The case for human rights due diligence
Global Witness' comments for Tripartite Meeting on Responsible Sourcing of Precious Stones
26 May 2014

Introduction

Responsible sourcing by companies buying diamonds and coloured stones is a critical element in tackling human rights violations associated with the extraction and trade of precious stones. Despite the development of international frameworks outlining the business responsibility to respect human rights and a growing public awareness of the risks associated with precious stones, concerns about conflict and human rights abuses in the sector persist.

Revenues from the trade in precious stones have played a central role in funding some of the world's most brutal conflicts and have contributed to increased instability in already fragile states. Proceeds from diamonds and coloured stones have given armed groups the means to operate and been channelled to state institutions implicated in widespread human rights violations. The trade has provided off-budget funding to security forces and corrupt officials hiding behind opaque company structures.

While efforts to tackle conflict diamonds have been made by governments and industry, existing responses are failing to comprehensively address the problem. Companies sourcing diamonds and coloured stones originating in countries like Afghanistan, Central African Republic, Myanmar or Zimbabwe, risk indirectly supporting violence.

Global Witness' efforts to break the links between human rights abuses, conflict and previous stones include participation in the Precious Stones Multi Stakeholder Working Group (PSMSWG). The PSMSWG is an informal working group, including companies, governments and civil society organisations working to address concerns about responsible sourcing and supply chain due diligence in the precious stones sectors.

Doing due diligence – in other words checking supply chains and addressing risk – can enable companies to do business responsibly and avoid causing harm. The risk-based due diligence approach is not new to industry. In many cases companies engaged in supply chains are already assessing business risks and potential impacts posed by third parties linked to their operations. The benefits of due diligence to business in this context are in avoiding potentially time intensive and costly problems using a flexible and practical approach.

Applying the same principles to assessing and mitigating risks to human rights is therefore not a great leap. Companies in the tin, tantalum, tungsten and gold sectors have joined governments and civil society, hosted by the Organisation for Economic Development and Cooperation (OECD), to develop recommendations for due diligence that firms can carry out when sourcing from conflict and high-risk areas.[1] This is in line with United Nations guidelines, which recommend risk-based due diligence as the means by which the business imperative to respect human rights should be met.[2]

Although existing guidance on sourcing minerals from conflict-affected and high-risk areas can and should be applied to diamonds and coloured stones, currently it is not widely implemented by the private sector. The case studies below make a clear case for a more comprehensive approach to mitigating human rights risks, so that companies can meet international standards. Global Witness believes that by building consensus around existing international due diligence standards – and if necessary developing additional guidance – governments, companies and civil society from producing, trading and consumer countries can more effectively address human rights concerns in precious stone supply chains.

Afghanistan

Natural resources, and especially precious stones, have funded conflict in Afghanistan for decades. In the 1990s, the United Islamic Front earned around US$60 million a year from gemstones, notably lapis lazuli and emeralds from Panjshir and Badakhshan provinces. As well as emeralds and lapis, rubies, marble, chromite (a mineral which provides chromium for use in metal production), coal and gold are among the most common targets for illegal extraction, and continue to support armed groups on both sides of the conflict today.[3]

Minerals play a significant part in funding the current insurgency: the Taliban take a 20% cut of the profits from mining in areas where they are present, like Jegdalak in Kabul province.[4] Kunar province is another mining area where locals involved in extracting various precious stones report paying a similar tax.[5] Meanwhile, the Haqqani network, a key part of the Taliban movement active in eastern Afghanistan, receives significant funds from the chromite trade.[6] These resources also fund armed groups that are nominally pro-government, like the Afghan Local Police.

Afghan government coffers see very little income from the mining sector. In 2013, no more than 3.4% of government revenues were from mining, yet there are an estimated 1400 illegal mines in the country and mineral deposits are reportedly worth nearly US$1 trillion.[7]

Central African Republic

The Central African Republic (CAR) possesses significant diamond resources and was the 14th largest diamond producer globally in 2012.[8] As the major export, diamonds have played a vital role in the economy.[9] However the country's mineral wealth has also been appropriated by armed groups. The UN recently announced sanctions on rebel leader Nourredine Adam, citing his facilitation of diamond trafficking to help finance the Seleka movement, which deposed the government in 2013 amid widespread human rights abuses.[10]

After the coup, CAR was barred from trading diamonds with the member states of the Kimberley Process. Nevertheless diamonds have been traded illegally since then to finance warring parties. Global Witness' research indicates that leaders of the Seleka rebels made significant profits from diamond trading after they seized control of diamond-rich regions. Miners were forced to sell diamonds at a fraction of their value,[11] were subjected to illegal taxes and in some cases paid protection money to the soldiers.[12] There are indications that the diamond trade is currently active in the north of the country, which remains under Seleka control. The transitional government exercises little effective control over its territory and lacks capacity to halt this trade.[13]

Prior to the conflict, CAR diamonds were sold in major international trading hubs including Antwerp, Dubai and India. There is a high risk that conflict diamonds from CAR are still entering these markets.

So far the conflict has left thousands dead and displaced nearly a million people.[14]

Myanmar (Burma)

Myanmar is widely reported to account for at least 70% of the world's production of premium jadeite.[15] Recent analysis by researchers at the Harvard Ash Centre, which was facilitated by the government of Myanmar, indicates that sales of jadeite in 2011 were worth in the region of US$6-9 billion.[16] If correct, these figures suggest that jade brings in more than double the revenue Myanmar receives from its exports of natural gas and up to a sixth of its 2011 GDP.

Myanmar jadeite is a conflict resource, however. Since the breakdown in the ceasefire between the Myanmar government and the Kachin Independence Organisation (KIO) in mid-2011, there have been persistent armed clashes around the Hpakant mines in Kachin State, which are the main sources of jadeite in the country.[17] Both the Myanmar military and the KIO are deriving financing from the trade and the opportunities to mine and sell jadeite act as an incentive to fight for control of the area.[18]

The trade in jadeite from Kachin has been inextricably linked with China since the Eighteenth Century[19] and, while reliable statistics are hard to come by, China would appear still to be the main destination for most of the material that Kachin produces.[20]

Zimbabwe

With the discovery of diamonds in the Marange region, Zimbabwe became one of the top five diamond producers globally.[21] Global Witness has exposed links between some of the mining companies operating in Marange and members of the military and secret police.[22] The involvement in the diamond sector of security forces loyal to the ZANU-PF ruling party, particularly around the 2008 and 2013 elections, raised concerns of off-budget diamond revenues being used to finance human rights abuses and vote-rigging.[23]

Zimbabwe's security forces have been repeatedly implicated in widespread human rights violations perpetrated against perceived critics of the government, aimed at stifling dissent.[24] Alongside fears that diamond revenues may be being channelled to abusive actors, are concerns that the people of Zimbabwe are missing out on their country's natural resource wealth. Diamond revenues could play an important role in propelling Zimbabwe's development. However, both the current Minister of Finance and his predecessor have been quoted in the press voicing concern about proceeds failing to reach the treasury.[25] At the same time, the government's struggles to pay workers in the civil service[26] is one indication of the country's declining economy.

Consumers have little guarantee that their diamonds have not been sourced from Marange. The Kimberley Process has given a green light to all diamond exports from Zimbabwe, allowing Marange stones to circulate on the international market.

The benefits of due diligence

Human rights due diligence is a process in which companies 'assess actual and potential human rights impacts, integrate and act upon the findings, track responses, and communicate how impacts are addressed', according to the UN.[27] The focus of due diligence should be on potential and actual human rights impacts to which companies are directly or indirectly linked through their business activities.

The onus for implementation is therefore on industry itself, meaning that due diligence can work in synergy with government-led initiatives. There are numerous benefits to risk-based due diligence. Primarily however, it should provide companies with an effective means to fulfil their responsibility to prevent adverse human rights impacts of their business operations.

Existing guidance shows how due diligence offers companies a flexible and workable approach to responsible sourcing.[28] For example, one of the key principles of due diligence is that a company's efforts can be scaled up or scaled down according to the level of risk they encounter. Companies are expected to look out for 'red flags' – high-risk factors in their supply chain – the presence of which should trigger further due diligence. If no red flags are present, no further investigation is necessary.

In some circumstances a risk-based approach may be a favourable alternative to applying blanket sanctions or export bans on producing regions, protecting and promoting responsible business rather than preventing it. For instance, in a country where mining operations in some areas do not present human rights or conflict risks, risk-based due diligence would not stop companies continuing to buy from these mines, but could potentially exclude others.

With a due diligence approach the emphasis is on the steps companies take to ensure they are not contributing to human rights abuses. Potential human rights concerns are addressed through company management systems. For example, in the development of a supply chain policy that sets out standards against which human rights due diligence is conducted, with clear lines of accountability in management structures.[29] The emphasis therefore is less on the product itself and more on how the company does business, on how its policies and processes promote responsible sourcing.

The nature of human rights due diligence requires companies to develop better oversight of their supply chains and while improved oversight may incur additional costs, the alternative – to continue sourcing precious stones in a way which puts local populations in producer and transit countries at risk of human rights abuses and other harms – is not acceptable.

Due diligence may bring additional benefits to businesses, for example better quality control and more security of supply. Equally, the demand for greater transparency by companies sourcing precious stones may have benefits for local populations beyond preventing conflict financing. Through asking questions about corporate structures or beneficial ownership, for example, due diligence may expose incidences of corruption and state looting. Transparency can encourage greater accountability and have wider development benefits for citizens, making it more likely that they benefit from their countries' resource wealth.

Undertaking due diligence enables companies to demonstrate their respect for human rights and can provide a means of protecting their reputation and increasing consumer confidence. In the event that a problem emerges in the supply chain, they can show that they have acted responsibly in the steps taken to avoid contributing to harm. The spotlight on the overseas operations of companies is growing and consumers are increasingly aware of and concerned about human rights impacts.

It is possible that if companies resist taking measures to prevent their business activities contributing to human rights abuses they will risk commercial disadvantage. Costs to human rights and costs to reputation may be directly linked. Concerned consumers may not wish to purchase from companies or even industries whose operations are linked to abuses.

Due diligence and the Kimberly Process

The Kimberley Process Certification Scheme (KP) is government to government certification system for rough diamonds, set up by states, industry and civil society seeking to stem the flow of conflict diamonds.

Conflict diamonds are defined by the Kimberley Process as ‘rough diamonds used by rebel movements to finance wars against legitimate governments’.[30] As a result of its scope and mandate, the KP is not empowered to address the range of risks to human rights posed by the trade in diamonds and coloured stones. For example, the KP applies only to diamonds and has no authority over other precious stones.

The narrow definition of conflict diamonds accepted by the Kimberley Process means the scheme is not mandated to address the wider range of associated potential harms, even with diamonds. Equally, as the KP applies only to rough diamonds it does not address the scope for abuses taking place beyond producer countries, further up the supply chain.

The responsibility for implementation of the Kimberley Process lies with governments. With due diligence however, the emphasis is on the business responsibility to take measures to mitigate adverse human rights impacts. Due diligence can therefore be employed to complement the activities of the KP, working alongside it in a supplementary fashion to increase the angles from which human rights concerns are tackled.

Respecting human rights across the supply chain

Under international human rights law, the obligation to protect requires States to protect individuals and groups against human rights abuses by third parties.[31] This obligation is elaborated upon in the United Nations Guiding Principles on Business and Human Rights (UNGPs), which underline the duty of governments to ensure that businesses operating in their jurisdiction are not causing or contributing to human rights abuses directly or indirectly through their business activities.[32]

The private sector in turn has a responsibility to respect human rights and should avoid business activities that could have a negative impact on human rights. This means companies should take measures to address human rights concerns as an integral part of how they go about their business. Although the way companies do this will vary according to a number of factors, the UNGPs nevertheless apply to all businesses ‘regardless of their size, sector, location, ownership and structure’.[33] As such, they apply to the full range of business enterprises involved in precious stones supply chains.

Companies are called upon to address any adverse human rights impacts linked to their operations, even in circumstances where the link may exist indirectly through business relationships.[34] Neither ignorance nor indirect involvement offer exemption from responsibility. Businesses across the diamonds and coloured stones industries should be assessing risks to human rights throughout their supply chains and taking steps to mitigate them.

The UNGPs also recommend that States 'provide effective guidance to business enterprises on how to respect human rights'.[35] Risk-based due diligence, as recommended in the UNGPs,[36] is increasingly accepted as a key tool to mitigate potential adverse human rights impacts of business operations.

However, the practice of human rights due diligence has not been widely adopted in the precious stones industries. This may be due to a number of factors, including lack of consensus on the application of existing guidance, the lack of a global standard explicitly designed for the precious stones industries, and a failure of industry to fully understand and/ or acknowledge its responsibilities in relation to human rights.

Until concrete measures are taken to address the current impasse, the unacceptable risk that precious stones industries will continue to fuel conflict and abuses remains. A government-backed exploration of existing internationally agreed due diligence guidance tools and their application to precious stones supply chains is a logical starting point.

The OECD Due Diligence Guidance

The Organisation for Economic Cooperation and Development's (OECD) Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas (the Guidance) is a five-step framework negotiated by a working group comprising governments, companies and NGOs. It was adopted in 2011 by OECD member states, and has also been incorporated into domestic legislation in Democratic Republic of Congo and Rwanda. In 2012, the UN Security Council endorsed due diligence guidelines identical to the OECD Guidance.

The Guidance applies to all minerals including precious stones. While detailed additional recommendations have been developed for tin, tantalum, tungsten and gold, a supplement for diamonds or coloured stones is not available.

The development of a precious stones supplement may be helpful in equipping the relevant industries with guidance tailored to the specific challenges associated with their supply chains. It may act as a global benchmark for human rights due diligence and offer greater clarity to companies and governments on the necessary steps to meet international standards. Alternatively, it may be that the existing OECD Due Diligence Guidance is sufficient but requires consensus around its application to precious stones supply chains.

At minimum, it is useful to draw lessons from the current OECD-hosted initiative on tin, tantalum, tungsten and gold. This could provide a useful model for a future dialogue on responsible sourcing of diamonds and coloured stones.

Conclusion

Diamonds and coloured stones continue to be associated with conflict, human rights abuses and instability. Current initiatives for responsible sourcing are failing to comprehensively address the risks in these supply chains and consumers are not able to know whether their purchases are funding abuses.

There is an urgent need to build consensus around an international benchmark for risk-based due diligence so that companies can meet their responsibility to respect human rights. Global Witness is advocating for governments, industry and civil society to come together in a formal process aimed at agreeing and supporting a global standard. This could be an important building block in stamping out the trade in precious stones that is associated with conflict and abuses.

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[9] See http://atlas.media.mit.edu/profile/country/caf/.

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[13] Ibid.

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