

resource matters

SEE NO EVIL, SPEAK NO EVIL

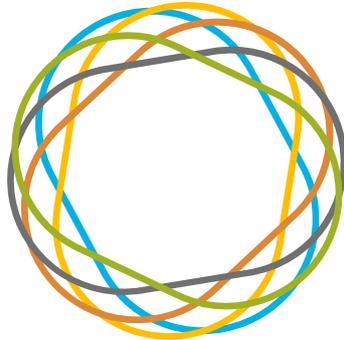


**Poorly managed corruption risks
in the cobalt supply chain**



Acronyms	3
Executive summary	4
See No Evil, Speak No Evil – Poorly managed corruption risks in the cobalt supply chain	6
A selective approach to cobalt supply chain due diligence	8
Due diligence for child labor in artisanal mining	8
Corruption, much less in sight	8
Case study : Glencore, the world’s lead cobalt producer	9
Methodology	10
Normative analysis	10
Analysis of corporate practices	10
Which due diligence is required towards suppliers that may be associated with corrupt practices?	12
What does the law say?	12
Indirect corruption and complicity	12
Concealment	13
Preventive measures	13
What do international standards and guidelines say?	14
What do the companies themselves say?	17
Corruption risk due diligence put to the test : the Glencore case	18
Identification of the cobalt supply chain	18
A considerable effort to map the cobalt chain	18
... but some reluctance to confirm the presence of Glencore	19
Identification of the risks of corruption : see no evil, speak no evil	20
Very limited risk management measures	22
Conclusion	24
Recommendations	25
Strengthen the normative framework	25
Better identify the supply chain	25
Better identify and manage the risks of corruption	25
Limit the risk of Glencore payments to an entity sanctioned for bribery	26
Appendix A - Glencore and Gertler : Ten Years of Controversial Links	28
Appendix B – Estimate of payments Glencore subsidiaries owed to Gertler affiliates in 2018	29
Appendix C – Glencore comments	30
Notes	31

S U M M A R Y



resource matters

Resource Matters is a Brussels-based non-profit organisation that aims to better understand and overcome economic poverty in countries otherwise rich in natural resources. It has particular expertise in mining and hydropower investments in the Democratic Republic of Congo.

In partnership with the Sciences Po Law School Clinic Program on Corporate social responsibility and Innovation (RISE, or Responsabilité et Innovation Sociale des Entreprises) is a platform for reflection, cross-learning and exchanges between students, law professors, lawyers, and corporate actors. It focuses on social responsibility and innovative practices developed by companies and other organisations.

Acromyms

AFA	French Anti-Corruption Agency
BE	Belgium
CATL	Contemporary Ampere Technology
CCCMC	China Chamber of Commerce of Metals, Minerals and Chemicals Importers and Exporters
CN	China
DE	Germany
DLH	Dalhoff, Larsen and Horneman
ENRC	Eurasian Natural Resources Corporation
ERG	Eurasian Resources Group
ESTMA	Extractive Sector Transparency Measures Act
FI	Finland
FR	France
GB	Great Britain
IDH	Human Development Index
IN	India
IRMA	Initiative for Responsible Mining Assurance
ITIE	Extractive Industries Transparency Initiative
JP	Japan
KCC	Kamoto Copper Company
KR	South Korea
LME	London Metal Exchange
NEVS	National Electric Vehicle Sweden
NO	Norway
OECD	Organisation for Economic Cooperation and Development
RCI	Responsible Cobalt Initiative
RMI	Responsible Minerals Initiative
SE	Sweden
SU	Switzerland
UNICEF	United Nations Child Fund
US	United States

Executive summary

Producers of electric vehicles and electronics face a daunting challenge: how does one ethically source cobalt, a key mineral for rechargeable batteries, when the world's largest producer of this material, Swiss multinational Glencore, makes extremely risky payments to a company sanctioned for corruption? The present study reveals that most major battery, car and electronics makers do not know how to handle this problem in their supply chain, and recommends a series of steps to minimize the risk.

The setting for this report is that of the Democratic Republic of Congo, one of the poorest countries in the world, and one that owns half of the world's cobalt reserves. Due to its two massive mining projects in Congo, Glencore is as a key player in the global cobalt market. In 2018, Glencore's Congolese subsidiaries produced more than a third of the world's cobalt production.

This position has not been earned without controversy. For a decade, Glencore has maintained a close business relationship with Dan Gertler, a notorious Israeli businessman. Very close to former President Kabila, several organizations and judicial authorities suspect him of potentially corrupt practices. In December 2017, the US administration sanctioned Mr. Gertler and dozens of his companies for corruption under the Global Magnitsky Law. Mid 2018, the US Department of Justice opened an investigation into Glencore's activities in Congo, Venezuela, and Nigeria to scrutinize its compliance with the Foreign Corrupt Practices Act. Both Gertler and Glencore have strongly denied all the corruption allegations.

Despite US sanctions, Glencore has continued paying royalties to a Gertler-affiliated entity, after this entity risked losing its mines in Congo if it stopped doing so. Resource Matters estimates the royalties owed to Gertler amounted to at least \$ US 74 million in 2018. The company has not disclosed how much was effectively paid.

These sanctions and investigations have direct consequences for companies that purchase directly or indirectly from Glencore.

From a legal point of view, the companies Glencore sells copper and cobalt to could be exposed to certain risks of complicity or concealment, depending on the jurisdictions they are based in, if they fail to manage the risk arising from these royalties payments. Indeed, a key element of such offenses is the client company's knowledge of potential acts of corruption perpetrated by its direct suppliers.

Beyond these legal risks, companies are expected to set up a system of due diligence with regards to their suppliers, in particular under the OECD Guide on the responsible sourcing of minerals from high-risk areas like Congo. According to these standards, corruption is one of the risks to be assessed.

Resource Matters and Sciences Po Paris has identified 14 large companies as probable Glencore customers and carried out a survey to evaluate how these companies manage the corruption risk associated with payments to a sanctioned entity. These include Apple, BMW, CATL, Daimler, Eco-pro, GEM, LG Chem, NEVS, Peugeot SA, Renault, Umicore, Samsung SDI, Volkswagen and Volvo Cars. The results, at best, are mixed.



The majority of the 14 have incorporated a risk management system into their supply chains. In addition, the companies have made significant efforts over the past three years to map their cobalt chains. However, when it comes to identifying real risks, these same companies have paid very little attention to corruption in the industrial sector. So far, the debate on cobalt supply chains has largely focused on human rights violations in artisanal mining sites, particularly concerning child labor.

Our research reveals that only a third of the 14 companies are prepared to admit that that Glencore is part of their supply chain, and that the links between Glencore and Gertler pose a risk.

Therefore, it is not surprising that the number of measures these companies have taken to manage this risk is very limited. Only two of the firms contacted have raised the issue of corruption with the supplier. The two did not pursue the matter any further, however, on the grounds that the supplier reassured them that the allegations were wrong and that it has not been convicted in court. Only one of the company's that responded indicated that it would conduct an audit from Glencore. The results of this audit, however, are not yet available.

We think that cobalt buyers will only truly contribute to Congo's macro-economic development if they help ensure that the proceeds of its mining boom benefit the Congolese population rather than a few controversial individuals. To that effect, Resource Matters recommends that companies sourcing directly or indirectly cobalt from Glencore should join forces and request of the company, preferably collectively, a number of practical safeguards to limit as much as possible the risk of corruption and embezzlement.

Such measures include an audit of payments Glencore has made to Gertler-affiliated entities so as to ensure that they have not been used for illicit purposes, as well as strict compliance with transparency rules, both through the Extractive Industries Transparency Initiative in Congo, and through compliance with transparency regulations Glencore and its subsidiaries are subject to in Canada and the United Kingdom.

Poorly managed corruption in the cobalt supply chain

Crossroads in Beijing where electric cars crisscross without noise or smelly smoke; electric scooters that invade the sidewalks of American and European cities : this is the mobility of the future, the result of a growing awareness that the threats of climate change require less polluting travel options.¹ The automotive sector is gradually veering “EV”, promising the production of many more electric vehicles over the next few years.²

One of the keys to this automobile transition is cobalt, a mineral that is essential for rechargeable batteries that keep these new vehicles going. According to the latest available statistics, almost two-thirds of the world’s production in 2018 came from a single country : the Democratic Republic of Congo (« Congo »). Congo is for cobalt what Saudi Arabia is for oil.³

Eldorado for this electric revolution, Congo is also a textbook case of the paradox of plenty: despite its vast mineral wealth, the country is ranked at the bottom of the human development index (“HDI”).⁴ Poverty is neither a coincidence nor fate. It results, at least in part, from an “improvable” governance record, to use the euphemism of a major European car brand. Large-scale corruption, embezzlement and tax evasion are rife, including in the copper-cobalt sector. They deprive Congo’s public treasury of the revenues that the country needs to invest in infrastructure and to diversify its economy.

Yet corruption is rarely the subject of public debate among major cobalt consumers. Despite the media controversies affecting several of the world’s largest cobalt producers, industrial producers are increasingly seen as «clean”, in contrast with the artisanal sector, branded as the source of all evils.

Intrigued by this lack of public debate on industrial producers and corruption, Resource Matters has requested the support of the Social Responsibility and Innovation Program (RISE) of Sciences Po Law School’s Clinic around a central research question: to which extent are corruption risks taken into account in due diligence efforts of major cobalt buyers of cobalt? The team sought to answer two complementary questions.

The first is the extent to which there is a duty for cobalt buyers to manage potential corruption risks in their supply chain. What is required according to the legal framework of the countries where cobalt transits and arrives? Can cobalt buyers be held legally accountable for potential bribery of their suppliers? What do less binding international standards stipulate, including due diligence guidelines for responsible mineral sourcing?

The second is how due diligence is carried out in practice, especially on the basis of a specific case study : the payments of Swiss trader Glencore, the world's largest cobalt producer, to the network of Dan Gertler, a businessman particularly close to the former president of Congo, Joseph Kabila, and sanctioned more than a year ago on grounds of corruption. Have companies that source directly or indirectly from Glencore detected this potential corruption risk in their chain? If so, what measures have they taken to mitigate this risk?

Before addressing these two questions, we first put this study in context and clarify the methodological choices the team has made.



A SELECTIVE APPROACH TO COBALT SUPPLY CHAIN DUE DILIGENCE

The copper and cobalt sector dominates economic activity in the former province of Katanga, in southeastern Congo. The sector is not homogeneous: large industrial operators work alongside entities that process ore from artisanal miners. The ratio between industrial and artisanal mining is not well known, especially since some producers operate in both branches without clear

Due diligence for child labor in artisanal mining

Symptom of this glaring poverty, one in forty children works in mining, digging up reddish earth, sorting ore or carrying bags, depending on their age.⁷ Non-governmental organization Amnesty International flagged these practices in two successive reports in 2016 and 2017.⁸ It establishes the responsibility not only of a key Chinese company in the artisanal sector, Huayou Cobalt, but also that of 27 large multinationals along the cobalt chain. According to Amnesty International, Apple, Lenovo, BMW, Renault and their peers needed to better verify that the suppliers of their products do not rely on child labor or other human rights violations.

Indeed, according to the Organization for Economic Co-operation and Development (OECD) Due Diligence Guidance on Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas ("OECD Guidance"),⁹ companies purchasing minerals or derivatives are required to set up a system to identify and manage risks in their chain. Amnesty's report received a lot of media coverage and a visible response from the targeted companies. These have launched a series of initiatives to better understand their specific supply chain and to specifically address child-related issues in the region.

distinction. According to a University of Berkeley study conducted in 2017 among more than 2,600 households living in the region, 60% rely on mining for their survival.⁵ Most are active in the artisanal sector, sparing hammer and metal bars to dig a way through a labyrinth of tunnels, bringing the coveted ore to the surface. The median salary is around US\$14 per month.⁶

Paradoxically, the high media coverage has overshadowed other risks that affect the supply chain. In particular, a binary classification based on the type of sourcing (artisanal / industrial) is emerging: supply from artisanal mining sites is deemed problematic; buying from industrial companies seems not to be.¹⁰ The world's main metals exchange - the London Metal Exchange (« LME ») - is for instance considering stricter rules for cobalt products from artisanal sites.¹¹ A coalition of organizations, including Resource Matters, wrote to the LME to challenge this discriminatory approach to supply chains.¹²

Corruption, much less in sight

This dichotomous approach is overly simplistic, not only because of the complex structure of value chains where artisanal and industrial materials are often mixed at some point,¹³ but also and above all because there are serious ethical concerns too in the industrial mining sector. Displacements of local communities without relocation or adequate compensation,¹⁴ environmental damage,¹⁵ deplorable working conditions in some factories...: all this means a rigorous diligence of industrial producers is a necessity.

One particular risk has been subject of regular media coverage for years: large-scale corruption. When the privatization of the Congolese mining sector got underway in earnest at the end of the 20th century, civil society organizations began increasingly to criticize imbalanced contracts signed in opaque circumstances.¹⁶ Even after these contracts were renegotiated following the first democratic elections in 2006,¹⁷ new unbalanced deals emerged, attracting further criticism. The Africa Progress Panel wrote in 2013 that Congo lost US\$1.3 billion in five transactions, all involving Dan Gertler.¹⁸ Three years later, US hedge fund Och Ziff acknowledged it committed corrupt practices involving Gertler to gain control over certain Congolese mining sites.¹⁹ Gertler has always denied the charges and defended his contributions to the country.

Nevertheless, two current cobalt producers are still under investigation for alleged corrupt practices involving the controversial businessman. Eurasian Natural Resources Corporation (ENRC), now restructured under the Eurasian Resources Group (ERG) and operator of the Metalkol, Boss Mining, Frontier and Comide sites, could face a lawsuit against the Serious Fraud Office in the United Kingdom.²⁰ Glencore, which operates the Kamoto Copper Company sites («KCC») and Mutanda Mining, received a subpoena from the US Justice Department for similar matters.²¹ The two multinationals have denied any wrongdoing.

Case study : Glencore, the world's lead cobalt producer

Resource Matters has selected Glencore as a case study for several reasons : its prominent position in the global cobalt market, the numerous allegations of corruption risks, and finally Glencore's decision to continue making payments to an entity sanctioned for corruption.

With a total production of 38,400 tonnes of cobalt in 2018,²² Glencore's two projects accounted for 36% of global cobalt production that year.²³ Several major battery producers purchase directly or indirectly from the Swiss group. Three of them - CATL, Samsung SDI and LG Chem - represented a considerable part of the rechargeable battery market. In sum, Glencore is the "best

placed large cap company for Electric Vehicle revolution", in its own words.²⁴ «The future needs our minerals.»²⁵

NGOs like Global Witness have regularly reported on their concerns about Glencore's potential corrupt practices arising from its relationship in Congo with Gertler.²⁶ Glencore has maintained this relationship with Gertler despite multiple allegations that he might be using his proximity to Kabila so as to corruptly obtain privileges and favors.²⁷ In December 2017, the US administration sanctioned Gertler for having concluded "hundreds of millions of dollars' worth of opaque and corrupt mining and oil deals in the Democratic Republic of the Congo" under the Global Magnitsky Act.²⁸ In July 2018, Glencore announced the US Department of Justice had requested evidence of its compliance with US corruption and money laundering laws with regards to its activities in Nigeria, Venezuela and Congo (see Appendix A).

Following the US sanctions, Glencore interrupted its payments to Gertler for a few months during early 2018. Under pressure, however, both from Gertler and Congo's state-owned company Gécamines, Glencore announced it would resume its payments to Gertler in June 2018.²⁹ These payments are still happening at the time of publication of this report and are expected to continue until the end of the life of the KCC and Mutanda mines. According to Resource Matters estimates, the royalties owed for the year 2018 for both projects combined amounts to at least \$US 74 million (see Appendix B). Glencore has not yet declared how much it effectively paid since the sanctions.

These payments to a sanctioned entity present a rare case of a permanent and ongoing corruption risk to companies in Glencore's supply chain. Although Glencore itself has not been convicted of corrupt practices, this permanent risk justifies the selection of this case.

METHODOLOGY

This report has two main parts : an analysis of the norms and standards for due diligence

about corruption, and one on corruption due diligence in practice.

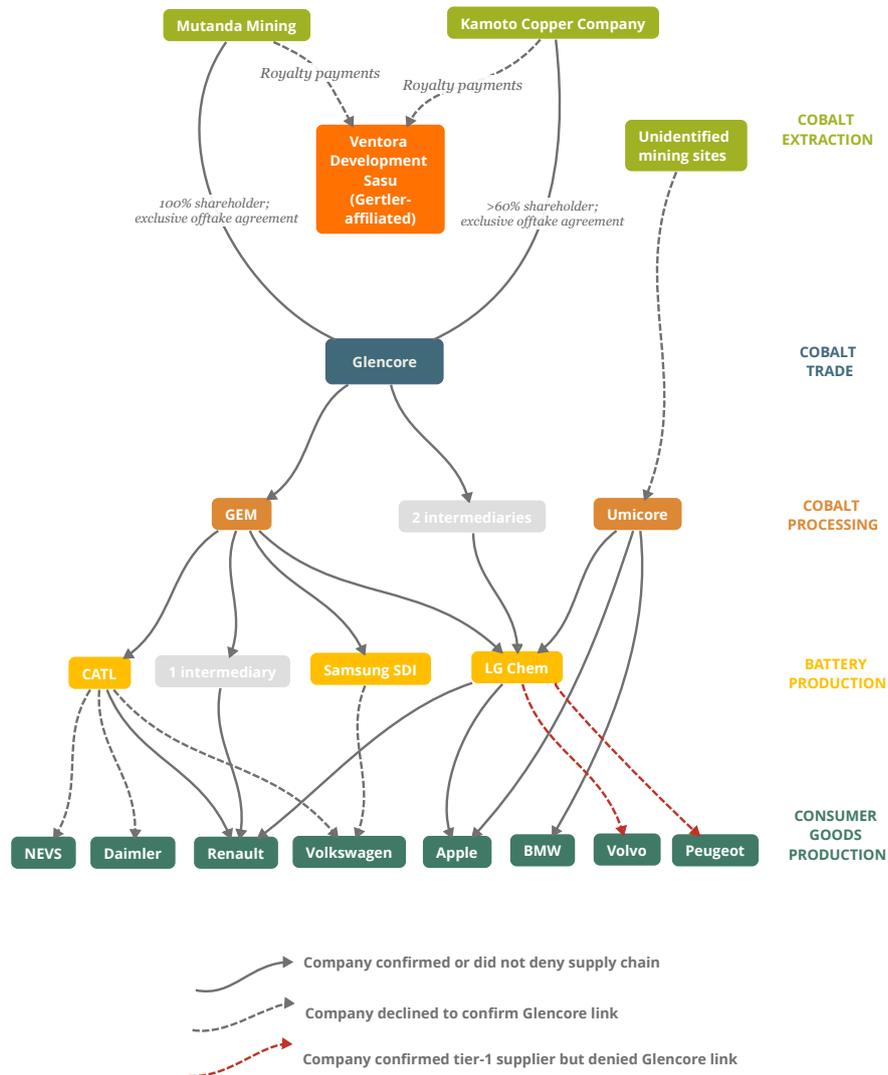
Normative analysis

Resource Matters first analyzed the laws and standards surrounding bribery of foreign public officials, especially those applicable in countries of incorporation of main cobalt users. The team studied the liability of clients for corrupt practices committed by their suppliers in Belgium (BE), China (CN), Finland (FI), France (FR), Germany (DE), Japan (JP), Norway (NO), South Korea (KR), Sweden (SE), Switzerland (SU), United Kingdom (UK), United States (US), India (IN). In addition, the team studied soft law instruments, including the OECD Guidance and other similar instruments that companies involved in the cobalt supply chain developed. The result of this analysis is presented in the first part of the report.

Analysis of corporate practices

In the second part, we study the degree to which companies apply these standards in their general policies and in relation to the Glencore case.

The team researched Glencore’s direct and indirect customers, relying on official statistics from the Mines Department of the former province of Katanga, suppliers lists from downstream companies (notably Apple, BMW, Daimler, LG Chem, Renault, Samsung SDI), financial press articles, secondary literature on the international cobalt market³⁰ as well as NGO investigations, namely that of Amnesty International.³¹



Once the list of probable customers was established, the team gathered and analyzed all documents these companies published on their due diligence practices and social and environmental efforts. The team screened corporate codes of conduct, supplier standards, anti-corruption guidelines, corporate social and environmental responsibility reports, conflict minerals reports and other relevant documents and websites.

The team subsequently reached out to the targeted companies with a standard questionnaire, adapted to each company according to the information it collected in the previous phase. The questionnaire includes a section on general corporate policies as recommended by the OECD Guidance, as well as a section on issues specifically related to their links with Glencore and how they managed the risk arising from the latter's payments to Gertler.

	Response	Interactions with research team	How comprehensive was the response (public documentation + interactions)?
Apple	✓	Response on the basis of publicly available information, confirmed by phone conversation	Partial
BMW	✓	Several detailed exchanges	Quite comprehensive
CATL	✗	No response	Not comprehensive at all
Daimler	✓	Several detailed exchanges	Quite comprehensive
Ecopro	✗	No response	Not comprehensive at all
GEM	✗	No response	Not comprehensive at all
LG Chem	✓	Several detailed exchanges	Quite comprehensive
NEVS	✓	Brief inconclusive exchange	Not comprehensive at all
Renault / Nissan	✓	In-person meeting	Quite comprehensive
Peugeot	✓	In-person meeting	Quite comprehensive
Umicore	✓	Oral and written exchange	Quite comprehensive
Samsung / SDI	✓	Several detailed exchanges	Comprehensive
Volkswagen	✓	Several detailed exchanges	Quite comprehensive
Volvo	✓	Several exchanges, mainly relating to Glencore's position in the chain	Partial

Which due diligence is required towards suppliers that may be associated with corrupt practices?

To what extent can companies purchasing cobalt-rich products be held liable for corrupt practices that companies in their supply chains may have committed? Can these companies face legal charges for this in their own countries and if

so, on what basis? Beyond the strictly legal responsibility, should they worry about corruption in their supply chain on the basis of non-binding international standards?

WHAT DOES THE LAW SAY?

The criminalization of bribery of foreign public officials has become relatively widespread in Western jurisdictions and, more recently, in some Asian jurisdictions. Nearly all countries surveyed have ratified the United Nations Convention against Corruption³² as well as the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions.³³ Over the last twenty years, countries have implemented these anti-corruption conventions to different extents in their respective criminal codes; some have even in a special law on the subject.³⁴ India stands out as the only country on the list of countries under review that has not adopted specific provisions on bribery abroad.³⁵

Domestic laws are quite unanimous on the criminalization of direct corruption of a foreign public official.³⁶ Even so-called «facilitation payments» to speed up the regular work of a public official are generally no longer tolerated.³⁷

Indirect corruption and complicity

In accordance with the OECD Convention,³⁸ complicity for bribery abroad is also often recognized as an offense (indirect bribery). This is especially so where a third party or an intermediary commits those acts for the direct benefit of the accomplice.³⁹ This notion of complicity in bribery is included in more than half of the jurisdictions the team analyzed (BE, FR, US, UK, FI, DE, JP, KR).⁴⁰

Could a supplier be considered as such a third party? Could the client be considered an accomplice?

Generally the supplier does not act on behalf of his client. However, the latter could nonetheless be held liable for acts of the former in specific circumstances. This is the case, for example, when a company wants to acquire a given type of good and requests his supplier to take care of it using “whichever means necessary” or tacitly accepts suspect means in the context of a principal-agent relationship.⁴¹ Another potentially risky case is when the employee of a company participates in discussions in which the supplier informs him he will have to pay bribes, and the employee “turns a blind eye”.⁴² Under the US Foreign Corrupt Practices Act («FCPA») for example, a company that buys goods with the knowledge that the supplier will use part of its payment to bribe a public official might be at risk of violating the FCPA.⁴³

Concealment

Clients may also face the legal risk of being liable for «concealment», i.e. to benefit from the proceeds of a crime committed by a supplier. French courts are currently considering a case that could set a precedent in this matter. A company called DLH is accused of having purchased wood from Liberian companies who had bribed officials of the Charles Taylor regime during the 1991-1992 civil war.⁴⁴ While the majority of jurisdictions do not provide for a precise definition of concealment,⁴⁵ some (CN, BE, FR) explicitly establish that the person who knowingly purchases ill-gotten property can be held liable for concealment.⁴⁶

Preventive measures

In a relatively small number of jurisdictions, clients are legally required to take steps to prevent that sourcing from potentially corrupt tier-1 suppliers. This is the case in France (by law),⁴⁷ Switzerland (by law),⁴⁸ and the United States (based on case law).⁴⁹

Purchase contracts in particular are subject to this pre-contractual due diligence requirement. French legislation (Sapin II Act) establishes that large corporations must map corruption risks and act accordingly.⁵⁰ US case law establishes the need to implement the necessary prior checks - in particular, to pay attention to potential red flags.⁵¹

The so-called Sapin II Act

The December 2016 Sapin II Act requires large companies to set up mechanisms to prevent corruption.⁵² These include a code of conduct, an internal whistleblower system, risk mapping, evaluation procedures of customers, first-tier suppliers and intermediaries based on the results of risk mapping, accounting control procedures, training tools, a disciplinary regime, and an internal control and evaluation plan to assess the measures that have been taken.

The same law established the French Anti-Corruption Agency⁵³ in order to control the implementation of these measures. In its guidelines, the Agency recommends assessing the integrity and reputation of suppliers before award contracts, as well as the supplier's corruption prevention policies and its links with public officials.⁵⁴ High risk profiles should lead to specific procedures - such as an audit request from the supplier, regular audits or special contractual clauses.⁵⁵

Other countries have issued supply chain due diligence guidelines for their companies (BE,⁵⁶ CN,⁵⁷ JP,⁵⁸ SU,⁵⁹ UK,⁶⁰ US).⁶¹ The Chinese authorities have developed specific guidelines for extractive companies such as cobalt miners.⁶² The guidelines establish that companies must identify all the other companies involved in their supply chain and use their influence to promote the application of ethics principles throughout this chain. This seems to be inspired by the OECD Guidance, which is discussed in the next section.

WHAT DO INTERNATIONAL STANDARDS AND GUIDELINES SAY?

Beyond international conventions and national laws, an arsenal of less binding international standards require companies to carry out due diligence with regard to their minerals supply chain, including on corruption.

The most recognized standard is the OECD Due Diligence Guidance for Responsible Supply Chains of Minerals.⁶³ It applies to all companies supplying or sourcing minerals that may come from conflict or high-risk areas.⁶⁴

OECD Guidance : Five due diligence steps

The OECD recommends carrying out the following five due diligence steps to ensure ethical sourcing:⁶⁵

1. Set up strong due diligence management systems. This includes: (i) adopting and communicating policies related to the supply chain; (ii) properly control the supply chain; (iii) set up alert systems and grievance mechanisms; (iv) engage with suppliers.
2. Identify and assess supply chain risks.
3. Design and implement a strategy to respond to identified risks, to mitigate them, through measurable actions.
4. Carry out an independent third-party due diligence audit at identified points in the supply chain.
5. Report on supply chain due diligence.



The OECD Guide is generally accepted as a reference standard. Almost all companies in this study have acknowledged that it applies to their cobalt supply chain.

	OECD Guide	Responsible Minerals Initiative (RMI)	Responsible Cobalt Initiative (CCCMC Initiative)	Pilot Cobalt Refiner Standard
Apple	✓	✓	✓	✓
BMW	✓	✓	✓	✓
CATL	✓	✗	✓	✓
Daimler	✓	✓	✓	✓
Ecopro	✗	✗	✗	✗
GEM	✗	✗	✓	✓
LG Chem	✓	✓	✓	✓
NEVS	✗	✗	✗	✗
Renault / Nissan	✓	✓	✓	✓
Peugeot	✓	✓	✗	✓
Umicore	✓	✗	✗	✗
Samsung / SDI	✓	✓	✓	✓
Volkswagen	✓	✓	✗	✓
Volvo	✓	✓	✓	✓

Even though the OECD Guidance is often relied on for very specific risks - conflict minerals, child labor in artisanal mining - Annex II of the OECD Guidance covers other important issues too, among them, bribery,⁶⁶ money laundering⁶⁷ and tax evasion.⁶⁸

The prohibition on paying bribes, however, is mentioned in the Guidance in a somewhat narrow and restricted way, and only covers corruption that aims to “conceal or disguise the origin of minerals” or to falsify tax returns.⁶⁹

However, other international standards refer to the obligation to manage corruption risks in the supply chain, and go beyond the narrow definition of the OECD Guidance. The Global Compact for instance, a globally endorsed initiative that applies to all economic sectors, adopts such a broader concept. It has developed an anti-corruption guide that lists a series of steps companies should take in their supply chain.⁷⁰

Similarly, the Cobalt Refiner Supply Chain Due Diligence Standard adopts a more general approach to corruption.⁷¹ This new cobalt-specific standard is driven by the two main coalitions of companies involved in this chain, the Responsible Minerals Initiative (“RMI”) and the China Chamber of Commerce of Metals, Minerals and Chemicals Importers and Exporters (“CCCMC”). These two coalitions also have their own standards, with corruption addressed in both.⁷² Interestingly, while the RMI explicitly prohibits facilitation payments, the Chinese Guide is limited to setting “criteria and approval procedures with respect to the offer or acceptance of gifts.”⁷³

Standard	Initiative	Reference to corruption, money laundering and tax evasion
Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict or High-Risk Areas	Adopted by the OECD (3rd edition, 2016)	Corruption : refrain from bribery to conceal or disguise the origin of minerals or cover up for false tax returns Money laundering : contribute to the effective elimination of money laundering when there is a risk of money laundering related to the extraction, trading, processing, transport or extraction of minerals resulting from illegal taxation or extortion throughout the chain. Tax Evasion: Pay all fees, taxes and royalties to governments; depending on the position in the supply chain, disclose these payments in accordance with the principles of the Extractive Industries Transparency Initiative (EITI).
OECD Guidance Supplements for Tin, Tantalum and Tungsten, and Gold ⁷⁴	Adopted by the OECD for specific minerals that have been challenging to source responsibly	More detailed reference to the various points throughout the mineral supply chain where illegal payments may take place. ⁷⁵ Recognized by some companies such as Samsung SDI as applicable to cobalt. ⁷⁶ The OECD may adopt supplements for other minerals. ⁷⁷
Guide “Fighting corruption in the supply chain : A guide for customers and clients”	Developed by the Global Compact, the world’s largest corporate initiative for sustainable development	“Acting against corruption in all its forms” is one of the ten principles of the Global Compact. ⁷⁸ The supply chain anti-corruption guide provides practical recommendations to limit corruption risks in the supply chain, for example : <ul style="list-style-type: none"> ● Establish anti-corruption codes of conduct ● Evaluate corruption risks before entering into a relationship with a supplier ● Exercise due diligence towards suppliers, customers and intermediaries involved in tenders.⁷⁹
Chinese Diligence Guidelines for Responsible Mineral Supply Chains	Developed by China Chamber of Commerce of Metals, Minerals and Chemicals Importers and Exporters (“CCCMC”)	In addition to clauses that resemble those of the OECD Guidance, the Annex to the Chinese Guidelines contains a section on bribery, money laundering and payments to governments. It generally prohibits bribery of public officials in all forms of business and transactions. ⁸⁰
Cobalt Refinery Supply Chain Due Diligence Standard	Developed in 2018 by CCCMC, the Responsible Cobalt Initiative (RCI) and the Responsible Minerals Initiative (RMI)	Reference to corruption, money laundering and payments to governments in general, inspired by the OECD Guidance but also by the Chinese Guide mentioned above. ⁸¹

In sum, the various standards that supply chain actors have developed over the years already recognize that corruption – broadly conceived - must be taken into account as a possible risk to be assessed according to the five stages of the OECD Guidance. As the next section will detail, companies themselves generally adopt a broad definition of corruption in their own policies. In a future edition of the OECD Guidance, we recommend that the scope of corruption should be extended to align the Guidance with other standards.

WHAT DO THE COMPANIES THEMSELVES SAY?

Virtually all the companies studied in this report prohibit and condemn corruption. Apple, BMW, Daimler, Huayou, LG Chem, PSA, Renault / Nissan, Samsung SDI and Umicore all refer to this, including in their codes of conduct.⁸⁴ Almost all say they have a due diligence system in place to manage corruption risks in their supply chains.⁸⁵

The degree of precision of what exactly is prohibited varies from case to case. The most vague commitment goes to the Chinese company GEM, Glencore's most important customer for cobalt in 2018.⁸⁶ GEM simply promises to "turn corruption into magic."⁸⁷ Other companies – such as CATL – list corruption among the risks to be assessed, but link it to the concealment of the origin of the minerals, in line with the narrow definition of the OECD Guidance.⁸⁸

Most companies also adopt supplier-focused standards (BMW, Apple, CATL, BMW, Daimler, LG Chem, PSA, Renault, SDI Samsung, Umicore, Volkswagen, Volvo Cars). Eight of them mention bribery in their supplier guidelines, sometimes in a special separate section.⁸⁹ For example, in its "Responsible Purchasing Charter", Peugeot SA asks its suppliers to commit to "comply with all applicable laws on corruption, including the UK Bribery Act," and to impose a similar commitment on their subcontractors.⁹⁰ At Volkswagen, corruption is one of the risks listed in the « compliance »

section; however, the more detailed description of risks focuses on human rights and the environment, rather than corruption.⁹¹ The same is true for Apple, which in its Supplier Responsibility Standard 2019 lists the risks of the OECD Guidance to be taken into account, but omits corruption and money laundering from that list.⁹²

Suppliers of Volvo Car and Samsung SDI have to complete a self-assessment questionnaire to assess their corporate social responsibility policies, including on corruption.⁹³ Daimler includes corruption awareness in its online training for employees and business partners.⁹⁴

Some companies have anti-corruption clauses in their contracts with leading suppliers, such as Daimler and BMW.⁹⁵ Samsung SDI told the team it reserves the right to terminate a contract if there is evidence that a tier 1 or tier 2 supplier has violated any rule, regulation or law relating to bribery or money laundering.⁹⁶

It should be noted that Glencore also has an anti-corruption code of conduct.⁹⁷ In its Global Anti-Corruption Policy, the Swiss miner and trader explains that the "Glencore Culture" is to respect the highest ethical standards, which both its employees and its business partners should adhere to. Yet, these policies have not prevented the long lasting relationship with Gertler or the company's facing investigations by the US Department of Justice for allegations of corruption. Codes of conduct in and of themselves are clearly not sufficient to attest to robust anti-corruption practices, which will be discussed in the next part.

Corruption risk due diligence put to the test : the Glencore case

In which extent are corruption risks detected in practice? To find out, the research team has relied on a specific case study: Glencore's payments to an entity affiliated with Dan Gertler. With this in mind, the team contacted 14 companies which probably purchase cobalt from Glencore.

The main finding is that as one moves down the five steps of the OECD Guidance, there are fewer and fewer companies that successfully reach the end of each step. While almost all respondents agree that a due diligence system is needed to assess corruption risks, far fewer of them actually detect these risks in practice. Even fewer are ready to discuss the identified risk with the supplier that creates the threat. Only one of the 14 companies is planning an audit.

IDENTIFICATION OF THE COBALT SUPPLY CHAIN

The OECD Guidance requires that once a due diligence system is in place, the company sourcing minerals from high-risk areas should identify the actual risks present in its supply chains. While there is noticeable progress in mapping cobalt chains, the same is not true for the identification of corruption risks.

A considerable effort to map the cobalt chain

Amnesty International's reports⁹⁸ on human rights abuses in Congo's cobalt mines have undeniably led many companies to begin mapping their cobalt supply chains. Most companies (9/14) reported trying to trace their supply chains, in some cases all the way down to mine sites.

The Renault group is among those who have made the most effort to achieve a detailed mapping of all companies involved in its supply

chains. The French group has identified the entire chain of its current battery manufacturer LG Chem, in close collaboration with the latter. Two future suppliers have sent Renault a more embryonic mapping, which will be completed in the coming months.⁹⁹ Peugeot SA renegotiated its contractual clauses to require its suppliers to identify the precise origin of its cobalt.¹⁰⁰ Volkswagen also asks its suppliers to provide information on the smelters / refiners of its cobalt¹⁰¹ and is attempting to trace its supply chain further down in 2019.¹⁰²

Volvo Cars plans to map its entire cobalt supply chain by 2020.¹⁰³ Daimler says it has launched a pilot mapping project for one of its cobalt supply chains, from the battery manufacturer to the mine. This mapping is intended to be extended to other future cobalt supply chains.¹⁰⁴ BMW states that it has been able to increase the transparency of its supply chain through workshops for its suppliers and dialogue with its tier two suppliers.¹⁰⁵ Finally, a consortium including LG Chem has launched a pilot project based on blockchain technology to trace cobalt from one link in the chain to another.¹⁰⁶

... but some reluctance to confirm the presence of Glencore

Mapping a supply chain is one thing, but discussing the findings openly is another. Some companies make almost no information about their supply chain available to the public, including NEVS, Volvo Cars, Peugeot SA, CATL, Ecopro and GEM.

Other companies publish information, but only up to a certain level. This is the case of Apple and Daimler, for example, which publish lists of processing entities and suppliers. Neither group wanted to confirm - or deny - Glencore's presence in their supply chains.¹⁰⁷ The other companies that did not wish to confirm Glencore's presence in the chain are NEVS, Volkswagen and Umicore.¹⁰⁸

Renault has shown the team all the data it had collected so far, which has allowed us not only to better situate Glencore in its global supply chains, but also to understand their complexity. Renault is the only group to have demonstrated such a degree of transparency. That said, other companies have confirmed that they are sourcing cobalt indirectly from Glencore, namely BMW, LG Chem and Samsung SDI.

Glencore is in our chain but... its cobalt is not

Volvo Cars and Peugeot SA confirmed that the data collected by the team was probably correct - thus establishing Glencore's presence in their supply chains - while ensuring that Glencore's cobalt did not end up with them.¹⁰⁹ In other words, their direct supplier would use cobalt from another source for products sold to Volvo Cars and Peugeot.

In both cases, the team tried to understand which guarantees both groups had to be sure of this. Our question did not, however, receive convincing answers, especially since a review of Renault's supply chains seems to confirm that Glencore is indeed present in the chains of the other two groups.



IDENTIFICATION OF THE RISKS OF CORRUPTION : SEE NO EVIL, SPEAK NO EVIL

Human rights violations, in particular child labor, feature most prominently among the risks identified in the cobalt supply chain. Health, the environment, and safety at work are also addressed. Corruption, on the other hand, seems to remain taboo.

For instance, NEVS and GEM recognize the risks of violations of labor law, human rights and environmental degradation in their responsible purchasing policies,¹¹⁰ but do not mention corruption risks. Apple conducted audits of GEM, a direct client of Glencore, but did not report any corruption risk. Peugeot SA told the team that of the 86 audits the group conducted for its suppliers (all categories combined), only one case of potential corruption had been detected.¹¹¹ LG

Chem shared with the team the two corruption-related questions it asks during supplier audits.¹¹² These are limited to verifying the presence of an ethics policy, anti-corruption training, and an whistleblower system. In the audits LG Chem conducted and published the results of - laudable, and quite exceptional - the risk of corruption is mentioned but is not analyzed in detail.¹¹³

Of the 14 companies, Umicore is the only one to publicly report two specific risks of corruption - without mentioning Glencore.¹¹⁴

Case detected by Umicore

In 2017 and 2018, reports from NGOs and press reports accused a supplier of bribes and corruption related to the acquisition of the mining assets of the supplier in the Democratic Republic of Congo.

(...) During the year, several authorities opened investigations on the supplier's behavior. In one case, the supplier reached an out-of-court settlement with the authorities. The supplier acknowledges having published misleading information, lacking sufficient internal controls and failing to disclose certain material risks. There is no judgment. (...)

Glencore case

For many years, NGOs and media have alerted the public about the opaque and controversial acquisition of certain mining sites in the Democratic Republic of Congo through Gertler.

In 2018, several investigations into Glencore's relationship with Gertler were underway, including Ontario (Canada) and the United States. In December 2018, the subsidiary of Glencore, Katanga Mining has entered into a settlement agreement with the Ontario Security Commission recognizes not having described adequately (i) risks related to its area of activity, particularly the high risk of corruption in the Congolese public sector, and (ii) its use of individuals and entities associated with Dan Gertler.¹¹⁵ There was no judgment on the corruption itself.

Samsung SDI also dedicates attention to corruption in its due diligence reporting. The company has developed its own risk assessment tool for its suppliers, including ethical aspects.¹¹⁶ In a section titled "compliance with laws and global anti-corruption policies," the South Korean company reports the number of identified cases, anti-corruption training it has conducted both within

the company and in the supply chain, and the number of sanctions it has imposed.¹¹⁷ However, no specific case is described.

Samsung SDI is also among the few companies to have recognized the risk posed by Glencore during its interactions with Resource Matters. The other companies also to have done so are LG Chem, BMW and Renault.



VERY LIMITED RISK MANAGEMENT MEASURES

Of the 14 companies contacted, fewer than a third are prepared to recognize the corruption risk arising from the links between Glencore and Gertler. It is therefore not surprising that the actions they have taken to manage this risk, as required according to the OECD Guidance step 3, are very limited.

Only two companies - Umicore and BMW – have raised the issue with the supplier. The two stopped there on the grounds that the supplier has not been subject to a court order. In the two anonymous cases reported by Umicore, the Belgian company indicates that “there is still no official judgment in the case”, that it awaits “the conclusions of the authorities to define its position.” In the meantime, the company has decided to maintain its business relationship with both companies.¹¹⁸

When BMW addressed the issue with Glencore, the latter reassured the German car maker that the various allegations were wrong and that its innocence would, on investigation, be proven.¹¹⁹ Like Umicore, BMW says it is waiting for the outcome of the investigation to “reconsider its position.”

Only one company indicated that it would conduct an audit : Samsung SDI. The Korean company, one of the largest battery producers in the world, has indicated that its contractual terms require compliance with laws - including those combating corruption - by both direct and indirect suppliers, and that it reserves the right to stop contracts in case of violation. Samsung has scheduled a third-party audit during the first half of the year [2019] “to assess where Glencore is in relation to these topics.”¹²⁰ Samsung SDI reports having stopped three contracts with business partners between 2015 and 2017 due to corruption.¹²¹

Finally, several companies have asked for advice on how to respond to this specific risk. They said that Glencore’s importance in the global cobalt chain posed a real challenge, and called for collective action. “It is not easy to eliminate [Glencore] from our supply chain,” one of them wrote.¹²² “We think it is more appropriate to work together

with all of those who are involved in this matter as a coalition to get to the bottom of the issue,” for example through the Responsible Minerals Initiative.

Payments to Dan Gertler in perspective

The majority of cobalt buyers’ current actions focus on child labor in mine sites. For example, the Swiss trading company Trafigura has launched the pilot project on the Mutoshi artisanal site which aims to improve working conditions of artisanal diggers and prevent the presence children on the site.¹²³ Apple, BMW and Samsung SDI cofinanced a large UC Berkeley study on the presence of children in artisanal mines. One of the companies contacted auctioned two cars and donated the proceeds - 75,000 euros - to UNICEF.

As laudable as these initiatives are, they are still drops in the ocean when placed in perspective with the money that Glencore’s subsidiaries pay Gertler. Indeed, according to calculations Resource Matters, Glencore owed royalties of at least US\$74 million for the year 2018, more than US \$ 200.000 per day (see annex B).

The royalty rights Gertler holds used to belong to the state-owned company Gécamines.¹²⁴ The money paid to Gertler - the equivalent of 4 cars a day - could have been used to maintain the Gécamines school system, which is recognized as one of the best in the province.

ANTI-CORRUPTION DUE DILIGENCE MEASURES (14 COMPANIES)



Conclusion

«As a major producer and marketer of cobalt, we support efforts to establish greater transparency in the value chain, and address the endemic poverty in this region that is the underlying cause of artisanal mining,» Glencore told the Financial Times in April 2018.¹²⁵

Despite these statements, and a code of conduct prohibiting corrupt practices of its employees and business partners, Glencore continues to make payments to Dan Gertler, in spite of sanctions corruption sanctions the US imposed more than a year ago. Questioned about which steps the company took to mitigate these specific corruption and money laundering risks, the company declined to comment.¹²⁶

In partnership with Sciences Po Paris, Resource Matters analyzed how 14 large companies identified as probable purchasers of Glencore's cobalt managed this specific risk in their supply chain. The results are, on the whole, mixed at best.

The vast majority of companies does recognize that corruption is one of the risks to be considered under the OECD Guidance, the key leading supply chain due diligence standard. Many refer to corruption in their codes of conduct and in suppliers guidelines. Some even integrate it into the contractual clauses of their purchase agreements and request that their suppliers apply the same standards to their own upstream suppliers.

In practice however, corruption risks are rarely detected in the course of due diligence efforts. Few annual sustainability reports pay attention to the issue. None of the companies surveyed for this study has publicly identified the Glencore-Gertler corruption risk in the Congolese industrial sector, even through the country has one of the world's highest corruption perception ratings.¹²⁷

The handful of companies that did attempt to address the subject with the supplier got assurances that the allegations were false, and did not follow up any further because the company has not been convicted of bribery. This position would compare to a scenario whereby a customer that faces child labor risks in its supply chain would take for granted the assertion that there are in fact no minors on the artisanal site, and that the supplier has not been not sentenced for child labor anyway, so that no further action is required.

This position has direct consequences for the customers in Glencore's supply chain. The legal analysis carried out by the team shows that the knowledge of potential acts of corruption of one's supplier might make the client liable for indirect corruption or concealment in certain jurisdictions.

In 2018, the world's largest cobalt trader owed \$200,000 a day to an entity sanctioned for corruption. Customers cannot remain oblivious to this risk and remain passive in the face of it. As long as the proceeds of the mining boom keeps benefiting a handful of controversial individuals rather than the Congolese population, cobalt buyers will hardly contribute to the country's macro-economic development. A variety of actions could and should be taken, preferably collectively.

Recommendations

STRENGTHEN THE NORMATIVE FRAMEWORK

- The OECD should review the list of risks included in Annex II of the OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas to make it more comprehensive. With regards to corruption, the definition should be broadened and aligned with other adopted standards such as the Pilot Cobalt Refinery Supply Chain Due Diligence Standard.
- Companies involved in supply chains where there is a corruption risk should check whether they could be considered either as accomplices or potentially responsible for concealment in their respective jurisdictions.
- Companies should include clauses in supplier contracts to ensure that they put in place an adequate risk management system further down the supply chain, including in the area of corruption. They should provide for specific training modules in this area.

BETTER IDENTIFY THE SUPPLY CHAIN

- Companies should continue their efforts to identify the supply chains of cobalt and other minerals, and include contractual clauses that aim at gathering information from the mine to the end user. New block chain initiatives are to be encouraged but will necessarily have to be accompanied by a real effort to detect and analyze risks.

BETTER IDENTIFY AND MANAGE THE RISKS OF CORRUPTION

- Companies should take a more holistic approach to the risks present in their supply chain rather than the one dictated by media coverage of a particular risk. Thus, attention is required for the risks of corruption, money laundering and tax evasion but also other risks not addressed in this study. In particular, buyers of minerals and metals could refer to the Standard for Responsible Mining Assurance (IRMA), which provides a more detailed grid of the various recurring risks in the mining sector.
- In order to minimize corruption risks, companies using significant quantities of minerals should actively support initiatives aimed at increasing transparency in the extractive industries. In particular, they should require extractive companies in their supply chains to publish annually all material payments made to state entities in the countries where their mining projects are located, all material contracts that bind the producer to state entities, as well as the actual beneficiaries of their mining projects.
- If these extractive companies operate in a country where the Extractive Industries Transparency Initiative (“EITI”) is implemented, downstream companies should insist on strict adherence thereto, as provided for in Annex II of the OECD guidance.

LIMIT THE RISK OF GLENCORE PAYMENTS TO AN ENTITY SANCTIONED FOR BRIBERY

- Companies that recognize that Glencore is a supplier of their suppliers, but that have been told that Glencore's cobalt is not used for the products they buy, should imperatively get solid evidence of this. Simple guarantees are not enough.
- Companies involved in Glencore's cobalt supply chain should conduct an audit of Glencore, including its corruption and money laundering risk management.
- These companies should achieve tangible guarantees that Glencore has taken all necessary measures in order to ensure that payments of its subsidiaries to entities affiliated with Dan Gertler are not tainted with potential risks of corruption or money laundering. These guarantees could, in non-limiting manner include anti-corruption clauses in contracts between subsidiaries of Glencore and its affiliates to M. Gertler as well as Glencore's law and audit evidence regarding the use of payments.
- These companies should ask Glencore to systematically and comprehensively disclose all payments made to state entities in Congo's EITI reports, the Payments to Government reports (UK) and reports published under the Extractive Sector Transparency Measures Act («EST-MA», Canada).
- These companies should ask Glencore to systematically and comprehensively disclose all payments made to the benefit of Gertler-affiliated entities, including in quarterly reports on the London Stock Exchange (Glencore) and on the Toronto Stock Exchange (Katanga Mining, a subsidiary of Glencore which owns 75% in Kamoto Copper Company).
- In order to limit the commercial disadvantage that the above-mentioned measures with regards to Glencore, which is a particularly powerful player in the cobalt-rich market, companies in its supply chain should preferably initiate such measures through one or several corporate coalitions, such as the Responsible Minerals Initiative and / or the CCCMC/RCI.



Appendix A - Glencore and Gertler : Ten Years of Controversial Links

Swiss-registered Glencore PLC operates two copper-cobalt ventures in the Democratic Republic of Congo: Kamoto Copper Company and Mutanda Mining. These Congolese entities produced a total of 38,400 tonnes of contained cobalt in 2018,¹²⁸ representing at least a third of Congo's cobalt production¹²⁹ and a fifth of global output. Civil society groups have repeatedly accused Glencore of insufficient due diligence with regards to the corruption risks its Congo investments entail. Its ongoing payments to a company associated with US Specially Designated National Dan Gertler constitute a persistent corruption risk.¹³⁰

Anti-corruption watchdog Global Witness started flagging Glencore's heavy reliance on Dan Gertler in Congo as a corruption risk as early as 2012.¹³¹ Gertler is an Israeli businessman with particularly close connections to then DRC President Joseph Kabila, accused of acquiring mining assets from state entities at a steep discount.¹³² Despite the warnings, "the relationship between Glencore and Gertler deepened," according to a recent Bloomberg News feature article on Glencore.¹³³ "The company rolled over loans to [Gertler] at the last minute, never requiring him to pay the principal. It gave him stock options at a discounted price."

In November 2017, a large-scale corporate leak better known as the Paradise Papers revealed that the signing bonus Glencore paid to gain control over the KCC mines was \$440 million lower than to the applicable standard at the time, thanks in part to Gertler's help.¹³⁴ Even though Glencore runs some of the biggest mining operations in the country, "the company didn't even have a representative in [DRC capital] Kinshasa, depending instead on a Gertler employee to handle relations with the government," according to Bloomberg News.¹³⁵

Early 2017, Glencore cut off some, but not all contractual ties with Dan Gertler. Glencore took such steps shortly after New York hedge fund Och-Ziff, another multinational with past links to Gertler, settled with the US Department of Justice on charges of bribery, agreeing to \$400+ million in fines and fees.¹³⁶ Glencore bought Gertler's shares in KCC and Mutanda for nearly one billion dollars¹³⁷ and stopped relying on Gertler's team for its public relations in Congo. However, Glencore kept making royalty payments to Gertler-linked entities on all copper and cobalt coming out of KCC and Mutanda.¹³⁸

On December 21st, 2017, the U.S. administration sanctioned Gertler and dozens of his companies under the Global Magnitsky Act, which authorizes the U.S. President to sanction alleged corrupt actors and human rights abusers.¹³⁹ Gertler was accused of having made "hundreds of millions of dollars worth of opaque and corrupt mining and oil deals in the Democratic Republic of the Congo".¹⁴⁰ The Global Magnitsky Act is designed to "cut off Gertler and his business from the American financial system".¹⁴¹ Even foreign entities such as Glencore may expose themselves to US sanctions if they uphold their business relationship with the Gertler network, since the US Treasury can sanction anyone it discovers to have provided support to a sanctioned entity, whether it be in kind or in cash, in dollar or any other currency.¹⁴²

In the first half of 2018, Glencore temporarily interrupted its royalty payments to the Gertler-affiliated companies in response to the sanctions.¹⁴³ After collective pressure from Gertler and state-owned company Gécamines in Congo, Glencore resumed its payment commitments in June 15, 2018.¹⁴⁴ Glencore makes those payments in euros through a non-American bank.¹⁴⁵

Appendix B – Estimate of payments Glencore subsidiaries owed to Gertler affiliates in 2018

In July 2018, Glencore announced that it had received a subpoena from the American Department of Justice requesting evidence of its compliance with U.S anti-bribery and anti-laundering laws in Nigeria, Venezuela and Congo.¹⁴⁶ In December 2018, KCC's parent company Katanga Mining (almost exclusively held by Glencore) settled with the Ontario Securities Commission, agreeing that it "failed to adequately describe the heightened risks associated with (1) its operating environment, specifically the elevated risk of public sector corruption in the Democratic Republic of the Congo; and (2) its reliance on individuals and entities associated with Dan Gertler."¹⁴⁷

Gertler and Glencore have always denied any wrongdoing. This appendix mainly intends to alert Glencore's customers to the corruption risk and to the US Treasury Department's red flags with regards to any payments made to entities sanctioned for corruption. The above-mentioned investigations into Glencore as well as the UK Serious Fraud Office's investigation into Eurasian Natural Resources Corporation, another mining company who has acquired Congolese cobalt assets with Gertler's assistance, will allow help to make clear whether these allegations amount to violations of applicable anti-corruption laws.

Glencore has two subsidiaries in Congo: Mutanda Mining and Kamoto Copper Company ("KCC"). Both owe royalties to Ventora Development Sasu, a Gertler-affiliated company.¹⁴⁸

Resource Matters calculated the amount of royalties owed in 2018, relying on data from the Glencore group and conservative assumptions.

KCC owes royalties amounting to 2.5% of net sales.¹⁴⁹ Based on 2018 gross sales amounting to US\$ 1,265,094,000,¹⁵⁰ and deductible charges of 10% of gross sales, the royalties owed for the KCC project in 2018 amount to approximately US\$ 28.46 million.

Mutanda owes royalties amounting to 2.43% of gross sales. Based on a conservative estimate of Mutanda's gross revenue of US\$ 1,875,549,800 for the year 2018,¹⁵¹ royalties owed for the Mutanda project for that year can be estimated at about US\$ 45.75 million. This estimate is slightly lower than Glencore's own estimate, as the company announced in June 2018 that it expected Mutanda to pay about 10.5 million euros per quarter, about US\$ 47.45 million.

This amounts to a total estimate of \$US 74.21 million for 2018. Note that these amounts reflect what is owed, not what was actually paid. Indeed, since Glencore made royalty advances in 2015 to a Gertler-affiliate for KCC, there may have been no cash payments this year for that project.¹⁵²

Glencore has not yet declared how much it has paid to Gertler in 2018. In December 2018, Glencore's subsidiary Katanga Mining Ltd (KCC's parent company) settled with the Ontario Securities Commission for \$US 22 million, recognizing it had failed to disclose corruption risks.¹⁵³ The Ontario Securities Commission accused Glencore of failing to disclose the royalty payments to another Gertler-affiliated company, African Horizons Investment Limited.¹⁵⁴

Appendix C

Glencore comments

Resource Matters asked Glencore a range of questions about its anti-corruption policies, the measures it had taken to limit corruption risks related to payments to Gertler-affiliated entities since the US sanctions, and comments on Resource Matters' estimate of payments owed in 2018. Glencore declined to comment on the latter two. Its full response on its anti-corruption policies is pasted below.

"We seek to maintain a culture of ethical behaviour and compliance throughout the Group, rather than simply performing the minimum required by laws and regulations.

We will not knowingly assist any third party in breaching the law, or participate in any criminal, fraudulent or corrupt practice in any country.

To support this, we have a Group compliance programme that includes a range of policies, procedures, guidelines, training and awareness, monitoring and investigations. Our permanent and temporary employees, directors and officers (as well as contractors, where they are under a relevant contractual obligation) must comply with our relevant compliance policies, procedures and guidelines, in addition to complying with applicable laws and regulations. When we enter into joint ventures where we are not the operator, we strive to influence our partners to adopt similar policies to ours. We have also established an Ethics, Compliance and Culture committee with effect from 1 January 2019 which further oversees the operation and implementation of our compliance programme.

Glencore's Global Anti-Corruption Policy is available on the Group website. It contains our clear position on bribery and corruption: the offering, paying, authorising, soliciting or accepting of bribes is unacceptable. We conduct analysis for corruption risks within our businesses and work towards addressing these risks through policies, procedures, guidelines, training and awareness, monitoring and controls.

In addition to our standard "Know Your Counterparty" programme, the Group has implemented the Third Party Due Diligence Procedure which seeks to ensure that our third party relationships which present the highest corruption risk are conducted in accordance with applicable laws and regulations and our Global Anti-Corruption Policy.

The procedure sets out a detailed process whereby circumstances that may pose a corruption risk are, on a risk basis, reviewed, addressed and taken into consideration when deciding whether and on which conditions to proceed with a third party relationship, particularly intermediaries, joint-ventures and service providers. The procedure also requires, where necessary, for ongoing monitoring and review of the relationships to ensure compliance with our Global Anti-Corruption Policy."

Notes

1. Our sincere thanks go to Sciences Po Paris students Anne Blickhan, Caroline Avan and Rose Vennin and to Aminata Ndiaye of Resource Matters for their research, writing and proofreading contributions. The ultimate responsibility remains that of Resource Matters.
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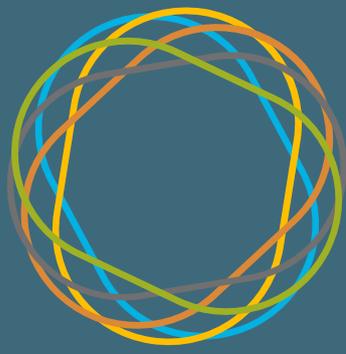
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info@resourcematters.org

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