

EUROPEAN CENTER FOR CONSTITUTIONAL AND HUMAN RIGHTS



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Executive Summary

Water pollution in the influence area of Glencore in Espinar (Cusco, Peru)

Legal Report to the Special Procedures of the United Nations Human Rights Council

On 21 May 2012, hundreds of inhabitants of the district of Espinar (Cusco) protested against the environmental pollution in the area around a Glencore copper mine. Two people died and many others were severely injured. It has since been scientifically established that the water in the influence area of the mine run by the Swiss mining corporation Glencore in Espinar is polluted. Three years later, no measures have been taken to remedy the water pollution. Glencore refutes any responsibility. In order to clarify the responsibilities of Glencore, Peru and Switzerland with regards to the human right to water, ECCHR, Multiwatch, Derechos Humanos sin Fronteras, CooperAcción and affected inhabitants of Espinar are submitting a Legal Report to the United Nations (UN) Special Rapporteur on the right to water and to the UN Working Group on transnational corporations.

Glencore's operations in the district of Espinar

Glencore operates the Tintaya open pit copper mine in Espinar (Cusco). The plant has two tailings dams that retain the water containing waste products from the extraction process. While Tintaya's gradual closure began in 2012, the Antapaccay project located approximately ten kilometers southwest of Tintaya mine began its operations. Tintaya's open pit will be reused as a huge tailings dam for the new expansion project.



More than 30,000 people live in the district in which Glencore operates. Several rural communities live directly next to the retaining dams and in the direct influence area of the mine.



Established water pollution in the influence area of Glencore in Espinar (Cusco)

Several scientific reports conducted since 2010 have established high levels of heavy metals in drinking, superficial and underground waters around the Glencore mine. In particular after the protests of May 2012, the Peruvian government began monitoring waters close to the mine. Studies revealed high levels of mercury, aluminum, arsenic and iron in drinking water making it unfit for human consumption. High levels of iron and molybdenum were found in the rivers surrounding the mine making those unfit for irrigation purposes. This confirms the results of monitoring conducted previously by the University of Kiel, Germany. Heavy metals have also been detected in high quantities in the urine of inhabitants living next to the mine. Among 17 heavy metals detected, the Peruvian government established very high level of mercury and lead. It concluded that these levels presented a danger to inhabitants' lives.

Ineffective measures to investigate and remedy the water contamination

Despite the established contamination and the risks it poses for the health of the rural communities, no actor has to date taken remedial action. Affected communities have repeatedly called for action on the contamination and the associated health risks. On 27 March 2015, two thousand affected inhabitants of Espinar peacefully protested against the mining operations. They asked the Peruvian government to establish the cause of the contamination and to address the water pollution. Since 2013 the Peruvian government has repeatedly promised to establish whether Glencore's operations are the source of the water contamination. So far, no causality study has been carried out. The pollution has not been remedied. Glencore refutes any responsibility for the contamination. Authorities in Switzerland, where Glencore is based, do not investigate Glencore's responsibility in Switzerland.

How Peru potentially violates the human right to water

As part of their obligations with regards to the right to water, States must ensure that natural water resources are protected from contamination by harmful substances.¹ In particular, access to traditional water sources in rural areas should be protected from unlawful pollution.² States must expressly adopt the necessary measures to prevent corporations from polluting water.³

In the case at hand, Peru is potentially violating the human right to water (articles 11 and 12 of the International Covenant on Economic, Social and Cultural Rights). Despite establishing contamination in 2013, Peru has not remedied the problem. Peru has not taken any effective measures to reduce the level of heavy metals in the drinking water and in the surrounding rivers. It has failed to adequately investigate the origin of the contamination and to establish the extent of Glencore's responsibility. Finally, it has not informed the affected communities as to the danger of consuming contaminated water.

The UN Special Rapporteur on the right to water and the UN Working Group on transnational corporations are asked to require the Peruvian government to:

1) Implement measures to reduce the established and future water contamination

¹ UN Committee on Economic, Social and Cultural Rights, General Comment No 15: *The right to water*, par. 8.

² *Ibid.*, General Comment No 15: *The right to water*, par. 16 c.

³ *Ibid.*, General Comment No 15: *The right to water*, par. 23.

in the influence zone of Glencore;

- 2) Establish the extent of Glencore's responsibility for the water contamination and invite an independent expert to determine the origin of the contamination;**
- 3) Evaluate the exposition to heavy metals of all inhabitants living close to the mine and inform them of the risks of drinking contaminated water.**

How Glencore potentially violates the human right to water

As recognized by the former Special Rapporteur on the right to water, businesses have a responsibility to respect human rights and to exercise due diligence to avoid any action which would result in human rights abuses in the scope of their operations.⁴ Under the UN Guiding Principles on Business and Human rights, corporations must identify and prevent risks and mitigate potential or actual violations.⁵ In order to objectively identify the risks, corporations must undertake meaningful consultations with potentially affected groups.⁶

While it has not been yet established that the mine is the main source of water contamination, Glencore systematically rejects any responsibility and does not sufficiently exercise its human rights due diligence. For example, it does not communicate publicly any results of its environmental impact assessments and does not consult effectively affected communities close to the mine. It does not provide affected communities with information on measures taken to prevent water contamination and on the future risks of water contamination related to the expansion project. In reality, Glencore shows no serious intention of cooperating in efforts to identify the scope of its responsibility and remedy the contamination.

The UN Special Rapporteur on the right to water and the UN Working Group on transnational corporations are asked to require that Glencore:

- 1) Implement and publicly report on measures to mitigate the established contamination and to prevent the future contamination in the expansion project of Antapaccay;**
- 2) Inform the local communities of internal environmental impact assessments and consult them in order to find common solutions.**

How Switzerland potentially violates the human right to water

Under the right to water, steps should be taken by States to prevent their own companies from violating the right to water of individuals and communities in other countries. Where States can take steps to influence companies to respect this right, through legal or political means, such steps should be taken.⁷

⁴ UN Human Rights Council, *Common violations of the human rights to water and sanitation*, 30 June 2014, par. 32.

⁵ *UN Guiding Principles on Business and Human rights*, Principle 17.

⁶ *UN Guiding Principles on Business and Human rights*, Principle 18 b.

⁷ UN Committee on Economic, Social and Cultural Rights, General Comment No 15: *The right to water*, par. 33.

Glencore has its headquarters in and operates from Switzerland. Civil society in Switzerland has repeatedly informed the Swiss government and the public on the risks of water contamination caused by Glencore in Espinar. On 16 October 2014, a delegation of Swiss MPs visited Glencore operations in Peru. Yet no measures have been taken in Switzerland to investigate Glencore's role in the contamination. No criminal or administrative investigation has been opened to ensure that Glencore does not pollute water in Espinar.

The UN Special Rapporteur on the right to water and the UN Working Group on transnational corporations are asked to require that Switzerland:

- 1) Open a criminal or an administrative investigation to determine Glencore's responsibility for the water contamination;**
- 2) Ensure that the victims of the contamination in Espinar have access to justice in Switzerland in order to determine Glencore's liability.**

In cooperation with:



Berlin, May 2015