

Advertising Standards Authority

Respondent to complaint: De Beers Group

Subject of complaint: use of the term “conflict free” to describe diamonds sold by De Beers Group in advertisements

Date of complaint: June 2020

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I. Summary

De Beers Group owns De Beers Jewellers and Forevermark brands. Marketing material published by both brands on social media states that their diamonds are “conflict free”.

It is submitted that this claim is false and misleading, a material breach of the UK Code of Non-broadcast Advertising and Direct & Promotional Marketing and in contravention of the provisions of the Consumer Protection from Unfair Trading Regulations 2008.

This complaint will demonstrate that diamonds sold by De Beers Group are inextricably linked to gross human rights violations by the Israeli government and therefore are not “conflict free”.

De Beers Group has a registered office at 20 Carlton House Terrace, London, SW1Y 5AN, UK.

II. Relevant law

The following provisions of the **UK Code of Non-broadcast Advertising and Direct & Promotional Marketing** (“The CAP Code”) are relevant to the present complaint:

IV These criteria apply to the Code:

...

c. compliance with the Code is assessed according to the marketing communication's probable impact when taken as a whole and in context. That will depend on the medium in which the marketing communication appeared, the audience and its likely response, the nature of the product and any material distributed to consumers

Principle

The central principle for all marketing communications is that they should be legal, decent, honest and truthful. All marketing communications should be prepared with a sense of responsibility to consumers and society and should reflect the spirit, not merely the letter, of the Code.

Rules

1.1 Marketing communications should be legal, decent, honest and truthful.

1.2 Marketing communications must reflect the spirit, not merely the letter, of the Code.

1.3 Marketing communications must be prepared with a sense of responsibility to consumers and to society.

...

1.5 No marketing communication should bring advertising into disrepute.

Misleading advertising

Background

The ASA may take the Consumer Protection from Unfair Trading Regulations 2008 into account when it rules on complaints about marketing communications that are alleged to be misleading ...

The ASA will take into account the impression created by marketing communications as well as specific claims. It will rule on the basis of the likely effect on consumers, not the marketer's intentions.

Rules

General

3.1 Marketing communications must not materially mislead or be likely to do so.

...

3.3 Marketing communications must not mislead the consumer by omitting material information. They must not mislead by hiding material information or presenting it in an unclear, unintelligible, ambiguous or untimely manner.

Material information is information that the consumer needs to make informed decisions in relation to a product. Whether the omission or presentation of material information is likely to mislead the consumer depends on the context, the medium and, if the medium of the marketing communication is constrained by time or space,

the measures that the marketer takes to make that information available to the consumer by other means.

Substantiation

3.7 Before distributing or submitting a marketing communication for publication, marketers must hold documentary evidence to prove claims that consumers are likely to regard as objective and that are capable of objective substantiation. The ASA may regard claims as misleading in the absence of adequate substantiation.

Exaggeration

...

3.13 Marketing communications must not suggest that their claims are universally accepted if a significant division of informed or scientific opinion exists.

Relevant provisions of the **Consumer Protection from Unfair Trading Regulations 2008** are as follows:

Prohibition of unfair commercial practices

3.—(1) Unfair commercial practices are prohibited.

(2) Paragraphs (3) and (4) set out the circumstances when a commercial practice is unfair.

(3) A commercial practice is unfair if—

(a) it contravenes the requirements of professional diligence; and

(b) it materially distorts or is likely to materially distort the economic behaviour of the average consumer with regard to the product.

(4) A commercial practice is unfair if—

(a) it is a misleading action under the provisions of regulation 5 ...

Misleading actions

5.—(1) A commercial practice is a misleading action if it satisfies the conditions in either paragraph (2) or paragraph (3).

(2) A commercial practice satisfies the conditions of this paragraph—

(a) if it contains false information and is therefore untruthful in relation to any of the matters in paragraph (4) or if it or its overall presentation in any way deceives or is

likely to deceive the average consumer in relation to any of the matters in that paragraph, even if the information is factually correct; and

(b) it causes or is likely to cause the average consumer to take a transactional decision he would not have taken otherwise.

(4) The matters referred to in paragraph (2)(a) are ...

(f) any statement or symbol relating to direct or indirect sponsorship or approval of the trader or the product ...

The CAP Code and 2008 Regulations are intended to reflect the relevant EU legislation, namely Directive 2005/29/EC concerning unfair business-to-consumer commercial practices in the internal market. Article 6 of that Directive provides notably as follows:

1. A commercial practice shall be regarded as misleading if it contains false information and is therefore untruthful or in any way, including overall presentation, deceives or is likely to deceive

the average consumer, even if the information is factually correct, in relation to one or more of the following elements, and in either case causes or is likely to cause him to take a transactional decision that he would not have taken otherwise:

(a) the existence or nature of the product;

(b) the main characteristics of the product, such as its availability, benefits, risks, execution, composition, accessories, aftersale customer assistance and complaint handling, method and date of manufacture or provision, delivery, fitness for purpose, usage, quantity, specification, geographical or commercial origin or the results to be expected from its use, or the results and material features of tests or checks carried out on the product;

(c) the extent of the trader's commitments, the motives for the commercial practice and the nature of the sales process, any statement or symbol in relation to direct or indirect sponsorship or approval of the trader or the product ...

2. A commercial practice shall also be regarded as misleading if, in its factual context, taking account of all its features and circumstances, it causes or is likely to cause the average consumer

to take a transactional decision that he would not have taken otherwise, and it involves:

...

(b) non-compliance by the trader with commitments contained in codes of conduct by which the trader has undertaken to be bound, where:

- (i) the commitment is not aspirational but is firm and is capable of being verified, and
- (ii) the trader indicates in a commercial practice that he is bound by the code.

The European Commission has provided guidance¹ on this Directive and at p. 42 it gives an example of an impermissible use of “free” in the context of environmental claims:

(i) Objective misleading practice: the environmental claim is misleading because it contains false information and is therefore untruthful, in relation to one of the items of the list provided for by Article 6(1).

Example: use of the term "biodegradable" when that is not the case (e.g. on a product for which no tests have been carried out); use of the term "pesticides-free" when the product actually contains some pesticides.

In conjunction with Article 12 of the Directive [substantiation of claims], this means that any environmental claims must be made on the basis of evidence which can be verified by the competent authorities ...

¹ European Commission, *Guidance on the Implementation/Application of Directive 2005/29/EC on Unfair Commercial Practices*, Brussels, 4.12.2009, Sec(2009) 1666 final.

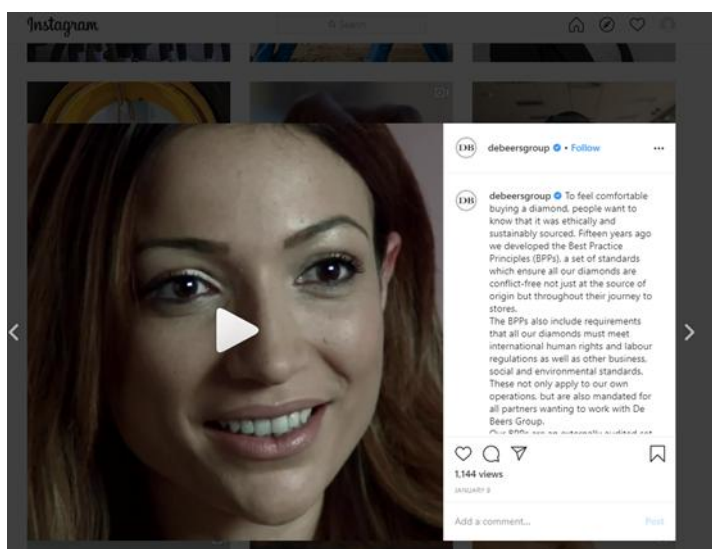
III. Four advertisements subject matter of the complaint

Advertisement no.1

In an Instagram post 9 January 2020 De Beers Group states “all our diamonds are conflict-free not only at the source of origin but throughout their journey to stores.”

https://www.instagram.com/p/B7GR_qSFg8k/

[Accessed 13 June 2020]



Text of advertisement:

“To feel comfortable buying a diamond, people want to know that it was ethically and sustainably sourced. Fifteen years ago we developed the Best Practice Principles (BPPs), a set of standards which ensure all our diamonds are conflict-free not just at the source of origin but throughout their journey to stores.

The BPPs also include requirements that all our diamonds must meet international human rights and labour regulations as well as other business, social and environmental standards.

These not only apply to our own operations, but are also mandated for all partners wanting to work with De Beers Group.

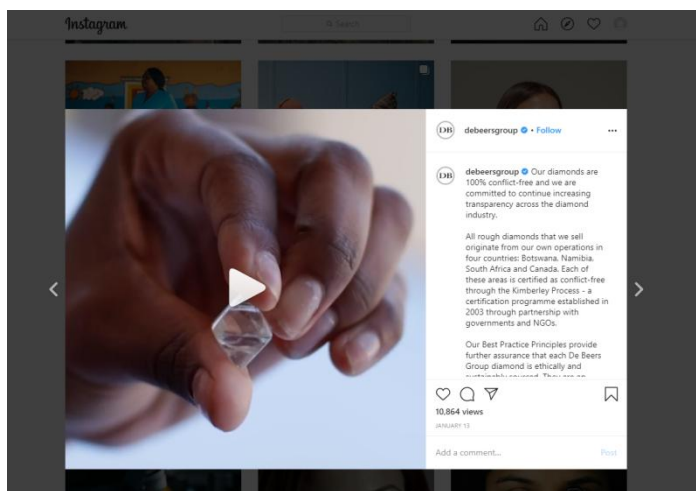
Our BPPs are an externally audited set of standards guaranteeing that each De Beers Group diamond is ethically and sustainably sourced. They are amongst the strictest set of standards the diamond industry has ever seen and we update them yearly to ensure they remain at the forefront of legislation and expectations 💎💖 Link in bio to find out more #buildingforever #diamondsdogood @debeersgroup”

Advertisement no. 2

In another Instagram post on 13 January 2020, De Beers Group claim their diamonds are 100% conflict-free. They state that Botswana, Namibia, South Africa and Canada are certified as conflict-free through the Kimberley Process.

<https://www.instagram.com/p/B7Qy8tkhEqB/>



[Accessed 13 June 2020]



Text of advertisement:

“Our diamonds are 100% conflict-free and we are committed to continue increasing transparency across the diamond industry.

All rough diamonds that we sell originate from our own operations in four countries: Botswana, Namibia, South Africa and Canada. Each of these areas is certified as conflict-free through the Kimberley Process - a certification programme established in 2003 through partnership with governments and NGOs.

Our Best Practice Principles provide further assurance that each De Beers Group diamond is ethically and sustainably sourced. They are an externally audited set of ethical, business, social and environmental standards, which are amongst the strictest the diamond industry has ever seen. Launched 15 years ago, we update them yearly to ensure they remain at the forefront of legislation and expectations   Find out more through the link in our bio.

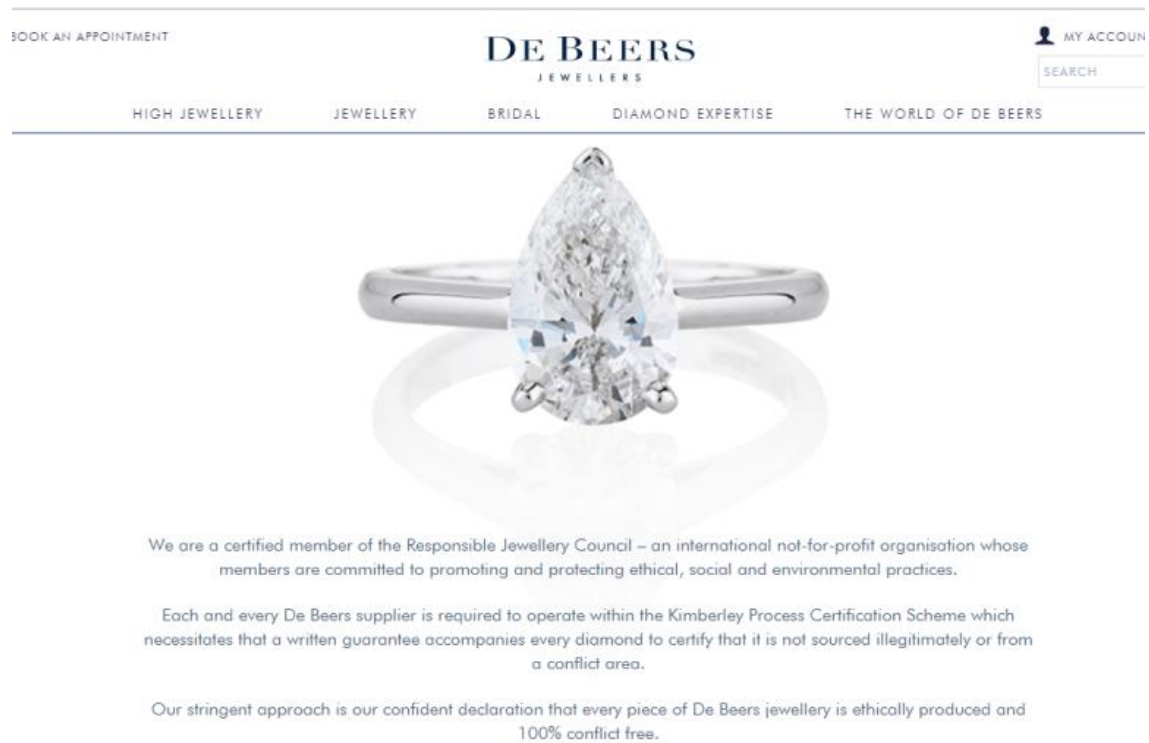
#buildingforever #diamondsdogood @debeersgroup”

Advertisement no. 3

De Beers' website claims their diamonds are 100% conflict free.

<https://www.debeers.co.uk/the-de-beers-difference/peace-of-mind/>

[Accessed 7 March 2020]



The image shows a screenshot of the De Beers Jewellers website. At the top, there is a navigation bar with the following elements: 'BOOK AN APPOINTMENT' on the left, the 'DE BEERS JEWELLERS' logo in the center, and 'MY ACCOUNT' with a search icon on the right. Below the navigation bar, there is a horizontal menu with the following categories: 'HIGH JEWELLERY', 'JEWELLERY', 'BRIDAL', 'DIAMOND EXPERTISE', and 'THE WORLD OF DE BEERS'. The main content area features a large, high-quality image of a pear-shaped diamond ring set in a white metal band. Below the ring, there are three paragraphs of text:

We are a certified member of the Responsible Jewellery Council – an international not-for-profit organisation whose members are committed to promoting and protecting ethical, social and environmental practices.

Each and every De Beers supplier is required to operate within the Kimberley Process Certification Scheme which necessitates that a written guarantee accompanies every diamond to certify that it is not sourced illegitimately or from a conflict area.

Our stringent approach is our confident declaration that every piece of De Beers jewellery is ethically produced and 100% conflict free.

Text of advertisement:

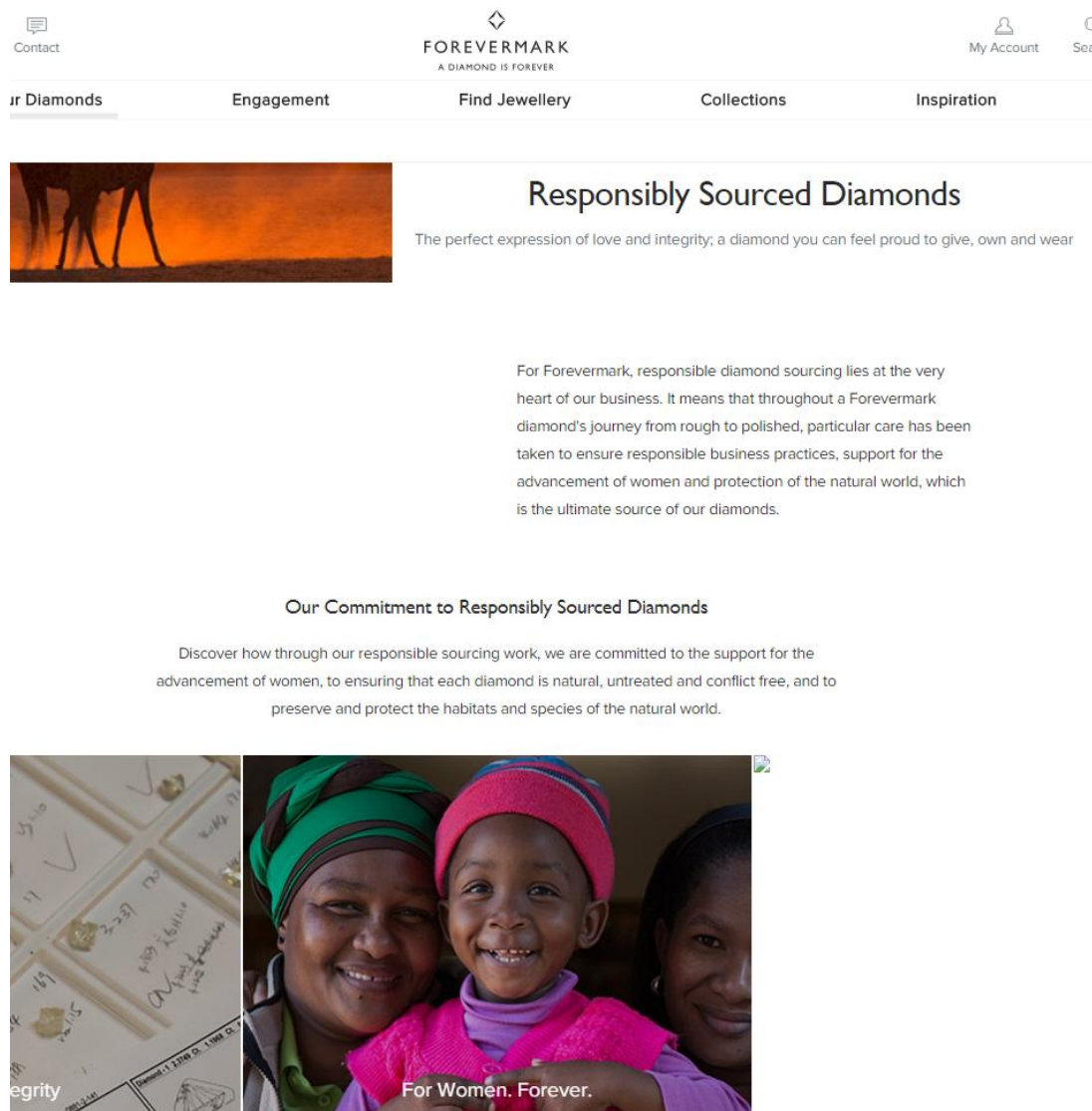
“Our stringent approach is our confident declaration that every piece of De Beers jewellery is ethically produced and 100% conflict free.”

Advertisement no.4

The Forevermark website claims the each of their diamonds is conflict free.

<https://www.forevermark.com/en/our-diamonds/responsibly-sourced/>

[Accessed 7 March 2020]



Contact My Account Search

Our Diamonds Engagement Find Jewellery Collections Inspiration

Responsibly Sourced Diamonds

The perfect expression of love and integrity; a diamond you can feel proud to give, own and wear

For Forevermark, responsible diamond sourcing lies at the very heart of our business. It means that throughout a Forevermark diamond's journey from rough to polished, particular care has been taken to ensure responsible business practices, support for the advancement of women and protection of the natural world, which is the ultimate source of our diamonds.

Our Commitment to Responsibly Sourced Diamonds

Discover how through our responsible sourcing work, we are committed to the support for the advancement of women, to ensuring that each diamond is natural, untreated and conflict free, and to preserve and protect the habitats and species of the natural world.

Integrity

For Women. Forever.

Text of advertisement:

“ Discover how through our responsible sourcing work, we are committed to the support for the advancement of women, to ensuring that each diamond is natural, untreated and conflict free, and to preserve and protect the habitats and species of the natural world.”

IV. False and misleading nature of “conflict free”

Context of complaint

The marketing material that is the subject of this complaint relates to the finished products sold by De Beers Group - cut and polished diamonds by the De Beers and Forevermark brands. It does not relate to the rough diamonds from which these diamonds are crafted. This is an important distinction.

It is submitted that claims by De Beers Group that their diamonds are 100% conflict free cannot be substantiated, are false, misleading and harmful to both society and consumer rights.

Some of the diamonds sold by De Beers and Forevermark are crafted by companies that are, directly and/or indirectly, a source of funding for the Israeli military.

De Beers Group employs complex regulatory systems that conceal from the public and consumers critical information about the links between their diamonds and grave human rights violations by the Israeli government.

Background

In the 1990s Human Rights Watch, Global Witness and Impact Transform (formerly Partnership Africa Canada) brought to public attention the role of diamonds in funding violent civil wars in certain African countries. The term “blood diamond” entered the public lexicon. The diamond brand image was tarnished and the ethical credentials of the industry were called into question.

The diamond industry came under growing public pressure to end the trade in blood diamonds – diamonds linked to grave human rights violations. In 2000 key players in the industry, including De Beers Group, established the World Diamond Council (WDC) to represent all sectors of the industry from mining through to retail.

After two years of negotiations, “based on a blueprint prepared by the WDC”, the diamond industry, NGOs and governments linked to the diamond industry agreed to the establishment

of a system of self regulation known as the Kimberley Process Certification Scheme which came into force in 2003. De Beers Group played a key role in the establishment of the Kimberley Process (KP).

Instead of banning all blood diamonds, the KP introduced a new term - “conflict diamonds” - the definition of which is limited to “rough diamonds used by rebel groups or their allies to fund violence aimed at undermining legitimate governments”.

This narrow definition means that only rough diamonds that fund rebel violence can be classed as “conflict diamonds”. Cut and polished diamonds, at the consumer end of the value chain, evade regulation even when they fund grave human rights violations.

The term “conflict free” has never been defined. In 2016, Cecilia Gardner, the former Counsel General of the WDC, said: “As for ‘conflict free’ – well this claim is so vague as to have no real meaning.”

While that may be so for the WDC it most certainly is not the understanding of the general public or diamond buyers. When used in marketing material it conveys an unambiguous message – one which deliberately misleads.

In 2005, organisations and leading companies in the diamond and jewellery industries, including DeBeers, collaborated to establish the Responsible Jewellery Council (RJC). The RJC created Codes of Practices (COP) setting out their own standards by which members would be assessed in order to gain RJC certification. However, the COP stipulates that the KP is the benchmark for ethical diamonds.

The extremely limited reach of the KP was exposed when government forces in Zimbabwe killed hundreds of artisanal diamond miners in the Marange area in 2008. Diamonds from Marange couldn't be called “conflict diamonds” as the violence there was carried out by government forces and not by rebels. Human rights organisations called for the definition of a “conflict diamond” to be broadened to include diamonds linked to human rights violations by government forces. The KP failed to reform and in 2011 blood diamonds from Marange were granted KP certification and allowed to enter the legitimate market. Global Witness immediately withdrew from the KP.

Human rights activists and some in the jewellery industry have been lobbying for reform of the KP for over a decade. A number of NGOs including Impact Transform and key individuals have withdrawn from the KP which a Guardian article branded “a 'perfect cover story' for blood diamonds”².

In November 2019 the KP concluded a three-year period of renewal and reform but failed to broaden the definition of a “conflict diamond”.

In 2015 Israel blocked a previous attempt to broaden the definition of a “conflict diamond” as “it could be disastrous...especially to Israel.”

While vested interests claim that the trade in blood diamonds has ended, the facts as outlined by Martin Rapaport in 2010 have not changed:

“The Kimberley Process (KP) is aiding and abetting severe human rights violations as it certifies, legalizes and legitimizes blood diamonds. Corrupt governments have turned the KP on its head. Instead of eliminating human rights violations, the KP is legitimizing them.

The diamond trade and consumers cannot trust the Kimberley Process, its system of warranties or those that promote the Kimberley Process as an assurance of the legitimate source of diamonds³.”

The De Beers Group claims to adhere to the *OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas*, 2016. It is submitted that the above authoritative information demonstrates the false and misleading nature of this claim, in light of the following provisions contained within the OECD guidance. In accordance with Annex II of this guidance, companies must “commit to refraining from any action which contributes to the financing of conflict”. Paragraph 1 of Annex II lists the following commitments regarding serious abuses associated with the extraction, transport or trade of minerals:

² The Guardian, *The Kimberley Process is a 'perfect cover story' for blood diamonds*, 24 March 2014, <https://www.theguardian.com/sustainable-business/diamonds-blood-kimberley-process-mines-ethical> [accessed 22 June 2020].

³ Martin Rapaport is leading figure in the global diamond industry. He is chairman of the Rapaport Group and founder of the Rapaport Diamond Report, the industry standard for the pricing of diamonds. See also, *Ethical Jewellery Exposé* by Marc Choyt.

1. While sourcing from, or operating in, conflict-affected and high-risk areas, we will neither tolerate nor by any means profit from, contribute to, assist with or facilitate the commission by any party of:

- i) any forms of torture, cruel, inhuman and degrading treatment;
- ii) any forms of forced or compulsory labour, which means work or service which is exacted from any person under the menace of penalty and for which said person has not offered himself voluntarily;
- iii) the worst forms of child labour;
- iv) other gross human rights violations and abuses such as widespread sexual violence;
- v) war crimes or other serious violations of international humanitarian law, crimes against humanity or genocide.

Regarding risk management of serious abuses:

2. We will immediately suspend or discontinue engagement with upstream suppliers where we identify a reasonable risk that they are sourcing from, or linked to, any party committing serious abuses as defined in paragraph 1.

Diamonds that fund the Israeli military are not “conflict free”.

In 2018 the Israeli Prime Minister Benjamin Netanyahu, said the Israeli economy “generates 88% of the vast security budget that funds the Israel Defence Forces, [and security agencies] Mossad and Shin Bet.”⁴

The diamond industry has been described as a “cornerstone” of the Israeli economy. According to the Jerusalem Post, “Israel turns over about \$28 billion in diamonds a year. The value of exported diamonds is so significant (about a fifth of total industrial exports) that the government reports its figures *sans* diamonds to ensure the gems do not skew the values.”⁵

The Israeli Diamond Industry (IDI) bestowed its highest honour, the Lifetime Achievement Award, upon Nicky Oppenheimer Chairman of De Beers, for his contribution to the world

⁴ <https://www.jpost.com/breaking-news/netanyahu-the-idf-is-the-only-army-fighting-iran-and-we-are-winning-574769>

[accessed 22 June 2020].

⁵ <https://www.jpost.com/business/business-features/diamonds-are-not-a-boycotters-best-friend-347843>

[accessed 22 June 2020].

diamond industry and to the Israeli industry in particular, which the IDI described as “enormous”⁶.

Evidence of suspected war crimes, crimes against humanity and the crime of apartheid by the Israeli military has been documented by Amnesty International,⁷ Human Rights Watch⁸, B’T Selem⁹ and the UN Human Rights Council¹⁰.

On 20 December 2019 the Prosecutor of the International Criminal Court (ICC), Fatou Bensouda, concluded there is reasonable basis to believe Israeli forces committed war crimes during the 2014 assault on Gaza which resulted in the deaths of over 2,250 people mainly civilian including over 550 children and also in relation to the transfer of Israeli civilians into the West Bank since 13 June 2014.

The Report of the independent commission of inquiry established pursuant to Human Rights Council resolution S-21/1 set out the following notable statistics:

20. [In the summer of 2014], in Gaza, in particular, the scale of the devastation was unprecedented. The death toll alone speaks volumes: 2,251 Palestinians were killed, including 1,462 Palestinian civilians, of whom 299 women and 551 children; and 11,231 Palestinians, including 3,540 women and 3,436 children, were injured (A/HRC/28/80/Add.1, para. 24), of whom 10 per cent suffered permanent disability as a result.

⁶ Diamond World News Service, *IDI bestows Lifetime Achievement Award upon Nicky Oppenheimer*, 21 March 2012, <https://www.diamondworld.net/contentview.aspx?item=6820> [accessed, 22 June 2020].

⁷ Amnesty International, *Israel/OPT: ICC investigation into war crimes a ‘historic step towards justice’* 20 December 2019,

<https://www.amnesty.org/en/latest/news/2019/12/israel-opt-icc-investigation-into-war-crimes-a-historic-step-towards-justice/>

[accessed, 22 June 2020].

Amnesty International, *Gaza: Cutting Edge Investigation Points to Israeli War Crimes In Rafah On ‘Black Friday’*, 29 May, 2015,

<https://www.amnesty.ie/gaza-israeli-war-crimes/>

[accessed 22 June 2020].

⁸ Human Rights Watch, *Israel: Apparent War Crimes in Gaza Accountability Needed for Officials Who Authorized Lethal Force*, 13 June 2018,

<https://www.hrw.org/news/2018/06/13/israel-apparent-war-crimes-gaza>

[accessed 22 June 2020].

⁹ B’T Selem, *Israeli AG’s objection to ICC jurisdiction in Palestine divorced from reality*, 12 March 2020,

https://www.btselem.org/press_releases/20200312_ag_objection_to_icc_jurisdiction_in_palestine_divorced_from_reality

[accessed 22 June 2020].

¹⁰ UN Human Rights Council, *Report on Independent Commission of Inquiry on the 2014 Gaza Conflict*, 29 June 2015,

<https://unispal.un.org/UNISPAL.NSF/0/5A8C9C9B05363F8C85257E7300507C14>

[accessed 22 June 2020]

During that 2014 assault on Gaza, the Israeli diamond industry sponsored truck-loads of equipment sent to soldiers committing suspected war crimes.

During the previous 2008/2009 assault on Gaza, “Operation Cast Lead”, Israeli forces killed over 1,400 Palestinians, mainly civilians. More than 300 of those killed were children. Thousands more were maimed and traumatised during the three weeks of relentless bombardment from land, sea and air¹¹.

During this time, Diacore International Ltd. (“Diacore”) helped fund and support a Unit of the Givati Brigade. Diacore is a DeBeers Group sightholder¹² and manufacturer of Forevermark diamonds.

Diacore is part of Beny Steinmetz Group Resources (BSGR)¹³. According to media reports, the BSGR group of companies is controlled by a trust fund, the Steinmetz Foundation, of which the Steinmetz family is the beneficiary¹⁴. Revenue from BSGR companies is channelled via the Steinmetz Foundation to the Israeli military. The Steinmetz Foundation “adopted” a Unit of the Givati Brigade of the Israeli military (see annex C below).

Essentially, the Steinmetz Foundation purchased equipment for and supported the Unit during operation ‘Cast Lead’, the Israeli assault on the besieged residents of Gaza¹⁵. A United Nations Human Rights Council Fact-Finding Mission into the assault – the Goldstone Report – found evidence that Israeli forces committed serious breaches of the Geneva Conventions amounting to war crimes and possible crimes against humanity. The Givati Brigade was responsible for one

¹¹ Amnesty International, *Israel/Gaza Operation ‘Cast Lead’: 22 Days of Death and Destruction*, 2009, <https://www.amnesty.org/download/Documents/48000/mde150152009en.pdf> [accessed 22 June 2020].

¹² <https://gss.debeersgroup.com/customer-directory/diacor-international-ltd> [Accessed 20 June 2020].

¹³ “In the 1990s, [Steinmetz] formed the Steinmetz Diamonds Group with his brother Daniel. Now called Diacor International, it is one of a select group entitled to buy gems from De Beers”, Haaretz, Israel News, *Diamonds, Big Mining and George Soros; The Fall of Beny Steinmetz, Once Israel's Richest Man*, 21 December 2016, <https://www.haaretz.com/israel-news/business/.premium-the-fall-of-beny-steinmetz-1.5476031> [accessed 22 June 2020].

¹⁴ Financial Times, *Beny Steinmetz seeks to reverse \$2bn arbitration award to Vale*, 24 May 2020, <https://www.ft.com/content/83369732-9308-4010-bf1f-b0c0dcc2139d> [accessed 22 June 2020].

¹⁵ BBC News, *Gaza crisis: Toll of operations in Gaza*, 1 September 2014, <https://www.bbc.com/news/world-middle-east-28439404> [accessed 22 June 2020].

of the most serious examples of gross human rights violations documented by human rights organisations and the UNHRC during the assault on Gaza when 25 members of the Sammouni family were killed and many other family members seriously injured, maimed and traumatized.

Salah al-Sammouni told Amnesty International:

“Soldiers came to the area at night [on 3 January 2009] and at dawn on 4 January many relatives came to my house to stay with us. We thought that if we stayed in our house we would be all right. After a while soldiers came to the house and my father spoke to them in Hebrew; he told them: ‘These are my children, my family, there are no terrorists here.’ The soldiers told us to leave our house and go to Wa’el’s house across the road and we obeyed. We were many relatives, about 100 altogether, many of them children. We stayed there all day and all night. We had hardly any food in the house and the children were hungry. Nobody could come to the area, not even ambulances. We were scared. The following morning (5 January) three of my cousins and I tried to go out of the house, to the walled garden to get some tomatoes and some wood to cook something. As soon as we got out of the door we were shelled. My cousins Muhammad and Hamdi were killed and Wa’el and I were injured and we retreated back into the house. Then the house was shelled again – at least two shells – from above. Some 25 people were killed and most of the others were injured. My little girl, Azza, was killed and my wife was injured. My mother Rahma was holding baby Mahmoud (six months old) and she was killed but she shielded the baby with her body and saved him. My father was killed. Wa’el’s children, a boy and a girl, were both killed. Safa, the wife of my brother Iyad, was killed and Maha, the wife of my brother Hilmi, and their baby son Muhammad were all killed. Why did they shell the house after having put us all in there? ... Only three days later could the Red Cross go in, but only on foot as the army did not let the ambulances approach; they found some children still alive and many others dead.¹⁶”

The findings of UN Human Rights Council investigation into this incident are detailed at pp. 159 to 166 of the Goldstone Report¹⁷.

¹⁶ Amnesty International, *Israel/ Gaza Operation ‘Cast Lead’: 22 Days of Death and Destruction*, at p. 20.

¹⁷ *Human Rights In Palestine And Other Occupied Arab Territories, Report of the United Nations Fact-Finding Mission on the Gaza Conflict* (“the Goldstone Report”), 25 September 2009, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G09/158/66/PDF/G0915866.pdf?OpenElement> [accessed 22 June 2020].

In 2010, Israeli political economist Shir Hever, in evidence to the Russell Tribunal on Palestine, stated:

“Every time somebody buys a diamond that was exported from Israel some of that money ends up in the Israeli military, so the financial connection is quite clear. Overall the Israeli diamond industry contributes about \$1 billion annually to the Israeli military and security industries.¹⁸”

More recently, in 2018, the UN OCHA reports that:

“A total of 295 Palestinians were killed and over 29,000 were injured in 2018 by Israeli forces. This is the highest death toll in a single year since the Gaza conflict of 2014 and the highest number of injuries recorded since OCHA began documenting casualties in the oPt in 2005”¹⁹.

Human Rights Watch believes Israel’s repeated use of lethal force against Palestinians who posed no imminent threat amount to war crimes²⁰.

It is submitted that the above information from authoritative sources demonstrates that diamonds processed in Israel help fund grave human rights violations.

Despite this, De Beers Group claims De Beers and Forevermark diamonds that directly and/or indirectly generate revenue for the Israeli military are “100% conflict free”.

Up until very recently, A.B.T. Diamonds Ltd. confirmed on the De Beers Group website that it had “made significant contributions to the Israeli Defence Forces” (see annex D below). De Beers has since removed the reference to the Israeli military from its website²¹. Of the 118

¹⁸ Russell Tribunal on Palestine, 20 November 2010, <http://www.russelltribunalonpalestine.com/en/sessions/london-session/programme.html> [accessed 22 June 2020].

¹⁹ UN, Office for the Coordination of Humanitarian Affairs (OCHA), Palestine Question, 27 December 2018, <https://www.ochaopt.org/content/2018-more-casualties-and-food-insecurity-less-funding-humanitarian-aid> [accessed 22 June 2020].

²⁰ Human Rights Watch, *Israel: Apparent War Crimes in Gaza Accountability Needed for Officials Who Authorized Lethal Force*, 13 June 2018, <https://www.hrw.org/news/2018/06/13/israel-apparent-war-crimes-gaza> [accessed 22 June 2020].

²¹ The amended page can be viewed at: <http://gss.debeersgroup.com/customer-directory/abt-diamonds-ltd>

customers listed on De Beers website, A.B.T. Diamonds Ltd. is now one of only five which does not have a Corporate Social Responsibility statement on their web page.

To recall, the KP only bans trade in rough diamonds that fund rebel violence. Other diamonds, rough or cut and polished, that fund human rights violations by government or private security forces are not regulated. Therefore, the KP cannot and does not provide any guarantee that a diamond is “conflict free”. The term conflict free does not appear anywhere in the KP Regulations. KP certification only guarantees a diamond is not a “conflict diamond”, which itself is defined extremely narrowly.

V. Correspondence with De Beers Group

In April 2019, at an AGM of Anglo American²², Shareholders Against Blood Diamonds (SABD) presented the CEO of De Beers and other shareholders with a booklet, “Blood Diamonds: Risks and Reparations”. The booklet provided evidence of how De Beers’ due diligence failed to identify and prevent blood diamonds entering De Beers Group diamond supply chain.

In response to questions raised by SABD at this AGM and in email communications with SABD (see annex A below) Anglo American defended the ethical credentials of the diamonds they sell on the basis that their business relationships and trading decisions comply with all applicable international and national legal requirements, with RJC Code of Practices and with their own Best Practice Principles (BPPs).

When asked how De Beers Group justify labelling their diamonds “conflict free”, Ferial Zerouki, SVP International Relations and Ethical Initiatives replied:

“It is not within the authority of either De Beers Group or Shareholders Against Blood Diamonds to unilaterally declare diamonds to be ‘conflict diamonds’ or ‘conflict free’. That power sits with the UN-backed Kimberley Process and the laws governing diamond exports that are enshrined into national law across all KP member states. Both through the KP certification of the diamonds we mine and

²² “Anglo American owns 85% of De Beers Group, the world's leading diamond company”, <https://www.angloamerican.com/products/diamonds#/projects-operations-offices-headquarters/diamonds> [accessed 22 June 2020].

through the KP-administered review missions to our operations, diamonds from De Beers are recognised to be conflict-free.”

In fact, the KP regulations do not claim that KP certified diamonds are “conflict free” and have no power to do so. KP certification guarantees a diamond is not a “conflict diamond” but, as in the example of diamonds from Marange in Zimbabwe, it does not guarantee a diamond has not funded conflict or human rights violations by non-rebels – i.e. government or private security forces. It is therefore misleading in itself to justify the use of “conflict free” by reference to the KP process.

In response to further questions submitted at its 2020 AGM (see annex B below), Anglo American set an unrealistically high threshold before they would take action:

“if a company we do business with were to be found guilty of violations of international law as part of a legitimate judicial process, then De Beers Group would have no hesitation in ending our business relationship.²³”

Given Israel’s hostility towards and refusal to recognise the authority of the International Criminal Court of Justice, this is a threshold which has very little likelihood of ever being reached. This means that until such time as an entity is convicted of grave human rights violations, De Beers Group will continue to facilitate and profit from diamonds which fund military actions which have been widely condemned by international human rights organisations as gross human rights violations.

Furthermore, this contrasts with the response set out in para. 2 of Annex II of the *OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas*, 2016, to which De Beers and its clients claim to abide, which sets the threshold at a reasonable risk:

“We will immediately suspend or discontinue engagement with upstream suppliers where we identify a reasonable risk that they are sourcing from, or linked to, any party committing serious abuses as defined in Paragraph 1.”

²³ The Anglo American reply was published on their website after the AGM 2020: <https://www.angloamerican.com/investors/shareholder-information/agm/agm2020/agm-2020-anglo-american-response-to-shareholder-questions>

VI. Conclusion

It is submitted that the information set out in this complaint makes clear that De Beers Group is sourcing diamonds from companies inside and outside of Israel that directly and/or indirectly generate revenue used to fund the Israeli military. This information also makes clear that the Israeli military is guilty of serious human rights violations including possible war crimes and crimes against humanity.

By continuing to be of “enormous” support to the Israeli diamond industry in general and by trading with companies (Diacore and A.B.T.) that are directly funding the Israeli military, De Beers not only tolerates, but profits from this trade in the knowledge that it contributes to serious human rights abuses.

De Beers Group companies are in breach of their own Best Practice Principles in respect to implementation of the OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas, 2016. The failure to conform to Annex II of this Guidance demonstrates that RJC certification is of little value as a guarantee of the ethical credentials of companies in the jewellery industry in general and the diamond industry in particular.

The fact that De Beers recently removed information about A.B.T. Diamonds funding the Israeli military suggests that this is something they do not want published, because diamonds that fund the Israeli military cannot be conflict-free.

Taking into account the probable impact of the description of De Beer’s diamonds as “conflict free” or “100% conflict free” as a whole and in context, it is submitted that this description is likely to deceive the average consumer and is likely to cause the average consumer to take a transactional decision he would not have taken otherwise.

While De Beers diamonds are not “conflict diamonds” within the narrow meaning of the KP, it is submitted that it is false and misleading or at the very least exaggeration to state that they are “conflict free” in light of all of the above information from authoritative sources linking the Israeli diamond industry with the financing of the Israeli military and the involvement of the latter in war crimes in Palestine.

The CAP Code must be applied in a manner that requires high standards in advertising, in line with the primary principle that advertisements must be legal, decent, honest and truthful. All marketing communications should be prepared with a sense of responsibility to consumers and society and should reflect the spirit, not merely the letter, of the Code.

Those who choose diamonds on the basis of the description “conflict free” are likely to have a sense of moral responsibility in purchasing same. They are likely to be persuaded by this description to purchase these goods when, if they were aware of the links between such goods and the conflict in Gaza, they may not otherwise have purchased the same products. If this description was not on the contested advertisements, such consumers may also not have purchased these goods. This is material information, i.e. information that the consumer needs to make informed decisions in relation to a product.

Even though De Beers diamonds may be in compliance with the KP, this only means that they are not “conflict diamonds” within the extremely narrow meaning of that process. This would not serve to substantiate the claim that they are “conflict free”, a term so vague as to have no real meaning and yet which may mislead a consumer to a significant degree.

The European Commission makes clear that it is impermissible to describe a product as being “free” of something, unless this can be substantiated on the basis of evidence which can be verified by the competent authorities (i.e. the ASA).

It is submitted that at the very least, this description is an exaggeration: it suggests that the claims of De Beers in this respect are universally accepted, in circumstances where a significant division of informed opinion exists (as set out in this complaint).

The ASA is requested to require the De Beers Group to amend their advertisements in respect of the diamonds they sell to remove the terms “conflict free” or to withdraw such advertisements in full. The ASA is further requested to impose any sanctions it sees fit in the event of non-compliance by De Beers.

Annex A

Communications between SABD and Anglo American/De Beers Group after AGM 2019

Shareholders Against Blood Diamonds
230 Wimpole Road
Cambridge
CB23 7AE
30th May 2019

For the attention of Mr Stuart Chambers and the Board of Anglo American

On the occasion of the Annual General Meeting 2019 Shareholders Against Blood Diamonds distributed copies of the booklet: Blood Diamonds: Risks and Reparations and presented a copy to you and other members of the Board.

We trust that you and the Board are giving serious consideration to the points raised in the booklet and the grave ramifications for the company posed by trading in diamonds linked to gross human rights violations and false claims of their conflict free status.

We would like now to elaborate further on our concerns and query some of the points made in the exchanges between the Board and those of us who asked questions at the AGM.

In reply to Mr Clinton, you stressed that Israel may have committed the crimes we referred to. The death toll in Gaza over the last year leaves no room for obfuscation; over 200 Palestinian men, women and children lie buried in the sands of Gaza. If any members of the Board are in any doubt about the facts they should, as a matter of urgency, refer to the finding of the Independent UN inquiry referenced in our booklet.

The replies from both you and Mr. Cleaver appeared to exonerate Anglo American on the grounds that it is not participating in the next step of the value chain when it sells to a sightholder that processes rough diamonds in Israel. This hand washing runs contrary to the strategic focus alluded to in the Annual Report 2018 which aims to "secure an industry wide ethical supply chain from mine to finger".

This is not a matter of selecting business partners based on nationality as you suggested in reply to Mr. Clinton. Rather it is based on the criterion of selecting partners that cause no harm regardless of their nationality or location. Companies that generate revenue for the Israeli government or donate to the Israeli military help fund gross human right violations. At least two of De Beers business partners, Diacore and ABT Diamonds Ltd., contribute to the Israeli military and a number of other Sightholders have operations in Israel that generate revenue for the regime. Revenue from the diamond industry is a highly significant source of funding for the Israeli military. Therefore, any diamonds processed by these companies cannot be conflict-free as understood by any reasonable interpretation of that phrase.

Furthermore, companies in Israel exported over \$3 billion of rough diamonds in 2017 and many of those diamonds are likely to have been supplied by De Beers.

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The UN Guiding Principles on Business and Human Rights states, "businesses must seek to prevent or mitigate adverse human rights impacts that are directly linked to their operations, products or services by their business relationships, even if they have not contributed to those impacts".

It is an indisputable fact that the diamond industry is a major source of funding for the Israeli government which is guilty of grave human rights violations on a daily basis. There should be no ambiguity when it comes to human rights violations in the diamond supply chain.

Like many others, the Board of Anglo American may well have been taken in and misled by De Beers promotion of Best Practice Principles and carefully worded annual Sustainable Development reports. But for anyone with an acute awareness of the diamond supply chain and what lies hidden between the lines, the scale of the disinformation is breathtaking.

It would not have been practical for Shareholders Against Blood Diamonds to raise all of the shortcomings of De Beers sustainability efforts at this year's AGM but it should be clear to you and other Board members that De Beers' efforts to ensure an ethical supply chain have failed and have left the company exposed.

Anyone not fully informed about the extent of the linkage between the diamond industry and human rights violations might think the only blood diamonds are rough diamonds linked to violence by rebel groups. As pointed out in our booklet, the Kimberley Process regulations only apply to that specific category of blood diamonds which the industry has labelled "conflict diamonds".

And therein lays the crux of De Beers' efforts which are primarily focused on eliminating "conflict diamonds" while the trade in other blood diamonds is swept under the carpet.

Diamonds, rough or polished, that fund breaches of international human rights law (war crimes) or international humanitarian law (crimes against humanity) can play no part in an ethical and responsible supply chain.

By adopting a strategy limited to preventing trade in "conflict diamonds" De Beers is facilitating and profiting from the trade in other blood diamonds. This has been brought to the attention of De Beers through social media and public demonstrations outside their Bond St store in London for a number of years, yet the practice continues. The ostrich-approach has been the preferred response to-date but that is not sustainable and is far removed from an ethical business practice to which Anglo American is committed.

It cannot be ethical to claim Forevermark diamonds processes by Diacore are responsibly sourced and conflict-free when profits from that company are channelled to a foundation that has "adopted" a military unit guilty of war crimes¹.

¹ Anti-Israel activists target Queen over Jubilee diamond, Jewish Chronicle, June 11, 2012
<https://www.thejc.com/news/uk-news/anti-israel-activists-target-queen-over-jubilee-diamond-1.33833>

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1. If De Beers is committed to "key industry issues, such as human rights," then why does it continue to trade with companies that fund an apartheid regime guilty of human rights violations?

While "diamond revenues to partner governments in particular help to fund vital public services", diamond revenues also fund rogue regimes that bring death, destruction, pain, suffering, bloodshed and violence to communities that have absolutely no means to defend themselves and have none of the physical or legal protection enjoyed by the buyers of our diamonds. Those buyers would be shocked to learn of the true cost of their diamonds which they were assured were responsibly sourced and conflict free.

If, as stated on our website, De Beers Best Practice Principles (BPP) assurance programme enables the company to monitor its supply chain partners for compliance with BPP, why has it not red-flagged companies in Israel guilty of widespread discrimination against non-Jews in employment practices; that have funded and supported the Israeli military sending "trucks of equipment" to soldiers attacking and killing civilians in besieged Gaza with the most sophisticated weapons of war from land, sea and air; that have been complicit in a major fraud involving millions of shekels or companies that employ serving members of the Israeli military which is guilty of human rights violations?

2. Do the same BPP apply to De Beers itself?

We can supply references for these facts, but that is hardly necessary given the scale of the resources available to a multinational company that stakes its reputation on robust due diligence.

While we recognise that De Beers puts resources into doing good in some parts of its supply chain, that effort is rendered null and void when the company turns a blind eye to other sectors that enable severe individual, social and environmental rights violations.

When considered against the reality on the ground in the Occupied Palestinian Territories, particularly in Gaza, the following statements from De Beers' Sustainable Development Goals ring hollow and demonstrate the utter failure of the company's due diligence.

"De Beers is also committed to addressing other key industry issues, such as human rights, labour, social and environmental standards. In 2003, the company launched the Best Practice Principles Assurance Programme. The programme enables De Beers to monitor its operations, customers and subcontractors for compliance with best practice ethical standards."

"a diamond's true purpose is realised when its purchased as a symbol of everlasting love or admiration."

"Every Forevermark diamond comes with the promise that it's beautiful, rare and responsibly sourced."

"De Beers Group and its partners contribute to sustainable development through business activities, social investment, policy and advocacy across all stages of the diamond value chain."

"Diamond revenues to partner governments in particular help to fund vital public services."

"Ensure net positive or no net loss impact on local ecosystems, and preserve ecosystem services, restore local ecosystems."

2 Mapping existing SDG contributions <https://www.debeersgroup.com/building-forever/sustainable-development-goals/mapping-existing-sdg-contributions>

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organisation is all they and their business partners have to do in order for their diamonds to comply with BPP.

The RJC and De Beers also require adherence to the World Diamond Council System of Warranties – another utterly bogus scheme which claims to guarantee diamonds are conflict free.

The KP and WDC have certified blood diamonds from Angola and Zimbabwe, two countries which De Beers does not source diamonds from, according to the Annual Report 2018.

In 2014, when Israel killed over 3000 people in Gaza including over 500 children, the KP certified over 5000 shipments of rough diamonds from Israel, all with System of Warranties guarantees proclaiming their conflict free status.

The RJC appoints "independent" auditors to assess compliance with the standards they have created which match with the KP standards that were drawn up by the World Diamond Council. It's a closed-circuit cartel that lacks all credibility.

It should not be necessary to explain further the nature and depth of the deception that underpins De Beers' diamond trade. This matter cannot be swept under the carpet. It's time for the Board of Anglo American to act independently of De Beers which clearly has a vested interest in maintaining the status quo.

3. Do you accept that RJC, KP and WDC do not provide sufficient guarantees that diamonds are conflict free?

We would like to thank you and the Board for the opportunity to put these questions to you and the Board at the AGM and we appreciate the way in which questioners were given ample time to make their case. By the time our turn came you asked us to be brief, which we could be as we were able to amplify our presentation with the case set out in our booklet, now further extended by the additional information in the Annex below.

We look forward to your response.

Yours sincerely

Jenny Hardacre

On behalf of Shareholders Against Blood Diamonds

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"Reduce the burden on local water supplies by minimising water consumption, avoid the unnecessary use of new fresh water, recycle water, monitoring water quality."

"Manage all risks related to hazardous substances, effluents, wastes and other emissions."

"Enabling marginalised and disadvantaged groups to access quality education and vocational training."

"Invest in energy, water and sanitation and transportation infrastructure where there are gaps in public delivery."

"Support programmes to build the capacity of local community institutions."

"Partner for greater impact Working with other businesses, government agencies and civil society to encourage shared responsibility for improving potable water and sanitation infrastructure, supporting community health workers and the strengthening of local health systems"

"Promote policies and public investment to strengthen key systems to support human capital (such as health and education systems)."

"Advocate for progressive policy making including equality, including women's economic empowerment and human rights."

"Work with customers and suppliers and through industry bodies to drive ever higher standards across the sector to increase transparency and oversight in the diamond industry to eliminate trade in conflict diamonds."

These statements appear to mock those who live under the cosh of the diamond-funded Israeli regime that has killed thousands of men, women and children, injured and maimed tens of thousands, ruined their lives, destroyed their livelihoods, bombed their water and sewage treatment facilities, destroyed vital infrastructure including the international airport in Gaza, electricity generating stations, schools, universities, hospitals, libraries, museums, cultural centres, mosques and thousands of homes summarily bombed, bulldozed and demolished at will without compensation or recourse to any form of justice.

If the Board of Anglo American is not already aware of condition in the Occupied Palestinian Territories and the direct linkage to the De Beers Group diamond trade, then they are failing in their fiduciary responsibilities to examine all impacts and risks associated with their business.

When one examines the architecture of De Beers BPP, it becomes shockingly apparent that monitoring of the most critical parts of the diamond supply chain has been outsourced to the wholly discredited Responsible Jewellery Council (RJC).

The RJC is a jewellery industry construct which De Beers helped to establish. Both entities support each other to give credence to a set of bogus standards designed to facilitate rather than eliminate trade in diamonds that funds human rights violations by rogue regimes.

The Codes of Practices (COP) developed by the RJC employ the equally discredited Kimberley Process as the standard for ethically sourced diamonds. NGOs, including Global Witness, Human Rights Watch and Impact Transform have been scathing in their criticism of the Kimberley Process. Both Global Witness and Impact withdrew from the KP over its refusal to ban diamonds linked to HR violations by government forces.

According to HRW: "The RJC's Code is full of loopholes and provides no guarantee that jewelry from a member is responsibly sourced." Despite this, De Beers maintains that membership of this discredited

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ANNEX

Casualty Figures and More Examples of Israel's Violations of International Law

The last two paragraphs of the summary of the booklet "Blood Diamonds: Risks and Reparations" state:

This misrepresentation by the world's leading diamond company exposes Palestinian victims of diamond funded violence to continuous serious violations of their inalienable human rights including killing, maiming, injury, ethnic cleansing, discrimination and severe psychological trauma.

Furthermore, it exposes Anglo American to legal sanction, the De Beers and Forevermark brands to potentially ruinous reputational damage and financial loss of and shareholders to commensurate financial jeopardy.

The booklet gives many examples of grievous human rights violations, citing the reports providing the evidence for them. We will now amplify these with details of the scale of the casualties inflicted by Israel and with more examples of Israel's violations of international humanitarian law funded in part by revenue from the cutting and polishing of De Beers and Forevermark diamonds.

Fatalities and Injuries

The UN monitors fatalities and injuries in Israel and Palestine. The figures are given at <https://www.ochaopt.org/data/casualties>. You can click on various items to get more detail. You will see that in the context of the on-going belligerent occupation of the Palestinian territories, the figures since January 2008 are:

FATALITIES	Palestinians	Israelis
Total fatalities	5470	232
Civilian fatalities	2864	13
Disputed status fatalities	1737	0
Girls + women + boys	1786	?
Civilian-settler	n/a	100
Security forces	1	119
Armed groups	868	n/a

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INJURIES

Total	105,505	5,512
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The central contention of the "Shareholders Against Blood Diamonds" is that diamonds processed in Israel fund conflict. These figures give clear evidence for this - it's hardly a conflict free situation, with the overwhelming preponderance of fatalities and injuries perpetrated by Israel on the Palestinians. Whatever the violence from the Palestinians, such as rockets from Gaza, this shows at the very least a grossly disproportionate response. The more than 500 Palestinian children killed in the 2014 onslaught on Gaza was particularly shocking.

Breaches of International Humanitarian Law

For the last 52 years Israel has been occupying the West Bank, Gaza and East Jerusalem. This military occupation is funded in part by revenues from the processing of Anglo American diamonds. As an occupying power Israel is bound by the provisions of the Fourth Geneva Convention, part of international humanitarian law. Israel is in breach of several provisions of the Convention.

Illegal Settlements

On 1 March 1980, the UN Security Council, in Resolution 465:

Determined that all measures taken by Israel to change the physical character, demographic composition, institutional structure or status of the Palestinian and other Arab territories occupied since 1967, including Jerusalem, or any part thereof, have no legal validity and that Israel's policy and practices of settling parts of its population and new immigrants in those territories constitute a flagrant violation of the Fourth Geneva Convention relative to the Protection of Civilian Persons in Time of War and also constitute a serious obstruction to achieving a comprehensive, just and lasting peace in the Middle East;

Strongly deplored the continuation and persistence of Israel in pursuing those policies and practices and calls upon the Government and people of Israel to rescind those measures, to dismantle the existing settlements and in particular to cease, on an urgent basis, the establishment, construction and planning of settlements in the Arab territories occupied since 1967, including Jerusalem;

The resolution was carried unanimously. Yet, in the 39 intervening years, there has been a vast expansion in these settlements. By now over 600,000 illegal Jewish settlers have been moved into the Occupied Palestinian Territories (OPT) in contravention of this Security Council resolution, Article 49 of the 4th Geneva Convention and Article 8(2)(b)(viii) the Rome Statute which establishes this transfer of population as a War Crime. A similar resolution, also condemning this flagrant violation, was passed by the Security Council, including the United States in 2015.

In most cases building illegal settlements involves appropriation of occupied land. This is a grave breach of Article 147 of the 4th Geneva Convention (extensive appropriation of property not justified by military necessity). Anglo American's complicity in these breaches of international law is at the very least a grave and flagrant breach of its stated commitment to an ethical approach to everything it does and "always doing the right thing".

Illegal Demolition of Homes

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In 1948/49 Israel destroyed 531 Palestinian villages as part of the ethnic cleansing of three quarters of the Palestinian population of the State of Israel (Ilan Pappé, *The Ethnic Cleansing of Palestine*, 2006). From the start of the occupation in 1967 until 2014 Israel destroyed some 28,000 Palestinian homes, businesses, wells and livestock shelters. This destruction has continued apace in the last five years including hideous destruction of thousands of homes in Gaza in 2014. Thousands of families have demolition orders against their house and never know when they are going to get 20 minutes notice of the bulldozer crashing through the walls. The excuse for demolishing the vast majority has been that they were built without a permit, but it is almost impossible for Palestinians to get a permit to build even on their own land. In addition, there has been extensive demolition of Bedouin houses in the Negev, within Israel itself. In the OPT the vast majority of these demolitions comprise extensive destruction of property without military justification, and are therefore war crimes under both the 4th Geneva Convention and the Statute of Rome.

House demolitions and settlements are all part of the Israeli programme of dispossession, displacing Palestinians from their land. The worst affected area is Area C, the 60% of the West Bank under full Israeli civil and military control. As the respected Israeli NGO B'Tselem reported in June 2013 (Acting the Landlord: Israel's Policy in Area C, the West Bank) "Israel consistently takes actions that strengthen its hold on Area C, displace Palestinian presence, exploit the area's resources to benefit Israelis, and bring about a permanent situation in which Israeli settlements thrive and Palestinian presence is negligible." They comprise a land grab, a major obstacle to any peace settlement and a situation that can under no stretch of the imagination be described as conflict-free.

The Wall

The wall or separation barrier, still under construction, was declared illegal by the International Court of Justice in its advisory opinion delivered to the UN General Assembly in 2004. The reason was that much of it is built well east of the Green line, a land grab of great swathes of Palestinian territory. The Court declared that the wall built on OPT territory must be dismantled and compensation paid for the immense damage done through its construction, not least in destruction of olive trees. The judgement also confirmed that the West Bank and Gaza are occupied, not disputed territory, and that Israel's settlements are illegal.

The wall is not even an effective security barrier. It's incomplete and merely forces a would-be attacker to take a longer route to gain entry to Israel. What it does do is impose great hardship on Palestinians denied access to their land or other parts of the West Bank, particularly for those living in the "seam zone" between the green line and the wall. Its construction is of course partly funded by revenue from the processing of Anglo American diamonds. In the absence of any response from Israel to the ICJ's call for compensation, complicit firms like Anglo American leave themselves open to similar claims.

Abuse of Children in Israeli Military Detention

There have been frequent detailed reports on this abuse. In March 2013 UNICEF declared in its report "Children in Israeli Military Detention" that abuse was "widespread, systematic and institutionalised". In October UNICEF release a follow up report revealing that the situation for child prisoners had worsened. In August 2013 B'Tselem issued its report "Abuse and torture in interrogations of dozens of Palestinian minors in the Israel police Etzion facility". These followed the devastating April 2012 report "Bound, Blindfolded and Convicted" by distinguished British jurists for Defence for Children

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International. All this, of course, presents a threat to the reputation of a company like Anglo American with trading partners that generate revenues that fund the military engaged in such widely condemned practices as abuse of children. .

Shareholders Against Blood Diamonds
230 Wimpole Road
Cambridge
CB23 7AE

18 July 2019

Dear Ms Hardacre

Thank you for your letter dated 30 May 2019. We take the issues you have raised with respect to human rights risks extremely seriously and continuously and thoroughly monitor the research and reports that are produced by journalists and non-governmental organisations. We thank you for the opportunity to engage and understand you have three key questions for us.

1. **'If De Beers is committed to 'key industry issues, such as human rights', then why does it continue to trade with companies that fund an apartheid regime guilty of human rights violations?'**

De Beers Group is indeed committed to understanding issues that affect us, our clients and the industry more broadly.

We comply with all applicable international and national legislative requirements and make appropriate business relationship and trading decisions under these important mechanisms. Equally, the rule of law informs our approach to ensuring that our decisions do not lead to unintended consequences and exposure to legal risks. Restricting and/or limiting trade with businesses from a specific country in the absence of internationally-mandated sanctions and/or directives would be in direct contravention of the legal compliance framework in which we operate. This includes United Nations-mandated resolutions, and the outcomes of such resolutions. For example, we are encouraged by the work undertaken by the UN Human Rights Council on this matter and are eagerly awaiting the results of the investigation, which will lead to a clear published database of companies that are involved in settlement-related activities that adversely affect human rights. Once published, we will review the work we have already undertaken to assess whether our business has any association with any named companies, and depending on the findings, we will take appropriate and commensurate actions that uphold the principles and values we stand for.

Furthermore, we are committed to the United Nations Guiding Principles on Business and Human Rights and take our commitment to respect human rights seriously. That is why we adopt a robust approach to identifying potential human rights impacts through a framework of initiatives and due diligence programmes (which are detailed below), and undertake proactive enforcement of our standards to ensure we continue to live up to both the letter and spirit of our commitment.

A member of the Anglo American plc group

Anglo American plc
Registered Address: 20 Carlton House Terrace, London, SW1Y 5AN, United Kingdom T +44(0)20 7968 8688 F +44(0)20 7968 8500.
Incorporated in England and Wales. Registration Number: 3554138

We understand that issues impacting human rights can occur across our business and through our business partners' operations and decisions. For the purposes of this response, we have specifically focused on our initiatives and due diligence with our Sightholder (customer) community.

Our due diligence efforts include third party checks on all businesses applying to be a Sightholder, which include a review of each associated group entity of the potential client and their ethical integrity and probity. The outcome of these checks informs our final admission decision; failure to demonstrate robust ethical integrity, including human rights impacts, will mean that the application will be unsuccessful.

If a company is accepted as a De Beers Group Sightholder, a comprehensive and holistic due diligence programme is initiated, including ongoing monitoring of every single group entity, key individuals and contractors; and third-party verification against our ethical standards, the Best Practice Principles (BPP), on an annual basis. Failure to comply with our standards through material breaches results in the application of contractual sanctions and may result in the termination of the supply relationship. The BPP requirements are based on globally-recognized best practice standards that include the United Nations Guiding Principles on Business and Human Rights, the International Finance Corporation's Performance Standards and the Voluntary Principles on Security and Human Rights. We believe that we live up to our principles and have established governance systems that allow us to consistently demonstrate our efforts in this regard.

It is important to clarify that we apply very strict controls, supported by the due diligence described above, to verify the identity and locations of the Sightholder recipients of our diamond shipments.

In reference to the two specific Sightholders you have mentioned in your letter, both of these Sightholders groups undergo the same level of in-depth due diligence and scrutiny on an ongoing basis annually.

2. 'Do the same BPP apply to De Beers itself?'

Yes, the BPPs have applied to De Beers Group entities since their inception in 2005. The BPPs were established in 2005 to provide consumers with the assurance that key ethical integrity issues were being holistically addressed by De Beers Group and its clients through third party assessment. The requirements of the BPPs evolve on an annual basis, and this evolution is based on emerging risks that we identify and would like to address, both in our business and throughout our value chain.

We report publicly on our performance against the BPP requirements, via our third party verifier's assurance statement that is available in our annual sustainability report, also in alignment with best practice standards and expectations. Contrary to your understanding, we have not outsourced monitoring to the Responsible Jewellery Council (RJC); we also apply the rigour of the BPPs on an annual basis through an independent third-party verifier. The BPPs are based on best practice, globally recognised standards ranging from ILO to ISO standards. They are comprehensive and comprise of business, social and environmental requirements covering core topics such as money laundering, business integrity and anti-corruption, human rights, employment requirements and environmental impacts and mitigation. Verification is conducted on an annual basis and corrective actions are implemented where non-conformances or improvement opportunities are raised by the independent third party verifier.

3. 'Do you accept that RJC, KP and WDC do not provide sufficient guarantee that diamonds are conflict-free?'

We strongly believe in undertaking a holistic and multi-initiative approach to ensuring that key ethical issues are identified and addressed in alignment with internationally-recognised standards. These are complex issues with no easy one-size-fits-all solution. That is why we have built a collective framework of multilateral, pan-industry and corporate initiatives, standards and governance systems that, when combined, represent a comprehensive approach. Each of these initiatives has a critical role to play within this framework and enable us to ensure we are taking proactive and responsible actions to identify and adequately address important issues, ranging from conflict diamonds to human rights impacts.

As described above, the BPPs are applicable to De Beers Group and its customers. Beyond this, we support access to a robust, third-party assessed standard that any member of the jewellery industry can subscribe to and follow. This is why we supported the development and evolution of the RJC and will continue to support its mission.

We believe that an approach of continuous improvement through evolving standards is the best method and have worked closely with the RJC throughout its life to drive new and more challenging standards. Most recently, we engaged with the RJC to align their Code of Practice with the OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas. The new 2019 standard is supported by many international non-governmental organisations and recognised by the OECD itself.

Finally, we are supportive of the reform programme currently underway at the Kimberley Process, are engaging with it through the World Diamond Council (WDC) and look forward to a productive outcome out of a complex multi-government process.

In 2018, the WDC expanded the mandate for the System of Warranties to include Human Rights, anti-money laundering and anti-corruption in the new Guidelines, demonstrating that while we encourage the government participants to evolve and enhance the Kimberley Process, the industry is taking proactive action to enhance confidence in the trading of rough diamonds.

The issues you raise are important and we take them extremely seriously. While I anticipate this letter may not fully satisfy all your concerns, I do nonetheless want to express my appreciation for your questions and hope you recognise our effort and approach in identifying and addressing human rights risks across our business.

Yours sincerely



Mark Cutifani
Chairman, De Beers

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230 Wimpole Road,
Cambridge
CB23 7AE

Corporate Office
20, Carlton House,
London
SW1Y 5AN

7th August 2019

Dear Mr Cutifani,

Thank you for your reply of 18-7-19 to the Shareholders Against Blood Diamonds' letter dated 30-5-19.

We feel, however, that your response has not directly addressed our concerns and instead uses as a defence the very frameworks we have questioned.

While we have pointed out a number of issues that call into question the ethical provenance of Anglo American's diamond trade, which we believe exposes the company to potentially significant financial and reputational damage, your response has not addressed these core issues (viz. De Beers trading with companies that fund human rights violations, that RJC, KP and the fact that WDC cannot provide any guarantee that diamonds are conflict free)

You maintain that Anglo American complies with all applicable legislative requirements; even so the company is knowingly selling diamonds which generate revenue used to fund human rights violations. It is therefore disingenuous to claim they are conflict free.

We were very surprised that you consider "Restricting and/or limiting trade with businesses from a specific country in the absence of internationally mandated sanctions and or directives would be in direct contravention of the legal compliance framework in which we operate." **We would be grateful for details of this legal compliance framework that in your view compels Anglo American to continue to trade with companies that fund violations of international law.**

As stated in our letter "This is not a matter of selecting business partners based on nationality as you suggested Rather it is based on the criterion of selecting partners that cause no harm regardless of their nationality or location. Companies that generate revenue for the Israeli government or donate to the Israeli military help fund gross human right violations. At least two of De Beers business partners, Diacore and ABT Diamonds Ltd., contribute to the Israeli military and a number of other Sightholders have operations in Israel that generate revenue for the regime. Revenue from the diamond industry is a highly significant source of funding for the Israeli military. Therefore, any diamonds processed by these companies cannot be conflict-free as understood by any reasonable interpretation of that phrase."

Furthermore, companies in Israel exported over \$3 billion of rough diamonds in 2017 and many of those diamonds are likely to have been supplied by De Beers.

Your response fails to address these specific examples.

Your reference to UN Human Rights Council investigations in relation to "settlement-related activities that adversely affect human rights" is not relevant to the concerns we have raised. It would have been more pertinent for your reply to refer to the various UNHRC reports that investigate serious human rights violations by Israeli forces in Gaza, some of which have been

directly supported by De Beers' business partner Diacore.

Our concern is this: De Beers indirectly funds human rights violations, and this does not accord with Anglo American's Human Rights Policy, which commits to "accept and support the corporate responsibility to respect human rights and actively seek to avoid involvement with human rights abuses."

Given this evidence, how can De Beers diamonds be honestly described as 'conflict free'?

The failure to acknowledge the links between the diamond industry and human rights violations by the Israeli government calls into question the sincerity of Anglo American's commitment to the letter and spirit of the United Nations Guiding Principles on Business and Human Rights.

While layers of complex due diligence guidelines may help obscure the linkage between De Beers' diamonds and gross human rights violations by the Israeli government for some, there is a real underlying risk to Anglo American's reputation, and consequently shareholders.

Whether or not Anglo American could legally avoid it, the company is in fact selling diamonds under the false guarantee that their sale does not fund conflict, whereas processing them in Israel will have generated revenue financing Israel's lethal oppression of the Palestinians.

Is this false sales pitch not a serious threat to Anglo American's reputation and share price?

We would be grateful if you could respond specifically to the items indicated in bold with reference to the points we have made.

Yours sincerely



Jenny Hardacre

On behalf of Shareholders Against Blood Diamonds

DE BEERS GROUP

Shareholders Against Blood Diamonds
230 Wimpole Road
Cambridge
CB23 7AE

16th September 2019

Dear Ms Hardacre,

Thank you for your letter dated 7 August 2019 in response to our letter of 18 July 2019.

Mr Cutifani has asked me to respond directly to your letter as I am responsible for the Best Practice Principles and De Beers Group's appointed representative to the Kimberley Process (KP), the Responsible Jewellery Council, the World Diamond Council and the Organisation of Economic Development and Cooperation, and therefore closest to this subject matter and most able to provide clarity.

Notwithstanding the context Mr Cutifani provided in his previous correspondence, I will address your three specific points directly as requested, but I would also like to immediately cut to the core of the issue. We respect your right to give voice to your views, and we do not in any way distract or diminish them, but we do disagree with them. We do not believe, nor is there any recognised legal precedent to support your central contention, that because a product creates tax revenue for the Government of Israel, which is subsequently utilised in any number of ways including the delivery of public services, it is therefore a 'conflict' product. While I am aware we will not see eye-to-eye on this point, our position is not an outlier on this issue. As campaigners of human rights, I would ask, with respect, that you not diminish the demonstrable and industry-leading lengths De Beers Group goes to in safeguarding human rights throughout the diamond value chain. De Beers Group is a leading force for human rights due diligence across the diamond and extractive sectors and will continue to seek-out and bring international best practice into our business and those of our customers and contractors.

To the specific points you raised in your letter:

1. **"We would be grateful for details of this legal compliance framework that in your view compels Anglo American to continue to trade with companies that fund violations of international law."**
 - We did not say that we are compelled to trade with companies that fund violations of international law. This is a mischaracterisation and unhelpful in creating an understanding of the issue. Our point is that we need to carefully take into account important legal, risks in deciding not to sell to certain businesses and/or into certain territories and ensure that there are compelling, objective reasons for any such action.
 - As is set out clearly in our BPP framework, if a company we do business with were to be found guilty of violations of international law as part of a legitimate judicial process, then De Beers Group would have no hesitation in ending our business relationship.
 - We know of no such ruling or conviction against the companies you have noted.

De Beers UK Limited

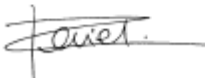
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Tel +44 (0)20 7404 4444 | www.debeersgroup.com
A limited liability company registered in England and Wales with Registered Number 2054170

DE BEERS GROUP

- The term "conflict diamond" has a specific-UN mandated definition. There is no legal basis for, and we fundamentally disagree with, your definition which includes any product or service for which tax is paid to the Israeli Government.
2. "Given this evidence, how can De Beers diamonds be honestly described as 'conflict free'?"
- It is not within the authority of either De Beers Group or Shareholders Against Blood Diamonds to unilaterally declare diamonds to be 'conflict diamonds' or 'conflict free'. That power sits with the UN-backed Kimberley Process and the laws governing diamond exports that are enshrined into national law across all KP member states. Both through the KP certification of the diamonds we mine and through the KP-administered review missions to our operations, diamonds from De Beers are recognised to be conflict-free.
3. "Is this false sales pitch not a serious threat to Anglo American's reputation and share price?"
- We respectfully disagree with your position, but believe it is held in good faith. As is ours. We believe in our people and they have earned the respect of communities, businesses and governments as a result of their leadership in safeguarding human rights. Anglo American has informed, principled shareholders that understand our operations and the essential role our diamonds play in creating lasting opportunities for diamond communities.

In summary, De Beers Group implements substantial and demonstrable measures, beyond the legal and compliance framework, to ensure the diamonds it sells are conflict-free, responsibly-sourced and create lasting opportunities across the diamond value chain.

Yours sincerely,



Ferial Zerouki,
SVP International Relations and Ethical Initiatives

De Beers Group

Shareholders Against Blood Diamonds question to Anglo American AGM 2020

Jenny Hardacre Shareholder ref: 11131845649

Shareholder Question to AngloAmerican AGM 2020

BACKGROUND

During AGM 2019 Shareholders Against Blood Diamonds (SABD) presented members of the Anglo American Board, the CEO of De Beers Group and other shareholders with a booklet highlighting the links between De Beers/Forevermark diamonds and the Israeli government's human rights violations.

Israeli human rights organisation B'Tselem's [The year in review](#) reports that Israeli forces killed a further 133 Palestinians during 2019. Over one fifth of those killed were children.

On December 20th 2019 the Prosecutor of the International Criminal Court (ICC), Fatou Bensouda, concluded "war crimes have been or are being committed in the West Bank, including East Jerusalem, and the Gaza Strip" during the 2014 assault on Gaza, resulting in the deaths of over 2250 people - mainly civilians, including over 550 children, and in relation to the transfer of Israeli civilians into the West Bank since 13 June 2014.

In email correspondence with SABD following the 2019 AGM, Feriel Zerouki, SVP International Relations and Ethical Initiatives, De Beers Group stated: "if a company we do business with were to be found guilty of violations of international law as part of a legitimate judicial process, then De Beers Group would have no hesitation in ending our business relationship. We know of no such ruling or conviction against the companies you have noted."

By setting such an impossibly high threshold for action, especially considering that Israel refuses to recognize the jurisdiction of the International Criminal Court, De Beers Group is giving a green light to business partners that fund the Israeli military and deliberately evading its responsibility to proactively respect human rights throughout its supply chain in line with the UN Guiding Principles on Business and Human Rights.

In relation to the claim that De Beers and Forevermark diamonds are conflict free, Mr. Zerouki, stated: "It is not within the authority of either De Beers Group or Shareholders Against Blood Diamonds to unilaterally declare diamonds to be 'conflict diamonds' or 'conflict free'. That power sits with the UN-backed Kimberley Process and the laws governing diamond exports that are enshrined into national law across all KP member states. Both through the KP certification of the diamonds we mine and through the KP-administered review missions to our operations, diamonds from De Beers are recognised to be conflict-free."

It is misleading for Mr. Zerouki to state that the Kimberley Process has the power to declare diamonds to be "conflict free". The term "conflict free" does not appear anywhere in the KP regulations.

As Mr. Zerouki should be aware, the term "conflict free" was introduced by the diamond industry as part of a 'System of Warranties' which has no impact on the Kimberley Process and no standing in any national or international law.

Diamonds that fund human rights violations by government forces continue to fall outwith the remit of the Kimberley Process. This was confirmed by the failure of the KP to broaden the definition of a "conflict diamond" during a plenary in November 2019 despite calls for it to do so from leading human rights groups and the World Diamond Council.

As the KP only regulates trade in rough diamonds the cut and polished diamonds sold by De Beers and Forevermark evade KP regulation. Despite this obvious loophole De Beers group continues to make reference to the the KP in an effort to bamboozle the public and consumers and conceal the human rights violations enmeshed in their supply chain.

QUESTION:

In the light of:

- i) the evidence presented by SABD at AGM 2019
- ii) the findings of the B'Tselem report
- iii) the conclusion of the Prosecutor of the International Criminal Court
- iv) the complete failure of the Kimberley Process to ban blood diamonds which fund government forces

What steps will the board of Anglo American take to ensure De Beers Group:

- ends the trade in diamonds that fund Israeli human rights violations
- and that it abides by the letter and the spirit of the human rights norms which the Anglo American claims to uphold and to which the public expect of a global leader in the luxury diamond market to adhere ?

Annex C

Agnes & Beny Steinmetz Foundation website indicating they had “adopted” a unit of the Givati Brigade which according to the UNHRC Goldstone Report was responsible for war crimes in Gaza during Operation Cast Lead



קרן אניאס ובני שטינמץ
The Agnes & Beny Steinmetz Foundation

English | צור קשר | פרויקטים נוספים | מער בסיון | מערכי שירותים עירוניים לגיל הרך | אודות הקרן | כללי

Others

THE TEL AVIV MUSEUM OF ART

The Foundation supports the Tel Aviv Museum of Art in building its wing of design and architecture and broaden its range of activities.

THE ISRAEL CANCER ASSOCIATION

The Foundation supports the Israel Cancer Association.

In 2007, Mr. Beny Steinmetz served as the chairman of the organization's main fundraising campaign "Hakash Badelet".

GEDUD TZABAR - GIVATI (IDF)

The Foundation has "adopted" Tzabar Unit of the Israeli Defense Forces' Givati Brigade.

The Foundation fosters a close relationship with the commanders and their soldiers, helps the brigade organize evening events, buys equipment for end-of-course ceremonies and gives aid to needy soldiers.

During Operation Cast Lead in the Gaza Strip, the Foundation helped the Unit purchase complementary equipment as well as visited and cared for the wounded soldiers.



Annex D

Older version of De Beers website relating to their business partner A.B.T Diamonds Ltd. (before the section about Corporate Social Responsibility was removed)

gss.debeersgroup.com/customer-directory/abt-diamonds-ltd

DE BEERS GROUP

ABOUT US CUSTOMER DIRECTORY DIAMONDS FOR GOOD



CUSTOMER TYPE

Accredited Buyers

CONTACT

HEAD OFFICE

Website www.abtd.co.il
Address Israel Diamond Exchange –
Maccabi Building
1 Jabotinsky St. - 21st floor
Ramat Gan 52520
Phone +972 3-575 0617
E-mail office@abtd.co.il

SHORT FACTS

Year of establishment	1976
Number of employees	17
Number of offices	1
Number of factories	0

A.B.T. DIAMONDS LTD

INTRODUCTION

A.B.T. Diamonds, founded by Avraham (Bumi) Traub, is a renowned and respected diamond manufacturer in Israel with global reach. The company is now managed together with the second generation and offers a high level of service and sterling reputation.

Mr Traub has served in a variety of leadership roles from 1982 to 2015 in Israel's industry bodies including: President of Israel Diamond Manufacturers Association (1989-1994 and 2013-2015), Vice-President, Israel Diamond Exchange and Director of the Israel Diamond Institute.

A.B.T. Diamonds provides a comprehensive range of rough and polished natural diamonds, the latter manufactured with an emphasis on the excellence of the make.

CORPORATE SOCIAL RESPONSIBILITY

The company and its owner have made significant contributions to the Israel Defense Forces and the Association for the Wellbeing of Israel's Soldiers, The Ezra LeMarpeh Association, founded by Rabbi A E Firer which provides assistance to the sick and needy, Assaf Harofeh Medical Center, and Zaka. The family has also directly distributed large quantities of food and clothing to the needy before Jewish holidays.