

## **Response to Global Witness**

**2 May 2012**

### **General statement**

Glencore International believes that sustainability must be an integral part of everything we do. It is vital to good business conduct, and helps us meet both our own expectations and those of our stakeholders.

We believe that operating sustainably also enhances our corporate reputation and forms part of our competitive advantage around the world.

For this reason, we have put a corporate sustainability framework in place to balance social, environmental, ethical and commercial interests at every level of our group. This framework is called Glencore Corporate Practice, or GCP. We have designed and implemented GCP to meet internationally recognised, sector-specific, good practice standards.

One of GCP's principles is a commitment to compliance.

Our position on the issues of bribery and corruption is clear: offering, paying, authorising, soliciting or accepting bribes is unacceptable to Glencore.

Our principles, commitments and management approach are stipulated in our global anti-corruption policy.

If employees are concerned that any conduct or proposed course of action might be improper or in breach of any applicable laws or regulations, they must refer that concern to a member of our Business Ethics Committee (BEC) or the local compliance co-ordinator.

The BEC includes representatives from our external counsels, to whom misconduct can be reported independently.

Glencore is of the view that, in the context of the Glencore group as a whole, there have been no material breaches of any applicable laws or regulations.

Our industrial operations must implement their own compliance programmes, designed to address their specific requirements, but consistent with our overall compliance commitment.

## **Kansuki**

Glencore holds a 50 per cent interest in Kansuki Investments sprl, which in turn holds a 75 per cent interest in Kansuki sprl, the owner of the Kansuki concession (thereby giving Glencore an effective interest of 37.5 per cent. in Kansuki).

Please do not confuse the finalization of the JV with the creation of the concession. The Kansuki concession has been in private hands since 2002. The new joint venture agreement was simply the conclusion of the general revisitation process that all the mining concessions were subject to, led by the World Bank and the Ministry of Mines.

Negotiations to acquire the shareholding in Kansuki Investments sprl began in early 2010 and were conducted with representatives of the Fleurette Group.

As you note from our prospectus, Glencore acquired this shareholding in August 2010.

The terms of the transaction were disclosed in our prospectus on page 182.

In exchange, Glencore has (i) an obligation to finance the first U.S.\$400 million of development related expenditures, if any, as and when such expenditure is incurred, (ii) the right to operate the operations, and (iii) a life of mine off-take agreement for all copper and cobalt produced by Kansuki. In addition, one of the partners in Kansuki has the right to sell an additional 18.75 per cent. ultimate interest to Glencore at the then calculated equity value of the operation, at the earlier of the date the operation produces a minimum annual 70,000 metric tonnes of copper and August 2013.

There was no cash consideration for this acquisition.

It is important to note that the \$400 million of development related expenditures that Glencore has an obligation to finance are being made available to Kansuki as a loan with a commercial rate of interest. These funds can only be used for development related expenditures. Financing the production of commodities is part of Glencore's business all round the world, and Glencore even extends loans of this type to projects in which it has no equity interest.

As disclosed in our preliminary results for 2011 and in our Annual Report for 2011, we are currently studying a combination of the Kansuki and Mutanda operations which will impact on the final programmes and budgets. However it is expected that the \$400 million facility will be sufficient to cover the full cost of the programme.

In respect of this and the other transactions you have raised we have always fully complied with our disclosure obligations.

## **Kansuki – Biko transaction**

The transaction through which Biko Invest Corp acquired Gecamines' 25 per cent shareholding in Kansuki sprl was disclosed in Glencore's prospectus. However Glencore

was not party to this transaction and hence questions about the transaction directly should be addressed to Gecamines and/or Biko.

It is important to point out that it is not Glencore that had this option – it was the joint venture, Kansuki Investments sprl.

During the period when this transaction took place, Glencore had decided in general not to increase its shareholdings in DRC projects. This was for two reasons – firstly Glencore already had substantial capital commitments to develop Katanga and Mutanda and preferred to invest its funds in developing its DRC projects – ie in building kit on the ground– rather than paying out shareholders. Secondly Glencore perceived that there was potentially some uncertainty ahead of the DRC presidential election. The outcome was uncertain and it was possible that there could be very unfavourable implications for the mining industry.

Glencore was not willing to match the offer and therefore the joint venture Kansuki Investments sprl recommended Gecamines accept the higher offer.

Questions on Gecamines' previous rights as a shareholder in Kansuki sprl and the rights held by Biko Invest Corp now should be addressed to them.

As you point out and as we disclose in various filings including our prospectus and our Annual Report 2011, one of the partners in Kansuki has the right to sell an additional 18.75% ultimate interest to Glencore at the then calculated equity value of the operation, at the earlier of the date the operation produces a minimum annual 70,000 tonnes of copper and August 2013. We have fully complied with our disclosure obligations in respect of this matter.

## **Mutanda**

Glencore holds a 50 per cent. interest in Samref Congo Sprl which in turn holds an 80 per cent. interest in Mutanda Mining Sprl, the owner of the Mutanda concession. The remaining 20 per cent. in Mutanda Mining Sprl was recently acquired by Rowny Assets Limited from Gecamines. Glencore is the operator.

Mutanda Mining Sprl was granted its rights to the Mutanda concession under its incorporation in May 2001.

Glencore acquired its shareholding in June 2007. The terms of this transaction, which did not involve a Government entity on either side, were not disclosed.

Glencore operates Mutanda, but there is a shareholder agreement in place and decisions are made jointly.

Samref received a letter from Gecamines advising that it had received an offer from Rowny for Gecamines' 20 per cent shareholding in Mutanda. As noted, Samref had the opportunity, not Glencore.

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In addition, the other shareholder in Samref was not willing to put in funds and we were not willing to finance them.

Samref therefore decided it was not willing to match other bids on the table. The recommendation back to Gecamines was to follow the highest bid. There were no discussions between Samref and Rowny.

### **Acquisition of more than 50 percent of Kansuki and Mutanda combined**

As we have disclosed in our Annual Report 2011, discussions with respect to a potential combination of the Mutanda and Kansuki operations are ongoing, with a view to ultimately obtaining a majority stake in the merged entity.

These discussions are ongoing and as such it is not prudent to make any disclosures beyond what we have done so already to our shareholders.

It is important to note that Glencore did not hold the pre-emption rights you refer to in your questions, in both cases they were held by companies in which Glencore had a shareholding. We have outlined above why we elected at the time not to push for these companies to exercise their pre-emptions. The situation today for Glencore is different, with Mutanda and Katanga at a more advanced stage of development and with the presidential election now complete. In addition, the potential merger with Xstrata will give the company greater scale and will enable more investment in DRC whilst maintaining a balanced portfolio worldwide.

### **Kipushi**

Kipushi was offered to Glencore as part of a security package for a financing transaction. We have no further involvement in this asset.

There is no relationship between this financing transaction and the Kansuki Investments sprl agreement.

## **Dan Gertler**

Companies associated with Mr Gertler are investors in projects in which Glencore is also a shareholder.

### **Auditing of Beneficial Interests**

Glencore does appropriate due diligence as required to ensure that it acts in line with its principles under Glencore Corporate Practice.

However your questions should be directed to these companies. Glencore has disclosed its 50 per cent shareholdings in Samref and in Kansuki Investments.

### **Loan Agreement and Stock Trades**

Katanga Mining Limited is a public company listed on the Toronto Stock Exchange. All transactions in the shares by major shareholders, such as Glencore, are publicly disclosed in line with Toronto Stock Exchange regulations.

The transactions referred to are part of a financing package and are structured accordingly. Glencore routinely finances the production of commodities around the world, including in the DRC.

It was in Glencore's interest to have other companies participate in the Katanga rights issue, in order to share the risk.

As disclosed in the Early Warning Report of 12 February 2009, Lora Enterprises participated in the rights issue with an investment of \$61m.

As disclosed in the Early Warning Report of 12 February 2009, some \$16 million was financed through Glencore writing a call option for Lora's affiliate Ellesmere. This option was written at the market price at the time, with a payment at the exercise of the option of interest rate at LIBOR +7 per cent. This was in effect a fully-secured loan at a commercially-attractive rate of interest for Glencore.

When Ellesmere subsequently chose to exercise its option, Glencore was confident in the future of the company and wished to maintain its shareholding. Glencore therefore bought shares back from Ellesmere at market rates. These shares subsequently rose, so this turned out to be a good investment.

Glencore has made loans to companies associated with Mr Gertler at various times, fully-secured on shares and at commercial rates of interest.

The transactions with Breton Global Limited were also a financing arrangement for the rights issue. Glencore wrote a call option for Breton, written at market price with a payment of interest, for a short period of time. This was effectively a fully-secured loan at a commercially attractive rate of interest for Glencore. When Breton subsequently

chose to exercise its option, Glencore was confident in the future of the company and wished to maintain its shareholding. Glencore therefore bought back shares.