Contracts, human rights and taxation: How a company exploits a country

The case of Glencore in the DRC

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The case of Glencore in the Democratic Republic of Congo.[1]

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Executive Summary

As part of the ecumenical campaign 2011, Bread for all and the Swiss Catholic Lenten fund in cooperation with the South African Bench Marks Foundation have conducted an exclusive study on the activities of the Swiss commodities group Glencore International AG in the Democratic Republic of Congo (DRC). The study, based on a desk research carried out in Switzerland and a field visit of four researchers in the DRC, aimed at assessing the impact of Glencore's investments on the Congolese economy, society and environment. The study reveals disturbing results.

In recent years, Glencore has become one of the leading commodities groups in the world. The company, based in Baar in Switzerland, has offices or factories and mines in 40 countries. In terms of revenues, with USD 145 billion in the year 2010, Glencore is far ahead of all other Swiss corporations. However, the company is still not well known by ordinary Swiss consumers: Glencore's customers are corporations in sectors such as the car, steel or energy industry.
Since 2002, Glencore pursues the strategy of expanding control over the entire value chain of commodity business. This includes investments in Africa, especially in Zambia through the Mopani Copper Mine and more recently in DR Congo, through Katanga Mining Limited (KML). Glencore International granted KML in November 2007 a first loan of USD 150 million and in January 2009 a second of USD 100 million, partly convertible into shares of KML. Glencore converted its convertible loans in spring 2009 and today owns nearly 75 per cent of KML. This deal with KML involved a contract which entitled Glencore to sell for the next ten years the cobalt and copper extracted in the mines of KML.

The investment promises a significant return. KML has six copper and cobalt deposits in the Katanga province spread over an area of more than 40 km2, which is more than the area of the Swiss canton Basel-Stadt. Thanks to further investments, KML aims to become the world's largest provider of cobalt and the most important producer of copper in Africa by 2015 (with respectively 30'000 tons and 310'000 tons of annual production).

The investigation of the Swiss Catholic Lenten Fund, *Bread for all* and the Bench Mark Foundation highlights that despite high yields, Glencore and its subsidiary KML don't seem to care about the economic, environmental and social impact of their mining activities. The criticism concerns in particular three areas: contracts, compliance with human rights and tax issues.

1. Unfair contracts: the resources of Katanga are being plundered

The activities of KML, including the mines in Katanga, are based on concessions that were negotiated after the Mobutu dictatorship and the civil war in a devastated country with widespread corruption. Therefore, the contracts for the award of exploration licenses were reviewed from 2002 to 2005 by the DRC government and parliament, but also by global audit firms mandated by the World Bank. All these assessments denounced these contracts for being unbalanced and contrary to the interests of the Congolese population. Contrary to the requirements in the Congolese Mining Code ("Code Minier Congolais"), the mining concessions were never put out to tender or renegotiated. Also, no independent body has been called upon to determine the value of the assets contributed by the Congolese state. Rather, the Directorate of the state-run company Gécamines negotiated behind closed doors with Belgian and Canadian private investors. Despite these flaws, DRC President Kabila accepted in late 2005 the creation of two joint venture companies (Kamoto Copper Company (KCC) and Copper and Cobalt Project (CCP)) and the assignment of key fields of the former public company Gécamines.

When the rights to exploit these deposits were definitively handed over to KML, the terms of contract were not fundamentally changed and remained unfair: Gécamines handed over not only large deposits of copper and cobalt (about 15.9 million tons of proved reserves), but also two manufacturing plants. Despite these contributed assets, the former state-owned company Gécamines today owns only 25 per cent of the joint venture, when it should own 50%. In other words, Glencore exploits one of the richest deposits of the world in natural resources, without leaving a fair share to the Congolese side. Instead, the mining activities consume a significant portion of the scarce electricity in the region, put an extra strain on the bad roads and pollute the environment.

2. Human rights violations

The investigation in the mining region of Katanga impressively demonstrates what the social consequences are and how human rights are constantly violated. The most serious problems are: the precarious situation of artisanal miners, the working conditions in the mines of KML and the impact on communities in their vicinity.

First, artisanal miners: According to the field survey, KML buys minerals from artisanal miners working on its concessions including Tilwezembe and Luilu. However, the subsidiary of Glencore buys the copper and cobalt not directly from the miners. Suppliers are rather middlemen who work primarily in the city of Kolwezi. In the artisanal mines, catastrophic working conditions prevail: without protective clothing and appropriate equipment, sometimes almost with their bare hands, the miners are digging holes and tunnels. To descend into the mines, they have to climb huge rubble hills, where they are constantly threatened by slide and rock fall. Therefore, accidents in the mines are frequent. The miners, who have no insurance or social protection, often can't afford to pay for medical expenses. Child labour is widespread: For the Katanga region alone, the study speaks of over 30'000 children and young people, who carry heavy bags of 20 kg of ore, clean minerals in rivers or dig the earth. A lot of children were observed, selling ore near the mines, where KML buys its minerals.

However, once KML wants to extend the industrial mining to areas with artisanal mines, small-scale miners are ruthlessly expelled. According to the study of *Bread for all* and the Catholic Lenten Fund, more than 10'000 miners were driven out of two mines between August 2010 and February 2011. In one case, according to local sources, the police had also used violence and several people have been injured.

Secondly, working conditions in the mines of KML: According to multiple sources, the Kamoto underground mine, which belongs to KML, is one of the most dangerous mines in Katanga province. On the site, the safety regulations are rarely respected, and signs with basic safety rules are largely absent. The result: in a timespan of only eleven months, between April 2009 and February 2010, three fatalities occurred.

In terms of health, the miners receive no protective clothing, even though studies have found high radiation levels, including uranium, in these mines. This radiation can cause health problems such as anaemia, diabetes, kidney problems and infertility.

The precarious security situation in the mines of KML is accentuated by the high rate of short-term contracts. In the mine of Kamoto, four out of ten miners do not have permanent contracts. Accordingly, they are less experienced and trained, which increases the risk of accidents.
Thirdly, living conditions in villages around the mines: KML doesn't implement a credible and systematic policy of dialogue with the communities situated around its mines. According to the field study, many village houses suffered damage (cracks as well as collapsed walls) as a result of regular blasting. In a letter to the leaders of the T17 mine, the residents of Moroni, a nearby village, pointed to such damages, but never received any response or compensation.

Another problem for communities living near the mines of KML concerns the pollution of streams and groundwater. The water pipes used for the mines are often in poor condition, therefore contaminated water regularly leaks out. Sometimes waste water is discharged directly into rivers, despite its high concentration of heavy metals, including uranium, of sulphur and of explosives residues.

3. Maximum gain, minimal taxes

In DRC, the mining tax revenues have shrunk in recent decades. While the mining sector accounted for 70% of total government revenues in the province of Katanga in the 80s, and for 30% in 2002, this percentage has dropped to 7% in 2006, despite the fact that mining production has increased significantly after the turmoil of civil war. This drop is mainly due to the many "tricks" mining companies use to evade taxes and duties: Examples are forged documents, illegal export of minerals or false information on quantities and concentrations of minerals. In addition, they also benefit from corruption within the administration. According to an investigation in 2007 by the Senate on the situation in the mining industry ("Rapport Mutamba"), the Congolese Treasury received only USD 92 million out of USD 205 million actually owed.

Glencore has a long and dark history in relationship with tax authorities. Let us recall the company's founder, Marc Rich, who already in 1983 was globally persecuted by US authorities because of tax fraud and trading with the enemy. Today, the headquarters of Glencore is situated in Baar, in the canton of Zug, in Switzerland, known for its low taxes. In addition, Glencore has several subsidiaries located in tax havens such as Bermuda Islands. This structure allows the group to shift profits and avoid taxes. In February 2011, the "system Glencore" attracted attention due to public investigations around the Zambian Mopani Copper Mine owned by Glencore. The major producer of copper and cobalt is accused of large-scale tax evasion.

Katanga Mining Limited, a subsidiary of Glencore in the DRC, appears to have also adopted the "Glencore system": KML has three subsidiaries situated respectively in Bermuda, Virgin Islands and the Isle of Man, which are all known as tax haven. Additionally, KML, which is on the way to become the largest copper producer in the DRC, will pay for the years 2010 to 2013 only a minimum annual tax of USD 1 million. This is nothing compared to the tax amounts paid by competitors such as First Quantum Minerals which is of similar size in respect to business activities but which paid USD 57 million in 2009.

4. Conclusion

KML and Glencore emphasize in their documentation or on their web pages the importance of environmental protection in their activities and the principles of corporate social responsibility (CSR). Glencore highlights that its activities are guided by principles ("Glencore Corporate Practice") which include: "compliance with laws and human rights, environmental protection, promotion of employees' health and safety, promotion of all business partners as well as of the surrounding communities and their welfare." Despite these commitments, action unfortunately is missing. As the field survey conducted by *Bread for All*, Catholic Lenten Fund and Bench Marks Foundation reveals, labour rights as well as the interests of local people and the surrounding communities are constantly violated in the context of Glencore's investment in RDC.

The finding is not surprising: Besides the rhetoric, Glencore hasn't implemented credible corporate social responsibility policies. Glencore has so far made no serious effort to ensure that its subsidiary KML will comply with human rights and will minimize its environmental impact in the future. If Glencore applies as expected for listing on the stock market, a change in the corporate culture towards more transparency is necessary. However, the Swiss government must enact rules in order to assure that companies like Glencore have to be accountable for human rights violations, also concerning the activities of their foreign subsidiaries.

1. Introduction

1.1 Objectives of the study

Switzerland hosts the largest number of transnational corporations in the world per inhabitant. Amongst these companies, there are well-known brands such as Nestlé, Novartis or Roche. There are also lesser-known companies active in the trading of raw materials. They are normally established in Geneva and Zug, two cities that have become main players in the world trade of raw materials. While Geneva mostly hosts societies active in the oil sector, Zug is the business centre of the mining industry’s products. These companies are active around the world and have an impact on the existence of thousands of people in Africa, Asia and Latin-America.

In the context of their 2011 Annual Campaign, Bread for All and Action of Careme have chosen to examine one Swiss mining company, Glencore, to analyse the economic, social and environmental impact of its activities. Glencore, headquartered in Baar in the Swiss canton of Zug, is one of the biggest suppliers of raw materials in the world. Glencore is also the Swiss corporation with the highest business revenue – US$145 billion in 2010. This study analyses the strategies and commercial activities of Glencore in the Democratic Republic of Congo (DRC). With the country's problematic human rights record, the DRC has become, despite its instability, a focus for privileged foreign investments from mining corporations from the west and, more recently, also from the Chinese. Glencore started investing in the province of Katanga (in the south of the DRC) in 2007.

In the framework of this study, a desktop-research was undertaken in Switzerland. In addition, the Bench Marks Foundation, a partner organisation of Bread for All, has undertaken two survey missions in the field. As part of the field research (done in October 2010 and February 2011) the four researchers of the Bench Marks Foundation visited several mining sites. They met mineworkers, representatives of civil society as well as unions, governmental representatives, and members of the communities neighbouring the mines. The researchers also sent a detailed questionnaire to Glencore and its subsidiary in Congo – Katanga Mining Limited – but no reply was forthcoming at the time of the report being published, or after.

1.2 The region: the province of Katanga in the DRC

Indicators of the Democratic Republic of Congo

Gross Domestic Product	US$300 per year and per inhabitant (in 2009, estimation)
% of population living with less than 2 dollars per day	84%
Life expectancy	46/49 years (m/f)
Infant mortality	1 infant out of 5 dies before reaching the age of 5
Investment on health	US$18 per inhabitant and per year
Literacy	35%
Average of school enrolment	3.8 years
Underfed population	76%

The Democratic Republic of Congo has one of the richest subsoils in terms of mineral resources in the world. However, its population is still today one of the poorest on the planet. In 2010, the United Nations Development Programme classified the country as the second worst performing country on its Human Development Index (169th).

The mines described in the report are located in Katanga, a province in the south-east of the DRC. The surface of Katanga is approximately 496'877 km^2, which is close to 12 times Switzerland's surface. Around 9 million people live in the region, where resources come mostly from agriculture and mining. Katanga hosts 34% of the world reserves of cobalt and 10% of the world reserves of copper, and is located in the so-called Copperbelt of Central Africa, which goes through Zambia and DRC.

Located in the southern part of Katanga, the village of Kolwezi is surrounded by the mines included in this study. This village was founded in 1937 to host the headquarters of the Belgian *Union minière du Haut Katanga* which, following nationalisation back in 1967, became the *Générale des carrières et des mines* (Gécamines), a state mining company. Once called in the 70s “the lung of the congolese economy” because of Gécamines’ intense production, Kolwezi is today a village marked by recession, unemployment and poverty. The recession started at the end of the 90s, when financial and managerial hardships forced Gécamines to close down almost 90% of its production. In 2003, massive layoffs undertaken by the company in the framework of a privatisation programme (more than 10 600 workers were retrenched) aggravated the crisis and pushed many mineworkers into severe poverty.

Nowadays, two types of mining exploitation take place in Kolwezi: artisanal mining and industrial mining. Artisan miners work in the old concessions of Gécamines, sometimes with their bare hands. They are tolerated by local authorities, who do not have other activities to suggest to the poor miners. Their situation, however, remains precarious: if any concession is reclaimed by private investors, police will chase them away, not hesitating to use violence. Industrial mines are in the hands of foreign multinational corporations that have reclaimed old concessions of Gécamines privatised between 1997 and 2005. These new joint ventures today export the essential minerals of Katanga. The interaction between artisanal and industrial mining is characterised by trade exchanges and social tensions.

2. Glencore in the Democratic Republic of Congo

2.1 The international headquarters: Glencore International AG

A history of controversy

Glencore International is one of the world's largest suppliers and traders of raw materials. The company was created in 1974 by Marc Rich, a controversial businessman listed by the Federal Bureau of Investigation (FBI) as amongst the most wanted white-collar criminals. At the end of the 1970s, Marc Rich had built his fortune by bypassing the American embargo on Iran to sell oil to the Ayatollah Khomeini. A few years later, he also sold gold to the South African Apartheid regime, despite the UN embargo. For these actions he was wanted in 1983 by the American justice system where he is accused of more than 50 charges (tax evasion of more than US$48 million, trading with the enemy, etc.). Theses charges, if convicted, would translate into more than 300 years in prison. Marc Rich then sought refuge in Switzerland and established the headquarters of his company in Zug. The Swiss government, thereafter, would always refuse to extradite him.

In 1994, Marc Rich passed on the management of Glencore International to his deputy, Willy Strothotte, who held the position of executive director for 8 years and today still heads its board of directors. Willy Strothotte is one of the main stakeholders at Glencore. With a fortune of more than 3 billion Swiss francs (2008), he is part of “the 20 patrons that make up Switzerland”. Since 2002, Ivan Glasenberg took over the executive direction of the company. Glasenberg was also part of the close circle of Marc Rich. He worked at Glencore since 1989, in the post of head of the carbon sector since 1991, before becoming director of the international headquarters in 2002.

Since Strothotte and Glasenberg took the reins of Glencore, the reputation of the company, however, has not improved much as the following examples show. In 2004, the Nigerian government accused Glencore of fixing its taxes. In 2005, it was accused of bypassing the embargo against Iraq and of having bought oil from Saddam Hussein. According to a CIA report, Glencore paid more than US$3 million of surcharges to Saddam Hussein for the petroleum. In 2007, the Bolivian government decided to take over one of the tin mines managed by the Swiss multinational, accusing Glencore of having under-paid for exploitation rights. Finally, a partner of Glencore was under investigation in Russia back in 2008 for “illegal commercial activities”.

Today, Glencore International AG has more than 50 offices in about forty different countries, employing more than 2 700 people. The corporation also manages, directly or indirectly, mining exploitations in 30 countries, employing about 55 000 people. Finally, Glencore has important shares, some majorities, in many stock market listed companies, especially: Xstrata Plc, Century Aluminium, Katanga Mining, Minara Resources, Chemoil Energy, Recyclex and UCR.

Glencore is the company with the largest revenue in Switzerland, which in 2010, amounted to US$145 billion. The total of their assets amounts to US$79,8 billion and the funds of its employees are US$19,6 billion. Yet Glencore is not listed in the stock market and the financial information given by the company is extremely brief, and incomplete.

In the beginning, Glencore focused its activities in the trading of metals, minerals and oil. During the 1980s, the company started to diversify its activities and invested in agricultural products – it acquired in particular a Dutch company active in the grain market. Since the 1990s, the company also started buying shares in the extraction, production, refining and smelting industries. During the last few years, and particularly under Glasenberg’s reign, Glencore has increased its control over the whole production process. Through its investments in various companies of the mining sector, the company acquires minerals from key mining areas of the world in a manner that may be considered monopolistic. Its investments in Africa, in particular in Zambia with the Mopani Copper Mine, and more recently in the DRC with Katanga Mining Limited, are part of the strategy to control the whole of the production chain.

Today Glencore is one of the largest suppliers of raw materials in the world. The company resells the products to customers in the motor, steel, electronic and energy industries or even in the food processing industry.

A "family" culture

The company culture at Glencore is one of ambition – it comprises an elite group of managers and officers, considered as being amongst the best in the world. Their staff is young, competent, intelligent and work at 200% and "they have a culture that does not tolerate mediocrity", according to Bloomberg. Whenever a post becomes vacant, even at the higher echelons of management, Glencore rarely opens it to outsiders, preferring generally to employ from within. At the managerial level, the directors go from one board of directors within the group to another. Willy Strothotte, for instance (president of the board of directors of Glencore International AG), is also president of the board of directors of Xstrata. Even the executive director of Glencore International AG, Ivan Glasenberg, is also a member of the board of directors of Minara Resources, a company in Australia where Glencore has invested.

Loyalty is another value of the Glencore company culture. This loyalty is guaranteed by the prestige of working in one of the largest transnational corporations in the world, but equally by its particular system of rewards. Since the company is not (yet) listed on the stock market, it belongs to the employees. In particular, the Swiss company invests the majority of its profits in a fund that is then redistributed to (some of) its employees. The 12 top directors owned 31% of the profits of the shareholders fund, which was worth US$16.7 billion, at the end of 2009. The other owners (around 435) share the rest of the cake. "If they left the company today, each of these top directors would take home an average fortune of US$325 million. The other executives (also owners) would receive an average of US$20 million. The employees still receive benefits up to 5 years after leaving the company," wrote a Bloomberg journalist.

2.2 Glencore's subsidiary in the DRC: Katanga Mining Limited (KML)

A subsidiary of Glencore in the DRC is Katanga Mining Limited (KML). The headquarters of KML are in Bermuda. Yet the corporation exploits six mining areas in the region of Katanga, in the DRC, through two joint ventures: the Kamoto Copper Company (KCC) and the DRC Copper and Cobalt Project (DCP). These two joint ventures were amalgamated into one through an agreement on July 25, 2009.

The exploitation rights of KML cover six different mining areas of copper and cobalt. The mining areas are located over a territory of more than 40 km^2, which is the size of the canton of Geneva (see the map below). They represent a total amount of 16 million tons of copper. The copper extracted from the subsoil of Katanga and the territories exploited by KML is of good quality: its density is of 3% to 5%. In comparison, the minerals extracted in Chile, for long considered the main world producer of copper, have a density average of only 1%.

Map of mining areas of KML. Copyright: D.Tillmanns.

KML's mines and deposits

The joint venture agreement between Gécamines and KML also included the use by the latter of a number of plants and industrial goods that used to belong to Gécamines. This is the case of the Kamoto concentrator and of the hydrometallurgical plant of Luili. These infrastructures play an extremely important role as with them, KML concentrates its minerals. As a matter of fact, the minerals extracted from the mines are only a mixture of minerals. Thus before transporting and exporting these minerals, it is necessary (as well as profitable) for them to undergo certain treatment.

The concentrator of Kamoto undertakes a first step in the treatment of the minerals through operations involving its crushing, sieving, grinding and selecting. The process also involves floating the minerals in the water, followed by decantation which leads to the separation of the silt and residues from the richest part of the mineral.

www.katangamining.com

The Luili Metallurgical Plant undertakes the second step in the purification of the minerals. Using a concentration of copper (25% to 40%), it leads, through successive phases, to the cathodes**.** The copper plates obtained are almost pure (99%).

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From the mines to the processing plants, KML has the means to control the whole cycle of the production of copper.

The largest producer of copper in Africa

Due to the rehabilitation of certain mines and infrastructures, the capacity of production of KML has not achieved its full potential. In 2009 - 2010 for instance, it was necessary to undertake several repairs in order to subtract water accumulated in an open pit mine in Kov. This was necessary so that extracting activities could be restarted, given that the reserves of that mining area were estimated to be approximately 15 million tons of copper. The potential is thus huge.

In 2010, KML produced almost 60 000 tons of copper and almost 3 500 tons of cobalt.

The company has the goal to become, by 2015, the largest producer of copper in Africa as well as the largest producer of cobalt in the world, with 310 000 tons of copper per year and 30 000 tons of cobalt per year.

Open pit mine T-17 Musonoi
Copyright: Katanga Mining

2.3 Glencore and Katanga Mining Limited: the tentacles of the empire

Glencore's strategy

In a poll conducted on the networks of the founder of Glencore, Marc Rich, *Business Week*'s journalists described in 2005 the economic strategy of Rich and his successors as follows: "The tactics of the "Rich Boys" are aggressive, but generally they are also perfectly legal. One of their investment strategies is to use the opportunities on offer by the East European countries and developing countries while these are in great need of financing capacity. Rich teaches his disciples –

called *lehrling* ("learners" in German) his strategy – to lend money to battered companies, so as to secure a quick right of purchase of their raw materials."

In the DRC, Ivan Glasenberg applied this strategy to the letter. Between 2007 and July 2009, at the height of a world financial crisis, Glencore slowly took an almost absolute control of the largest reserves of copper and minerals in the world. In less than three years, it bought out almost the whole of Katanga Mining Limited. With this investment, Glencore managed to diversify its suppliers of raw materials and thus increase its presence in the global market of copper and cobalt.

Glencore and KML: Summary of important facts and dates

	EVENTS
November 2007	Glencore Finance offers a first loan close to US$150 million to KML. At the same time, KML and Glencore reach a commercial agreement which allows the latter to buy, during six years, the 100% of the production of copper and cobalt in Katanga Copper Company (KCC).
October 2008	Glencore nominates the new ad interim director at KML: Steven Isaacs, finance director at Glencore International. He is seconded by Tim Henderson, executive director for Africa at Glencore International.
January 2009	Glencore lends US$265 million to KML as convertible and non convertible debts. Such loan entails: - The prolongation of the first loan of 150 million dollars back in 2007, whose value has now increased and with the interests is now worth US$165.3 million. - A new loan of US$100 million. Simultaneously, KML and Glencore reach a new commercial agreement that will allow the latter to buy during ten years the 100% of the production of copper and cobalt of KML (that is, the mines of KCC and DCP).
April 2009	Glencore offers a new loan of approximately US$50 million to KML, non convertible, and repayable in December 31, 2009.
Between February and July 2009	Glencore becomes majority shareholder at KML, with 77% of the shares. In October, Glencore will resell some of these shares and establish its participation with 74.4% of the shares.

KML at the height of the financial crisis

Glencore invests for the first time in KML in November 2007. At the time, the economy in Katanga gets going again thanks to the rise in the price of copper on the international markets. A ton of copper is sold then for more than US$7 000, given the sudden rise in the demand of raw materials in China and India. The second investment of Glencore arrives at the end of 2008, at the height of the financial crisis. In one year, the context has radically changed: the prices have fallen 60% and a ton of copper is sold for US$2 800. In Katanga, the situation is worrying as in only a few months, more than 40 mining companies have closed their doors and several foreign investors, especially the Chinese investors, packed their bags and left. An observer pointed out: "When Katanga coughs, the international market of copper sneezes... With the financial crisis, the contrary has happened – the mineworker in Katanga has sneezed, agonizingly."

During this period, KML also experienced difficulties. In November 2008, given the weak price of cobalt, the company had to stop the exploitation of its cobalt mine in Tilwenzembe and suspend mining at the concentrator in Kolwezi. The situation looked even bleaker for KML, as it had undertaken during the year several financial investments to repair some infrastructures. In addition, it undertook a series of repairs and investments which sought to improve the performance of the concentrator Kamoto, so as to increase the volume of minerals extracted there. Finally, the ongoing merger of the joint venture agreements of Kamoto Copper Company (KCC) and DRC Copper and Cobalt Project (DCP) meant that the company needed to increase from 1 to 100 million dollars its capital stock. In the autumn of 2008, KML was in urgent need of cash, which gave Glencore International the opportunity to offer to KML the necessary life saving measures and thus allow for the recapitalisation of the company.

The economic take-over by Glencore

As the Swiss company points out on its website, Glencore has invested now for several years in other companies active in the extraction of raw materials: "The strategic investment of Glencore in industrial goods is an important part of the activities through which Glencore acquires and trades with raw materials. Such investments are also seen as a way to diversify risks."

The first loan of US$150 million by Glencore to Kamoto Copper Company (KCC) in 2007 clearly illustrates this approach. The loan came along with a commercial agreement, which allowed Glencore to buy 100% of KCC's copper produced during six years.

In 2008, while KCC and DCP were working on a merger agreement, Glencore looked after its interests and nominated the interim directors at KML, following the resignation of the old CEO, Arthur Ditto. The new interim director, Steven Isaacs, was at the time a top executive at Glencore International for 14 years. He was then still finance director at the mother company. Before taking the post as director of KML, he had chaired a working group responsible for the acquisition and development by Glencore of the mines of Mopani in Zambia. His assistant, Tim Henderson, was the executive director for the Africa region at Glencore International. At the end of 2008, while KML was facing acute financial difficulties, the interim directors signed a loan of US$100 million with the Swiss company.

Thanks to the loan, Glencore International took the control over KML:

- Confirming a commercial agreement which allowed them to buy during ten years 100% of all copper and cobalt extracted from the concessions of KML. Through this agreement, Glencore secured the exclusive provision, short of saying monopolistic, from six key mining areas of Katanga.
- Becoming the majority shareholder at KML, with 74.4% of the shares. This allowed them to maintain long term control over KML.

The conditions under which Glencore took control of KML defy the norm. Given the financial crisis, the fall in the price of copper and cobalt and in the sources of cash, the shares of KML lost 97% of their value in the stock market in only six months. When the loan of Glencore to KML was converted into shares, between February 2009 and July 2009, the value of KML was at its lowest: one share that was worth more than US$16 in 2007 was then not worth more than 27 cents (US$0.27). In exchange of a loan of less than US$500 million, Glencore acquired 74.4% of the share of a company that is today worth US$3.2 billion.

Glencore's influence on the management of KML

Glencore has a decisive influence at the heart of the board of directors of KML. Out of eight members of the board of directors, four are employees, or former employees, of Glencore

International or of a company associated to Glencore:

- ☐ **Steven Isaacs**, mentioned above, was the interim director of KML from October 2008 to December 2009. He was a director at Glencore International for 14 years.
- ☐ **Cornelius Erasmus** is also a director of Glencore International AG. He is on the board of directors of KML since November 2009. He is also a member of the board of directors of the copper mines of Mopani in Zambia.
- ☐ **Aristotelis Mistakidis** is a director at Glencore International since 1993, who then become part of the board of directors of KML since January 2008. He is also president of the board of directors of the copper mines of Mopani in Zambia, and is also member of the board of directors of Recyclex SA (Anciennement Metaleurop SA).
- ☐ **John Ross** is the new executive director of KML since January 2010. Before taking on the directorship of the company in the DRC, he worked for eight years for companies linked to Glencore, and in particular for the copper mine of Mopani, and for the Mutanda and Mukonkota mine in the DRC. Before joining KML, he worked for Mopani Copper Mines, where he was a project manager.

Today, Glencore's remarkable control over KML is considered a risk factor, even in the official reports by KML: "Glencore and its subsidiaries own 74.4% of the shares of Katanga Mining Limited. In addition, two of the members of the board of directors, Mr. Mistakidis and Mr. Erasmus, are currently employed by Glencore. Since Glencore actually has the majority control at KML as well as links with two members of the board of directors, its position allows for a significant influence over the decisions taken at KML, in particular when approving shareholders. The control by Glencore could in fact prevent or slow down any changes in the ownership of KML, or could even hold back decisions by the director or board of directors, something that would conflict with the interests of other shareholders and, in consequence, have a negative impact on the course of shares of Katanga."

Open pit mine T-17 Copyright: Katanga Mining

3. Contracts, human rights, environment and taxes: the negative balance sheet of Glencore

3.1 The allocation of rights: the looting of resources in the DRC

The activities of KML in the region of Kolwezi are based on the mining rights acquired in a non-transparent process at the end of the war, in 2004 and 2005. Despite a long process of re-negotiating the mining contracts led by the Congolese government between 2007 and 2009, the terms of the concessions of KML did not change much. It fundamentally remains the same today: the contracts systematically favour the interests of private investors. And the people of Katanga have not had many opportunities to see improvement in their living conditions, despite the large profits made by Glencore's subsidiaries.

Site in Gécamines

Corruption and non-transparent negotiations

According to the Congolese Mining Code, which was drawn up in 2002 with the support of the World Bank, the privatisation of the public company, Gécamines, must be done through an open and transparent tender. In fact, Article 33 of the Code specifies that for all mining areas whose reserves are of public interest, and its value has been proved, researched, or even started to exploit, the allocation must follow a public invitation to tender, based on a reliable and independent evaluation on the value of the commodities to be privatised.[2] In the case of the exploitation rights of the mines of KML, none of the above clauses were respected.

At the time, KML did not exist in its current form. The six mining areas exploited today by Glencore's subsidiaries (in particular Kamoto and KOV) were the subject, in 2005, of two separate joint venture agreements between Gécamines and Belgian (Kinross Forrest) and Canadian (Global Enterprise Corporate) investors. These two agreements later turned into one under the direction of KML in 2009.

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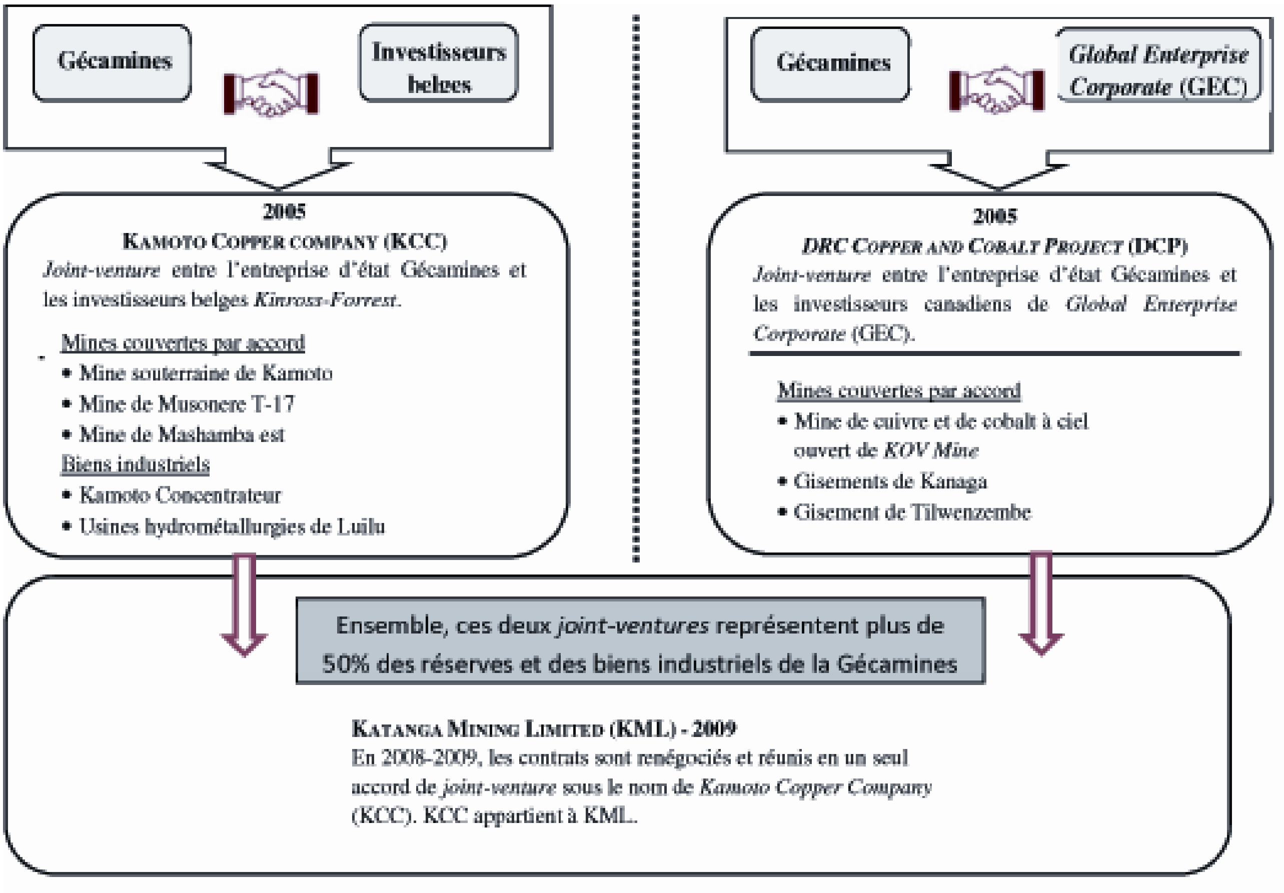
[2] See Law N0 007/2002 of 11 July supporting the mining code, article 3 : «L'appel d'offres est conclu dans un délai d'un an à compter de l'entrée en vigueur de l'Arrêté portant réservation du gisement à soumettre à l'appel d'offres. L'appel d'offres, précisant les termes et conditions des offres ainsi que la date et l'adresse auxquels les offres devront être déposées, est publié au Journal Officiel. Il peut également être publié dans les journaux locaux et internationaux spécialisés. Les offres déposées conformément aux termes et conditions de l'appel d'offres sont examinées promptement par une Commission Interministérielle dont les membres sont nommés et convoqués par le Ministre afin de sélectionner la meilleure offre sur la base de :a) programme des opérations proposées et des engagements des dépenses financières y afférentes ; b) ressources financières et techniques disponibles de l'offrant ; c) l'expérience antérieure de l'offrant dans la conduite des opérations proposées ; d) divers autres avantages socioéconomiques pour l'Etat, la province et la communauté environnante, y compris le bonus de signature offert. »

History of the rights of KCC and DCP



These two agreements were extensively documented and widely criticized in particular for the non-transparent process in which the rights were allocated. In the case of the mines of Kamoto, for instance, the negotiations between Kinross Forrest (KFL) and the public company Gécamines started in 2001. The director of KFL, the Belgian financier Georges Forrest, was then an important financial contributor of Joseph Kabila's political party;[3] as such, he enjoyed privileged relations with the Congolese elite.[4] When the negotiations with Kinross Forrest started, Georges Forrest was also the president of the board of directors of Gécamines, a job provided to him by Kabila and where he served from 1999 to 2001. This obvious conflict of interest, however, did not stop him from leading the negotiations.

From 2001 to 2005, several Congolese as well as international actors (see Charter below) denounced as unacceptable the contract proposed by KFL to Gécamines, which gave to the latter the exploitation rights to the mining areas of Kamoto and for the use of the plants attached to it. But this outcry was useless. The agreement was ratified by presidential decree in August 2005. The birth of Kamoto Copper Company was thus stained with corruption and collusion involving the networks of the Congolese elite. The company subsequently changed its name to Katanga Mining Limited in November 2005.[5]

3 " L'Etat contre le peuple, la gouvernance, l'exploitation minière et le régime transitoire en République démocratique du Congo", Fatal Transaction, 2006, page 46.

4 "Congo Siasa. The Richest Man in the Congo?" J.Sterns, 2010.

5 See www.katangamining.com/kat/about_us/history

Kamoto Copper Company: warnings against a biased contract

Date	*Event*
2001	After announcing the negotiations between Kinross Forrest and Gécamines, the Minister of Mining, Simon Tuma-Waku, sent a report to President Kabila, where in his conclusion he pointed out the unfair and disadvantaged terms and conditions of the contract to the Congolese people that weighed heavily in favour of Kinross Forrest.
September 2003	An independent English company, International Mining Consultants (IMC) confirmed the conclusions of that report. Based on an audit by the World Bank, IMC presented to the Congolese authorities a plan of action to reform Gécamines. In this context, IMC recommended the immediate suspension of the negotiations between KFL and Gécamines and that the idea of a joint venture be abandoned. The IMC also recommended the dismissal of all Gécamines directors.
November 2003	Following IMC's report, the Chief of Staff to the Presidency (Kabila) sent a letter to the director of Gécamines, demanding that they end all negotiations with Kinross Forrest as well as those involving the mines of Kamoto, Dima and the Luilu plants.
February 2004	The director and the president of Gécamines signed in February 2004 a joint venture agreement with Kinross Forrest.
June 2005	The Lutundula Commission, in charge of evaluating mining contracts settled during the war, submitted a report to the National Assembly which recommended the suspension of the joint venture agreement with Kinross Forrest. Two months later, the contract was accepted via presidential decree.

Congolese contributions undervalued

Several observers denounced the joint venture agreement between Gécamines and Kinross Forrest because of the terms of the contract, which were obviously unfavourable to the Congolese. The commodities brought in by Gécamines to the joint venture agreement were systematically undervalued. As a result, the Congolese natural resources are cheaply sold with an agreement offering 75% of the dividends to the Belgian investor and 25% of the dividends to the Congolese investor.

The assets brought in by Gécamines to the joint venture:

- The reserves of the mining area of Kamoto have proved to be 15.9 million tons of copper and of almost one million tons of cobalt. In 2005, the price of one ton of copper fluctuated between US$3 000 and US$4 000. The value of the Kamoto reserves is thus worth several billion dollars.[6]
- The plants of Kamoto and Luilu, allowing for the processing of minerals, have residual value which is considerable.

The assets contributed by Kinross Forrest are:

- US$200 million as key money, or goodwill in South African language (but basically is

[6] In comparaison, the value of the reserves attributed to China in 2008, that is, 10 million tons of copper and 200 000 tons of cobalt, was estimated to be more than 9 billion dollars.

defined as payment made by a potential tenant in an attempt to secure a desired tenancy).

- Loans that will allow for the finance of investments to re-launch the production. According to the agreement, these loans will be entirely reimbursed by the joint venture.
- The expertise to conduct mining operations.

Given the assets that each of the partners bring in, it is difficult to understand the 25% shares agreed to by Gécamines: it should have been 50%, at least. At the end of the day, this will result in Gécamines only being able to receive 25% of the dividends or benefits of the joint venture.

The process of reviewing the mining contracts, led by the Congolese government from 2007 to 2009, yielded little change. The contracts of the Katanga Mining Limited (that is, of the Kamoto Copper Company (KCC) and the DRC Copper and Cobalt Project) were part of the contracts reviewed and evaluated by the board of enquiry and were found to be non-viable and non-acceptable in their present state.[7] However, these discussions between the government and the private corporations, party to the renegotiation of the contract, too did not lead to any change. Today, the distribution of the dividends between Gécamines and KML is still of 25% and 75%.[8] This means that the subsidiary of Glencore has the right to exploit one of the richest subsoils in the planet without having to give back a substantial part of the benefits to the Congolese state.

To put this into context, it is important to point out a recent contract between the People's Republic of China and the DRC, which sparked a lot of anger in Europe. The contract establishes conditions that are a lot more favourable to the DRC. Firstly, the Chinese part takes 68% of the dividends, leaving 32% of them to the Congolese counterpart: thus China clearly takes less than Western investors in other contracts. Secondly, in exchange for the access to the reserves (worth 10 million tons of copper and 200 000 tons of cobalt), China committed to undertake important infrastructure development projects, such as: 3 000 km of roads, as many railroads, 31 hospitals with 150 beds each, 145 health centres, and even universities! The infrastructural projects are said to be worth US$6.5 billion.[9] With Glencore's investments, the conditions are not at all close to the above. The subsidiary of the Swiss corporation uses the limited electricity of the country and the precarious routes of the Katanga province and pollutes the air of the region, without any compensation or any real contribution to the development of the region.

A mining sector that does not benefit people

Katanga Mining Limited is not the only foreign company in the DRC that acquired licenses that have been shrouded in controversy. The mining areas and plants currently exploited by KML account for more than 50% of the assets of Gécamines.

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7 See “ Révision des contrats miniers and RDC. Rapports sur 12 contrats miniers”, CEPAS, novembre 2007. Also see the speech of the legal adviser on mines Valery Mukasa in “Rapport de l'atelier sur l'évaluation du processus de revisitation et de renégociation des contrats miniers tenus au CEPAS, le 14 décembre 2009 ”, pp.4-7.

8 The negotiations between the government and the private actors on the contracts of KCC and DCP have not been made accessible to the public, despite repeated demands from the Congolese civil society. The reports of Katanga Mining Limited, however, shed some light on the overall conclusions: (a) the distribution of the dividends is still of 25% and 75%, (b) KML will have to pay extra hey money, that is, 104 million dollars to Gécamines, and (c) the royalties paid for using industrial commodities as well as for the exhaustion of reserves will increase from 1.5% to 2.5%. See “A Technical Report on the Material Assets of Katanga Mining Limited Katanga Province, DRC”, Tim Henderson, 31 March 2010, pp. 4-13.

9 The contract signed with China also raises a few questions, in particular when it comes to tax exemptions, yet still the overall conditions are way superior to those contained in contracts signed with Western companies. Especially given the fact that Western corporations base their headquarters in tax havens in order to avoid paying taxes in DRC: see “DRC: les contrats chinois en 7 questions”, by Congotribune, 24 May 2008. Or “RD Congo le contrat minier chinois divise”, by Hanse Guye, Les Afriques, or even “Le contrat du siècle”, Christian Colomba, Monde Diplomatique, February 2011.

Historically, it is important to note that Gécamines, under state hands, was amongst the world's top five largest producers of copper and cobalt. During the 1970s and 1980s, the company's turnover represented up to 70% of the Congolese budget and guaranteed approximately 33 000 jobs in Katanga. The company's dynamism to the provincial economy represented then a real plus value for the inhabitants of the region of Kolwezi. Gécamines employed large sections of the local population, built up roads, supplied the water and electricity provisions, contributed to the maintenance of schools and hospitals, and even put in place centres for the provision of food in the neighbouring regions. The hospitals or health centres of Gécamines were not exclusive for the company workers, but welcomed patients from neighbouring communities. The general hospital Jason Sendwe, for example, received annually up to a million patients who were not linked to Gécamines.[10] That is how, until the beginning of the 1990s, the region of Kolwezi represented “an island of development” as reflecting the country's highest rates of schooling, access to water as well as electricity.

Currently, the situation has completely changed: towns in the Katanga province are in a disastrous condition. The town of Kolwezi lacks basic infrastructure including drinking water, and access to food. The majority of the 500 000 inhabitants have no access to electricity and resort to charcoal for heating purposes, leading to serious problems of pollution and destruction of the neighbouring forests. Whilst the roads to the mines are always well-maintained, those in towns cry out for urgent rehabilitation. They are full of potholes, causing severe havoc particularly when it rains. The health situation in Kolwezi is also a cause for pain: there is only one doctor for every 100 000 inhabitants, which is one of the lowest rates in the African continent.[11] Finally, the social indicators have also dramatically dropped: the school enrolment rate now stands at 46%, which is 10% under the national average (56%).

In this precarious context, Katanga Mining Limited manages certain social programmes, but they are mostly anecdotal, and difficult to verify. What is clear, however, is that there is no global vision, nor a significant contribution to the development of the region. Health-wise, for instance, Katanga Copper has opened a health centre on the outskirts but, as it appears, only the company's workers have access to it. The quality of it is also not up to scratch, as field researchers confirm that, “even the workers of Katanga Copper would rather go for treatment to public hospitals, as they are not happy with the services offered at the company's health centre.”[12]

3.2 Human rights: repeated abuse

In economic terms, the activities of Glencore's subsidiary in Katanga are based on contracts that constitute a form of looting of the region's resources. And what about the social policies of KML? Do they benefit the population and respect the rights of the workers of Kolwezi? The field researchers sent by the Bench Marks Foundation, Bread for All and Action de Careme, found Glencore’s subsidiary to be little concerned with its social and environmental responsibility. They further found problems in three areas: violation of human rights and child labour in the artisanal mines from which KML buys its minerals; labour rights abuses in the KCC mines owned by KML; and environmental damage done to communities neighbouring the mines.

[10] Press conference by Jean-Pierre Mutemba, in “Révision des contrats miniers en RDC. Rapports sur 12 contrats miniers”, CEPAS, November 2007, p. 128.

[11] “Corporate Social Responsibility and the Supply Chain in the Copper – Cobalt Mining Industry in Katanga : Glencore, Kolwezi”, Freek Cronje, Jean-Didier Losambo Nzinga adn David van Dick on the behalf of the Bench Marks Foundation, Bread for All and the Swiss Catholic Lenten Fund, December 2010, p. 50.

[12] Idem, p. 50.

KML, Glencore and the artisanal sector

In Katanga, there are approximately 150 000 artisanal miners, of which 30 000 live in the region of Kolwezi. Considering that one miner feeds approximately five persons, the number of inhabitants that depend on artisanal mining extraction in Kolwezi is estimated to be approximately 750 000 people.

The mining code adopted back in 2002[13] grants the right to work in an artisanal mine to any Congolese citizen that applies for it. Following the waves of retrenchments that affected Gécamines between 2002 and 2005, a large number of miners of Gécamines turned to artisanal mining to earn a living. In the main, the government is mandated to identify and define specific zones for the exploitation by artisanal miners. Each miner should be registered and obtain an identity card. On the practical side, however, artisanal exploitation is a bit restricted. The technical services lack the means for law enforcement, the buyers and the middlemen trade illegally, and artisanal miners are not aware of their rights. As a result, almost the majority of artisanal exploitation takes place outside of the law.[14] In addition, the living and labour conditions of artisanal miners in Katanga are extremely poor and sub-standard.

Glencore's subsidiary has bought a large quantity of minerals from the artisanal subsidiaries, according to several witnesses whom field research spoke to.[15] These minerals are an extremely good business for big corporations. Glencore's subsidiary does not get the copper and cobalt directly from the miners but rather they work with *negociants*, which act as intermediaries between the artisanal miners and some of the trading houses. The *negociants* are located in town, and in this case, in Kolwezi, where their service is in great demand. Certain companies even go so as far as offering loans to *negociants* to help them establish their "businesses". They, in return, are expected to deliver their minerals to their creditors, i.e. the companies which gave them their loans, at prices lower than real market rates. Various different sources, including the Bench Marks Foundation researchers, who interviewed the *negociants* in Kolwezi,[16] alleged that KML supply chains are:

- ☐ The *negociants*' trading houses, which are mostly Lebanese and Pakistani owned. They buy minerals extracted from the Quarry Basin of Luili and the concessions of Tilwezembe, 30km away from Kolwezi. Both concessions belong to Katanga Mining Limited.
- ☐ Two trading houses, Bazanu and Isamael, who buy minerals from the area of Tilwezembe and another called Mutanda Mining.

These minerals are partly refined in the concentration plants of KML and integrated in KML's official channels for processing and exporting. It is most probable that a part of these artisanal minerals are also exported in a non-concentrated form to Zambia, and that they are not declared, since they are not recorded in the official statistics of production and exportation.

Working conditions in artisanal mines: a dire situation

The working conditions in artisanal mines are disastrous. The miners dig holes and tunnels, mostly with bare hands and with no safety equipment. They have no ladder to go down the mines, which sometimes are 40 metres deep. They go down alongside the rubble, risking injury every time. Inside the tunnels, the miners use flashlights or candles to see. In that semi-darkness, they work the soil to

13 See "Loi no 007/2002 du 11 juillet 2002 portant code minier. Titre IV de l'exploitation artisanale des mines"
14 "Exploitation minière artisanale en RDC", Etude Promine, Pact, June 2010
15 In particular *negociants,* union members and civil society representatives in Kolwezi.
16 The Bench Marks Foundation researchers interviewed *negociants* of Kolwezi, civil society representatives of Kolwezi, as well as people close to the Kamoto Copper Company.

bring minerals to the surface. In the mines, accidents are frequent. Yet miners are often not able to pay their medical bills, as they have no medical aid or social protection of any kind.

In terms of health, artisanal miners further face less visible dangers: according to a study by Pact Congo,[17] most of the areas surrounding Kolwezi present radioactivity levels harmful to human health. In addition, the groundwater and water of surrounding rivers contains heavy metals as well as uranium.

These artisanal mines look like anthills with dozens of miners relentlessly working until dawn. Amongst the miners are children who are small and agile and able to squeeze in certain holes or narrow gullies. They are also employed around the mines, along with the women, to clean the minerals or to carry bags as heavy as 20 kilograms. According to the International Labour Organisation (ILO)[18] 30 000 children are working in the mines in Katanga. These children, because of poverty, are forced to leave school to contribute to the family income. A whole generation is growing up in the violent reality of the sandpits. Beyond the physical consequences that these jobs generally entail – injuries linked to accidents or to the heavy bags they carry – there are social consequences and millions of children have no other future.

Child labour in a copper mine in Katanga
Copyright: Guilda Elmaguado

During field research, the Bench Marks Foundation researchers observed many women and children around the mines of Kamoto, T17 and KOV, mines owned by KML. They also observed women and children by the mines of Tilwenzembe and the Basin of Luilu. According to a woman interviewed, they work 7 hours in the morning and 5 hours in the afternoon, for a salary of 1 000 Congolese francs per day (1 dollar). The women often suffer from kidney failure and ophthalmological problems. They are often witnesses of, as well as victims of sexual harassment.

Laughable wages

The salaries of artisanal miners depend on the prices set by *negociants*, which are often very low.

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17 "Report on Health Problems potentially linked to Exposure to Radio Active Substances in Kolwezi", Pact Congo, 2010.

18 2006 statistics.

The abundance of labourers, the lack of unions and the ignorance of the market make it difficult for the diggers to lead a real negotiation on prices. Diggers can get paid an average of US$3 to US$5 a day for their work. They can get US$30 on their best days. *Negociants* earn better, but they are under the pressure of companies, such as KML, to sell at a cheaper rate. In October 2010, for instance, commercial companies would buy a ton of cobalt for US$1 000, its concentration being of 8%. The profit margins made by big corporations are thus very large.

A road paved with corruption

Corruption is another difficulty artisanal miners face. The majority of artisanal miners have no identity card, their status is thus illegal. And so they are quite vulnerable to the pressure coming from the police and official bodies. The corruption is extremely well organised and present in every phase of the process of extraction. It starts literally at the entering point of each mine, around the check points defining the exploitation areas, and even alongside each road leading to Kolwezi. In total, the bribes demanded by all those intermediaries add to a considerable amount. When the Bench Marks Foundation researchers visited the artisanal mines of the Basin of Luilu, owned by KML, more than 5 000 artisanal miners were working there. And the government was well "represented" in the area: the national agency of enquiries (the secret services), the mines police (the section of the national police responsible for enforcing the law in mines), as well as a private security company, contracted by KCC (thus by KML), are evident controlling the area. Each of these services demanded payments or kickbacks from miners. Apart from the actors present in the area, there are further official bodies demanding their piece of the cake: the Ministry of Mines, the Customs Office, Kolwezi's City Council, the local traditional leaders and even the representatives of EMAC, the Artisanal Miners Association of Katanga (created to defend the miners' interests), etc. For the artisanal miner, the road to the sale of the minerals is thus full of hazards and the salary of the work will be inversely proportional to the number of intermediaries the digger meets before selling.

Miners hunted ruthlessly

Artisanal miners often work on old concessions of Gécamines or on land ceded by private companies. This state of affairs serves everyone: the government, who has no other jobs to offer to miners, and the private companies, who buy the minerals back at a good price. When the companies who own the concessions want to develop an industrial activity, the diggers will then be chased out unceremoniously. This often leads to violence and desperation. The field research led by Bench Marks Foundation reveals that artisanal miners – more than 10 000 – have been chased out of two mines of KML between August 2010 and February 2011, when Kamoto Copper Company (KCC) decided to recover its mining areas. In the summer of 2010, the police had to use force in the concession of Luilu, owned by KCC. They shot live bullets and the clashes ended with several people injured, although some local sources even talk of deaths.[19]

As they buy back the minerals of artisanal miners, without trying to improve the situation in the concessions, KML and Glencore not only support extremely precarious situations but also favour child labour. As they accept the use of live bullets by the police on the miners in order to chase them away from the concessions, these two companies play a role in acute human rights violations.

[19] Evidence gathered by the Bench Marks Foundation researchers, substantiated by the article: "Kolwezi : violents combats entre policiers et creuseurs miniers artisanaux", radio Okapi, 22 June 2010.

3.3 Labour rights in KML mines

The precariousness of unions

Labour rights including the right to strike do not sit well in the DRC, although the constitution guarantees workers the right to organise themselves and to join a union. In reality, these rights are often not respected. As a result, of the 24 million adults of working age, just 128 000 belong to a union.[20] Union members face two main problems: outright repression and also the existence of "phantom unions". According to the International Trade Union Confederation (ITUC-CSI), "the private sector is dominated by phantom unions, created by the employers using inactive members, in other to prevent any attempt of real organising."[21] Genuine union members often face repression, with arbitrary arrests, even torture.[22] Newspapers also write regularly of brawls and strikes that are broken up by the police. In some plants, they do not even hesitate to call the police, renown for their repressive methods to stop protests in the mines or plants. In other cases, intimidation, and even violence, is used to repress workers by the private security services contracted by the mining companies.

Previous to Kamoto Copper Company and DRC Copper and Cobalt receiving the concessions, a union existed in Gécamines. It opposed the contracts, especially taking issue with a clause stating that the new joint venture societies were not obliged to inherit the debts and delayed salaries Gécamines owed to the workers.[23] Currently unions are hardly present in the mines of Katanga Mining Limited. According to a union representative of Kolwezi, the relation between the unions and Kamoto Copper Company (KCC) has become strained. It is thus difficult for workers to defend their rights. It is even rendered harder, according to a former human resources employee, by the close relationship that the company maintains with the local elites. According to several witnesses, "the mining code, whose main purpose is to guarantee the respect to certain norms, is not executed. Issues such as closure plans of some mines, human rights or the development of human resources are not discussed but completely ignored."

Work contracts

In the mines of Kamoto Copper Company (KCC), owned by Katanga Mining Limited, 30% of the workers are sub-contractors. This number increases to 40% when it comes to the underground mine of Kamoto. The high percentage of sub-contracting workers increases the insecurity of working in the mines and is worsened by dangerous mine accidents. In fact, the workers have little knowledge when it comes to the constraints of their job and to what health and safety norms to follow.

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20 "2009 Country report on Human Rights Practices – Democratic Republic of Congo", UNHCR, March 2010, section 7, point a.

21 "Internationally recognised core labour standards in the Democratic Republic of Congo. Report for the WTO General Council Review of the Trade Policies of Democrtic Republic of Congo", International Trade Union Confederation, November 2010

22 See in this regard the account given by ITUC: "On 19 January 2009, the president of the CCT, Nginamau Malaba, and two other trade union leaders were arrested by agents of the National Intelligence Agency after signing a memorandum denouncing the misappropriation of public funds by the Ministry of the National Economy and Trade. The three unionists were held captives for a month and tortured. They were released on 23 March for 150 dollars bail each but the magistrate refused to examine the unionists' complaint on torture" in "Internationally recognised core labour standards in the Democratic Republic of Congo. Report for the WTO General Council Review of the Trade Policies of Democrtic Republic of Congo", International Trade Union Confederation, November 2010

23 "Internationally recognised core labour standards in the Democratic Republic of Congo. Report for the WTO General Council Review of the Trade Policies of Democrtic Republic of Congo", International Trade Union Confederation, November 2010.

Health and safety in KML mines

According to the president of the trade union in the Kolwezi mines, the mines of Katanga Mining Limited would be amongst the most dangerous exploitations of Africa's copper belt. This has resulted in most miners trying to avoid working for this company. In particular, the underground mine of Kamoto stands out, due to the high risks of floods and falling rocks. These accusations are confirmed by the statistics of KML who report that between 2009 and 2010, in the space of eleven months, 3 fatalities were reported in the mines of KML. In February of 2009, in the mine of Kamoto, one worker was killed by a falling rock. In March, in an open pit mine, a mineworker was killed by a mudslide. In January of 2010, a temporary worker died while working in a furnace of the minerals processing plant. The company reports do not include the number of non fatal accidents that take place in its mines and plants, which are several every month according to the union representatives.

Despite the risks incurred by workers, KML does not undertake many safety measures. The Bench Marks Foundation researchers, who managed to anonymously access the mine in Kamoto, noted that there are no prevention signs in the area. Hence, there are no warnings about the dangers incurred by workers and very little information about measures of precaution to observe in order to limit the risk of accidents.

The researchers also noted that workers did not receive appropriate protective clothing. In the mines of Kolwezi, the levels of uranium radiation are extremely high. But workers are not informed about the danger nor do they receive tools to measure the radiation levels in the underground mines of Kamoto. They do not have access to protective clothing to neutralise the effects of radiation. Yet exposure to the radiation of uranium may carry serious health problems, from a simple skin irritation to serious burns, also kidney and fertility problems.[24]

Surrounding communities

When it comes to the impact of mining in local communities, KML has yet to implement a credible dialogue with the communities located close to the mines. The field researchers met several community members who complained about damages caused to their environment.

Abandoned villages

The village of Musonoi, located on the outskirts of Kolwezi, is home to over 2 000 inhabitants. Successive mining areas surround the village. It is next to the mine T-17, owned by Kamoto Copper Company (KCC) and, thus, by Katanga Mining Limited. The village of Musonoi was created at the end of the 1930s. Since the 1960s, many workers of Gécamines established their homes there. Nowadays, life in Musonoi is precarious: the unemployment rates have increased dramatically and the infrastructures are no longer looked after. After the collapse of Gécamines, the majority of former workers did not find jobs in KCC, having to resort to artisanal mining.

[24] Regarding companies and uranium, see: "Africa offers Easy Uranium", Julio Godoy, IPS, 26 December 2010


The town of Musonoi with the mine T-17 in the background
Copyright: Bench Marks Foundation

During the field research of the Bench Marks Foundation, the chief and a group of villagers denounced the negative impact in their homes of the mine T-17. Numerous houses show cracks and some roofs are collapsing due to blasting of the mine. Coughing is also common place due to the dust coming from the mine as the air often carries many particles. At certain points in the village there are piped water outlets where inhabitants fetch water. The quality of the water is questionable, especially with the tailings dam in the immediate vicinity. A nurse at Musonoi's clinic informed the research team that respiratory problems and diarrhoea are most prevalent in the village. According to her, these diseases could be linked to the mining activities.


House in Musonoi. The cracks due to blasting of the mine T-17 are clear.
Copyright: Bench Marks Foundation

In May 2010, with the assistance of an NGO in Kolwezi, the residents of Musonoi wrote a letter to Kamoto Copper Company complaining about the damages caused by the neighbouring mining activity. Glencore never responded to the letter.

The scourge of polluted water

In the village of Musonoi, and more generally in the whole of the mining region, the pollution of the water carries dangerous consequences for the health of the population. During their visit to the mining areas of KCC, the researchers noted the disastrous state of the water drainage pipes. As a result, there are frequent leaks, and the polluted water coming from the mine ends up spreading to the groundwater and to the surrounding fields. The piping of water that forms flooded pits is also highly problematic as it would seem as if the water is simply discharged into the river system. Water in flooded pits, having stood still for months, or even years, in inactive mines, could be contaminated with toxic substances, particularly uranium, sulphur, residues of blasting and diesel. According to local sources, the rivers of Musonoi and of Luilu are dangerously polluted. Tailings waste from the mines flow freely. Rock falls are frequent, whereby remnants of soil and waste, which may contain high levels of heavy metals, land in the nearby villages, fields and rivers.

According to the Congolese mining code, Katanga Mining Limited must assess the social and environmental impact of its activities regularly.[25] The company claims to have commissioned such assessment back in 2008.[26] Yet the efforts of a civil society worker in Kolwezi to get hold of a copy of the study proved to be in vain as she never managed to gain access to the documents. The lack of transparency makes it tough for civil society actors to undertake follow up as well as control activities.

The situation in the DRC is complicated: companies are required to submit environmental and social impact plans and assessments to the national authorities in Kinshasa. According to the Minister of Mines of the province of Katanga and of the division of Kolwezi, whom the researchers met in October 2010, the national Ministry of Mines never gives a copy of such assessments to local governments. Nor has the national Minister of Mines ever visited the mines of Kolwezi to verify that the companies implement their social responsibility programmes.

3.4 Katanga Mining Limited and Glencore: companies carefully avoiding paying tax

Tax evasion: how does it work?

According to Tax Justice Network (of which Action de Careme and Bread for All are members), almost two thirds of the trade transactions take place amongst the different subsidiaries of the same company.[27] Through these internal trade transactions, the companies manage to move their profits to tax havens, where they will not be taxed. That means that, for example,[28] a ton of copper produced in Africa is sold by an African subsidiary of the company to the subsidiary of the same company based in Bermuda, who will then sell that ton of copper in the international market to a client in China. In order to push down the profits of the African subsidiary, the copper is first sold to the subsidiary in Bermuda for a “transfer price”, lower than the real market price. The African subsidiary will then record a considerably low profit and thus will pay almost no taxes. The subsidiary in Bermuda has not paid much for the copper but will sell it at market prices... thus making a considerable profit... which will not be taxed! The OECD guidelines establishes that “transfer prices” calculated by companies should correspond to market prices. But such guidelines are not compulsory but voluntary and thus have not been enforced.

Consequences of tax evasion

Tax evasion by big multinational corporations prevents developing countries from receiving much needed revenues which could be used for meeting its developmental challenges. According to

[25] See “Loi N0 007/2002 du 11 juillet portant code minier”, first Title, first chapter, point 19 (page 30).
[26] See “A Technical Report on the Material Assets of Katanga Mining Limited Katanga Province, DRC”, Tim Henderson, 31 March 2010, p.52.
[27] http://www.taxjustice.net/cms/front_content.php?idcat=144
[28] For other examples, see Bread for All/Action de Careme, “Le commerce des matières premières apporte richesse à quelques-uns et misère à beaucoup”, Repères 02/2010.

Christian Aid, a UK-based Non Governmental Organisation, developing countries lose close to US$160 billion per year due to tax evasion![29] This amount is far larger than the development aid of US$120 billion, by the OECD countries in 2009.[30]

Mining revenues in the DRC

During the past decades, the revenues from the mining sector in the DRC have decreased. While the mining sector represented 70% of the revenues of the government of the Province of Katanga in the 1980s, and 30% in 2002, the percentage fell to 7% in 2006.[31] This is so despite the production of minerals having increased over the last few years. The reasons can be found at the door of both the Government and the corporations. Corruption and lack of coordination amongst the different state services responsible for the collection of taxes make it difficult for the collection of all due taxes to the Congolese government.[32] On the other hand, the corporations use many tricks, aimed at avoiding the payment of taxes: falsified documents, illegally exported minerals and underestimated calculations of the quantity and quality of the minerals.

Companies in the mining industry also take advantage of the confusion and proliferation of different laws and regulations to avoid the payment of taxes. A Senate report published in 2007 accused mining companies of "unduly profiting from the advantages of the Mining Code to the detriment of the State Treasury".[33] According to the report, the Congolese Treasury Department failed to collect US$92 million from a total amount due of US$205 million.[34] Thus, the DRC lost 55% of the tax money due to it.

However, according to the World Bank, the revenues of the mining sector could, if collected, represent between the 20% and the 40% of the public budget[35] (that is, between US$200 million and US$400 million). The potential revenues for the State are thus significant.

The Glencore "system"

Glencore has a long history of controversial relations with the tax man in other countries as well. The US Justice wanted Marc Rich, the founder of Glencore, back in 1983, accused of evading taxes to the value of more than US$48 million (see Section 2.1). Glencore has its social base in Baar, a Swiss canton of Zug, which is known for its low tax rates. Furthermore, Glencore owns several subsidiaries in tax havens, such as Glencore Finance (Bermuda), Glencore Limited in Bermuda or Carlisa Investments in the British Virgin Islands. Through them, the corporation enjoys a great freedom of movement, in search of profits and tax optimisation.

In February 2011, the "Glencore system" was under the spotlight in Zambia. Its subsidiary there, Mopani Copper Mine (MCM), which is an important producer of copper and cobalt, was suspected

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29 Christian Aid, "Death and Taxes: the true toll of tax dodging", May 2008. Access under: http://www.christianaid.org.uk/images/deathandtaxes.pdf

30 http://www.alliancesud.ch/de/ep/eza/quantitaet/entwicklungshilfe-schweiz-2009

31 "RDC : Banque mondiale et multinationales ont organisé le super-pillage des matières premières", Tony Busselen, CongoTimes, 5 April 2008

32 "Can Katanga's mining sector drive growth and development in the DRC?", Garrett, Nicholas, Lintzer, Marie, Journal of East African Studies, October 2010. Accessed under: http://www.informaworld.com/smpp/content~content=a928458486~db=all~jumptype=rss

33 http://www.lepotentiel.com/afficher_article.php?id_edition=&id_article=86716

34 "Sénat de la République Démocratique du Congo, Rapport de la Commission d'Enquête sur le Secteur Minier (Rapport Mutamba) ", September 2009. http://storage.canalblog.com/09/31/201811/45329150.pdf

35 "Can Katanga's mining sector drive growth and development in the DRC?" Garrett, Nicholas, Lintzer, Marie, Journal of East African Studies, October 2010. Accessed under: http://www.informaworld.com/smpp/content~content=a928458486~db=all~jumptype=rss

of being guilty of possible tax evasion at a large scale. The Zambian tax man realised that MCM was paying much too low taxes and subsequently mandated an audit report be done by a tax specialist on Mopani's activities between 2006 and 2008.[36] While the report was done, Glencore's subsidiary did everything possible to stop or make the task of the auditors more difficult. The conclusions of the report are very enlightening as they found:

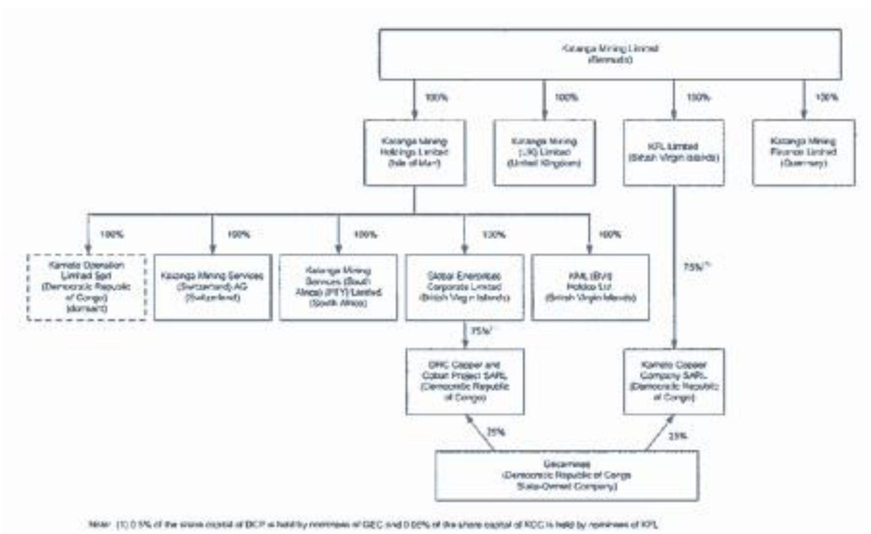
- Inflated operational costs
- Irregularities in the declared volumes of production by MCM
- Under-pricing of copper and cobalt when selling to Glencore
- Price arbitration used by MCM is abnormal and seems to purposely move out the profits from the country.

Through inflated operational costs, undeclared production and under-priced exports, MCM would be seeking to decrease their profits in the country and avoid paying taxes to the Zambian Treasury. An observer of the mining sector, quoted by Reuters,[37] declared that “it is common knowledge that Glencore never leaves crumbs on the table.”

The taxes and royalties of KML

KML's organisational chart is extremely interesting. It shows that Katanga Mining Limited (KML), same as Glencore, manages a network of subsidiaries in three tax havens:[38] Bermuda, Virgin Islands and Isle of Mann. With these subsidiaries, KML can make use and abuse of transfer prices and lower the taxes due to the DRC. The chart also mentions one subsidiary in Baar, in the Swiss canton of Zug. According to the Swiss companies register, Katanga Mining Services AG is a service provider in the mining industry as well as trade.[39] The director of KML Services in Zug, Nicholas Brodie, is also responsible for the finances of the parent company, Katanga Mining Limited, based in Bermuda.[40] This structure would mean that the company based in Zug is “producing” bills or service fees, in order to lower the profits of KML in DRC.

Structure of Katanga Mining Limited[41]



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36 “Counter Balance, Summary or the Pilot audit report – Mopani Copper Mine”, February 2011.
37 http://news.yahoo.com/s/nm/20110225/ts_nm/us_glencore_1
38 “Counter Balance, Summary or the Pilot audit report – Mopani Copper Mine”, February 2011.
39 See “ Katanga Mining Services” at www.moneyhouse.ch
40 See www.katangamining.com, about us, senior management.
41 “Katanga Mining Limited, Annual Information Form 2009”, p. 4.

Katanga Mining Limited (KML) is about to become the largest producer of copper in the DRC, but it will just pay minimal taxes (only US$1 million) between 2010 and 2013.[42] In contrast, other competitors of similar size have paid higher taxes in the last years: First Quantum Minerals (FQM) paid US$57 million in taxes in 2009,[43] and Tenke Fungurume Mining (TFM) claims to have paid more than US$180 million in taxes between 2006 and 2009.[44]

KML paid royalties to Gécamines, but they were negotiated to a very low level. KML pays 2% of the net revenues during the first four years. The percentage then decreases to 1.5%. The net revenues are calculated as follows: the total of the sales minus the transport costs, the quality control, the insurance as well as the marketing. Thanks to such deductions, the concept of "net revenues" may be a bit manipulated to the company's advantage.

Hence, it seems that the "Glencore system" applied in Zambia by Mopani is quite close to that applied in the DRC by Katanga Mining Limited. That should not come as a surprise, if one realises that that two members of the executive board of KML, appointed by Glencore, are also members of the executive board of the Mopani mines in Zambia. In fact, one of them, Aristotelis Mistakidis, is the president of Glencore! In addition, before being appointed the executive director of KML, John Ross was project manager at the Mopani mines (see Section 2.3). Following the example of Mopani, KML sells its whole production to Glencore.

KML and Glencore have highly profitable companies thanks to the rich subsoil of the DRC. Yet these profits are not shared equitably: the local population is not profiting from this.

Glencore's headquarters in Baar, in the canton of Zug

42 "KML Technical Report", March 2010, p. 57.
43 "Can Katanga's mining sector drive growth and development in the DRC?", Garrett, Nicholas, Lintzer, Marie, Journal of East African Studies, October 2010.
44 http://www.fcx.com/operations/downloads/TFM_CONTRACT_FACTS.pdf

4. Social and environmental responsibility: a comparative analysis of Glencore International AG and of Katanga Mining Limited

4.1 Human rights in the DRC

Human rights in the DRC are at high risk. In several reports, the UN, as well as NGOs and trade unions have documented human rights violations, workers rights and environmental norms abuse, by armed groups, governmental authorities and private companies. These reports also record the existing collusion within the elite networks and the pressure that potential whistleblowers experience. Human rights activists often go through arbitrary arrests, torture and receive frequent death threats. On 2 February, 2011, the Observatory for the Protection of Human Rights Defenders (OBS) published a public statement on the death threats received by Jean-Claude Katende and Georges Kapiamba, the national president and vice-president of the African Association for the Defence of Human Rights (ASADHO). The death threats followed their participation in a press conference to denounce the regime's intolerance to its political opponents.[45] This was not the first time that publicly denouncing the regime had led to death threats. Back in May 2006, Jean-Claude Katende and Jean-Pierre Muteba, secretary general of the trade union Nouvelle Dynamique Syndicale (NDS), were threatened when speaking out against corruption, child labour, environment abuses and the violation of international law on social responsibility by mining corporations.[46]

The field researchers of the Bench Marks Foundation recorded several abuses of human rights, workers rights and environmental norms. In this complex context, what were the responses from Glencore and Katanga Mining Limited? Did they put in place precautionary measures to stop such violations? Did they have a credible social responsibility policy? In this last chapter, Bread for All and Action de Careme have attempted to answer these questions.

4.2 Glencore and KML: CSR policies lack credibility

The analysis of Glencore International SA and of Katanga Mining Limited has been based on the following criteria: transparency, human rights, worker rights, relations with the community, business ethics and respect for the environment. These criteria are inspired by the Global Reporting Initiative (GRI), a multiparty initiative whose objective is to provide companies with guidelines when reporting their activities from a social and environmental point of view. The policies of Glencore and KML are also compared with other companies of similar size in the mining sector.

In the mining sector, several companies are showing some degree of social responsibility in their willingness to be more transparent and committed to dialogue. On the ground and in their extracting chains, these companies often meet with problems; they can be denounced for their human rights abuses or environmental violations. Yet, on paper, they have in place policies and systems of social responsibility and present themselves as open to dialogue.

Transparency

Best practices – The most transparent companies in the mining sector publish very detailed reports on sustainable development, which cover all the social and environmental aspects of their performance. These reports provide information on their policies and management systems; they include quantitative indicators to measure the company's progress, for instance, in professional

[45] "Appel urgent de l'observatoire pour la protection des droits de l'homme, Menaces de mort en RDC", 2 February 2011

[46] "Menaces de mort contre des activistes qui ont dénoncé des abus dans le secteur des ressources naturelles en RDC", media release by the network *Publish What You Pay*, 5 May 2006.

accidents. Most of these reports follow the recommendations of the Global Reporting Initiative. Some reports are made by independent auditors, thus increasing the viability or integrity of the information as well as the credibility. The example of Freeport – McMoRan is interesting. This company publishes an annual report of approximately 50 pages, along with a second report based on the indicators proposed by the Global Reporting Initiative.[47] The BG Group even keeps a website presenting all detailed statistics classified into different subjects.[48]

Glencore and KML – are amongst the least transparent companies in their sector. Glencore publishes only three pages of general principles under the headline "sustainability". The company provides no statistics, no indicators, nor any concrete description of their activities. KML publishes 10 pages of general information on their social and environmental policies and programmes. No wonder the precise statistics, information about implementation measures and results achieved are lacking.

Human rights

Best practices – Companies are compelled to respect the principle of human rights included under national law. The best companies also refer to international law, that is, the Universal Declaration of Human Rights, the Conventions of the International Labour Organisation, etc. Prior to investing in a country, these companies undertake various impact studies, adopt clear human rights policies and regularly control the implementation of such policies.

The companies commit to make their areas secure while avoiding human rights violations yet they often use police and private security forces to do their dirty work for them. The violation of human rights takes place despite their commitment to control the private security forces they contract, and the signing of a Memorandum of Understanding with public security forces. These companies are part of the initiative Voluntary Principles on Security and Human Rights (PVSDR), launched in 2000 and specifically targeting companies in the mining sector.

Glencore and KML – Glencore claims to uphold the Universal Declaration of Human Rights, but it does not mention any other international law. And it is not part of the Voluntary Principles on Security and Human Rights.

In 2008, KML gave a mandate to an independent firm to undertake an impact study on its activities in social and environmental terms. From the beginning, the firm wanted to use international standards (IFC performance standards and Equator Principles) for that purpose, yet it had to lower such ambitions. At the end of the day, the evaluation mainly sought to guarantee the DRC legislation.[49] The results of the study are not public. KML claims to adhere to the Voluntary Principles on Security and Human Rights, but the company is not listed amongst the members of the initiative and gives no precise information on any implementation measures undertaken! This lack of engagement contrasts with the activities of Freeport-McMoRan, for instance, an American society working in the DRC with Tenke Fungurume Mining, one of the main competitors of Katanga Mining Limited.[50] In 2009, Freeport-McMoRan, a member of the Voluntary Principles on Security and Human Rights, organised 1 300 hours of training for private security forces involved in its operations in Katanga. The company also asked the governmental police forces to sign a Memorandum of Understanding to make sure they respect a code of conduct when operating in the company's areas.

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47 See www.fcx.com/envir/sus_reports.htm

48 See www.bg-group.com/sustainability

49 "A Technical Report on the Material Assets of Katanga Mining Limited Katanga Province, DRC", Tim Henderson, 31 March 2010, p.52.

50 See "Working Towards Sustainable Development, Report 2009", Freeport-McMoran, page 17.

Police actions to break a strike at the Katanga plant
Copyright: Thierry Michel

Labour rights

Best practices – All companies are expected to respect the ILO's basic rights in particular the right of freedom of association and the right to bargain collectively, two of the fundamental labour rights. The most pro-active companies sign collective labour agreements with trade unions or staff associations or committees. These agreements offer working conditions above the average within the field, be it for salaries, working hours or social benefit payments. The mining sector is known as a dangerous sector for its employees – there are many accidents, even deadly ones. The best companies have management systems in place to reduce the impact of their activities on the health and safety of their employees. These companies also produce low statistics when it comes to accidents and deaths.

Glencore and KML – Glencore does not refer to the Conventions of the International Labour Organisation and does not claim to dialogue with staff representatives. It does claim to have management systems as well as health and safety programmes "fit to international standards", but provides no detail about such policies and programmes.

KML does not refer to the Conventions of the International Labour Organisation nor does it claim to dialogue with staff representatives. Yet it has developed a detailed policy on health and safety. Also its management systems adhere to an internationally recognised norm (OSHAS 18001). There are teams in every area tasked with the implementation and control of the health and safety performance. But the company provides no indication on the frequency or seriousness of accidents. It is thus impossible to ascertain the reliability of the implementation of all these programmes. This lack of transparency contrasts with the statistics provided, for instance, by First Quantum. Their statistics include the number of deaths as well as the number of accidents in each of the mines the company has worldwide.[51]

Community relations

Best practices – The most advanced companies in this aspect put in place programmes of voluntary

[51] See "Corporate Sustainability report 2010", First Quantum Minerals LTD.

dialogue with the stakeholders and redistribute part of their profits to the neighbouring communities. They publish reports that record the donations made to the communities as well as the taxes they pay to the governments of the countries where they are active. They cooperate with the Initiative for the Transparency of Extractive Industries (ITIE), which promotes the publication of the money that companies in the mining sector pay to governments.

Glencore and KML – Glencore claims that its presence has a positive impact on the local communities and that it promotes real dialogue with them. The company says it has put in place a mechanism to collect the complaints of these communities. But again they provide no details about the functioning of such mechanisms, the number of complaints they receive, nor the way the latter are treated. Glencore is not a member of the Initiative for the Transparency in Extractive Industries (ITIE).

KML does not mention any systematic dialogue policy with the communities affected by its activities. KML mainly provides information about donations to, for instance, one hospital and one school. It claims to have donated US$20 million. KML is part of the Initiative for the Transparency of Extractive Industries (ITIE). Yet on their website, the company fails to provide any information about the amounts paid to the government. This lack of precision contrasts with the information provided, for instance, by Freeport-McMoRan in its annual report on social responsibility: the society details the taxes on its revenues, the taxes on its salaries, the dividends or even the royalties to the government of each country.[52]

Business ethics and corruption

Best practices – The most proactive companies in the sector design policies to fight corruption: they appoint people internally in charge of their implementation. They suggest trainings and "hotlines" to managers in order to make it easy for employees to receive advice and to report corruption. Some companies publish the number of corrupt activities unveiled and the measures taken to fight them (for example, sanctions or dismissals).

Glencore and KML – Glencore and KML do not give out much on such information and content themselves with declarations of intention such as "we do not pay kickbacks", "we abide by the law", or "we do not take part in criminal, fraudulent or corrupt activities". Glencore claims to prevent problems through its procedures and internal policies, without giving further detail. KML provides no information on its procedures!

Respect for the environment

Best practices – Given its pollutant emissions (affecting air, water and ground), the mining sector carries huge environmental impacts. The most proactive companies have completed and perform management systems which allow them to limit the environmental impact of their activities. They set themselves ambitious goals to reduce their impact and actually reach them. They can prove with quantitative indicators that their environmental impacts per ton of minerals extracted have been reduced to the minimum. In this aspect, some companies subscribe to initiatives such as ISO 14001. This is the case, for instance, of BG Group, which provides on its website detailed statistics on the number of oil or water leaks recorded in the pipes of its exploitations.[53]

Glencore and KML – Glencore admits that its activities have an environmental impact and it claims to have management systems and programmes to reduce its environmental impact "fit to the

[52] See "Working Towards Sustainable Development, Report 2009", Freeport-McMoran, page 19.
[53] See www.bg-group.com/sustainability/environment/Pages/environment_performance.aspx

best international practices.” Again this is unsubstantiated. KML undertook a study of its environmental impact in 2008, through an independent auditing house. It also claims to set itself goals, but such goals are never published.

None of these two companies publish any data on the impact of their activities on the air, the water or the ground, nor on their residues. It is thus impossible to evaluate their environmental performance. Yet their activities do have a huge environmental impact. For instance, Glencore indirectly emits huge quantities of CO_2 (because of the burning of charcoal that it sells to customers) – the indirect emissions are three times the total of CO_2 emissions in Switzerland.[54]

[54] The burning of charcoal produced annually by Glencore emits the equivalent to more than 150 million tons of CO2. Estimations by Bread for All and *Action de Carême*, based on the amounts of the productions of charcoal of Glencore and of its shares.

5. Conclusion

There are several initiatives, multi-actor or not, that can help mining companies to implement their policies on risk prevention when it comes to human rights, environment and corruption. These include the Voluntary Principles on Security and Human Rights (PVSDH), the Initiative for the Transparency of Extractive Industries (ITIE) and even the International Council on Mining and Metals (ICMM). Other non-sectoral activities also support the implementation of management and evaluation systems, with precise indicators: ISO 140001, SA 8000, OHSAS 18001 or even the Global Reporting Initiative (GRI). Yet Glencore is not part to any of these initiatives.

On its website, the Swiss company claims that its activities are guided by the Glencore Corporate Practice, in particular: "The respect to law, human rights, health and safety in the workplace for employees, protection of the environment as well as the satisfaction and well being of all their business partners, and of the neighbouring communities." Yet these words are not followed by the appropriate actions: the field research led by Bread for All, Action de Careme and Bench Marks Foundation, reveals that labour rights as well as the best interest of the population, in general, and the surrounding communities are constantly overridden wherever Glencore invests in DRC.

Despite the beautiful words, Glencore has yet to put in place a credible policy of social responsibility. Furthermore, and despite its massive profits, and the strategic place it holds in the global market, and its investments in countries where human rights are at high risk: Glencore gets a 0 in terms of social responsibility!

As the Swiss corporation plans to become listed in the stock market, it's high time for its company culture to evolve towards greater transparency. It would also be about time for the Swiss government to take some measures to force companies such as Glencore to put in place credible measures of risk-prevention regarding human rights and the environment. Otherwise, these companies will continue forever to violate, with impunity, the fundamental rights of millions of people in the DRC, in Zambia and elsewhere.