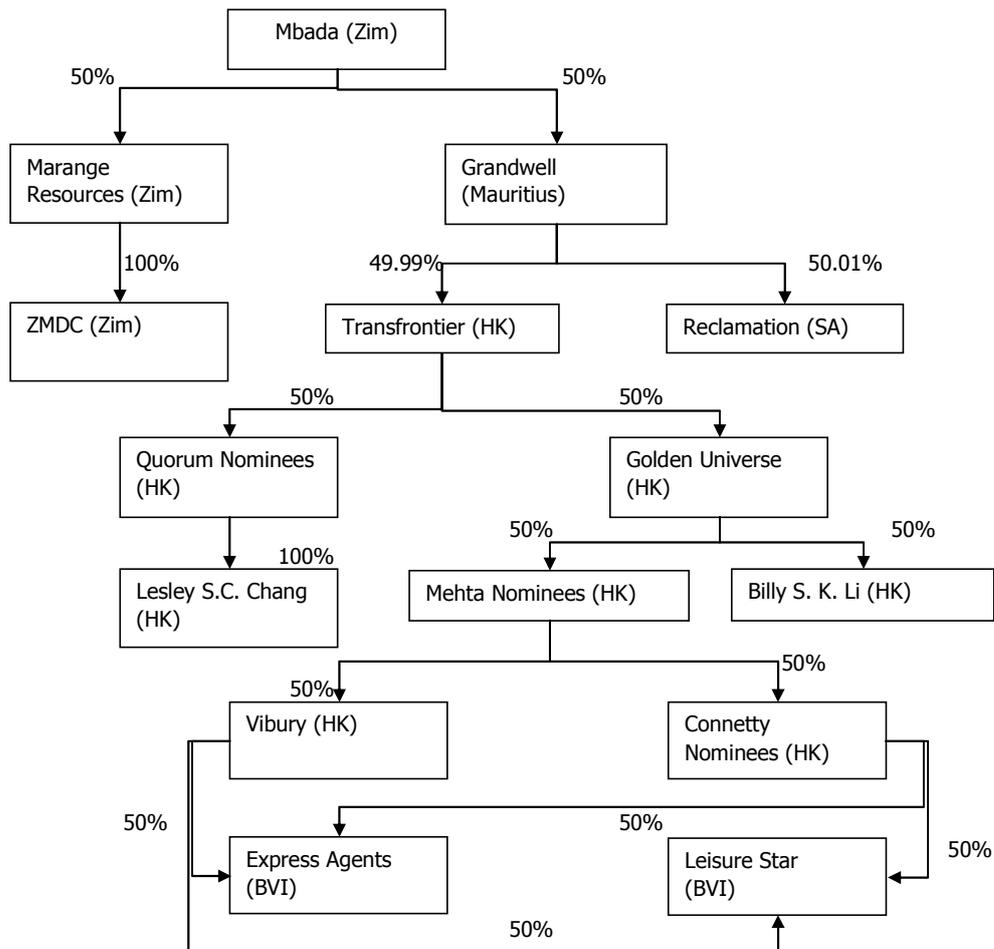


Table 1: Interlocking directorships among Hong Kong entities

	Quorum	Golden Universe	Mehta	Vibury	Connetty
CLHL Secretaries	Corporate secretary	Corporate secretary	Corporate secretary	Corporate secretary	Corporate secretary
Billy Sze Kuen Li (also a director of three other companies)	Director	50% shares Director	Director	Director	Director
Alice Lai Seung Chan (same address Billy Li) (also a director of two other companies)		Former 50% shareholder Former director			
Leslie Chien Shuk Chan (also a director of six other companies)	100% shareholder Director		Director	Director	Director
Fung Yee Leung* (also a director of seven other companies)	Former director		Former director	Former director	Former director/ Secretary
Anita Sum Yu Leung (also a director of three other companies)	Director		Director	Director	Director
Agnes Chau Leung Chan	Secretary		Secretary	Secretary	Secretary
Terence Chi Kin Leung (also a director of four other companies)	Director		Director	Former 50% shareholder Director	Former 100% shareholder Director
Edmond Chi Kong Leung	Director		Director	Director	Director
Sai Yan Luk	Director		Director	Director	Director

* Alice Fung Yee Leung resigned her directorships on 2 February 2012.

The ultimate beneficial owners of Transfrontier have not been identified. However, they may be connected with (retired) Zimbabwean Air Vice Marshal Robert Mhlanga, the Chairman of Mbada. Mr. Mhlanga is also the sole director of Liparm Corporation, three interlinked companies (Liparm Investment Holdings, Liparm Consultancy, and Liparm Trading) incorporated in South Africa.³⁷ Mr. Mhlanga is widely reported to have been President Robert Mugabe's personal pilot, and was a prosecution witness in the 2003 treason trial of then MDC opposition leader Morgan Tsvangarai. Mhlanga is reported to have been Chief of Staff Operations at the National Command Centre which controlled the announcement of poll results in the disputed 2002 presidential elections.³⁸

Until recently, Liparm's website described its "sister companies" thus: "Liparm Corporation has vested interests in business opportunities that enhance the value of our operations. These companies include, among others, the Transfrontier Group Company Limited, Skyview Minerals (Pvt) Ltd³⁹ and Mbada Diamonds (Pvt) Ltd. We value our sister companies as they not only provide a platform for the enhancement and the promotion of operations, but also create exposure and opportunities for sustainable growth and business development on a global scale."⁴⁰ A few days after Global Witness wrote to Mr. Mhlanga asking about the relationship between Liparm and

Transfrontier, the section on Liparm's website describing its "sister companies" was removed. Global Witness has saved and archived the relevant web pages.

Liparm also may be establishing a related company, Transfrontier International, in Dubai, a low tax zone in the United Arab Emirates. In late 2011, in the Dubai Yellow Pages, an employee of Liparm Corporation placed a public request for prices for two 2500kg safes for an "associated" company called Transfrontier International which has established an office in Almas Tower in Dubai.⁴¹ Almas Tower is the home of the Dubai Multi Commodities Centre and the Diamond Exchange. It is not known whether Transfrontier International is actively trading in Mbada-produced diamonds in Dubai.

There has been uncertainty about the true beneficial owners of Mbada since the outset. The former CEO of the ZMDC admitted to a Parliamentary Committee that "it would have been difficult to do due diligence on [Mbada parent company] Grandwell because it is a paper company, registered in Mauritius."⁴² This poses the question:

Who are the ultimate beneficial owners of Matt Bronze and Mbada and associated companies, including Transfrontier (and related companies registered in Hong Kong, British Virgin Islands and Dubai), Skyview Minerals, Reclam and Liparm?

What are secrecy jurisdictions?

Secrecy jurisdictions are countries which combine low tax rates with secrecy laws allowing the real 'beneficial owners' of companies to remain hidden.

Many offshore tax havens and secrecy jurisdictions allow corporate anonymity and thus erode the balance between corporations and society. In these states, offshore companies are often exempt from filing accounts and revealing their directors and shareholders. Sometimes companies are allowed to appoint corporate directors (other companies), rather than named individuals. A business may register in several different tax havens, further obscuring a company's true 'beneficial owners'. For example, Bananas & Co. (an imaginary company trading in fruit) might be registered in the Cayman Islands, with corporate directors in Monaco, each controlled by a trust located in the British Virgin Islands, which hides behind attorney-client privilege to justify a refusal to reveal the true identity of the beneficial owner.

A further barrier to understanding who controls these companies is the use of nominees. These professionals hire out their names to appear as the legal director or shareholder of a company, while the real control belongs with someone who does not appear on company documents. It appears that a number of nominees were involved in the corporate ownership chain of Mbada.

Structures such as this can be used by transnational companies to set up hidden subsidiaries which they use to avoid tax obligations (by trading within their own group to shift profits to low/no-tax jurisdictions). But they can also be used to hide secret stakes in a state asset by public officials.

The new international anti-money laundering standards agreed by the Financial Action Task Force (FATF) in February 2012 would require nominees to declare to relevant authorities that they are representing a third party. This is a welcome step forward, and Global Witness encourages national governments to implement this measure as soon as possible.⁴³

However, FATF still has a very long way to go to tackle the kind of opacity demonstrated in the Mbada case, and which in so many other cases permits tax evasion and laundering of money acquired via corruption or other forms of criminality. Global Witness is also calling for a new global standard in which jurisdictions are required to list the ultimate, or beneficial, owner of companies on a public registry, or risk exclusion from the global financial system.⁴⁴

Are there revenue implications for Zimbabwe?

Zimbabwe desperately needs tax revenues. For example, in 2011, life expectancy at birth in Zimbabwe was just over 51 years. This reflects, in part, the rapid decline of the country's health system in recent years.⁴⁵

The MDC-controlled Ministry of Finance recently presented the 2012 national budget with expenditure totaling US\$3.4 billion, and specified additional spending that would occur only if the Treasury received US\$600 million from diamond revenues promised by the ZANU PF-controlled Ministry of Mines. The Finance Minister noted "we are beginning to sound like a broken record in emphasising the need for transparency in the handling of our diamond revenues and, indeed general revenue from the rest of the mining sector."⁴⁶

Accurate figures about revenues from Marange diamonds are notoriously difficult to find. In its annual report one of the owners of Mbada, Reclam, reports the figures "related to its diamond operations" (see table 2).

The profits recorded by Transfrontier or ZMDC are not known, nor the royalties, dividends and taxes which were paid by Mbada. However, Reclam states that "Zimbabwe will retain approximately 62% of the revenues derived from the diamonds' sales in the form of royalties, resource depletion fees, taxes and the government's 50% equity interest in the joint venture."⁴⁷

The complex structure of Mbada and its related companies, many of which are located in tax havens (see table 3 overleaf), raises three related questions:

- *Are Transfrontier International actively trading in Mbada produced diamonds in Dubai?*
- *If so, how are the transfer prices governing the sale or transfer of diamonds between two related companies (Transfrontier and Mbada) determined?*
- *If so, how does this affect the taxes paid to the Zimbabwean Treasury?*

What is transfer pricing?

If two unrelated companies trade together, they generally pay the market price for a good or service. However, if two related companies, or divisions of the same company, conduct a transaction, then it can be difficult to price the good or service accurately. The consensus is that this internal price should reflect the price which would be reached between two separate firms – the arm's length principle.

However, the price can be distorted in such a way so that tax is paid in countries with lower tax rates. This is called abusive transfer pricing. For example, in our hypothetical scenario Bananas and Co. produces bananas in Costa Rica. It then sells the bananas at a very low price to a subsidiary in the Cayman Islands. Therefore there are very few profits to tax in Costa Rica. Then the Caymans subsidiary sells the bananas to a company in the UK at a high price, claiming that substantial legal and financial costs have been incurred in the Caymans. Therefore most of the taxable profit hasn't been booked in either the UK or Costa Rica, but in the Caymans, a country with 0% corporation tax. Sometimes the penalties such practices inflict on producer countries, in the form of lost taxation revenues, are overlooked by the governments concerned.

Table 2: selected diamonds related data for Reclam, part owner of Mbada⁴⁸

	Year end 30 June 2011	Year end 30 June 2010
Revenue	R1009.4m (c. US\$81m)	No revenue
Profit before income tax	R642.7m (c. US\$128m)	-R71.7m (c. US\$9.4m)

Table 3: Applicable corporate tax rates, relevant jurisdictions 2011⁴⁹

Jurisdiction	Corporate tax rates
Zimbabwe	25%
South Africa	28%
Mauritius	0%
Hong Kong	0% / 16.5%
Dubai	0%
British Virgin Islands	0%

Conclusion

This paper reveals the control exercised by the Zimbabwe security sector over Anjin and the transfer of 25% of Mbada, a valuable diamond mining company, to a firm based in a series of tax havens and secrecy jurisdictions with unidentified beneficial owners. The secrecy surrounding the real owners of Mbada has a number of potential consequences, including a possible loss of tax revenues, and the potential opportunity for officials or military figures to personally benefit from a state asset. The partial control of Anjin by the military and police creates opportunities for off budget funding of an unreformed and partisan security sector.

Recommendations

Global Witness recommends a series of short term measures, plus, in the longer term, the creation of policy and legal frameworks which should help avoid problems in the future.

Short term

The Government of National Unity (GNU) should cancel the Anjin contract.

The GNU should immediately review all other contracts in the Marange diamond fields, and audit concession allocation procedures and operations conducted so far, to see whether they represent a good deal for Zimbabwe.

Mbada and Anjin should publish details of their ultimate beneficial owners, and those of related companies such as Transfrontier and Matt Bronze.

The GNU should publish all mining concession contracts and other relevant agreements.

The Kimberley Process should not authorize sales of diamonds by Anjin.

Consumers should not buy diamonds originating from the Marange mines until they can be certain they will not fund human rights abuses.

Longer term

The GNU should pass legislation banning serving members of the military, police, the CIO and other members of the security services from control over, or beneficial ownership of, mining companies.

The GNU should design new transparent and fair concession allocation procedures designed to maximize public benefit.

The GNU should undertake reforms which would allow it to sign up to the Extractive Industries Transparency Initiative (or a domestic equivalent), designed to improve transparency of revenue flows.

The Financial Action Task Force, which is the intergovernmental body that sets the global anti-money laundering standards, should adopt a standard that requires each jurisdiction to collect and list publicly the beneficial ownership information for any company incorporated there.

Further questions to be answered

Assessing whether Anjin and Mbada's corporate structures benefit Zimbabwe's people requires answers to a number of key questions:

Do Anjin or Matt Bronze make any payments direct to the Ministry of Defence, Ministry of Home Affairs, Zimbabwe Republic Police, Zimbabwe Defence Force, Central Intelligence Organisation or the Office of the President and Cabinet?

Is Transfrontier International actively trading in Mbada-produced diamonds in Dubai? If so, how are the transfer prices governing the sale of diamonds between two related companies (Transfrontier and Mbada) determined? And, if so, how does this affect the taxes paid to the Zimbabwean treasury?

Who are the ultimate beneficial owners of Matt Bronze and Mbada and associated companies including Transfrontier (and related firms registered in Hong Kong, British Virgin Islands and Dubai), Skyview Minerals, Reclam and Liparm?

Was the transfer of 50% of Grandwell Holdings to Transfrontier Mining Company Ltd made in return for the grant of an extra 6,440 hectares concession area? If so, why was 50% of Grandwell transferred to Transfrontier, registered in Hong Kong, rather than to the Presidency of Zimbabwe, in whom mineral rights are vested by law?

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- ¹ See Global Witness, *Rigged: The Scramble for Africa's Oil, Gas and Minerals*, January 2012.
- ² See Global Witness, *Return of the Blood Diamond, 2010*, and Human Rights Watch, *Diamonds in the Rough*, June 2009.
- ³ Human Rights Watch, *Perpetual Fear*, March 2011, p.4.
- ⁴ Kimberley Process, *Compliance Verification Report on Anjin Investments*, 2011.
- ⁵ Global Witness interviews, 2012.
- ⁶ Kimberley Process, *Compliance Verification Report on Anjin Investments*, 2011.
- ⁷ Cited in *Zimbabwe Chronicle*, *Anjin Now World's Largest Diamond Producer*, 16 December 2011 (last accessed 31 January 2012).
- ⁸ AllAfrica.com, *President Museveni Endorses Stadium Plans for Akii Bua*, 18 January 2012.
- ⁹ AllAfrica.com *Mozambique: Second Phase of Airport Modernisation Starts*, 20 February 2011. Airports Council International, *newsletter* May 2009.
- ¹⁰ Minister of Defence, Hon. Emmerson Mnangagwa, *Speech to Zimbabwean Parliament* 31 May 2011.
- ¹¹ "The related Zimbabwe side should establish an escrow account to secure the payment and repayment of the facility with revenue of Zimbabwe's side's benefits from Anjin Investments (Private) Limited. Anjin Investments is the joint venture set up by Zimbabwe side and Anhui Foreign economic Construction (Group) Corp Limited. An agreement on the escrow account should be signed by Zimbabwe sides and the lender for the purpose herein," Cited in *The Financial Gazette*, *MDC-T Agrees to Mortgage Diamonds*, 10 June 2011.
- ¹² *Zimbabwean Parliament*, 15 June 2011.
- ¹³ Corporate documents in possession of Global Witness, available on request, and Global Witness interviews, January 2012.
- ¹⁴ Ministry of Defence website, http://www.mod.gov.zw/index.php?option=com_content&view=article&id=47&Itemid=53 (accessed 20 January 2012).
- ¹⁵ *The Herald*, *"Support Unit nabs 29,000, recovers guns"*, 23 December 2011, http://www.herald.co.zw/index.php?option=com_content&view=article&id=29871:support-unit-nabs-29-000-recovers-guns&catid=46:crime-a-courts&Itemid=138 (accessed 20 January 2012).
- ¹⁶ *The Herald*, *Female police officers hailed*, 12 October 2011, http://www.herald.co.zw/index.php?option=com_content&view=article&id=23539:female-police-officers-hailed&catid=38:local-news&Itemid=131 (accessed 20 January 2012).
- ¹⁷ *The Herald*, *Bulawayo to host Zanu-PF conference*, 2 September 2011, http://www.herald.co.zw/index.php?option=com_content&view=article&id=20185:bulawayo-to-host-zanu-pf-conference&catid=37:top-stories&Itemid=130 (accessed 20 January 2012).
- ¹⁸ Corporate documents in possession of Global Witness, available on request.
- ¹⁹ *The Herald*, *Foreign Defence Attaches Donate 40 Books to ZDF*, 17 September 2004, <http://allafrica.com/stories/200409170338.html> (accessed 20 January 2012).
- ²⁰ Human Rights Watch, *Zimbabwe: Bullets for Each of You*, p.28, 2008.
- ²¹ European Union, *External Action Service, Financial Sanctions in Force*, http://ec.europa.eu/external_relations/cfsp/sanctions/list/version4/global/e_ctlview.html, (accessed 30 January 2012).
- ²² Hon. Chikwinya, *Speech to Zimbabwean Parliament*, 27 October 2011.
- ²³ Knox Chitiyo. *The Case for Security Sector Reform in Zimbabwe*, Royal United Services Institute, September 2009. Derek Matyszak, *Zimbabwe's Security Sector – Who Calls the Shots?*, Research and Advocacy Unit, 2011.
- ²⁴ Human Rights Watch, *Zimbabwe: Bullets for Each of You*, p.28, 2008.
- ²⁵ Extracted and translated as annex 20 of the *Final Report of the United Nations Group of Experts on the Democratic Republic of Congo (A/2010/596)*, 15 November 2010: Article 27 of the *Democratic Republic of Congo Mining Code*, law 007/2002.
- ²⁶ Human Rights Watch, *Unkept Promise, Failure to End Military Business Activity in Indonesia*, 2010.
- ²⁷ Kimberley Process, *Compliance Verification Report on Anjin Investments*, 2011.
- ²⁸ Kimberley Process Certification Scheme, <http://www.kimberleyprocess.com>, (accessed 30 January 2012).
- ²⁹ Global Witness interviews, 2012.
- ³⁰ Reclam, *Annual report*, 17 October 2011, p.106.
- ³¹ *Memorandum of Agreement between Marange Resources and Grandwell Holdings*, 2.1.5.
- ³² Global Witness, *Return of the Blood Diamond*, 2010.
- ³³ Mbada still appears to be unregistered in Zimbabwe. We have checked the Zimbabwean company registry four times between 2010 and December 2011 and while Mbada is marked as a reserved name, it remains unregistered.

³⁴ See Mines & Minerals Act (1961) Section 2. "Rights to minerals vested in President: The dominium in and the right of searching and mining for and disposing of all minerals, mineral oils and natural gases, notwithstanding the dominium or right which any person may possess in and to the soil on or under which such minerals, mineral oils and natural gases are found or situated, is vested in the President, subject to this Act."

³⁵ Corporate documents in possession of Global Witness, available on request.

³⁶ Corporate documents in possession of Global Witness, available on request.

³⁷ Mr. Mhlanga is also sole director of Sparax Holdings 48 (a company registered in South Africa).

³⁸ Peta Thornycroft, Daily Telegraph, How the army hijacked Zimbabwe poll, 3 May 2003.

³⁹ Skyview Minerals (Pvt) Ltd is registered in Zimbabwe. Its directors are:

- Godfrey Dzinomwa (principal officer).

- Abdulla Ismail Kassim - a lawyer at Gollop and Blank.

- Mazebeli Ephethile - Executive Assistant to the Transfrontier Group Chairman, Dubai.

⁴⁰ Liparm, www.liparm.co.za (accessed 20 January 2012). Web pages and stored by Global Witness, available on request.

⁴¹ Requirement of Cat 5 safe quotation in Dubai UAE - Dubai Yellow Pages, <http://dubaiyellowpagesonline.com/b2b/52378/showoffers.htm> (accessed 26 January 2012).

⁴² Dominic Mubayiwa, ZMDC CEO, oral evidence to the Parliamentary Portfolio Committee on Mines and Energy hearings, 8 February 2010.

⁴³ Revised Financial Action Task Force 40 Recommendations on anti-money laundering and countering the financing of terrorism.

⁴⁴ See for example, Response to FATF consultation paper: Review of the Standards – Preparation for the 4th Round of Mutual Evaluations: Second public consultation, pp. 4-6.

⁴⁵ United Nations Development Programme, Human Development Indicators, Life expectancy at birth 2011. Available at <http://hdrstats.undp.org/en/indicators/69206.html> (accessed 26 January 2012).

⁴⁶ 2012 National Budget, Paras 245-6, available at: <http://www.zimtreasury.org/downloads/930.pdf> (accessed 26 January 2012).

⁴⁷ Reclam, http://www.reclam.co.za/zim_mbada_operations.php (accessed 26 January 2012).

⁴⁸ Reclam, Annual Report, 17 October 2011, p.106.

⁴⁹ World Bank, Doing Business project. Available at <http://www.doingbusiness.org/>. Grandwell Holdings is registered as a Global Business Category 2 company in Mauritius. A GBC2 company is completely exempt from paying taxes in Mauritius. See the Mauritius Companies Act (2001) Part XXX [30], 362. Available at <http://www.gov.mu/portal/goc/compdiv/file/CompWeb2001.pdf>. Hong Kong's profit tax rate of 16.5% is not applicable to profits whose source is outside the territory of Hong Kong. Also see Deloitte, Corporate Tax rates 2011. Available at http://www.deloitte.com/assets/Dcom-Global/Local%20Assets/Documents/Tax/dtt_corporate_tax_rates_2011.pdf (accessed 26 January 2012).

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