Contracts, human rights and taxation: How a company exploits a country. The case of Glencore in the Democratic Republic of Congo.[1]

Author: Chantal Peyer (*Bread for all*), in collaboration with Yvan Maillard (*Bread for all*) and with the help of four researchers of the Benchmarks Foundation: Freek Cronjé, Jean-Didier Losamgo Nzinga, Vidette Bester and David van Wyk, who conducted the field survey in the DRC.

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 km^2, 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).

[1] Original Title: **« Contrats, droits humains et fiscalité: comment une entreprise dépouille un pays. Le cas de Glencore en République Démocratique du Congo. »** The complete study is only available in French.

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.