

A toxic legacy

Glencore's footprint in Colombia & Peru

European banks and investors must take their responsibility

Fair Finance Guide Netherlands

Finance Guide Netherlands

A toxic legacy. Glencore's footprint in Colombia and Peru

The Dutch Fair Finance Guide is a coalition of the following organizations:

Amnesty International, Milieudefensie, Oxfam Novib, PAX and World Animal Protection

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London Mining Network

Fair Fin Belgium

Peru Support Group UK

Colombia Solidarity Denmark

NOAH Friends of the Earth Denmark

Broederlijk Delen Belgium

Summary

As Glencore has reached its current position as one of the biggest companies in the world, its business model continues to have severe consequences for local communities and the environment. A number of scandals have evidenced Glencore's involvement in human rights violations, corruption, tax avoidance and environmental destruction.¹

Glencore, a company based in tax havens Jersey and Switzerland, operates globally in all areas of the mining chain in a range of minerals (copper, molybdenum, silver, gold, coal, cobalt, nickel, zinc, etc.). Glencore also has operations in power generation and agribusiness.

Glencore in Colombia and Peru

Glencore's mines have had devastating impacts on their surrounding environments, with grave consequences for those who live nearby. This report elaborates on two examples of Glencore owned mines which have impacted severely on communities living around the mines in Peru and Colombia: the coal mines Cerrejón in the North of Colombia and the copper mine in Espinar in Peru. Tangentially also included in this briefing, where the comparison with the situation in Cerrejón is relevant, are the activities of Glencore subsidiary Prodeco in Cesar.

A river has been diverted to accommodate Glencore's mine in Colombia, in an area where water is very scarce. The water supply in Peru and Colombia around the mines is polluted with lead and other heavy metals. Indigenous, afro and peasant communities have been especially affected.

The Business and Human Rights Centre's 2022 Transition Minerals Tracker² found, for the second consecutive year, that Glencore had the most recorded allegations of human rights abuses of all tracked companies (70 from 2010-2022, including 5 in 2022).

Engagement with Glencore

External pressure from investors, banks, trading partners, policy makers and regulators is key to force a change in Glencore.

Banks and investors have engaged with Glencore, both on an individual basis and through common investor initiatives like Climate Action 100+ and Advance by PRI.³ However, although Glencore endorses many international conventions and agreements,⁴ the implementation at the national level is severely lacking. Glencore does not ensure that national subsidiaries live up to the policies and standards it claims to endorse at headquarters level. The engagement by banks and investors with Glencore has been piecemeal and not effective and many banks and investors are failing to hold Glencore accountable.

Legislation

The issues around Glencore are but one example to show that governments and the European Union need to show strong leadership to contribute to a better integration of human rights issues in the due diligence processes of companies and investors. The European Union should properly integrate the human rights responsibilities of the financial sector in the Corporate Sustainability Due Diligence Directive (CSDDD), in line with the OECD sectoral guidelines for the financial sector⁵. By requiring financial institutions to identify and address the social and environmental risks and harms in their financial decisions and portfolios, this Directive could limit and end harmful financial flows on the one hand and ensure a better treatment of sustainability-related financial risks on the other. Such a requirement is considered necessary and workable by a wide range of stakeholders, including progressive investor groups⁶, the United Nations in its Guiding Principles and the OECD in its general and investor-specific guidelines.

Due to heavy lobbying by the financial sector, banks and investors are not sufficiently covered in the current CSDDD proposal. It is crucial that, the European Parliament, the Council of the European Union and the European Commission align the final text of the Directive with the OECD Guidelines for Responsible Business Conduct for Institutional Investors⁷. These include, amongst others the obligation for financial institutions to conduct due diligence in an ongoing way, instead of as a one-off before providing services. It also means ensuring that due diligence is carried out throughout financial institutions' entire value chains and investment portfolios. In this way, financial institutions financing Glencore will perform proper human rights due diligence analysis before financing controversial companies and will use their leverage to exercise pressure over companies such as Glencore to prevent, mitigate and remediate human rights violations. It is crucial that investors set up specific and measurable milestones for Glencore towards that goal.

This briefing outlines structural failings in the operations of Glencore, specifically in Colombia and Peru, and is published on the occasion of visits from delegations from Colombia and Peru to European countries to speak to governments and financial institutions.



Glencore in Peru

One of Glencore's operations in Peru is the Antapaccay copper mine in the province of Espinar, in the southern Andean region of Cusco, which is the ancestral territory of the Quechua and K'ana indigenous peoples.

Mining activity in Espinar, since its inception in the 1980s, has been marked by continuous environmental and social violations leading to ongoing conflicts. It is concerning that the company Glencore (that acquired the operation in 2013) repeats past mistakes by failing to identify and prevent environmental impacts promptly, not recognizing and adequately compensating potential affected parties, not proactively ensuring the collective rights of indigenous peoples during land negotiation processes, and accepting a formalistic view of prior consultation, believing that minimal requirements set by a mineral-dependent state like Peru are sufficient. Further expansion of mining activities under these conditions may generate new conflicts and jeopardize the well-being and rights of communities. It is also a risk for investors, as an increase in socio-environmental conflicts can jeopardize the viability of investments and the operation of companies.

A new report by CooperAccion⁸ on which this briefing paper is based, demonstrates that, despite its promises, Glencore is not meeting international environmental, social, and Indigenous rights standards. On the contrary, the company consistently relies on the minimum requirements of national legislation, which is relatively weak in Peru and has significant gaps.

The report highlights serious omissions by the company in various aspects, provides recent information on the environmental impacts of mining activities, and on land negotiation processes in the company's expansion plans.

Recent official reports⁹ offer new information that show a causal link between Glencore's operations and pollution in Espinar. A due diligence approach should lead the company to publicly acknowledge these findings and proactively contribute to remediation efforts.

The expansion of the mining project into a new area called Coroccohuayco would involve a significant enlargement of the area concerned, more than 200 km². However, in the negotiation process for the acquisition of land from indigenous communities, Glencore does not appear to adhere to the principles of due diligence and best practices to guarantee the collective rights of indigenous peoples. The process is being carried out with contradictory information and without providing communities with objective studies necessary to value the land. In addition, the company has not been clear in indicating that the sought extension of the area would almost obliterate at least one community (Pacopata) and would therefore require a resettlement plan in accordance with the recommendations of ILO Convention 169 and IFC Performance Standard 5.



Chapter 1 Glencore in Colombia

Carbones del Cerrejón (“Cerrejón”) is a coal mining company based in La Guajira, Colombia and is one of the largest open-pit coal mines in the world. It is fully owned by Glencore.

Over decades, thousands of Wayuu indigenous people have been resettled from their ancestral land and mining activities have caused extensive environmental damage and pollution, affecting the health of hundreds of thousands of people. Over the course of its four decades of operation, the Cerrejón mine has been linked to the forced eviction of at least 15 indigenous and Afro-Colombian communities¹⁰. At times, evictions have been carried out with armed guards, tear gas, and metal projectiles¹¹.

The mine is also environmentally hazardous: nearby communities have been inhaling poisonous dust for decades and air, soil and water supplies have been contaminated. Toxic pollutants have caused a multitude of health issues, including eye damage, heart disease and premature births¹². Over 336,000 people have developed respiratory complications that are directly attributable to the mine¹³. Similar impacts are also endured by the population of farming communities around the Prodeco operations in Cesar (immediately south of La Guajira).

The open-pit coal mining by Cerrejón, which takes place in a semi-desert environment, has drastically transformed the livelihoods of the people depending on the Ranchería River. The cumulative impacts of mining operations on water sources have led to alterations in the hydrological cycle in a region highly vulnerable to the climate crisis¹⁴. This is directly related to the humanitarian crisis in the department due to water scarcity.

Residents of La Guajira and Cesar who report on and provide evidence of the impacts of mining activity have been targeted, suffering threats and attacks. Despite the judicial rulings issued by the Colombian Constitutional Court, impunity persists in La Guajira and Cesar regarding land dispossession and failures in resettlements of communities. There is no public acknowledgment from Glencore or Carbones del Cerrejón and Prodeco regarding the harm caused by their operations, let alone the cumulative and irreparable damage resulting from their mining activities¹⁵. Instead, Glencore and Cerrejón have started proceedings against the Colombian government in an ISDS. In an Investor State Dispute Settlement (ISDS) transnational companies can sue countries when they believe that a state’s decision impacts their investment and future profits. This claim pressures the Colombian state to pay millions of dollars¹⁶ to Glencore because the Colombia’s Constitutional Court suspended in 2017 the extraction of coal from the river Arroyo Bruno and diverting the river for this reason¹⁷. Glencore refused to comply with the order, started diverting the river and decided to sue the government of Colombia using ISDS provisions in the UK-Colombia and Switzerland-Colombia bilateral investment treaties.



Glencore in Cesar, Colombia

In the mid-1990s mining companies Prodeco/Glencore and Drummond started to operate in Cesar, Colombia, which was effectively a war zone. Between 1996 and 2006 paramilitaries waged a terror campaign in this region, killing more than 3,100 people and forcibly displacing over 55,000 from their villages. The paramilitaries also made at least 240 people disappear; their bodies have yet to be found. Critical community organizations and trade unions could not perform their duties properly under threat, as their leaders were not sure of their lives (several union leaders were murdered during this period).

The paramilitary group responsible for these atrocities operated in the area roughly at the same time as mining multinationals arrived there and managed to expand their operations in the area.¹⁸ However, mining companies have so far failed to address the human rights impact in the mining zone, while at the same time they have benefited from the abuses, for example by obtaining land in zones where communities had previously been forcibly displaced. While victims have been waiting for recognition, truth and reparations for a long time, threats and assaults by paramilitary successor groups have recently increased again.¹⁹

The victims of violence in the mining region suffer to date. They still do not know the truth behind what happened to their loved ones, the land has not been returned (restituted) to displaced families, and the social leaders continue to be targeted by new illegal armed groups when they try to claim their rights. The recent decision by parent company Glencore to close down Prodeco's mining operations in Cesar has raised concerns among the population and other stakeholders that Prodeco-Glencore may avoid its responsibility towards the victims of violence in the Cesar mining region.

While Drummond was recently indicted (in December 2020 and again in May 2023) by the Colombian Public Prosecutor's Office for allegedly supporting and financing paramilitary violence between 1996-2003, Colombia's Special Peace Jurisdiction (a kind of national peace court established after the signing of the 2016 Peace Accord) is also currently investigating Drummond's and Prodeco's role in war crimes from that time.



Chapter 2 Climate and corruption

This chapter briefly examines how Glencore performs in other areas of ESG criteria, looking briefly into climate and corruption.

2.1 Climate and coal

Glencore is the world's 11th largest producer of thermal coal. Besides selling coal from its own mines, Glencore also trades in third party coal, making the company one of the largest exporters of thermal coal worldwide. While most diversified mining companies are turning their back on thermal coal, Glencore has no plans to phase out its coal production. In fact, the company is still developing new coal mines and planning to extend the life of its existing mines.²⁰

In 2023, major institutional investors spanning Europe, the United Kingdom and Australia co-filed a shareholder resolution²¹ at Glencore plc, seeking greater transparency on how the company's thermal coal production aligns with the Paris objective of keeping global temperature increase to 1.5°C. It received support from institutional investors representing approx. US\$596 billion in assets under management, as well as support from major proxy advisors Glass Lewis and Institutional Shareholder Services (ISS). Despite the moderate request, Glencore's board recommended voting against the resolution²².

Over 29% of shareholders voted in support of the resolution at the AGM in May 2023²³. ACCR concluded in September 2023 that the climate report by Glencore is inadequate.²⁴ Glencore's own production data from its coal assets shows planned coal production will stay roughly flat for the next 10 years. All Paris-aligned scenarios require thermal coal production to decline significantly over the coming decade²⁵.

2.2 Corruption

Over 197 investment funds are suing Glencore in several court cases²⁶ over allegations that the company made misleading or untrue statements in its prospectuses to cover up corrupt activities. The litigation in London's High Court follows Glencore's admission of bribery and market manipulation last year. After a coordinated international investigation, Glencore agreed to plead guilty to a series of charges in return for paying \$1 billion in fines and forfeitures in the US, £280 million in the UK and \$40 million in Brazil.

The UK's Serious Fraud Office is investigating former Glencore employees and will decide whether to charge any of them with bribery offences by the end of 2023. Glencore is subject to ongoing investigation by the Office of the Attorney General of Switzerland over its organisational failure to prevent alleged corruption. The Dutch Public Prosecution Service is conducting an investigation 'of similar scope'. The timing and outcome of these investigations is unknown.

Chapter 3 Investors in Glencore with activities in the Netherlands

This chapter examines which investors in the Netherlands have financial links with Glencore. Where possible, we list previous responses and reactions of investors to reports of Glencore being linked to human rights violations.

3.1 Lending and underwriting

Table 1 Approved lending by Dutch banks to Glencore

	Corporate loan	Revolving credit facility			Total
Bank	Glencore International AG	Glencore Energy UK Ltd	Glencore International AG	Glencore PLC	
ABN Amro	75	193,53	840,23	1067,50	2176,25
ING Group	100	308,53	855,52	1067,50	2331,55
Rabobank		256,03	362,00	871,28	1489,32
Total	100	564,55	1217,52	1938,78	3820,86

All figures in mln US\$

Source: Bloomberg and Refinitiv, viewed in June 2023

The Fair Finance Guide Netherlands asked the banks whether these figures were correct. ING and Rabobank did not reply to this question. ABN Amro did reply to our question and made the following comments (translated from an email in Dutch):

- ABN Amro does not comment on individual clients, including clients with whom the relation has ended.
- In 2020 ABN Amro announced a change in strategy for its wholesale department (excluding ABN AMRO Clearing). As a result of this change in strategy, ABN AMRO's corporate Banking activities outside Europe and its Trade&Commodities Finance-activities worldwide are being phased out.
- In its annual report over 2022, ABN AMRO indicated this phasing out was practically finished. ABN AMRO's focus is now on the Netherlands and North-West Europe, and the banks services clients where it can offer scale.
- The company to which these figures refer does not fit in the aforementioned change of strategy. The Fair Finance Guide should therefore conclude that ABN AMRO (at least since 2022) does not have a direct financing relationship with wholesale companies that are active on the global commodities markets.
- Indirect financing, for instance through investments in shares or bonds facilitated by the bank for its clients in such companies could still be possible.
- ABN AMRO engages with clients where this is deemed necessary.

Based on this response the Fair Finance Guide Netherlands concludes that ABN AMRO no longer has an active client relation with Glencore, however it did provide finance in the years up to its change in strategy.

3.2 Shares and bonds

The table below lists the shares and bonds held by investors active in the Netherlands. All investors but Allianz have their headquarters in the Netherlands. Allianz is a German insurer with about 1,3 million clients in the Netherlands.

The figures shown in the table below were presented to the investors for verification. The figures resulting from the financial research are based on the last available overview of investments in June 2023. Some investors provided updated figures. For reasons of consistency, the table below shows only figures available on June 2023. However, if an investor has excluded Glencore since then, this is shown in the table by crossing through the figures.

An overview of the responses:

- PME indicates that it is no longer investing in Glencore and has placed the company on its exclusion list.²⁷
- PMT indicated that the figure listed here is correct.
- Pensioenfond Detailhandel indicated that a newer overview of its investments was available. This overview lists a total of 8,3 million USD, slightly lower than the figure listed below. For reasons of consistency, we maintain the figure found by Profundo in the table below.
- Van Lanschot Kempen indicated that it has sold its investments in Glencore and has placed the company on its exclusion list.²⁸
- Pensioenfond Vervoer indicated that the figures were correct.
- Pensioenfond Rail&OV indicated that it has sold its investments in Glencore end of 2022 and placed the company on its exclusion list.²⁹
- For ABN Amro's response, see above.
- Aegon indicated it does not comment on investment figures because it considers these confidential.
- Allianz, BPL Pensioen and ING Group did not respond to our request for verification.

Table 2 Investing in Glencore by investors with activities in the Netherlands

Investor	Bondholding	Shareholding	Total
ABN Amro ⁱ	0,2	1,0	1,2
Aegon	37,7	16,3	54,0
Allianz	108,3	14,2	122,6
BPL Pensioen	3,9		3,9
ING Group	1,6		1,6
Pensioenfond Detailhandel	10,2		10,2
Pensioenfond Metaal en Techniek (PMT)	63,8		63,8
Pensioenfond Rail & Openbaar Vervoer		5,7	5,7

ⁱ We refer to paragraph 3.1 for more explanation about ABN AMRO

Pensioenfonds van de Metalektro (PME)	24,0	15,0	39,0
Pensioenfonds Vervoer	18,8	8,9	37,7
Van Lanschot Kempen		20,2	20,2
Total	244,5	40,4	285

All figures in mln US\$

Source: for ABN Amro, Aegon, Allianz, ING Group and Van Lanschot Kempen: Refinitiv eMAXX (viewed in June 2023)

For BPL Pensioen: BPL Pensioenfonds (2021), Overzicht beleggingen per 30 juni 2021, viewed in January 2022

For Pensioenfonds Detailhandel: Pensioenfonds Detailhandel (2023), Beleggingen Pensioenfonds Detailhandel, as of 31 December 2022, retrieved on 12 April 2023.

For PMT: PMT (2023), Investment Grade Bedrijfsobligaties, as of 31 December 2022, retrieved on 12 April 2023

For Pensioenfonds Rail&OV: Pensioenfonds Rail & OV (2022, February), Publicatie beleggingen, as of 31 December 2021, retrieved on 25 May 2022

For PME: PME (2022), Aandelen, as of 31 December 2022, retrieved on 27 January 2023 and PME (2022), Bedrijfsobligaties, as of 31 December 2022, retrieved on 27 January 2023.

For Pensioenfonds Vervoer: Pensioenfonds Vervoer, Overzicht-beleggingen, as of 31 December 2021, retrieved on 20 April 2023.

3.3 Action by investors towards Glencore

In reports published over the past years, the Fair Finance Guide Netherlands investigated whether and how investors responded to human rights violations in (the value chain of) their investee companies. Studies were conducted for the Fair Insurance Guide and the Fair Pension Guide the studies focused on around 10 cases of human rights violations to which companies were linked. The FFG NL asked insurance companies and pension funds to answer a list of questions to assess the quality of their response to human rights violations. This response was scored on a scale of 1-10. Glencore's activities in Cesar (Colombia) were part of these reports.

Some investors here were listed in these reports for investments in (amongst others) Glencore.

- Aegon scored a 4.4 for its response to the cases it was linked to through investments. This included Glencore. The report noted that Aegon conducted collective engagement with Glencore, which focused on avoiding repetition of human rights violations.
- Allianz scored a 1 in this report because it refused to provide any information on possible engagement with its investee companies (including Glencore).
- BPL Pensioen scored a 2.9 for its response to the cases it was linked to through investments. This included Glencore. The report noted that BPL Pensioen had engagement with Glencore on environment, corruption, labor rights and human rights.
- Pensioenfonds Detailhandel scored a 5 for its response to cases it was linked to through investments. This included Glencore, and the fund showed evidence it engaged Glencore on human rights. The fund had formalized goals for its engagement, asked the company for updates on progress, and paid attention to remediation in its engagement with Glencore. This included asking the company to set up an operational level grievance mechanism.
- PMT scored a 1.8 for its response to cases it was linked to through investments. This included Glencore. PMT did not disclose any information to indicate engagement with Glencore.
- Pensioenfonds Vervoer scored a 2.3 for its response to the cases it was linked to through investments, this included Glencore. Through its investments manager, the fund did engage Glencore on human rights. The pension fund provided very little information, which hampered assessment of its response.

Chapter 4 Recommendations to European governments and the European Institutions

Governments need to show strong leadership to contribute to a better integration of human rights issues in the due diligence processes of investors. Since investors can play a positive role in changing the behaviour of companies they invest in, such as Glencore. The following recommendations are made in this regard:

1. Adopt human rights due diligence legislation for companies, including financial institutions, that will set binding requirements for companies to respect human rights in compliance with the UNGPs and OECD Guidelines³⁰. The legislation should cover all companies and its subsidiaries in all sectors, requiring due diligence over the entire value chain including its business relationships. It should require the implementation of gender-responsive due diligence, the involvement of stakeholder consultation and FPIC requirements, civil liability, and ensure access to justice and remedy for the victims of adverse impact of business operations. The legislation should contain public reporting requirements and enforcement mechanisms.
2. Bring the financial sector into the CSDDD. The European Parliament, the Council of the EU and the Commission should properly integrate the human rights responsibility of the financial sector in the final text of the Corporate Sustainability Due Diligence Directive (CSDDD), in line with the OECD Sectoral Guidelines for the financial sector³¹. Financial institutions must be able to identify whether their actions will negatively impact people or the planet, and then take measures to prevent and mitigate that impact. Unfortunately, the current proposal contains a number of flaws that need to be addressed. The proposal states that financial institutions must only conduct due diligence once, prior to providing their services, and there is no obligation to conduct any ongoing due diligence. This is problematic since limiting the application of due diligence goes against the ongoing and risk-based nature of the due diligence principle. While pre-contractual due diligence obligations might be sufficient for short-term financial services and transactions, for long term investment relationships it is key to regularly assess and monitor potential or actual adverse human rights impacts. This is already established market practice e.g., in project finance under Equator Principles terms³².
3. In response to the Commission's proposal – both the Council of the European Union and the European Parliament adopted positions on the CSDDD. The Council decided that Member States can decide individually whether the financial sector is included, and investment funds are excluded from the scope. Furthermore, a limited obligation for due diligence was proposed, which is only related to financial services and only before these services are provided. The Parliament adopted a position that is more ambitious, but also is not fully in line with international standards because pension funds and investment funds are excluded, the definition of value chain is limited and there are limited due diligence obligations for the financial sector.
4. Given the above-mentioned gaps and loopholes, we call on EU co-legislators to address these shortcomings in the trilogue negotiations and amend the CSDDD to incorporate meaningful due diligence obligations for financial institutions- in line with international frameworks such as the OECD-guidelines. Our concrete recommendations to the EU institutions currently negotiating a final legislative text:
 - Inclusion of the financial sector and of downstream business relationships of financial actors cannot be an option left to Member States as proposed by the Council as this will lead to a race to the bottom between Member States and undermines a core function of EU Directives in creating a harmonized approach among EU Member States.

- Integrate inclusion of the full value chain of financial actors (upstream and downstream business relationships); downstream due diligence is essential for the financial sector as this is where most impact is made on human rights and the environment. Not including this makes legislation meaningless; the value chain must furthermore include all financial services (banking, insurance and investments).
- It is key to oblige financial institutions to conduct due diligence in an ongoing way, instead of as a one-off before providing services.
- The European Parliament's proposal to introduce an obligation for institutional investors and asset managers to use their leverage to ensure adequate due diligence by their investees is important and should be integrated in the final legislative text.

These improvements will contribute to the level-playing field that a broad range of financial actors have demanded, facilitating consistency and compliance across markets and jurisdictions and in making sure that the Directive has impact on the ground.

On this moment the only way for impacted people to make their voice heard is through the national Contact Points for Responsible Business Conduct (NCPs). They can handle cases as a non-judicial grievance mechanism. However often these cases end unresolved. In 2021, a case was filed against Glencore's Cerrejón coal mine in Colombia with the NCPs of Ireland, the UK, Australia, and Switzerland. The complaints allege that the Cerrejón mine has caused adverse human rights impacts by displacing indigenous and Afro-Colombian communities without their free, prior, and informed consent. The complaints further allege that the mine has polluted the air and water in the vicinity of the mine with consequent human rights impacts. On 20 December, 2022, the NCP published its final statement concluding the case without any agreement between the parties.³³ Another complaint was filed in 2023 with the NCP of the Netherlands on the Cesar mine of Glencore in Colombia (see textbox).

NCP complaint in the Netherlands

On 20 April 2023 Colombian victims of 'bloodcoal' filed a complaint against energy companies RWE, Vattenfall, Uniper, and Engie for their contribution to severe human rights violations surrounding coal mines in Colombia. The complaint, supported by SOMO and PAX, is submitted to the National Contact Point (NCP) for the OECD Guidelines in The Hague. It also targets bulk handling company HES International and the ports of Rotterdam and Amsterdam, through which the coal was shipped.

Between 1996 and 2006, over 3,000 people were killed and tens of thousands displaced from their land around the coal mines in the northern Colombian province of Cesar. The coal mines are operated by US-based Drummond and Swiss-based Glencore, which have expanded the mines onto the land from which the victims were displaced.

The complainants argue that despite their knowledge of abuses, the energy companies failed to take sufficient action to address the dire situation of severe human rights impacts directly associated with the coal they were sourcing. This is a violation of the OECD Guidelines for Multinational Enterprises and means the energy companies can be considered to be contributing to the harms. The victims seek financial reparations, public acknowledgement of the harm done to them, and improvements in the situation of communities near the mines.³⁴

Chapter 5 Recommendations to Glencore

This section is divided into three parts: general recommendations, recommendations to Glencore in Peru and recommendations to Glencore in Colombia.

5.1 General recommendations

1. Implement robust human rights and environmental due diligence mechanisms across the value chain and enable ongoing participatory community monitoring throughout the life of the project. Glencore should hire independent human rights and environmental experts, who are deemed acceptable to local communities and civil society organizations, to support these processes and when reporting on its compliance with environmental and human rights standards. Furthermore, it should ensure that local communities are enabled to participate in human rights and environmental monitoring fully and meaningfully.
2. Commit to implement and publish third-party audits of their social and environmental performance, including FPIC performance, against robust standards like IRMA.³⁵
3. Resource and guarantee the independence of its existing complaint mechanisms and procedures to bring them into line with the recommendations of the International Commission of Jurists³⁶. It should fully address and provide remedy for complaints concerning adverse environmental and human rights impacts on local communities.
4. Revise their existing policy commitment to Free, Prior and Informed Consent to explicitly and publicly recognize the right of indigenous communities to withhold their consent for new mining projects and/or any planned expansions or other changes to project design, or environmental interventions that will affect them. This should include transparent consultation and negotiations processes, so that local populations are not pressured in their deliberations and can participate meaningfully in all stages of planning and implementation. Corporate policy commitments should be clear that the company will not move forward with a project without the consent of the communities impacted.³⁷
5. Glencore must strengthen its policies and internal systems to ensure that community consultation and consent processes are inclusive and gender responsive, and to ensure projects are adequately assessing and mitigating the gendered impacts of their operations on affected communities.

This means:

- Publicly committing to ensure gender equality in project planning and operations. At a minimum, policies and commitments should align with the Guidance on Gender Dimensions of the United Nations Guiding Principles on Business and Human Rights and include full resourcing to provide gender responsive grievance mechanisms when violations occur during operations.³⁸
- Investing in intersectional human rights impact assessments at all mine sites when assessing project risks. Standalone gender impact assessments or human rights impact assessments that integrate gender power analysis are key tools that Glencore should implement at each project site.

- Ensuring Glencore has a safeguarding plan at the (mine) operation level to prevent and mitigate potential coercion, exploitation, abuse, harassment, sexual and gender-based violence, bullying, fraud, improper conduct, and child exploitation. Glencore has to make sure that communities know their safeguarding rights and know how to make safeguarding complaints.
- Glencore should strengthen its policy commitment around human rights defenders to include explicit policy language regarding zero tolerance for any form of stigmatisation or retaliation by employees, suppliers, or business partners against defenders for the work they do. Glencore should also publish their operational guidance documents to support this policy commitment and should commit to using their leverage and speak out in defense of human rights defenders.

5.2 Recommendations about Glencore in Peru

1. The existence of severe contamination of water and health impacts on the local population from toxic heavy metals in the vicinity of Antapaccay's operations is well-established in various studies since 2010, showing results exceeding the Maximum Permissible Limits. The cause of this contamination has been a subject of debate, with Glencore denying any responsibility and attributing it to "natural contamination" due to the geological characteristics of the area. However, new official reports provide new evidence showing a causal relationship between mining operations and contamination³⁹. The principles of human rights due diligence should lead the company to a proactive response in terms of: (1) emergency actions to address the causes and effects of pollution; (2) a comprehensive review of its policies and practices to rectify this situation; and (3) cooperation with any actions or measures determined by the authorities regarding the responsibilities for this pollution and any potential reparations and compensations resulting from it.
2. In relation to the land negotiation process: all land negotiations must be paused until the new EIA has been completed, together with objective and independent studies that provide adequate information for communities to reach a decision. The company must be transparent and provide accurate information about its land acquisition needs and the consequences for communities. If the project requires the acquisition of such a large proportion of land that it threatens the very existence and livelihoods of communities – as we have found would occur in at least one case – the company must comply with the IFC standards and international law (ILO Convention 169 and the UN Declaration on the Rights of Indigenous Peoples) to ensure the continued existence of Indigenous communities, avoiding fragmenting their territory through a resettlement plan that includes replacement of their livelihoods and the infrastructure for their continued existence (schools, health centres, etc.).
3. In relation to consultation and consent: in line with the recommendations of the Ombudsman's Office and the jurisprudence of the Inter-American Court of Human Rights, the company should demand that the state ensures that the prior consultation is carried out based on the decisions of the governmental authority, where the opinions of Indigenous communities actually have the potential to influence the substantive aspects of the project, in particular the environmental assessments. Where the project involves the resettlement of Indigenous people, the company must ensure that communities can express their free, prior and informed consent, in accordance with international standards and ILO Convention 169.

5.3 Recommendations to Glencore in Colombia

It is essential that Glencore takes actions in line with a just energy transition and contributes to a comprehensive reparation process. To achieve this, it is necessary for Glencore to:

1. Withdraw claims under investment treaty provisions at the International Centre for Settlement of Investment Disputes (ICSID), which are undermining environmental, social and human rights legislation and jurisprudence at national level⁴⁰. An example of this are the current proceedings against the State of Colombia challenging the verdict of the Constitutional Court regarding Cerrejón. This claim pressures the Colombian State with the threat of having to pay millions of dollars⁴¹ to Glencore for fulfilling its obligation to protect the water rights of marginalized indigenous and afrodescendant communities.
2. Pay for the financing of mine closures including ensuring environmental, social, and climate justice by fully assuming the costs of cumulative impacts, due to violations of human rights, as well as the environmental damage caused by mining activities. This should also include the cumulative impacts, ensuring that they do not become environmental liabilities and that the costs are not transferred to the Colombian state. This includes socio-cultural impacts, which have been completely overlooked in the closure plan. Communities affected by adverse impacts of mining have to be involved in the elaboration of mine closure plans. In Cesar, south of La Guajira, Prodeco abruptly ceased operations in March 2020, without properly involving mineworkers and communities in discussions on a mine closure plan that, according to Colombian law, should address and remedy socio-economic, environmental and human rights impacts. While the discussion and legal wrangling over the issue continues in Cesar, internal divisions and conflicts over the issue are flaring up in local communities. In La Guajira, close attention must be paid to ensure that a similar situation will not occur around the Cerrejon mine.⁴²
3. Properly plan the post-closure stage, which should be distinguished from the closure stage and its reversion process, in order to specify the necessary control and monitoring measures for long-term and perpetual impacts and establish the required sources of financing for this purpose. Also in this process, external and community monitoring of the process is needed.

Chapter 6 Recommendations to banks and investors financing Glencore

There have been numerous attempts at engagement by investors with Glencore. Various investors have concluded that engagement has not delivered sufficient results. Several investors have already divested from Glencore, including one of the biggest investor in the world, the Norwegian Government Pension Fund⁴³, and the biggest pension fund of Europe, Dutch ABP⁴⁴, which referred to “major sustainability risks, such as bribery, corruption, conflicts with local communities, and poor working conditions” when excluding Glencore from its portfolio in 2021. Glencore is blacklisted by 32 investors and banks, including Storebrand, Swedbank, Danske Bank, Norwegian DNB⁴⁵, Dutch insurance companies Actiam and CZ and Scandinavian pension funds KLP, PenSam, Danica Pension⁴⁶ and AkademikerPension.

Those banks and investors that continue to finance Glencore with loans and investments should step up their engagement. The following is crucial:

1. Adopt SMART goals to pressure Glencore

Investors have to define specific and measurable milestones to be achieved by Glencore. The 12 recommendations in the previous section are to be delivered by Glencore within a year. If Glencore does not implement the 12 recommendations, investors and banks should exclude the company and its subsidiaries from investments and financing.

2. Investors must become more transparent

Investors often are insufficiently transparent about individual engagement trajectories. It is often unclear which issues are addressed in engagement trajectories. Some investors report a list of companies engaged including the broad topics of engagement (e.g., just referring to ‘human rights’ or ‘labour conditions’).

Investors should improve transparency by systematically publishing the details of each engagement activity with the companies, including the interim goals formulated, and the interim goals achieved, the next steps for the engagement and the overall timeline of the engagement. It is also essential that banks, pension funds and investors communicate more transparently on their decisions to conclude or continue the engagement with companies.

3. Set up a grievance mechanism and provide remedy

It is essential that stakeholders can access a channel to raise concerns. Therefore, a grievance mechanism has to be established by banks and investors. The UNGPs and OECD Guidelines recognize that, regardless of the quality of due diligence processes, adverse human rights impacts may occur, and that when those impacts occur, people who are harmed should have access to remedy. Recovery and remediation are step 6 of the OECD due diligence cycle⁴⁷. By establishing grievance and remedy mechanisms, investors can ensure that remedy is available to affected stakeholders when negative impacts occur and promote adequate and effective human rights due diligence in order to assess, prevent and mitigate impacts before they occur.

Appendix 1 Annex 1 Responses by Glencore and rebuttals

In the preparation of this report, Glencore was given the opportunity to respond to the content of what has been outlined in both case studies.

The response by Glencore to the Peru case study (Sept 8, 2023) can be found [here](#)

The response by CooperAccion to Glencore can be found [here](#) (Sept 19,2023)

The response by Glencore to the Colombia case study (Oct 2, 2023) can be found [here](#)

The response by Censat and Cinep to the letter by Glencore (date, 2023) can be found [here](#)



Appendix 2 Overview of European investors in Glencore

Table 3 Table 1. Overview of European investors in Glencore as of June 2023 (investors above US\$45m)

Bank	Country	Sum (US\$m)
<i>Groupe BPCE</i>	France	802.7
<i>Abrdn</i>	UK	471.1
<i>Royal London Group</i>	UK	414.4
<i>Legal & General</i>	UK	329.7
<i>UBS</i>	Switzerland	316.5
<i>Schroders</i>	UK	289.4
<i>HSBC</i>	UK	225
<i>Aviva</i>	UK	215
<i>Deutsche Bank/DWS</i>	Germany	197
<i>Carmignac Gestion</i>	France	181
<i>M&G</i>	UK	178
<i>Deka Group</i>	Germany	166
<i>Jupiter Fund Management</i>	UK	143
<i>Allianz</i>	Germany	120
<i>Janus Henderson</i>	UK	106
<i>Intesa Sanpaolo</i>	Italy	97.8
<i>Crédit Agricole</i>	France	86.7
<i>Sjunde AP-fonden (AP-7)</i>	Sweden	65.1
<i>Pensioenfond Metaal en Techniek (PMT)</i>	The Netherlands	63.8
<i>Virgin Money</i>	UK	59.6
<i>Aegon</i>	The Netherlands	54.0
<i>Anima</i>	Italy	50.2
<i>Man Group</i>	UK	49.4
<i>Zürcher Kantonalbank</i>	Switzerland	45.5

European banks are important for Glencore: of all the loans and underwriting for Glencore between January 2016 and June 2023, totaling US\$88.1bn, nearly 50% (US\$43.6bn) came from European banks (Table 4).

Source: Profundo BV, Refinitiv.

Table 4 : Cumulative overview of approved loans and underwriting to Glencore per European financial institution (January 2016 to June 2023, US\$m)

Bank	Country	Sum (US\$m)
<i>UBS</i>	Switzerland	3,268
<i>BNP Paribas</i>	France	2,578
<i>Société Générale</i>	France	2,337
<i>ING Group</i>	The Netherlands	2,332
<i>HSBC</i>	UK	2,262
<i>ABN Amroⁱⁱ</i>	The Netherlands	2,161
<i>Crédit Agricole</i>	France	2,054
<i>Santander</i>	Spain	2,050
<i>Deutsche Bank</i>	Germany	2,028
<i>Barclays</i>	UK	1,902
<i>UniCredit</i>	Italy	1,916
<i>Commerzbank</i>	Germany	1,801
<i>Standard Chartered</i>	UK	1,733
<i>Banco Bilbao Vizcaya Argentaria (BBVA)</i>	Spain	1,732
<i>NatWest</i>	UK	1,657
<i>Rabobank</i>	The Netherlands	1,489
<i>Groupe BPCE</i>	France	1,303
<i>Intesa Sanpaolo</i>	Italy	1,018
<i>La Caixa Group</i>	Spain	999
<i>Skandinaviska Enskilda Banken</i>	Sweden	992
<i>DZ Bank</i>	Germany	902
<i>Raiffeisen Banking Group</i>	Austria	801
<i>Zürcher Kantonalbank</i>	Switzerland	782

ⁱⁱ We refer to paragraph 3.1 for more explanation about ABN AMRO

<i>Landesbank Baden- Württemberg (LBBW)</i>	Germany	604
<i>Erste Group</i>	Austria	568
<i>Bankinter</i>	Spain	554
<i>Precision Capital</i>	Luxembourg	494
<i>KBC Group</i>	Belgium	349
<i>Hamburg Commercial Bank</i>	Germany	349
<i>Lloyds Banking Group</i>	UK	140
<i>KfW</i>	Germany	100
<i>Total</i>		43,636

Source: Profundo BV, Refinitiv.

References

¹ See also:

<https://resourcegovernance.org/articles/seismic-change-needed-glencore-following-decade-corruption>; and

<https://noah.dk/glencore>

² <https://www.business-humanrights.org/en/from-us/transition-minerals-tracker/>

³ <https://www.unpri.org/investment-tools/stewardship/advance/the-companies>

⁴ Glencore plc, “Human Rights Policy (1 June 2021),” https://www.glencore.com/who-we-are/policies/human-rights-policy_

⁵ <https://mneguidelines.oecd.org/rbc-financial-sector.htm>

⁶ <https://www.eurosif.org/news/joint-statement-of-support-by-responsible-investors-organisations-for-the-corporate-sustainability-due-diligence-directive-csddd/>

⁷ <https://mneguidelines.oecd.org/RBC-for-Institutional-Investors.pdf>

⁸ See the report here in English (link) and a more elaborate version in Spanish (link). The links are forthcoming. The reports can be made available on request.

⁹ A series of reports on causality prepared by OEFA (2022-2023), see footnote 28

¹⁰ Healy, N., (et al) Embodied energy injustices: Unveiling and politicizing the transboundary harms of fossil fuel extractivism and fossil fuel supply chains, *Energy & Social Science* 48. 2019, page 225

¹¹ https://icbhr.org/assets/reports/Make_it_your_Business_ICBHR_FINAL.pdf, page 40. GLAN, 2020 NON-COMPLIANCE WITH THE OECD GUIDELINES FOR MULTINATIONAL ENTERPRISES: https://c5e65ece-003b-4d73-aa76-854664da4e33.filesusr.com/ugd/14ee1a_14d758179e494a7bb096875cf1f63c87.pdf

¹² Global Witness (2021) ““We are going to kill you.” A case study in corporate power left unchecked” <https://www.globalwitness.org/en/blog/we-are-going-to-kill-you-a-case-study-in-corporate-power-left-unchecked/>

¹³ Heli A Arregocés, Roberto Rojano, Luis Angulo and Gloria Restrepo, ‘Intake Fraction of PM10 from Coal Mine Emissions in the North of Colombia’ *Journal of Environmental and Public Health* (2018) Article ID 8532463 <<https://perma.cc/S2VE-UKXM>> p. 5: ‘We appraised that annually there are 22 hospital respiratory disease admissions, 442 emergency room visits, 105835 restricted activity days, and 336832 respiratory symptom cases attributable to the direct impact of the mining.’

¹⁴ GLAN, 2020 NON-COMPLIANCE WITH THE OECD GUIDELINES FOR MULTINATIONAL ENTERPRISES: https://c5e65ece-003b-4d73-aa76-854664da4e33.filesusr.com/ugd/14ee1a_14d758179e494a7bb096875cf1f63c87.pdf, page 1

¹⁵ See the report by Cinep and Censat Agua Viva here in English (link) and in Spanish (link). The links are forthcoming. The reports can be made available on request.

¹⁶ Due to the secrecy around ISDS claims, it is unknown how many millions Glencore is demanding from the Colombian government. <https://investmentpolicy.unctad.org/investment-dispute-settlement/cases/1122/glencore-v-colombia-iii->

¹⁷ In 2013 Cerrejón announced plans to divert the sacred river Arroyo Bruno – a stream which provides water to some 40,000 people – in a bid to extract 35 million tonnes of coal from the riverbed. It would result in the forcible eviction of indigenous communities from one of the only arable parts of the region into the inhospitable desert. The communities started a campaign to stop the diversion of the river and took legal action.

¹⁸ PAX (n.d.), “Stop Blood Coal”, online: <https://www.paxforpeace.nl/stay-informed/in-depth/stop-blood-coal>, viewed in February 2021.

¹⁹ Banktrack (2016, May), *Human Rights Impact Briefing #2: Drummond and paramilitary violence in Colombia*, p.3

²⁰ <https://www.coalexit.org>

²¹ <https://www.accr.org.au/companies/glencore-plc/>

²² <https://www.accr.org.au/news/%E2%80%9CImpossible-for-glencore-to-ignore%E2%80%9D-coal-mining-giant-hit-with-large-shareholder-vote-on-thermal-coal-risk-at-agm/>

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- ²³ <https://www.reuters.com/markets/commodities/glencores-shareholder-opposition-climate-report-grows-2023-05-26/>
- ²⁴ https://www.accr.org.au/downloads/accr_glencoreupdate_sept2023.pdf
- ²⁵ <https://www.accr.org.au/insights/investor-bulletin-glencore%E2%80%99s-door-open-for-engagement/>
- ²⁶ <https://www.reuters.com/markets/commodities/legal-general-sues-glencore-investor-losses-after-corruption-fallout-ft-2023-02-17/>
- ²⁷ PME (2023) *Waarin beleggen we niet?* Online: <https://www.pmpensioen.nl/waarin-beleggen-we-niet>, viewed November 2023
- ²⁸ <https://www.vanlanschotkempen.com/-/media/files/documents/investment-management/esg/exclusions-and-avoidances/uitsluitingslijst.ashx>
- ²⁹ https://railov.nl/documents/965/Uitsluitingslijst_ondernemingen_Q3_2023.pdf
- ³⁰ For example, for the UK: Corporate Justice Coalition. A Business, Human Rights and Environment Act. <https://corporatejusticecoalition.org/our-campaigns/due-diligence-law/>
- ³¹ <https://mneguidelines.oecd.org/rbc-financial-sector.htm>
- ³² <https://equator-principles.com/about-the-equator-principles/>
- ³³ See: <https://www.oecdwatch.org/complaint/glan-vs-glencore/>
- ³⁴ See: <https://paxvoorvrede.nl/nieuws/imvo-wetgeving-broodnodig-bewijst-zaak-van-colombiaanse-steenkoolslachtoffers-tegen-energiebedrijven/>
- ³⁵ <https://responsiblemining.net/what-we-do/standard/>
- ³⁶ <https://www.icj.org/wp-content/uploads/2019/11/Universal-Grievance-Mechanisms-Publications-Reports-Thematic-reports-2019-ENG.pdf>
- ³⁷ For more information: <https://www.oxfamamerica.org/explore/research-publications/recharging-community-consent/>
- ³⁸ UNDP and UN Working Group on Business and Human Rights, “Gender Dimensions of the Guiding Principles on Business and Human Rights” (Office of the United Nations High Commissioner for Human Rights, Geneva, 2019), <https://www.ohchr.org/sites/default/files/Documents/Issues/Business/BookletGenderDimensionsGuidingPrinciples.pdf>.
- ³⁹ Environmental assessment of causality of the environmental components surface water, sediment and hydrobiological communities within the Auditable Unit of the Antapaccay-Expansion Project–Corocchohuayco Integration of Compañía Minera Antapaccay” (00095-2023-OEFA/DEAM-STEC, available at: https://cooperaccion.org.pe/wp-content/uploads/2023/09/2023-OEFA-N_00095-2023-OEFA-DEAM-STEC-agua.pdf), and clarifications (00184-2023-OEFA/DEAM-STEC), available at: <https://cooperaccion.org.pe/wp-content/uploads/2023/09/2023-OEFA-00184-2023-OEFA-DEAM-STEC-precisiones-al-00095-agua.pdf>). See summary in Annex 2 (<https://cooperaccion.org.pe/wp-content/uploads/2023/09/Anexos-Oefa-Antapaccay.pdf>).
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- ⁴³ <https://www.nbim.no/en/responsible-investment/exclusion-of-companies/>
- ⁴⁴ <https://apg.nl/media/fjdfceoc/responsible-investment-report-apg-2021.pdf>, page 18
- ⁴⁵ For an overview of exclusions of Glencore, see <https://www.financialexclusionstracker.org/>
- ⁴⁶ <https://www.ipe.com/news/abp-exits-glencore-investment-over-human-rights-concerns/10055740.article>
- ⁴⁷ <https://mneguidelines.oecd.org/OECD-Due-Diligence-Guidance-for-Responsible-Business-Conduct.pdf>

About this report

This report has been commissioned by The Fair Finance Guide (Eerlijke Geldwijzer) which is a coalition of the following organisations: Amnesty International, Milieudefensie, Oxfam Novib, PAX and World Animal Protection. It examines the role of Glencore in Colombia and Peru and lists European investors in Glencore. The aim of the Fair Finance Guide is to encourage corporate social responsibility by financial institutions.

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Authorship

This report was researched and written by Oxfam, CooperAccion, Cinep, Censat Agua Viva, Finanzas Justas Colombia and Fair Finance International. Financial research was carried out by Profundo. Oxfam Novib and PAX adjusted the report for the Dutch context.

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