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GLENCORE IN THE DEMOCRATIC REPUBLIC OF CONGO: PROFIT BEFORE HUMAN RIGHTS AND THE ENVIRONMENT

Written by: Chantal Peyer and François Mercier

In collaboration avec with Congolese civil society organisations, in particular: the “Commission épiscopale pour les ressources naturelles (CERN)” and “Action contre l’impunité pour les droits humains (ACIDH – Emmanuel Umpula)”, and Jean-Pierre Muteba.

Glencore in the Democratic Republic of Congo: profit before human rights and the environment

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Colophon
"*Bread for all*" and the "*Swiss Catholic Lenten Fund*" are entirely responsible for the contents of this report. All first names used in this report are fictitious.
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Glencore in the Democratic Republic of Congo: profit before human rights and the environment

1. Glencore: a mining giant in full expansion

The Glencore group is one of the largest suppliers of and traders in raw materials in the world. The group today, has 50 offices in more than 40 countries where it employs more than 2,800 people. It also employs 55,000 people in its industrial operations in 13 countries.

Glencore has also the largest turnover of any company in Switzerland: US$ 186 billion in 2011, an increase of 28% compared to 2010. The company is active in three areas:

- metals and minerals (turnover of US$ 52 billion in 2011)
- raw materials for energy (US$ 117 billion)
- agricultural raw materials (US$ 17 billion)

Glencore has major holdings in several companies listed on stock markets: Xstrata Plc, Century Aluminium, Katanga Mining, Chemoil Energy and UC Rusal. Glencore has in recent years increased its control over the entire raw material production chain. As a result of investments and take-overs[1], the firm has now a large network covering the entire raw material supply chain, from the production right up to trading.

A history tarnished by scandal

The company was created in 1974 by Marc David Rich, a controversial businessman. At the end of the 1970s, Marc Rich built up his fortune by circumventing the U.S. embargo on Iran and by selling oil to Ayatollah Khomeini. Some years later, he was also selling oil to the apartheid regime (South Africa), despite the United Nations embargo. He was pursued by the American justice system in 1983 for tax fraud, trading with the enemy, etc. Marc Rich sought refuge in Switzerland and established the headquarters of his company in Zug. The Swiss government has always refused his extradition.

March Rich handed over the reins of Glencore International in 1994 to his second, Willy Strothotte, who for 8 years held the post of Executive Director and then became Chairman of the Board of Directors. Willy Strothotte left Glencore in 2011. He was also the Chairman of the Board of Directors of Xstrata (see below) from 2002 to 2011.

Ivan Glasenberg took over the executive management of the firm in 2002. Glasenberg has been working in Glencore since 1989, being responsible for the coal sector from 1991 before becoming Director of the international office in 2002. He has also been a non-executive director of Xstrata since 2002.

The firm's reputation is regularly tarnished by scandal. Glencore was accused in 2004 of tax manipulation by the Nigerian government[2]. In 2005, it was accused of having circumvented the embargo against Iraq: according to a CIA report, Glencore apparently paid more than 3 million dollars in surcharges to Saddam Hussein in order

[1] See for example: "Vers un rachat de Viterra – Le géant canadien de la manutention des céréales est la cible d'une OPA de Glencore", http://indices.usinenouvelle.com/produits-agricoles/vers-un-rachat-de-viterra.4236

[2] See, in particular: "The Rich Boys: An ultra-secretive network rules independent oil trading. Its mentor: Marc Rich", Marcia Vickers, Business week, July 18, 2005 et "Glencore Parries Attacks on secrecy as debt rises", Bloomberg, Saijel Kishan and Simon Casey, February 2008.

to have access to his oil. In 2007, the Bolivian government decided to seize one of the tin mines in the hands of the Swiss multinational, accusing it of having under-paid the exploitation rights. In 2008, a partner of Glencore in Russia was under investigation for "illegal business activities".

In 2010 alone, Glencore paid US$ 780,000 in fines for non-respect of environmental standards[3], demonstrating that Glencore considers it as "minor in the context of global business"[4]. In 2011, Glencore was suspected of tax evasion in Zambia and five non-governmental organisations (NGOs) lodged a complaint for breach of the OECD guidelines. Finally, following Glencore's stock market entry in 2011 (see below), Ethos – a foundation of Swiss institutional investors – decided to exclude Glencore from their portfolios because of the social and environmental controversies linked to the group[5].

Stock market entry

Up to April 2011, Glencore was not listed on any stock market and the financial information issued by the firm was extremely summary. Glencore belonged to its employees who received a share in the profits.

Glencore announced in May 2011 that it was going to become a company listed on the London and Hong Kong stock markets. The company, Glencore International plc, became the group's parent company. It is registered in Jersey and has its offices in Switzerland (Baar). With the stock market entry, the employees' holdings and their rights to profits have been converted into shares in Glencore International plc. Thanks to that, the company's 5 most important directors are all dollar billionaires[6]. Ivan Glasenberg, the CEO of Glencore, alone owns 15.8% of the shares, which amounts to approximately US$ 7 billion at the current share prices.[7]

1 GLENCORE HEADQUARTERS IN BAAR, IN THE CANTON OF ZUG

Glencore's stock market entry has had a positive effect on the transparency of the group, now required to publish very much more detailed information. Thus, in September 2011, Glencore published its first "Sustainability Report" and decided to support the Extractive Industries Transparency Initiative (EITI).

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[3] Glencore, Sustainability Report 2010.
[4] The Guardian Environment Blog, 07.09.2011, Glencore on its safety record, environmental performance and tax.
[5] www.ethosfund.ch/f/news-publications/ethos-quarterly-article.asp?code=113
[6] Forbes, 05.04.2011, Glencore Prospectus Confirms IPO Will Create Six New Billionaires, www.forbes.com/sites/christopherhelman/2011/05/04/glencore-prospectus-confirms-ipo-will-create-six-new-billionaires
[7] Prices and exchange rate of 21.03.2011.

Giant merger

In February 2011, Glencore announced its intention to merge with Xstrata, of which it already holds 34.5% of the shares. The goal of the two companies is clear: to become a giant with an equity market value of US$ 90 billion, controlling raw materials from production to trading[8]. It the merger is approved by the shareholders and the authorities, the new group will become an even more powerful force in poor African countries. The blog, "Africa Diligence", commented on the proposed merger as follows: "Imagine, at the gates of Africa, a 4th mining giant, whose turnover amounts to 28 times the national budget of Congo, 36 times that of Cameroon and 41 times that of Gabon."[9]

It is moreover certain that the proposed mergers and acquisitions will not stop there. According to the newspaper, Le Monde, "[…] observers expect that the new Glencore-Xstrata group will target the number 5 in the world, Anglo American, whose platinum deposits in South Africa are very attractive."[10]

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[8] According to the Glencore press release: "Creation of a major natural resources group with a combined equity market value of $90 billion and a unique business model, fully integrated along the commodities value chain, from mining and processing, storage, freight and logistics, to marketing and sales", Glencore, 07.02.2012, News Release.

[9] http://africadiligence.com/2012/02/09/ce-que-glencore-xstrata-va-changer-en-afrique-leditorial-de-guy-gweth

[10] Le Monde, 18.02.2012, http://www.lemonde.fr/idees/article/2012/02/18/la-bonne-mine-des-matieres-premieres_1645265_3232.html

2. DESCRIPTION OF GLENCORE'S INVESTMENTS IN THE DEMOCRATIC REPUBLIC OF CONGO

2.1 THE PROVINCE OF KATANGA

The mines described in this report are located in Katanga, a province in the south-east of the Democratic Republic of Congo (DRC). Katanga covers approximately 496,877 km^2, or approximately twelve times the area of Switzerland. Nearly 9 million people live in this region and their income comes essentially from agriculture and mining. Katanga is home to 34% of the world's resources in cobalt and 10% in copper, and is situated in what is called the "Great Central African copper belt" that crosses Zambia and the DRC[11]. The population benefits little, however, from these underground riches: nearly 70% of the people in Katanga live in poverty and 80% do not have access to drinking water or electricity[12].

The town of Kolwezi, around which the mines covered in this report are located, is situated in South Katanga. This town was created in 1937 to house the headquarters of the Belgian company, *Union minière du Haut Katanga*, which, following its nationalisation in 1967 became *Générale des carrières et des mines* (*Gécamines*), a State mining company. Referred to in the 1970s as "the lung of the Congolese economy" because of the intense production by *Gécamines*, Kolwezi is today a town marked by recession, unemployment and poverty. The recession began in the late 1990s, when *Gécamines*' financial and management problems caused a drop in production by nearly 90%. Massive dismissals by the company in the context of privatisation programmes in 2003 (more than 10,600 workers were dismissed in 2003) worsened the crisis and resulted in numerous miners ending up in a precarious situation. Today, most of the mining operations in Kolwezi are joint ventures between the former State company and foreign multinational companies. Among the major ones are Free Port MacMoRan with Tenke Fungurme, and Glencore with Kamoto Copper Company and Mutanda Mining.

[11] www.infomines.com, section RDC.
[12] See "Pauvreté et conditions de vie des ménages dans le Katanga" (Poverty and living conditions of households in Katanga), UNDP, March 2009.

2.2 The properties of Kamoto Copper Company and Mutanda Mining

Kamoto Copper Company (KCC)

Kamoto Copper Company is a joint venture 75% of which is held by the Katanga Mining Limited (KML) company and 25% by *Gécamines*. It is the result of a merger in July 2009 of two former competitors, i.e. the former Kamoto Copper Company (owned by Georges Forrest) and the DRC Copper and Cobalt Project (owned by Dan Gertler).

Glencore's acquisition of this company, via Katanga Mining Limited, was carried out in two stages: an initial loan of 150 million dollars in November 2007, followed by a second loan of 100 million dollars in January 2009[13]. A really good deal for the Zug company because, when Glencore's loan to KML was converted into shares, KML's value was at its lowest: in six months, KML's shares had lost nearly 97% of their value on the stock markets. For a loan of less than 500 million dollars, Glencore had therefore acquired 74.4% of a company that today is worth more than 3 billion dollars[14].

KCC's exploitation rights actually cover six different deposits of copper and cobalt: the KOV and T-17 open-pit mines, the Kamoto underground mine and the unexploited mines of Mashamba Est, Tilwezembe and Kananga. These deposits are spread over an area of more than 40 km^2, i.e. an area about the size of the canton of Geneva. They represent some 16 million tonnes of copper reserves in total[15].

2 In the KCC mines

KCC also owns two plants: the Kamoto concentrator and Luilu hydrometallurgical plant.

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[13] For detailed history of the sales and acquisitions of KCC, see: «Contrats, droits humains et fiscalité: comment une entreprise dépouille un pays. Le cas de Glencore en République Democratic du Congo" (Contracts, human rights and taxation: how a company robs a country. The case of Glencore in the Democratic Republic of Congo), Chantal Peyer, March 2011.

[14] "Glencore: why considering a listing now?" Eric Onstad, Laura MacInnis and Quentin Webb, Reuters, 25th February 2011. For the price of the shares, see: "Katanga Mining Limited, Annual information form for the year ended December 31, 2009", March 31 2010, pp. 5 and 8.

[15] Assessments of reserves vary according to the sources. According to a technical report for 2010 by Katanga Mining Limited, the proven copper reserves are 15.9 million tonnes, to which must be added probable reserves of 121.7 million tonnes. According to an estimate by the *Centre d'études pour l'action sociale* (Study Centre for Social Action - CEPAS), the proven reserves are more likely to be approximately 23.3 million tonnes of copper. See "Révision des contrats miniers en RDC. Rapports sur 12 contracts miniers" (Revision of mining contracts in the DRC. Reports on 12 mining contracts), CEPAS, November 2007.

In 2011, KCC produced[16]:

- more than 90,000 tonnes of copper, which represents an increase of 57% compared to 2010; and
- more than 2,400 tonnes of cobalt, which represents a drop of 29% compared to 2010.

The companies predict substantial growth in the coming years and aim to become the largest producer of copper in the DRC.

Mutanda Mining

Mutanda Mining Sprl (MUMI) is a company established under Congolese law that was legally set up in May 2011[17]. There is little public information about MUMI. This is due to the fact that the companies owning MUMI were not, prior to 2011, listed on stock markets. That has changed with Glencore's listing on the London and Hong Kong stock markets and the publication of an external audit carried out by the firm, Golder Associates[18]. The secrecy is also explained by the distance of MUMI: the mines are located some 40 kilometres from Kolwezi. In contrast to the KCC mines, it is not possible to approach the exploitation sites without the company's authorisation. The company is equally less exposed to the media than its sister company, KCC. In effect, MUMI was never 100% owned by *Gécamines* and, as such, is not an undertaking with which the population of Kolwezi identifies. Finally, Mutanda Mining was, until 2011, the fruit of a joint venture between *Gécamines*, which held 20% of it, and the Samref Congo Sprl group, which held 80%. *Gécamines*'s holding was, however, sold in spring 2011, under extremely obscure circumstances (see chapter 9), to a company held by investor Dan Gertler. Glencore holds 50% of Samref Congo, thus 40% of Mutanda Mining. The Swiss firm is equally involved in the operational management of MUMI[19].

MUMI has three open-pit mines, two of which are currently being exploited. The reserves of these mines are estimated at more than 45 million tonnes of copper or three times those of KCC. The company also manages three processing plants.

In 2011, MUMI produced[20]:

- more than 63,700 tonnes of copper, which represents an increase of 291% compared to 2010; and
- more than 7,900 tonnes of cobalt, which represents a drop of 11% compared to 2010.

[16] "Glencore Preliminary Results 2011", 5 March 2012.
[17] See www.miningcongo.cd
[18] See "Mineral Expert Report: Mutanda", Golder Associates, 4 May 2011.
[19] See "Glencore The Value in Volatility. Global market research", Deutsche Bank, 6 June 2011.
[20] "Glencore Preliminary Results 2011", 5 March 2012.

2.3 A Profile of the Glencore empire in DRC: method of research

With KCC and MUMI, Glencore controls the access to enormous deposits in the Democratic Republic of Congo: KCC's and MUMI's reserves total 60 million tonnes of copper. In comparison, the contract concluded between Chine and the DRC in 2008, and about which much was written, concerned 10 million tonnes of copper, i.e. six times less than the reserves controlled by Glencore[21]. When the mines have reached their full output, Glencore could well become the largest producer of copper and cobalt in Africa and, given its power, resembles a State within a State in Katanga.

How is Glencore exploiting these resources and respecting the legal, social and political framework in Katanga? Does the parent company use its control in order to guarantee that its subsidiaries respect human rights and environmental standards? These are the questions that this report seeks to answer.

Bread for all and *the Swiss Catholic Lenten Fund*, in collaboration with Congolese non-governmental organisations (NGOs) – the *Commission épiscopale pour les ressources naturelles (CERN), Action contre impunité et pour les droits humains* (ACIDH) – carried out research in order to learn more about the impact of the Swiss company's activities in Katanga. Several field visits and some fifty interviews were carried out with representatives of civil society (miners, cooperatives, employees, villagers, local NGOs) as well as representatives of the provincial and local administration (town hall, mining registry, etc.). This investigation comes after a first report published in March 2011. It deepens and expands the analysis on several points, in particular the situation of the artisanal miners (chapter 3), the firm's impact on the environment (chapter 4), the working conditions in the industrial mines (chapter 5), the situation of the local communities (chapter 6) and the taxation of Glencore and its subsidiaries (chapter 8). Glencore became aware of the research in January 2012. At the end of February 2012, that is more than eight weeks prior to the publication of the report, a questionnaire relating to the main results of the research was sent to the parent company in Zug. The firm's responses have been incorporated into the text, particularly where the views diverged.

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[21] See “RDC: les contracts chinois en 7 questions” (DRC: the Chinese contracts in 7 questions", Congotribune, 24 May 2008, “Le contrat du siècle” (The contract of the century), Christian Colomba, Monde diplomatique, February 2011, or still "China and Congo: friends in need", Global Witness, March 2011.

3. Glencore and artisanal miners: lack of due diligence in respecting human rights

3.1 Artisanal mining in Katanga

Since the privatisation of the mining concessions and the progressive bankruptcy of the State enterprises, artisanal mining has proliferated in the DRC to the point that it constitutes today the main source of exports of the country. The figures are spectacular: artisanal mines today provide between 70 and 90% of the global production exported from the RDC[22]. This is the exact opposite of the global tendency because 85% of the ore on international market comes from industrial production and only 15% from artisanal mines. According to estimates about 150,000 artisanal miners work in the Province of Katanga, of whom nearly 30,000 live in the region of Kolwezi. If you consider that a miner supports approximately five people, the number of inhabitants, who depend on artisanal mining in Kolwezi, is in the range of 750,000.

The activities of the artisanal miners are authorised by the Congolese Mining Code: "In the areas of artisanal exploitation, physical persons of Congolese nationality, who hold an artisanal miner's card, are authorised to exploit gold, diamonds, as well as other mineral substances.[23]" However, when the miners carry out their activity on private concessions, i.e. where the exploitation rights have been granted to private joint ventures, they must come to an agreement with the companies, failing to do so their activity will be considered as illegal, and may be pursued at any time.
The life of the miners is extraordinarily hard: they descend into holes or tunnels using a pocket lamp and without any safety equipment. The air is bad in the "holes" and there may be uranium radiation given the presence of this substance in the region's sub-soils[24]. The miners spend several hours at a time in the underground galleries and tunnels and, when they return to the surface, they do not know whether they are going to earn a decent income: that will depend on the trader with whom they work and the number of intermediaries (private police, public police, owner of the pit, etc.), who will 'tax' their work. A large number of children and minors work in the mines.

The public authorities bear a large part of the responsibility for the precarious situation of the miners. In fact, they have authorised this activity without making enough open-pit mines available to be operated legally. They are equally incapable of applying the law or making sure it is applied, which contributes to a climate of arbitrariness and insecurity. Finally, they are doing little to put a development

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[22] Assessments of the number of artisanal miners in the DRC and the global production of the ore that comes from artisanal mines are difficult to make, given the lack of government resources to draw up such statistics but – also and above all – given that the majority of miners are not officially registered and do not have any official authorisation. However, various estimates suggest 70 to 90% of the total production comes from artisanal mines. The figure of 90% is given by PactCongo in its study: "Stratégie de transition en terme de gouvernance et de development économique. Kolwezi." (Transition strategy in terms of governance and economic development), PactCongo, 2007.

[23] "Act no. 007/2002 of 11 July regarding the Mining Code", Title IV, Chapter 1. In the Special Official Journal of 15 July 2002.

[24] See in this regard: "Report on Health Problems potentially linked to exposure to radioactive substances in Kolwezi. Copper, Cobalt and Conflict: Creating the capacity, mechanisms and relationships for reducing conflict in the artisanal mining sector of Kolwezi", PactCongo, October 2010. And also "Exploitation minière artisanale en RDC" (Artisanal mining exploitation in DRC"), Promine, Pact study, August 2010.

strategy in place that would allow agriculture and commerce to restart and create new employment which would offer job alternatives to the artisanal miners.

The private companies are equally partly responsible for the problems related to artisanal mining. By effectively refusing to take their responsibilities when the miners are on their site, even purchasing their ore at low prices via intermediaries, they contribute to maintaining a system that tramples on human rights. And, when they want to restart industrial operations, the companies do not hesitate to chase the miners away without further ado.

Two cases documented in this report demonstrate the links between the Glencore subsidiaries and artisanal miners: the artisanal exploitation of the Tilwezembe quarry and the evacuation of the Mupine pit.

3.2 The Tilwezembe mine: a black hole in Glencore's concessions

3.2.1. The link between the Tilwezembe concession and Glencore

The Tilwezembe mine is some 30 kilometres from the town of Kolwezi and approximately three kilometres from national road no. 1 that goes to Lubumbashi. It includes 3 large open-pit mines of some 340 mine pits. To get to them, the visitor crosses the village. There are no clay or brick houses here; Tilwezembe is a temporary village, a village of miners who do not know when they will be chased away again. The houses are made of sheeting, most often of sheeting and sacks that used to be used to transport ore. Women run the various associated activities in the village: makeshift restaurants, a hotel made out of plastic sheeting, bars, a grocery shop, etc.

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3 Village of Tilwezembe

The mine bustles with activity. There are approximately 1,600 artisanal miners. They are men of different ages, who dig out the ground practically with their bare hands, who go down into the holes without safety equipment and who work without any support structure. The life expectancy of these miners is not very high given the accident rate and the difficult working conditions. According to one account received on the spot, the number of miners has apparently significantly dropped over the last year at Tilwezembe, because of the difficult working conditions.

At Tilwezembe, there are also the owners of the mine pits, who manage or supervise the ‘holes’. They advance money to the miners, supply them with sacks, cigarettes or food. There are also the transporters, known as "*salisseurs*" (the ‘spoilers’).

The traders are among the most powerful. Their office is located at the entrance to the mine and constitutes the point via which all the ore from Tilwezembe must transit. The miners have no other choice: It is at this office that they must sell their sacks of copper and cobalt, or otherwise be arrested. The ore is weighed, assessed, paid for and then packed into large cloth sacks at the office before being loaded onto trucks.

Then, finally, in the mine, there are the private and public security forces. Security is ensured at Tilwezembe by three private security groups: Mobile, MAGMA and Star Security Services. There are 55 private guards on the site. Additionally,the official mine police is also present..

4 TILWEZEMBE MINE

History of the Tilwezembe mine

According to a Katanga Mining Limited/KCC[25] technical report, prior to 2008 the Tilwezembe concession belonged to the DCP Copper and Cobalt project, owned by Dan Gertler. At that time, the mine was operated industrially and there were no artisanal miners on the site. The ore was shipped from Tilwezembe to the Kolwezi concentrator and then sent to the Luilu (Kolwezi) plant and the Shituru (Likasi) plant to make cathodes.

Following the merger of DCP Copper and Cobalt Project and KCC, in 2008, the concession reverted to the new entity, KCC, in which Glencore is the major shareholder. In November 2008, however, industrial mining operations were suspended because of the global financial crisis[26]. To this day, they have not been resumed. In its 2011 technical report, published for Glencore's stock market entry, Katanga Mining Limited confirmed the list of concessions belonging to it in the Kolwezi region. Tilwezembe mine still figures among them and is described as a dormant mine, thus not operated industrially. The Glencore report does not mention the artisanal miners, who are at this mine[27].

[25] “An independent Technical Report on the Material Assets of Katanga Mining Limited”, SRK Consulting, 17 March 2009, page 43.
[26] Katanga Mining Limited – News release no 18/2008.
[27] "KML Independent technical Report 2011", page 10 (http://www.investis.com/katanga/technicalreport-2011/katanga-mining-limited-technical-report2.pdf)

Artisanal miners have been active in the Tilwezembe mine since the end of 2010. They have occupied the mine, which is not operated by KCC. According to Glencore: "this mine was in a state of maintenance when it was invaded one night in mid-2010 by hundreds of displaces artisanal miners, who have managed to close the access to the mine to KCC[28]."

The miners at Tilwezembe today work under the technical supervision of the *Service d'Assistance et d'Encadrement du Small Scale* Mining (Small-scale-mining technical assistance and training service - SAESSCAM) and with the support of the Maadini Kwa Kilimo Cooperative (CMKK). They sell their ore to a trader called MISA MINING.

Does the mine still belong to the Glencore subsidiary (KCC)?

Does this mine, exploited by artisanal miners, still belong to the Glencore subsidiary? This question is not entirely irrelevant given the huge gap between the description of Tilwezembe in the documents published by KML as being a "dormant" mine and the reality on the ground, a mine bustling with activity and where more than 1,600 people are extracting ore, practically with their bare hands and at risk to their lives. Analysis of the information collected from the various provincial services is unequivocal: the Tilwezembe concession still belongs to KCC. That is confirmed by interviews carried out with the heads of the Katanga artisanal mining unit (of the Provincial Department of Katanga) and by SAESSCAM's temporary office: "Tilwezembe mine belongs to KCC, which is a merger of two joint ventures. The presence of artisanal miners is the result of the mine being neglected by KCC. Given the *de facto* artisanal exploitation, the Minister decided to organise the exploitation", states an official, who prefers to remain anonymous.

But, this is, above all, confirmed by the mining registry: five exploitation licences have been identified as being in KCC's name (nos. 525, 4960, 4961, 4963 and 11602). It has been visually confirmed that the Tilwezembe mine is covered by one of the above-mentioned licences. An exploitation licence gives a real and exclusive right to its holder[29]. This right includes, in particular, the right to exploit, process, transport, tranship, and market and sell the products from the mining operation or to have it let. In return, the holder is subject to the payment of the annual surface area rights per *carré* (1 *carré* = 84.955 ha)[30]. The non-payment of the surface rights will result in the loss of the licence. Information collected from the Mining Registry Office shows that KCC continues to meet its obligations in relation to the payment for all these licences. Glencore, moreover, confirms this information: "The exploitation licence for the Tilwezembe concession is held by KCC. KCC continues to pay the annual surface rights in accordance with the directives of the Congolese Mining Code. It is KCC's hope that these rights to the quarry will be restored to it and that it will be able to redevelop these resources in the future[31]".

Tilwezembe concession thus still belongs to the Glencore subsidiary, KCC. However, in the mine, another actor has taken on the role of trader: MISA Mining. KCC has been informed of the presence of Misa Mining[32] but, according to the information

[28] Glencore's response to the questionnaire sent by *Bread for all* and *the Swiss Catholic Lenten Fund*.
[29] "Act no. 007/2002 of 11 July regarding the Mining Code", Section 65. In the Special Official Journal of 15 July 2002.
[30] Ibid., articles 198 and 199.
[31] Glencore's response to the questionnaire sent by *Bread for all* and *the Swiss Catholic Lenten Fund*.
[32] "Letter of the Ministry of Mines and Lands, the subject of which was the support for and authorisation of miners in the Tilwezembe mine", dated 12 October 2010. See attachments.

provided by the firm, has opposed the nomination of this trader. In a letter to the Provincial Ministry of Mines, John Ross, the former director of KCC, wrote: "Katanga Mining Limited, the holding company of KCC, is an entity listed on the Toronto stock market and required by this fact to observe a certain number of social, environment and other standards. We cannot, accordingly, give our consent to the nomination of MISA MINING and request the suspension of this appointment until we have met in order to discuss, together, a suitable solution [33]". Glencore affirms that, since this letter of John Ross "no other correspondence has been received from the authorities relative to the presence of Misa Mining[34]".

From Kolwezi to Zambia: the road taken by the Tilwezembe ore

MISA Mining is an agency managed by Mr Ismaël, a former employee of the Bazano Group (GB), who is described by the miners as being an extremely tough man in business, who has no respect for the miners. Misa Mining is the interface at Tilwezembe between the miners and another company, the Bazano Group. In concrete terms, this means that the ore is bought from the miners, weighed, then packed by Misa Mining employees before being resold to the Bazano Group. The sacks that are used to package the ore nearly all carry the GB logo, i.e. of the Bazano Group. This relationship between Misa Mining and Bazano has been confirmed by a spokesperson of the Lebanese firm: "Tilwezembe is an artisanal area of operations placed under the management of Misa, the headquarters of which is based in Kolwezi. The Bazano Group is not directly involved in the exploitation of ore at Tilwezembe but the Bazano Group has nevertheless signed an agreement with Misa Mining to purchase the ore from the Tilwezembe site. The ore purchased is transported directly to Likasi and then exported[35]".

5 TILWEZEMBE SALES AGENCY

The Bazano Group is a trading company set up in 2002 by a Lebanese businessman: M. Alex Hassan Hamze. This company has its headquarters in Lubumbashi with two branches in Likasi (a processing plant and a warehouse) and at Kolwezi (an office, a warehouse and a purchasing agency). The Bazano Group buys ore from artisanal miners in different areas and directly exploits the Shamitumba pit, some 30 km from

[33] "Letter to the Ministry of Mines sent by John Ross, Managing Director of KCC on 27 October 2010". Document supplied by Glencore in response to the questionnaire sent by *Bread for all* and *the Swiss Catholic Lenten Fund*.
[34] Glencore's response to the questionnaire sent by *Bread for all* and *the Swiss Catholic Lenten Fund*.
[35] Information received in Likasi, 9 January 2012.

the town of Likasi. It has made a fortune over the ten years and become a key player in the region but little information is available about Bazano's share capital.

It has nonetheless been established that Bazano is a close business partner of Glencore. Bazano, in effect, holds shares in Mutanda Mining[36] and extracts raw materials (copper and cobalt) in the Mutanda mines, where the plant is managed by Glencore and in which it holds 40% of the shares[37].

It has equally been established that Glencore's subsidiary in Zambia, Mopani, purchases via Bazano, some of the artisanal ore from Tilwezembe. This takes place in two ways:

- some lorries take the raw ore directly from Tilwezembe to the Mopani plants in Mufulira; and
- other trucks take the ore from Tilwezembe to Bazano Group warehouses in Likasi. There, it is repacked and repackaged, before being exported to Zambia.

We have collected this information ourselves by following trucks from Tilwezembe to Likasi. It has also been confirmed by several truck drivers, who transport the ore from Tilwezembe to Likasi and/or Zambia: the truck drivers have confirmed that they regularly carry ore from Bazano in Likasi to Mopani in Zambia. It has also been confirmed by a third, very well-placed source in the mining industry. And finally there is a written document which testifies that ore is delivered from Tilwezembe, via Bazano, to Mopani in Zambia.

Glencore's responsibility with regard to Tilwezembe

The preceding paragraphs demonstrate that Glencore purchases ore from Tilwezembe. Or, to put it directly, that Glencore markets and sells ore from artisanal mines in the DRC via Bazano and via its subsidiary, Mopani, in Zambia.

This fact is not surprising. It emerges from the logic of the import statistics that are officially given by Mopani. In effect, in its 2011 provisional financial statement, Glencore explains that the processing costs of its Mopani subsidiary increased in early 2011 by 18 million dollars, because of increases in purchases of copper and copper concentrate coming from Mutanda Mining and Katanga[38]. Glencore *de facto* acknowledges that it imports ore not only from its own mines but equally from other sources in the DRC. In the preliminary results for the whole of 2011, Glencore again makes its clear that 204,400 tonnes of copper were produced in Mopani in 2011, 103,000 tonnes of which came from outside sources[39]. As the interim report indicates, these outside sources are primarily Mutanda Mine and third-party sources in the

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[36] Bazano in fact holds the shares of Samref Sprl, which holds 80% of Mutanda Mining.

[37] See, in this regard, the report "Glencore: The Value in Volatility". Global market research, Deutsche Bank, 6 June 2011, http://www.scribd.com/doc/57254342/34/Mutanda-%E2%80%93-a-tier-1-greenfield-development-asset

[38] See "Glencore ad Interim Report 2011", page 24: "Mining costs for H1 2011 increased by $ 22 million compared to H1 2010 due to the proportionate increase in production and development in both underground and open pit mining. Processing costs for H1 2011 increased by $ 18 million, due to the increased throughput at the smelter and increased quantity of purchased ore and concentrate, primarily from Katanga and Mutanda. Production using feed from third parties increased by approximately 8% between H1 2011 and H1 2010 and therefore, while overall costs have increased, the cash cost per tonne of finished copper from Mopani mines has decreased."

[39] See "Glencore Preliminary Results 2011", page 16, 5 March 2012.

DRC. Statements collected at Tilwezembe and Likasi make it clear that one of these other sources is ore from artisanal mines, purchased via Bazano.

Questioned on the matter, Glencore states that “KCC is not involved in the mining currently happening at Tilwezembe nor do we buy the product from the operations. These artisanal miners are exploiting resources for which KCC holds the licence – i.e. this is to our disbenefit (sic). However of even more concern is that their operations may well be unsafe and creating environmental problems. We continue to be in discussions with the local authorities on how best to resolve this situation.[40]” Glencore equally states that all the ore imported into Zambia comes from their own operations (KCC and MUMI) and known sources[41] and that no copper from artisanal mines features among those sources.

3.2.2. Working conditions in Tilwezembe mine

Working conditions in Tilwezembe are appalling: child labour, accidents, problems of hygiene or even manipulation of prices and weights are everyday practice. And, faced with a situation where the traders have the monopoly in the mine, the miners have few means for defending themselves.

A climate of tension

On 24 and 25 December 2011, the miners in the Tilwezembe revolted. As a local NGO press release states[42], the demonstrators addressed three specific demands to Misa Mining:

- an end to the manipulation of the grade of ore by the Misa Mining laboratories;
- the purchase of the ore at a Congolese Franc/dollar exchange rate that respects world rates;
- exhumation and the handing-over of the bodies of dead miners to members of their families in the event of a landslide instead of secret burials.

Following this demonstration, the Mines Police proceeded to arrest eleven pits owners and miners, considering them to be behind the uprising. These eleven people were transferred to the *Agence nationale de renseignements*[43] where seven of them were released. But the four others were referred on 5 January 2012 to appear before a judge of the High Court.

This demonstration, as well as the arrests that followed, reveal the climate of tension, if not violence, that reigns in Tilwezembe. This climate is accentuated by, if not the result of, abuses committed by the trading company, Misa Mining.

Rigged weighing scales, under-estimated concentrations and fanciful exchange rates prove that Misa Mining abuses its monopoly.

In the Tilwezembe pit, as in numerous other pits, it is the trader (purchasing agency) i.e. Misa Mining that has the analytical laboratory that determines the content of the copper or cobalt in the ore. The buyer is thus both judge and party and the miners have no way of verifying the results of the laboratory or of obtaining a counter expertise of the results. This situation leads to a situation where the buyer has a

[40] Glencore's response to the questionnaire sent by *Bread for all* and *the Swiss Catholic Lenten Fund*.
[41] Conference call with Glencore on 5 April 2012.
[42] See "Un négociant et 3 creuseurs de minerais de la carrière de Tilwezembe arrêtés au parquet de Grande Instance de Kolwezi" (A trader and three miners of ore at the Tilwezembe quarry arrested by the Prosecutor's office of the High Court of Kolwezi), ACIDH press release, 01/01/2010.
[43] The Agence nationale de renseignements (ANR) is the secret police, which has offices in Kolwezi.

monopoly. And to patent and repeated abuse by the buyer. This abuse takes four forms.

Firstly, the grade of the ore is systematically under-valued. All the accounts corroborate each other: apart from the subtraction of a 2% margin, referred to as the safety margin, Misa Mining systematically undervalues the copper and cobalt content of the ore. For cobalt for example, the Misa Mining laboratory values the content at between 2 and 4% in general. Whereas, according to the accounts collected, the same ore is valued at more than 10% in the agencies in Kolwezi. The miners cannot, however, go and sell their ore to these agencies in Kolwezi for Misa Mining holds the exclusive rights, thus the monopole, on purchases of ore from Tilwezembe. The same applies for copper.

Second problem, the weighing scales and the methods used by Misa Mining to estimate the weight of the ore. Here again, the accounts are all agreed: the weighing scale is apparently rigged and for each 100 kg, 10 kg is subtracted without the miners being informed of the fact. In addition, 17% must be deducted for humidity, which is officially subtracted by Misa Mining. So, at the end of the day, for 100 kilos of ore delivered, the miner will only be paid for 73 kg.

Third problem, rejects. If the content of the ore does not exceed 1%, it is considered as a reject and the miners do not receive any payment. The ore is, however, kept by Misa Mining and the miners may not try to sell it elsewhere.

Fourth problem, finally, the rate of exchange. The ore is, in principle, paid for in Congolese Francs but at the daily rate for the dollar. At the time of the field investigation (late December 2011 - early January 2012), Misa Mining's exchange rate was 750 Congolese Francs to a dollar, whereas market rates were closer to 900 or 920 Congolese Francs to the dollar. This situation amounts to a loss of 150 or 170 Congolese Francs per dollar for the miners.

The wages of the miners in Tilwezembe

Questioned about how much money they manage to make in a month, the miners had difficulty in giving exact, constant figures. Most often, they say, the wages vary because they depend on the quantity of ore extracted, the concentration of the copper or cobalt or the metal prices. "I cannot estimate what I earn in a week or a month", explains Theo. "It is often a question of luck. You find some good material and you are paid well. But, you have to allow for the team mates, the transporters and others. This profession allows us to eat, pay for clothes and, sometimes, pay the rent or for medical care, but never more. It's irregular just as in any informal profession."

Other accounts suggest an income of around 200 dollars per month on average. The notion of uncertainty reappears on the accounts: "Ultimately, it is a question of luck", explains Lingala, "since there are times when a pit produces stuff of varying grades. Nothing is, therefore, certain in this jungle."

Child labour at Tilwezembe

There are a lot of minors, of ages varying from 13 to 17, working and going down the mines at Tilwezembe. Alphonse, for example, is 15 and has been working in the pit for 4 months. He is from a family of eight children and, as in the majority of accounts, he began to work in the mine in order to contribute to the family income. "The owner of the pit knows that I am 15", recounts Alphonse, "but he has no problem with that because he needs the labour and I need to find some money to meet my needs.[44]" In Alphonse's work team, five youngsters share the mining activities. The oldest is 17. They are all thus minors. In all, about 1/3 of the total work force in the mine are estimated not yet to have reached the age of majority. Which means nearly 700 minors, whose ages are between 14 and 17.

Accidents at Tilwezembe

As has already been highlighted in this report, the working conditions in the artisanal mines, and at Tilwezembe, are precarious and dangerous. There are many health and safety problems. There is the lack of equipment for the miners to go down into the pits: they rarely have a safety harness or a cable. It is equally rare that they have suitable clothing for their work or a helmet. There are equally the risks of landslides caused by poor management of waste or of tunnels collapsing. Dug to depths of between 25 and 80 metres, the pits do not have any safety structures. Finally, numerous illnesses are caused by the unhygienic conditions: "There is no hygiene nor are there health measures, or water or toilets," according to Faustin (fictitious name), who has been working in the mine for two years "If you need to relieve yourself, everyone goes into the bush and, if thirsty, the miners drink water that is not suitable for consumption".

When an accident occurs in or around the pits, the miners do not receive any compensation from the traders, Misa Mining. In principle, it is the owner of the pit who must look after their care, but since they too have few resources, the miners are left to their own devices. "A stone fell on my right foot and injured it", says a miner met in Radem hospital. "The doctor told me that the wound was 5 centimetres deep. Misa Mining did not give anything. It was the owner of the pit, a policeman with the rank of lieutenant called Kahilu, who took care of the costs. However, Kahilu became the owner of the pit in order to be able to make the two ends meet and feed his family. He has little money. What is more, I have not eaten anything in the hospital since this morning."

Two accidents took place in the mine while the research was being carried out at Tilwezembe. The first, mentioned above, was caused by a stone falling on the foot of a miner. The second apparently resulted in six injured.

How deaths are dealt with in Tilwezembe

According to several miners questioned in Tilwezembe, Misa Mining does not make any statement and or declare the exact number of deaths in the event of a mortal accident. The accusation is serious because, according to these accounts, it seems that Misa Mining carries out secret burials in order to minimise the incidents. Some families have, apparently, never found the body of their brother, father or husband. This issue was, furthermore, at the very heart of the demands by the miners during their protest march on 24 and 25 December 2011. They have asked Misa Mining to exhume and hand over the bodies of the miners killed by landslides or by other accidents, instead of carrying out secret burials. These allegations reveal the climate of fear and suspicion that reigns at Tilwezembe. And the absence of respect that Misa Mining shows to the miners.

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[44] All the first names used in this report are fictitious.

The accident of 16 May 2011

On 16 May 2011, a road accident resulted in several deaths and injured[45] at the exit from Tilwezembe mine. The person, who normally drove the truck, had already left the site, so Misa Mining asked another driver to drive the vehicle. It was 11 pm when the miners, the last traders and employees of Misa Mining left the site on the truck. There were more than 50 people in all in the vehicle. The driver lost control of the vehicle at a bend known as Mupeto and the truck turned over.

Help was organised at the site of the accident by agents of Misa Mining[46]. The injured were transported on board of three vehicles, a Land Cruiser, a Toyota Hilux Surf and a jeep, to the RADEM centre and the dead to Mwangeji hospital in Kolwezi. Following this incident, the medical expenses of those hospitalised were met by Misa Mining, but the families of the dead received only 100 to 200 dollars from the Lebanese firm. "The amount depended on how much pressure each family exercised", said Divin.

At the time of the incident, and according to various witnesses, Misa Mining apparently buried the dead secretly, the very same night. The families went to the hospital to find their loved ones but never found them.

Police violence

Several private security groups, in particular Mobile (51 people), MAGMA (4), SSS (Star Security Services), as well as the Mine Police are active at the Tilwezembe site. These security services have a cell (a container) in which miners suspected of wanting to leave with ore are held. According to accounts received, those arrested may spend more than 48 hours, or even a week, before being transferred to the authorities. Miners sometimes obtain their freedom by paying a fine of between 50,000 and 10,000 Congolese Francs. Witnesses have also reported that the individuals arrested are badly treated in this cell: not only may members of their family not visit them but they are also subject to violence and blows.

3.3 The June 2010 incidents in Luilu: non-respect of the Voluntary Principles on Security and Human Rights (VPSHR)

The sequence of events in Luilu

On 21 June 2010, violence broke out between the police forces and the artisanal miners near Luilu and Tshamundenda, on the Taqwa and Kilamazembe concessions belonging to *Gécamines*, adjacent to the KCC concessions. According to information received by *Bread for all* and *the Swiss Catholic Lenten Fund*, *Gécamines* decided – without consulting the artisanal miners' cooperatives beforehand – to evacuate the miners who were working on its site. Reports suggest that the violence escalated and lasted several hours[47] and equally that Glencore's subsidiary, KCC, was involved: "The situation was serious at the Kilamazembe quarry because the miners were worked up seeing that *Gécamines*, KCC and military from the rear base were beating up and arresting everybody while people's very survival depended on this operation", recounts a lawyer who defended the civil party in the action that followed the events.

[45] According to accounts collected on site, more than twenty people lost their lives.

[46] The witnesses cited the names of four employees, close to the director of Misa Mining, Mr Ismaël, who organised the help following the incident.

[47] See in this regard "Kolwezi: violents combats between policiers et miners miniers artisanaux" (violent fighting between police and artisanal miners", radio Okapi, 22 June 2010. An account of the facts was also obtained from various witnesses and from one of the civil party's lawyers, who intervened in the context of the military legal action that followed the events.

The military initially pursued and arrested miners, even people just passing by. The miners responded by throwing stones and by temporarily blocking the entrance to the Luilu plant: "To demonstrate their anger, the miners decided to prevent any access to the Luilu plant and an individual named Tareck, one of those responsible for KCC security, accompanied by an agent of the Agence nationale de renseignements (ANR) came to speak to the miners to ask them to leave peacefully, otherwise he had all the means needed to force them to leave. While they were talking, another person responsible for security at *Gécamines* arrived, but his presence was not accepted by the miners. Shortly afterwards, a KCC jeep arrived with an intervention crew aboard and the miners were prevented from working that day", recounts the lawyer. Attempts at mediation took place the next day, in particularly by a member of the EMAK cooperative but the tension was already at its height. The Mayor of Kolwezi, representatives of *Gécamines* and KCC, as well as military, members of the presidential guard and the police forces were all on the spot[48]. The police responded to the stones thrown by the miners by firing real bullets. During the course of these clashes, three people were killed: Jacques Mulunda aged 22, André Mwiland, aged 17 and a young woman called Nathalie. The violence also resulted in several people being injured both among the miners and the police. Luilu police station was sacked.

The responsibility of KCC

On its Internet website, Katanga Mining, the parent company of KCC makes reference to the "Voluntary Principles on Security and Human Rights (VPSHR)": Our sustainability procedures and policies are based on international standards and codes, such as the Voluntary Principles on Security and Human Rights, as well as the Extractive Industries Transparency Initiative (EITI)[49]". The voluntary principles are an initiative launched a little over ten years ago by English-speaking countries, the primary aim of which is to avoid international companies becoming party to major breaches of human rights in countries at risk or at war[50]. The code of conduct requires that company take increased responsibility in sensitive areas and pro-active measures in order to reduce the risks of breaches of human rights by public and private security forces. Among these measures figure, in particular: carrying out an assessment of the context and risks of breaches of human rights, holding a dialogue with local actors, meeting the political authorities and the heads of the security forces, or even requesting an investigation in the event of a breach of human rights.

At the time of the incidents in Luilu, *Gécamines* and KCC did not take the measures of "due diligence" that were needed in the situation in order to avoid violence. In effect, in Katanga, in order to reduce social tension, it is vital to consult the miners and their cooperatives when proceeding with an evacuation. *Gécamines* did not do that[51]. Calling in the police, without any other form of notice or discussion is just opening the door to all kinds of violence.

KCC's role in these events must be clarified. According to information received by *Bread for all* and *the Swiss Catholic Lenten Fund*[52], KCC apparently made its private security forces and equipment, such as for example a jeep, available to *Gécamines*.

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[48] Accounts speak of seven armed military, five members of presidential guard and a large number of police armed with real bullets.
[49] See http://www.katangamining.com/kat/corp_respo/policies
[50] See http://www.voluntaryprinciples.org
[51] The researchers questioned representatives of EMAK management.
[52] The accounts were collected from people who were on the spot at the time of the events, as well as form the lawyer of the civil party in the case.

KCC apparently also played a seminal role by taking responsibility for calling in the public security forces, apparently without having first obtained the proper requisition orders. According to Glencore: "This incident was related to a *Gécamines* concession and not a KCC concession. KCC did not order the evacuation. The evacuation was undertaken by *Gécamines* security. As a result of the above, KCC did not conduct an inquiry.[53]"

Uncertainty remains as to the exact role played by KCC, i.e. about its shared responsibility with *Gécamines*. The company's version of the facts and that of on-the-spot witnesses differ. During the military legal case, the companies' responsibility was neither discussed nor taken into consideration. "Despite our insistence before the court that the military auditor deepen his investigation and make KCC attend the case because we were certain that it made improper or illegal use of public forces, neither the court nor the auditor agreed to grant our request and no valid reason was ever given for their refusal[54]", explains the lawyer for the civil party. The absence of any debate is revealing of the weaknesses of the Congolese legal system and of the absence of any consideration being given to the companies' shared responsibility in certain breaches of human rights[55].

It is important in the view of *Bread for all* and *the Swiss Catholic Lenten Fund* to clarify KCC's responsibility in these events in order to improve KCC's internal "due diligence" procedures. It is equally urgent that the Zug parent company adhere to the "Voluntary Principles on Security and Human Rights" in order to commit itself to respecting the code of conduct in the framework of its relations with private and public security forces everywhere in the world.

[53] Glencore's response to the questionnaire sent by *Bread for all* and *the Swiss Catholic Lenten Fund*.
[54] Quotation from the lawyer for the civil party.
[55] See for example "Le procès de Kilwa: un déni de justice. Chronologie, octobre 2004 – juillet 2007" (The Kilwa case: a denial of justice. Chronology, October 2004 - July 2007), RAID, July 2007.

4. Respect for the environment

4.1. Mining industries and the environment: a relationship with risks

The mining industry is a high-risk sector when it comes to environmental pollution. Against a background of weak governance, as in the Democratic Republic of Congo, the ecological balance sheet of the former State companies and of the new private joint ventures is often extremely negative.

Three kinds of pollution are created by the mining industries:

- Air pollution: from the emissions from the plants, but also from the dust caused by mining activities. The fine particles contain heavy metals and other substances, such as silica, which can be extremely harmful for the flora and fauna, but also for human health[56].
- Pollution and deterioration of the soil[57]: from the smoke of the plants, as a result of the incorrect temporary storage of mining waste and from the dust that falls on the soil. The concentration of heavy metals and acid reaches very high levels. The soils become arid and infertile, and this pollution contaminates the crops and the food chain.
- Pollution and deterioration of water sources: from effluents of the plants, but equally from poor management of mounds and embankments, and mining waste that is deposited in the rivers in the form of sand and dust. This pollution results in the disappearance of aquatic flora and fauna, and reduces the population's access to drinking water[58], with harmful consequences for health in the event of prolonged consumption[59].

In this report, we analyse primarily the pollution and deterioration of the rivers caused by the companies associated with Glencore. A detailed analysis of other sources of pollution remains to be done.

4.2. Kamoto Copper Company: acid in the rivers

The companies' rhetoric

On their Internet websites and in their various publications, Katanga Mining Limited and Glencore acknowledge that their activities may have negative consequences for the environment. "Our goal is to create long-term value through the ethical and responsible extraction of mineral resources and production of metals", writes KML. Our goal is to minimise to the greatest possible extent adverse effects of our operations on the environment.[60]" The parent company, Glencore, goes further and states that it is striving for international best practice in order the remedy the adverse

[56] See "High Human Exposure to Cobalt and other Metals in Katanga", by Célestin Lubaba Nkulu Banza et alios, Environmental research, Volume: 109, Issue: 6, Pages: 745-752, 2009.
[57] See for example: "Phytostabilisation des sols contaminés en métaux lourds par industrie d'extraction de Cu à Lubumbashi" (Phytostabilisation of soils contaminated with heavy metals by the copper mining industry), Ngoy Shutcha, University of Lubumbashi.
[58] See chapter 6 of this report.
[59] See for example, "La pollution de la rivière Kafubu. Rapport d'enquête" (The pollution of the Kafubu River. A report), *Plateforme des organisations pour la promotion et la défense des droits économiques, sociaux et culturels*, July 2011.
[60] "Katanga Mining Limited sustainable policy principles", 2007.

impact of its activities: "In order to manage and limit the environmental impact of our activities, we identify the associated risks at each stage of our supply chain. To achieve effective short and long-term management, we develop, implement and monitor management systems and programmes in order to meet international best practice standards and ensure regulatory compliance. We aim to continually improve performance by setting ambitious goals."[61]

That rhetoric is not translated in to action in the field: KCC's practices hardly respect the environment. At the level of protection of water, they even constitute serious breaches of national and international standards and contravene OECD Guidelines for Multinational Enterprises[62].

We were not able to gain access to the Kamoto concentrator during the course of this research, but we were able to examine the impact of the Luilu hydrometallurgical plant on the environment. The results show massive pollution of the Luilu River, in particular by acid. This pollution can be seen with the naked eye: the water in the canal, which discharges the waste water into the river, is black and smells of rotten eggs. This is confirmed by touch: the water burns the skin and the irritation is persistent. But the pollution is, above all, verified by laboratory analysis.

6 **EFFLUENT FROM THE LUILU PLANT AND WATER SAMPLE TAKEN FROM THIS EFFLUENT.**

[61] "Glencore Corporate Principles. Commitment to the Environment" 2010.
[62] See, for example, guideline 3 of Section VI Environment: "3. Assess, and address in decision-making, the foreseeable environmental, health, and safety-related impacts associated with the processes, goods and services of the enterprise over their full life cycle with a view to avoiding or, when unavoidable, mitigating them." see "Guidelines for Multinational Enterprises", 2011 edition, page 43.

Analyse of effluents from the Luilu plant[63]

Parameter	Value	Lead *(Pb)*	Cadmium *(Cd)*	Cobalt *(Co)*	Copper *(Cu)*	Nickel *(Ni)*	Zinc *(Zn)*
Swiss requirements applicable with regard to discharge into water[64]	pH 6.5 to 9.0	0.5 mg/l Pb (total)	0.1 mg/l Cr-VI	0.5 mg/l Co (total)	0.5 mg/l Cu (total)	2 mg/l Ni (total)	2 mg/l Zn (total)
Requirements under Congolese law in relation to mining waste[65]	-------	0.6 mg/l	0.1 mg/l	------	0.3mg/l	0.5 mg/l	1mg/l
Results of analysis of Luilu effluents	1.9	1.7	0.02	0.9	2.5	2.7	9.4

The effluents are the water that is discharged into the river by the Luilu hydrometallurgical plant. The new act on the environment in the Democratic Republic of Congo stipulates that "any discharge of waste or of substances likely to pollute the marine environment, to alter or deteriorate the quality of surface or underground water, whether continental or marine, is prohibited.[66]" This act is in line with the spirit of the Mining Regulation, which already stipulated, in Appendix IX, that it is prohibited to discharge untreated waste water into rivers: "It is prohibited to discharge waste water, mine water, mine waste, waste or any other contaminant into surface water and less than 100 metres from a source of drinking water or source of water for human beings or livestock. All contaminants must be stored and treated in such a manner so as to eliminate any risk of water pollution." And, "it is prohibited to mix waste mine water with other water.[67]"

In the case of the Luilu hydrometallurgical plant, the investigation revealed massive pollution of the river, pollution that constitutes both a breach of Congolese laws and international standards. Laboratory analysis reveals, in effect, a pH of 1.9, therefore the extremely high acidity of the effluents. In order to understand this figure, you have to be aware that, the lower the pH, the higher the acidity. Pure acid has a pH of 1. In Switzerland, the pH threshold accepted for industrial waste is between 6.5 and 9. In concrete terms, this means that the KCC plant is pouring practically pure acid into the river. Or, to put it in another way, the sulphuric acid that is used for the production of cathodes is released untreated into the water of the river. The levels of lead, cobalt, copper, nickel and zinc are equally well above the permitted thresholds in the DRC. The levels of copper (2.5mg/l/ and of Zinc (9.4 mg/l) found in the effluent from the

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[63] The sample was taken from the canal that carries the waste from the Luilu plant to the Luilu River. The analysis was of the water before it is discharged into the river. The sample was taken on 3 October 2011 and analysed by the Wessling Laboratory in Switzerland.

64 Ordinance on the protection of water. Standard for water discharged into rivers by industries. Appendix 3.2, 28 October 1998.

65 See “Classification of mine waste and its characteristics”, Appendix XI of the Mining Regulation of the Democratic Republic of Congo.

66 “Act no. 11/009 of 09 July 2011 implementing the basic principles concerning the protection of the environment. Section 49”, Special edition of the Official Journal, 11 July 2011.

67 See “Directive on the Environmental Impact Study”, Appendix IV of the Mining Regulation, Articles 55 and 56.

Luilu plant are eight times higher than the thresholds set by the Congolese Mining Regulation. The levels for nickel (2.7 mg/l) and lead (1.7 mg/l) are five and three times higher than the regulatory thresholds. These analyses are confirmed by samples of the plant's effluents taken up-river and down-river.

Analysis of water samples of effluents up-river and down-river[68]

Parameter	Value	Manganese	Cobalt *(Co)*	Copper *(Cu)*	Nickel *(Ni)*	Zinc *(Zn)*
WHO standards	-----	0.4 mg/l	1 mg/l	2 mg/l	0.02 mg/l	3mg/l
Swiss requirements regarding water quality[69]	-----	-----	-----	0.005 mg/l Cu (total) 0.002 mg/l (dissolved)	0.01 mg/l (total) 0.005mg/l (dissolved)	0.02 mg/l Zn (total) 0.005 mg/l (dissolved)
Analysis of the water sample up-river from the Luilu plant effluent	pH 6.11	0.004	0.02	0.006	< 0.001	< 0.001
Analysis of the water sample down-river from the Luilu plant effluent (300 metres down-river)	pH 3.37	0.004	0.094	0.224	0.012	< 0.001

The samples taken of the effluents up-river and down-river demonstrate that the level of acidity of the river is strongly affected by the waste from Luilu because it rises from 6.11 before the plant to 3.37 once the water from the plant has been mixed with the river water, 300 metres down-river from the effluents. The analyses equally reveal a large increase in the levels of copper, cobalt and nickel in the water. They equally confirm that there is contamination from heavy metals, which is related to the activities of the Luilu hydrometallurgical plant.

Consequences of the levels of pollution on the flora, fauna and health of the inhabitants

The extremely high level of acid discharged into the river by the Luilu hydrometallurgical plant constitutes a very major risk for the flora and fauna of the river. It is generally admitted that, for fish to survive in a river, the pH must be between 4.5 and 9.5. As the professor from the University of Lubumbashi, who carried out the analyses of the water samples, stresses, "the acid in the river and the very high content of suspended matter risks leading to the extinction of aquatic flora

68 The samples were taken in early January 2012. They were analysed in the laboratories of the Industrial Chemistry Department, Technical Faculty, University of Lubumbashi.

69 Since we do not know the requirements regarding water quality in the DRC, we have used the Swiss and WHO standards here.

and fauna"[70]. The acid is, therefore, killing the fish in the river by progressively blocking their gills. And what does it do to human beings? Ingestion by human beings of water with very low pH levels can also lead to serious health problems, in particular burning of the mouth, throat, oesophagus and stomach, difficulty in swallowing, nausea, vomiting or diarrhoea. In summary: water with a too low pH level, as in the case of Luilu River, is unsuitable for consumption and presents a danger for the health of the local populations.

This scientific analysis is corroborated by accounts received from the inhabitants of the town of Luilu and its surroundings. "Twenty years ago", recounts the village chief[71], "there were a lot of fish in the river. The river was a source of revenue for nearly all the village. We could eat the fish, sell them and irrigate our fields. In short, everybody needed the river. Today, there is nothing, no fish or crabs. The water is very dirty and you can even see the metals with the naked eye. The water is no longer suitable for irrigation nor can it be used any longer for domestic purposes, for washing dishes or clothes, let alone for drinking. KCC discharges waste that is rich in ore and full of acid. That is what is behind the death of the fish and the drying-up of our fields."

What angers the inhabitants of Luilu and the surrounding villages is not only the deterioration in the living conditions but also the indifference of KCC with regard to them: "My village has borne the direct brunt of KCC's activities", recounts the village head, "but as you will note, the company has not made any social contribution. Since the pollution of the Luilu River, we no longer have any water, we do not have any electricity, we risk famine because we can no longer irrigate. I think that the company should clean up the water in the river. It should equally compensate the people who are the direct victims of its pollution, all those, in particular, who have used the acid water without knowing it to water their fields."

Glencore's response

Confronted with this situation, Glencore acknowledges the pollution and states that they solved the problem a few days before the publication of this report: "Addressing it (the problem of the pollution of the Luilu river) has been prioritized as part of KCC's Environmental Management Plan", replies Glencore in the questionnaire sent to it by *Bread for all* and *the Swiss Catholic Lenten Fund* at the end of February 2012 and "KCC has just completed a substantial engineering project to stop this discharge permanently. The project ensures that all effluent generated by the operation is deposited into the tailing impoundment facility. This facility has been commissioned and will be operational within weeks.[72]" In a conference call on 5 April 2012, Glencore claimed to have now completely resolved the problem. *Bread for all* and *the*

[70] The report explains that "the possible consequences are the extinction of aquatic flora and fauna, the certain causes of which are:
- the reduction in the penetration of the sunlight in the water thereby depriving the aquatic ecosystem (plants, algae, etc.) of light and preventing photosynthesis;
- the covering of aquatic organisms and the obstruction of the gills of aquatic animals".
See "Chemical analysis and chemico-physical measurements. Water from the Kando, Luilu and Musonoi rivers", University of Lubumbashi, February 2012.

[71] Meeting that took place on 4 January 2012.

[72] Glencore's response to the questionnaire sent by Bread for all/*the Swiss Catholic Lenten Fund* in March 2012. The text reads: "The Luilu operations have been disposing of untreated waste water into the Luilu River ever since operations began over 50 years. Addressing the pollution at the Luilu River has been prioritized as part of KCC's Environmental Management Plan. KCC has just completed a substantial engineering project to stop this discharge permanently. The project ensures that all effluent generated by the operation is deposited into the tailing impoundment facility. This facility has been commissioned and will be operational within weeks."

Swiss Catholic Lenten Fund could not do an independent assessment of the situation and could not evaluate whether the solution is a sustainable one or not.

Glencore also claims that it inherited the situation from *Gécamines*: "The Luilu operations have been disposing of untreated waste water into the Luilu river ever since operations began over 50 years." It equally minimises its responsibility, saying that the pollution is also the result of artisanal miners, working down-stream. Glencore and KCC, finally, promise that they are going to solve the problem:

It is important that Glencore's subsidiary resolve the problem of acid pollution as fast as possible and that it install a water treatment plant that meets international standards. This measure is, however, only one of the three aspects of its responsibility. The second consists of contributing to the decontamination of the river and banks. It is, moreover, what the firm Golder Associates implicitly implies when it states in the audit carried out for Glencore that: "The possibility exists that significant impact by mining-related spillages on the local stream/river systems may exist and needs to be confirmed by on-site assessment of potentially affected areas by a suitably qualified specialist. In the event that contamination that can safely be removed without causing excessive damage to the streambeds is identified, allowance has to be made for at least the de-silting and re-instatement of contaminated stream beds and banks. Other measures may also be required in order; to allow the natural aquatic ecosystems to return as far as possible. This could have a notable cost and has been excluded from this cost estimate, mainly due to uncertainty of responsibility for this environmental liability and the fact that such areas could not be detected from aerial imagery."[73]

7 VIEW OF THE LUILU RIVER AFTER THE DISCHARGING OF THE WASTE WATER

[73] An Independent Technical Report on the Material Assets of Katanga Mining Limited, page 107, Golder Associates, March 2011.

Finally, the third aspect of KCC's responsibility is to assess the harm caused to the inhabitants and, within the framework of a transparent procedure, to offer the latter compensation. The right to water, the right to food, even the right to health of many inhabitants have, in effect, been trampled on over the last few years because they have no longer had access to drinkable water, because they have drunk contaminated water, because the fish in the river are dead or because their fields have been made after having been watered using water that has been made too acidic. Restoring access to drinkable water, to their source of existence, will take time and investment and that is also part of the responsibility of the companies that have destroyed the very foundations of these villagers' existence.

Glencore and KCC claim that the pollution was inherited from *Gécamines*. That is not enough. The Luilu hydrometallurgical plant has effectively been rehabilitated since 2004[74]. The works were carried out in three stages. And, seven years later, when the restoration works are practically completed and the factory has been producing cathodes since 2007, the problem of water pollution has still not been resolved. In concrete terms, that means that the treatment of the water was not a priority in the works and that the management has not undertaken any rapid action in this area. That said, various documents prove that the management of KCC and of KML have been aware of the seriousness of the pollution caused by the Luilu hydrometallurgical plant's activities for a long time[75]. Worse, a sentence in the audit carried out by Golder Associates reveals even that the management of KCC deliberately allowed toxic residues to be discharged into the river out of fear that the plant's own infrastructure would be damaged by the acidity of its residues: "hazardous and non-hazardous effluents from the Luilu Refinery are currently being disposed to a ground depression to the south of the plant and overflow into the Luilu River. This is primarily due to problems with inadequate facilities to neutralise the leach residue effluent and the concern that the low pH of the effluent will corrode the pipeline transporting tailings[76]".

Glencore has been purchasing 100% of the production of Katanga Mining Limited since late 2007. In concrete terms, this means that, since the Luilu hydrometallurgical plant resumed production of cathodes in late 2007, they have been purchased and commercialised by the Zug enterprises. At an operational level, Glencore has taken over control of KML since autumn 2008, when Steven Isaacs – financial director of Glencore International – was appointed the director ad interim of KML. Finally, in 2009, Glencore took over economic control of KML with more than 74% of its shares[77]. Glencore has, therefore, exercised a determining influence over KCC operations in the period 2007 - 2012. And, during all these years, the massive pollution caused by the Luilu plant has continued. Questioned about the slowness of

[74] "The condition of the plant in 2004, when taken over, was extremely poor and almost totally run down. A progressive renewal programme was planned, to match the increasing throughput. Considerable progress has been made to-date in the phased rehabilitation exercise. Completion of Phase 1 was in December of 2007 and completion of Phase 2 in December of 2009." From "An Independent Technical Report on the Material Assets of Katanga Mining Limited", page 86, Golder Associates, March 2011.

[75] An initial environmental impact study in 2006 was followed by a second in 2009, carried out by the firm, SRK Consulting. The audit carried out by Golder Associates in 2011 equally states, on page 116, that KCC proceeded to take samples of water on its site and analyse them. And, it stresses that, "historical and current discharge of tailings material into the Luilu River represents a significant environmental risk to KCC".

[76] "An Independent Technical Report on the Material Assets of Katanga Mining Limited", page 116, Golder Associates, March 2011.

[77] See "Contrats, droits humains et fiscalité: comment une entreprise dépouille un pays. Le cas de Glencore en République Démocratique du Congo" (Contracts, human rights and taxation: how a company robs a country. The case of Glencore in the Democratic Republic of Congo), Chantal Peyer, March 2011, pages 8-9.

its reaction, Glencore claims to have ordered engineering studies already in 2009. And, claims that three years have been needed in order to order and carry out the construction of a water treatment plant[78].

4.3. Mutanda Mining: a mine in a game reserve

An assessment of the situation and the environmental impact of Mutanda Mining is complex given the difficulty involved in accessing the site, but also because of the fact that the mine and plant are being expanded and because the situation is, therefore, undergoing major changes. In this initial study, we shall not systematically assess the impact of Mutanda Mining's activities on the environment, but we shall discuss three points: the questions raised by the development of mining activities in game reserves, the impact of the activities on the fauna of the reserve and the management of waste and effluents in the Kando river.

Lower Kando (Basse-Kando) game reserve

The Democratic Republic of Congo has exceptional flora and fauna. Numerous animal and plant species have been able to be protected since the 1930s in the 8 national parks and 63 game reserves and areas in the country. Gorillas, rhinoceroses, hippopotami and okapis are some of the species that have survived thanks to the protection of these sites and the work of the Institut Congolais de Conservation de la Nature (Congolese Nature Conservation Institute - ICCN).

The Province of Katanga has two nature reserves and fifteen game reserves, including that of Lower Kando, located in the Kolwezi District, in which the Mutanda Mining mines and plant are located. The Lower Kando reserve was created in 1957 and its status has been extended several times. The last extension took place in 2006, which means that the site is still today, legally, a reserve in which the fauna should be protected[79].

According to the Mining Code and Regulation of the Democratic Republic of Congo, sites that are protected, i.e. natural parks and game reserves should not be subject mining operations. In concrete terms, that means that no exploitation licence should be granted on those sites: "No mining or quarrying rights may be granted in a protected zone nor any artisanal exploitation established[80]" The Mining Regulation lists the sites that are considered to be protected zones; the Lower Kando reserve is included[81]. The regulation also stipulates that, if mining concessions partially encroach on protected zones, then the company must take special measures to reduce the impact of its activities on the flora and fauna: "Mining and quarrying rights may be granted in perimeter areas that encroach on reserve zones. However, the environmental plans for the operations pursuant to such rights must indicate the existence of reserve areas, acknowledge their reason for existence and include adequate measures for attenuating the damaging effects of the operations on the reserve area in question as well as the objective for which the reserve area was

[78] Conference call with Glencore, 5 April 2012.

[79] Order no. 52/48 game of 27 March 1957, extended by the order of 2006 signed by the Minister for the Environment, Nature Conservation, Water and Forests.

[80] See Decree no. 038/2003 of 26 March 2003 implementing the Mining Regulation, Sections 4 and 5.

[81] Mining Regulation, Article 3: "Under the terms of this Decree, the following are considered to be protected zones: the national parks, in particular Virunga, Garamba, Kundelungu, Maïko, Kahuzi-Biega, Okapi, Mondjo, Upemba and Moanda; the game areas, in particular Azandé, Bili-Uélé and Bomu, Gangala na Bodio, Maïka-Pange, Mondo-Missa, Rubi-Tele, Basse-Kondo, Bena-Mulundu, Bushimaie, Lubidi-Sapwe, Mbombo-Lumene, Luama, Rutshuru, Sinva-Kibali and Mangaï; the Reserves, in particular the Presidential Park of N'sele, the Srua-Kibula, Yangambi, Luki and Lufira reserves, the protected sectors and the zoological and botanic gardens of Kinshasa, Kisangani, Lubumbashi, Kisantu and Eala."

established [82]".

The Mining Regulation, therefore, sets out clear rules regarding the granting of licences on protected sites. However, the mining registry and the various competent services of the State seem to pay little attention to the application of this law: mining concessions have been granted, since 2007, in the Lower Kando to several companies, including, in particular, Chemaf, Mutanda Mining, Phelps Dodge and Platimin Congo[83]. Most of these companies have begun preliminary exploration work. Mutanda Mining has already started its mining activities and carried out substantial works to build ore processing plants. As of now, MUMI is the only mining company that is already operating and producing in the Lower Kando game reserve.

In order to access the ore, to deposit the mounds and embankments, and construct the plants, Mutanda Mining has colonised substantial areas of the reserve. Those spaces are crossed by noise, machines, smells and industrial dust. The plants and mines also need large quantities of water from the Kando river. According to statements collected on the spot, this mining activity has apparently had two consequences for the park's fauna. Firstly, the noise and deforestation have apparently made the elephants, buffalo, antelopes and numerous other animal species flee towards Zambia. Secondly, the intensive use of water from the Kando River has apparently caused the level of water to drop, which consequently apparently has caused the hippopotami to migrate to other regions[84].

In the technical report drawn up by Golder Associates for Glencore's stock market entry, a whole chapter is devoted to the environmental impact of Mutanda Mining. The report indicates that the impact studies were carried out in 2007-2008 within the framework of the process for granting exploitation licences[85]. However, no where is there any mention of the existence of the game reserve. The analysis of the MUMI environmental impact does not make any reference to this challenge nor does it refer to any special measure that the firm may have taken in order to minimise its impact on the park's fauna. This silence, or omission, raises questions.

MUMI's impact on the Kando river

In order to assess the impact of Mutanda Mining's activities on the Kando River, water samples were taken from the Kando river up-stream and down-stream from the MUMI operations and towards the barrier constructed by MUMI on the Kando River.

[82] See Decree no. 038/2003 of 26 March 2003 implementing the Mining Regulation, Section 5.
[83] See "Spoliation des forêts classées au profit de l'exploitation minière dans la Province du Katanga", natural resources network press release, 2007. And, also "La Basse-Kando, vivier des Minings anarchistes", congoleo, 16 December 2009.
[84] See "République Démocratique du Congo: déboisement de forêts classées au profit de l'exploitation minière dans la province du Katanga – le cas de la Réserve de la Basse-Kando" (Democratic Republic of Congo: Exploitation of classified forests for the benefit of mining operations in the Province of Katanga - the case of the Lower Kando Reserve), Christian Bwemba, WMR Bulletin no 133, 2008. This analysis has been confirmed by meeting held on the spot with the inhabitants of the villages.
[85] An Independent Technical Report on the Material Assets of Katanga Mining Limited, page 112, Golder Associates, March 2011.

Analysis of effluents

Parameter	Value	Lead *(Pb)*	Manganese	Cobalt *(Co)*	Copper *(Cu)*	Nickel *(Ni)*	Zinc *(Zn)*
Swiss requirements applicable with regard to discharges into water	pH 6.5 to 9.0	0.5 mg/l Pb (total)	-----	0.5 mg/l Co (total)	0.5 mg/l Cu (total)	2 mg/l Ni (total)	2 mg/l Zn (total)
Requirements under Congolese law in relation to mining waste[86]	-------	0.6 mg/l	0.1 mg/l	------	0.3mg/l	0.5 mg/l	1mg/l
Results of analyses near MUMI barrier	6.37	-----	0.004	0.003	0.185	<0.001	<0.001

Analysis of the samples taken near the barrier built by MUMI reveal that the firm is respecting the Congolese legal requirements.

8 BARRIER CONSTRUCTED BY MUMI ON THE KANDO RIVER AT THE LEVEL OF RIANDA VILLAGE

[86] See "De la classification des rejets miniers et leurs caractéristiques" (Classification of mining waste and its characteristics), Appendix XI of the Mining Regulation of the Democratic Republic of Congo.

Analysis of samples from up-river and down-river of the barrier

Parameter	Value	Manganese	Cobalt *(Co)*	Copper *(Cu)*	Nickel *(Ni)*	Zinc *(Zn)*
WHO standards	-----	0.4 mg/l	1 mg/l	2 mg/l	0.02 mg/l	3mg/l
Swiss requirements regarding water quality	-----	-----	-----	0.005 mg/l Cu (total) 0.002 mg/l (dissolved)	0.01 mg/l (total) 0.005mg/l (dissolved)	0.02 mg/l Zn (total) 0.005 mg/l (dissolved)
Analysis of water sample up-stream from the MUMI barrier	pH 6.00	<0.001	0.004	0.017	< 0.001	< 0.001
Analysis of water sample down-stream from the MUMI barrier (300 metres lower)	pH 6.21	0.004	0.003	0.174	<0.001	< 0.001

Analysis of water from up-stream and down-stream from the barrier on the Kando River, even if relatively high, does not show any unusual levels. MUMI's activities are not the origin of an acid contamination since the pH values above and below the barrier are nearly identical. With regard to heavy metals, analyses show that the levels of cobalt, nickel and zinc are quite acceptable. The level of copper is, however, relatively high even if it remains below the legal limits and indicates an impact of the activities of MUMI, given that it goes from 0.017 above the exploitation to 0.174 below it.

In the case of MUMI, the measures taken by the company to minimise the impact of the discharge of waste on the environment are bearing fruit. Effectively, according to the explications given by Glencore: "The Mutanda plant has been built as a "closed circuit", which guarantees that no (water) effluent is discharged. Mutanda has used a new technology in its plants, one that is still little used in Africa".[87]

The impact on the surrounding communities

Glencore and Mutanda Mining boast in various reports of having very good relations with the village communities and of having a regular - monthly - dialogue with the local chiefs. The firms also highlight various social projects and achievements. Mutanda, for example, explains that it has built two community clinics, dug a number

[87] Glencore's response to the questionnaire sent by *Bread for all* and *the Swiss Catholic Lenten Fund*. At a technical level, the firm explains that: "A key component to being a zero effluent disposal facility was the design of the double lined tailings dam. The first layer being an imperviously clay layer with an underliner drainage system, and the second layer being a 1.5 mm HDPE liner produced to international performance standards (UV resistance, chemical and mechanical resistance). The design of the tailings facility is a new and proven approach to tailing management, and Mutanda is one of the few operations in Africa to utilize this technology."

of wells and started up a training programme for local farmers. MUMI equally claims to have a project to build a fish farm for 3,000 villagers[88].

These contributions to the life of the villages and communities are positive, but it has to be stressed that they amount to an obligation: to the extent that MUMI's activities affect the right to water, the right to food and the inhabitants' employment, the firm is obliged to put measures in place in order to reduce the adverse impact of its activities. According to the reports received on the spot, the MUMI mine's operations have had an impact on the villagers' daily lives. Moise, a father of four children, who lives in Kishala, explains: "The majority of the villagers used to live from fishing or were fishermen. It was our principal source of revenue. The money earned allowed us to pay for study, clothes, manufactured products for our families and for seeds to sow our fields. We also had what we needed to care for ourselves in the event of illness. Today", he continues, "you can see a huge change". There are not enough fish in the river. They have nearly all migrated downstream, the animals too. We have been deprived of our principal source of revenue, our children are no longer able to go to school and it is becoming more difficult to pay for seeds. The reason for the migration of the fish and animals, according to Moise, is "that they have all fled the noise and machines that are working 24 hours a day without rest. For the fish and crabs, there is the drop in the level of the water and, we think, perhaps also the discharges of the Mutanda Mining company".

Analysis of the waters from MUMI has revealed an acceptable level of acid and MUMI does not appear to be behind any major contamination of the sources of water. However, the intense use of water for the mine and other factors have perhaps played a role in the drop in the level of water and in the fact that the fish have practically disappeared from the river.

Glencore's response to this is: "Re the water volume, your witnesses may have been referring to the current drop in water level of the Lualaba. The drop in water level is not a result of Mutanda's water consumption. This may be related to throughput at the hydro-electric operation run by Snel, which has been increased due to power constraints at other Snel power plants. To provide context, Mutanda draws approximately 1.4 million cubic meters per year from the river, while the hydro-electric plant throughput is approximately 4.7 billion cubic meters per year (approximately 3,500 x Mutanda's water usage). We also believe that it may be related to the construction by a Chinese company of a new bridge."

[88]An Independent Technical Report on the Material Assets of Katanga Mining Limited, page 115-118, Golder Associates, March 2011.

5. Working conditions in the companies related to Glencore in DRC

5.1 Working conditions in the mining sector

The right to a decent job, freedom of association and the right to form trade unions and the right to strike are recognised by the Congolese constitution[89]. The DRC has equally ratified the International Labour Organisation conventions regarding five basic labour standards (child labour, forced labour, discrimination in terms of employment, freedom of association and collective bargaining). However, the government administration does not have the resources, or even the political will, to check that the law is implemented.

The working conditions in the industrial mines are often less precarious than those that reign in the artisanal mines: incidents are less frequent, employees are better equipped and the wages are more regular. The fact remains that the work in the industrial mines, such as those of KCC or Mutanda Mining, is nonetheless physically and mentally demanding. The conditions offered by the foreign companies, which have taken over the State concessions, are not always up to the level of expectations. The working conditions in KCC's and MUMI's industrial mines will be examined in this chapter.

5.2. Working conditions at Kamoto Copper Company (KCC)

A climate of tension

In its sustainable development principles, Katanga Mining Limited, KCC's parent company, represents its employment philosophy as being to "provide a work environment in which everyone is treated fairly and in which they are given the opportunity to realise their full potential[90]". At the end of December 2011, however, the employees of KCC in Kolwezi held a march and a strike to denounce the working conditions in the Glencore subsidiary's mines and plants. On of the elements that triggered the strike was a work accident in the Luilu hydrometallurgical plant that resulted in the death of an employee. A cover of a tank containing cobalt concentrate gave way when he was cleaning the tank and he was thrown into the metal scrap, resulting in his death. Over and above this incident, the strikers demanded various changes in KCC's employment policy, in particular:

- a wage increase: according to the demonstrators, they have remained unchanged or practically unchanged since 2007. Whereas, KCC had promised in 2007 to increase the wages in line with the increase in production. The production has increased from 30,000 tonnes in 2007 to 150,000 tonnes in 2011, but the wages have not increased in line with it.
- revision of the collective bargaining agreement
- a supply of clean drinking water to all workers (whether Congolese or expatriates)
- equal treatment between expatriate and Congolese workers in relation to wages for the same work.

The language of the leaflet announcing the strike, which circulated in Kolwezi, is virulent: it threatens the KCC management, stating that they will be "accompanied to

[89] See Articles 36 - 39 of the Congolese Constitution (2006).
[90] See "Sustainable development policy", Katanga Mining Limited, 2007.
http://www.katangamining.com/kat/storage/sustainable_policy.pdf

the airport" and will no longer be in safety if they do not meet the workers' demands. It also calls on people to insult the '"Whites who go down into the mines" and threatens "to set fire to the sub-stations in the Kamoto mine[91]". The violent tone of the leaflet is shocking but sheds light on the climate of social tension that exists in KCC. A climate far removed from that of a company that allows every employee "to realise their full potential". Working conditions at KCC are analysed in more detail in the following paragraphs.

Employment contracts, working hours

KCC appears to respect Congolese legislation in terms of contracts and working hours. In effect, according to the information gathered, the majority of KCC employees have permanent contracts, or fixed-term contracts, and receive a copy of their contract. Short-term contracts are used rather by KCC sub-contractors. Most of the expatriates are on consultancy contracts with Katanga Mining, even if they occupy fixed posts in the organigramme. Some positions have fixed hours of work, from 7 am to 4 pm, while others are organised in three shifts:

- F1 from 7 am to 3 pm;
- F2 from 3 pm to 11 pm;
- F3 from 11 pm to 7 am.

Overtime is frequent but little appreciated by the employees, since "it is subject to income tax and therefore poorly paid", according to the accounts received.

9 CONGOLESE WORKER

[91] "Letter to the employer KCC on the subject of wage demands", dated 27 December 2011.

Health and safety at work

KCC has a mixed record as regards health and safety at work. According to the information gathered, safety equipment is now systematically handed out to every worker, who is required to wear it. This equipment consists of helmets, a vest, an overall, a face-mask, boots and gloves. The only complaint: those working at night do not receive any equipment against the cold. The equipment is replaced once it is completely worn out. New employees receive training, upon recruitment, before going down into the mine.

However, other problems remain. The most common complaints at KCC are related to the lack of ventilation in the Kamoto underground mine: they have to work in a smoke-polluted atmosphere because of the lack of adequate ventilation. The problem has already been brought to the attention of the company's management on several occasions[92], but the latter have not taken adequate measures to resolve the problem. Result: the employees complain of a persistent cough and breathing difficulties, symptoms from which they did not suffer before. Over and above the inconvenience caused by the respiratory problems, there is also uncertainty about the diagnosis: the workers do not know whether those symptoms will have a lasting impact on their health or not, nor to what extent. Another problem that was mentioned to the researchers concerns the gas fumes in the cell room in the Luilu hydrometallurgical plant.

KCC has built a hospital centre for its employees. This investment is positive but the employees complain of the lack of quality of the care there. The criticisms relate to the training of the staff, the lack of regularity of examinations and the lack of information given to patients.

Freedom to form trade unions

There are several trade unions, eight according to our information, represented at KCC[93]. This figure reflects the divisions within the Congolese trade union world. Negotiations have taken place between management and staff, but the representatives complain of pressure and threats of dismissals when they try to defend the rights of their members.

Wages

As has already been highlighted in the introduction, one of the main demands of the workers at KCC concerns wages. They vary depending on duties and responsibilities, but have barely increased over the last few years. The minimum wage at KCC is between 165 and 200 dollars. This is higher than the Congolese minimum wage[94], but remains modest[95]. According to Glencore, adjustments were made following the strike of December 2011: "This strike by certain personnel was illegal in that it was not sanctioned by any union and was in breach of the collective service agreement", claims Glencore. "Nonetheless following discussions with the unions and directly with employees", the firm continues, "it was agreed that (1) The 2011 bonus payment was accelerated; paid in January rather than March / April, and (2) the Category

[92] Civil society in Kolwezi has, in particular, contacted KCC on the subject.

[93] There are eight trade unions at KCC: CTP, UNTC, CTVC, GST, CDT, CSC, CGTC and Solidarity.

[94] The Congolese minimum wage is 90 dollars per month, an amount that is both derisory and inadequate given the cost of living. The Mayor of Kolwezi, Ms Charlotte Cime Jinga, has herself stated that the level is a problem and should be revised.

[95] The minimum wage in companies such as Tenke Fungurume or Anvil Mining is closer to 300 dollars per month, if not more.

Adjustment programme would be accelerated by 5 months; over 650 employees have since been adjusted and the process of employee review is ongoing.[96]"

According to information received by *Bread for all* and *the Swiss Catholic Lenten Fund*, the situation on the ground is more complicated: KCC did not initially respect its undertakings from December 2011 and a new strike took place on 5 and 6 March 2012. Following this second strike, and an intervention also by the Mayor of Kolwezi, a new agreement granting a wage increase of 60 dollars or more seems to have been negotiated between management and employees.

Discrimination between Congolese employees and expatriate workers

The issue of discrimination is extremely sensitive in DRC. When the foreign firms bought the mining concessions, which had previously belonged to the State companies, it was expected that they would contribute to the development of a local skill base. That they would, therefore, support staff training and encourage local management staff to take over responsibilities within the company. In the case of KCC, there is deep frustration among staff at the lack of any KCC policy in this regard: not only is no ongoing training offered to mine employees but no policy in relation to promotion of local staff has been put in place. According to the workers, there is even a policy of discrimination within KCC: "Only the expatriates are generally promoted", explains Maurice. "The Congolese management staff find themselves being given instructions by younger or less competent expatriates. This situation is demotivating for the workers and behind a lot of friction within the work teams", adds another employee.

At a day-to-day level, the Congolese workers and expatriates live practically in two parallel worlds. Foreign staff eat in the Luilu plant canteen and receive bottled water. "There is a canteen for the expatriates", says Chérubin, a mechanic with KCC, "but (there is) no way of knowing what type of food those people receive". The Congolese workers, in contrast, receive only a piece of bread and mine water, "which is not of good quality", to satisfy their hunger. They are not formally prohibited from entering the Luilu canteen but each meal there costs 10 dollars: a prohibitive amount for employees who earn 165 and 600 dollars per month and who, with that amount, have to feed a family of four to ten people.

Unfair and arbitrary dismissals

The climate of tension at KCC is worsened by a past history of collective dismissals. In the event of an economic crisis, if the prices of metals fall on the world markets or in the event of a "restructuring" for other reasons, KCC does not hesitate to carry out massive lay-offs, thereby creating doubt, uncertainty and lack of job security.

One of those large lay-offs took place upon the arrival of Glencore as major shareholder in April-May 2009. It was accompanied by the merger of DCP Copper and Cobalt Project and KCC and resulted in the forced departure of more than 700[97] employees. These dismissals gave rise to legal complaints being lodged by former employees before the Kolwezi High Court[98]. In the public hearing and ruling of 14

[96] Glencore's response to the questionnaire sent by *Bread for all* and *the Swiss Catholic Lenten Fund*.
[97] 713 employees in all were dismissed.
[98] The ex-employees had initially lodged the complaint with the Kolwezi Labour Tribunal. No agreement was reached at the mediation body and the case was therefore referred to the Kolwezi High Court. See "Procès Verbal de non-conciliation N22/METPS/IUT/52/K'ZI/2009" (Report of failure to achieve conciliation N22/METPS/IUT/52/K'ZI/2009). *Bread for all* has a copy of this report.

January 2011[99], the Court ordered the company to pay damages. The Court noted that the legal procedures had not, in several respects, been respected and ordered the payment of wage arrears in the amount of 3.5 million dollars to the 83 employees who had brought the action.

According to Glencore: "These layoffs were unfortunate but necessary and were carried out in full accordance with the law. They were due to overstaffing and low productivity in certain parts of the operation. Some 189 expat jobs were also ended at this time."[100]

Analysis of the facts that emerge from our investigation give another picture: that of a company failing in its obligations in the context of the collective lay-offs of April 2009. There are several problems:

- Firstly, a lack of respect for the law: in order to carry out such a large number of lay-offs, KCC and DCP should have obtained authorisation from the Ministry of Labour. And that had not been received at the time that KCC and DCP went ahead with the dismissals[101].
- Secondly, lack of respect for the trade unions: the company's management had negotiated the lay-off of more than 700 employees with the trade unions. The agreement reached with the trade unions concerned, however, to workers aged 51 and over, who were to be put on early retirement. When the list of those dismissed was published, it included the names of more than 460 employees of less than 51. The terms of the discussions with the trade unions had not been respected.
- Thirdly, lack of respect for the previous commitments: at the time of the dismissals, the firm paid one or, at most, two months' wages to ex-employees. The latter should have received much higher amounts. In effect, when DCP Copper and Cobalt Project took over the *Gécamines* exploitation licences, it accepted to take over the latter's wage arrears. But some of those wage arrears had still not been paid to the workers at the time of the collective dismissal in April 2009. And, DCP refused to include them in the severance payments. Result: the workers lost several months of wages due to them. KCC finally paid these wage arrears in September 2011, two and a half years after the discussions, letters of protest from the workers and legal actions.
- Fourthly, lack of respect for the employees: at the time of the collective lay-offs, the company showed a lack of sense of dialogue, which risked provoking violence on the part of laid-off employees. The day, on which the dismissals took effect, the employees discovered a list at the entry to the site with the names of the more than 700 individuals laid-off. No prior individual notice had been given and no meeting with the management arranged. The workers were treated as if they were faceless numbers: they discovered their names on this "black list" and they were prohibited from entering the mines by armed police. The confrontation between the police and the laid-off workers ended up in clashes and the police finally managed to disperse the workers by firing live

[99] See "Jugement du Tribunal de Grande instance de Kolwezi, audience publique du 14/01/2011" (Ruling of the Kolwezi High Court, public hearing of 14/01/2011). *Bread for all* has a copy of this ruling.
[100] Glencore's response to the questionnaire sent by *Bread for all* and *the Swiss Catholic Lenten Fund*.
[101] This problem of respect for procedures was emphasised in the ruling of the High Court: "The fact ... that on the day of the dismissals, the defendant did not have the authorisation of the Minister with responsibility for labour and social welfare within his competences, the fact that simply requesting the Minister's authorisation is not sufficient in itself to proceed with massive lay-offs ...", "Ruling of the Kolwezi High Court, public hearing of 14/01/2011".

bullets. Two days later, the laid-off workers received a letter at their homes telling them whether they would be paid one or two months' severance pay. The company did not provide any justification in its letter for the amount or for the calculation of the severance pay. However, explications were necessary because many workers should have received more than two months' severance pay given their seniority and the arrears due from *Gécamines*. The letter, however, stated that "this payment … confirms the amicable separation of the parties and, *de facto*, excludes any legal recourse or arbitration[102]". This affirmation amounts to a denial of rights. No agreement or legal text effectively prohibits laid-off employees from having recourse to a conciliation body or the High Court. 83 of them, moreover, did so and lodged a complaint which ended in a ruling in their favour at the Kolwezi High Court on 14 January 2011.

The ex-employees, who lodged the complaint before the Court have still not, at this time, been paid by the company. It should have paid approximately 3.5 million dollars in all in damages to the 83 claimants, but it has appealed the ruling. According to Glencore, the company has appealed "on the grounds that the awards were significantly above what was prescribed by law and because the dismissals were carried out in accordance with the law.[103]"

The appeal was due to be heard in Lubumbashi in August 2011. It was postponed to 18 October 2011, then to 20 November 2011 and then to 13 December 2011 before it was finally decided to transfer the case to Kinshasa. For the claimants, the multiple postponements and the decision to transfer the cases to Kinshasa – without any ruling in Lubumbashi –is incomprehensible. And represents yet another attempt to deny justice: the ex-employees who live in Kolwezi can hardly afford to fly to the capital which is more than 2,000 kilometres away. "We will not be able to follow our cases because of lack of financial means", recounts one of the claimants. "Those who have been able to pay the amounts required by the Kolwezi Court have already done so with enormous difficulty. The company knows that[104]".

According to Glencore, "KCC has submitted its request to the Supreme Court in accordance with the law on the basis that Kinshasa would provide a neutral jurisdiction, in which the relevant case law could be considered and a binding decision reached[105]".

5.3. Working conditions in Mutanda Mining

A climate of dissatisfaction

Investigating working conditions at MUMI amounts to finding the means to dig through a wall of obscurity. MUMI is effectively scarcely accessible to the public and cultivates discretion. Meetings with MUMI employees have, nonetheless, allowed a picture of the day-to-day life of the workers, who work there, to be established. This picture shows that, behind the image of modernity cultivated by MUMI, the working conditions are hardly attractive if not in breach of Congolese law. The main problems that have been identified by the employees concern the working hours, the poor payment of overtime, discrimination between expatriate and Congolese employees and the lack of trade unions.

[102] "Notification of termination of contract" of DCP Copper and Cobalt Project, dated 8 May 2009. See appendices.
[103] Glencore's response to the questionnaire sent by *Bread for all* and *the Swiss Catholic Lenten Fund*.
[104] Account received on 17 December 2011, following the announcement of the transfer of the cases to Kinshasa.
[105] Glencore's response to the questionnaire sent by *Bread for all* and *the Swiss Catholic Lenten Fund*.

Contracts and working hours

Nearly all of those working at MUMI are on fixed-term contracts, signed by the company and handed over to each employee. Short-term contracts are used by MUMI sub-contractors.

Different systems operate at MUMI for the working hours, i.e. a system for fixed hours, from 7 am to 4 pm, Monday to Saturday, and that for rotating shifts for the workers who work two nights in a row and then two days in a row. The working hours of the rotating shifts are very exhausting for the workers: during the day, they work for nine hours, but at night, the workers do more ten hours at a time.[106].

The workers may also have to perform overtime but, according to all accounts, it is "badly paid", if not simply omitted from the pay slips: "The overtime hours do not appear on the pay slips at the end of the month or are not even paid", recounts Léandre. Such practice constitutes a breach of the Congolese Labour Code, which stipulates that overtime hours must be recorded in a register and must result in an increase in remuneration.

Wages

The minimum wage at MUMI is approximately 200 dollars per month. An amount that respects Congolese law, but does not allow a worker to provide a decent living for his family. The costs for an average household with two children[107] can be estimated at approximately 390 dollars per month:

- Rent: 90,000 CDF (US$ 97)
- Schooling: 30,000 CDF (US$ 32)
- Electricity + water: 40,000 CDF (US$ 43)
- Food: 120,000 CDF (US$ 130)
- Cost of transport: 30,000 CDF (US$ 32)
- Clothing for children and adults: 50,000 CDF (US$ 54)

On a wage of 200 dollars per month, or even a wage of 300 or 350 dollars per month, earned by several of the employees who were interviewed, it is difficult to support a family of two children.

Health and safety

The wearing of work equipment is mandatory in the company (boots, goggles, overalls, face-masks). Few work accidents have been recorded over recent years at MUMI. However, a lack of respect for the safety provisions - in particular regarding the use of toxic substances - in the laboratory has been mentioned.
MUMI has built a health centre for workers and their families. This facility is a positive action but the workers complain of a lack of quality in relation to the care: "The employer does not care about the health of the workers", states Franck, "and does not ever demand that laboratory tests be carried out before a medical prescription is issued". The lack of confidence in the medical centre staff was cited in all the meetings and revealed real disquiet regarding the care given.

[106] Accounts received speak of periods of between 10 and 14 hours of work at night.
[107] Definition: for an average household, we mean a household that can pay for the children's schooling and which has a roof over its head and adequate food.

Discrimination

At MUMI, despite the lack of eating facilities in the area, the company has not made any arrangements for employees to be able to eat decently. The Congolese workers do not have a canteen: the one on the site is reserved for the "bosses", mainly expatriates. Local employees receive flour and tins of food and must cook for themselves, in groups using firewood. The water that they are given comes from wells or the river. They do not know whether the water is suitable for drinking or not. The company claims that the water is clean but they themselves refuse to drink that water. The expatriates drink bottled water that is supplied by the company.

Freedom to form trade unions

There is no trade union at MUMI. A staff committee was created in 2009, but the representatives of this committee, who began to negotiate with the management, were dismissed following a wild-cat strike in February 2011. Freedom to form a trade union is therefore not respected within MUMI.

The lack of freedom to form a trade union is aggravated by the large presence of security guards. Several workers have recounted that they are closely monitored by the security guards, accompanied by dogs, which means that the "workers work all the time under stress". The workers have equally mentioned being searched every time they leave, or even of bad treatment if they are suspected of something[108].

Wild-cat strike and unfair and arbitrary dismissals

A wild-cat strike took place on the site of Mutanda Mining on 11 February 2011. The workers took to the streets and blocked the national road from Likasi to Kolwezi. There were several demands and they concerned, in particular: wages, lack of a canteen and decent food on the MUMI site, the working hours and the poor transport conditions. The strike has been presented as an organised strike, but - according to the witness accounts that we have collected - that was not the case. The employees were expressing their frustration in relation, in particular, to the lack of progress in the discussions between the staff committee and the management. The staff committee had drawn up a Memorandum containing the demands on different points, in particular:

- an increase in the lowest wages, with a minimum wage of 600 dollars;
- distribution of clean water to workers on the site;
- that a canteen be set up;
- respect for maximum working hours of 45 hours of work per week (which is the legal limit);
- the creation of a real trade union at MUMI.

The discussions with the management were going nowhere in February 2011 and the discontentment had become all the greater before erupting in a wild-cat strike Following this strike, seven employees of MUMI, including the main representatives of the staff committee, were dismissed without notice by the management. The company accused them of having led the strike.

On the subject of this strike, Glencore claims: "This was an illegal strike by certain employees and contractors; the strike was carried without any warning and without following due process. Nonetheless, to reach an amicable resolution, Mutanda has (1)

[108] The suspicions often concern theft. The suspects are then beaten while handcuffed, according to witness accounts.

increased the maize meal contribution from 25 kg per month to 50 kg per month; and (2) agreed in January 2012 that Category 1 (lowest employment category for Mutanda) would only be used temporarily for temporary labour agreements and once an employee becomes permanent, they would be automatically increased to Category 2.[109]"

[109] Glencore's response to the questionnaire sent by *Bread for all* and *the Swiss Catholic Lenten Fund*.

6. Glencore and local communities: the lack of dialogue

6.1. The requirements of the Congolese Mining Code and Regulation

Western companies, and their subsidiaries, which invest in countries at risk have to take precautionary measures to ensure that their activities do not have an adverse impact on the local populations. When copper and cobalt are located on ancestral lands, when the mining means that villages must be displaced or that farmers must abandon the land that they have been cultivating up to then, the companies must obtain the free and informed consent of those populations. In concrete terms, this means that the populations must have the right to say no to a project. This obligation is set down in Convention 169 of the International Labour Organisation. It equally appears in many national and international standards.

The obligation to consult local populations is not restricted to extreme cases: any impact of the company's activities on the population, flora and fauna must be studied within the framework of an impact assessment procedure. And, what appeared, a few years ago still, to be "good practice" or a "responsible approach" is tending today to become minimum standard, if not a legal obligation.

In the Democratic Republic of Congo, the obligations in this area are set out in the 2002 Mining Code and in the 2003 Mining Regulation[110]. The requirements are clearly spelled out. In order to obtain an exploitation licence, a company must provide the mining registry with an impact study and an environmental management plan, as well as a plan detailing the project's contribution to the development of the surrounding communities: "The applicant shall draw up its application for an Exploitation Licence and lodge it with the Mining Registry, in accordance with Articles 35 and 37 of this Code. The application shall include:

> - the report on the consultations with the authorities of the local administrative bodies and the representatives of the surrounding communities;
> - the plan for the project's contribution to the development of the surrounding communities."

(Article 69 of the Mining Code)[111].

The process for the elaboration of these studies must be based on an open and transparent consultation. The law demands that the firm organise information sessions to explain to the population the exploitation project, the work undertaken, the projected impact, the environmental consequences, etc. In order for the inhabitants to be able to discuss the matter and take a position, the key documents must be translated into the local languages and dialects[112] and participatory processes must be put in place: "The public consultation during the course of the

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[110] "Unheard Voices. Mining activities in the Katanga province and the impact on local communities", p. 9-12, ACIDH & SOMO, November 2011.
[111] See "Act no. 007/2002 of 11 July implementing the Mining Code", Article 69, Special Official Journal of 15 July 2002.
[112] See "Decree no. 038/2003 of 26 March 2003 implementing the Mining Regulation", Article 479.

elaboration of the Environmental Impact Study must permit the active participation by the local populations affected[113]."

Which communities are concerned and which populations affected? They are defined in Article 480 of the Mining Regulation. They are the inhabitants who live beside the mines, beside the operational sites, plants, electronic exchanges and also those who take drinking water from a river that will be affected by the company's activities. When you realise that the mines of the Kamoto Copper Company cover more than 40 km^2, an area about the size of the Canton of Geneva, and those of Mutanda Mining several km^2 too, it is obvious that a large number of inhabitants should or ought to have been consulted during the course of the elaboration of the Environmental Impact Study.

The objectives of the environmental impact studies and the community development plan are twofold. Firstly, they must minimise the adverse impact, i.e. "reduce the harmful effects of the mining operation or open pits, such as shocks, noise, dust, etc. on the activities of the human beings and animals who live around the area" (Article 452, point f of the Mining Regulation). Secondly, they must make a positive contribution, thereby improving the living conditions of the populations. This positive obligation is detailed in Article 425 e of the Mining Regulation: "The elaboration of the Environmental Management Plan of the Project must improve the well-being of the local populations by implementing economic and social development programmes and by providing compensation for the populations in the event of displacement from where they live."[114] In concrete terms, this means that the company's corporate social responsibility policy should not be limited to the once-off construction of a school or hospital, that it should not be determined solely by the management bodies but rather it must be based on a regular, open and transparent dialogue with the populations in order to learn of their needs and to put projects in place that correspond to their needs. In addition, this dialogue should not be restricted to a single consultation, prior to the completion of the project, but should continue throughout the mining operation, as yet again stipulated by the regulation. "The holder of a licence must maintain a constructive dialogue with the communities" (Article 477 d). That is what the Congolese law states. The reality is, however, totally otherwise.

6.2. The insufficient consultations carried out by Glencore's subsidiaries in DRC

The consultation at the time of the environmental impact study

Kamoto Copper Company carried out an Environmental Impact Study in 2009. The company held a number of consultations within the context of this study, with representatives of non-governmental organisations and local communities. According to Glencore, "The legal requirements were followed in full. These consultations gathered all affected communities, local authorities, NGOs, students, churches, associations, rural communities, traditional chiefs, police and security". The Zug firm adds that the process was exemplary because "Prior to the meetings, KCC's consultant sent background information and documents to the communities / stakeholders on topics to be discussed. And, after the meeting, the environmental

[113] See "Decree no. 038/2003 of 26 March 2003 implementing the Mining Regulation", Article 451.
[114] Ibid. Article 452.

impact study was sent to the participants and made available to the local communities[115]".

According to the information gathered by *Bread for all* and *the Swiss Catholic Lenten Fund* on the ground and from the various organisations that participated in the process, the situation was different; the consultation carried out by KCC did not meet the standards set down by law and did not permit those consulted to understand the full implications, defend their interests and follow up the commitments made by the company. From accounts received there, the majority of the people had not received, therefore were not aware of, the contents of the document prior to the session. On the day of the consultation, they had to give their views on a document that they had not read, without having the time to think about it and discuss its contents among themselves. After the consultation, the representatives of the NGOs and the communities never received – contrary to what the firm claims – the final report of the KCC's environmental impact study or its environmental management plan. Kolwezi's civil society tried in vain to obtain a copy of this document.

What KCC did contrasts with that of, for example, its rival Tenke Fungurume (TFM), which, during the consultation procedure for its project, organised more than 100 meetings with representatives of local communities. The meetings were announced in the local media and took place over several weeks[116].

Organising an open and transparent consultation with local communities is a difficult exercise, which demands a major commitment on the part of a company. As a recent report of the Institute for Human Rights and Business emphasises, companies "need to discuss with communities the changes they bring, and not just to secure the 'consent' they seek[117]". In concrete terms, this means that a company must be ready to accept that "what is good for it is not always what is good for the communities"[118]. Companies must, accordingly, learn to show respect for the communities that are affected by their projects and must accept that the dialogue be two-way, i.e. a dialogue that allows for criticism. Ultimately, they must grant communities the right to say no to their projects or suggestions.

In the case of the consultation carried out by KCC, it is clearly apparent that the company's consultation procedure was not open and transparent. KCC's goal was to obtain the formal consent of those consulted in order to be able to lodge a report with the mining registry, as required by law, and so keep its exploitation licences.

Consultation after environmental impact study

Glencore's subsidiary KCC claims that it organises meetings with the local communities every four months. However, none of the various witnesses or representatives of the NGOs on the spot, interviewed by *Bread for all* and *the Swiss Catholic Lenten Fund* has been invited or even heard talk of such meetings. If the process exists then it is totally lacking in transparency and significance. Glencore equally claims that two individuals have been taken on by KCC in order to look after

[115] Response to the questionnaire that was sent by *Bread for all* and *the Swiss Catholic Lenten Fund*, March 2012.
[116] See: "Unheard Voices. Mining activities in the Katanga province and the impact on local communities", pp. 13-21, ACIDH & SOMO, November 2011.
[117] "From Red to Green Flags: the corporate responsibility to respect Human Rights in High Risk Countries", Institute for Human Rights and Businesses, May 2011, pp. 116-177.
[118] Idem, p. 116.

relations with the communities. These "community liaison officers" are supposed to go to the villages, reply to letters from the inhabitants and deal with complaints lodged with their office by the communities. According to Glencore, hundreds of complaints are dealt with annually. There again, there is a gap between what Glencore claims having put in place as a dialogue and the lack that the communities affected by the activities complain about. The Luilu and Musonoi committees have sent *Bread for all* and *the Swiss Catholic Lenten Fund* copies of the very many letters sent to KCC that have remained unanswered.

6.3. Water is life: the populations' lack of access to drinking water

The lack of dialogue on the part of Glencore's subsidiaries with the populations is shown by the issue of access to drinking water. Whether it be in Musonoi, Luilu or in other villages, there is a lack of drinking water. It is not an issue of quantity: there is plenty of ground water. It is a problem of the development or maintenance of the supply infrastructure: the majority of the pipes today are empty and the inhabitants of the towns around Kolwezi no longer have drinking water in their homes. They must go to the edges of the villages to fill up their plastic jerry cans and transport the heavy load back home to be able to cook, have water to drink or to wash themselves with. The women and children are sometimes forced to walk several kilometres in order to find a tap or a leak in the water pipes, which will allow them to wash themselves and quash their thirst. They return to the village loaded with yellow jerry cans full of water which may not be suitable for drinking and is of dubious quality.


10 Water supply in Musonoi

The situation twenty years ago, however, was different: the inhabitants of Musonoi, Luilu and elsewhere had running water. What happened?

In Kolwezi and the surrounding villages, water was supplied up to the beginning of the 2000's by the State company, *Gécamines*. At the time, *Gécamines* was not only the largest employer in the region, but also a State within a State: it built schools, financed hospitals, ensured that the villages were supplied with drinking water and maintained the road network. It acted as a *de facto* substitute for the political authorities. With the progressive dismantling of *Gécamines* and the privatisation of the mining sector, roles in the management of towns and villages have been redefined. Water supply today is primarily the responsibility of Regideso. It, however, has a problem in maintaining the pipes and investing in order to maintain or develop the infrastructure: funds are lacking, Regideso's management is weak and support from the local authorities insufficient. Faced with this situation, the inhabitants often write to the companies - now privatised - to ask them to finance or support certain improvements in the water systems. The latter often do not respond, considering that such investment is not within their remit. An analysis of the situation on the ground reveals, however, that the reality is more complex: in a country at risk, with a weak State and when the private companies have often contributed to the deterioration of the infrastructure, they cannot simply close their eyes and deny any responsibility. This is shown by the examples of the towns of Musonoi and Luilu, explained below.

Water used to gush out in Musonoi!

Musonoi is a town located a few kilometres from Kolwezi. The dusty road that leads to the town crosses a lunar landscape, typical of mining regions: it snakes through mounds formed by mine waste and the deep open-pit mines. The exploitation of the mines, in particular of KOV and T17, is behind the construction of Musonoi at the time of *Gécamines*: a lot of workers were housed in these huts that are only a few tens of metres from the exploitations.

11 ENTRANCE TO THE TOWN OF MUSONOI, WITH THE MOUNDS FROM THE MINE IN THE BACKGROUND

The inhabitants of Musonoi today lament the deterioration in living conditions and, particularly, the deterioration in the supply of drinking water. The accounts are unanimous and supported by various documents drafted by the inhabitants' committee. Up until the 2000's, water flowed 24 hours a day in Musonoi, 365 days a year. Now, however, 80% of the inhabitants no longer have water in their neighbourhood. They line up at the entrance to the village where there are a few leaks in the pipes and a few taps supply the blue gold. "Our daughters are obliged to go out in the evening and that exposes them to risk", stresses a father. Beyond the issue of the safety of the young women, the difficult access to water brings with it problems of risk of infection and contamination, if not of public health.

Gécamines used to supply water for free in Musonoi in the 1980s. The water was supplied to the village from two main wells: P27 and P68. It was stored in two water

12 THE FORMER WATER TOWERS IN MUSONOI

towers located in the centre of the village and distributed through pipes to various parts of the village. The water towers were always full. And the water was fed to the taps in each neighbourhood.

In 2005-2006, shortly after the taken-over and privatisation of DCP Copper and Cobalt Project, the first well that supplied the village - P68 - was deviated and then blocked. According to a member of the village committee, DCP decided to use the pump for watering the Kamoto road. Then, for no apparent reason, the company put waste full of heavy metals on the pump, which then became unusable. The inhabitants of Musonoi saw their water supply drop significantly. And the removal of this well - whose flow was 450 m^3 of water per hour - increased the pressure on the rest of the network. It also made the water towers useless because the flow was no longer sufficient to pump the water up to the holding tank.

The remaining pump, P27, has also experienced several "misadventures" over the last few years. Its flow has diminished with age and use. And KCC installed a valve on the circuit in order to deviate some of the water for the T17 open-pit. In concrete terms, this means that KCC has, during several years, been taking off part of the water meant for the village for the industrial operation of its open-pit mine. Or, to put it another way, KCC has been using the only remaining pump of the village, thereby impeding access to water for nearly 15,000 people rather than investing in new infrastructure.

The T17 mine has not been operating since spring 2011, but the flow of the P27 pump has not exceeded 60 m^3 per hour, whereas fifteen years ago it was 180 m^3 per hour. Without the P68 pump, with an aging P27 pump, the town of Musonoi has only a trickle of water in its pipes. That is in addition to the fact that the pipes have not been maintained, that there are holes in places. It is then easy to understand why the inhabitants are forced to go on foot to seek water.

The consultative committee for the development of the town of Musonoi has written on several occasions to KCC to make it aware of its griefs. At the end of March 2011, the KCC liaison officer finally agreed to meet the committee to discuss their demands. During this meeting, the Musonoi committee asked, in particular:

- that the pipes be sealed and that some of the piping be renovated so that the leaks no longer reduce the, already very modest, flow of water;
- that a new pump be installed so as to increase the flow again and allow the water towers to be supplied. Then the water could be redistributed to the various neighbourhoods in the town; and
- that pump P27 be rehabilitated in order to increase its water flow.

At the end of that meeting, KCC undertook to renovate the Musonoi town pipes. However, nothing has been done and the company has not carried out the promised work.

The Musonoi water supply situation has further deteriorated since November. The only pump that was still supplying the town, P27, effectively broke down on 6 November 2011. Given the absence of action by the public authorities and the lack of reaction from KCC, the women of Musonoi put up barriers on the road leading to Kamoto and prevented the KCC vehicles from getting to the mine. After three days of blockage, the public authorities and the company finally met the inhabitants. They put some temporary solutions in place. During three weeks, KCC trucks delivered drinking water to Musonoi. Then the authorities found another temporary solution: pump P26, which normally supplies the town (of Kolwezi), was made partially available to Musonoi. In concrete terms, the inhabitants of Musonoi receive water from 6 pm to 6 am. The rest of the time, i.e. during the entire day, Musonoi has no access to water. "Imagine! Our wives have to go and get water in the night. That it not a solution", says one villager.

Glencore today claims that, "The supply of water to these communities has always been the responsibility of *Gécamines* and the local water utility, but it is very much our concern. The current situation is the result of years of neglect of infrastructure and a growing population. As a responsible corporate citizen we are keen to play a part in resolving this long-standing and difficult problem. In more concrete terms, Glencore says that "In order to assist the Musonoi township, KCC will install several water tanks in Musonoi during 2012". It is to be hoped these promises will be better kept that those made regarding the renovation of the pipes in March 2011. It is also to be hoped that KCC will consult the Musonoi water committee regarding any envisaged solution. For that committee, the installation of a new pump allowing the water towers to be supplied would solve Musonoi's problems. KCC should hold a transparent consultation process in order to arrive at a consensus with the populations concerned. Failing which, it will not be possible to find a lasting solution. Short-term savings only risk increasing the long-term costs.

b. No-one in Luilu has protected the essential infrastructure

Luilu is a mining town of about 25,000 inhabitants, located a few kilometres from Kolwezi. The issue of access to drinking water in Luilu is slightly different from that in Musonoi. Firstly, because the town could, in principle, be able to supply itself from the Luilu River, which flows past its houses. However, as has been highlighted in chapter 4 of this report, the water of the Luilu river is so polluted that consumption of its water would lead to severe health risks for its inhabitants. This pollution is caused, principally, by the Luilu hydrometallurgical plant - owned by KCC - which is discharging untreated sulphuric acid into the river.

The second difference from Musonoi is that Luilu's infrastructure problems are not the lack of a pump, but the lack of piping or rather the lack of maintenance and monitoring of the pipes. The town of Luilu was effectively supplied in the time of *Gécamines* by two pumps - the TW3 and TW11 pumps - located near the KOV open-pit mine. The pumps had a flow of 204 m^3 of water and were enough to supply the entire town with drinking water. The TW11 pump is today out of commission. The TW3 pump is still working. It is located some 5-6 kilometres from Luilu, which means that the water must be piped a relatively long distance through the piping. When *Gécamines* still operated the KOV mine and the Luilu plant, it maintained the TW3 pump and repaired and replaced the pipes. Following the decline, then the privatisation of *Gécamines* in 2004-2005, maintenance work on the pipe network stopped. Abandoned and no longer monitored, the pipes have been punctured. This situation has been signalled on various occasions to the authorities, as shown by a letter from the Mayor of Kolwezi, who wrote to the National Police Commander on 14 October 2005: "I have the regret to inform you that certain individuals showing a lack of civic spirit have started to destroy the water pipes in the areas shown on the attached by cleaning heterogenite products, without being stopped by the security forces, thus depriving the population of Luilu of drinking water, for several years[119]". The result of this deterioration was that Luilu's water supply diminished until it finally completely ceased in 2005.

In order to have water, the inhabitants of Luilu are now forced to dig private wells to a depth of 13 - 15 metres. These wells dry up each dry season. They must then buy water from private individuals, who have deeper wells, and often at exorbitant prices. These wells also raise issues of health safety: according to reports gathered on the spot, they do not meet standards and the water that is drawn from them is reddish and has a bitter taste[120].

In order to deal with this situation, the inhabitants of Luilu have organised themselves. They raised money in 2006 from various donors and private individuals in order to restart the TW3 pump and to renovate the pipes from the KOV mine to the town. The town mobilised itself: the inhabitants did the work themselves and companies made people available, who had the necessary skills, and used materials. *Gécamines*, for example, offered pipes, the Bazano Group transported them for free, Regideso made engineers, a welder and a small truck available, COMECO paid for the purchase of accessories, etc. KCC, which has taken over most of the mining sites around Luilu only offered a modest contribution of 2,400 dollars[121].

The Luilu inhabitants' respite was, however, brief. By 2007, lengths of the pipes along the road from KOV to Luilu had already been punctured, destroyed, thereby once again interrupting the town's water supply. Two years later, lengths of the pipes were stolen. These thefts are incomprehensible when you realise that the Luilu water pipes are only a few centimetres from KCC's pipes that carry ore from the Kamoto concentrator to the Luilu plant. KCC's pipes are monitored by guards and are rarely damaged. In concrete terms this means that the guards protect KCC infrastructure

[119] Letter from Mayor Claude Mumba Kamusake to the National Police Commander (District of Kolwezi), dated 14 October 2005.
[120] Information confirmed by correspondence between the inhabitants' defence committee and Regideso, as well as various press releases published by the *réseau d'intégrité et de la bonne gouvernance* (network for integrity and good governance - RIBOG).
[121] Information provided by a member Luilu town water committee.

but let people damage or steal the Luilu water pipes, located only a few centimetres away and do not intervene. The damage caused to the pipes and the theft of the pipes cannot, of course, be attributed directly to KCC. The responsibility in the first instance falls to the police, Regideso and *Gécamines*. The company has, however, shown indifference and neglect: when it could have acted to protect Luilu's infrastructure and could have invested in order to contribute to the development of the communities, it did not react.

IN THE FOREGROUND, THE WHITE PIPES TRANSPORTING THE ORE FROM THE KAMOTO CONCENTRATOR TO THE LUILU HYDROMETALLURGICAL PLANT. IN THE BACK, THE DARKER PIPES CARRYING WATER TO LUILU AND WHICH HAVE BEEN PUNCTURED AND STOLEN.

In April 2011, two KCC employees went to Luilu to look at the drinking water network. They noted, in particular[122]:

- the theft of approximately 840 metres of piping along the road between KOV and the Luilu plant; and
- corrosion of approximately 100 metres of piping by concentrates coming from KCC.

It is interesting to note that this visit, just like that to the inhabitants of Musonoi by representatives of KCC, occurred just after the publication in Switzerland of the first report on Glencore's investments in the DRC[123]. The visit was, however, not followed up by any action and no measures were taken to improve the situation, with the exception of repairs to pipes that had been directly damaged, by corrosion, by concentrates coming from KCC. The representatives of the Luilu town water

[122] See report on the visit of two representatives from KCC, drawn up by the Luilu water committee and dated 17 April 2011.
[123] See "Contrats, droits humains et fiscalité: comment une entreprise dépouille un pays. Le cas Glencore en RDC" (Contracts, human rights and taxation: how a company robs a country. The case of Glencore in the DRC), Chantal Peyer, 11 March 2011.

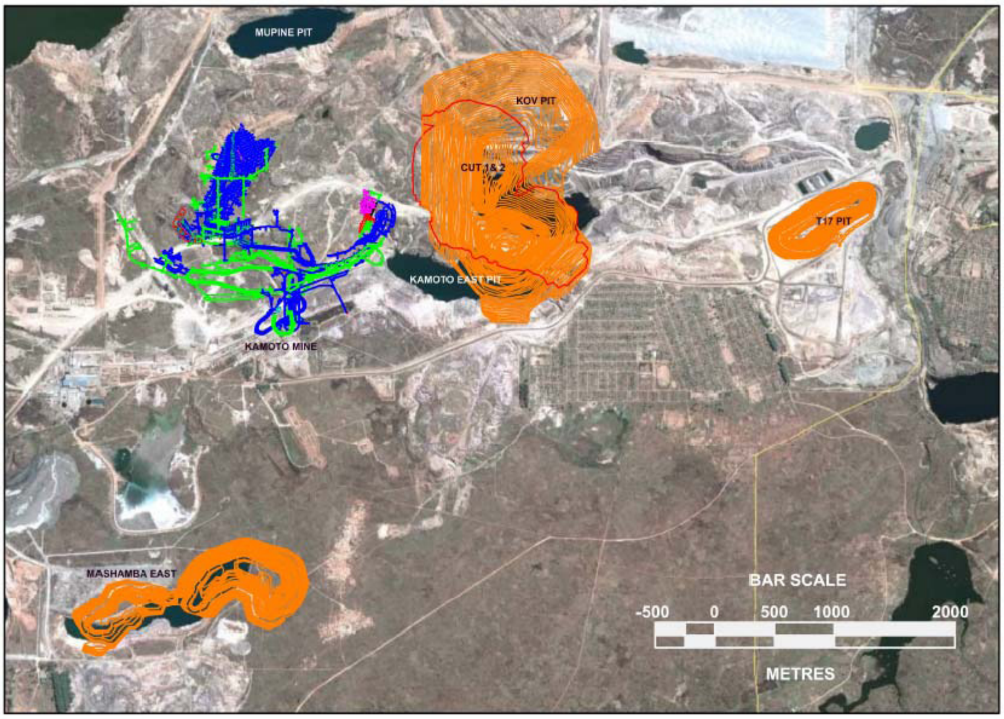
company have not been contacted either by the firm and regret the lack of transparency and lack of information from the company[124].

c. Conclusion

When companies pollute rivers or destroy existing supply infrastructures, they have a *de facto* responsibility to remedy the situation in order to guarantee the populations' right to water. Furthermore, according to the Congolese Mining Code and Regulation, the companies must take the needs of the populations affected by their activities into consideration and put a certain number of measures in place for the development of the surrounding communities. Taking account of communities' needs means guaranteeing their right and their access to water. Few needs are more pressing in the eyes of the inhabitants. Unfortunately, Glencore's subsidiary in the DRC does not seem to take these commitments seriously.

6.4. MUSONOI: DUST AND INHERITED CRACKS

Musonoi is today a town in search of a future: few of the inhabitants continue to work in the KCC mines but the town is squeezed between the large gaping holes of the KOV and T17 mines and the mounds of waste. Life in Musonoi is inseparable from the mining operation and KCC's activities impact on the daily life and the quality of life of every inhabitant of the town as the diagram below shows.



Taken from "An Independent Technical Report on the Material Assets of Katanga Mining Limited", p.52

Explosions in the T17 open-pit mine practically stopped in 2011: studies have shown that the surface ore reserves are nearly exhausted. However, as the technical report that was published for Glencore's stock market entry [125] states, KCC foresees replacing the T17 open-pit mine by an underground mine from 2015. The firm also foresees starting up operations in the Kamoto-Est underground mine from 2017. Musonoi's destiny will, therefore, continue to be affected by mining activities around it.

[124] Situation as of 16.02.2012.

[125] "An Independent Technical Report on the Material Assets of Katanga Mining Limited", pages 52-54 and 63-64, Golder Associates, March 2011."

There are several sides to the impact of the mines on the inhabitants' daily lives: dust, cracks, and the mounds and embankments. The inhabitants complain of the dust that in the dry season comes from the mines, mounds and embankments, and roads used by KCC vehicles. The outsides and insides of the houses are covered in particles full of heavy metals, the long-term inhalation of which can prove dangerous for health. The audit carried out by Golder Associates in 2011 for Glencore's stock market entry acknowledges that the amounts of dust, in particular in Musonoi, largely exceed acceptable levels[126]: they would be deemed to be alert thresholds in South Africa. The company claims that it has increased the use of equipment for getting rid of dust emissions in its mines. The problem, however, persists in Musonoi. According to the town's inhabitants, other measures should be taken, in particular, by reducing the mounds and embankments and filling in the mine holes that are no longer exploited. The dust would then be less volatile. The inhabitants also request that the roads near to the village be regularly sprayed in order to reduce the clouds of dust. The company sprays its roads from time to time, but too infrequently for the problem to be solved. And it has done nothing yet about its mounds and embankments: when a mine is no longer being exploited, it abandons it, without restoring the site. In Musonoi, moreover, the mounds and embankments have become so high that radio waves are now blocked.

13 HOUSE, THE EXTERIOR OF WHICH IS CRACKED AND THE INTERIOR WHICH HAS PARTIALLY FALLEN DOWN BECAUSE OF EXPLOSIONS IN THE T17 MINE IN MUSONOI

Another problem concerns the façades of very many houses, which show large cracks. These cracks are , in the main, linked to the repeated explosions that took place in the T17 mine, located only a few tens of metres from the town, and which was operated until spring 2011. The ceiling of the living room has partially fallen down in one of the houses visited, which is located on the outskirts of the town, so rendering it uninhabitable. The situation of the cracked houses in Musonoi is well-known in the region. The inhabitants have been complaining for a long time about the adverse impact of the explosions on their homes. KCC acknowledges this damage but claims that some of the cracks are due to wear and tear and to lack of maintenance of the houses. The company also claims to have provided confidential

[126] Ibid., page 117. The audit states that the levels of dust recorded between January and September 2010 exceed the threshold that is codified as an alert threshold in South Africa.

compensation, i.e. secretly, to a number of inhabitants. On the spot, however, none of the inhabitants interviewed reported having received any financial compensation from KCC: "You know, everyone knows what is going on", states one inhabitant whose house has been damaged by the explosions, "if one of us had received money from KCC, then the whole village would know about it. As far as I am concerned, I have not received anything, although the ceiling planks of my living room have fallen down." KCC's rhetoric raises questions. And, yet again, shows a lack of transparency. If, in effect, a company wants to improve its relations with the communities affected by its activities, it must implement an open and transparent negotiation process. KCC should, in order to respond to the problem of the cracked houses, meet the inhabitants, carry out a precise assessment of the impact of the explosions on the houses in Musonoi, put an assessment procedure in place for compensation, etc. None of the inhabitants met on the spot reported being aware of such a process.

6.5. Conclusion: keep talking, I'll be back!

In its 2011 sustainability report, Glencore claims to have dialogues with local communities: "We understand that our relationships with local communities are important, not only for all our operations, but for the whole Glencore group. We believe that the best way to manage these vital relationships is to adhere to the principles of open dialogue and co-operation." The reality on the ground is, however, different.

The consultation that took place for the development of the environmental impact study did not allow local organisations to consult amongst themselves in order to respond in an appropriate manner. Furthermore, after the consultation, the organisations never received a copy of that study and, contrary to legal requirements, they cannot obtain a copy from the mining registry when they request it.
When it comes to their other social or community projects, Glencore's KCC subsidiaries hardly consult the inhabitants, those who live 100 metres from its mines or a kilometre from its plants. They sideline the concerns of the communities. Their concerns are not, for example, the renovation of Kolwezi airport. Their concerns are access to drinking water, health and education. Two million dollars could guarantee the supply of drinking water to the towns of Luilu and Musonoi, i.e. to more than 30,000 people. This amount is modest in terms of the 10 million dollars that Glencore claims to have invested in "social" projects in Katanga in 2011 and in comparison with the 23 million dollars that it claims to have spent between 2008 and 2010.

7. GLENCORE'S CORPORATE SOCIAL RESPONSIBILITY POLICY

On the ground, it clearly appears that the activities of Kamoto Copper Company and Mutanda Mining raise serious questions in terms of respect for human rights, labour rights, pollution of the environment and regarding the lack of dialogue with local communities. The facts collected constitute in several regards breaches not only of Congolese law but even more so of international norms and practices. The environmental and social balance sheets of these companies are alarming. What is Glencore doing about this situation? What corporate social responsibility policy has the Swiss parent company put in place to reduce the adverse impact of its activities in developing countries? Until last year, the answer was: nothing! Or nearly nothing. Novethic, the research institute on corporate socially responsible investment, published a comparative study on the mining sector in August 2011[127], in which Glencore appeared as one of the least transparent and least responsible mining companies in the world. Out of a ranking of 23 firms, Glencore came 22nd in terms of corporate social responsibility (CSR) and was assessed as having a fledgling, if not non-existent CSR policy and whose communications were particularly poor. Glencore published its first report on sustainability in September 2011, an attempt at communication that set out, in over 100 richly illustrated pages, the principles of its sustainability policy. This report is, however, disappointing and does not constitute a credible response to the abuses committed on the ground.

The history of Glencore's corporate social responsibility policy

Glencore not only invests in the Democratic Republic of Congo, but also in Colombia, Kazakhstan, Zambia, Russia and even Sudan, to mention only a few countries. However, despite this strong presence in "areas at risk", the company waited until 2009 before developing guidelines in terms of corporate social responsibility. These guidelines, the "Glencore Corporate Principles", were adopted by the Board of Directors of Glencore in May 2010. That same year, the company drew up an internal guide defining how subsidiaries and joint-ventures should implement these principles, and what they meant in concrete terms. This guide, like most of the documents mentioned in the sustainability report, is not available on Internet. Glencore announced that, for 2011, its subsidiaries and joint-ventures must carry out a self-assessment that will serve as the basis for the definition of measurable objectives and more detailed annual comparisons[128]. The publication of information on this subject is promised for the sustainability report that will be published in 2012.

What can be deduced from this process? How should the policy put in place by the Zug company be assessed? In this chapter, we shall analyse certain aspects of this policy, in particular its regulatory framework, the mechanisms implemented (impact assessment and monitoring) and the transparency of communication.

[127] "Secteur minier coté et risques ESG. De l'influence des ONG sur l'activité et la réputation des entreprises minières" (Listed mining sector and risks. The influence of NGOs on activities and reputation of mining enterprises), Novethic and be-linked, page 29, September 2011.
[128] See "Glencore. Sustainability report 2010», page 31. See also "Glencore on its safety record, environmental performance and tax", Leo Hickman, The Guardian, 7 September 2011.

Glencore reinvents its own regulatory framework

The first point that raises questions when you analyse the Glencore Corporate Principles(GCP) is the very general nature of the text and the few regulatory references that constitute their basis. The only text to which the "Corporate Principles" refer is the "Universal Declaration of Human Rights": "We support the UN's Universal Declaration of Human Rights, which prohibits forced, compulsory or child labour", states Glencore in the section "Commitment to our people". Nowhere in the "Glencore Corporate Principles" is there a question of the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights or the Conventions of the International Labour Organisation[129]. However, these texts should form the basis of any code of conduct and any corporate social responsibility policy, as emphasised by the UN Special Representative for human rights and transnational corporations and other enterprises, John Ruggie[130].

The consequence of this lack of regulatory references is twofold. Firstly, it is not clear whether Glencore is really committing itself to respecting, definitely and throughout its operations, human rights and the environment as they have been defined in international treaties and covenants. Glencore appears rather to be defining its own regulatory framework, using vague words and imprecise concepts. Secondly, the analysis of what constitute human rights appears to be extremely restricted: the firm mentions "classic rights", such as the prohibition on forced labour and child labour, labour rights and the freedom to form trade unions, but rights, such as the right of communities to prior, free and informed consent, the right to water and the right to food, are not clearly spelled out as issues and defined in the "Glencore Corporate Principles".

The same is true when it comes to other codes of conduct or recognised standards, such as, for example, the ILO Conventions relative to indigenous populations, the "International Finance Corporation Performance Standards" or the "Equator principles". The firm makes passing or partial or occasional reference to these norms without signing up to them or clearly undertaking to use them as reference standards against which its performances could be measured.

This lack of clarity stands out against the practice of other firms, such as for example, First Quantum, which clearly establishes, in the introduction to its sustainability report, to which charters and principles it adheres and which it is therefore required to respect[131].

Glencore is barely involved in any international initiative

Apart from the Extractive Industries Transparency Initiative (EITI) to which Glencore signed up in September 2011, the firm does not participate in any voluntary initiatives, designed to improve the environmental and social balance sheet of the mining sector.

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[129] The Declaration on Fundamental Principles and Rights of the International Labour Organisation (ILO) is mentioned in Glencore's sustainability report but it is buried in a text of more than 100 pages and its primordial character is not established.

[130] See Principle 12: "The responsibility of business enterprises to respect human rights refers to internationally recognized human rights – understood, at a minimum, as those expressed in the International Bill of Human Rights and the principles concerning fundamental rights set out in the International Labour Organisation's Declaration on Fundamental Principles and Rights at Work."

[131] See, for example "First Quantum. Corporate Sustainability report 2010", pages 6-7.

Glencore does not participate in the "Voluntary Principles on Security and Human Rights or the "International Council on Mining and Metals" (ICMM).
Here again, it seems as if Glencore wants to reinvent its own standards and the mechanisms for implementing them, without having to refer to the requirements and standards of any existing initiative and without either having to deal with them in a way that is transparent to its "peers", i.e. in comparison to the performances of other companies in the mining sector. Glencore is definitely lacking in comparison to other companies of comparable size and who are active in the Democratic Republic of Congo.

Comparative table of the CSR policies of three firms active in DRC

	Glencore	**Freeport McMoran**	**First Quantum**
Regulatory framework that the firm undertakes to respect[132]			
Universal Declaration of Human Rights (UDHR)	Yes	Yes	Yes
Conventions of the International Labour Organisation (ILO)	Yes/No	Yes	Yes/No
Guiding principles relative to business and human rights (Ruggie)	No	No	Yes
OECD guiding principles for multinationals	No	No	No
Standards to which the firm refers[133]			
International Finance Corporation Performance Standards (IFC)	No	No	Yes
Equator Principles	No	No	Yes
Voluntary initiatives to which the firm adheres[134]			
Voluntary Principles on Security and Human Rights (VPSHR)	No	Yes	Yes
Extractive Industries Transparency Initiative (EITI)	Yes	Yes	Yes
International Council on Mining and Metals (ICMM))	No	Yes	No
ISO 140001	No	Yes	Yes
OHSAS 18000	No	Yes	Yes
Annual CSR report published and accessible	Yes	Yes	Yes

With three positive responses to eleven questions, Glencore shows little commitment in terms of corporate social responsibility. Freeport MacMoran, its main competitor in DRC, with seven positive responses out of eleven, makes much more effort to improve its environmental and social balance sheet.

[132] To obtain a yes, the company must unambiguously refer to the regulatory framework in question. It must incorporate it in its principles and undertake to implement them.
[133] To obtain a yes, the company must undertake to implement all of these standards.
[134] To obtain a yes, the company must officially sign up to the initiative and systematically implement it.

Implementation of the Glencore Corporate Principles

When it comes to the implementation of the "Glencore Corporate Principles", the information given in the sustainability report is very thin. Nowhere does Glencore refer to the need to systematically carry out human rights and environmental impact studies. However, such an approach is essential for a corporate social policy. It must allow the context to be evaluated, for the communities who are affected by a project to be identified and how the companies' activities risk harming the human rights of those communities to be studied. The importance of such impact studies has been emphasised in the guiding principles relative to companies and human rights, elaborated by John Ruggie. In those principles, John Ruggie states that, in order to be credible, the impact assessments should[135]:

- cover all human rights and not be restricted to classic social and environmental impact studies;
- Draw on internal and/or independent external human rights expertise;
- Involve meaningful consultation with potentially affected groups and other relevant stakeholders.

None of these conditions is completely fulfilled by Glencore and, in the light of these principles, the rhetoric of the Swiss firm's sustainability report is slick: it advances social works that have been completed, charitable projects supported by the company and its subsidiaries but does not give an account of the concrete problems on the ground that are the direct result of its activities. However, as the practices of Kamoto Copper Company and Mutanda Mining au Katanga have demonstrated it is there that the real challenges are to be found. It is with regard to these points that a rigorous assessment is expected by the local communities.

The Zug firm sins also when it comes to monitoring and follow-up. In 2011, Glencore asked all its subsidiaries and joint ventures in which it holds a majority share to carry out a self-assessment of their implementation of the "Glencore Corporate Principles". This self-assessment will allow the company to define measurable objectives for the future. But, nowhere does it say that the contributions of external actors will be taken into account, in particular, of non-governmental organisations and of local communities, when it comes to defining those objectives. This is not surprising when one considers that Glencore has been known, for more than ten years, for its opacity and its inability to dialogue with external actors.

Communication policy in relation to corporate social responsibility

Glencore's communication policy is, in general terms, scarcely transparent. *Bread for all* and *the Swiss Catholic Lenten Fund* are of the view that Glencore tries to hide problems rather than showing that it is aware of them and that it is going to remedy them with concrete and reliable measures. John Ruggie, the UN special representative for human rights and translational corporations and other enterprises, has stated that when it comes to corporate social responsibility the time for rhetoric is over. From now on, companies must "know and show", i.e. know the problems and show how they will respond. Glencore has not yet adopted this approach. Let us take, for example, the issue of the artisanal miners. Glencore's subsidiary, KCC, in

[135] See "Guiding principles relative to companies and human rights: implementation of the "protect, respect and repair" frame of reference of the United Nations", Principle 18, John Ruggie, June 2011.

Katanga holds the exploitation licence for the Tilwezembe pit in which artisanal miners work. The firm itself acknowledges that, in the response sent to *Bread for all* and *the Swiss Catholic Lenten Fund*. However, in its sustainability report, Glencore denies the facts and claims that the issue of those miners (diggers) has nothing to do with its concessions: "Since 2009, Katanga, our mining operation in the DRC, has been operating in a complex mining area alongside other concession owners. There are many artisanal and small-scale mining activities near Katanga mining concessions, mainly around old stockpiles. Katanga does not have the right to manage these stockpiles nor can it prevent these miners from accessing them, as the land on which the stockpiles stand does not form part of Katanga's concessions"[136]. This response raises questions. Firstly, because the information given by Glencore is incorrect. Tilwezembe is effectively a concession that belongs to Glencore. These statements demonstrate a complete lack of vision and responsibility. In effect, a responsible firm does not simply try to state that the miners (diggers) are not on its concessions. In a situation as tense as that in Katanga, it sets out what its policy will be for avoiding violence and breaches of human rights on the day that it is confronted with this issue.

Conclusion: paternalistic attitude towards the communities

Basically, Glencore reflects a very paternalistic approach when it comes to corporate social responsibility. The firm lists in its sustainability report the charity projects, the social works completed – schools repainted, hospitals built, etc. – of its subsidiaries, but it does not show, in the view of *Bread for all* and *the Swiss Catholic Lenten Fund*, any clear consciousness of the fact that Glencore is a guest that is exploiting the resources and lands on which the local communities have lived for tens of decades. Glencore utilise the language of a firm that considers itself to be generous when it voluntarily participates in social projects. Anthony Hodge, Chairman of the International Council on Mining and Metals states that "the best risk insurance that a firm can obtain is the confidence of the community." And, he continues: "Generating this kind of trust is not possible through following the kind of paternalistic approach that characterized the industry only a few decades ago. Progressive mining companies see themselves as a member of the community – a cog in the wheel [137]". John Ruggie emphasises that companies cannot compensate for breaches of human rights by good works and by implementing social projects. Glencore has now to change direction and measure the extent of what a credible and transparent corporate social responsibility policy requires, one that places the notion of human rights and respect for the environment at its centre.

[136] "Glencore. Sustainability Report 2010", page 53.
[137] "Why the future of Mining Depends on Social Change", Paul Klein, Forbes, 23 February 2012.

8. Glencore's economic challenges and taxation in DRC

8.1 Introduction: the curse of resources

For very many countries in sub-Saharan Africa, extractive industries – exploiting mainly oil and minerals – are the largest industries. The sector is, moreover, growing very rapidly: world production of iron has increased over the last 10 years by 180% and that of cobalt by 165%. The mining sector in China has increased by one third between 2005-2010[138].

One might think that the poor countries benefit from the exploitation of natural resources, in particular given the recent increase in prices of many raw materials. But, in reality, a large number of poor countries have not been able to benefit from this manna. One of the reasons is the fact that a lot of raw materials are to be found in countries with weak governance, where corruption and inefficient tax systems constitute major problems. Another reason is to be found in the possibilities for translational companies to transfer gains to tax havens.

According to the Extractive Industries Transparency Initiative (EITI), "DRC is an often cited example of the so-called "paradox of plenty." Extremely rich in natural resources (80% of world wide resources of Cobalt, 10% of world wide resources of copper), the population suffers of extreme poverty (80% of the Congolese population lives of less than US$ 0.20 a day)."[139]

DRC tax receipts from the mining sector rose to US$ 27 million in 2006 and US$ 155 millions in 2009[140], a very low figure in comparison to the size of the industries. The government is in the process of revising the Mining Code, which is 10 years old, in order to increase the share paid to the State[141]. According to various official sources, tax receipts from the mining sector should increase up to US$ 1 billion.

8.2 Dubious sales to Dan Gertler, someone close to Glencore

A British MP, Eric Joyce, revealed documents in November 2011 showing that a series of mining concessions belonging to the DRC appeared to have been sold off to companies registered in tax havens[142]. More than 45 companies, all recently created in the British Virgin Islands, have acquired concessions in the DRC over the last four years. None of the sales had been the object of a call for tender. None of the purchasing companies is known to be active in the mining sector. None of the transactions had, moreover, been published by the government. That said, an agreement from 2009 between the International Monetary Fund (IFM) and the Government of the DRC requires the latter to publish all agreements between State mining companies and foreign firms. It was only under foreign pressure that the government finally published the figures.

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[138] Opening Pandora's Box – The New Wave of Land Grabbing by the Extractive Industries and The Devastating Impact on Earth, The Gaia Foundation, 2012.
[139] http://eiti.org/fr/republique-democratique-du-congo
[140] Source: World Bank.
[141] Reuters, 21.03.2012, DR Congo to up mining project levies – minister, http://af.reuters.com/article/drcNews/idAFL6E8EL60I20120321
[142] MP exposes $5.5 billion loss to Congolese people through questionable mining deals with BVI 'shell' companies, Eric Joyce, 18.11.2011.

Basing himself of market estimates, Eric Joyce claims that the concessions were sold for less than at least US$ 5.5 billion of their real value. These concessions are probably destined to then be sold on to multinationals companies, so making a huge profit.

By analysing the shareholding of the companies in the British Virgin Islands, it appears that very many of the transactions are linked to Dan Gertler, a businessman close to President Kabila and who has often been in business with Glencore. Several of the transactions concern concessions exploited by Glencore.

KCC: Glencore working closely with Dan Gertler

According to E. Joyce, KCC's parent company, Katanga Mining Ltd (KML), has been the object of several sales and purchases of shares in conditions that are not at all clear[143]:

- In October 2009, one company in the British Virgin Islands belonging to the Gertler Family Trust bought shares in KML from Glencore for US$ 34.6 million when their stock market value was US$ 86.9 million. In March 2010, Glencore bought back slightly less than half of those shares for US$ 31.5 million.
- In February 2010, another company in the British Virgin Islands, belonging to the Gertler Family Trust purchased shares in KML for US$ 0.2970 a share, before reselling them a month later to Glencore for US$ 0.7580.
- In February 2009, another company in the British Virgin Islands belonging to the Gertler Family Trust took out a loan from Glencore to buy shares in KML and to grant rights to the former.

It has to be noted that Dan Gertler has played a major role in the past in the acquisition of the licences held by KCC and the formation of the current group. The birth of KCC in 2005 was marked by corruption and collusion involving networks of elite Congolese individuals. Dan Gertler has used his influence to ensure that the group was not taken over by other investors[144]. Glencore in 2007 entered the operations via various investments and by collaborating closely with Dan Gertler.

Mutanda Mining and Kansuki: Who will benefit from the shares sold?

Mutanda Mining, of which Glencore indirectly owns 40% of the capital, is a company that is "associated under the operational control of Glencore". Kansuki, a copper and cobalt still at the exploration stage is located beside the Mutanda concession and 37.5% of it belongs to Glencore. Kansuki is not yet operational but Glencore has already invested US$ 103 million in it[145].

In spring 2011, *Gécamines*, a mining company belonging to the Congolese State, sold its shares in Mutanda and Kansuki, i.e.:

- 20% of Mutanda's shares
- 25% of Kansuki's shares

Those shares were sold to two companies, Rowny Assets Limited and Biko Invest Corp., registered in the British Virgin Islands and belonging to Dan Gertler. The two companies paid US$ 137 million for the shares in Mutanda and Kansuki. However,

[143] List of Offshore Companies Dealing in DRC Assets, Eric Joyce, 21.11.2011.
[144] See, in particular: "Steinmetz Springs Takeover Bid for Nikanor, African Mining intelligence", 23 May 2007 and "Investors chronicle, googlies and spin in darkest Africa", August 30 2007
[145] Glencore, Preliminary Results 2011, p. 18.

according to the estimates of Golder Associates and Deutsche Bank, the value of those shares at the time was US$ 1,057 million or nearly 8 times the sales price[146],[147]. Who will benefit from the shares sold? Glencore, via its subsidiaries, apparently had an option on the purchase of those shares. Contacted about this question, Glencore claims: "We chose not to invoke our pre-emption rights because we preferred to invest in developing the assets (i.e. building the facilities and buying equipment) rather than paying out a shareholder"[148]. However, in its preliminary results for 2011, Glencore says that "Discussions with respect to a potential combination of the Mutanda and Kansuki operations are ongoing with a view to ultimately obtaining a majority stake in the merged entity."[149]. According to an informed source who wishes to remain anonymous, it was also motivated by the fact that Mutanda's resources are in decline. Glencore denies benefiting from the above transactions but does not, of course, give any details of its strategy for becoming the major shareholder in both entities.

8.3 Taxes and taxation

Tax evasion is the principal reason for the flight of capital from Africa

Sophisticated strategies allow companies' profits to be transferred out of producer countries to tax havens, often entirely legally. Taxes have the potential, for poor countries, to offer a more stable and greater source of finance than development assistance. Paying its taxes correctly should be part of the corporate social responsibility of a company.

Tax evasion, together with criminal activities and corruption, constitute what are referred to as illicit financial flows. For the UN, illicit financial flows are the main loss of resources from Africa, worsening poverty on the continent[150]. The methods behind this flight of capital are many: they include the use of tax havens, non-transparent jurisdictions, transfer-pricing and money laundering. Over the period 2000-2009, "Global Financial Integrity" (GFI) estimates that illicit financial flows from Africa have grown to US$ 334 billion in total[151]. According to the director of GFI, Raymond Baker, tax evasion constitutes the greatest source of illicit financial flows from Africa, with criminal activities and corruption far behind[152].

For companies actives in several countries, there are numerous way ways of "optimising' the tax burden. One of the classic ways is to modify import-export prices; by over-invoicing imports or by under-invoicing exports, the company's profits can be reduced in a particular country. This practice – transfer-pricing – is not acceptable under international accounting and tax practice but it is often difficult to establish the real prices of goods imported or exported. Moreover, the granting of licences or loans between companies within the same group allows the profits of a subsidiary to be

[146] MP exposes $5.5 billion loss to Congolese people through questionable mining deals with BVI 'shell' companies, Eric Joyce, 18.11.2011.
[147] Bloomberg, Gecamines Sale of Congo Copper Assets May Undermine Share Offer, 13.07.2011, www.bloomberg.com/news/2011-07-12/gecamines-undisclosed-sale-of-congo-copper-mines-may-threaten-share-offer.html
[148] Glencore's response to *Bread for all* and *the Swiss Catholic Lenten Fund*, 14.03.2012.
[149] Glencore, Preliminary Results 2011, p. 18.
[150] UN Economic Commission for Africa Press Release, 18.02.2012, published onhttp://taxjustice.blogspot.com/2012/02/communique-on-inauguration-of-high.html
[151] Global Financial Integrity, Illicit Financial Flows from Developing Countries Over the Decade Ending 2009, Dec. 2011.
[152] Voice of America, Tax Evasion Possibly Biggest Drain of Money From Africa, 22.03.2012, http://www.voanews.com/english/news/africa/Tax-Evasion-Possibly-Biggest-Drain-of-Money-From-Africa-143901516.html

reduced and those of another in a tax haven to be increased. The borderline between the legality and illegality of such practices is sometimes difficult to establish.

Glencore is one of the companies making the most use of tax havens

Oil, gas and mineral companies are among those that make the most use of tax havens and non-transparent jurisdictions. According to a recent study by the network, Publish what you pay (PWYP), 10 of the largest companies in this sector have 6,038 subsidiaries, of which more than one third (2,083) are registered in tax havens[153].

Tax havens and non-transparent jurisdictions facilitate financial opacity and the transfer of gains out of producer countries. In PWYP study, Glencore is one of the least transparent companies in the mining sector, with nearly half of its 46 subsidiaries registered in tax havens. An affair concerning Glencore came to light in Zambia in February 2011. Glencore has a subsidiary in that country, Mopani Copper Mine (MCM), which is a major producer of copper and cobalt. The Zambian tax authorities, surprised by the fact that MCM hardly paid any taxes, ordered a pilot audit report covering the years 2006-2008[154] from renowned firms.

According to the audit firms, MCM was apparently practicing tax evasion on a grand scale. The audits revealed that:

- some operational costs are inexplicably high;
- there are inconsistencies in the volumes of production declared by MCM;
- MCM sells copper and cobalt to Glencore there are very much lower than those on the international market; and
- the price arbitrage used by MCM is "not normal" and seems to serve to send profits out of the country.

By increasing operational costs, under declaring its production and selling its production at prices lower than those of the market, MCM was seeking to reduce its profits and not pay taxes due to the Zambian tax authorities. Glencore contests the audit firms' conclusions but it is possible that MCM can expect a claim for back taxes.

Given the Zambian case and other issues of tax evasion that may concern Glencore in developing countries, the British Parliament has asked Glencore to appear in 2012 before the international development committee.[155]

As regards KCC, its organigramme is as follows (situation on 31.12.2010):

75% of KCC is held by 5 companies, all based in tax havens. If you add the parent company, Katanga Mining Limited in Bermuda and another service company in Switzerland, which makes 7 companies in all, all part of the same group and all in jurisdictions that apply low or insignificant rates of tax.

Difficult to follow taxes despite EITI

Glencore's subsidiaries in DRC must primarily pay the following taxes and duties, on an annual basis[156]:

[153] Publish What You Pay Norway, Piping profits: the secret world of oil, gas and mining giants, sep. 2011.
[154] Counter Balance, Summary of the Pilot audit report – Mopani Copper Mine, Fév. 2011.
[155] Reuters, MPs to grill miners, Glencore on tax, 02.03.2012, http://uk.reuters.com/article/2012/03/02/uk-glencore-parliament-idUKTRE82114620120302
[156] See: EITI report for 2008-2009 for the DRC, Appendix 1, Feb. 2012, www.itierdc.org

1	Corporation tax	30% of profits or 1‰ of turnover if there is a loss
2	Surface rights	US$ 424.78 per "carré" (1 carré = 84.955 ha) when the concession is exploited[157]
3	Mining fees	For non-ferrous metals: 2% of sales reduced by transport, analytical, insurance and marketing costs [158]
4	Dividends and State premium (pas-de-porte)	Duties on the obtaining of concessions and dividends paid to State companies
5	Import duties	2% on goods imported for mining purposes
6	Export duties	Variable tax on the export of mining products
7	Miscellaneous taxes	Taxes on small-scale operators, provincial taxes (they were only introduced in Katanga in 2010), etc.

Companies and State bodies declare, via the Extractive Industries Transparency Initiative (EITI), the amounts paid in various taxes and duties in the mining and oil sectors. Normally, the amounts paid by companies should match the amounts received by the State.

The latest EITI report for the DRC covers the period 2008-2009 and has just been published. It shows that there are huge differences between the amounts declared on the one side and the other. In 2008, the companies declare payments of US$ 121 million, the State receipts of only US$ 88 million. In 2009, it is US$ 99 million from the companies versus US$ 74 million by the State.

The report admits that there are anomalies and major gaps in the data. These problems arise because of the complexity of the mining sector in the DRC, the ineffectiveness of the tax administration and the great confusion in the collection of data. At any rate, these problems and the delay in the publication of the reports make any clear follow-up of the amounts paid by the companies extremely difficult.

It has to be noted that KCC and Mutanda Mining support the EITI and that they modestly sponsor it (US$ 10,000 from KCC and US$ 5,000 from Mutanda Mining in 2011)[159].

KCC appears to be avoiding taxes on its profits and payment of dividends

In the EITI report, KCC declares that it has paid the following taxes (in US$):

		2008	**2009**
1	Corporation tax	4'500	201'076

[157] See Decree no. 038/2003 of 26 March 2003 implementing the Mining Regulation, Section 396.
[158] See Act no. 007/2002 of 11 July 2002 implementing the Mining Regulation, Section 240.
[159] EITI's Internet website for the DRC RDC, www.itierdc.org

2	Surface rights	-	-
3	Mining fees	7'318'802	3'064'005
4	Dividends and State premium	-	-
5	Import duties	6'072'263	13'425'201
6	Export duties	1'118'533	2'730'519
7	Miscellaneous taxes	18'560	-
	TOTAL	**14'532'658**	**19'420'801**

It can, therefore, be seen that the major part of the tax receipts comes from mining fees on sales and import-export duties. The mining fees seem consistent with the sales by KCC shown in Glencore's reports.

What is surprising is that the EITI report does not mention either dividends or the premiums paid to the State:

- Under the agreement concluded with *Gécamines*, KCC should pay royalties of 2.5% on net sales[160]. This is, moreover, also mentioned in KML's financial statements, albeit without any details. The EITI report also states that the royalties have probably been omitted from the account[161].
- KCC must pay a total of US$ 140 million in royalties for 2009 - 2016. According to KML's financial statements, US$ 20 million was paid in 2009[162]. It is not clear why this amount does not appear in the table below.
- In 2008 and 2009, *Gécamines* still owned 25% of KCC and should therefore have received a corresponding share of the distributed profits. The absence of dividends may be explained if KCC made losses (see below).

Why does KCC, moreover, not pay surface rights? At the time of the merger between KCC and DCP in 2009, the new entity, KCC, received the concession to exploit 48 *carrés*. It has to be noted that the annual surface rights for the exploitation of the mining concession are nonetheless negligible.

KCC does generally seem to pay the various taxes and fees due in DRC. However, the main problem with tax avoidance comes from the profits shown by KCC in DRC. The following details can be obtained from the group consolidated reports of KML, KCC's parent company[163]:

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[160] Katanga Mining Limited, Consolidated financial statements for the years ended December 31, 2009 and 2008, pp. 39-41

[161] EITI report for 2008-2009 for the DRC, Feb. 2012, p. 13

[162] Katanga Mining Limited, Consolidated financial statements for the years ended December 31, 2009 and 2008, pp. 39-41

[163] Katanga Mining Limited, Consolidated financial statements for the years ended December 31, 2009 and 2008, pp. 39-41

	2008	2009	2010	2011
Operational turnover in DRC (US$ million)	210.0	285.5	535.9	574.4
Profit/Loss from operations in DRC (US$ million)	-1,248.8	-54.6	304.5	110.6

According to KML, the major loss in 2008 came from the fact that copper prices dropped; some projects were postponed and the value of the mineral reserves was downgraded.

It can clearly be seen that the DRC operations have been generating profits since 2010. However, this is a consolidated statement which excludes internal expenditure and income. According to different anonymous sources, KCC's accounts show significant losses for 2010 and 2011 (US$ amounts in 9-digit figures). According to those sources, these losses are apparently explained by services provided by and interest paid to other companies in the group. If other companies in the group lend funds and render services to KCC, this increases KCC's expenditure on the one hand and the receipts of the other companies on the other hand. Such services and interest can also easily be over-estimated and that is difficult to verify. At the consolidated level, these receipts and expenditure cancel each other out, but that apparently allows KCC to declare losses in DRC.

By declaring losses in DRC, KCC only pays minimum taxes on profits (1‰ of turnover instead of 30% of profits) and does not pay any dividends to *Gécamines*. This is normal practice for international firms and, apparently, quite legal.

At the level of receipts for the Congolese State, the effect of this organisation of the group is the following:

	2010	2011
Operational turnover in DRC (US$)	535,946,000	574,394,000
Profit/Loss from operations in DRC (US$)	304,483,000	110,578,000
KCC results in DRC (US$)	*loss*	*loss*
Taxes on profits probably paid by KCC (1‰ of turnover figure in US$)	(535,946)	(574,394)
Tax on profits theoretically due (30% of consolidated DRC gain in US$)	91,344,900	33,173,400
Theoretical DRC result after tax (in US$)	213,138,100	77,404,600
Maximum theoretical dividends for the State (25% of profits after tax in US$)	53,284,525	19,351,150
Maximum theoretical loss for the Congolese State (taxes + dividends in US$)	**144,093,479**	**51,950,156**

According to these calculations, and supposing that the entire profits had been distributed at the end of the financial year, the Congolese State would have benefited from **US$ 196 million** over the last two years.

It must be noted that, according to the Mining Code, losses and depreciation during the period of deficit may be carried forward and deducted from taxable profits during subsequent financial years[164]. That could have been applied here, in which case KCC would not have to pay the 30% in income tax on profits during a number of financial years. That cannot continue in the long-term. Furthermore, the dividends should in any case have been paid out.

It is surprising that *Gécamines*, a 25% shareholder, does not denounce such practices, which prevent it from receiving any dividends. *Gécamines* is represented by 3 individuals on the KCC Board of Directors and by 2 in the management. According to reports received, it appears that KML/Glencore is able to exercise enough influence on the management of KCC for KCC to be able to carry out the transfers referred to above.

KCC appears to be avoiding taxes on expatriates' incomes

According to an anonymous source, 136 expatriates occupy positions in KCC. Normally, the income of an expatriate working in a Congolese company is subject to an income tax of 40%[165], with the exception of workers from a neighbouring country, who are treated as nationals[166]. This income tax, called IPR, was introduced in the DRC in order to protect local workers against the risk of an invasion of the labour force by foreign workers. The peculiarity is that it is not paid by the beneficiary of the remuneration. It must be paid by the employer.

However, it appears that nearly all of the expatriates are shown as working for another company of the group, located abroad, and not for KCC in the DRC. They

[164] Act no. 007/2002 of 11 July 2002 implementing the Mining Regulation, Sections 249 - 251.
[165] Ordinance-Act no. 69 of 10 February 1969
[166] Ministerial order no. 4 of 24 June 1997

are not, therefore, subject to the 40% income tax rate but only to a much lower rate (5-25%). There is a corresponding loss.

Mutanda Mining could be undervaluing its sales

In the EITI report, Mutanda Mining declares that it has paid the following taxes (in US$):

		2008	**2009**
1	Corporation tax	3,520,106	29,872
2	Surface rights	3,407	4,089
3	Mining fees	1,474,575	1,435,548
4	Dividends and State premium	-	-
5	Import duties	-	1,676,829
6	Export duties	-	1,204,478
7	Miscellaneous taxes	-	125,922
	TOTAL	**4,998,088**	**4,476,738**

On the basis of the mining fees, the net sales (less transport, analytical, insurance and marketing costs) should have risen to US$ 74 million (2008) and US$ 72 million (2009). In 2008, the corporation taxes indicate that the profits rose probably to US$ 11.7 million. In 2009, in contrast, the profits must have been very low (less than US$ 0.1 million).

Here again, it is surprising that Mutanda Mining does not appear to pay the State any dividends since *Gécamines* owned 20% of the company at the time.
Glencore declares that the combined gross revenue of KCC and Mutanda Mining in 2011 was US$ 1,073 million and that they paid taxes of $166 million in 2011[167]. The accounts of Mutanda Mining are, however, not published. Given the absence of more precise figures on the profits obtained in each country, it is not possible to know what the real transfers of funds are – either for KCC or for Mutanda Mining – between each branch of the group or where the profits are taxed.

Concerning production, a well-placed anonymous source has told us that, "production declared in Mutanda Mining does not correspond to the real production. The inspectors do not have the means needed to check the production." According to Glencore's reports, the production of copper from Mutanda Mining for 2011 was 63,700 tonnes. Whereas, according to our contact, who has access to the related information, this figure is apparently 5,000 to 10,000 tonnes less than the reality.

[167] Glencore's response to *Bread for all* and *The Swiss Catholic Lenten Fund*, 14.03.2012

9. For a change in direction: requests and demands

9.1 Requests and demands to Glencore, KCC and MUMI

The Congolese and Swiss non-governmental organisations that have assessed the impact of Glencore's investments in the Democratic Republic of Congo are of the view that the Swiss company has a central responsibility in the violations of human rights and environmental standards committed by its subsidiaries, Kamoto Copper Company (KCC) and Mutanda Mining (MUMI). They ask that the Swiss parent company, Glencore, but also that KCC and MUMI:

a) Artisanal miners

Adhere to the Voluntary Principles on Security and Human Rights (VPSHR) and implement those principles in all their relations with private and public police forces in Katanga.

Acknowledge their responsibility towards artisanal miners, who work on their concessions, in particular in Tilwezembe, and put a transparent and responsible system in place for purchase of the ore, in particular, via:

- semi-industrial stripping in the artisanal mines, in order to reduce the risks of accidents;
- the opening of independent analytical laboratories, beside the purchasing agencies, in order to guarantee an impartial and accurate calculation of the concentration and weight of the ore sold by the miners;
- support for the implementation, with the cooperatives, of a social security system for the miners.

b) Environment

Install water treatment systems that satisfy international standards in all plants and operations in the DRC.

Contribute to the decontamination of the banks of the Luilu River and initiate a transparent dialogue with the surrounding communities in order to assess the damage that they have suffered as a result of the pollution from the KCC hydrometallurgical plant.

Distribute the environmental impact studies, as well as the environmental management programmes of KCC and MUMI to the communities concerned and publish them on their Internet websites.

c) Labour rights

Support the organisation of independent trade unions and a real social dialogue within their companies.

Adapt the wages of the employees to the best practices in the sector in Katanga.

Ensure respect for the Congolese Labour Act and respect for the Conventions of the International Labour Organisation, in particular in relation to working hours, payment of overtime, and health and safety at work standards.

Set up canteens and serve clean water to all employees of their company.
Compensate or reinstate employees who have been victims of unfair and/or arbitrary dismissals (dismissals of April 2009 at KCC and of February 2011 at MUMI)

d) Dialogue with the communities

Hold an open, transparent and regular dialogue with the representatives of the communities affected by their activities (within the meaning of Article 69 of the Congolese Mining Code, as well as of Articles 452, 457 and 480 of the Congolese Mining Regulation). This dialogue must allow:

- the social and environmental impact of the companies on the communities to be regularly evaluated;
- necessary corrective measures to be taken and the inhabitants compensated when their living conditions deteriorate as a result of the company's activities (cracks in houses as a result of explosions, polluted rivers and streams, etc.);
- the utility of the projects that the company wishes to implement within the framework of its corporate social responsibility (construction of schools, hospitals, roads, etc.) to be evaluated and the specific needs of the communities identified.

e) Taxation and transparency

Publish on their Internet website the joint-venture contract signed between the Congolese State and the interested parties for KCC, MUMI and Kansuki Mining.

Publish the accounts of its subsidiaries country-by-country.

9.2 Requests to the Swiss Government

The non-governmental organisations ask the Swiss Government to ensure that enterprises that have their headquarters in Switzerland respect and ensure that human rights and environmental standards are respected, including also within the framework of their activities abroad. To that end, the non-governmental organisations ask that the Swiss authorities adopt the legal bases in order that:

- Swiss multinationals – with regard to their activities, their subsidiaries and suppliers – take measures designed to avoid any violations of human rights and any deterioration in the environment here and elsewhere (obligation "to take care that things not occur");
- Individuals, who suffer damage as a result of the activities of Swiss multinationals, their subsidiaries and suppliers, may lodge a complaint in Switzerland and demand reparation; and
- Multinational enterprises with their headquarters in Switzerland publish the accounts of their subsidiaries country-by-country.

On that subject, see also www.corporatejustice.ch

About the organisations which publish this report

Bread for All

Bread for all is the Development Service of the Protestant Churches in Switzerland. *Bread for all* empowers people in Asia, Latin America and Africa to free themselves from poverty and dependency and it motivates people in the North to commit to a fairer world.

- We empower people to build sustainable livelihoods through over 350 development projects and programs in 50 countries in Asia, Latin America and Africa. The are implemented by our 12 Swiss partner organisations. Furthermore,we support strategic capacity building of selected partners in the South.
- We inform and provide educational services about development policy issues for the public at large in Switzerland. Through our yearly ecumenical campaign in cooperation with the *Swiss Catholic Lenten Fund*, we contribute to motivate people to push for a fairer world and to act in solidarity for the community.
- We advocate for international social, political and economical structures that provide the framework for a fair and sustainable development process worldwide. Our main concerns are the right to food, sustainable development and climate change, fair trade, corporate social and environmental responsibility, fair international finance.

Swiss Catholic Lenten Fund

Making an impact

Fastenopfer is a Catholic NGO in Switzerland. The slogan 'We share' describes our involvement in disadvantaged countries in the South and in Switzerland.

Impact in the South

Fastenopfer supports people who take responsibility for their future. Promoting self-empowerment! Experience has shown us that a project only becomes sustainable if the community is involved and supports it. That's why Fastenopfer focuses on strengthening local village structures and other groupings in which people are involved.

Raising awareness in Switzerland

Our public information work is intended to motivate people in Switzerland to think about living conditions in the disadvantaged countries in the South. We inquire into the causes of poverty that affects large sections of the population, and see ourselves as a voice for the people in the South, including at the political level.

Funding

Fastenopfer is funded mainly from donations and legacies. Other sources include money collected in parishes and funding from the Federal government, as well as from individual communes and cantons. Funds are allocated carefully and targeted to specific needs in order to ensure their effective use. (Zewo-certificated).