



Dangerous Business in a Fragile State

Glencore in the Democratic Republic of the Congo



Extracting raw materials is a dirty and risky business: artisanal miners in a cobalt mine near the Congolese city of Kolwezi.
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Glencore's copper and cobalt mines in the Democratic Republic of the Congo pose considerable risks to the local environment and human health. A study by *Bread for All* and *Catholic Lenten Fund* offers two examples that illustrate the Swiss commodity group's role and the difficulties victims face in seeking justice.

Glencore, one of the biggest commodity trading groups in the world, mines cobalt and copper in two large mines in the south of the Democratic Republic of the Congo (DRC). The extraction of raw materials is literally a dirty business that impacts both people and the environment. *Bread for All* and *Catholic Lenten Fund* have been monitoring Glencore's activities in the Congo since 2011. This report provides an update on developments in 2019 and 2020 and revisits an earlier case.

The report highlights how Glencore uses smart economic maneuvers to pressure the Congolese government. It shows

how the risks associated with raw material extraction, such as the transportation of highly toxic substances, are outsourced by large corporations. As a result, nobody wants to accept responsibility. Such is the case regarding a serious accident involving a vehicle transporting acid in the village of Kabwe. Finally, the report revisits an earlier case which *Catholic Lenten Fund* and *Bread for All* documented back in 2014. It involved a young man who was seized by security officers on the premises of the Glencore subsidiary Kamoto Copper Company (KCC) and subsequently met his death. To this day, his family is still waiting for a final court ruling.

1 Glencore's power play in Congo

At the end of 2019, Glencore temporarily closed the Mutanda mine in Kolwezi, one of the largest cobalt mines in the world. Up until last year, the mine, operated by Mutanda Mining (Mumi), was responsible for about one fifth of the global cobalt production. Yet, according to Glencore, the mine is no longer economically viable. The suspension of operations has left the majority of the more than 3,300 employees with no work for approximately two years and will result in considerable economic losses for local suppliers and small businesses.

Glencore suspended operations despite the facts that the Mutanda mine was very productive and that cobalt, as a strategic commodity, is in great demand worldwide due to the electric car boom. Also, Glencore just signed longterm cobalt supply contracts with several major customers including Tesla and Samsung.

So why did the corporation decide to temporarily close the mine? On the one hand, the world market price for cobalt has been under pressure in the past two years. Around 70 percent of the world's cobalt resources are in the DRC, where Glencore and its two cobalt mines extract enough cobalt to meet more than a third of the global demand. The group therefore has a dominant position in the market, not only in the DRC but worldwide. By temporarily suspending operations at a large mine, it can strongly influence the supply and thus also the price of cobalt.

On the other hand, political and strategic factors are also likely to have played a role: The closure of the Mutanda mine coincides with the Congolese government pushing ahead with a legislative reform that will impose higher taxes on multinational commodity companies. Therefore, it seems likely that by closing the mine, Glencore can put pressure on the Congolese

state to ensure that the legal reforms do not run counter to the group's interests.

2 Tragic accident involving a truck transporting acid

In February 2019, a fatal accident occurred in the village of Kabwe, around 80 km east of the mining city of Kolwezi. Owing to a driving error, a tank truck, which was transporting sulfuric acid to Glencore's Mutanda mine, overturned. The truck crashed into several houses and ended up upside down on top of a minibus. The incident claimed 21 lives and left at least seven people injured, some seriously. It also caused extensive damage to homes and the environment.

The collision caused a leak and highly toxic sulfuric acid began to spill from the tank. Several people were trapped inside or underneath the minibus, where the slow leak of acid caused their skin to burn. Witnesses to the accident could only look on helplessly as the rescue operation proceeded. Hours later those trapped were still calling for help, to no avail. A resident of Kabwe kept repeating: "Their bodies dissolved before our eyes." All that remained of many of the deceased were body parts – legs, torso, thighs, and innards. Some of those who witnessed the accident are still traumatized by what they saw.

"The acid made their bodies dissolve before our eyes."

Eyewitness of the accident

One of the injured was a 23-year-old man named Milambo Kayamba, a father of three children. He was trapped under the minibus from 4 p.m. until the early hours of the morning. By this time, the acid had eaten away the flesh on his legs and had started to attack the bones. The doctors therefore decid-



Glencore's Mutanda mine is one of the largest cobalt mines in the world. © Google Maps



The horrific scene following the accident: the tank truck came to rest upside down burying several people and a minibus beneath it. © used with permission



Milambo Kayamba lost both legs in the accident. ©used with permission



6-year-old Anaïs Kazadi Wa Kazadi suffered severe acid burns to her head and eyes. ©used with permission

ed to amputate one of his legs. Following the operation, he remained in hospital and could not work to feed his family or support his parents and siblings. In July 2020, around a year and a half after the accident, doctors decided to amputate Milambo's other leg too. He is in pain regularly and will be wheelchair-bound for the rest of his life.

A six-year-old girl named Anaïs Kazadi Wa Kazadi also suffered severe injuries. During the accident, the truck crashed into the porch of her home. Anaïs, who was sitting in the living room, fell face down and passed out. She suffered extensive burns to her head, face, and both eyes from the acid leak. Anaïs's complex injuries required specialist treatment, which she has since received at the hospital of Glencore's subsidiary KCC. However, her eyes have not yet healed, and it is still unclear whether she will ever be able to lead an independent life.

All of the injured have either lost their livelihoods completely as a result of the accident or are unable to fully support themselves. In a poor country like the Congo, that has no social security system in place, this has life-threatening consequences for the victims and their families. In addition, several homes and businesses were damaged when the tank truck crashed into them. The acid leak also caused damage to eight farmers' crops and continues to affect the fertility of the land to this day.

2.1 Mumi's role in the accident

The sulfuric acid in the tank truck was intended for the Mutanda mine, as Mumi parent company Glencore has confirmed. However, both Glencore and Mumi deny responsibility for the accident and its serious consequences. According to Glencore, Mumi had commissioned a subcontractor, transport company Access Logistics, to make the delivery. For its part, Access Logistics subcontracted the job to a company called Easy Way, without Mumi's knowledge. The truck that was used actually belonged to a private person. Contrary to all legal requirements, the truck was not insured.

After the accident, representatives of Mumi met several times with the affected residents of Kabwe and distributed food to

them, the injured, and the victims' relatives. After five months, the food deliveries stopped, which was met with incomprehension among the recipients.

2.2 Partial compensation for the victims

The owner of the acid tanker could not be traced for over a year and a half. In the summer of 2020, around the same time that *Catholic Lenten Fund* and *Bread for All* confronted Glencore with questions about the accident, the legal representatives of the truck owner finally contacted the lawyer representing 20 of the accident victims with an offer of compensation. After the initial offers were rejected as being far too low, the lawyers agreed on individual compensation payments for 18 people of 1,000 to 3,250 U.S. dollars in July and August 2020.

Anaïs Kazadi Wa Kazadi and Milambo Kayamba, the two worst affected cases, were not included in this agreement. The truck owner's representatives offered Anaïs Kazadi Wa Kazadi's mother 6,000 U.S. dollars and Milambo Kayamba 5,000 U.S. dollars in compensation. In view of their injuries, their long-term physical limitations, and the resulting medical costs, they could not agree to these sums. As a result, Milambo and Anaïs, who have the most serious injuries of all, are still waiting for compensation almost two years after the accident.

The owners of the fields damaged by the acid have received modest compensation payments of around 30 to 300 U.S. dollars, presumably from Mumi's subcontractor Access Logistics. Since the farmers did not receive a copy of the agreement regarding these payments, it was subsequently not possible to determine whether the sums paid constituted full or partial compensation. Mumi representatives also promised the farming families seeds for three years and an agricultural training course. All other victims who lost their livelihood as a result of the accident and those whose property was damaged, are still waiting for compensation.

2.3 Who bears responsibility?

For many of the victims it is clear that Mumi is liable for the accident and its consequences as the acid was intended for its

mining activities. However, Mutanda Mining and Glencore are not legally responsible for the cause of the accident. According to the numerous witnesses, the main reason for the accident was the truck's excessive speed and dangerous driving. Criminal proceedings are ongoing against the drivers in Kolwezi, and they have been held in custody since the accident.

Many of the victims believe Mumi is liable for the accident and its consequences since the acid was intended for its mining activities.

But it is well known that road conditions in the DRC are more dangerous than anywhere else. All companies involved in mining raw materials must reckon with a significant risk of accidents in the supply chain. At the time of the accident, Mumi was applying stricter standards for the transport of chemicals in other countries. It is questionable whether Mumi did everything possible to ensure that all vehicles used in its supply chain were covered by an adequate liability insurance. In addition, it remains unclear whether Mumi took enough measures after the accident to track down those responsible and to ensure that the victims were adequately compensated.

3 Rough Path to Justice – The Mutombo Kasuyi Case

Over six years ago, a young man named Mutombo Kasuyi was killed at the hands of security guards on the premises of

Glencore's subsidiary KCC. *Bread for All*, *Catholic Lenten Fund*, and RAID reported on the case in detail in 2014. This report revisits the story and brings it up to date with the latest developments. The victim's family is still waiting for a final court ruling.

On the afternoon of 15 February 2014, three friends, John Kanwiel Kabulo, Eric Mutombo Kasuyi, and a man named Trésor, ran into a security patrol on the way to see Mutombo's uncle on the KCC premises. The patrol (probably) mistakenly took the young men for illegal prospectors. Since attacks on civilians by security forces happened quite frequently at that time, the friends fled in different directions. John and Trésor escaped. However, Mutombo, a 23-year-old father of two young children, was apprehended and shortly after taken to the KCC hospital in the patrol jeep. Upon arrival at the hospital, the doctor pronounced him dead.

What happened between Mutombo's flight and his arrival at the KCC hospital? That question is at the core of legal proceedings that have occupied the courts of Katanga province since 2014. The case was initially handled by a military court in Kolwezi. But the proceedings were not conducted in accordance with the law. The members of the security patrol contradicted each other, important evidence disappeared, and other evidence was either not requested or was ignored by the judge.

Various medical reports on the condition of Mutombo's corpse stated that it showed signs of extreme external force,



Two eyewitnesses at the accident site in Kabwe. © Bfa



Tshibanda Lina, Mutombo Kasuyi's uncle, shows his deceased nephew's driving licence. © Bfa

probably caused by blows. This was consistent with the observations made by Mutombo's uncle when he identified the corpse. Other pieces of evidence, such as the jeep of the security patrol, disappeared under mysterious circumstances. Nevertheless, in August 2014 the military judge acquitted the accused security officers of all charges – on the grounds that the cause of death was unclear.

Mutombo's family's lawyers were highly critical of this ruling and assumed that the judge must have been influenced. Ac-

cording to them, the judge should have found the two defendants guilty or should have at least requested more evidence. Mutombo Kasuyi's family therefore decided to appeal against the ruling.

Items of evidence, including the security patrol's jeep, disappeared under mysterious circumstances.

Around three years later, the court of second instance, the military court in the provincial capital Lubumbashi, ruled that the judge in Kolwezi had not conducted a fair trial – an interim success for the lawyers and Mutombo's family. The case documents were to be sent back to Kolwezi where a retrial should take place.

That was on 10 July 2017, over three years ago. To date, the case file is still with the military tribunal in Lubumbashi. Following numerous inquiries from the family's lawyers, it emerged in February 2020 that the referral ruling had suddenly disappeared from the case file. This lengthy delay is very difficult to bear for Mutombo's relatives. They want clarity at last about who is responsible for the death of their son, father, nephew, and husband so that they can finally come to terms with their loss.

4 Conclusion: The Responsible Business Initiative offers a remedy

The case of Mutombo Kasuyi exemplifies how difficult it can be to seek justice in the DRC. It also shows that in countries like the DRC, the judiciary can be influenced by third parties and the right to a fair trial is not guaranteed.

Since the alleged perpetrators in this case were either directly employed by KCC, a Glencore subsidiary, or under its operational supervision, it would have to be examined whether the case falls under the liability clause of the Responsible Business Initiative. The initiative might therefore offer victims like Mutombo's family the right to seek justice in Switzerland. *Catholic Lenten Fund* and *Bread for All* have supported the Responsible Business Initiative since the start of the collection of signatures and are actively involved in the voting campaign for a YES on 29 November 2020.