



Glencore: Notorious crimes and failures

Mining giant Glencore has made aggressive use of complex corporate structure and tax havens to deprive developing nations of tax revenues, while frequently being accused of human and environmental rights violations in the course of its business.

Problem Analysis

Swiss mining giant Glencore has made extensive efforts to exploit corporate power for its own advantage, often at the expense of human and environmental rights. It has made use of Investor–State dispute mechanisms when governments have restricted its activity. It has adopted a complex international structure to minimise its tax exposure and so deprived a number of developing nations of tax revenues, including Zambia and Burkina Faso. It has been accused of causing human rights violations and environmental damage at mining operations as far afield as Peru and Australia.

Company

Main Company: Glencore plc.

Head office: Baar, Switzerland

Registered office: Saint Helier, Jersey

Subsidiary: Since 2015, the world's largest commodity trader. Glencore was founded by Marc Rich in 1974, who was forced to sell the company in 1994, after commodity trading and marketing company Trafigura was split off in 1993.¹ In 2013, Glencore merged with Anglo-Swiss mining company Xstrata (but still operates under the name Glencore).

Company background

Listed on the stock markets in London, Hong Kong and Johannesburg.

Biggest shareholder is the Qatar Investment Authority.¹

CEO of company: Ivan Glasenberg (CEO)
(total remuneration: US\$ 1.51 million, 2015;
salary US\$ 1.447 million, 2015)²

Company's annual PROFIT: \$0.93 billion (2016)³

Company's annual TURNOVER: \$ 152.9 billion (2016)⁴

Presence: 50+ countries

Number of employees: 155.000 (2016)⁵

Company activity

Main activities: production, sourcing, processing, refining, transporting, storage, financing and supply of metals and minerals, energy products and agricultural products.

Country and location in which the violation occurred

As Glencore owns over 150 mining & metallurgical, oil production and agricultural assets around the world, there are many different countries involved and affected.

Ghana, Chad, Zambia, Bolivia, Colombia, Philippines, Argentina etc.⁷

Summary of the case

Response of Glencore to several of these issues <http://www.glencore.com/assets/public-positions/doc/Glencores-response-to-the-2015-Public-Eye-Nomination.pdf> & <http://www.glencore.com/public-positions>

1. ISDS cases

In 2016, Glencore initiated two ISDS (Investor State Dispute Settlement) cases. One against Bolivia and the other against Colombia. The claim against Bolivia arose out of the expropriations of two tin and antimony smelting plants (the Vinto Metallurgical Complex and the Vinto Antimony Plant) as well as a tin and zinc mine (Colquiri Mining Center).⁸ The government claims that the mining concessions had been awarded under suspicious circumstances and that it nationalised them in the public interest.^{9,10} Glencore claims, via its subsidiary located in the tax haven of Bermuda, US\$ 675.7 million in damages from the Bolivian government.¹¹

Bolivia has taken several steps to prevent international tribunals from rendering decisions that can be enforced against the country by foreign investors. The country withdrew from ICSID (International Centre for Settlement of Investment Disputes) in 2007, modified the Bolivian Constitution in 2009, terminated bilateral investment treaties (BITs) with nine countries, and introduced a new domestic arbitration framework in 2015. The goal of the new act is to keep arbitration proceedings inside the country and

subject to Bolivian law and its authorities, including investment arbitrations involving foreign investors.¹² It is still unclear how Bolivia's new arbitration mechanism will work in practice and, clearly, it did not prevent Glencore from starting its ISDS case in 2016.¹³

Glencore sued the Colombian government because it has sought to revoke parts of an amended concession agreement signed with the government in 2010 to expand the Calenturitas coal mine run by Glencore's subsidiary Prodeco.¹⁴ Glencore's activities in Colombia have been dogged by scandals, with at least ten people murdered when paramilitaries seized a patch of land called El Prado next to Calenturitas in 2002^{15,16}, while communities have been rehoused over environmental damage and the firm has faced large-scale strikes by workers over low salaries¹⁷. The damages sought by Glencore are unknown.¹⁸

2. Tax avoidance, corruption and other irregularities

There is growing evidence of Glencore's tax avoidance and involvement in corruption. "Publish What You Pay" named Glencore the most opaque mining company in terms of tax transparency as it incorporated half of its 46 subsidiaries in tax havens.¹⁹ Its massive global network of subsidiaries and related companies was revealed in 2017 by the release of the Paradise Papers, explored by the International Consortium of Investigative Journalists (ICIJ).^{20,21}

The ICIJ and 95 media partners explored 13.4 million leaked files from a combination of offshore service providers and the company registries of some of the world's most secretive countries. The Paradise Papers documents include nearly 7 million loan agreements, financial statements, emails, trust deeds and other paperwork from nearly 50 years at Appleby, a leading offshore law firm with offices in Bermuda and beyond.²² Glencore was one of Appleby's top clients. The leaks reveal how "Glencore made secret payments, battled cash-strapped countries in court, and sought to reduce its tax bill in nations around the world."²³ Glencore diverted millions of dollars through tax havens and fought off lawsuits and tax bills. Two of the most prominent illustrations that are provided by the leaks are Glencore operations in the Democratic Republic of Congo (DRC) and Burkina Faso.

In May 2014, Global Witness revealed how back in 2009, an opaque Glencore company in Bermuda loaned US\$45 million to an equally opaque entity in the British Virgin Islands controlled by Dan Gertler without revealing the loan publicly.²⁴ The leaked documents in the Paradise Papers showed that Glencore provided this undisclosed loan to Gertler's company in return for helping a company in which Glencore held a stake strike a mining deal with Congolese officials.^{25,26}

"The leaked files provide the most detailed evidence yet of

the behind-the-scenes lobbying and the money flows that helped Katanga, in which Glencore was just a shareholder at the time, acquire mining licenses. The files also raise questions about how Katanga, which was later taken over by Glencore, managed to pay a price that critics have viewed as less than the licenses' real value. In response to questions from ICIJ, Glencore said that the price for the mining licenses was agreed to before Gertler entered the negotiations and that its loan to the company controlled by Gertler was "made on commercial terms" with standard provisions in place."^{27,28}

In March 2017 Global Witness reported that, between 2013 and 2016, Glencore redirected over \$75 million in mining payments to Gertler.²⁹

In addition to the Appleby files, ICIJ has obtained a confidential assessment by Burkina Faso's tax office. It accuses a Glencore subsidiary of abusing tax loopholes and creating fictitious charges by shell companies to reduce taxable earnings and avoid paying tens of millions of dollars in taxes to one of the world's poorest countries. Burkina Faso's tax office fined the Glencore subsidiary after allegations that the company abused loopholes to avoid tax. The tax office said the subsidiary made "fictitious" charges to an offshore company, an allegation Glencore denies.³⁰

"As villagers struggled with hunger, poverty and other hardships, boardroom machinations in faraway Switzerland, Bermuda and other tax havens moved millions of dollars into – and then out of – the small African nation whose name means "Land of Honest Men."³¹

In the spring of 2012, the British Parliament's International Development Committee opened an inquiry into taxation in developing countries, including a Glencore subsidiary in Zambia.³² According to one estimate by ActionAid³³, alleged tax avoidance in relation to a copper mine may have cost Zambia as much as £76 million (equivalent to \$63.6 million) in one year. If the estimate is correct, it would be roughly double the country's health budget in 2007.³⁴

It is not only in developing countries that Glencore stands accused of using tax tricks. A British tax expert alleged that the company raised costs of its UK-based subsidiary by buying complex insurance contracts with the parent in low-tax Switzerland worth US\$ 122.8 million.³⁵ And the Australian arm of Glencore has been involved in cross-currency swaps of up to AU\$ 25 billion of a type under specific investigation by the Australian tax office, the Paradise Papers reveal. A cross-currency swap is an agreement between two parties to exchange interest payments and principal on loans in two different

currencies. Companies use such swaps to get access to favorable tax rates. The Australian arm of Glencore is accused of using swaps to enter into deals at unrealistic, non-commercial rates, then using the swaps as a way to shift profits from high-tax to low-tax jurisdictions.³⁶

Glencore is linked to various corruption and other scandals across the world. In 2012 a Glencore International Plc unit was fined 500,000 euros (\$622,800) by a Belgian court in a corruption case involving a European Union official in return for market-sensitive information. The company received confidential information that allowed it to put in favourable bids in tenders for European export subsidies.³⁷ In a 2017 UK High Court case, Glencore was accused of working as an oil trader in Ghana without licence, illegally importing and storing oil in Ghana. Springfield Energy sued Glencore claiming a partial refund of the money it has paid to Glencore on the basis of “unjust enrichment” in Ghana. It has demanded \$1.1 million plus interest.^{38,39} Glencore however maintains that reports of illegal involvement in the Ghanaian petroleum industry are totally inaccurate,⁴⁰ and the case remains pending.

And in Queensland, Australia, QCoal managing director Chris Wallin lodged a formal complaint to the Crime and Corruption Commission (CCC) in 2017, that accused the Department of Natural Resources and Mines (DNRM) of not prosecuting Glencore for alleged illegal mining activity on land it does not have rights over in the Bowen Basin. These alleged illegal mining activities have continued for more than 10 years.⁴¹ The Queensland government resolved the dispute by amending the law to validate Glencore’s claim.

3. Australia’s open zinc and lead mine

Glencore’s McArthur River Mine (MRM) is the largest open cut zinc and lead mine in the world.⁴² It is located in the belly of the sacred McArthur River in Australia’s Northern Territory (NT). It has been mined underground since the mid-1990s and expanded into an open cut project in the mid-2000s. Glencore has been accused of acting improperly with Indigenous groups in the area who have no legal say over the mine. The mine has long been opposed by the local Gurdanji, Mara, Garawa and Yanyuwa Peoples, who have major cultural and environmental concerns related to the mine. The mine expansion ploughed through the Rainbow Serpent Dreaming Site, which was of deep spiritual significance to local clan groups. The local groups challenged the open-cut/diversion in court and won, but the government passed legislation to overrule this.^{43,44}

Issues of great concern are uncontrolled seepage from the tailings storage facility (TSF), risk of failure of the TSF embankment and the failure of revegetation and continued

erosion of the McArthur River diversion, spontaneous combustion of the pyrite (iron disulfide) in the waste rock, sending toxic sulphur dioxide fumes into the atmosphere and affecting the inhabitants of a nearby Aboriginal outstation, and high levels of mine derived lead found in fish near the mine.⁴⁵ In 2013 a waste rock dump spontaneously ignited, releasing toxic plumes into the air for more than a year. The company did not notify anyone, therefore the NT Mines Department only found out 6 months after it started. Since then there have been more incidents of burning waste rock.^{46,47} Elevated levels of heavy metals (cadmium, lead) were detected in water samples as well as fish, invertebrates and cattle in 2013 and 2014⁴⁸, but government departments have largely dismissed concerns.⁴⁹ 400 cattle had to be killed and the cattle station was quarantined.⁵⁰ According to Greenpeace analysis of official figures, levels of poisonous sulphur dioxide measured at the mine exceeded national standards at least 19 times during 2017. While these national standards apply to air quality likely to be experienced by the general population, rather than at a mine site, the measurements are nevertheless indicative of a significant source of pollution of concern to those in the mine’s vicinity.

The company has recently admitted that it will take hundreds of years to manage and rehabilitate the site.⁵¹ Documents indicate that Glencore intends to have little or no involvement after the mine’s life ends. Their current proposal is to leave 500 million tonnes of waste on the bank of the McArthur River forever. Environmental groups and the local people want the mine completely backfilled upon closure, which is supported by a 2016 report from the Mineral Policy Institute.^{52,53} The company rejects this as too costly.

Glencore makes billions each year, but has reportedly paid no royalties to the Northern Territory Government.⁵⁴ The company has been investigated by the Australian Tax Office for its tax practices.⁵⁵

4. Australia’s mining weaknesses

In August 2017, Glencore’s multibillion Wandoan coal mine won approval from the Queensland government. The open-cut mine is proposed to operate for 35 years in the Surat basin, and will require a railway to the Gladstone port.⁵⁶ Doubts about the future of the Wandoan mine had lingered since 2012, amid falling thermal coal prices and a poor market outlook.⁵⁷ The approval has enraged environmental groups, who say the government is prioritising a flailing coal industry over communities, and putting the state’s agricultural industry at further risk.⁵⁸ Protest groups are concerned with the adverse impacts

of proposed coal mine developments on climate change, groundwater, threatened species, Indigenous rights, and the Great Barrier Reef.⁵⁹

A large number of farmers have already been displaced by Glencore over this vast area, and Lock the Gate fears that remaining farmers on and near the lease will be forced out. “In 2010 local landholders took this mine to court on the basis of destruction to their land and water, and the mine has been troubled by complex compensation claims,” said a Queensland campaigner, Ellen Roberts. According to Lock the Gate “This project will be eligible for a secretive Queensland government loan via the royalty deferral package announced in June. So, Queenslanders are expected to subsidise mining giant Glencore for five years as it rips through one of our core agricultural regions.”⁶⁰

5. Carbon Majors

Human-induced climate change was officially recognized in 1988. Nevertheless, the fossil fuel company operations and products worldwide have doubled their contribution of fossil fuels since then. Using the most comprehensive dataset of historic company-related greenhouse gas emissions (GHGs) produced to date, the Carbon Disclosure Project (CDP) revealed that 71% of all global GHG emissions since 1988 can be traced to just 100 fossil fuel producers.⁶¹ Glencore is number 43 on this list and responsible for an estimated 0.38% of all global industrial greenhouse gas emissions between 1988 and 2015.

In July 2016, the Commission on Human Rights of the Philippines forwarded a climate-change-related complaint lodged by typhoon survivors and non-governmental organisations to the oil, coal, mining and cement companies, and asked them to respond to the allegations. Glencore responded:⁶² “While we take this matter seriously, we believe that our annual and sustainability reports as well as our publication ‘Climate change considerations for our business’, which set out our approach towards climate change and our performance, provide a full response to the issues raised by the Petition.”

6. Peru

The mining projects Tintaya and Antapaccay currently owned by Glencore are located in the province of Espinar, the South of the Peruvian Andes. The Tintaya open pit copper mine has two tailings dams that retain the water containing waste products from the extraction process. The Antapaccay project, located approximately ten kilometres from the Tintaya mine, began its operations in 2012. Tintaya’s open pit is since then in closure, but will be reused as a huge tailings dam for the new expansion project.⁶³

For more than a decade, communities have complained

about a scarcity of water and a growing mortality among animals.⁶⁴ A report of the Minister of Health, confirmed the contamination of water with heavy metals as well as the presence of a highly dangerous concentration of arsenic, lead, chromium and mercury in the blood and urine of people living around the mining activities. It concluded that 2.2% of the samples were severely contaminated and 52.71% contained at least one parameter that exceeded official thresholds.⁶⁵ The mine’s management denied that the pollution was a consequence of the company’s activities, and claimed is the result of the natural mineralization of the area.

The situation worsened in May 2012 and sparked widespread protests, as well as heavy clashes between protesters and police. The government declared a state of emergency and sent police forces to the province to contain the mobilizations and protect the facilities of Xstrata (later part of Glencore).⁶⁶ In the following days, the repression continued, several civilians were wounded and two were killed. The police apparently acted like a private security firm at the service of the mining company. Peruvian authorities confirmed the existence of an agreement for the provision of police services complementing the original police function.^{67,68}

The company is currently facing claims in a London court for hiring security forces to mistreat protesting environmental activists.⁶⁹ The Peruvian government has sided with the mining company, facilitating the presence of police forces to hold down protesters and not recognizing the contamination.⁷⁰ Glencore rejects any responsibility for the harm caused. The Peruvian authorities have made little progress with their investigations into the causes of the pollution and into remedial measures.⁷¹

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