

Up-date on the Report “PR or Progress? Glencore’s Corporate Responsibility in the Democratic Republic of the Congo”

December 2014

This preface updates the report *PR or Progress? Glencore’s Corporate Responsibility in the Democratic Republic of the Congo*, first published in June 2014 by RAID, Bread for All and Action de Carême. All three organisations recognise the importance of disseminating the results of this research in French, in order to make them more widely accessible, particularly to the non-governmental organisations and communities in Katanga who contributed to the report by various means: by agreeing to be interviewed, providing testimonies or official documents or assisting the research team during its visits to the area.

On 16 June 2014, on the eve of publication, Glencore attempted to delay the release of the report, claiming that it contained ‘significant factual errors’ and ‘detailed information and key findings which have not been put to us in the course of your discussions with Glencore’. When the report appeared, Glencore published a statement (available on its website¹) highly critical of the report and objecting to the methodology and conclusions. RAID, Bread for All and Action de Carême would like to take this opportunity to reply in detail to these criticisms. The three organisations also call on Glencore to publish this response on its website.

After having carefully analysed the answers by Glencore, we still maintain the main conclusions we reached at the time of publishing our report:

- **Effluent bearing heavy metals continues to be discharged into the Albert Canal and into the Luilu River.² Despite claims of this being incorrect, Glencore never published its own water quality measurements.**
- **The legality of MUMI’s presence in the game reserve is contested.**
- **The behaviour of security teams is a matter of concern. Medical evidence confirmed that Mr. Mutombo, died at KCC’s site, not from natural causes, as the company alleged, but from internal injuries sustained around the time of his arrest. Glencore has failed to address the numerous inconsistencies in KCC’s version of the circumstances of his death.**
- **KCC and MUMI’s engagement with communities is inadequate. Dozens of people interviewed have never been invited to a meeting by the company, nor have they ever heard of any public consultations.**

¹ Glencore response to Key Findings and Questions, presented by Bread for All, the Swiss Catholic Lenten Fund and RAID, 17 June 2014

² This was the case at the time of the publication of our report

- **Blasting at KCC’s mine has been going on close to residents’ homes in Musonoi for years making their lives a misery. KCC has not consulted, resettled or compensated the most affected families.**
- **KCC pays no dividends and almost no income tax to the Congolese State, in spite of the fact that the Katanga Mining group is making huge profits.**
- **The acquisition of shares in Mutanda/Kansuki over the past years, which allowed a close associate of the DRC President to make substantial profits to the detriment of the Congolese State, remains highly controversial.**

1. General Comments

RAID, Bread for All and Action de Carême regret the fact that Glencore rejects all of the report’s conclusions and seems unable to recognise the problems and negative impacts that its investments in the Democratic Republic of the Congo (DRC) have caused.

A solution to many of the problems raised could be found if the company were willing to enter into a genuine and transparent dialogue with non-governmental organisations and affected communities. But this would require a change of attitude.

First, affected communities would have to be considered as rights-holders, for whom appropriate mechanisms for consultation need to be put in place that conform to international standards. According to the IFC’s recommendations, these consultations should:

- Be based on the prior disclosure and dissemination of relevant, transparent, objective, meaningful and easily accessible information which is in a culturally appropriate local language(s) and format and is understandable to Affected Communities.³
- And, help Affected Communities to understand any risks to and potential impacts on such communities and relevant mitigation measures.⁴

At the moment, **the consultations conducted by Glencore’s Congolese subsidiaries do not meet these standards** (see Chapter 5.1).

Second, reports by non-governmental organisations should be regarded as a chance to have access to constructive criticism and resolve problems, and not just as a reputational risk to be managed. RAID, Bread for All and Action de Carême recall that throughout the long period of research, Glencore for the first time agreed to engage in in-depth discussions with the report’s authors. The authors were able to interview several managers in the DRC and they are grateful for the time they gave. These meetings represent an important step. But they did not lead to a shared understanding

³ IFC Performance Standards on Environmental and Social Sustainability. (PS1 §30): Assessment and Management of Environmental and Social Risks and Impacts, 2012.

⁴ *ibid*, (PS1 §29)

of the problems. Nor to a constructive and long-term critical engagement. Indeed a long-term engagement would require a willingness to recognise that problems exist. Glencore however has simply rejected all of the report's conclusions.

2. Memorandum of Understanding

Glencore claims (in its letter dated 16 June) that RAID, Bread for All and Action de Carême did not respect the terms of the Memorandum of Understanding which had been agreed prior to the commencement of the research. In particular, the company claims that a key part of the agreement was not followed: 'Before publication, key findings will be made available to Glencore, and the company will be given reasonable time to comment.'

The non-governmental organisations categorically deny this damaging and untrue assertion. All of the report's conclusions were submitted in advance to the company and discussed with them on various occasions – in person or in writing. The findings and recommendations of the site visits were presented to Glencore in November 2013, *eight months before the publication* of the report. Below in outline is the record of the different steps taken to engage with the company:

- In May 2013, the terms of reference for the research were agreed with Glencore and a Memorandum of Understanding was drawn up.
- In September 2013, well in advance of the site visits to Kamoto Copper Company (KCC) and Mutanda Mining (MUMI), Glencore was provided with the list of questions and topics for discussion.
- In October 2013, during the 4-day site visit, Charles Watenpuhl, Head of Communications and Anna Krutikov, Sustainability, from Glencore's headquarters, were present at all times. They were able not only to monitor the questions that were put to senior managers at KCC and MUMI but also their replies.
- In November 2013, immediately after the site visits, Glencore was sent a 6-page letter which was also copied to KCC and MUMI, outlining the research findings and making key recommendations.
- In January 2014, Glencore sent a response.
- On 5 May 2014, a detailed list of key findings was sent to Glencore giving the company two weeks - as agreed - to respond.
- On 12 May 2014, at Glencore's request, an additional meeting took place in Berne to discuss the principal conclusions of the report.
- On 21 May 2014, Glencore sent its response to our findings, which were incorporated into the report.
- On 13 June 2014, Glencore received an advance copy of the report, four days before publication.

Glencore therefore was fully aware of all the environmental, social, human rights and tax issues that are raised in the report, well before its publication. The company knew that RAID, Bread for All

and Action de Carême had identified the main problem of pollution at Luilu, that the legality of MUMI's presence in the game reserve was contested, that the behaviour of its security teams was a matter of concern and that the mechanisms for consulting communities was regarded as inadequate. The company knew all of the conclusions of the research. It did not have in all cases the details of the evidence – testimonies, satellite photographs, water samples, official documents – that substantiated the findings. But this did not contravene the Memorandum of Understanding.

On the other hand, Glencore refused to make most of the documents listed in the Memorandum of Understanding available to RAID, Bread for All and Action de Carême, despite its having agreed to do so during negotiations.

3. Environnement

Pollution of the Luilu River

RAID, Bread for All and Action de Carême acknowledge that the Kamoto Copper Company (KCC) has taken measures to reduce pollution from effluent that is discharged from the hydro-metallurgical processor at Luilu. The company now channels some of its effluent to the Mupine tailings dam. KCC also recycles part of its waste water, in a closed circuit, in its new copper processing plant. RAID, Bread for All and Action de Carême maintain however that **effluent bearing heavy metals continues to be discharged into the Albert Canal and into the Luilu River**. Water samples were taken by the research team at different locations using appropriate scientific procedures and under the supervision of a university professor. These samples were then analysed by a Belgian laboratory and the results were clear: even if the level of acidity has improved (though they remain at the top limit of the legal threshold), the waters are heavily contaminated with copper and cobalt. The contamination in heavy metals cannot, as Glencore asserts, come from the effluent of other mining companies: only KCC operates at the locations where the samples were taken. Furthermore, satellite images confirm that the effluent has come from overflows from the water retention tanks at Luilu's installations and are then discharged into the Albert Canal. Finally, the research team, accompanied by different witnesses, were able to make visual observations of these discharges and identify the source of the effluents as coming from the Luilu plant. Glencore claims that the samples taken by the researchers do not match the results of KCC's own samples that are taken regularly. **But the firm has refused to back up its claims by publishing the results of its own water analysis**, or to provide GPS data identifying where the samples have been taken. RAID, Bread for All and Action de Carême regret this lack of transparency.

Basse-Kando Game Reserve

In its response, Glencore recognises that MUMI is based in the Basse-Kando game reserve, but it puts all the blame on the Congolese government for the situation. The company claims that it followed all the legal procedures and had received full authorisation to exploit the concession after the review of mining contracts in 2007-2008. Glencore fails however to mention that it has known since 2007 that, according to the Mining Code, mineral exploitation in a game reserve is illegal. And

in view of the concern that the Congolese Institute for the Conservation of Nature (ICNN) continues to express about MUMI’s status, it remains controversial. For Bread for All, Action de Carême and RAID the company should have engaged in an open and frank dialogue a long time ago with the relevant stakeholders, including with ICCN and the Ministry of Environment.

4. Human Rights and Security

In its response to the report, Glencore denies that its subsidiaries have any control over the deployment of Mine Police officers on their sites and rejects ‘any allegation of having obstructed the investigations’ into the death of Eric Mutombo Kasuyi that occurred on KCC’s mine on 15 February 2014.⁵

In previous communications (letters of 27 March 2014 and 16 June 2014), concerning the violent death of Eric Mutombo Kasuyi on KCC’s site, Glencore states that RAID, Bread for All and Action de Carême made ‘severe accusations [that] are not true’; that our press release about the case⁶ contained ‘clearly false allegations’ and; that *PR or Progress?* makes ‘a number of wild and unsubstantiated claims and assumptions’.⁷

The company required us – ‘[i]n order to avoid subsequent legal issues’ – to remove the press release about Mr Mutombo’s death and proposed that a ‘clarification’ (the wording of which had to be coordinated with Glencore) should be distributed. In fact, RAID, Bread for All and Action de Carême stand by the statements made – all of which were substantiated at the time and which have also been borne out by subsequent events – and we require Glencore to retract its aspersion that we deal in untruths, which is damaging to our reputation.

Glencore <i>Accusation described as ‘not true’/assertion made⁸</i>	RAID, Bread for All and Action de Carême <i>Substantiated facts cited</i>
'you allege that Mr. Mutombo and his colleague have been arrested by a security team including Kamoto Copper Company (hereinafter, "KCC") employees'	Glencore has confirmed that Mr. Mutombo was arrested. ⁹ Only KCC’s Judicial Police Officers can make arrests. ¹⁰ Glencore specifically states that Mr. Mutombo was apprehended by two Mine Policemen. ¹¹ It is unclear whether Mr. Mutombo’s arrest followed his apprehension.

⁵ Glencore response to Key Findings and Questions, presented by Bread for All, the Swiss Catholic Lenten Fund and RAID 17 June 2014

⁶ Bread for All, Swiss Catholic Lenten Fund and RAID, Press Release ‘Violent Deaths on Glencore’s Mining Concession in the Democratic Republic of the Congo’ 27 March 2014

⁷ Letters from Michael Farhbach, Glencore, to Patricia Feeny, RAID, dated 27 March, and letter from Charles Watenpuhl, Glencore, to Chantal Peyer and Patricia Feeny dated 16 June 2014

⁸ All assertions are made by Glencore in its letter (ibid.) of 27 March 2014.

⁹ Glencore Xstrata letter Anna Krutikov to Bread for All and RAID dated 25 March 2014

¹⁰ Interview with the Procureur de la République, M. Makaba, Kolwezi, 23 March 2013; and Interview with KCC’s Head of Security, Kolwezi, October 2013.

¹¹ Glencore Xstrata letter 25 March. “The apprehension of Mr Mutombo was completed by a group consisting of two officers of the Mine Police. On his arrest...”

<p>'that Mr. Mutombo has been beaten to death in the course of this arrest'</p>	<p>Two <i>post mortems</i> at the time (see below)¹², and testimony in court from the doctors who carried out the <i>post mortem</i>, confirms that Mr. Mutombo died of multiple injuries, consistent with having been beaten. According to court documents 'all the experts were adamant that this bruising was a result of blows from a hard object to the victim's body.'¹³</p>
<p>'The findings of the [KCC] doctor as well as the photographs [taken by the prosecutor at the KCC hospital] show clearly that there were no signs of beatings or physical abuse.'</p>	<p>Glencore's insistence that the body showed no signs of beatings or physical abuse is contradicted by both <i>post mortems</i> and by court testimony: The medical experts questioned were adamant that the victim did not die from natural causes. 'And from the medical reports, the three Gecamines doctors [who carried out the second <i>post mortem</i>] clearly told the Court that the large bruise on the right side of the chest would have caused the death of the victim within minutes on 15/02/2014. This is contrary to what the accused and KCC...wanted the Court to believe that the victim had sustained this injury before the date of the incident.'¹⁴</p>
<p>'The first autopsy report of February 20, 2014, on which you base your release, stating the cause of death to be multiple traumas, stands in complete contradiction to the second autopsy report of February 28, 2014. The company was advised that the second autopsy report confirms the initial findings that there were no signs of beatings or physical abuse.'</p>	<p>There is no 'complete contradiction' between the first and second autopsy (<i>post mortem</i>) reports. The second <i>post mortem</i> notes several abrasions, contusions and lesions on the head and neck and concludes: 'The death was probably caused by a significant contusion on the right side of the thorax'.¹⁵</p> <p>The report of the KCC doctor's 'initial findings' has not been released by KCC and was not produced in court. Not only does the death certificate, signed by the KCC doctor, give the cause of death as 'unknown', but, unusually, it was only produced eight weeks after Mr. Mutombo's death.¹⁶</p>

¹² Details of the first post mortem contained in a letter from the *Centre d'aide juridico-judiciaire* to the Mayor of Kolwezi, 3 March 2014. See also, Note de Plaidoirie des parties civiles, RP 521/KGM 2014 Fait, à Kolwezi, le 25/08/2014: « *Il est sans conteste que les conclusions apportées à ce rapport [examens post mortem à l'hôpital Mwangéji], relèvent que le feu MUTOMBO KASUYI est décédé d'un polytraumatisme.* »

¹³ Note de Plaidoirie des parties civiles : « *Ceci étant, le tribunal pour s'en convaincre et dissiper tout mal entendu est arrivé à poser la question aux différents experts à savoir si cette contusion ne serait pas le fait d'une maladie que pourrait avoir la victime notamment la tuberculose ou autre maladie, tous les experts étaient formels que cette contusion est une émanation des coups dus à un corps dur qu'avaient reçus la victime.* »

¹⁴ Note de Plaidoirie « *Et de part l'expertise médicale, les trois médecins de la Gecamines ont clairement dit au Tribunal que la contusion importante de l'hémithorax droite, ne pouvait qu'entraîner la mort de la victime dans les minutes qui suivaient cette contusion à la date du 15/02/2014, contrairement au soutènement des parties prévenues et civilement responsable KCC, qui ont bien voulu faire voir au Tribunal que la victime aurait eu ce coût avant la date des événements.* »

¹⁵ GECAMINES Services Medicaux du Groupe Ouest« Rapport Medico-Legal D'Autopsie 27 février 2014: *Il s'agit d'un cas de décès probablement suite à une contusion importante de l'hémithorax droite...* »The death was probably caused by a significant contusion on the right side of the thorax .."
Note de Plaidoirie . »

« *Le Tribunal de Céans s'en est rendu compte par rapport à toutes les questions posées aux experts qui ont refusé d'admettre que la mort serait le fait d'une autre maladie.* »

¹⁶KCC Hospital Kolwezi Certificat de Décès, « *L'homme apporté mort à l'hôpital KCC/Kolwezi Samedi 15 Février 2014. Cause du décès: inconnue.* »Dr Alain Malale Kayindi. According to a date stamp it was received by the Military prosecutor on 6 May 2014.

RAID, Bread for All and Action de Carême would like to make clear that the material used to substantiate the concerns expressed in this section of the report (carefully documented in footnotes) draws on statements made by Glencore in its written response to questions raised in a letter RAID and Bread for All sent about Mr Mutombo's death on 19 March and subsequent interviews and correspondence with the company. The report also cited official documents and statements to the prosecutor, made by KCC Security Staff and the two military policemen (the latter were subsequently charged with the involuntary killing of Mr Mutombo). The report also cites statements from eye witnesses provided to the prosecutor and to the two, *post mortem* medical examinations, carried out by doctors from the Mwangeji Hospital morgue and Gecamines Hospital. Notable by its absence from the court documents, to which RAID and all concerned parties had access, was the report of KCC's doctor, who had certified Mr Mutombo's death). The family had to bury Mr Mutombo without the death certificate, which was only sent to the military prosecutor on 6 May 2014 (the company has never explained the reason for this delay). Glencore, through its subsidiary, KCC, would have had access to all the above. Furthermore, Glencore had privileged access to the results of its own internal inquiry, which it did not share or make public.

In addition, the report drew on interviews with the lawyers representing the victim's family and with members of Mr Mutombo's immediate family. Discrepancies between Glencore/KCC's version of events and the information RAID, Bread for All and Action de Carême had gathered and analysed were discussed with the company in detail - in letters and in face-to-face meetings - during March and May 2014.

Since the report was published the trial of the two policemen accused of unlawful killing has taken place before the military court in Kolwezi, both of whom were acquitted. Medical evidence confirmed that Mutombo had died not from natural causes, as the company alleged, but as a result of injuries he had sustained which were consistent with his having been beaten. The victims' family and the military prosecutor have lodged an appeal against the verdict, which was characterised by the prosecutor as '*mal jugé*' or flawed. Under Congolese criminal procedural rules, the acquittals mean that the claim for damages, brought by the victim's family against KCC, cannot proceed.

Glencore states that it has 'no control over the DRC mine police'¹⁷ yet they provide security services on KCC's sites and operate in security teams under the *de facto* supervision of KCC staff. The mine police remain on site for several days at a time.¹⁸ The company's denial that KCC exerts any control over the mine police was contradicted by evidence from the senior Mine Police Officer on duty at the mine at the time of the incident. When asked how commands were given to policemen

¹⁷ Glencore Response 21 May 2014: 'KCC has no control or jurisdiction over the DRC Mine Police, and cannot comment on their actions'.

¹⁸ Note de Plaidoirie: « les prévenus quoi que appelés policiers d'intervention étaient basés dans les installations KCC depuis plusieurs jours et ils y travaillaient sous la direction et la supervision de KCC. »

deployed at mine sites said 'they are transmitted by [the company] that has requisitioned them'.¹⁹ His statement appears to support the report's conclusion, based on the statements of the accused and other members of KCC's security team, that the mine police were directed by KCC's Security Department. Another telling detail is the lack of autonomy demonstrated by the fact that the Mine Police did not file a report on the arrest and subsequent death of Mr Mutombo at the mine site, but that the only official report was written by the leader of KCC's Security Team, acting in his capacity as a judicial police officer (with a mandate from the Congolese authorities to arrest and interrogate suspects on the mine site).²⁰

In its public response to the report, Glencore admits that, at the time of Mutombo's unlawful killing at the site, KCC did not have in place a Memorandum of Understanding with the DRC's Mine Police, addressing material and financial assistance and specifying expected standards of conduct.

Glencore has not addressed the numerous inconsistencies and discrepancies in KCC's version of circumstances of Mr Mutombo's death (see Chapter 4.2.2).

5. Community Relations

a) Consultations:

RAID, Bread for All and Action de Carême are frankly astonished by the claim that Glencore's subsidiaries had 900 meetings with affected communities in 2013. In fact, in the villages and townships which were visited during the 2013 and 2014, **dozens of people interviewed had never been invited to a meeting by the company, nor had they ever heard of any public consultations.** The gap between the figure cited by the company and the reality on the ground is impossible to reconcile. All that is needed to establish precisely how many consultations have taken place with communities, the identity of the people invited, the subject of the discussions and any commitments made, would be for Glencore's subsidiaries to publish the minutes of the meetings it claims have been held.

Other mining companies in the DRC do this. Glencore however has not yet taken the first step and **refuses to publish precise information about its community consultations.**

b) Access to Water:

RAID, Bread for All and Action de Carême are pleased to note that KCC has committed to improve access to water for the Luilu township in collaboration with the state water utility, REGIDESO. The non-governmental organisations are closely following progress on the ground. However it is highly regrettable that **KCC refuses to accept any responsibility for improving access to clean water for Musonoï.**

¹⁹ Note de Plaidoirie pour les parties civiles le 25/08/2014: « *Cela n'est pas surprenant dans la mesure où à la question posée par le Tribunal au renseignant Paul MBAYO, major de la police de Mine et Hydrocarbure, à savoir, sur terrain, les instructions se passent comment ? Ce dernier a affirmé qu'il faut tenir compte des réalités sur terrain c.à.d. les commandements des policiers dans une entreprise minière passent par cette dernière qui l'a réquisitionné. Cela revient à déterminer que réellement les prévenus obéissaient aux instructions et ordres émanant de KCC.* »

²⁰ Procès Verbal judiciaire n° 002/011/RG047/PIC/KOV/DESK-KCC/2014

c) Resettlement of Musonoï Residents:

Blasting at KCC's T17 mine has been going on close to residents' homes for years making their lives a misery. Clearly before the blasting and drilling at T17 commenced, those people living closest to the pit should have been relocated for their health and safety, as was recommended by Glencore's own consultants. Apart from the severe problem of dust and lack of clean water, many of the houses have suffered structural damage and some have even collapsed as a result of the explosions. Glencore, in its response of June 2014, claims not to have divulged the 2009 resettlement action plan for Musonoï in order 'to avoid creating confusion' and upset among the residents. Today the company is reconsidering its projects and says it now intends to excavate an underground mine. According to the company, this new option means that no homes in Musonoï will need to be demolished and no residents will need to be relocated. But this is disingenuous; the question that Glencore completely fails to address is **why KCC has not already resettled those families living closest to the mine.** It seems to be trying to evade responsibility for redressing KCC's past impacts and the years of upheaval and disruption that its mining activities have already inflicted on the people of Musonoï.

KCC now claims to be evaluating the impact of the proposed underground mine in its new environmental and social impact assessment, but at no time has the affected population, those who live in the township, been informed, let alone consulted about this. This lack of transparency and dialogue with the communities, whose future is at stake, is in contradiction not only with Congolese law (which requires consultations during not after the EIA process) but also with international human rights standards, to which Glencore claims to adhere (see Chapter 5.3.3).

6. Taxation

Glencore rejects the report's conclusion that profits are transferred abroad in orders to avoid paying taxes and asserts that all taxes and duties are paid according to DRC laws.

In fact, KCC has never made any profit in the DRC since it was taken over by Glencore in 2009. Instead, it has always recorded substantial losses. How could Glencore – trying to maximise its return on investment – be interested in such a loss-making project? Paradoxically it is apparent that the parent company, KML, has been highly profitable since 2010, while being located in a low-tax jurisdiction. In the initial agreement, KCC was supposed to use profits to reimburse debts and pay dividends, but the opposite has occurred. **KCC pays no dividends and almost no income tax the Congolese State** which holds (through Gécamines) 25% of KCC.

We did not claim that KCC was not paying any tax. According to Glencore, MUMI and KCC paid US\$ 212 million in 2012 and US\$ 282 million in 2013 in various taxes, fees and royalties. However, Glencore provides no break-down of these amounts. We have questions whether the amounts paid are correct (for further details see Chapter 6 of the report) and Glencore has not provided any further clarification.. There is no record of several payments that Glencore claims to have made, in the financial documents that are available for consultation. The EITI does not provide sufficient

information either. It should be noted that Glencore's subsidiaries have paid various fines and penalties to the DRC tax authorities over the past few years.

The amounts paid to the Congolese State are substantially lower than what was estimated in 2008, at the beginning of the project, i.e. US\$ 400 million per year for KCC alone. We do not deny that Glencore's activities in the DRC help support some 10,000 jobs, but the fiscal contribution of the mining sector in DRC is in general far below what it should be, while the DRC remains one of the poorest countries in the world.

Regarding the controversial acquisition of shares in Mutanda/Kansuki over the past years, Glencore only repeats what it had previously stated and has not provided any new information. These transactions are part of a series of acquisitions by off-shore companies related to the Israeli businessman Dan Gertler, many of which have been analysed and questioned by the Africa Progress Panel and many other reports. **These transactions have all been conducted in secret which gives rise to concerns as to whether they have been substantially undervalued.**

Glencore did not seem to oppose this or be willing to make use of its pre-emptive rights to buy the shares directly in spite of their extremely low price, allowing Dan Gertler to make substantial profits to the detriment of the Congolese State. Whatever the reasons are, the doubts will remain.

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