



BREAD FOR ALL LENTEN FUND

Glencore in the DR Congo:

incomplete due diligence



A truck carrying copper raises a cloud of dust on the road to Luilu. | © Meinrad Schade.

Executive Summary¹

1 | Purpose and methodology of the report

This report analyses human rights and environmental due diligence of Swiss commodity trader and producer Glencore in the DRC. Due diligence is measured in the following issues: community relations, access to water, the right to health, the right to food and the right to an income. Social responsibility programmes as well as taxation and corruption issues are also briefly analysed.

This is the fourth report published by *Bread for all* and *Catholic Lenten Fund* on Glencore's activities in the DRC. The report is based on the research work of the African Resources Watch (AFREWATCH) and the Legal Aid Centre (CAJJ) between 2014 and 2018, as well as a field visit by *Bread for all* in May 2018.

2 | Glencore and its subsidiaries in the DRC

Glencore is one of the world's largest commodity trading and extraction companies. It is based in Baar in the canton of Zug. The multinational is a major producer and marketer of over 90 commodities, employing 146,000 people worldwide. In the DRC, Glencore owns two companies: Mutanda Mining Sàrl (MUMI), an open-pit copper and cobalt mine, and Kamoto Copper Company Sàrl (KCC), a group of copper and cobalt mines. These two companies are located near the town of Kolwezi and employ a total of 22,000 employees. KCC and MUMI have some of the world's largest reserves of copper and cobalt, making Glencore one of the largest global producers of these two commodities. In recent years, Glencore's cobalt production has drastically increased, following an strong

¹ This document is a summary of a larger report on Glencore in the DRC which is available here (French only): www.sehen-und-handeln.ch/report-glencore-18

demand for the metal, which is a key component of electric car batteries.

3 | Right to food affected by pollution

3.1 | Pollution in Moloka in 2013-2014

Spills from MUMI caused crop damage to 26 farmers' fields in Moloka over a one-year period in 2013-2014. Moloka is a small village located at the southwestern edge of the MUMI concession. In all, 23.85 hectares of land were destroyed. The harvests of 26 farming families were ruined, including cassava, maize, rice, bean, pineapple and banana crops. The pollution was so severe that it can be seen on satellite images. At first, MUMI did not react to the farmers' complaints. Then MUMI denied that it had caused any pollution in the fields. CAJJ analysed the case thoroughly, advocated for the farmers and alerted the authorities, after which MUMI agreed to compensate the 26 families, who received a total of USD 65,330 for the damaged crops. But MUMI did not pay any compensation for destroying the land, which is now unusable. This is disappointing, since according to Article 281 of the Mining Code, Glencore should also pay compensation for "any modification rendering the land unfit for cultivation". The 26 farmers currently have no other land to cultivate. MUMI has started to clean up the land, but the trees planted are growing very slowly. CAJJ found that only a portion of the 23.85 hectares polluted have been rehabilitated.

It should be noted that MUMI has always refused to publish its environmental analyses detailing the nature of pollutants, despite calls for transparency from farmers and CAJJ.

3.2 | Pollution in Moloka in 2018

According to a CAJJ investigation, on the morning of January 9, 2018, community members working in Moloka noticed that blackish, foul-smelling wastewater from MUMI had flooded a number of the farmers' fields. According to Glencore, this was a minor spill of used oil that occurred along the fence and that did not impact the waterways or surrounding areas.

3.3 | Pollution in Kaindu in 2017

In April 2017, a spill occurred along the MUMI barrier and spread into the fields in Kaindu, a village of a few hundred inhabitants whose fields are located on the southern edge of the MUMI concession. According to the farmers interviewed, crops were damaged and fish and frogs died on the night of the spill. The 32 farmers affected requested information on what happened, the extent of the pollution and the substances that were spilled. Unfortunately, the farmers do not have the necessary resources to collect and analyse soil or water samples. A total of 32 farmers have requested compensation from MUMI, but

the company refuses to pay, claiming that the unplanned spill did not affect crop-growing areas.

MUMI has always refused to publish its environmental analyses detailing the nature of pollutants, despite calls for transparency from farmers and CAJJ. MUMI described the nature of the spill in vague terms, calling it a mixed solution of residue sludge composed of 50 % solids.

A few hours after the spill, a peasant woman from Kaindu went to her fields and crossed the river in which the spill occurred. This peasant woman then complained about health problems. She has taken on debt to cover her medical expenses and is asking Glencore for compensation, which has so far refused but has nevertheless declared itself open to reviewing the case in November 2018.

3.4 | Pollution in Tshamundenda in 2018

In January 2018, during heavy rains, a dike broke inside the KCC site, causing a spill of NaHS (sodium hydrosulphide, a base chemical in the form of a black liquid) into a drain along a 4-km area outside the KCC concession in the township of Tshamundenda. The spill damaged crops in many fields and gardens, and the fish in fish-farming ponds were killed. In all,

460 households were affected. The owner of the fish ponds was the most severely impacted, claiming damage of USD 14,000. The soil in the contaminated fields and gardens has not yet been cleaned up and many are still unusable. KCC provided financial assistance to 460 households for crop damage (most people who were questioned reported being satisfied with the payments made by KCC).

The owner of the fish ponds felt that the compensation was too low to offset the damage incurred, but nevertheless accepted a KCC payment of USD 5,925. The compensation amounts were calculated by AGRIPPEL (Ministry of Agriculture, Fisheries and Livestock). KCC did not clean up the fields and gardens. Instead, the company suggested that the affected households form associations and join its development programme through which it would provide them with fertilisers and seeds. It is disappointing that KCC did not offer compensation within the meaning of Article 280 (compensation for crop damage) and Article 281 (compensation for modification rendering the land unfit for cultivation) of the Mining Code, but instead simply provided "financial assistance" without acknowledging its responsibility for destroying crops and polluting the soil.

3.5 | Pollution in Tshamundenda in 2015

Another spill occurred three years earlier in Tshamundenda, in February 2015 (60 cubic metres of sulphuric acid spilled from a truck that overturned in front of the entrance to KCC). Glencore stated that it had neutralised and cleaned the drain where the spill occurred.

“Bread for all and Catholic Lenten Fund demand that Glencore compensates farmers for crop and income losses, and also for land rendered unfit for cultivation.”



Polluted soil close to the village of Moloka. | © Meinrad Schade.

3.6 | Pollution assessment

The frequent “unintentional spills” and pollution clearly have a **negative impact on the right to food of the populations** living near the KCC and MUMI mining sites. Even if compensation is paid, the farmers end up with fields or gardens that are unfit for cultivation.

Bread for all and *Catholic Lenten Fund* demand that KCC and MUMI:

- **implement more effective measures to prevent environmental accidents** so that this type of pollution does not recur;
- **communicate openly and transparently with the communities**, explaining what has happened, what substances have been released and their toxicity;
- **promptly assess the damage and loss suffered** by local populations in the presence of government representatives and NGOs supporting the communities (in particular CAJJ);
- **undertake to comply with Article 281 of the Mining Code and to take depollution/remediation measures** at damaged sites; as well as to
- **undertake to compensate farmers** for crop and income losses, and also for land rendered unfit for cultivation.

4 | Right to health affected by dust

In the two townships of Musonoi and Luilu, during the dry season (April to October), the inhabitants suffer from the dust created by trucks from KCC and other companies as well as private vehicles. In Musonoi, the dust also comes from KCC’s mine tailing piles, which are very close to people’s homes. In its 2017 annual report, KCC acknowledges that dust has a negative impact on the population. KCC claims to be the main company taking measures to reduce dust emissions, by maintaining the road and engaging in dust control actions by watering the road and using other specific products. The community members interviewed stated that the roads are not watered frequently enough to prevent the emission of very large amounts of dust.

In May 2018, in the townships of Musonoi and Luilu, *Bread for all* measured values between 150 and 250 µg/m³ of coarse particulate matter (<10 µm, also called PM₁₀) in the townships and up to 500 µg/m³ on their access roads. This corresponds to 3 to 10 times the daily averages recommended by WHO (50 µg/m³) for coarse particulates (PM₁₀). According to WHO, these particulates cause respiratory diseases in the population. Representatives of three health centres in Musonoi report that respiratory diseases are common among the local population. The roads are unpaved. Another problem caused by dust is road accidents.

A bypass road is being built by the local government, which may partially solve this problem in the future. Moreover, on the road to Musonoi, a 13-kilometre section is being paved by a private company on behalf of the local government.

Despite the measures taken, Glencore's activities have a negative impact on the right to health of the populations of Musonoi and Luilu. Paving a portion of the Musonoi road may soon change the situation and reduce some of the dust. The problem of dust from the tailing piles in Musonoi, on the other hand, will remain unresolved.

Bread for all and *Catholic Lenten Fund* demand that KCC implement dust control measures through effective road watering during the dry season in order to put a stop to this negative impact on the right to health.

5 | Community Relations

In each township around KCC and in each village around MUMI, Glencore has hired social workers and community liaison officers who have regular discussions with the communities.

According to Glencore, KCC has contacts mainly with the administrative representative of a community (usually the village chief), community committees and other groups, such as cooperatives, associations and customary chiefs. In the communities, members selected by the community form a committee and remain in this role for three years. KCC and MUMI state that they use local media (radio and TV) to inform communities.

6 | Consultations by KCC in 2017

As required by the Congolese Mining Code, KCC held consultations in 2017. KCC has commissioned a new Environmental and Social Impact Assessment (ESIA). Consultations were held in the townships around KCC, including Musonoi and Luilu. Unlike in previous years, AFREWATCH, CAJJ and other NGOs were invited to the consultation sessions. However, according to an AFREWATCH report, these consultations were incomplete and did not comply with the best practices required by the International Finance Corporation's Performance Standards: only a small number of people were consulted among the tens of thousands of people living in the two townships. The ESIA summary was not distributed to the communities. AFREWATCH noted that the consultations were not held in Swahili, but in French. Glencore, on the other hand, claims that the consultations were also conducted in Swahili. The information was given in a language that was too technical and difficult for community members to understand. The explanations focused on the positive impacts of the mines. Moreover, women were significantly under-represented.

These consultations are deficient on several points and do not yet comply with best practices as required by the Congolese Mining Code or the International Finance Corporation's Performance Standards, which call for "prior disclosure and dissemination of relevant, transparent, objective, meaningful and easily accessible information which is in a culturally appropriate local language(s) and format and is understandable to affected communities".

7 | Pollution of the Luilu River

In 2012 and 2014, *Bread for all* and *Catholic Lenten Fund* provided evidence of KCC's pollution of the Luilu River via the Albert Canal (evidence that had been challenged by Glencore). The situation in 2018 has improved. It would appear that the Luilu River is no longer polluted by KCC plants. The water samples analysed by *Bread for all* in May 2018 do not show any pollution of the Luilu River.

8 | Access to water

For many years, the Luilu River has been polluted by various mining companies, including KCC, and this situation has adversely affected the right to water of the people of Luilu. That is why KCC has a responsibility to undertake to guarantee access to

water for these populations. Since 2007, residents' committees have been asking KCC to commit to this goal. In 2014, in an interview with *Bread for all* and *Catholic Lenten Fund*, KCC promised to participate in the construction of wells so that the township of Luilu would have access to water. After more than ten years of waiting and numerous letters from residents' committees, three substations have been under construction for three years, but have not yet been completed. These three substations will be accessible for a population of about 10,000 inhabitants. But the other neighbourhoods of the township of Luilu still do not have sufficient access to water (approximately 20,000 inhabitants).

KCC's support for the construction of substations to improve the population's access to water is commendable. However, it is disappointing that a large percentage of the inhabitants of Luilu will not be able to benefit from these substations.

9 | Right to an income and road closures

The 2014 report criticised the fact that MUMI closed the road connecting the villages of Kapaso, Riando, Kando and Kisenda to National Road No. 1 in 2011. Instead of a 5-km journey either on foot or bicycle, villagers had to travel 15 km to sell their produce. This detour was an enormous handicap. In 2018, the

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research team found that trucks equipped to carry people in the back are running on the road between Lualaba-Gare and Kaindu. Unfortunately, it should be noted that the people are seated on benches installed at the rear of the trucks and are exposed to dust.

The negative impact on the right to an income due to road closures has been greatly reduced thanks to the measure taken by MUMI, although this transport system can be improved (buses instead of trucks).

10 | Taxation, economic and corruption issues

Although this report focuses on human rights and environmental issues, a chapter is devoted to taxation, economic and corruption issues. The record on corruption and taxation is extremely worrisome.

For many years, Glencore has been working with Dan Gertler, an Israeli businessman and billionaire who is a close associate of DRC President Joseph Kabila. In April 2018, Dan Gertler filed a lawsuit against Glencore claiming compensation of nearly USD 3 billion for not paying license fees on two mines. On June 15, 2018, Glencore announced that it had

resumed payments to its partner. Glencore had stopped paying Dan Gertler because he had been placed on a US sanctions list in December 2017 for acts of corruption. In early July 2018, Glencore announced that it was under investigation by the US Department of Justice, which had requested documents on compliance with the U.S. Foreign Corrupt Practices Act and money-laundering statutes in three countries, including the DRC.

In January 2018, the Congolese state-owned mining company, Gécamines, which holds 30 % of Kamoto Copper Company (KCC), commenced legal proceedings with the Commercial Court of Kolwezi to dissolve KCC to penalise it for avoiding the payment of dividends. On June 12, 2018, Glencore announced that it had reached an agreement with Gécamines. KCC's debt will be significantly reduced and Gécamines will start receiving dividends—for the first time.

In Switzerland, Glencore is the subject of legal proceedings. In December 2017, the Swiss NGO Public Eye filed a criminal complaint with the Office of the Attorney General (OAG), calling on the courts to investigate the acquisition of mining licences at discounted prices by Glencore. To date, the OAG has not yet made a decision on whether or not to follow up on this complaint.



Brick walls and corrugated metal roofs: living conditions are difficult in the villages around the MUMI concession.

Conclusion

According to the United Nations Guiding Principles on Business and Human Rights, Glencore should conduct due diligence in four steps: 1) identify risks; 2) take appropriate action; 3) track through indicators; 4) communicate analyses and measures adopted.

Bread for all and *Catholic Lenten Fund* come to the following conclusion on the due diligence of Glencore in the DR Congo:

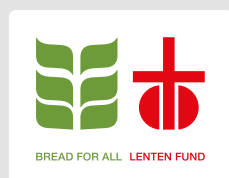
1. **Glencore has carried out an assessment of its environmental and social impacts**, in accordance with the requirements of the Congolese Mining Code. However, it is not clear whether this assessment systematically includes all human rights, as defined by international standards (United Nations Guiding Principles on Business and Human Rights, and OECD Guidelines);
2. **Glencore takes certain measures** to minimise or eliminate the negative impacts of its activities. These measures are sufficient in the case of stopping the pollution of the Luilu River and the right to income during road closures. But the measures are **insufficient in the case of the right to health impacted by dust in Musonoi and Luilu and the right to food in the event of pollution of fields**;
3. **Glencore does not sufficiently track the effectiveness of these measures on the basis of indicators and with local populations**, as shown by the impacts on the right to food and health. As required by the Guiding Principles, Glencore's tracking should be based "on appropriate qualitative and quantitative indicators and draw on internal and external feedback, including from affected stakeholders", i. e. local populations affected by dust and pollution.
4. **Glencore does not communicate sufficiently** on this subject. Their sustainability reports provide only general information on the human rights processes implemented by the company. However, **there is insufficient public information on the impacts of KCC and MUMI on human rights and the environment in the DRC as well as on the details and effectiveness of the measures taken to reduce these im-**

pacts. Moreover, Glencore has not published its Environmental and Social Impact Studies (ESIAs) or even a summary of these studies for the local populations (as required by the Congolese Mining Code).

This report concludes that **Glencore is not fully implementing due diligence.** In addition, the record on corruption and taxation is very worrisome, given Glencore's numerous legal battles.

Although KCC and MUMI would appear to have improved in some respects over the past six years, it is largely due to the work and pressure exerted by the partner organisations of *Bread for all* and *Catholic Lenten Fund*.

This experience shows that **the long-term work of partner organisations in the field is crucial. However, it is not enough.** Even today, major issues (right to health, right to food) **remain unresolved.** Binding regulations for Swiss multinationals, as required by the **Responsible Business Initiative**, are absolutely necessary to ensure better respect for human rights and environmental standards by Swiss multinationals abroad.



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