

A Report Back Workshop on the 10th Plenary of the Kimberley Process (KP)

6 March 2014, Burgers Park Hotel

Introduction

This workshop was held to reflect on the Kimberley Process (KP) since South Africa's tenure as Chair in 2013 and the subsequent hand over of that role to China at the 10th KP plenary in November 2013. The objective of this workshop was to provide an opportunity for the sharing of lessons learned during SA's tenure, with China and Angola as incoming chair and deputy chair respectively and explore ways to deal with outstanding issues. Speakers included Ambassador Nhlapo (former Chair on behalf of SA), Mr Shamiso Mtisi (the KP Civil Society Organisations Coalition representative), Mr Ernest Blom in absentia (the Diamond Industry representative and President of the Federation of Diamond Bourses (WFDB)) and Mr Bernardo Campos (Vice-Chair of the KP representative of Angola). The current (2014) chair of the KP - China was also invited to the workshop, but tendered their apology for inability to attend.

The Chair of the meeting **Dr Showers Mawowa** welcomed everyone to the workshop and stated that the event served as a report back platform, which offered a reflective discussion on the 10th Plenary of the Kimberley Process.

Opening Remarks: Ms Charmaine Williamson



Ms Williamson indicated that in 2004, she was the Director of the Conflict and Governance Facility (CGF), then a partnership project between the South African government and the European Union, during which time they supported a two year programme on the governance of natural resources in Southern Africa. Thus, she said,

"The project aimed at contributing towards enhancing the effective participation of SADC region in the AU led continental processes towards the development and adoption of minimum standards for the governance of mineral resources. Research on five natural resources took place; fossil fuels, land, maritime resources, minerals and water."

She also added that, *"The research acknowledged and worked within the system of complexity and that is; no resource is isolated from another and that there are critical interdependences."*

Additionally, Charmaine shared six key findings of the research which were as follows:

- Effectiveness of governance was negatively affected by dispersed efforts and advised on a far more coherent relational and interconnected process.
- Natural resources should be key priority in Africa's Peace and Security agenda.
- Strict adherence and respect of regional and continental instruments of the peace, governmental and development agenda should be achieved.
- The exploitation of natural resources should not undermine the promotion and protection of human security.
- Enhancing Africa's ownership in all its dimensions is a critical perspective and addresses much larger agendas of trade
- Natural resources are finite and we should find ways to safeguard these intergenerational legacies.

She added one finding that she felt the research neglected to address, which is the role of women, children and the rights of people with disabilities, in particular, how their lives are affected.

She then thanked SALO's partners namely; the Norwegian Embassy, Irish Aid, the Embassy of Denmark and OSISA. She also thanked the Department of Mineral Resources, the 2013 chair of the KP- Ambassador Nhlapo, the new chair of the KP- China and the joint efforts of governments, industry leaders and civil society representatives who enabled the KP to successfully curb the flow of conflict diamonds.

Charmaine concluded by stating that the recovery, development and progress of Africa is intricately linked to resources governed in ways that not only bring public good to the socio-economic development of the nation, states, regions and continents that possess the mineral wealth, but also in ways that ensure ongoing human advancements and security.

Presentations

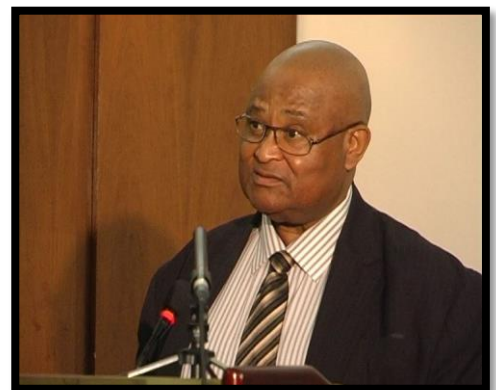
Dr. Mawowa acknowledged the Departments of Mineral Resources and that of International Relations and Cooperation, respectively, before introducing Ambassador Nhlapo.

Speaker 1: Ambassador Welile Nhlapo

Ambassador Nhlapo emphasised the importance of looking at what the KP is, and the components of what had sustained it for all the years. He emphasized that the challenges were continuing despite whatever attempts and contributions that were made as the KP.

Issues discussed at the Plenary:

- It was noted that the situation of Venezuela was getting completely out of control and disturbing. There were challenges around the management of diamonds in the self-suspended Venezuela. The Plenary concluded that Venezuela should be allowed to continue in suspension until they find solutions to their challenges and are able to comply with the KP requirements.
- In terms of the Central African Republic (CAR), conflict is always discussed but diamonds are never mentioned yet they constitute some of the key drivers and a very important component. The KP therefore, wants to see how best to help the CAR to manage its resources, especially diamonds. The country is suspended from the KP until such time they can guarantee that they have control over the activities that are taking place in the mining and market areas. The KP hopes to continue to work with



CAR so that they can also derive the necessary revenue. CAR is hoping that the sanctions or the temporary suspension will be removed.

- In Cote d'Ivoire, diamonds continue to be a problem in the destabilisation of the country. The government does not have control and smuggling networks continue to cause instability. The KP has been able to make some strides and in December the KP met with the Security Council group that was dealing with the issue of the sanctions on the diamonds of that country. The KP had established that Cote d'Ivoire has reached a point where they could be capable of complying with the KP, but there were security questions, which made it impossible for the Security Council to get them off the hook. The KP was working with the Security Council on the issue of Cote d'Ivoire.
- The KP continues to focus on strengthening its own internal mechanisms as decided by the Plenary:
 - To look at the various working groups of the KP in order to strengthen them and close all the loopholes as a mechanism to make them as efficient and effective as possible.
 - There is an ongoing debate, aimed at reaching a common understanding about the need to extend the definition of conflict diamonds to cover other areas outside what was originally the issue. One of the problems has been to agree on whether to expand the definition to include other factors around human rights and conditions under which people work in the areas where diamonds are extracted.
 - It was appreciated that consensus as a form of decision-making is the one that enabled the KP to continue working. As such, the KP has to have an agreement on this issue, in order to ensure that decisions are easily taken and that everyone can defend those decisions.
- Most diamond producing countries have very weak state institutions and are unable to efficiently and sufficiently manage their resources, which results in them falling into the wrong hands and help to fuel conflicts. State capacity is important in order to have proper regulatory processes. The KP has been able to look into the internal mechanisms within states that regulate the extraction and trade in diamonds and intends to ensure that the peer review system becomes more effective as a tool to ensure that compliance with KP minimum requirements is properly reviewed.
- The KP also focuses on interregional situations and interconnections, because if there is problem in one country, it will most likely affect the neighbouring countries. The KP intends to make sure that cross boarder activities are monitored. He cited the Mano River basin as an example of the work being done on this issue.
- The KP works with other multilateral institutions that have got the capacity, the mandate and the ability to deal with issues that are outside its mandate. Therefore collaboration is key in order to achieve success.

Ambassador Nhlapo stated that the KP would continue to grow as long as the focus was on the issue as agreed upon in Plenary and not shy away from dealing with some of the issues that might be controversial and sometimes divisive. He said that open and frank engagement on issues gives more vitality and life to the process. He hoped that the process would continue to reflect on these issues in the same way in which it started.

Thus, he said, "Because at the end of the day, the nexus between peace, security, stability and development is all that we are talking about, because if we ignore that, all these things we hear about the growth on this continent and some of the things about the bright future that this continent might have, might be lost and undermined, if we are not able to manage our resources in a particular way."

The African Diamond Producers Association (ADPA) should be able to rally around and protect their resources, which are now again a target of attack in terms of regulatory frameworks, which are being developed outside. According to him, the objective should be the same and the problem comes when

others want to control resources that don't belong to them, because now, Africa has developed enough mechanisms and ideas to enable it to manage its own resources.

Ambassador Nhlapo concluded by wishing those who continue with the KP, including the 2014 chair (China) and the vice-chair (Angola) success. He then emphasised the importance of focusing on CAR and the role of diamonds in that conflict and well as the KP limitations and the helplessness of the international community in dealing with that situation, partly due to the wrong framing of the problem.

Speaker 2: Mr Bernardo Campos



Dr Mawowa congratulated Angola on the assumption of the Vice-chair of the Kimberley Process. He acknowledged the role played by that country in championing the implementation of the Washington Declaration on Artisanal and small-scale mining and their leadership role in the African Diamond Producers Association (ADPA). He then introduced the next speaker, Mr Bernardo Campos, the 2014 Vice-Chair of the Kimberley Process on behalf of the Angolan government.

Mr Bernardo Campos expressed his gratitude for the opportunity and honour to be part of the discussions. He thanked Ambassador Nhlapo for his guidance and for having successfully conducted the KP chair-ship in 2013. He congratulated the KP for the success of the previous ten years. He cited that that controlling 99.8% of the rough diamonds in international market, the world can be considered free of conflict diamonds. He affirmed his availability to work under KP chair and his commitment is continue working together with the tripartite pillars of the KP. He concluded by stating that he had attended the workshop in order to listen to all participants and hoped that significant progress would be achieved in the matters discussed.

Speaker 3: Mr Shamiso Mtisi

Mr Mtisi's presentation focussed on the terms of reference of the workshop, as outlined on the programme. Thus, he said, *"This workshop intends to reflect on the past year, lessons learned during South Africa's tenure as chair, resolutions that came out of the 10th Plenary, issue that remain contested and what this means for the initiative going forward."*

Mr Mtisi mentioned that he was inspired by Ambassador Nhlapo's ability of to steer the conversations in 2013 and for managing people with different expectations, different backgrounds; politically, economically and ideologically. He mentioned that civil society had viewed reforms in the KP as being slow, although there had been some progress here and there.



Below are the issues he said were of concern to civil society:

- The definition of what constitutes conflict diamonds. The administrative decision of 2013 clearly stated that there was no agreement on the definition. Civil society said that the current definition of the

conflict diamond was outdated and did not address the way in which mining in diamond-producing areas has evolved over the decade. Civil society had been calling for the expansion of conflict diamond definition that adequately responds to cases of violence and human rights abuses in the diamond supply-chain, especially by state and non-state actors. In this case, state and non-state actors refer to the police, the military or private security guards that are normally hired by mining companies to secure premises.

- In terms of diamonds and development, civil society would want a situation where diamonds lead to community and national development. Diamond mining should not be used to subvert the will of the people or suppress them in any country. These issues were identified as the ones that had actually battered the image of the KP as they affected the value of diamonds.
- In many countries, national compliance remains weak leading to a lot of leakages of diamonds. The laws are not strong and in some countries are not being enforced.
- It is important for the Kimberley Process to take concrete steps in promoting or working with initiatives that promote transparency and accountability. Mr Mtisi recommended that the KP should undertake a study in partnership with the Extractive Industry Transparency Initiative (EITI), to see what the flow of diamonds in terms of production and contracts that have been signed has been like.

To this, Shamiso said, *"I think that it can really help the Kimberley Process to understand the impacts of diamonds and also the contribution of the diamond sector if we are talking about diamonds and development, in terms of promoting development."*

- The cutting and polishing industry should be included in the KP oversight and statistics, because the exclusion of this industry from the KP system creates a vacuum between production, trading systems, retailers as well as consumers.
- There is need for clearer responsibility for the industry through the supply chain to make sure that industry on its own takes steps to promote human rights within their operations, through due diligence activities.

He also noted that there are positives and negatives that civil society viewed from their assessment of the South African 2013 Plenary outcomes. Below are some of the positives that were noted:

- The KP has played a great role over the past ten years in stemming the flow of conflict diamonds.
- The adoption of proposals for the modification of the Kimberley Process core document. Some recommendations are now, or will in future become mandatory requirements.
- Adopting and noting the issue of the West Africa regional approach to promote compliance at that level and the harmonisation of laws and policies in the Mano River union.
- Venezuela's inaction for the past years and hopefully that one day when the situation stabilises politically, there will be movement in terms of getting a review team and technical assistance to the country.

Some of the negatives arising from the 2013 Plenary:

- There's still no consensus on the definition.
- The mandate of the Committee on KPCS Review (CKR) ended and there are proposals in the administrative system to develop what is called an Innovative Ideas Forum and the mandate of that forum has not yet been defined.
- The developmental role and impact of the KP has not led to improvements in the lives of many people.

- The KP Peer Review Mechanism can be strengthened by independent monitoring instead of just having participants in the KP review each other.

There are certain recommendations in the Kimberley Process core document that should be considered as mandatory. These are as follows:

- The control over and licensing of diamond mines.
- Effective security.
- Licensing of artisanal miners where there is need.
- Registering and licensing diamond buyers, sellers, exporters, agents and courier companies involved in carrying rough diamonds.
- Ensuring the routing of cash purchase through official banking channels. Some participants in the KP do not want payments for diamonds to be transacted through official banking channels. Rather, some people prefer to carry briefcases wherever they are and even at airports. This exposes the whole diamond sector and takes away the credibility of the system. Civil society therefore recommended that all transactions go through the bank, to guarantee traceability.

Mr Mtisi concluded by thanking SALO for inviting him to this very important workshop.

Speaker 4: Ernie Blom

Dr Mawowa thanked Mr Mtisi for representing the civil society voice well. Mr Blom unfortunately could not make it to the meeting, because he was involved in an accident on his way to the workshop. Dr Mawowa read Mr Blom's speech, which is summed up below:

His speech started by thanking Dr. Mawowa for the contribution he made through the papers he wrote. He further congratulated Ambassador Nhlapo for his sterling job as chairman, during 2013, stating that this was evident in the fact that no major issues arose during his tenure. He recommitted the WFDB through its representative body, the World Diamond Council (WDC) to working with the KP, to ensure a transparent long-term future for the diamond industry that benefits all people along the value chain and instill confidence in the product, in the minds of consumers across the world.

Fourteen years later, the KP has certainly achieved its goals of almost completely eradicating conflict diamonds. The KP reinvented itself and has gone beyond this, finding life in protecting this vital industry on this continent.

"Madiba played a vital role in the process and I believe that the KP is a part of his legacy. The road ahead for the KP has evolved to now include governments, together with industry and civil society."

Mr. Blom gave a brief history of the WDC. He mentioned that the key development factor in the diamond industry has been the beneficiation programme.

"This development has ensured that local people benefit from the industry while creating a new skills-base employment group for these producing countries."

He then stated that diamonds have provided the funding for many different kinds of social development programmes, citing Southern Africa and Botswana as examples. He also announced that the WFDB is finalising a programme to allow membership for diamond producing countries, thus allowing them to enjoy the benefits offered WFDB. There has been major changes in the diamond industry on a global basis that has benefited Africa, an example being a Diamond Trading Company moving its headquarters from

London to Gaborone, Botswana and also Europe lifting sanctions on Zimbabwean diamonds, which will enable Zimbabwe to formalise its trade and build an income stream from diamonds.

The KP has an agreement with the WDC for another three years and it accords that the WDC manages the KP's Administrative Support Mechanism (ASM). The WDC has also established an operating and administrative support mechanism managed by the Israel Diamond Institute Group of Companies, the Antwerp World diamond Centre, India's Gem and Jewelry Export Promotion Council and the Diamond House of the Government of Ghana.

A key issue for industry is “consumer confidence” which is warranted by the KP. The KP cannot prevent resource-fueled wars on its own, but there is need to consolidate post-conflict reconstruction, peace building and team work which will help achieve success on a social, development and financial basis.

“..This industry is too important for Africa, its people and future development for us not to succeed.”

Discussion Round 1

Mrs Joyce Skhakhane (SALO Board member) asked if the UN cannot create a team of international watchdogs to monitor the countries where there is violation of the KP processes. She then proposed that SALO should make a mechanism to zoom in on the plight women, children and people with disabilities in relation to the diamonds.



Paulo Vika Paulo, a member of the Angola KP team made a comment based on responses to the questions below:

- Where we come from?
 - To this, he gave a brief history of the KP.
- Are we happy from this period?
 - The producer countries would say; yes, because conflict diamonds have been reduced 15% off to 1.02%.
 - The consumer would say; yes, because business continued during this period, despite the financial crisis in 2008 and 2009.
 - African civil society would say; no, because they want to see more diamonds contributing to development through more revenue generation.
 - Foreign civil society would say; no, because they want the definition of conflict diamond to include violence and human rights.
- Where we are now.
 - We don't have any more conflict directly linked to the diamond business. We have to look at the original sources conflict in Africa, because diamonds are only the consequence and these problem are:
 - Weak political situation.
 - Weak economic situation.
 - Weak social situation.
 - Lack of education .

It is important to look at how to peacefully resolve the conflicts in Africa and Angola has some experience in this regard. Most countries involved in artisanal diamond producing can only earn approximately 5 million in dividends, yet for development, you need a fraction of 10 million. This makes it hard for such

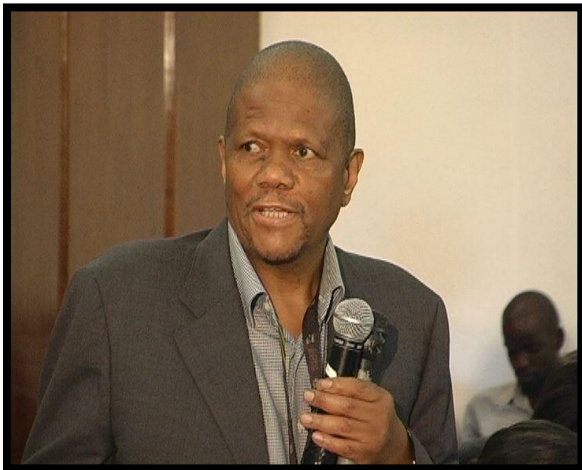
states to get investments and therefore results in informal economy. Killing this kind of activity will result in Africa killing itself. He emphasised the importance of protecting artisanal mining.

Mr Vika then raised the questions below:

- Where are we going and how are we going?
 - Angola as the Vice-Chair and China will continue to discuss issues with the industry, civil society and the governments.
 - We want to see African civil society partnering with the government. This can be achieved either through ADPA or the working group, for African civil society to discuss. This relationship can create and consolidate the capacity to be strong and can defend and protect our resource.
 - The European civil society must consolidate the economic and political relationship and not to destroy it.
- How do we keep this credibility?
 - All the responses above can contribute to the credibility of the KP.

Mr Vika stated that people sell other agendas to cause confusion in conflict countries and cited Egypt, Libya, Iraq and Ukraine as examples. He concluded by stating that Africa can immensely benefit from its resources. He challenged Africa to look for solutions to its problems.

Ambassador George Nene said that it is very difficult for manage a trilateral entity. He stated that he did



not think there is anything like absolute consensus or sufficient consensus. If there is no consensus on the interpretation of the definition, it makes it difficult to advance a certain course. He then advised the KP to have a relationship with what Kofi Anan started. The UN is grappling with the issue of big conglomerates who are failing to honour their human rights obligations where they make profits. The KP in his view should look at that.

Mr Aziz Pahad (former SA Deputy Minister of Foreign Affairs) thanked the panel and SALO for organising this session, which was a continuation of all the excellent meetings organised in 2013. He then asked if momentum

won't be lost due to the Chinese' lack of participation in these kinds of meetings. He recommended that the KP should find some synergy between itself and the issue of the nexus between peace, development and security. Other issues of concern that were noted were;

- Violence and human rights
- Responsibility of industry
- Transparency and accountability.

Ms Cara Gilboy asked what is given back after extraction of mineral resources in terms of rehabilitation, on conservation. She argued that the big mining corporations should adhere to social responsibility. She also mentioned the need for more women in mining and that the KP should be involved in this.

Responses

Ambassador Welile Nhlapo

Ambassador Nhlapo mentioned that certain minimum requirements have to be met by any producing country to qualify for the KP membership. Some of these are as follows:

- They must have a legislative framework crafted through the peer review mechanism.

- Systems should be in place to ensure that there can be accountability from the diamonds that are mined and those that are exported.

Thus, he said there is need for, *“Technical and other support that can be given for the country to be able to regulate and manage its own resources to the best of its capabilities.”*

There is a tendency to develop certain mechanisms that are suitable for ensuring that African countries comply, and not to develop their own standards in order to ensure compliance on their own, but respond to external dictatorship. Sanctions have been used to punish these countries. The KP on its own does not have the legal mandate or the capacity to deal with human rights, social and economic issues, but tries to find a common basis through partnerships on complementarity.

Regarding the lack of participation by China, Ambassador Nhlapo stated that the ongoing structures of the KP; the working groups on specific issues that have been decided must continue to work. The work of the KP continues whether there is an active chairman or not.

He was however cautious when he added, *“But you do need an active chairman who can be able to monitor and encourage the process and make sure that everybody takes their responsibility.”*

Mr Bernardo Campos

Bernardo said there are different issues that need to be considered when talking about credibility. These include:

- Organisation
- Regulation
- The quality of the certificate
- Transparency
- Protection of the natural resources-we have a big responsibility to act today, thinking for tomorrow
- Social responsibility-make diamonds contribute to development of the communities and country.

If the KP works as a tripartite, which comprises governments, the industry and the civil society, it will organise itself with objectivity. There will be coherence with the goals, elaboration, organising and thinking. This way, they can create a structure that will get good results in terms of credibility. The KP needs to be coherent and very responsible regarding human rights issues, in order to avoid confusion.

Mr Shamiso Mtisi

Mr Mtisi challenged Mr Vika’s statement regarding the issue of mining investment, where he said a company may incur a lot of operating costs and other associated expenses when they are developing a mine, thereby hindering them from doing more to the community. He stated that mining companies get tax exemptions and therefore do not pay for everything. He also mentioned that developing an alluvial diamond mine is not that costly. Therefore, diamond mines need to make sure that they invest in communities. They should do due diligence in terms of their impact on, and compensate communities that are displaced in the process. They also should ensure that their private security companies act responsibly and respect the people’s rights.

Civil society in the KP is part of the same family, whether someone comes from Canada, the UK or the EU. KP civil society coalition shares ideas, perspectives and no one is necessarily the leading voice.

The administrative decision for the 2013 Plenary contains a provision, which acknowledges the conduct of a study by Partnership Africa Canada on the peer review mechanism. There are several recommendations relating to reshaping the peer review mechanisms and making it more effective and efficient.

Civil society had put the issues of conservation, Corporate Social Responsibility and women in mining on the table of the KP. The KP should find ways to address these issues, through collaborating with other institutions and organisations. On the issue of human rights, there are several declarations or voluntary principles on the minimum use of force.

Discussion Round 2

Linda Maso reaffirmed the comments made by Mr Mtisi regarding human rights. Linda mentioned the Voluntary Principles on Human Rights and Security and South Africa had been invited to join that process, but South Africa feels that the process is in contrast with the principles of human rights the country stands for, as it protects the interests of the extractive industry including the diamond one. The position of the South African government is that there is a need for an instrument that is legally binding, ensures respect, protection and remedy in cases of violations of human rights.

Sibonakaliso Mbatha emphasised that his comments were in his personal capacity, not a representation of his organisation. His comment, which was on the Extractive Industries Transparency Initiative (EITI) was that there is a perception by many African countries that Africans are being bullied by outside forces to join EITI. They also feel that African states are being told what to do with their minerals and the revenue, and that the EITI is seen as paternalistic and condescending towards Africa. If South Africa were to join the EITI, would that necessitate a reconfiguration of state and probably an amendment in the constitution? Is there space or opportunity for an internal and organic mechanism flowing from within the African continent's mining producers themselves on the continent?

Responses

Mr Shamiso Mtisi

Shamiso reminded participants that the EITI started as a campaign by civil society groups and many of those groups based in Africa to address issues related to the use and distribution of revenues. He said that the EITI is a multi-stakeholder scheme, involving government, industry and civil society to make sure that there is an element of disclosure of the payments on what government receives from mining companies. It is possible for countries to develop the EITI principles of promoting transparency and accountability through their own internal systems and measures.

The issue of the voluntary principles on human rights security has been raised within the KP. Voluntary principles call on companies to train their security on how to handle human rights cases and how to interact with communities. Because of divisions within the KP in terms of human rights issues, there has not been any movement.

Ambassador Welile Nhlapo

Ambassador Nhlapo said that African diamond producing countries were not invited into the initial process, which eventually impacted more on them than those who are initiating those processes. Politics also intervene and Africans become very suspicious about the intentions. He said principles such as Dodd-Franc and AGOA come in to intervene and create a problem for the integration processes of the continent. These are the debates, concerns and discussions that should be taking place to ensure that there is a better and common understanding so that that the playing field can be levelled.

He mentioned that nothing should compel South Africa to join EITI, but it relates to it. The EITI has invited South Africa. They want to benefit from the country's domestic experience and if that is the case, then they should be upfront with regards to the basis of the interaction.

Conclusion

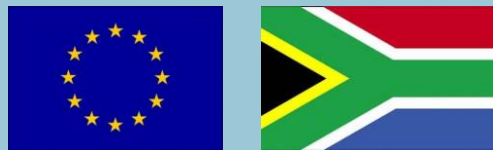
Ms Lineo Chabana thanked all the speakers and the funding partners of SALO. She then thanked all who attended and participated respectively and invited everyone for lunch.

The analysis and recommendations included in this Policy Dialogue Report do not necessarily reflect the view of SALO or any of the donors or conference participants, but rather draw upon the major strands of discussion put forward at the event. Participants neither reviewed nor approved this document. The contents of the report are the sole responsibility of SALO, and can under no circumstances be regarded as reflecting the position of the donors who provided financial assistance for this policy dialogue session.

About the Southern African Liaison Office:

The Southern African Liaison Office (SALO) is a South African-based not-for-profit civil society organisation which, through advocacy, dialogue, policy consensus and in-depth research and analysis, influences the current thinking and debates on foreign policy especially regarding African crises and conflicts.

SALO would like to thank the European Union (EU) through the SA-EU Dialogue Facility for their direct support of this event



and the Royal Norwegian Embassy, Pretoria; Irish Aid and the Embassy of Ireland, Pretoria; the Embassy of Denmark, Pretoria; and OSISA, among others, for their ongoing support of the Policy Dialogue Series.

